



## AGENDA

The following will be considered at the Regular Meeting of the Doña Ana County Board of County Commissioners to be held on **Tuesday, May 23, 2017** at 9:00 a.m. in the Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces:

- **Invocation**
- **Pledge of Allegiance**
- **Roll Call of Commission Members Present and Determination of Quorum**

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS CONVENES AS THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY BOARD OF FINANCE, AND THE COUNTY BOARD OF APPEALS IN OPEN SESSION.**

- **CHANGES TO THE AGENDA** - Chuck McMahon, Interim County Manager, will discuss
  - **PET SHOWCASE** - ASCMV Staff will present
1. **MINUTES** - Approval of the Minutes of the Regular Meeting of May 9, 2017 and the May 16, 2017 Work Session
  2. **PUBLIC INPUT**  
**STAFF INPUT**  
**COUNTY ELECTED OFFICIALS' INPUT**  
**COMMISSION INPUT**

### **PROCLAMATIONS/PRESENTATIONS**

3. Proclaim the Month of May to be National Emergency Medical Services and Trauma Awareness Month in Doña Ana County - Introduced by Jamie Michael, Health and Human Services Director; and Eric Crespín, Interim Fire Chief; Jess Williams, Director, Public Information/Special Projects, will read the Proclamation.
4. Presentation of the List of Contracts Signed from May 5 - May 19, 2017 - Pamela Wood, Contract Administrator, will discuss.
5. Presentation and Discussion of Affordable Housing Financing Mechanisms: A Feasibility Analysis and Affordable Housing Loan Fund Business Plan - Chuck McMahon, Interim County Manager, will discuss.
6. Presentation and Discussion of Property Assisted Clean Energy (PACE) Program - Chuck McMahon, Interim County Manager, will discuss.

**CONSENT AGENDA - The Board will be asked to approve by one motion the following items of recurring or routine business:**

7. Resolution Donating a Painting from the Doña Ana County Permanent Collection to the Las Cruces Elks Lodge – District 5 Vice-Chairman John Vasquez, will discuss.
8. Approve Out-of-State Travel for Lieutenants to Attend EEO Training for New Investigators, One in Atlanta, Georgia June 12-16, 2017 and 2<sup>nd</sup> in Washington, D.C. October 23-27, 2017 – Chris Barela, Director, Detention Center, will discuss.
9. Approve Award of Request for Proposal 17-0015 Inmate Telecommunication Services and Delegate Signature Authority to the County Manager for Related Contract Documents – Chris Barela, Director, Detention Center, will discuss.
10. Approve Assignment of Santa Teresa Airport Hangar T-11 Condominiums, Deed for Leasehold Condominium Interest Unit #5, from Leon Development, LLC, to Mike McNamee and Marcia McNamee and Delegate Signature Authority to the County Manager for the Assignment and all Related Documents – Bill Provance, Airport Manager, will discuss.
11. Approve Purchase of CenturyLink Services up to \$65,000 Annually and Delegate Signature Authority to the County Manager – Bob Bunting, Infrastructure Manager, IT Department, will discuss.
12. Approve Purchase of Server Equipment in the Amount of \$63,936.04 Under the Advanced Network Management State Purchasing Agreement #40-000-13-00020 WAN/LAN, Approve Associated Budget Revision and Resolution to Reallocate Operating Budget to Capital and Delegate Signature Authority to the County Manager – Bob Bunting, Infrastructure Manager, IT Department, will discuss.
13. Approve Utilization of SPA 70-000-16-00037AA to Purchase 160 Tactec Carriers and Special Threat Plates – Enrique Vigil, Sheriff, will discuss.
14. Approve Utilization of GSA Contract #GS07F0004Y to Purchase 3 Automated License Plate Reader Speed Trailers and Associated Budget Revision and Resolution – Enrique Vigil, Sheriff, will discuss.
15. Approve Utilization of SPA 70-000-16-00004 to Purchase Three 2017 Chevrolet Tahoes – Enrique Vigil, Sheriff, will discuss.

**APPROVALS**

16. Approve Resolution Adopting Doña Ana County's FY2017-2018 Preliminary Budget – Jo Ann Rowe, Financial Services Director, will discuss.
17. Approve Resolution Increasing Liquid Waste Discharge Fee – Nora Oliver, Office Supervisor, Utilities Department, will discuss.
18. Approve Resolution Increasing Wastewater Utility Rates – Nora Oliver, Office Supervisor, Utilities Department, will discuss.



**APPROVALS - Continued**

19. Approve Resolution Superseding Resolution 2013-57 to Amend the Purpose of the Crisis Triage Center – Jamie Michael, Director, Health and Human Services Department, will discuss.
20. Approve Resolution Establishing a Film Advisory Committee – District 5 Commissioner Vice-Chair John Vasquez, will discuss.
21. Approve the Re-Appoint of Two Members from the Local Banking Community, William Jacobs (White Sands Federal Credit Union) and George Ruth (Citizens Bank); and One Private Citizen, Dr. Chris Erickson (NMSU), to the Doña Ana County Investment Advisory Committee – Eric Rodriguez, County Treasurer, will discuss.
22. Approve Publication of Title and General Summary and Notice to Hold a Public Hearing to Consider and Adopt an Ordinance Approving the Las Cruces Community Farms, LLLP Local Development Act (“LEDA”) Project Proposal and Approve the Project Participation Agreement, the Intergovernmental Agreement and the Guaranty Agreement and Delegate Signature Authority to the Interim County Manager for the Documents Cited and Other Required Documents – Chuck McMahon, Interim County Manager, will discuss.
23. Approve Resolution Establishing a Utilities Advisory Committee – District 5 Commissioner Vice-Chair John Vasquez, will discuss.
24. Approve Payment to Infosend for Printing & Mailing Services for the Budgeted Assessor’s 2017 Notice of Value – Paul Ponce, Chief Deputy Assessor, will discuss.

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS RECONVENES AS THE COUNTY BOARD OF APPEALS IN OPEN SESSION.**

25. Approve a Special Use Permit for a Winery and Wine Tasting Room – Luis Marmolejo, Senior Planner, Community Development, will discuss.

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS ADJOURNS AS THE COUNTY BOARD OF APPEALS IN OPEN SESSION.****CORRESPONDENCE**

26. Scott Krahling, County Clerk, will present to the Commission any claims received by Doña Ana County.

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS MAY CONVENE IN CLOSED SESSION,** to discuss a limited personnel matter related to the search criteria and process to be used to recruit a permanent County Manager; pursuant to the attorney-client privilege to discuss pending threatening litigation regarding El Paso Electric Company’s 2017 Renewable Energy Plan before the New Mexico Public Regulatory Commission; to discuss bargaining strategy preliminary to collective bargaining negotiations with the *International Association of Fire Firefighter (IAFF) Local 5037; American Federation of State, County and Municipal Employees, NM Council 18, Local 1529 (Detention Center), and Local 1879 (Court Security), and*

*Local 2709 (Blue Collar)*; as authorized by the Open Meetings Act, NMSA 1978, § 10-15-1 (H)(2)(5) and (7) respectively.

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS MAY CONVENE IN OPEN SESSION** to take action, if any, on the closed session items.

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS ADJOURNS AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.**

**THIS AGENDA IS SUBJECT TO CHANGE**

**NOTE:** Doña Ana County will ensure effective communication with individuals with disabilities and will, upon request, provide auxiliary communication aids and services to afford those individuals equal opportunity for participation in Doña Ana County sponsored meetings, events, or activities. Any request should be made to the Americans with Disabilities Act Coordinator, in writing, or by phone, at least two business days prior to the event at which accommodation is needed. If you have any questions regarding examples of reasonable accommodations, please contact the ADA Coordinator, at 525-5884 (voice) or 525-2951 (TTY), 845 N. Motel Blvd. Las Cruces, NM 88007.

Spanish language interpretation services are now available upon request for participation in Doña Ana County sponsored meetings, events, or activities. Please contact the Community & Constituent Services Office at 525-6163, at least 48 hours prior to the event. **Servicios de interpretación en las juntas será disponible por petición. Por favor en contacto la Oficina de Servicio a la Comunidad y Constituyentes 525-6163 por lo menos dos días hábiles por adelantado para pedir este servicio.**



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## MINUTES

Chair Isabella Solis called the **Regular Meeting** of the Doña Ana County Board of Commissioners to order at 9:00 a.m., on **Tuesday, May 9, 2017**, in the Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces.

Time: 09:02:20

District 4: Isabella Solis, Chair - Present  
District 5: John L. Vasquez, Vice-Chair - Present  
District 1: Billy G. Garrett, Commissioner – Present  
District 3 Benjamin L. Rawson Commissioner – Present  
District 2: Ramon S. Gonzalez, Commissioner – Present

Time: 09:02:31

**Chair Solis recognized Mayor Perea from Sunland Park, Representative Rudy Martinez and Representative Bill Gomez in the audience and thanked them for being here.**

### Invocation

Time: 09:02:45

**Before the Invocation, Jess Williams asked for moment of silence in remembrance of Hatch Police Office Jose Chavez and Alamogordo Police Officer Clint Corvinus.**

Led by: Jess Williams, PIO Director

### Pledge of Allegiance

Time: 09:04:24

Led by: Isabella Solis, BOCC Chair

### Roll Call of Commission Members Present and Determination of Quorum

Time: 09:04:47

Led by: Lynn J. Ellins, Deputy County Clerk

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS CONVENES AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.**

CHANGES TO THE AGENDA – Chuck McMahon, Interim County Manager, will discuss

Time: 09:05:08

Changes: **Chuck McMahon stated that they have a request from the appellant who would like Item #18 postponed to a later date and understands that the applicant for the winery had reached out to that applicant ahead of time, they were not in agreement and believes the appellant is present the winery folks are also present and the decision is at the discretion of the BOCC.**

Commissioner Gonzalez made a Motion to Postpone Item #18 until their next Regular Meeting of May 23, 2017.

Commissioner Vasquez seconded that motion.

Public Input

Time: 09:07:09

Given by: 1) Dawn Okaley 2) Brian Oakley 3) Quent Pirtle

**\*In order to listen to Public Input comments go to Doña Ana County website:**  
<https://donanacounty.org/bocc/video>.

**Motion to Postpone Item #18 until their Next Regular Meeting of May 23, 2017:**

Motion: Ramon S. Gonzalez

Second: John L. Vasquez

District 1: Billy G. Garrett – No

District 2: Ramon S. Gonzalez – Yes

District 3: Benjamin L. Rawson – Abstain

District 4: Isabella Solis - Yes

District 5: John L. Vasquez - Yes

Motion passed

1. MINUTES – Approval of the Minutes of the Regular Meeting of April 25, 2017; Approval of the Minutes of the May 2, 2017 Work Session and the May 2, 2017 Special Meeting.

Time: 09:13:49

Motion: Benjamin L. Rawson

Second: Ramon S. Gonzalez

District 1: Billy G. Garrett – Yes

District 2: Ramon S. Gonzalez – Yes

District 3: Benjamin L. Rawson – Yes

District 4: Isabella Solis - Yes

District 5: John L. Vasquez - Yes

Motion passed

2. EMPLOYEE RECOGNITION – The Commission will recognize Doña Ana County Employees for their years of service to Doña Ana County – Jess Williams, Public Information Director/Commission Liaison, will present.

Time: 09:14:32

<u>Name</u>	<u>Department</u>	<u>Years of Service</u>
John Romero	Fire & Emergency Services	5
Matthew Root	Detention Center	5
Lorenzo Banuelos	Detention Center	5
Diana Lara	Detention Center	5
Edgar Rivas	Detention Center	5
Christian Ramirez	Detention Center	5
Ryan Van Winkle	Utilities Department	5
Gordon Grinde	Utilities Department	5
Matthew Hawn	Information Technology	10
Robert Bunting	Information Technology	10
Michelle Blackwell	Engineering Department	10
Samuel Ramos	Sheriff's Department	15
Lalo Castrillo	Road Department	Retiring

Time: 09:23:18

Chair Solis recognized Eric Rodriguez-County Treasurer and Miguel Sanchez-Chief Deputy Treasurer who were in the audience.

3. PUBLIC INPUT

Time: 09:23:32

Given by: 1) Mark Best 2) Rev. Jared Carson 3) Merrie Lee Soules 4) Lisa Neal

STAFF INPUT

Time: 09:31:09

Given by: Lani Davis-H/R Senior Administrator, Nelson Goodin-County Attorney and Blake Davenport-Risk Management Manager.

COUNTY ELECTED OFFICIALS' INPUT

Time: 09:33:35

Given by: Eric Rodriguez- County Treasurer and Jess William-PIO Director

COMMISSION INPUT

Time: 09:38:10

Given by: John Vasquez, Benjamin Rawson, Ramon Gonzalez, Billy Garrett and Isabella Solis.

**\*In order to listen to Public, Elected Officials, Staff and Commissioner's Input comments go to Doña Ana County website: <https://donanacounty.org/bocc/video>.**

PRESENTATIONS/PROCLAMATIONS

4. Proclamation Declaring May 2017 as Bike Month in Doña Ana County in Conjunction with National Bike Month – Introduced by District 1 Commissioner Billy Garrett; Jess Williams, Director, Public Information/Special Projects, will read the Proclamation.

Time: 09:49:36

Motion: Billy G. Garrett

Second: Ramon S. Gonzalez

District 1: Billy G. Garrett – Yes

District 2: Ramon S. Gonzalez – Yes

District 3: Benjamin L. Rawson – Yes

District 4: Isabella Solis - Yes

District 5: John L. Vasquez - Yes

Motion passed

5. Proclamation Declaring May 2017 as Border Servant Corps Month in Doña Ana County in Conjunction with the 20<sup>th</sup> Anniversary of the Border Servant Corps – Introduced by District 1 Commissioner Billy Garrett; read by Jess Williams, Director, Public Information/Special Projects.

Time: 10:00:29

Motion: Billy G. Garrett

Second: John L. Vasquez

District 1: Billy G. Garrett – Yes

District 2: Ramon S. Gonzalez – Yes

District 3: Benjamin L. Rawson – Yes

District 4: Isabella Solis - Yes

District 5: John L. Vasquez - Yes

Motion passed

6. Proclamation Declaring May 7 – 13, 2017, as Correctional Officers and Employees Week – Introduced by District 1 Commissioner Billy Garrett; read by Jess Williams, Director, Public Information Officer/Special Projects.

Time: 10:04:48

Motion: Billy G. Garrett

Second: John L. Vasquez

District 1: Billy G. Garrett – Yes

District 2: Ramon S. Gonzalez – Yes

District 3: Benjamin L. Rawson – Yes

District 4: Isabella Solis - Yes

District 5: John L. Vasquez - Yes

Motion passed

7. Presentation of the List of Contracts Signed from April 26 – May 5, 2017 – Pamela Wood, Contract Administrator, will discuss.

Time: 10:10:56

8. Presentation of the Services provided by the Doña Ana Cooperative Extension Service and their FY18 Budget Request – Karim A. Martinez, County Program Director and Family & Consumer Sciences Agent, New Mexico State University, will discuss.

Time: 10:13:51



## CONSENT AGENDA

Time: 10:33:18

9. Approve Award of RFP 17-0029 for Disability Insurance to MetLife and Group Life Insurance to Dearborn National – Lani Davis, Human Resources Department, will discuss.
10. Approve Budget Revision and **Resolution** Transferring Budget among Payroll, Operating, and Capital Accounts as Indicated – Enrique Vigil, Sheriff, will discuss.

### **RESOLUTION NO. 2017-44**

11. Approve Out-of-State Travel for Community Development Employees, Animal Controls/Codes Employees to Attend 40 Hour National Animal Cruelty Investigation (ACI) Certification School Training, in Macomb County, MI August 21 – 25, 2017 – Vicki Lusk, Manager, Animal Controls & Codes, will discuss.
12. Approve a Sole Source Purchase from Adapt Pharma for an Amount not to exceed \$170,000.00 to Purchase NARCAN as Part of the Scope of Work for a Drug and Overdose Prevention Grant – Jamie Michael, Director, Health and Human Services Department, will discuss.
13. Approve Task Order to Wilson & Company, Inc. Through CES Contract #2014-015 906-002 WCI, to Provide Design Services for Airport Rd. and Industrial Ave. and Delegate Signature Authority to the County Manager for all Related Documents – Robert Armijo, Director, Engineering-Road, will discuss.
14. Approve the Utilization of US Communities Price Agreement #4400001839 to Procure Equipment for Three (3) Remote Sensing Stations and a Repeater for the Flood Commission's Flood Warning System, and Delegate Signature Authority to the County Manager for Related Contract Documents – Paul Dugie, Director, Flood Commission, will discuss.
15. Approve **Resolution** Authorizing Doña Ana County to Comment on and Participate in the Public Regulation Commission Rulemaking Case No. 17-00046-UT – Nelson Gooding, County Attorney, will discuss.

### **RESOLUTION NO. 2017-45**

**Motion to Approve Consent Agenda Items 9-15:**

Motion: Benjamin L. Rawson

Second: Ramon S. Gonzalez

District 1: Billy G. Garrett – Yes

District 2: Ramon S. Gonzalez – Yes

District 3: Benjamin L. Rawson – Yes

District 4: Isabella Solis - Yes

District 5: John L. Vasquez - Absent

Motion passed

NOTE: Commissioner Vasquez left the meeting before vote on Consent Agenda Items.

BREAK

Time: 10:34:36

BACK FROM BREAK

Time: 10:45:17

APPROVALS

16. A Resolution to Continue Financial Support for the South Central Regional Transit District (SCRTD) and Authorizing the Interim County Manager to execute all Related Documents – District 1 Commissioner Billy Garrett will discuss.

Time: 10:45:17

Motion: Billy G. Garrett

Second: No Second

**Motion died for lack of a 2<sup>nd</sup>.**

PUBLIC HEARING/ORDINANCE

17. Approve Final Plat for Bishop's Cap Subdivision – Luis Marmolejo, Senior Planner, Community Development, will discuss.

Time: 10:49:30

**Motion to Approve Final Plat for Bishop's Cap Subdivision to Include Findings:**

## FINDINGS:

Pursuant to §2.12.9 (Final Plat Review and BOCC Action) of the UDC, “[t]he BOCC shall not deny a Final Plat if it has previously approved a Preliminary Plat for the proposed subdivision and it finds that the Final Plat is in substantial compliance with the previously approved Preliminary Plat”:

1. The Board of County Commissioners has jurisdiction to review this application. The property is located outside of any incorporated municipal zoning authority and is within Doña Ana County.
2. BOCC Approval of the Preliminary Plat on March 27, 2015 for Bishop’s Cap Subdivision confirmed that the subdivider furnished documentation of the following:
  - a. Water quantity is sufficient to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses, to the satisfaction of the Office of the State Engineer.
  - b. Water is of an acceptable quality for human consumption and measures are taken to protect the water supply from contamination, pursuant to NMED requirements.
  - c. There is a means of liquid waste disposal for the subdivision, pursuant to NMED requirements.
  - d. There is a means of solid waste disposal for the subdivision, pursuant to NMED requirements.
  - e. There are satisfactory roads to each parcel, including entry and exit for emergency vehicles, and there are appropriate utility easements to each parcel, according to DAC Fire Marshal’s Office and DAC Engineering.
  - f. Terrain management protects against flooding, inadequate drainage, erosion and meets the requirements of the Design and Construction Standards, according to DAC Flood Commission and the Doña Ana Soil and Water Conservation District.
  - g. There are protections for cultural properties, archaeological sites and unmarked burials that may be directly affected by the subdivision, as required by the Cultural Properties Act, according to New Mexico SHPO.
  - h. The subdivider can fulfill the proposals contained in the disclosure statement for the subdivision.
  - i. The subdivision will conform to the New Mexico Subdivision Act and these Regulations.
3. The Final Plat Application is consistent with the UDC:
  - a. §2.12 (Subdivision Procedures) and meets requirements for Final Plat Approval.
  - b. §2.12.9 (Final Plat Review and BOCC Action), the Final Plat is in substantial compliance with the previously approved Preliminary Plat.
  - c. § 2.2.2 (General Notice Requirements) and §2.12.5 (Public Hearings on Preliminary Plats and Final Plats) as proper notice of the public hearing was given.
  - d. §2.12.11a (Recording Plats); improvements are in place and have been reviewed and approved by the County Engineer.

Motion: Benjamin L. Rawson

Second: Ramon S. Gonzalez

District 1: Billy G. Garrett – Absent  
District 2: Ramon S. Gonzalez – Yes  
District 3: Benjamin L. Rawson – Yes  
District 4: Isabella Solis - Yes  
District 5: John L. Vasquez – Absent

Motion passed

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS CONVENES AS THE COUNTY BOARD OF APPEALS IN OPEN SESSION.**

18. Approve a Special Use Permit for a Winery and Wine Tasting Room – Luis Marmolejo, Senior Planner, Community Development, will discuss.

**NOTE: Item #18 was Postponed until the BOCC's next Regular Meeting of May 23, 2017.**

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS ADJOURNS AS THE COUNTY BOARD OF APPEALS IN OPEN SESSION.**

CORRESPONDENCE

19. Lynn Ellins, Deputy County Clerk, will present to the Commission any claims received by Doña Ana County.

Time: 11:05:35

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS MAY CONVENE IN CLOSED SESSION**, to discuss a limited personnel matter related to the search criteria and process to be used to recruit a permanent County Manager; pursuant to the attorney-client privilege to discuss pending or threatening litigation regarding comments on the rule making case 17-00046-UT before the New Mexico Public Regulation Commission; and, to discuss bargaining strategy preliminary to collective bargaining negotiations with the *International Association of Fire Firefighter (IAFF) Local 5037; American Federation of State, County and Municipal Employees, NM Council 18, Local 1529 (Detention Center), Local 1879 (Court Security), and Local 2709 (Blue Collar);* and the *Communications Workers of America, Local 7911* as authorized by the Open Meetings Act, NMSA 1978, § 10-15-1 (H)(2)(5) and (7).

Time: 11:05:53

Motion: Benjamin L. Rawson

Second: Ramon S. Gonzalez

District 1: Billy G. Garrett – Absent  
District 2: Ramon S. Gonzalez – Yes  
District 3: Benjamin L. Rawson – Yes  
District 4: Isabella Solis - Yes  
District 5: John L. Vasquez - Absent

Motion passed

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS MAY CONVENE IN OPEN SESSION** to take action, if any, on the closed session items.

**NOTE:** Commissioner Vasquez was not present when the Motion was made to go into Closed Session but, he did attend the Closed Session and was present after the Commission Convened in Open Session.

Time: 12:46:41

**To Let the Record Reflect that nothing was discussed in Closed Session other than the Items Identified in the Motion to go into Closed Session.**

**THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS ADJOURNS AS THE BOARD OF COUNTY COMMISSIONERS AND THE COUNTY BOARD OF FINANCE IN OPEN SESSION.**

Time: 12:46:54

**The Commission Adjourned with no Objection.**

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

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Isabella Solis, Chair, District 4 For / Against

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John L. Vasquez, Vice-Chair, District 5 For / Against

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Billy G. Garrett, District 1 For / Against

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Benjamin L. Rawson, District 3 For / Against

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Ramon S. Gonzalez, District 2 For / Against

ATTEST:

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Scott Krahling  
County Clerk

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

\_\_\_\_\_  
COUNTY CLERK  
Initiating Department

\_\_\_\_\_  
Scott Krahling/Cindy C. Padilla  
Contact Person



\_\_\_\_\_  
May 23, 2017  
Meeting Date

\_\_\_\_\_  
1a  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**Approval of Minutes for the BOCC Work Session of May 16, 2017.**

**SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

**SUMMARY OF FINANCIAL IMPACT**

**ADMINISTRATIVE REVIEW AND APPROVAL**

\_\_\_\_\_  
Finance

\_\_\_\_\_  
Legal



\_\_\_\_\_  
County Manager/  
Agenda Review

\_\_\_\_\_  
Purchasing

\_\_\_\_\_  
Human Resources

\_\_\_\_\_  
Assistant County Manager/  
Peer Review

\_\_\_\_\_  
Planning

\_\_\_\_\_  
Other

**DOCUMENT CONTROL**

Original/s for signature? \_\_\_ Yes No    For Recording? \_\_\_ Yes No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

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## MINUTES

Chair Isabella Solis called the **Work Session** of the Doña Ana County Board of Commissioners to order at 9:00 a.m., on **Tuesday, May 16, 2017**, in the Doña Ana County Commission Chambers, 1st Floor, Doña Ana County Government Center, 845 North Motel Boulevard, Las Cruces.

Time: 08:59:23

District 4: Isabella Solis, Chair - Present  
District 5: John L. Vasquez, Vice-Chair - Absent  
District 1: Billy G. Garrett, Commissioner – Present  
District 3 Benjamin L. Rawson Commissioner – Present  
District 2: Ramon S. Gonzalez, Commissioner – Present

### Pledge of Allegiance

Time: 08:59:30

Led by: Isabella Solis, BOCC Chair

### Roll Call of Commission Members Present

Time: 08:59:51

Led by: Lynn J. Ellins, Deputy County Clerk

## **COMMISSION CONVENES AS THE BOARD OF COUNTY COMMISSIONERS IN OPEN SESSION TO DISCUSS:**

### 1. FY18 Preliminary Budget

Time: 09:00:06

**NOTE: This was only a Work Session and no Final Decisions or Motions were made.**

**COMMISSION ADJOURNS AS THE BOARD OF COUNTY COMMISSIONERS.**

Time: 10:02:15



**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

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Isabella Solis, Chair, District 4 For / Against

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John L. Vasquez, Vice-Chair, District 5 For / Against

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Billy G. Garrett, District 1 For / Against

---

Benjamin L. Rawson, District 3 For / Against

---

Ramon S. Gonzalez, District 2 For / Against

ATTEST:

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Scott Krahling  
County Clerk

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Health and Human Services  
Initiating Department

May 23, 2017  
Meeting Date

Jamie Michael, Director and Eric Crespin., Interim  
Fire Chief  
Contact Person

3  
Agenda Item Number

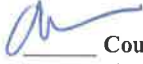

**TITLE OF AGENDA ITEM TO BE CONSIDERED**  
**PROCLAIM THE MONTH OF MAY TO BE NATIONAL EMERGENCY MEDICAL SERVICES  
AND TRAUMA AWARENESS MONTH IN DOÑA ANA COUNTY**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**  
A proclamation requested by the Health and Human Services and Fire and Emergency Services Departments honoring May as National Emergency Medical Services and Trauma Awareness Month to celebrate emergency medical services as a vital public service among Doña Ana County.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**  
Proclamation

**SUMMARY OF FINANCIAL IMPACT**  
None

**ADMINISTRATIVE REVIEW AND APPROVAL**

<input type="checkbox"/> Finance	<input type="checkbox"/> Legal	 County Manager/ Agenda Review
<input type="checkbox"/> Purchasing	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Assistant County Manager
<input type="checkbox"/> Planning	 Other	

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No      For Recording?  Yes  No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or  No

# Proclamation

## Doña Ana County State of New Mexico

WHEREAS, the Doña Ana County Board of Commissioners is pleased to celebrate emergency medical services as a vital public service among the county's residents, and

WHEREAS, the members of emergency medical services teams – represented in Doña Ana County by American Medical Response, Inc. and the Doña Ana County Fire and Emergency Services – are ready to provide lifesaving care to those in need 24 hours a day, seven days a week, and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury, and

WHEREAS, the emergency medical services system consists of first responders, emergency medical technicians, paramedics, firefighters, educators, administrators, emergency nurses, emergency physicians and others, and

WHEREAS, the members of emergency medical services teams, whether career or volunteer, engage in thousands of hours of specialized training and continuing education to enhance their lifesaving skills, and

WHEREAS, it is appropriate to recognize the value and the accomplishments of emergency medical services providers, and

WHEREAS, National Emergency Medical Services and Trauma Awareness Month is being observed across the United States of America during the month of May, and

WHEREAS, it is the distinct pleasure and privilege of the Doña Ana County Board of Commissioners to bestow Proclamations, and all residents of Doña Ana County are represented by the Doña Ana County Board of Commissioners, and, therefore, speak with a united voice through the actions and deeds of this Board,

NOW THEREFORE, the Doña Ana County Board of Commissioners does hereby proclaim May 2017 as Emergency Medical Services and Trauma Awareness Month in Doña Ana County and encourages all residents, governmental agencies, public and private institutions, businesses, hospitals, schools and colleges in Doña Ana County to celebrate the emergency medical service providers who risk their own lives and health to protect the well-being of our communities. As these heroes rush forward for us, may we remember to stand for them, and may we never forget that an efficient, high-quality emergency medical service system is crucial to ensuring care during any emergency.

PROUDLY PROCLAIMED this 23<sup>rd</sup> day of May, 2017.

Board of County Commissioners for Doña Ana County, New Mexico

\_\_\_\_\_ yea \_\_ nay  
Isabella Solis, Chair

\_\_\_\_\_ yea \_\_ nay  
John L. Vasquez, Vice-Chair

\_\_\_\_\_ yea \_\_ nay  
Billy G. Garrett, Member

\_\_\_\_\_ yea \_\_ nay  
Ramon S. Gonzalez, Member

\_\_\_\_\_ yea \_\_ nay  
Benjamin L. Rawson, Member

\_\_\_\_\_  
Attested: Scott A. Krahling, County Clerk

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Purchasing Department  
Initiating Department

Pamela Wood, Contract Administrator  
Contact Person

May 23, 2017  
Meeting Date

4  
\_\_\_\_\_

Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**PRESENTATION OF CONTRACTS EXECUTED FROM MAY 5<sup>th</sup> – MAY 19<sup>th</sup>**

SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

**No Action Required – Presentation of Contracts Executed from May 5<sup>th</sup>, 2017 to May 19<sup>th</sup>.**

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Listing of Contracts.

SUMMARY OF FINANCIAL IMPACT

None.

ADMINISTRATIVE REVIEW AND APPROVAL

\_\_\_\_\_ Finance

\_\_\_\_\_ Legal

  
\_\_\_\_\_ County Manager/  
Agenda Review

 Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Other

DOCUMENT CONTROL

Original/s for signature? \_\_\_ Yes  No      For Recording? \_\_\_ Yes  No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

## CONTRACTS EXECUTED BETWEEN 5/5/2017 AND 5/19/2017

Contract No.	Department Name	Contractor	Begin Date	End Date	Scope of Work	Award Amount	Procurement Method	Rev or Exp	Authority
17-185	Flood	New Mexico Department of Homeland Security & Emergency Management (NMDHSEM)	06-Jan-17	31-Mar-19	Flood Warning System to install 7 weather stations within the County	\$176,500 Fed: \$77,499 Local: \$99,001	FEMA Grant	Rev	25-Apr-17
17-186	Engineering	US Department of Interior Bureau of Land Management	Signature of BLM	3 years	Temporary Right-of-Way for 15.22 acres for Southern Spaceport Road	N/A	N/A	N/A	11-Apr-17
17-187	Sheriff	Doña Ana Community College Customized Training	08-May-17	31-May-17	Notary Public Training	\$109	Exempt	Exp	NTE \$50K
17-188	HHS	La Clinica de Familia	08-May-17	30-Jun-18	Psychiatric Residency Program -in partnership with MMC, Burrell College and NM Primary Care Training Consortium for Federally Qualified Health Center (FQHC	\$270,000	Exempt	Exp	25-Apr-17
17-189	Engineering	Picacho Hills Property Owners Association (PHPOA)	08-Mar-17	3 years	Permit Agreement for Landscaping, Maintenance, Or Litter Control within County Right-of-Way	N/A	No Procurement	N/A	Resolution 05-62 8/9/2005
17-190	Facilities	US Department of Interior Bureau of Land Management	Signature of BLM	10 yr lease	Recreation or Public Purposes Lease for Rodey Community Center & Park per Development Plan approved 10/1/2007	N/A	Exempt	N/A	NTE \$50K

### Column Descriptions

**Contract No.** - Assigned contract number once it is fully executed. First two digits indicate Fiscal Year; the last 3 digits are sequential.

**Department Name** - Initiating Department.

**Contractor** - Contractor or Vendor Name.

**Begin and End Dates** - Award period of performance.

**Scope of Work** - Brief description of item(s) or services.

**Award Amount** - The total amount awarded by the County. "IQC" or "Per Task Order" indicates an Indefinite Quantity Contract requiring financial approval through purchase orders; "Per Task Order" indicates contracts on an "as needed - project related" basis.

**Procurement Method** - Pursuant to Procurement Code (1978 NMSA Chapter 13) for procurement of goods or services. Invitations to Bid (ITB) or Requests for Proposals (RFP) indicated by 17-XXXX (17 indicates fiscal year and last 4 digits are sequential). "PSC" is a Professional Service Contract (NTE \$50,000). "Grant" funds awarded to County. "Exempt" are Exemptions from the Procurement Code (NMSA 13-1-98) such as "Gov to Gov" or "advertising" or "subscription."

**Rev or Exp** - financial impact to the County (Revenue or Expense).

**Authority** - Signature authority to enter into the contract either BOCC approval date or Not To Exceed (NTE) amount of \$50,000 (\$50K).

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Community Development  
Initiating Department

May 23, 2017  
Meeting Date

Chuck McMahon  
Contact Person

5  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**  
**PRESENTATION AND DISCUSSION OF AFFORDABLE HOUSING FINANCING MECHANISMS: A  
FEASIBILITY ANALYSIS AND AFFORDABLE HOUSING LOAN FUND BUSINESS PLAN**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

Doña Ana County has been working on an affordable housing initiative since 2013 with the intent to advance affordable housing in the county. In 2015 Doña Ana County adopted an Affordable Housing Plan and Ordinance and in 2016 secured funds to assist in implementation to identify affordable housing financing mechanisms. The consultant – Werwath Associates – will provide a presentation on the feasibility analysis and loan fund business plan outlining the recommended financing mechanisms.




**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Agenda Item Summary  
Presentation Slides  
Affordable Housing Financing Mechanisms: A Feasibility Analysis  
Affordable Housing Loan Fund Business Plan  
Affordable Housing Plan  
Affordable Housing Ordinance

**SUMMARY OF FINANCIAL IMPACT**

None at this time

**ADMINISTRATIVE REVIEW AND APPROVAL**

 Finance	_____ Legal	 County Manager/ Agenda Review
_____ Purchasing	_____ Human Resources	_____ Assistant County Manager
 Planning	_____ Other	

**DOCUMENT CONTROL**

Original/s for signature? \_\_\_ Yes No      For Recording? \_\_\_ Yes No

Return original/s to: Angela R. Roberson – Community Development

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Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

## Agenda Item Summary

05/23/2017 BOCC Meeting

### Title: Presentation and Discussion of Affordable Housing Financing Mechanisms: A Feasibility Analysis and Affordable Housing Loan Fund Business Plan

#### Background: Affordable Housing Initiative

##### Affordable Housing Plan and Ordinance

In 2014 Doña Ana County secured and leveraged funds from the New Mexico Mortgage Finance Authority (MFA) and the Colonias Infrastructure Board (CIB) to conduct an Affordable Housing Plan (AHP). MFA awarded \$50K while CIB awarded \$50K for a total of \$100K. Having an adopted AHP is a requirement of MFA for a local government to establish an Affordable Housing Program and to receive available MFA funds. In the fall of 2015 the County adopted the Affordable Housing Plan (attached) and the Affordable Housing Ordinance (attached).

##### Affordable Housing Financing Mechanisms: A Feasibility Analysis

In early 2016 MFA and Doña Ana County discussed opportunities for the County to obtain MFA technical assistance funds as part of implementing the AHP. Community Development met with local affordable housing stakeholders to verify local needs regarding the types of technical assistance to consider. It was determined that exploring and identifying financing mechanisms was the type of technical assistance to pursue.

MFA awarded technical assistance funding in the amount of \$20,145 while Doña Ana County provided a \$5K match (\$4K Community Development Dept.; \$1K Engineering Dept.) for a total project funding of \$25,145 to conduct a two-phased approach to identifying and developing financing mechanisms.

- Phase I – Feasibility Analysis for Affordable Housing Funding Mechanisms  
To create a feasibility analysis and report
- Phase II – Program Design and Implementation Assistance  
To design a loan fund that includes one or more loan products in support of affordable housing

##### Affordable Housing Loan Fund Business Plan

The business plan is a blueprint for Doña Ana County to consider the start-up of a “Doña Ana County Affordable Housing Loan Fund”. As a result of the strategic planning analysis, three (3) recommended start-up activities were identified to initiate an Affordable Housing Loan Fund.

- 1) Home Repairs  
Loans to homeowners for urgently needed home repairs
- 2) Utility Line Connections  
Loans to homeowners for utility line connections
- 3) Short-Term Loans  
Early-stage, short-term loans to developers of affordable housing for sale or for rent

These three (3) loan products offer solutions for major affordable housing needs that were identified in the County’s Affordable Housing Plan.

## RECOMMENDED PLAN TO START A DOÑA ANA COUNTY AFFORDABLE HOUSING LOAN FUND

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Presentation to County Commissioners, May 23, 2017

Werwath Associates  
COMMUNITY DEVELOPMENT CONSULTANTS



## Background and Process

- Following the adoption of the Doña Ana County Affordable Housing Plan, the County engaged Werwath Associates to complete a feasibility study and potential business plan
  - Purpose -- to recommend potential financing mechanisms for affordable housing to implement housing plan
  - Presented to County staff on Sept. 29, 2016 – revised version accepted in December included basic concepts for business plan
  - Business plan for starting up an Affordable Housing Loan Fund was completed April 20, 2017 – includes a five-year budget.
  - The feasibility study and business plan were funded by the NM Mortgage Finance Authority (MFA) and the County



## Background and Process

- The Plan for the Loan Fund implements a portion of the County's Affordable Housing Plan and Ordinance
- Feedback resulted in extensive refinements in 3 drafts
  - Input mainly from County staff, nonprofit housing groups, MFA
- Presentation today is to request Commissioners to:
  1. Review and approve the plan in concept
  2. Approve start of a capital campaign
  3. Actual start-up will depend on success in raising sufficient capital

## Three Recommended Loan Products

1. Loans to **homeowners for urgently needed home repairs**, to improve safety and livability of distressed homes
2. Loans to **homeowners for connections to natural gas and water lines**
3. Early-stage, **short-term loans to builders/developers of new affordable housing** for sale or for rent

The key goals are to make nearly 30 loans each year totaling \$700,000 to \$800,000

## Loan Products

	Home Repair Loans	Utility Lines Connection Loans	Developer Loans
Goals for # of loans closed	Average 12 per year	Average 15 per year	Average 1 per year
Average loan \$\$ assumed	\$11,000	\$6,000	\$500,000
Maximum Incomes	Homeowners not over 120% of area median income (\$54,840/year for family of 3)	Homeowners not over 120% of area median income (\$54,840/year for family of 3)	Homes for <120% AMI buyers; Rentals for <60% AMI renters (\$27,420/year for family of 3)
Assumed Interest rate	4% annual rate	4% annual rate	3%-5%
Assumed term of loan	5-10 years, 8 years on average	2-8 years, 6 years on average	2-3 years

## Why These Loan Products?

- The Fund addresses 3 major affordable housing needs:
  - Home repairs, utility connections, significant new construction
- Each of the loan products is based on best practices of loan funds started up in New Mexico and elsewhere
  - The consultants had 1st-hand experience with these start-ups
  - This business plan is based on similar assumptions and strategies
  - Incorporates best practices learned from other start-ups

## Why These Loan Products?

- All products are relatively short-term loans don't require raising huge amounts of capital
  - For example, it would take \$30 million to \$50 million in capital to make a similar number of 30-year "permanent" loans over five years for home purchases or rental housing construction
- In short, the recommended loan products are a balance between:
  1. Addressing acute needs for affordable housing
  2. A practical approach to what's feasible for a start-up in a rural County lacking deep-pocket funders

## Direct Benefits to the County

- 50-80 resident families can benefit annually
  - From \$1.9 million in start-up capital -- will recycle many times
- Will increase County GTR and real estate valuations
- Most loan administration functions can be outsourced
- With sufficient start-up capital, the loan fund becomes self-sufficient

## Proposed Administration: Homeowner Loans

- Recommended: an RFP to select one or two administrators of the loans to homeowners
- Administrator(s) would perform all functions from marketing to applications to closings to loan collections
  - Following policies and procedures set by the County
  - But loans would be made in the name of the County
  - And loan collections would go into a single-purpose bank account for making new loans – but the County could call in all funds at its discretion

## Proposed Administration: Developer Loans

- Recommended: an RFP to select an outside contractor to accept applications and underwrite developer loans
  - MFA is one qualified candidate, and has expressed interest
  - The Underwriter would follow policies, procedures and loan terms set by the County

## Recommendations on Capitalization

- \$1.5 million is the minimum capital commitment needed to start up a fund on a sustainable scale of operations
  - Otherwise it won't be self-sufficient – it will lose money
- We suggest the County commit to invest \$375,000 at the start of Year 1 and another \$375,000 at the start of Year 2
  - Fulfilling the County commitment should be contingent in achieving a firm commitment of matching grant funds from other sources
- The Fund won't attract borrowed capital until it develops a track record – by Year 3 or 4.

## Risks and Mitigations

- There are risks of losing capital, but manageable ones
  - Defaults and delinquencies are the major risks
  - Assuring quality of outsourced functions is another risk
- Recommended risk mitigations include:
  1. Requiring collateral such as 1<sup>st</sup> and 2<sup>nd</sup> liens
  2. Careful underwriting including use of credit scores
  3. At first, using only grants and county equity -- not borrowed capital which the County would have to repay if there were defaults
  4. Careful selection of homeowner loan administrator(s) and outside underwriter for the larger developer loans.

## Recommended Next Steps

- Commissioners consider approval of the Business Plan in concept
- County makes firm commitment of \$750,000 in capital
  - Contingent on receiving another \$750,000 in capital commitments to be paid in during the same period
  - Staff then authorized to raise the matching capital
- Consultants complete policies/procedures documents and help write RFPs (covered by current contract)

# Affordable Housing Financing Mechanisms: A Feasibility Analysis

**A Report to Doña Ana County**

Completed January 30, 2017

By Werwath Associates



**Werwath Associates**  
COMMUNITY DEVELOPMENT CONSULTANTS

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7. Recommended Next Steps .....	23
8. Other Loan Products for Possible Future Consideration .....	24

Appendix A: Persons Interviewed for This Study

**Werwath Associates**  
Affordable Housing Consultants

1611 Camino Porvenir  
Santa Fe, New Mexico 87505  
505.699.9017



## 1. Executive Summary of Findings and Options to Consider

### Background and High Points of Needs Analysis

The purpose of first phase of this study was to provide a feasibility analysis and recommendations regarding high-priority options for Doña Ana County to expand the supply of decent, affordable housing. This work is intended to provide a menu of action items to aid in the County's implementation of its Affordable Housing Plan and Affordable Housing Ordinance, which were adopted in 2015. The potential benefits extend beyond just providing affordable housing—to healthier living environments, reduced energy costs, more disposable income among lower-income residents, more economic activity and an expanded tax base.

The study identified the following five major categories of housing needs and gaps, in DAC rural areas and colonias derived from the Affordable Housing Plan and the consultant team's data gathering, analysis, and knowledge of best practices.

1. Repairs of owner-occupied homes in poor condition, particularly in the colonias
2. Natural gas line connections for owner-occupied homes, in place of expensive propane fuel
3. Construction of more affordable housing, both for sale and for rent
4. Off-site infrastructure to create affordable house lots
5. More favorable regulations that reduce the cost of building affordable homes and rental units

These five high-priority needs and gaps were weighed against the practical opportunities and constraints encountered in the start-ups of many similar programs. These include primarily:

- The apparent likelihood establishing or enabling funding sources—and how efficiently the funding sources can be established—for new affordable housing financing mechanisms
- Existing program delivery capacity and how much that capacity can realistically be added to during the start-up of new program activities.

### Proposed Affordable Housing Loan Fund

As a result of this strategic planning analysis, County staff and the consultant team narrowed down the recommended start-up activities to those that address the first three on the list above. Therefore, the study recommends that the County create an Affordable Housing Loan Fund that offers the following three loan products.

1. Loans to homeowners for urgently needed home repairs
2. Loans to homeowners for natural gas line connections, to reduce utility costs
3. Early-stage, short-term loans to developers of affordable housing for sale or for rent

This focused approach to the start-up does not preclude the County from addressing the other needs and gaps in the future, when the funding and delivery capacity are available to do so. Funding off-site infrastructure to create new affordable house lots will require a very large amount of capital per home as grants, bonding, CIP funding, or very long-term loans. Improving

regulatory incentives is typically a multi-year effort that requires strong and constant leadership from appointed and elected officials. The consultant team recommends that any such effort be delayed until the proposed Loan Fund has been successfully launched

The next step in this study is the acceptance of the report by the County. Assuming that occurs, the consultants will create a business plan and financial projections for a proposed Affordable Housing Loan Fund that would be launched with the three loan products described above. It is recommended that the formal launch would occur only after the County has made or received firm commitments for an agreed-upon minimum amount of capital for the start-up.

## 2. Background and Introduction

The purpose of the first phase of this study was to research and identify high-leverage opportunities for the County to support affordable housing through new funding mechanisms and to provide a feasibility analysis of those options. This work flows from the comprehensive affordable housing planning process that resulted in the completion of an Affordable Housing Plan and adoption of an Affordable Housing Ordinance in 2015. This planning process is mandated by the New Mexico Affordable Housing Act for public entities that seek to directly support affordable housing with public resources.

The 2015 Doña Ana County Affordable Housing Plan presents a detailed view of current housing conditions and needs within the county. The plan culminates in a “Goals, Policies, and Quantifiable Objectives” section that contains a number of recommendations that chart a course to increasing the stock of decent, affordable housing in the county.

Among the goals contained in the Affordable Housing Plan, there are several that could be addressed with the creation of one or more County-sponsored financing mechanisms to support construction or upgrading of affordable housing. The Plan referred to goals of providing “Low Interest Loans” for housing repairs and providing “Infrastructure Assistance.” A well-designed and implemented financing mechanism could also have impacts on other priorities of the Housing Plan, including “Linking Affordable Housing and Economic Development Investments”, “County Support for Infrastructure Financing”, “Development Partnerships”, “Supporting Non-Profit Housing Initiatives”, and “Consistency in Utility Providers.”<sup>1</sup>

This report focuses primarily on financing mechanisms to benefit areas outside of the municipal boundaries of Las Cruces and La Mesilla, as there are many affordable housing resources already in place within those municipalities. That said, our investigative approach has also considered complimentary approaches and direct collaboration with the City of Las Cruces as a critical aspect of fostering a truly healthy affordable housing environment within the County.

County investments in affordable housing could produce multiple benefits, as follows. These benefits are reasons for the County to consider investing in one or more of the options for financing affordable housing that are recommended for consideration in this report.

1. Improved quality of life for families and individuals from living in decent, safe and sanitary housing.
2. In those instances where monthly housing costs are reduced, families will have more disposable income for other necessities.
3. Improved health and education outcomes for residents and their children linked to “healthier” new or renovated housing and longer retention of housing (which has benefits such as children not having to move from school to school due to the parents’ housing affordability challenges).

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<sup>1</sup> Phrases in quotation marks are as they appeared in the Affordable Housing Plan

4. In many cases, reduced costs of utilities in newly constructed or renovated housing—or getting access to lower-cost energy sources.
5. In many cases, some increases in neighborhood property values, where affordable housing is newly built or existing affordable homes are upgraded.
6. Economic benefits to businesses and employees in the County, due to increased expenditures on construction/repairs and increased disposable income of the families assisted.
7. Increased collections of gross receipts taxes due to construction and repair activity, more disposable income of residents, and resulting multiplier effects on the County's economy.
8. Growth of nonprofit organizations that are envisioned as “retailing” the proposed new loans to homeowners, which will build capacity of affordable housing providers and could also generate a new employment opportunities.
9. New infusions of capital investments in new construction of affordable housing that could be leveraged by the County's initial investment in an Affordable Housing Loan Fund.
10. Increased County revenue from an expanded real estate tax base.
11. Increases in family assets and wealth, to the extent that County support of affordable housing would be able to stimulate more homeownership among lower-income households.

### **Process**

In addition to the analysis of the existing Affordable Housing Plan and housing market data, this investigation was focused on obtaining information directly from potential users of financing mechanisms through interviews. These stakeholders included affordable housing non-profit providers as well as private real estate industry professionals. Information gained from these interviews was considered within the context of best practices nationally and within the state, and in light of the requirements of the New Mexico Affordable Housing Act.

The consultants' investigations began with a briefing of County Community Development staff on the current funding environment and general parameters for the project. The core goal of the study was to identify potential opportunities for the County to provide financing mechanisms that address current gaps in the housing funding landscape and also present high-leverage return, meaning that relatively small amounts of funding would attract other funding and yield substantial benefits in terms of housing quality and affordability.

The consultant team worked collaboratively with County Community Development Staff to develop a list of diverse stakeholders to interview. The focus of the interviews was to gather input about specific housing funding needs within the county. Two days of in-person interviews were conducted in June of 2016, which was followed by phone interviews with additional informants to answer specific questions raised in interviews. Interviewees included

representatives of non-profit housing service providers, private sector real estate developers, banks, the USDA Rural Development Office, and the City Las Cruces Housing and Neighborhood Services Department. From this interview process, research and our knowledge and experience with best practices in operating affordable housing programs we arrived that the recommended options presented in the report. A complete list of those interviewed can be found in Appendix A of this document.

In September of 2016, a preliminary discussion draft of this report with five options for County financing mechanisms was presented to and discussed with County staff. At this meeting staff and the consultant team agreed to narrow the options for financing mechanisms down to three that appeared most feasible to launch in the near future. Therefore, five options are described in the report but only three will be the focus of the next stage of work.

The next stage of our advisory services will be to create a detailed business plan and administrative procedures for an Affordable Housing Loan Fund that could be created by Doña Ana County, subject to approval of the County Commission.

The three kinds of financing recommended for the Affordable Housing Loan Fund are as follows, and are described in the next section of the report.

- Loans to homeowners for urgently needed home repairs
- Loans to homeowners for natural gas line connections, to reduce utility costs
- Early-stage loans to developers of affordable housing for sale or for rent

### 3. Affordable Housing Needs and Gaps

To succeed, new financing mechanisms aimed at supporting affordable housing must focus on the more urgent housing needs and realistic opportunities to address them. The Doña Ana County Affordable Housing Plan identifies needs across housing types and for residents at different income levels. Key themes from that plan include the continued need for affordable homeownership opportunities for low and moderate-income households<sup>2</sup>, need for affordable rental housing development, housing repairs for existing owners and the need for infrastructure investments in Doña Ana County including colonia communities. For more information about the details of the specific housing needs discussed below, and how these tie to incomes and household types, please review the Housing Needs Assessment section of the 2015 Doña Ana County Affordable Housing Plan, pages 36-46.

We identified the following five major categories of housing needs and gaps, derived from the Affordable Housing Plan and our own data gathering and analysis.

- Repairs of owner-occupied homes
- Gas line connections for owner-occupied homes
- Construction of affordable housing
- Off-site infrastructure to create affordable house lots
- More favorable regulations

Following are explanations of each of these needs and gaps and how they could be addressed.

#### A. Repairs of Owner-Occupied Homes

The Affordable Housing Plan identifies the need for housing repairs as a very high priority. The plan estimates that around 51% of homes within the colonias are in poor condition with a full 3% being beyond repair. This observation from the Affordable Housing Plan was reinforced when speaking with affordable housing service providers who have practical experience with local/regional housing rehabilitation programs. It is important to clearly define home repairs as used in this context, meaning the repair of one or two major systems within the house, which should not be confused with full home renovation or rehabilitation which is typically costly and complex.

Among special financing programs in New Mexico for home repairs, weatherization programs operated by nonprofits reach the most low-income families. In Doña Ana County, the Southwest Regional Housing and Community Development Corporation offers both weatherization grants from the Federal Department of Energy and financing for much more comprehensive renovations from the HOME program of the U.S. Dept. of Housing and Urban Development.

The weatherization program helps the most families in Doña Ana County, providing grants for energy improvements for households with incomes up to about \$40,000 a year (assuming a typical family of three). Grants averaging about \$5,500 are limited to adding insulation, caulking,

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<sup>2</sup> In this report, "Low and Moderate Income" refers to households with incomes at or below 80% of the area median income as defined by the U.S. Department of Housing and Urban Development, adjusted by family size. This is the upper threshold for housing assistance under most federal programs. For example, 80% of AMI for a family of three in Doña Anna County is currently \$36,500.

installing new windows and heating systems, and the like. The grants will not fund repairs of roofs in poor condition, damaged or worn siding or structural problems even if those repairs are essential to proceeding with energy upgrades. Weatherization services are also in very high demand with waiting lists currently four years long.

The HOME program requires complete repairs of all substandard conditions along with other general improvements, while the weatherization program does not. The HOME program is restricted to families with incomes below 60% of the area median income—about \$27,000 in annual income for a family of three. The program currently serves 10-15 households a year in Doña Ana County with repairs costing up to \$75,000. In New Mexico, HOME funding is distributed by the New Mexico Mortgage Finance Authority. Unfortunately, the HOME Program is a shrinking resource; national allocations to the program have been reduced by Congress by about 40% since 2009 and much of the state's allocation is set aside for new housing development.

Each year, funding for a small number of home repair loans at a 1% interest rate for up to \$20,000 is made available in New Mexico through the USDA Rural Development Section 504 program. National funding for this program is very limited, so it is unlikely that it will ever address more than a few homeowners in Doña Ana County each year.

Certainly, a few lower-income families can tap into home equity loans for repairs—but the vast majority cannot due to the need to have higher credit scores and at least 30% equity value in the home as based on appraisal.

The insufficiency of affordable loan and grant programs for home repairs in New Mexico as well as the challenges with traditional bank financing prevents many lower-income families from receiving urgently needed basic repairs. This overall funding scenario prevents Doña Ana County residents from maximizing access to weatherization upgrades through grants as well as private financing. Non-profit weatherization providers indicate that when they assess a property for weatherization assistance, they often find issues with basic condition of the property—roofs in bad condition, siding issues and structural problems—that preclude them from providing assistance until those conditions are remedied. Oftentimes potential recipients of weatherization assistance have been on waiting lists for years, and the presence of these deficiencies mean that families are unable to receive assistance until conditions are remedied, often meaning families with homes in need of repair are passed over.

The provision of modest loans for urgently needed, non-energy-related repairs could help leverage more weatherization funding and also ensure that fewer families who have been waiting for assistance for years are denied, or sent back to the bottom of the waiting list.

#### **B. Financing for Gas Line Connections**

Several of the local experts we interviewed as well as the 2016 Doña Ana County Affordable Housing Plan pointed out a very specific and very important housing affordability challenge—namely, the high cost of propane gas for heating and cooking. Interviews with housing service providers indicated that in many communities within Doña Ana County, there is nearby access to natural gas line, which could provide a much more affordable alternative when compared to propane. Oftentimes the individual cost of connecting to existing natural gas infrastructure is

not cost prohibitive, but requires that an entire group of homeowners agree to extend the service and share the costs of extending the infrastructure.

Providing groups of homeowners with individual low-interest loans for connecting to natural gas lines would be a simple way—for a modest investment—to help local families greatly reduce their heating costs. The increased comfort could also improve health outcomes for some residents who have been unable to afford to properly heat their homes. This would also provide communities with new options for home heating and cooking fuel sources.

### **C. Construction of Affordable Housing**

**For-sale housing:** The development of newly constructed housing affordable to low and moderate-income households should be a priority for the county. There are several housing development partners with experience and capacity to deliver subdivision level affordable housing production at pricing affordable to households at 50-80% of the area median Income (AMI). Increased production of for-purchase affordable housing can help alleviate the housing problems of some of the 2,000 households identified in the Affordable Housing Plan who currently reside in overcrowded homes, or the estimated 6,500 homeowners and 4,300 renters who are currently cost burdened by their current monthly housing costs, as also reported in the County's Affordable Housing Plan.

The 2015 Doña Ana County Affordable Housing Plan also identifies a need for at least 600 units of newly constructed affordable homeownership opportunities to satisfy the current demand. The most effective way to support affordable housing development is through donation of land, funding of planning work to ensure feasibility of a project, or funding for acquisition or infrastructure costs.

Another key aspect to homeownership for low and moderate-income households is the availability of financing. Most of the non-urban parts of Doña Ana County qualify for USDA Rural Development mortgage loans. These loans are very advantageous for consumers in that they carry below market interest rates, offer low down payment requirements, and require no mortgage insurance premiums. Despite this low barrier to entry, consumers are still required to pay for closing costs associated with the loan, which USDA staff indicate are a barrier for many of their applicants in the rural parts of the county because they lack the savings to cover these costs. This funding gap—in addition to the limited federal funding for USDA loans—indicates a need for additional down payment and closing cost assistance for lower-income homebuyers in the county.

If more affordable homes could be built in Doña Ana County and targeted for sale to lower income families, best practices throughout New Mexico and nationally indicate that starting tandem programs offering homebuyer counseling and down payment assistance from non-USDA sources to leverage banks' "affordable" loan products would be essential to success. USDA loans are too limited a resource to contribute to any significant increase in the sales of new affordable homes. Therefore some additional forms of mortgage assistance would be needed, such as second mortgage loans funded by the New Mexico Mortgage Finance Authority. These types of loans are primarily intended to help fund down payment and closing costs.

**Affordable housing for rent:** Affordable rental housing, particularly that which serves households with incomes below 60% AMI, is a critical need identified in the housing plan and



through interviews with stakeholders. At the time the housing plan was produced, there were over 3,000 households on various waiting lists for existing affordable rental housing in the county.

Unfortunately, Doña Ana County is not currently recognized as a high-priority “area of statistically demonstrated need” for affordable rental housing development by the New Mexico Mortgage Finance Authority, which significantly limits access to the primary affordable rental housing development funding source in the state, which is the Federal Low Income Housing Tax Credits (LIHTC). An award of these tax credits to a typical 60-apartment project can be worth the equivalent of an outright grant in the neighborhood of \$10 million. This allows a rental property to be nearly debt-free and thus be able to charge lower rents.

However, without a designation of “statistically demonstrated need”—based on local population growth and rental vacancy rates—it is very difficult to propose a project that scores high enough to be competitive against other potential projects across the state. Nonetheless, in creating any financial mechanisms to support affordable housing development, the County should consider funding mechanisms that could directly support affordable rental housing development for future times when Doña Ana County is again classified as a Tier 1 area for statistically demonstrated need or there are changes to the allocation methodology.

Local government funding is a critical factor for obtaining the all-important tax credits, because any direct contribution of funding, land, fee waivers or other contributions with quantifiable value to affordable rental housing development by a local entity increases that project’s scoring within the allocation methodology. Projects are awarded one point in the tax credit scoring for every percentage point of local government contribution to the project (up to a maximum of ten points). Traditionally, this category of scoring within the LIHTC allocation process has had a strong impact on where tax credits are awarded within the state.

#### **D. Off-Site Infrastructure Extensions to Create Affordable House Lots**

Another theme that emerged from both the Affordable Housing Plan process and stakeholder interviews related to this investigation was the dire need in certain areas of the county for access to water lines and sewer systems, particularly in the colonias and rural communities in the county. Doña Ana County is large in geographic size, which makes the provision of infrastructure difficult. Compounding this is the presence of over 70 water utilities within the county, which make the cost of water and connecting to infrastructure highly variable. In some areas, infrastructure improvements entail added costs of road improvements.

Infrastructure development is a key factor in driving growth in appropriate areas, and can also play a key role in creating affordability if low-cost or grant financing is used. The housing development scenarios presented in the density analysis section of the housing plan indicate that the cost of off-site infrastructure was approximately \$27,000 per home. Based on interviews with Tierra Del Sol, a prolific affordable housing developer, if this amount is financed for buyers in the form of very low-interest or deferred payment loans, that would be sufficient to make purchases of modest new homes affordable to this organization’s low and moderate-income homebuyer clients, who typically have household incomes in the \$20,000 to \$25,000 range.

Generally it is difficult to finance infrastructure for affordable new homes at the level of \$27,000 per home, but even smaller amounts, in the range of \$10,000 per unit could help incentivize affordable housing creation through low-interest or 0% interest loans that could—for example—have all repayments deferred until resale of the home.

#### **E. Streamlining Development Regulations**

To address the housing-related needs described above there is critically important corollary need—to provide more regulatory incentives for building new affordable housing. To be most effective, any new County affordable housing initiative must look at the whole housing development picture. The Affordable Housing Plan (AHP), as well as interviews with elected leaders and constituents alike, highlight the importance of streamlining the current development review process. The AHP includes policy recommendations for aligning the proposed Unified Development Code with affordable housing goals, reduce or eliminate performance zoning in targeted growth areas, and standardize the permitting and approval process for affordable housing projects. Without concerted work on these other areas, any investments in affordable housing production may be hindered.

#### **How Affordable Housing Needs and Gaps Were Prioritized**

As noted in the previous section of this report, three of these needs/gaps were selected to be addressed during the proposed start-up of a Doña Ana County Affordable Housing Loan Fund, as follows:

- Repairs of owner-occupied homes
- Gas line connections for owner-occupied homes
- Development costs associated with the construction of affordable housing

Two more areas were seen as legitimate affordable housing needs to address but deemed more challenging. Therefore, the consultants and County staff determined that these would not be addressed in the initial business plan, but could possibly be addressed at a later stage as medium or long-term strategies.

- Off-site infrastructure to create affordable house lots
- More favorable regulations (streamlined development approval process)

There were no doubts about the benefits of extending existing water and sewer lines to open up more affordable building lots for home construction. The challenge is the large amount of capital needed—estimated (as noted) to be as much as \$27,000 per home.

Likewise, there is a general understanding that potential changes in land use regulations and building could make it possible to build homes at somewhat lower costs. However, based on the experience of other communities in New Mexico, a process to arrive at these regulatory changes could take several years, with no guarantee of success. Even in New Mexico communities like Santa Fe, which strongly support affordable housing, efforts to provide more flexible regulations and regulatory incentives for affordable housing have stalled out.

## 4. Practical Opportunities and Constraints

Before turning to a more detailed discussion of the recommended options for financing mechanisms, it is important to explain what our study identified as realistic opportunities and practical constraints to the types and quantities of affordable housing financing that the County could be able to start up and administer during an initial phase of a financing program. Of course, such a program should address the unmet needs to the extent possible. But the program must also be based on reasonable assumptions regarding how much funding can be raised initially, and the capability of the County and/or potential partners to administer an affordable housing funding program.

Best practices from other communities in New Mexico and elsewhere indicate that the recommended funding mechanisms are most effective when administered as part of a loan fund or “trust fund” for affordable housing. This type of umbrella funding structure tends to attract a growing funding base, is more likely to have economies of scale, and is more likely to be consistently productive with multiple loan products versus putting “all the eggs in one basket.” The loan fund or trust fund structure can also help ensure that funds dedicated to affordable housing are uniformly administered. In the remainder of this report, the structure is referred to as a “loan fund,” which is the most commonly descriptor for these types of programs.

### Initial Funding Levels

Based on the consultants’ experience with successful loan fund start-ups in New Mexico and elsewhere, we conclude that any affordable housing fund intended to address countywide housing needs would need to start with approximately \$750,000 in capital in its first year to have meaningful impact with a reoccurring allocation of similar size the following year. The experience of successful affordable housing loan funds indicate that a Doña Ana County loan fund would need to raise between \$1,500,000 and \$2,000,000 in the first several years to reach its full potential and to support the administrative costs with sufficient loan origination fees and interest payments.

### Administrative and Organizational Capacity

We also conclude that the County’s staffing structure (as with most local governments) is not currently well positioned to provide marketing, intakes, loan administration and loan servicing for numerous “retail” loans to homeowners. Non-profits and other partners already providing similar assistance to homeowners should administer the loans and manage collections. Thus, we recommend that the County consider lending “wholesale” to the nonprofits for the homeowner lending components of a proposed Doña Ana County Affordable Housing Loan Fund. For loans to new affordable housing developments, the County could administer those directly or outsource these tasks to one of several existing affordable housing loan programs that operate in New Mexico. Details about the types of loans are described later in the report.

#### HOUSING FUNDS IN NEW MEXICO

##### City of Albuquerque

- Established in 2007
- \$32 million invested
- Focused on rental and homeownership housing development
- Documented leverage over \$200 million
- Generated over \$3.6 million in GRT and
- Created nearly 700 units and 1200 jobs

##### City of Santa Fe

- Established in 2005
- Funds housing programs and development
- Capitalized with CDBG, General Obligation Bonds, past loan repayments
- Over \$800,000 awarded annually

### **Facets of Administration**

Administration is a critical component of any successful affordable housing loan program. This includes taking and assisting with applications, underwriting the applications (meaning the assessment of potential loans for compliance with loan guidelines and risk thresholds), disbursing funds, collecting repayments, accounting for these transactions, and monitoring the portfolio to mitigate risks of default. It can take several years to develop the staffing, capacity, and systems to appropriately underwrite and administer lending programs. Moreover, there are many private sector banks and non-profit organization that already have these capacities and systems in place for their current activities. Because of this, it is generally advisable to design programs that involve outsourcing to partners—such as nonprofits and banks—that already maintain the capacity and systems to administer underwriting and payment collection systems rather than to build that capacity internally.

Administrative duties can vary widely depending on the type of loan fund mechanisms in place. At a minimum there will need to be a part-time staff person designated within County Administration that manages the fund, acts as a partner and community liaison, develops and enforces policies and procedures, maintains up to date balances, contracts for any outsourced services, manages distributions to partners, and conducts monitoring of partner activities to ensure compliance with the policies and procedures. This person would also be critical in reporting the activities of the loan fund both internally to staff and policy makers within the County as well as reporting out to partner and the community at large about the impacts of the funds. This staff person could start as part-time—perhaps 20% of full time equivalent— and have the position grow incrementally to match the growth of the fund.

Another level of administration relates to the day-to-day operation of the funding mechanisms. Generally loans are subject to underwriting requirements, or parameters that dictate where funding can be applied, what level of risk is acceptable and who are the allowable beneficiaries of these loans. Typically, underwriting criteria will be developed in collaboration between the County and partners to ensure that the funding source is useful within the funding context discussed above. Once underwriting is developed, the partner would typically provide the initial underwriting and analysis. Whether a second review occurs prior to funding, or as part of ongoing project monitoring should relate to the amount of funding being disbursed. For example, a large loan to a housing developer should be reviewed directly by the County prior to approval, but relatively small amounts of consumer assistance provided through a partner could be reviewed annually through sampling the loans and their compliance with underwriting criteria.

## 5. Recommended Options for Business Plan

### Types of Loans Recommended for new Affordable Housing Loan Fund

As noted in previous sections, five different options for new affordable housing initiatives rose to the top in the County’s Affordable Housing Plan and our subsequent study. Then County staff and the consultant team narrowed these down to three for purposes of having a focused start-up business plan with the best chances of success. That business plan and associated program guidelines will be the next and final stage of work for the consultants.

<b>Consumer loans for home repairs</b>	Issue “wholesale” loans to nonprofit affordable housing organizations to originate “retail” loans to eligible homeowners for home repairs.
<b>Consumer Loans for gas line connections</b>	Similar to the home repair loans (above), issue wholesale loans to affordable housing organizations to then originate small loans to eligible homeowners for gas line connections.
<b>Loans for construction of affordable housing</b>	Low-interest, short-term, early-stage loans to affordable housing developers intended to fund primarily pre-development (planning and feasibility) activities and thereby leverage construction and permanent financing.

### Other Program Options for Future Consideration

Also as noted in previous sections, there are two options that were studied that will not be included in the start-up business plan, as follows. These options were considered worthy to pursue but much more difficult to implement in the short term. In the event that the County wishes to pursue these options later, more details on implementation issues are provided in appendices to this report.

<b>Limited funding for infrastructure</b>	Earmarking existing infrastructure funding or other eligible funding for infrastructure – to open up new locations for building affordable homes
<b>Enact new regulatory incentives</b>	Convening a group to study the County’s land use and building regulation and then to make recommendations for affordable housing incentives such as fee waivers, density bonuses or expedited development review.

### Description and Analysis of the Chosen Options

The following matrix describes the three selected options in more detail. The loan product descriptions and potential funding sources are based on best practices of similar programs in New Mexico and elsewhere. The “risk and return” analysis is based on the experience of the consultant team in providing technical assistance to start up over a dozen similar programs including existing programs within the state.

The matrix below is followed by a detailed narrative description of each loan product that is recommended for consideration.

<b>AFFORDABLE HOUSING LOAN PRODUCT MATRIX</b>			
<b>Points of Analysis</b>	<b>Product 1: Consumer Loans for Housing Repairs</b>	<b>Product 2: Consumer Loans for Gas Line Connections</b>	<b>Product 3: Gap Financing Loans for Housing Developers</b>
Target Uses	Funding for a single house repair for income qualified household such as roof, structural work, etc.	Group of loans for extension of utility services such as natural gas along street alignments or to specific neighborhoods	Partial site acquisition and site planning loans to leverage construction and permanent financing for affordable subdivisions or rental housing)
Target Borrowers	Low and moderate-income homeowner between 50-100% AMI	Low- to middle income homeowners from 50-120% AMI	Affordable housing development organizations
Loan Size/Structure	\$9,000-\$12,000	\$3,000-\$9,000	\$100,000-\$500,000
Rate*/Term	2%-5% interest, 4-10 year term, adjusted to assure affordability	2%-5% interest; 4-10 year term, adjusted to assure affordability	3-5% interest (depending on need and cost of capital); terms up to 2 or 3 years
Administrator	Existing non-profit housing rehabilitation provider(s) operating in the county	Existing non-profit housing rehabilitation provider(s) operating in the county	County (internal) with possible outsourced underwriting and/or loan servicing
Major Upsides	High demand, existing partner capacity and documented need, addresses central need in County	Medium demand, existing partner capacity and reported high level of performance for similar loans	Lowers risk for private lenders, creates high leverage, increases affordable housing availability
Major Downsides	No existing similar products to track effectiveness, possibility of moderate to high default rate	Large amount of administrative time for partner organizations; possibility of high default rate	Large amounts of funding at risk, calling for careful underwriting and have sufficient grant capital to cushion possible losses
Fills Unique Niche	No sources are available for "partial" repairs other than home equity loans; can leverage more weatherization funds	Yes- some similar loans done by Tierra Del Sol but no permanent funding source	Yes, private lenders are risk averse, this lowers their risk to acceptable levels to make projects feasible.
Funding Sources	Local funds, CDBG, other	Local funds, other	Local funds, CDBG, other
Revenue Generation	Very modest—assume 2% return, all of it being used to cover overhead and loan losses	Very modest—assume 2% return, all of it being used to cover overhead and loan losses	Assume average 3%-4% average return which should result in modest net profits
Level of Risk For Loss of Some Capital	Moderate to high, depending on underwriting criteria	Moderate to high depending on underwriting criteria	Low to moderate, depending on risk profile allowed by underwriting criteria

\* Preferably below market rate

The following are more detailed descriptions of the financing products that a new County Affordable Housing Loan Program might offer.

### **Loan Product 1: Consumer Loans for Home Repairs**

**Rationale.** There are currently few consumer loans available for home repairs for those who do not qualify for very low-income assistance or who have considerable equity in their home. The State of New Mexico managed Federal HOME Program funded owner-occupied repair program typically focuses on full-house rehabilitation and is limited to just a handful in the County in a given year. Based on interviews with providers the needs far exceed the demand, with extensive waiting lists of more than 200 at Tierra Del Sol alone. The USDA Rural Development 504 program offers loans for home repairs but is restricted to very low-income households (those below 50% AMI).

The following product concept is designed to address that need and also to leverage more weatherization funding for county residents who will not qualify until they perform other urgently needed repairs.

**Loan Size.** We envision that this type of assistance would typically be between \$9,000 and \$12,000 per household and focused on a single repair such as a HVAC, a roof, or other single systems within the home. This is preferable because with limited funds, this avoids entering into rehabilitations that can escalate as further issues are discovered or trigger full code compliance for the house. The range of loans should include a minimum loan amount to justify the administrative work associated with the loan.

**Loan Terms.** The loan could be structured as a low-interest loan with monthly repayments and interest rates in the range of 2%-5%. While it would be desirable to offer lower interest rates, these would be the rates necessary to cover the significant labor costs of helping homeowners specify the work, find qualified contractors, and monitor the work, which typically costs at least \$1,000 per home repair loan. The length of the loan could be adjusted to create an affordable payment level for the borrower, but should not exceed 15 years, with optimal payback in the range of 4-10 years. Loan terms could be lengthened to make monthly payments more affordable for the lowest-income clients. For planning purposes, conservatively assuming a 2% interest rate is recommended, due to the very low incomes of many potential clients.

**Beneficiaries.** This program should be income targeted to serve owner households that currently cannot use USDA products, particularly targeting households between 50-80% AMI, and the County may consider targeting households above 80% AMI, which would enable charging higher interest rates on the order of 5%.

**Potential Funding Sources.** This type of activity is currently an allowable activity under the Federal Community Development Block Grant (CDBG) program administered by the State of New Mexico, although by all accounts, no applications for home repair funding have been made or approved in the past several decades. The County would need to apply directly to the state for such funding. Other potential funding sources could include county general purpose funds, a county bond issue, corporate donations or foundation grants. In the consultants' experience, private Donations and grants are possible but not likely for this type of program.

**Administrator.** This type of fund is also best managed by existing partners in the community with experience with home repair and renovation. The funding could be awarded competitively to providers who then make loans directly to individual families. The organizations selected to administer a program such as this should have capacity for income certification and construction management and proven experience with home repair programs.

**Community Benefit.** Small investments in home repairs would not only allow for improved quality of life as well as the health and safety of residents, but could also unlock other (non-County) potential funding sources currently not available to consumers because of the condition of their homes.

### **Loan Product 2: Consumer Loans for Connecting To Gas Lines**

**Rationale.** As described the Doña Ana County Affordable Housing Plan and interviews with housing service providers indicated that there are considerable needs for funding to connect to nearby main gas lines. Propane is nearly twice as expensive as natural gas, posing a significant threat to affordability. Typically this funding would be allocated on a case-by-case basis, or in batches of funding to serve a specific geographic area. Tierra Del Sol has made several of these types of loans in the past and found them to be very high performing loans with small monthly payments and few defaults. The loan product described below does not necessarily increase the quality or supply of affordable housing, but would make monthly operating costs more affordable and increase the value of existing housing stock in the County.

**Loan Size.** Interviews with service providers indicate that that typical cost to connect to nearby natural gas service infrastructure is reported to be in the range of \$3,000 to \$9,000 per home when undertaken on scale of a single street or block within a subdivision where the utility provider is willing to extend the trunk line in the street.

**Loan Terms.** As with the home repair loans, these loans could be structured with monthly repayments and interest rates in the range of 2%-5% with typical paybacks over 3-8 years—the shorter term than for Product #1 being assumed due to the expected smaller sizes of these loans. The rationale for the interest rate estimate is the same as for the home repair loans: namely, making these loans involves significant labor on the part of lender, over and above simply making a loan. Differential rates and terms could be used, as suggested above for Product #1.

**Beneficiaries.** The income service level of this type of loan should be broader than home improvement loans and have a high enough income limit to be able to serve entire small service subareas. As such, this program should target a maximum household income up to 120% of AMI. This higher income limit is important because there are limited financing options available in the private market, and many times this type of utility extension project requires an entire street or block to sign on, regardless of their income level. This higher income limit ensures that most families on a given street or road would qualify for the funding.

**Potential Funding Sources.** This would be an eligible expense under the CDBG program, as well as County general funds. As discussed above and later in the report, CDBG for housing activities would need to be applied for directly to the state, which has not previously funded any housing activities with this source.



**Administrator.** Funding for this type of program would be best managed by a partner who has experience with this type of service activity as well as income certification. The administrator would be responsible for interfacing with beneficiary households and obtaining necessary paperwork loan documents as well as collecting monthly payments.

**Community Benefit.** The benefit of a utility connection loan product would be to improve the living conditions of low-income residents of the rural part of the County. This would also increase housing financial sustainability and increase disposable spending for households. It would also help develop a more consistent utility infrastructure within the County.

### **Loan Product 3: Gap Loans for Housing Developers**

**Rationale.** Non-profit housing developers indicate that one of the most useful funding mechanisms would be gap financing for land acquisition and subdivision development. Most affordable housing developers are used to layering multiple funding sources including internal organizational funds, grant funds and conventional financing to complete a subdivision acquisition and the planning work required to demonstrate feasibility and raise the construction and permanent financing. Housing developers in the county indicated that early-stage below-market loan products would be useful. This was reinforced by interviews with local banks who indicate that gap financing would most certainly help lower the bar to offering conventional financing to projects.

**Loan Size.** Loan sizes for early stage and gap financing would generally range from \$100,000 to \$600,000 depending on the project. The funding amount should target a threshold loan to value ratio that would allow maximum leverage of privately available financing. Interviews with management of two local nonprofit housing organizations indicated that they would be interested in borrowing on the order of \$500,000 for larger single-family subdivisions and rental projects—but it is also assumed that the program could lend lower amounts for smaller projects.

**Loan Terms.** To offer loans more affordable than commercially available funding, interest rates on these loans should bear interest rates somewhat lower than current construction interest rates. For home construction programs, these types of loans are typically made for two-year terms or at most three-year terms, and repaid in stages as homes are sold. For funding acquisition and planning costs of affordable rental projects, up to three-year terms may be necessary, with the principal and interest repaid when the construction financing closes.

**Beneficiaries.** The program would be targeted to non-profit and for-profit housing developers that are willing to commit to providing a portion of their homes at below market rates for qualified low and moderate-income households.

**Administrator.** Given the size, complexity and need for thorough underwriting of these types of loans, this type of program should be administered internally at the county, contracting with an expert third-party organization for the technical tasks involved in the underwriting phase..

**Potential Funding Sources.** This type of activity could be funded with general funds, local investment funds, and is eligible under the CBDG program.

**Community Benefit.** This type of program would create both direct and indirect benefits for the County. Direct benefits would include increasing the availability of affordable housing within the County. The secondary benefit would be increased economic activity related to housing construction and home purchases. Affordable housing developments could also be part of the larger mixed income, mixed-use developments to spur more holistic community development in targeted areas of the County and serve as an economic driver.

## 6. Estimated Capital Needs and Potential Funding Sources

A critical consideration with any local government funded affordable housing financing mechanism is the potential sources of funding used to capitalize that fund. The resources available impact both the types and the terms of the loans. While no specific discussions about the types of resources the County has to invest in an affordable housing fund, the County input has been clear that, at least initially, any affordable housing funding mechanism needs to have a relatively short payback period and carry at least a modest rate of return for the County. These parameters also dictate that the loans have a relatively low risk for default. Below we discuss the various types of funding sources that have been used in other loan funds in New Mexico.

### Estimated Volumes of Capital Needed

As noted in Section 4 of this report, a Doña Ana County loan fund would need to raise between \$1,500,000 and \$2,000,000 in the first several years to achieve a sufficient volume of lending and sufficient interest payments to cover its operating costs. to reach its full potential and to support the administrative costs with sufficient loan origination fees and interest payments.

If, as proposed, the Loan Fund makes a significant volume of larger loans to developers repayable in two to three years, the funds can quickly be re-lent to additional projects, reducing the amount of capitalization needed when compared to making long-term loans.

As the next step in this study, a detailed business plan and financial projections for a proposed Loan Fund, so that the County can better determine whether and how to move ahead with the concept. That plan will include: Estimates of the volumes number and dollar volumes of loans that could feasibly be made over a five-year period.

- The estimated amount of loan repayments year-by-year,
- Operating costs year-by-year, and
- The resulting amount of capitalization needed for this start-up period.

### Potential Funding Sources

Following are descriptions of potential sources of funding to support affordable housing financing mechanisms. These represent a total range of potential sources relevant to the types of potential funding mechanisms presented in this report.

#### Start-Up Capital Needed

\$1.5 to \$2.5 million

#### Potential Sources

County funds  
Bond issue  
Sales of County land  
NM Mortgage Finance Authority  
Recycled repayments to Loan Fund  
NM Affordable Housing Tax Credits  
State Community Development Block Grant  
Colonias Infrastructure Fund

#### CDFI'S IN NEW MEXICO

Community Development Financial Institutions (CDFI) are an important tool in the community development landscape. This designation by the US Treasury allows non-profit organizations to carry out many of the functions limited to banking institutions for the purpose of assisting low-income, low-wealth households. This is a particularly useful designation for affordable housing activities because of the potential for underwriting and originating loans.

There are 14 CDFI's in New Mexico, Tierra Del Sol is the only CDFI operating in Doña Ana County.

**Local General Purpose Funds.** Several municipalities in the state use general funds to directly support affordable housing activities. In the case of Santa Fe these funds are used only for direct housing services provided by non-profit partners and amounts to around \$300,000 annually. These funds are used to support affordable housing services such as housing counseling and administration of city affordable housing programs. The City of Las Cruces sets aside \$100,000 a year of general funds to complement its CDBG and HOME entitlement funding.

**County Reserve Funds.** New Mexico Counties are required to hold three percent reserves. These funds must be held in investments or banks that meet certain criteria determined by the state. If structured correctly, these funds could potentially be vested with a local bank or Community Development Financial Institution (CDFI) and used as collateral to make consumer loans to support affordable housing activities.

**Bonding.** Both the City of Albuquerque and Santa Fe have used municipal bonding to support affordable housing activities. The City of Albuquerque has issued General Obligation bonds on a two year cycle to support the construction of affordable housing. Amount for these bonds have ranged from over \$10 million in 2011 to a low of \$2.5 million in 2013. The current issuance in 2015 was for \$4.5 million.

The City of Santa Fe set aside a portion of a General Obligation bond for use on affordable housing infrastructure and offsite improvements. This issuance was for \$1.2 million with \$800,000 going to down payment and closing cost assistance and \$400,000 was made available to both for-profit and non-profit developers and provided up to \$25,000 per unit for units that elected to serve income qualified households.

Bond sales have also been utilized for the acquisition of land dedicated to affordable housing. These have been then converted into long-term affordable housing financial resources by using the payback from land sales to capitalize affordable housing funds.

**Land Sales.** While not incredibly common in New Mexico, the City of Santa Fe and the Town of Taos have both used land sales to provide funding for affordable housing. In both these instances the land sales were also in direct support of affordable housing as well.

Tierra Contenta, established by the City of Santa Fe in 1994 is a large master planned development with the goal of creating at least 30% affordable housing. Acquired with public bond funds as a defunct development, the land was then sold to a non-profit master developer. As the master developer paid off portions of the acquisition loan, these funds were recycled into the City of Santa Fe Affordable Housing Trust Fund and Economic Development Funds.

In the case of Taos, the Chamisa Verde project was a town-sponsored affordable housing subdivision. As homes were sold off, developers repaid the cost for lots, which was recycled to provide affordable housing services. Unfortunately this development stalled due to mismanagement and the larger housing downturn.

**New Mexico Mortgage Finance Authority (NMMFA)**

NMMFA has multiple sources of state-appropriated, federal and internally generated funds, some of which could potentially be invested in the proposed loan fund.

**Loan Recapture/Recycled Funds.** One ongoing source of revenue for funds such as the Santa Fe Affordable Housing Trust Fund are and the Down Payment Assistance Revolving Loan Fund operated by the Santa Fe Community Housing Trust are recycled and recaptured funds from previous affordable housing investments. In this case, repayments of down payment assistance grants to individual homeowners, as well as monetary value of discounts provided through the City's inclusionary zoning programs are used to support the fund. In both these instances these funds are recaptured when homes are resold after initial occupancy. This type of funding source does not provide the "seed capital" needed to start a fund but helps maintain the long-term resource base of the fund.

**New Mexico Affordable Housing Tax Credits.** These state level tax credits encourage private investment in affordable housing by providing tax credits up to 50% of the value of a donation directly benefiting approved affordable housing activities. Qualified contributions can be in the form of cash, services, buildings or land donations. This program could be used to leverage private contributions to a County affordable housing fund.

**Community Development Block Grant Funds.** There are designated Entitlement Communities, based on population, that are large enough to receive a direct allocation of federal Community Development Block Grant (CDBG) funds and that have opted to use these funding for affordable housing programs. In Santa Fe these funds are used to provide down payment and closing cost assistance to homebuyers, as well as to fund repairs for low and moderate-income homeowners. In both these instances, the loans are provided at zero interest and require no monthly payments, but are due on sale or transfer of the property. Over the years, these CDBG investments have grown and represent a significant loan fund, with a portion of that fund being recycled each year.

The obstacle to using this funding source in Doña Ana County is that the County is not eligible for a direct allocation of CDBG, and therefore has to apply through the New Mexico Department of Finance and Administration. Although this entity currently has not historically awarded CDBG to be used for housing activities, DAC routinely utilizes CDBG funds for roadway improvements. The County should explore opportunities to align with other counties and municipalities across the state to lobby the New Mexico Finance Authority for CDBG to be invested in housing activities.

**Colonias Infrastructure Fund.** The Colonias Infrastructure Fund was established in 2010 by the New Mexico State Legislature and is overseen by a board that allocates funding to specific project that benefit colonias communities. The level of funding available varies depending on state revenues. Over \$12 million was available in the previous year, but this is expected to drop considerably in the current fiscal year due to declining revenues associated with lower oil and gas prices.

Among the allowable uses of the fund are infrastructure uses for housing. Staff at the New Mexico Finance Authority, the agency within that state that oversee the fund, report that to date, they have not received an application for a housing activity. The fund's project selection criteria highly weights "shovel ready" projects, and all easements and approvals must be in place for funding to be awarded. For this reason, this funding source is not likely to provide seed capital needed to catalyze an affordable housing funding mechanism in Doña Ana County.

## 7. Recommended Next Steps

The following chart describes, in sequence, the next steps suggested by the consultant team.

Lead Entity	Action Step
Werwath Associates	Delivery of this report in final form.
County	Adoption of this report and its recommendation to plan for the potential start-up of an Affordable Housing Loan Fund that offers loans to homeowners and developers as described in this report.
Werwath Associates	Create a business plan for the proposed Loan Fund that includes the product definitions, marketing strategy, staffing plan, financial projections, risk analysis and a draft of the proposed administrative procedures. This will include additional analysis of delivery capacity of the County staff and potential outside partners such as nonprofit housing organizations and banks.
County	In tandem with the business planning tasks above, complete an analysis of possible internal funding sources for the start-up, which could leverage other funding sources. These could include general funds, cash generated by sale of properties, or a portion of the proceeds of a general obligation bond.
County	Approve the business plan as a guide to the start-up of an Affordable Housing Loan Fund. It is recommended that the fund not be officially launched until an agreed-upon minimum amount of funds have been firmly committed.
Werwath Associates County	Assuming County approval of the concept, policies and procedures for operating the loan fund would then be completed as part of the consultants' scope of work.
Input from the Public and Stakeholders	In addition to required public meetings of the Commissioners, provide opportunities for input on the business plan and loan fund policies/procedures. Forming a Planning Committee consisting of experts and community advocates might be considered for this purpose.

## 8. Other Loan Products for Possible Future Consideration

As noted in previous sections, County Staff and the consultant team recommended three types of loans to be offered at the start-up of a proposed Affordable Housing Loan Fund. Descriptions of two more potential loan products are provided here, in case the County determines to pursue these options at a later date. Based on experience with the start-up and operations of similar loan funds, the consultant team recommended that consideration of these two options be delayed due to the large amount of capital that would have to be raised for either of these two options, as well as the added complexities of offering these kinds of financial assistance.

### **A. Infrastructure Loans/Grants for Affordable Housing Developers**

**Rationale.** One of the most challenging and costly stages of housing development is the provision of infrastructure such as roads, sidewalks, and utility improvements. It is also more difficult to be financed through conventional sources and one of the key barriers to new housing development. A program designed to support infrastructure development could be designed to offset the costs of infrastructure by providing assistance tied to the number of affordable housing units to be created in the development.

**Loan Size.** To be effective an infrastructure assistance loan should target a level that is of significant benefit to the developer, approximately in the range of \$10,000 minimum per-unit. Under such a scenario, a 40-unit development would receive \$400,000 in infrastructure assistance.

**Loan Terms.** There are two major options on how these loans could be structured, either due at sale of the home, or passed on as deferred assistance to the affordable buyer. In the case of the former, the loan would become due when the home is completed and sold. In the case of a pass-through to the buyer, that investment from the County would be converted into a direct discount to the buyer, which would not only lower the effective cost of the home to the buyer, but also function as a type of down payment assistance, making mortgage qualification easier. Existing programs offer options to use either structure, both requiring a full payback of the initial investment, but no interest or other fees.

**Beneficiaries.** This program would be targeted to for-profit or non-profit developers who are willing to commit to sell homes at affordable price thresholds to qualified buyers at or below 80% of the Area Median Income for home purchase, and below 60% AMI for rental housing.

**Administrator.** Because many of the common potential partners would also be the types of organizations who would benefit from this type of assistance, to eliminate conflict of interest purposes and ensure the maximum number of program participants, this type of fund should be managed internally by the County.

**Community Benefit.** Investments in infrastructure for affordable housing construction have community-level economic benefit and will increase access to homeownership. This type of investment also has the potential to increase the capacity of affordable housing development partners.

## **B. Mortgage Assistance for Homebuyers**

**Rationale.** This type of assistance would be focused on potential homebuyers with the goal of lowering barriers to accessing mortgage financing or lowering the cost of financing. This could take the form of low or no interest down payment and closing cost assistance, or larger principle reduction mortgages designed to eliminate mortgage insurance premiums, dramatically lowering monthly payments or extending buying capacity. Both would significantly ease the process of qualifying for mortgages.

**Loan Size.** The size of loan offered under a mortgage assistance program would vary widely depending on the type of assistance provided. The minimum amount needed for downpayment and closing cost assistance starts around \$1500 for a no-downpayment USDA loan product to as much as \$10,000 to reach minimum downpayment requirements for FHA or conventional lending in parts of the County not eligible for USDA loans such as the area surrounding Las Cruces, Doña Ana, Mesilla and Santa Teresa.

To be effective, principal reduction mortgages should target a high enough level of assistance to eliminate private mortgage insurance, which is required on all mortgages with a loan-to-value ratio of over 80%. This means that loans would need to be at or near 20% of the purchase price of the home, which could be as high as \$30,000 per transaction on a \$150,000 home.

**Loan Terms.** Down payment and closing cost assistance is typically provided as a deferred loan or grant. Many of these types of loans are provided to income-qualified buyers with zero-interest and are due at transfer or sale of the property. In this way the resources become perpetual, meaning the principle amount of the loan is always repaid, but does not grow with time to account for inflation.

In contrast, a principal reduction mortgage can be structured as a deferred loan or an amortizing loan with monthly payments. The use of amortizing second mortgages, meaning liens in second position in their claim on title, has proven a very effective and reliable source of revenue generation for several non-profit Community Development Financial Institutions in New Mexico.

Grants and/or loans that are forgiven over time are not recommended because of the need to preserve scarce affordable housing resources.

**Beneficiaries.** Deferred loan and grants would have to be restricted to income qualified buyers that meet the applicable definitions of eligible beneficiaries in the County's affordable housing ordinance.

Amortizing principal reduction loans given at market rates could potentially be provided to a broader income range of buyers because the resource is not being provided at a discount. One potential structure for this would be to have variable rates from market rate for higher income households to well below market rate for lower income buyers.

**Potential Funding Sources.** Both CDBG and bond funding would be potential funding sources for down payment and closing costs assistance grants and loans. Larger amortizing loans in the \$30,000 range could be made with reserve fund investments.



**Administrator.** It is critical that any lending programs such as this be managed by entities that have experience and the staffing and administrative structures already in place. This includes the ability conduct underwriting on transactions and strong financial management infrastructure. Down payment and closing costs assistance programs are typically managed by non-profit housing providers or commercial lenders. Provision of amortizing loans would have to be handled by a CDFI or other licensed lending institution.

**Community Benefit.** Lowering the barrier to homeownership has manifold benefits for communities. These range from more intangible benefits such as increased community investment, to more tangible outcomes like increased tax revenue, local spending on home related items, and long-term housing stability for buyers.

**Appendix A**  
Persons Interviewed for This Study

<b>Contact</b>	<b>Organization</b>
Phyllis Taylor	Sites SW, Affordable Housing Plan Project Manager
Jorge Castillo	Doña Ana County Community Development
Steven Chavira	Las Cruces Home Builders Association, Former Director
Veronika Molina	Southwest Housing and Community Development
Rose Garcia	Tierra Del Sol Housing Corporation, Director
Art Marujo	Tierra Del Sol Housing Corporation
Juan Olvera	Mesilla Valley Public Housing Authority, Director
Julia Brown	Doña Ana County, County Manager
Wayne Hancock	Board of County Commissioners District 4, Chair
Benjamin Rawson	Board of County Commissioners District 3
Bob Pofahl	Picacho Mountain Development
Dawson Dinsmore	Pioneer Bank
Clyde Hudson	U.S. Department of Agriculture, Area Director
Angela Quintana	Colonias Infrastructure Board, Program Manager
Vera Zamora	City of Las Cruces Housing & Neighborhood Services
Arianna Vigil	NM Local Government Division

**Doña Ana County  
Affordable Housing Loan Fund  
Business Plan**

Completed April, 20, 2017

By Werwath Associates



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**Werwath Associates**  
COMMUNITY DEVELOPMENT CONSULTANTS

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# 1. Executive Summary

## **Overview and Introduction**

This business plan is a blueprint for Doña Ana County government to consider the start-up a “Doña Ana County Affordable Housing Loan Fund.” County staff and consultants collaborated to create it. The loan fund is proposed as a County “enterprise” activity to improve housing affordability and quality in the county. To do so, the Loan Fund would provide loans at low interest rates based on prudent and time-tested lending practices, in the affordable housing industry including requirements for collateral.

This first section of the plan provides a high-level summary of the major points of a proposed business plan for a Doña Ana County Affordable Housing Loan Fund. Details can be found in subsequent sections.

It is standard practice for a business plan to draw a very clear picture of proposed operations and finances for specific business activities, projected forward several years. Variations of this game plan could also be effective—and rare is the business plan that is not amended before, during or after the start-up.

However, an effective business plan has to be focused, with as few “maybes” as possible. Otherwise, the marching orders aren’t clear. In that spirit, the authors have endeavored to present a strategy that is most feasible given the housing needs, available capital, delivery capacity and current market conditions in the county.

## **Loan Products**

During the start-up period, the Loan Fund will offer three loan products:

1. Loans to homeowners for urgently needed home repairs
2. Loans to homeowners for utility line connections, to reduce energy costs
3. Early-stage, short-term loans to developers of affordable housing for sale or for rent

## **Needs and Demand for the Homeowner Loan Products**

These three loan products offer solutions for major affordable housing needs that were identified in the County’s Affordable Housing Plan adopted in 2015. During the start-up, the loans would be offered only for properties located in unincorporated areas Doña Ana County. Affordable housing data indicate that these areas have greater unmet needs. In contrast, the bulk of the incorporated areas in the county have experienced significant inflows of financing for affordable housing for several decades.

Demand for the loans to homeowners for home repairs and utility line connections is expected to come immediately from most areas of the county, but will be particularly strong in the Colonias. Two nonprofits that would consider making the loans estimate demand in their existing home repair programs for over 50 loans a year, compared to the more conservative business plan goals of 27 homeowner loans per year—15 loans averaging \$11,000 for home repairs, and 12 averaging \$6,000 for utility line connections.

There is a strong need for the County to step in and provide low-interest loans. Most homeowners with urgent needs do not qualify for home equity loans and would typically have to pay 15%+ interest rates for credit card financing. Available below-market-rate loans and grants for home repairs in the county are sufficient for only a few dozen homeowners every year.

### **Need and Demand for Loans to Affordable Housing Developers**

Demand data for loans from affordable housing developers shows potential for lending a minimum of \$500,000 per year—these being much larger loans than the homeowner loans. This is due to the fact that developers are expected to be financing between 8 and 60 homes for sale or for rent—not one home at a time. In the Financial Projections that are an appendix to this report, one new developer loan per year averaging \$500,000 is projected, which in some years might be several loans totaling around \$500,000.

Local affordable housing developers indicate that financing for land acquisition, planning and infrastructure costs is very hard to find at workable interest rates, and only available in limited amounts from out of state nonprofit lenders. The Developer Loan product will create an opportunity to get financing locally at lower rates with less time spent shopping numerous lenders. Interest rates about 50% lower than market rates will help produce homes at lower costs.

### **Capitalization of Loan Fund**

The Loan Fund will be launched as an operational program of the County only when the Fund has received firm and adequate commitments for investing capital in the fund. The goals for the minimum feasible capitalization of the Loan Fund for the first five years of operation have been calculated at \$1,905,000 in the Financial Projections (see Appendix).

Potential sources of start-up capital include County funds, proceeds of sales of county land, investments by the New Mexico Mortgage Finance Authority, other state or federal funding such as state CDBG grants, and grants by banks, other corporations and foundations.

It is assumed that the most feasible timing of the capital campaign would be the first six months—a timeframe in which the majority of the start-up capital for new loan funds is typically committed. This plan assumes that most of the start-up capital needed five years of feasible operations will be paid in during the first two years.

These crucial capitalization goals do not preclude the County from raising additional funds, making more loans, or changing the terms and mix of loan products based on real-world experience and market conditions.

After about three years, when the Loan Fund has established a successful track record of lending and repayments that utilize all of the start-up capital, the County will be in a position to seek low-interest “community reinvestment” loans from banks. This borrowed capital could enable the County to expand loan volumes in excess of the projections.

## 2. Market Analysis

Following is an analysis of market demand for the three proposed loan products. The analysis led to conclusions by the consultants about the estimated numbers of loans to be made each year, average loan amounts, interest rates, and terms.

	<b>Home Repair Loans</b>	<b>Utility Lines Connection Loans</b>	<b>Developer Loans</b>
<b>Market size</b>	200 Low-Income homeowners on waiting list of one local nonprofit	Hundreds of low-moderate income homeowners are in need <sup>1</sup>	As many as six single-family and multifamily (MF) developers
<b>Estimate of loan closings per year</b>	10-15 Loans Per Year, Average of 12	15-20 Loans Per Year, Average of 17	1 Loan Per Year (Average)
<b>Demand trend</b>	Rising as housing stock ages and other funding sources are very limited	Demand might be decline in 3-5 years after the most willing & able borrowers have accessed loans	Steady demand from single-family developers; MF demand depends on NMMFA <sup>2</sup> annual funding
<b>Estimated range of loan sizes</b>	\$9,000-\$12,000	\$3,000-\$9,000 Per Loan	\$100,000-\$600,000
<b>Assumed average loan size</b>	\$11,000	\$6,000	\$500,000
<b>Assumed income range of borrower (or beneficiaries)</b>	Homeowners at or below 80% of area median income	Homeowners at or below 120% of area median income	Homes for <120% AMI buyers; Rentals for <60% AMI renters
<b>Assumed interest rate</b>	4% annual rate	4% annual rate	3%-5%
<b>Service area</b>	Unincorporated county	Unincorporated county	Unincorporated county
<b>Likely areas of high demand</b>	Colonias & and in other unincorporated areas in the county	Colonias & and in other unincorporated areas in the county	Areas with water & sewer lines nearby

<sup>1</sup> No waiting list or survey exists but from their other work, staff of nonprofits state that there are many hundreds of homeowners without natural gas line connections. County staff believes there will be some demand for water line connection loans, and possibly for sewer line connection loans.

<sup>2</sup> NMMFA refers to the New Mexico Mortgage Finance Authority, which allocates federal Low Income Housing Tax Credits and makes long-term low-interest mortgage loans –the primary drivers of affordable housing rental developments in New Mexico.

Senior staff of local nonprofit housing organizations were the primary informants for the data shown above—Tierra del Sol Housing Corporation and Southwest Regional Housing and Community Development Corporation.

### **Competition Analysis – Homeowner Loan Products**

The proposed homeowner loan products complement and do not compete with existing grant and low-cost loan programs for home improvement lending in Doña Ana County.

In Doña Ana County, the Southwest Regional Housing and Community Development Corporation (SRHCD) offers both weatherization grants from the Federal Department of Energy and financing for much more comprehensive renovations from the HOME program of the U.S. Dept. of Housing and Urban Development, serving about 10-15 homeowners in the county each year.

SRHCD sees the proposed partial home repair and utility connection loans as complementary and not competitive with their existing grant and loan programs for homeowners, because they can reach clients who they cannot serve now. In fact, these new loan products could allow SCRHCD to provide an average of about \$5,500 in additional weatherization grants to future Loan Fund clients who do not qualify at present because they have bad roofs and other dysfunctional systems that have to be addressed before the home can qualify for weatherization grants.

Tierra del Sol Housing Corporation already makes as many as 10 to 12 loans and grants each year for emergency home repairs and gas line connections but has very limited capital for this purpose. TDS representatives estimated that they could more than double their production if Loan Fund provided them with this capital.

Each year, funding for a small number of home repair loans at a 1% interest rate for up to \$20,000 is made available in New Mexico through the USDA Rural Development Section 504 program. The loans are available countywide, except for Santa Theresa, Las Cruces, and areas within 15 miles of the Las Cruces city limits. National and statewide funding for this program is very limited, so it is unlikely that it will ever address more than a few homeowners in Doña Ana County each year. Thus, this program is considered non-competitive with the proposed Loan Fund home repair loans.

Certainly, a few lower-income families can tap into home equity loans for repairs—but the vast majority cannot due to the need to have high credit scores and at least 30% equity value in the home based on an appraisal. Also, some low-income homeowners may be able to borrow small amounts of home repair funds through credit cards or from finance companies, but the interest rates are typically 15% or higher, presenting no competition to the much lower-interest loans proposed in this plan.

The insufficiency of affordable loan and grant programs for home repairs in New Mexico as well as bank financing prevents many lower-income families from receiving urgently needed basic repairs. This gap is precisely the reason that the Home Repair and Utility Line Connection loans are proposed for the initial stage of the Loan Fund.



**Competition Analysis - Developer Loan Product**

Only two lenders in New Mexico offer below-market financing for early-stage expenses of affordable housing construction projects—such as land acquisition, planning and infrastructure costs. These lenders are the New Mexico Mortgage Finance Authority and the recently-launched, nonprofit Ventana Fund. Both lenders offer financing similar to what is proposed for the Doña Ana County Loan Fund, but their capital for lending is quite limited. This means that affordable housing developers in Doña Ana County have a slim chance of accessing these funds in any given year because of competition from developers elsewhere in New Mexico.

Tierra del Sol management indicated that they mostly go out of state and approach multiple loan funds to obtain early-stage financing at below-market interest rates—mostly for developing subdivisions with affordable house lots for sale. The Director of SRHDC management indicated that they would consider building affordable subdivisions in Doña Ana County, as they do in Grants and Luna counties, if funding were available.

From the information gathered for this plan, we estimate that the demand from just these two organizations could exceed \$1.5 million in low-interest loans per year from the proposed Loan Fund—over three times the \$500,000 in annual developer loans conservatively projected in this business plan. This appears to be a safe margin of demand to better assure meeting the lending goals in the Financial Projections. The other two loan funds are unlikely to loan more than \$500,000 every year or two. And some loan applications are likely to be rejected due to not meeting the underwriting criteria.

### 3. Marketing Strategy

#### Key Guidelines for the Three Loan Products

Following are key elements of the proposed guidelines for making the three proposed types of loans. More exact proposed terms for the loans will be drafted in the final phase of preparing for the launch of the Loan Fund.

Proposed Key Guidelines	Product 1: Consumer Loans for Housing Repairs	Product 2: Consumer Loans for Utility Line Connections	Product 3: Gap Financing Loans For Housing Developers
Target Uses	Funding for a single house repair for income qualified household such as roof, structural work, etc.	Loans for extension of utility services such as natural gas, water and sewer lines to a homeowner or groups of homeowners	Partial site acquisition, infrastructure and pre-development loans to leverage construction and permanent financing for affordable subdivisions or rental housing)
Target Borrowers	Low and moderate-income homeowner between 30-80% AMI	Low- to middle income homeowners from 30%-120% AMI	Affordable housing development organizations
Loan Size/Structure	\$9,000-\$12,000 Average \$11,000	\$3,000-\$9,000 Average \$6,000	\$100,000-\$500,000 per loan Assumed annual lending volume of \$500,000
Interest Rates	4% annual rate	4% annual rate	3% annual rate for nonprofits; up to 5% for for-profits
Term of Loan	5-10 years, average assumed to be 8	2-8 years, average assumed to be 6	2-3 Years
Administrator	Non-profit housing lender	Non-profit housing lender	Internal County with outsourced underwriting and/or loan servicing
Level of Risk For Loss of Some Capital	Moderate to high, depending on underwriting criteria	Moderate to high depending on underwriting criteria	Low to moderate, depending on risk profile allowed by underwriting criteria

#### Marketing the Loan Products, In General

Loan Fund Manager's Role - The Manager will cultivate relationships with the major print, radio and TV media in Doña Ana County. The Manager will provide the media with periodic press releases about the launches of the loan products and announcements of new rounds of funding availability. Once loans have been made, the Manager will encourage reporters to prepare stories about homeowners and others who have benefited from the loans to homeowners and developers.

The Manager will also be responsible for general institutional outreach to the community and marketing to potential investors in the Loan Fund.

Nonprofit Partner(s) Roles – One or more nonprofits would be engaged under contracts to manage the Home Repair and Utility Line Connection products, including the primary responsibility for outreach and marketing for those products. Details are described below.

Loan Fund Website - The Loan Fund's website will describe the Fund in general, along with the guidelines of the three loan products, the benefits of using the loan products, and how to apply for them.

Following are descriptions of how the three loan products will be marketed individually.

### **Marketing Home Repair and Utility Line Connection Loans**

Income Targeting – Loans will be targeted to homeowners with household incomes at or below 120% of Area Median Income, as published and updated annually by the U.S. Dept. of Housing and Urban Development. Adjusted for household size: for example, the 2016 income cap for a family of three was \$54,840; family of five, \$65,760. These income limits are updated and published annually by the U.S. Dept. of Housing and Urban Development.

Primary Marketing Messages – These will be as follows:

- Benefits to homeowners such as increased comfort and safety and reduced energy costs.
- The lack of affordable options for such small home improvement loans, comparing the low interest rates of the Loan Fund loans to those of credit cards and household finance companies at rates of 15% interest or more.
- The assistance of the nonprofit partner(s) available to applicants in preparing repair specifications and obtaining qualified bids from reputable contractors, at no extra cost.

Combing Existing Wait Lists for Possible Applicants – The nonprofit partner(s) managing Home Repair loans will contact homeowners on their existing waiting lists for home repair financing and weatherization grants to urge them to apply for the Home Repair loans from the new Loan Fund.

Special Efforts to Encourage Utility Line Extensions – The nonprofit partner(s), based on their existing knowledge of the market, will reach out to groups of homeowners who could collectively cooperate in paying for short utility line extensions—for example, off a main line and a quarter mile down a road to serve 8 or 10 homes. Where there is interest, this will involve facilitating meetings of homeowners, assisting in determining the estimated cost of proposed line extensions, taking loan applications, and assisting with monitoring the contract terms and work by a qualified installer.

Other Outreach Efforts – As necessary to achieve the Business Plan goals for annual loan closings for the two homeowner loan products, the nonprofit partner(s) will conduct other outreach. This typically involves meetings with church and community groups, posting

notices in public places, and encouraging word-of-mouth marketing by contacting previous clients who received similar assistance.

Intakes and Applications – The nonprofit partner(s) managing the homeowner loans will respond to questions of potential borrowers, set up intake interviews, explain the information required to make applications, assist in completing applications, and approve qualified applications within the limits of available funding.

Progress Tracking - The partner(s) will provide the County with a progress report updated monthly. For each applicant, the report will include the dates of intake, application, completion of repair specifications, and loan closings. The Loan Fund Manager and nonprofit partner(s) will review the data to determine whether current progress is sufficient to meet the Business Plan goals for loan closings. If not, the nonprofit partner(s) will increase their outreach efforts.

### **Marketing Developer Loans**

Pool of Potential Borrowers – The identity of developers who could benefit from Developer Loans is mostly a known quantity and limited to about a half-dozen affordable housing developers and perhaps a few newcomers, as follows:

- Projects with affordable homes for sale and new rental communities continue to be built by several nonprofits and one housing authority serving the unincorporated County. SRHDC and TDS reported that they would primarily use low-cost loans from the County to acquire and develop new subdivision lots for single-family homes.
- In recent decades, several for-profit developers (in addition to several nonprofit developers) have built affordable rental projects in the incorporated areas of the County using special low-cost financing such as federal tax credits and low-interest loans from the New Mexico Mortgage Finance Authority.
- Other potential customers for Developer Loans could include for-profit homebuilders interested in building and selling affordable homes, as well as affordable rental housing developers who might develop an interest to enter the County market due to the availability of the Loan Fund's proposed low-interest loans for funding early-stage project expenses.
- The County's loan guidelines for Developer Loans for affordable housing may restrict these to priority areas for new residential developer, per the County's current and future land use policies.

Outreach to Developers – The primary method of outreach will be to issue Requests for Applications (RFAs) initially on an annual or twice-annual basis. The Loan Program Manager will maintain a list of housing developers who have been active in building affordable housing in the County or expressed interest to the Loan Fund.

Outreach will consist of the Loan Fund Manager distributing the RFA and related application materials to the entire list of potential borrowers and being available to answer questions about qualifications and loan terms. Once a loan application or preliminary application has been prepared, it will be forwarded to the Loan Fund's Underwriter, who will address questions of a more technical nature. See Sections 5 and 6 for more detailed descriptions of the role of the Underwriter, which will be a qualified professional individual or firm working on a fee basis under contract to the Loan Fund.

#### **Institutional Marketing of Loan Fund**

"Institutional marketing" refers to communications, outreach and contacts by the Loan Fund Manager for the following purposes:

To inform county residents and businesses of what the Loan Fund has to offer, accomplishments to date, and benefits to the county as a whole. This will be accomplished by keeping the information on the website up to date, including online publishing of an annual report.

To build an informal network of supporters. This will be accomplished by compiling names and contact information for customers, individuals and businesses that have done business with, or expressed interest in, the Loan Fund. The primary mode of outreach will be an emailed newsletter and/or updates about specific topics.

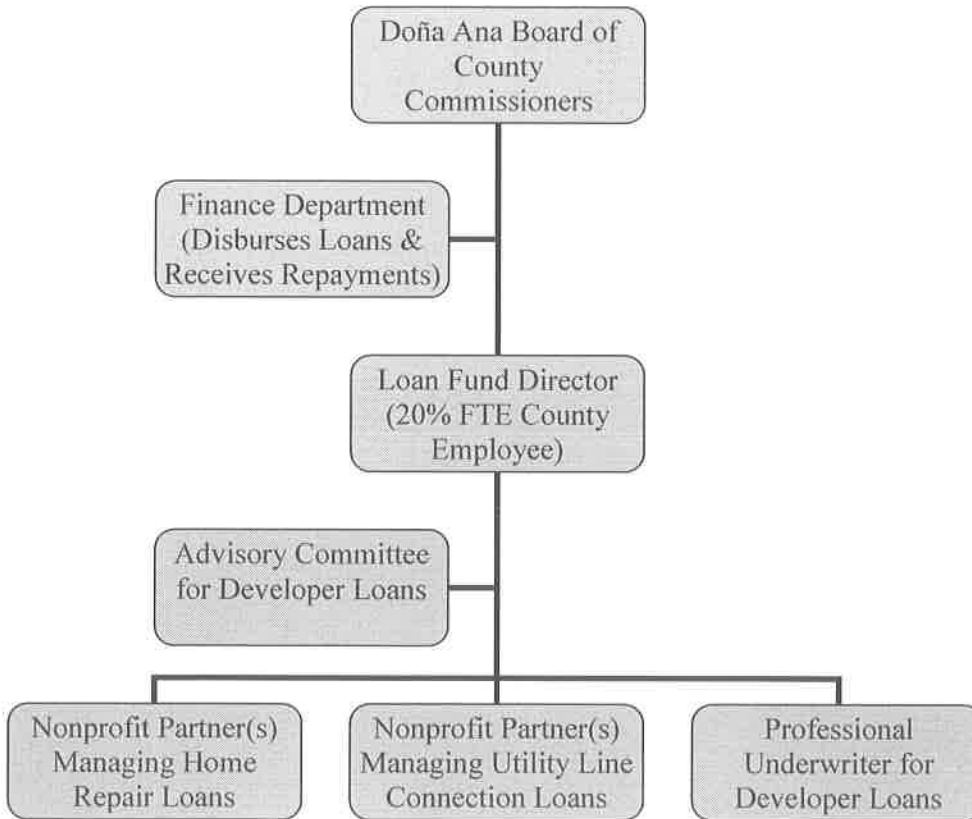
To make potential investors aware of the opportunities and benefits of investing capital in the Loan Fund. This will be accomplished through robust communications and outreach to funders to include phone calls and emails, introducing them to the Loan Fund and its capital campaign.

## 4. Organization, Management and Start-up

### Legal and Financial Structure

The Loan Fund will operate as an “enterprise” activity of Doña Ana County Government. As such, its financial activities will be reported in the County’s financial reports. The principal place of doing business will be the Doña Ana Government Center in Las Cruces, New Mexico.

### Organization Chart



The roles and responsibilities of each entity are described in Section 4, above.

### Decision-Making

The County Commissioners will make all decisions regarding the Loan Fund start-up, loan guidelines, budgets, contracts for services, and acceptance of capital investments.

### Lending Policies and Procedures

Loans will be made in accordance with loan policies and procedures (still to be drafted) and budgets for the three types of loans, which must be approved by the County Commissioners. With regard to contracts, purchasing and other matters, the Loan Fund will follow the existing policies and procedures of the County government.

### **Loan Fund Planning Committee**

During the planning and pre-approval phase of the Loan Fund, the County will form a Loan Fund Planning Committee with a maximum of 11 members. Best efforts will be made to include representatives of county-based nonprofit housing organizations, lenders, and for-profit builders interested in increasing residents' opportunities for obtaining decent, affordable housing. Best efforts will be made to include a commercial lender willing to review the financial projections. The Planning Committee will cease to exist when the County Commissioners have approved the loan fund in concept and authorized a Loan Fund Manager to start the capital campaign.

### **Loan Fund Advisory Committee**

When the County Commission has approved the start of the capital campaign, the County will form a Loan Fund Advisory Committee with a maximum of 7 members. It will be desirable to have at least 2 members with lending experience with multi-unit housing developments, 2 with experience in lending to homebuyers and homeowners in rural areas, and other members with experience in real estate law, home renovations, and other related fields. The primary roles of the Advisory Committee will be as follows:

- Advise and assist the Loan Fund Manager in obtaining investments of capital for the start-up and future expansion of lending activities.
- Advise the Manager and make recommendations to the County Commissioners with regard to Requests for Proposals and contracts for outsourced services.
- Advise the Manager and make recommendations to the County Commissioners with regard to approval of Developer Loans.
- Review progress reports at least quarterly and offer analysis and advice to the Loan Fund Manager regarding how to deal with any challenges, as well as possible ways to improve the volumes and positive impacts of the lending program through refinement of the loan products and/or policies and procedures. In this regard, the nonprofit partner(s) and contract underwriter may be invited periodically to Advisory Committee meetings for candid discussions of ways in which policies and operations could be improved.

### **Collaborations with Other Lenders**

The Loan Fund Manager and Advisory Committee members will make best efforts to collaborate with other lenders, as follows:

- Through formalized participation or co-lending agreements with other lenders with regard to affordable housing developers who have applied for Developer Loans.
- By maintaining relationships with local and regional bank Community Reinvestment Act (CRA) Officers with regard to possible new opportunities for leveraging more capital for the Loan Fund.

- By maintaining good working relationships with appropriate staff members of the New Mexico Mortgage Finance Authority and the Rural Housing Service of the U.S. Dept. of Agriculture—both of which offer special financing for home repairs and affordable housing developers, and are apt to be co-lenders on some or many projects.

### Timetable for Start-Up

Following is a tentative timetable for the start-up, subject to review and approval of the County Commissioners:

<b>Task or Phase</b>	<b>Timeframe</b>	<b>By Whom</b>
Form Planning Committee	April 2017	County
Draft analysis of possible County enabling legislation required	May 2017	Consultants
Review Business Plan	March-April 2017	Planning Committee, Staff
Revise Plan	April 2017	Consultants
Decision to approve Plan in concept and start capital campaign; appoint acting Loan Fund Manager	May-June 2017	County Commissioners
Draft Loan Policies/Procedures	April-May, 2017	Consultants
Review Policies/Procedures	May, 2017	Planning Committee, Staff
Revise Policies/Procedures	May 2017	Consultants
Prepare and approve enabling legislation, if required	May 2017	Acting Loan Fund Manager; County Commissioners
Pursue capital campaign	May-June 2017	Acting Loan Fund Manager
RFP for outsourced services: managing homeowner loans and underwriting developer loans (contingent upon actual start-up)	May-June 2017	Acting Loan Fund Manager; County Commissioners
Negotiate and draft contracts for outsourced services, contingent on Commissioners' approval of Loan Fund start-up	June 2017	Acting Loan Fund Manager
Go/no go decision on start-up of Loan Fund; appoint Loan Fund Manager as permanent position	June-July 2017	County Commissioners
Commence start-up, award contracts for outsourced services	July 2017	Loan Fund Manager



## 5. Staffing and Operations

### Staffing

Staff during the start-up and for the foreseeable future will consist of one County employee devoting 20-40% percent of his or her time to serve as Loan Fund Manager. The salary and fringe coverage scales up from \$0 in the first year (due to lower revenues at the start-up) to \$15,000 in the second year to \$20,000 in the third year, thereafter adjusted upwards by 3% per year to account for expected inflation.

This modest level of staffing will be made possible by outsourcing the most labor-intensive tasks involved in the management of lending operations.

### Roles of Loan Fund Manager

The Loan Fund Manager will be responsible for performing the following tasks:

1. Carrying out certain marketing tasks as described in Section 3 above.
2. Carrying out a campaign to raise capital for the first five years of operations, with the advice and support of the Loan Fund Advisory Committee.
3. Negotiating contracts with one or more nonprofit partners for nearly complete outsourced management of Home Repair and Utility Line Connection loans, and monitoring work done under those contracts. In this role, the Manager will seek reviews and comments from the Loan Fund Advisory Committee.
4. Negotiating a contract with a qualified residential development loan underwriter to analyze and make recommendations on applications for Developer Loans, assisting in getting additional information needed by the underwriter, and presenting an evaluation for each loan application to the Loan Fund Advisory Committee for its recommendations and the County Commission for approval of developer loans.
5. Preparing for the County Commission requests for approval of the above-described services contracts, periodic Requests for Applications for Developer Loans, and agreements with investors to provide capital for the Loan Fund.
6. Liaison with the County's Finance Department to process loan draws and repayments.
7. Preparing and distributing periodic progress reports and annual reports for the County Commission, supporters and the general public. Key information for supporters and the public will be in the County's public records but also provided by email distribution and publication on the Loan Fund's website. The Manager will review progress reports with the Loan Fund Advisory Committee at least once each calendar quarter.

8. Carrying out other incidental duties essential to the Loan Fund achieving the operational and financial goals of this Business Plan. All key goals are summarized quantitatively in the Financial Projections appendix to this Business Plan.

### **Outsourced Functions for Making Homeowner Loans**

As noted above, through a Request for Proposals, one or more local nonprofit housing organizations will be selected to manage most operational functions of making and collecting Home Repair Loans and Utility Line Connection Loans. Following is a summary of key outsourced functions:

1. Outreach, marketing, client intakes, and managing applications as described in Section 3 above.
2. Assisting clients in preparing affordable and workable specifications for the improvements to be funded by the loan. Also, assisting clients with identifying qualified, reputable contractors, reviewing improvement contracts and budget breakouts for adequacy prior to loans being approved.
3. Underwriting each loan by reviewing the work specifications, budget, borrower's financial data, credit report, and land title/lien status as provided by a title company.
4. Approving individual loans through authority delegated by the county, subject to continual monitoring by the Loan Fund Manager and suspension or termination of the services contract in the unlikely event of failing to clear any serious irregularities.
5. Setting up loan escrow accounts for each client with reputable local financial institutions, with draws for contractor payments requiring two signatures, one by the owner and one by the field inspector for the nonprofit.
6. Preparing Deeds of Trust and Promissory Notes for each loan, filling in forms approved by the County which will identify the County as lender. Prepare and transmit an amortization schedule to the County Finance Department.
7. Making requests to the County for disbursement of individual loan proceeds into the escrow account.
8. Inspections of repair and installation work in progress and co-approval (with the homeowner) of each draw from an escrow account. Tracking draws against each project budget.
9. Maintaining a tracking system in a spreadsheet format with nearly real-time data on loan closings, draws from escrow accounts and other key data essential for proper management of a pipeline of repair and installation projects.

10. Providing monthly activity/draw reports on all “open” loans (draws and work not yet completed) to the Loan Fund Manager, most of which will be a copy of the summary spreadsheet from the tracking system, accompanied by brief narratives explaining specific delays and other challenges in achieving the Business Plan goals in general and completing specific repair/installation projects.
11. Servicing homeowner loans – meaning collections, accounting, late notices, etc. Repayments will be deposited in a restricted, single-purpose bank account.

## 6. Financial Plan and Capitalization Strategy

### Overview

The major goals of the financial plan are as follows:

1. To raise \$1.4 million in start-up capital that will be committed and paid in over two years.
2. To enter into contracts with one or two qualified nonprofits to originate and service the Home Repair and Utility Line Connection loans, in exchange for origination fees of 2% per loan and approximately \$45 per loan per year in servicing fees.
3. To achieve the volume of Home Repair and Utility Line Connection loans as described in the Financial Projections – growing from \$222,000 in the first year to \$250,000 in the fifth year.
4. To achieve the volume of developer loans shown in the Financial Projections—growing from \$500,000 in the first year to \$563,000 in the fifth year.
5. To keep operating expenses in line with the Financial Projections.

The following sections are a guide to the details of the Financial Projections and a description of the capital-raising strategies.

### Major Operational Assumptions (Part 1 of Financial Projections)

Projected Number of Loan Closings and Average Loan Amounts. Shows the goals for numbers of loans made per year, average loan amounts, and total loan commitments for each of the three loan products.

Other Assumptions. Describes other assumptions that drive the financial projections. These include inflation adjustments, assumed fees to be paid for outsourced tasks, average loan interest rates, terms of loans in months, and loan origination fees to be paid to the Loan Fund to help pay for the overhead costs of making Developer Loans.

### Income/Expense (Profit and Loss) Projections (Part 2 of Financial Projections)

Operating Income. Shows the projected income to the Loan Fund for each of the first five years—which will consist of origination fees for Developer Loans and interest payments on all loans. The goals for the Fund's net income rise from about \$24,000 to \$72,000 over the first five years (see row 37 of the Excel version of the financial projections).

Operating Expenses. Shows the goals for operating expenses, including the fees to be paid for outsourced loan management tasks, salary costs of the part-time Loan Fund Manager, and other necessary operating costs such as for a website, credit reports,

attorney/title company costs, and the contingency line item. Total projected expenses rise from about \$26,000 in the first year to \$55,000 in the fifth year (see row 48 of the financial projections). This assumes that the County forgoes revenue to pay for the part-time Loan Fund Manager in the first year. Otherwise, operations would result in a deficit during the start-up year.

Operating Profit by Year and Cumulative Profit. Shows the operating profit per year (row 49)—growing from a \$2,200 loss in the first year, to nearly \$10,000 in the second year to nearly \$17,000 in the fifth year (row 50)—resulting in a cumulative surplus of about \$50,000 at the end of five years. The relatively small amount of profit is a reflection of the goal to keep interest rates as affordable as possible, while still turning a profit.

### **Cash Flow Projections**

Here, an explanation is called for. Due to standard accounting practices, loans made and loan principal payments received do not show up in the Income/Expense projections. These are considered “asset” or “balance sheet” transactions, not expenses and income. Therefore, in a business plan for a lender, it is necessary to include cash flow projections. Cash flow projections include all money received and all money disbursed, combining the income/expense transactions and asset transactions.

In constructing the cash flow projections, the crucial goal is to assure that there is sufficient cash paid in at all times to cover all of the disbursements for lending and operating expenses. That determines how much capital is needed, and when that capital needs to be paid in—a crucial part of any business plan.

The cash flow projections determined that \$1,905,000 in start-up capital is needed to cover both operating costs and the required lending capital, of which \$1,500,000 will need to be paid in during the first two years in order to achieve a sufficient volume of lending and profitability for a successful start-up.

Projected Disbursements. Shows the disbursements for each of the first five years for Home Repair, Utility Line Connection, and Developer Loans as well as for the total operating expenses carried over from the Income/Expense projections.

Projected Revenues. Shows the income from loan interest and origination fee payments, as well as the loan principal repayments, which cannot be included in operating income.

Surplus/Deficit by Year and Cumulatively. Shows the net cash flow (“surplus/deficit) deficit by year. Years 3 and 4 show negative cash flow. Carry-over (cumulative) cash flow from prior years shown in Row 65 covers those deficits and indicates a nearly \$114,000 cumulative surplus at the end of five years. The cash flow surplus in Year 5 is greater than the cumulative profit in Year 5 because it includes injections of additional capital in addition to profits, sufficient to provide liquid working capital.

**Proposed Capitalization Strategy**

Experience of other similar loan funds indicates that a substantial amount of the capital needed for the start-up funds should be committed prior to a commitment to proceed.

This is the recommended scenario:

The plan is based on the assumption that the County will commit \$750,000 for the start-up, with \$375,000 to be provided in Year 1, and another \$375,000 to be provided in Year 2.

This puts the County in a good position to make a request to one major funder to match these contributions. The funder would be asked to commit \$375,000 in matching funds for the first year, with the second installment of \$375,000 contingent on the County funding an equal amount and the program achieving substantially all of its goals in the first year. In the event that first year production is below the targets, the funding agreement could potentially permit a delay in advancing some funding until the third year.

For Years 3-5, an additional \$405,000 of additional capital injections will be needed to fund the remainder of the capital needs. This might be funded with additional County funds, proceeds from the sale of County land, Community Development Block Grant funds from the State of New Mexico, lenders, other corporate contributors and/or charitable foundations. As noted earlier in this plan, low-interest "community reinvestment" loans from banks could be a source of ample expansion capital, once the Loan Fund has established a successful track record.

## 7. Risk Analysis

Following is an analysis of the major risks of operating the proposed loan program and strategies for mitigating them.

<b>Major Potential Risks</b>	<b>Mitigations</b>
Not being able to raise sufficient capital to operate the loan fund without ongoing operating losses.	- Committing to a goal of obtaining \$1.5 million in commitments prior to the launch, in approximately 6 months, or not proceeding.
Challenges with achieving the goals of the capital campaign.	<ul style="list-style-type: none"> <li>- Most funders would expect the sponsor (the county) to make an initial, substantial commitment of capital for start-up, to be matched perhaps 1 for 1.</li> <li>- Seek a "lead" matching start-up grant of approximately \$750,000 from the most likely outside funder.</li> </ul>
<p>Not lending the funds at the interest rates or in the volumes projected in this Plan.</p> <p>The result could be insufficient interest income to cover operating costs.</p>	<ul style="list-style-type: none"> <li>- This risk can be mitigated by careful design of the loan guidelines and the scopes of work for outside, fee-for-service homeowner loan program managers.</li> <li>- The financial projections peg the fees to homeowner loan program manager(s) to volumes of loans. This provides both an incentive to make loans, and cuts operating costs if loan volumes are lagging.</li> <li>- If there is more than one homeowner loan manager under contract, the contract terms should allow moving allocations of loan funds from a lagging contractor to one meeting or exceeding production goals.</li> </ul>
Difficulties with operations; some clients dissatisfied; mistakes made by contractors in originating and outsourcing loans.	<ul style="list-style-type: none"> <li>- Careful spot monitoring of the homeowner loan program progress reports and files by the Loan Program Manager.</li> <li>- Sanctions for ongoing poor performance if not corrected.</li> <li>- Having a third party obtain feedback from clients about their satisfaction with the lending process and results.</li> </ul>

Major Potential Risks	Mitigations
Loan delinquencies	<ul style="list-style-type: none"> <li>- This risk can be mitigated by careful underwriting of all loan applications to determine the credit-worthiness of the borrower, ability to repay, and adequacy of collateral.</li> <li>- Another mitigation is to assure an immediate response to late payments, combined with financial counseling if need be (see next item).</li> </ul>
Loan defaults and loss of lending capital	<ul style="list-style-type: none"> <li>- The most effective risk mitigation is to assure that the homeowners and developers secure the loans with sufficient collateral. (Specific requirements for collateral will be included in the policies and procedures for making loans.)</li> <li>- Another important mitigation is to pay prompt attention to delinquencies and modify, to provide some counseling to help clients catch up on late payments, and as a last resort, to modify the terms of repayment for clients who have experienced temporary financial set-backs but are otherwise good credit risks.</li> </ul>
Higher than expected operating costs	<ul style="list-style-type: none"> <li>- This risk will be partly mitigated by locking in costs of the homeowner loan originations and developer loan underwriting at fixed percentages of each loan or fixed dollar amounts per loan. This approach is represented in the financial projections.</li> <li>- The Loan Fund Manager must closely monitor all expenses as they are paid—and review financial statements monthly to assure that trends in operating expenditures are in line with the financial projections.</li> <li>- In the event of unavoidable cost overruns, there is a \$3,000 per year contingency line item. In addition, there is a cushion of at least \$24,000 in working capital (surplus cash) projected for the first year, growing to nearly \$114,000 in the first year</li> </ul>



## Appendix A: Financial Projections

<b>1. Major Operational Assumptions</b>						
<b>Projected Number of Loan Closings</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Total 5 Years</b>
Home repair loans, homeowners	12	12	12	12	12	60
Gas line connection loans, homeowners	15	15	15	15	15	75
Early-stage developer loans	1	1	1	1	1	5
<i>Total Number of Loans Closed</i>	28	28	28	28	28	140
<b>Average Loan Amounts</b>						0
Home repair loans	\$11,000	\$11,330	\$11,670	\$12,020	\$12,381	
Gas line connection loans	\$6,000	\$6,180	\$6,365	\$6,556	\$6,753	
Early-stage developer loans	\$500,000	\$515,000	\$530,450	\$546,364	\$562,754	
<b>Total Loan Commitments By Loan Products</b>						
Home repair loans	\$132,000	\$135,960	\$140,039	\$144,240	\$148,567	\$700,806
Gas line connection loans	\$90,000	\$92,700	\$95,481	\$98,345	\$101,296	\$477,822
Developer loans	\$500,000	\$515,000	\$530,450	\$546,364	\$562,754	\$2,654,568
<i>Total Loan Capital Committed</i>	\$722,000	\$743,660	\$765,970	\$788,949	\$812,617	\$3,833,196
<b>Other Assumptions</b>						
Annual inflation for expenses & loan sizes	3%	3%	3%	3%	3%	
Origination fees for homeowner loans, as % of loans closed	4%	4%	4%	4%	4%	
Loan servicing fee per year per loan, for homeowner loans	\$60	\$62	\$64	\$66	\$68	
Number of credit reports per each homeowner loan closed (some applications won't close)	3	3	3	3	3	
Cost per credit report	\$18.00	\$18.54	\$19.10	\$19.67	\$20.26	
Fee for underwriting each developer loan	\$3,000	\$3,090	\$3,183	\$3,278	\$3,377	
Interest rate for homeowner loans/1	4%	4%	4%	4%	4%	
Aver. term homeowner loans (months)	84	84	84	84	84	
Interest rate for developer loans/2	3%	3%	3%	3%	3%	
Aver. term developer loans (months)	24	24	24	24	24	
Origination fee received, developer loans	2%	2%	2%	2%	2%	
<b>NOTES:</b>						
1. The 2% interest rate is conservatively low, assuming 100% very low income borrowers. Rates up to 5%-6% could be charged to higher income clients.						
2. The 3% interest rate is conservatively low, assuming nonprofit borrowers. Rates up to 5%-6% could be charged to for-profit developers.						

## 2. Income/Expense (Profit and Loss) Projections

Operating Income	Year 1	Year 2	Year 3	Year 4	Year 5
Origination fees received, developer loans	\$10,000	\$10,300	\$10,609	\$10,927	\$11,255
Homeowner interest payments	\$4,218	\$11,560	\$17,900	\$23,233	\$27,482
Developer interest payments	\$10,000	\$30,450	\$31,364	\$32,304	\$33,274
Total Projected Income	\$24,218	\$52,310	\$59,873	\$66,464	\$72,010
Operating Expenses					
Origination fees paid to homeowner lenders	\$8,880	\$9,146	\$9,421	\$9,703	\$9,995
Servicing fees paid to homeowner lenders	\$1,620	\$3,337	\$5,156	\$7,081	\$9,117
Fees to outside underwriter, developer loans	\$3,000	\$3,090	\$3,183	\$3,278	\$3,377
Fees for PR and assist with capital campaign	\$3,000	\$2,500	\$1,000	\$1,030	\$1,061
Loan Fund Manager, part-time (County staff)	\$0	\$15,000	\$20,000	\$20,600	\$21,218
Website - setup, content, updates, hosting	\$2,000	\$1,000	\$1,030	\$1,061	\$1,093
Real estate attorney & title company (fees)	\$3,500	\$4,000	\$4,120	\$4,244	\$4,371
Credit reports, homeowner applicants	\$1,458	\$1,502	\$1,547	\$1,593	\$1,641
Reserve for contingencies	\$3,000	\$3,090	\$3,183	\$3,278	\$3,377
Total Projected Expenses	\$26,458	\$42,665	\$48,639	\$51,868	\$55,248
<b>Operating Profit (Loss)</b>	<b>(\$2,240)</b>	<b>\$9,644</b>	<b>\$11,234</b>	<b>\$14,596</b>	<b>\$16,762</b>
<b>Cumulative Profit (Loss)</b>	<b>(\$2,240)</b>	<b>\$7,404</b>	<b>\$18,638</b>	<b>\$33,234</b>	<b>\$49,996</b>

## 3. Cash Flow Projections - Indicates Amount of Capital Needed

Projected Cash Outflow	Year 1	Year 2	Year 3	Year 4	Year 5	Total 5 Years
Home Repair loan disbursements	\$132,000	\$135,960	\$140,039	\$144,240	\$148,567	\$700,806
Gas Line Connection loan disbursemen.	\$90,000	\$92,700	\$95,481	\$98,345	\$101,296	\$477,822
Developer loan disbursements	\$500,000	\$515,000	\$530,450	\$546,364	\$562,754	\$2,654,568
Operating expenses (total from P&L)	\$26,458	\$42,665	\$48,639	\$51,868	\$55,248	\$224,878
Total Projected Disbursements	\$748,458	\$786,325	\$814,609	\$840,817	\$867,865	\$4,058,074
Projected Cash Inflow						
Capital contributions - various sources/1	\$750,000	\$750,000	\$165,000	\$135,000	\$105,000	\$1,905,000
Origination fees received, developer loans	\$10,000	\$10,300	\$10,609	\$10,927	\$11,255	\$53,091
Homeowner loan repayments/2	\$3,034	\$73,920	\$112,551	\$152,341	\$193,325	\$535,172
Developer loan repayments/2	\$10,000	\$30,450	\$530,000	\$545,900	\$562,277	\$1,678,627
Total Projected Revenues	\$773,034	\$864,670	\$818,160	\$844,169	\$871,857	\$4,171,890
<b>Surplus (Deficit) by Year/3</b>	<b>\$24,576</b>	<b>\$78,344</b>	<b>\$3,551</b>	<b>\$3,351</b>	<b>\$3,992</b>	<b>\$113,816</b>
<b>Cumulative Surplus (Deficit)</b>	<b>\$24,576</b>	<b>\$102,921</b>	<b>\$106,472</b>	<b>\$109,824</b>	<b>\$113,816</b>	

### NOTES:

1. These projections assume raising most of the capital in the first two years to enable the minimum feasible volume of lending for 5 years.
2. This cash flow projection differs from the Income/Expense projection by showing loan principal repayments—not income, but return of capital.
3. Deficits in Years 3 to 5 are covered by capital raised in the first two years. If more capital is raised in Years 3-5, more loans can be made.

# DOÑA ANA COUNTY **AFFORDABLE HOUSING PLAN**

2015



PREPARED FOR:  
DOÑA ANA COUNTY

PREPARED BY:  
SITES SOUTHWEST

DOÑA ANA COUNTY RESOLUTION NO. \_\_\_\_\_ - 2015 -64

**A RESOLUTION ADOPTING THE DOÑA ANA AFFORDABLE HOUSING PLAN AS APPROVED BY THE NEW MEXICO MORTGAGE FINANCE AUTHORITY THUS ENABLING DOÑA ANA COUNTY TO ESTABLISH AN AFFORDABLE HOUSING ORDINANCE TO PROMOTE AFFORDABLE HOUSING IN DOÑA ANA COUNTY**

**WHEREAS**, the County of Doña Ana (the "County"), acting through its Board of County Commissioners, is a political subdivision duly organized and existing under the laws of the State of New Mexico (the "State"); and

**WHEREAS**, the Board of County Commissioners unanimously approved a contract services agreement for an Affordable Housing Plan with the New Mexico Mortgage Finance Authority (NMMFA) in September of 2014; and

**WHEREAS**, NMMFA outlines specific requirements for elements that must be included in an Affordable Housing Plan; and

**WHEREAS**, NMMFA has approved the Affordable Housing Plan for Doña Ana County; and

**WHEREAS**, an NMMFA approved Affordable Housing Plan must be adopted by Resolution in order for Doña Ana County to leverage state/federal resources to assist local efforts to promote affordable housing; and

**WHEREAS**, affordable housing represents a critical component to enhance the quality of life of County residents; and

**WHEREAS**, the Board of County Commissioners of Doña Ana County commits to exploring a range of options to promote affordable housing in Doña Ana County;

**NOW, THEREFORE, BE IT ORDERED THAT THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS**, approve by Resolution adoption of the Doña Ana County Affordable Housing Plan attached and incorporated hereto as Exhibit "A".

ADOPTED this 14th day of October, 2015.



COUNTY OF DONA ANA ) RESOLUTION  
STATE OF NEW MEXICO ) ss PAGES: 110

I Hereby Certify That This Instrument Was Filed for Record On OCT 15, 2015 10:13:39 AM And Was Duly Recorded as Instrument # 1522168 Of The Records Of Dona Ana County




Witness My Hand And Seal Of Office,  
Lynn J. Ellins, County Clerk, Dona Ana, NM

Deputy Vanessa Herrera

DAC Affordable Housing Plan Resolution

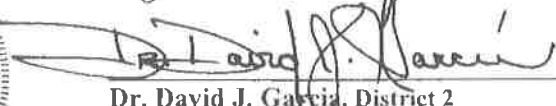
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BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO

  
Billy G. Garrett, Chair, District 1  For /  Against

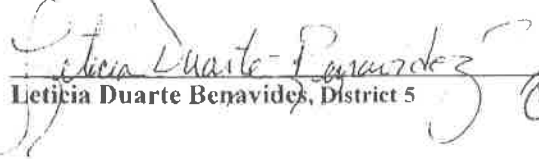
  
Wayne D. Hancock, Vice-Chair, District 4  For /  Against



  
Dr. David J. Garcia, District 2  For /  Against

ABSENT

Benjamin L. Rawson, District 3  For /  Against

  
Leticia Duarte Benavides, District 5  For /  Against

ATTEST:

  
Lynn J. Elms  
County Clerk



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## EXECUTIVE SUMMARY

Doña Ana County, located in south central New Mexico, encompasses 3,814 square miles and is the second most populated County in the state. The County's population is concentrated along the Rio Grande valley, which bisects the County from north to south. Doña Ana County is home to New Mexico State University. Agriculture is a major economic activity and contributes to the County's rural character, but technology and bi-national commerce and industry also contribute to the County's growth. The County borders El Paso County, Texas and the state of Chihuahua, Mexico as well as Luna, Sierra and Otero Counties in New Mexico. The County offers diversity in its natural and built environments and its cultures and communities.

The purpose of this plan is to identify housing needs and barriers to housing development within the County outside of the major urban area of Las Cruces and Mesilla, each of which has its own plan for affordable housing. Plan information is reported for unincorporated areas of the County, including the Chaparral colonia, and the municipalities of Hatch, Anthony and Sunland Park. The plan proposes goals and implementation steps aimed at addressing housing needs. This report conforms to the guidelines set forth by the New Mexico Mortgage Finance Authority (MFA), which administers grants and technical support to New Mexico's municipalities and counties for affordable housing. Adoption of an Affordable Housing Plan by resolution and an Affordable Housing Ordinance, both as approved by MFA, will allow Doña Ana County to donate toward projects that meet the affordable housing needs identified in the plan.

The plan is organized into the following sections:

**Community and Economic Profile.** This section describes demographic trends and projections, highlighting community characteristics that are relevant to housing needs. It includes data about populations that often have special housing needs, including single parent families, seniors, disabled individuals and people living in poverty.

**Housing Assessment.** The housing assessment examines the types, condition and affordability of housing in Doña Ana County and surrounding communities. It also examines characteristics and affordability of for-sale housing currently on the market as well as available rental housing. Finally, it describes local programs and organizations working to address housing needs in the County.

**Housing Needs.** This section provides a concise description of the specific housing needs by type, population and number of units needed.

**Land Use and Policy Review.** The policy review examines relevant planning documents, County ordinances and their impacts on affordable housing. This section also describes other governmental and non-governmental constraints to affordable housing development, including land use and environmental barriers.

**Goals, Policies and Quantifiable Objectives.** This section puts forth specific yearly objectives for the number of housing units by type to be built or rehabilitated. It then lists a number of goals and action steps, including the strategies explained in the previous chapter, which should be implemented in order to achieve these objectives. The responsible party for carrying out each action step is noted, whether it be the County government, a nonprofit organization, or another entity.

Data for this plan came from many sources. The most current sources of demographic data include American Community Survey 5-Year Estimates and the 2010 Census. Community input regarding



housing needs was collected through meetings with local housing providers and people knowledgeable about the housing market in the various communities in the County, and interviews with key stakeholders.

Housing is generally considered to be affordable when a family pays no more than 30% of income for housing. The area median income (AMI) for a family of four in Doña Ana County in 2014 is \$47,200. The maximum house price affordable to households at 100% of AMI is \$181,572, and the maximum house price affordable to households at 120% of AMI is \$217,887. While there are a few homes available for sale at prices affordable to households at these income levels, over half of housing for sale is priced higher than is affordable by a household at 120% of AMI, 15% is affordable to households with incomes between 100% and 120% AMI

There are over 1,000 subsidized or affordable rental apartments in Doña Ana County outside of Las Cruces and Mesilla. Apartments are concentrated in the border communities of Anthony, Santa Theresa and Sunland Park. However, the waiting lists of households eligible for subsidized rentals are more than double the existing units, and limited vacancies are generally in transition from one tenant to another. Of approximately 1,000 households that receive rental vouchers in the County, 130 households have chosen to live in communities outside of Las Cruces and Mesilla.

Doña Ana County has established nonprofits that provide subsidized rentals, affordable homeownership opportunities, transitional and temporary housing, and permanent supportive housing as well as service providers to support families who need housing. There are also service providers that specialize in rehabilitation and weatherization. The need is for additional financial resources to allow existing organizations to provide additional affordable housing.

## Summary of Recommendations

### Housing Production Goals

A summary of the housing goals for the County outside of Las Cruces and Mesilla, which have separate plans, is shown in Table 1. These goals are intended to meet current needs and projected needs over the next ten years.

**TABLE 1. AFFORDABLE HOUSING GOALS**

Type of Housing	Target Income	Current Need	10-year Future Need
Home Ownership	30-80% AMI	600 units	600
Rental Housing, households with 4 or more persons	0-80% AMI	1,200 units	1,100
Rental Housing, households of 1-3 persons	60% AMI and below	3,000 units	900
Senior & People w/Disabilities Independent Living	60% AMI and below	360 units	200
Housing Rehabilitation	60% AMI and below	8,000 units	1,200
Transitional Housing	60% AMI and below	1,200 beds	--
Permanent Supportive	30% AMI	400 units	60



**Policy Changes**

- Adopt an affordable housing plan and ordinance in compliance with the Affordable Housing Act, as reviewed and approved by MFA.
- Make sure that other County initiatives are consistent with the Affordable Housing Plan, ensuring that affordable housing is recognized as an issue in other County documents.
- Link affordable housing and economic development investments
- Reduce or eliminate performance zoning in target areas
- Standardize permitting for approved affordable housing projects
- Standardize permitting for infill
- Support infrastructure financing, including using Tax Increment Development Districts and Public Investment Districts to help finance infrastructure improvements in large developments that include affordable housing
- Encourage regionalization of utilities and expedited development review in areas where water service providers have the capacity to accommodate growth.

**Development Partnerships**

- Facilitate partnerships with other governmental and private entities. Potential partnerships could include joint projects with private or non-profit entities where the County contributes land or infrastructure improvements, funding of specific programs that further County goals, support for legislative funding or grant requests or similar support to other entities.
- Surplus County property can be sold or leased to provide a revenue stream that funds affordable housing initiatives. Land acquisition could include surplus properties that might be donated by the other entities, such as the BLM.
- One of the most important roles that the County can play is making sure that infrastructure in target growth areas is in place.

**Assistance to non-profit housing providers**

- Rehabilitation or replacement of existing structures through assistance to existing organizations that provide rehabilitation programs in the County.
- Grants or other direct financial assistance to non-profit housing providers.

**Funding/financing**

- Partner with local mortgage lenders to administer County financing programs.
- Low interest loan pool created with County funds.
- Support for non-profit housing initiatives.



## INTRODUCTION

The State of New Mexico enacted amendments to the New Mexico Affordable Housing Act in 2007. The Affordable Housing Act permits State and local governments to provide or pay the cost of land, buildings and/or necessary financing for affordable housing projects. Affordable housing projects are residential housing primarily for persons or households of low or moderate income.

Under the provisions of the Act, a municipality may:

- A. Donate, provide or pay all, or a portion, of the costs of land for the construction on the land of affordable housing;
- B. Donate, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing;
- C. Provide or pay the costs of financing or infrastructure necessary to support affordable housing projects; or
- D. Provide or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing.

The Act requires the local governing body to adopt an Affordable Housing Plan and Ordinance if it wishes to provide donations towards affordable housing. Doña Ana County is in the process of extensive planning for the County's future through the Viva Doña Ana initiative, which has adopted six livability principles that will help make healthy communities by strengthening the County's people, places and prosperity. The livability principles have a direct bearing on housing choices and affordability.

The six principles are:

### **Principle 1: Provide More Transportation Choices**

***"Better transportation means more time for my family, cleaner air, and healthier communities.***

*Develop safe, reliable, and affordable transportation choices to decrease household transportation costs, reduce energy consumption and dependence on non-domestic resources, improve air quality, reduce greenhouse gas emissions, and promote public health."*

Research conducted for the Viva Doña Ana project indicate that 97.8% of households spend more than 45% of income on combined transportation and housing. Transportation choices are considered in analyzing the best locations for affordable housing.

### **Principle 2: Promote Equitable, Affordable Housing**

***"Being able to afford a good place to live is important to everyone.***

*Make decisions that provide different types of housing to support a more diverse community across the region. More choices that are more affordable, closer to work, and can reduce the amount of your paycheck that goes to housing and transportation."*

The Affordable Housing Act allows the County to participate directly in providing housing that meets this goal.

### **Principle 3: Enhance Economic Competitiveness**

***"Quality education and work options mean success for my family.***

*The success of the region is based on our access to education, jobs, and real wages to live a stable quality*



*of life. The local government and private businesses need to be involved in encouraging job retention, growth, and economic prosperity. This needs to be done with a focus on the availability of adequate housing for employees of existing and potential future businesses, industries, and institutions in our region.”*

While this goal focuses on education and work options, it recognizes that adequate housing for employees of existing and potential future businesses, industries, and institutions in the region is also crucial to economic competitiveness.

#### **Principle 4: Support Existing Communities**

##### ***“Working to build up our communities.***

*Concentrate local and federal monies for investment in our established urban and rural communities. All areas are subject to growth over time. Making smart decisions on where to place growth, how to improve existing buildings, and what types of development should go where can strengthen our existing communities. As a region, decisions need to be made and tools put in place to direct the right kind of growth in the right locations.”*

Investments in housing – improving the existing housing stock and directing new housing to the right locations – are part of support for existing communities.

#### **Principle 5: Coordinate Policies & Leverage Investment**

##### ***“Let’s work together for a stronger region.***

*Cooperation among federal, state, and local governments, officials, and planning efforts will strengthen the region by properly channeling federal funding and coordinating large-scale improvements (like transportation and energy production). Working together as a region strengthens our pull to secure federal funding and funnel real money to region-wide projects.”*

Decisions about the locations of affordable housing should be coordinated with the County’s broader policies and investment in future growth.

#### **Principle 6: Value Communities & Neighborhoods**

##### ***“I would like a community garden in my neighborhood.***

*Valuing communities and neighborhoods means making places that we enjoy being in, such as great walking paths, parks, plazas, markets, and community gardens. Bringing these amenities into our communities contributes to a diverse, supportive, efficient, healthy, and livable community, and contributes to the overall well-being of residents and visitors.”*

The County’s decisions about amenity investments help support strong residential communities.

The experience of Doña Ana County and the analyses conducted for this plan indicate that the powers granted to the County through the Affordable Housing Act will help the County accomplish its housing goals.

## **Organization of the Plan**

The affordable housing plan identifies existing and projected future housing needs in Doña Ana County outside of the urban communities of Las Cruces and Mesilla. This affordable housing plan contains the



information that has been collected and analyzed to further an understanding of the housing market and unmet needs in Doña Ana County. The plan also considers the needs of the municipalities of Hatch, Sunland Park and Anthony, and the Chaparral Colonia. Figure 1 shows the locations of communities in the County, and Figure 2 shows general land ownership. The County's communities extend along the Rio Grande and the East Mesa where privately owned land is located.

The affordable housing plan identifies specific obstacles to affordable housing and unique opportunities available to meet the needs identified in the community profile and housing needs assessment. Then, the plan recommends how, when, where and by whom local housing issues will be addressed. These recommendations are contained in goals, policies, and quantifiable objectives to increase affordability by housing types for owners and renters. The programs that are recommended, which include actions by the County administration and other housing providers, address specific needs for construction, rehabilitation, preservation and financing of affordable housing.

The affordable housing plan is organized according to the MFA requirements for such plans, with the following sections:

**Community Profile.** Demographics, including the characteristics of the local population, economic conditions, and housing, including general characteristics of the County's existing housing stock.

**Housing Market Analysis,** including the recent development trends and the market for homes for sale and rentals

**Housing Needs Assessment,** including existing and projected needs

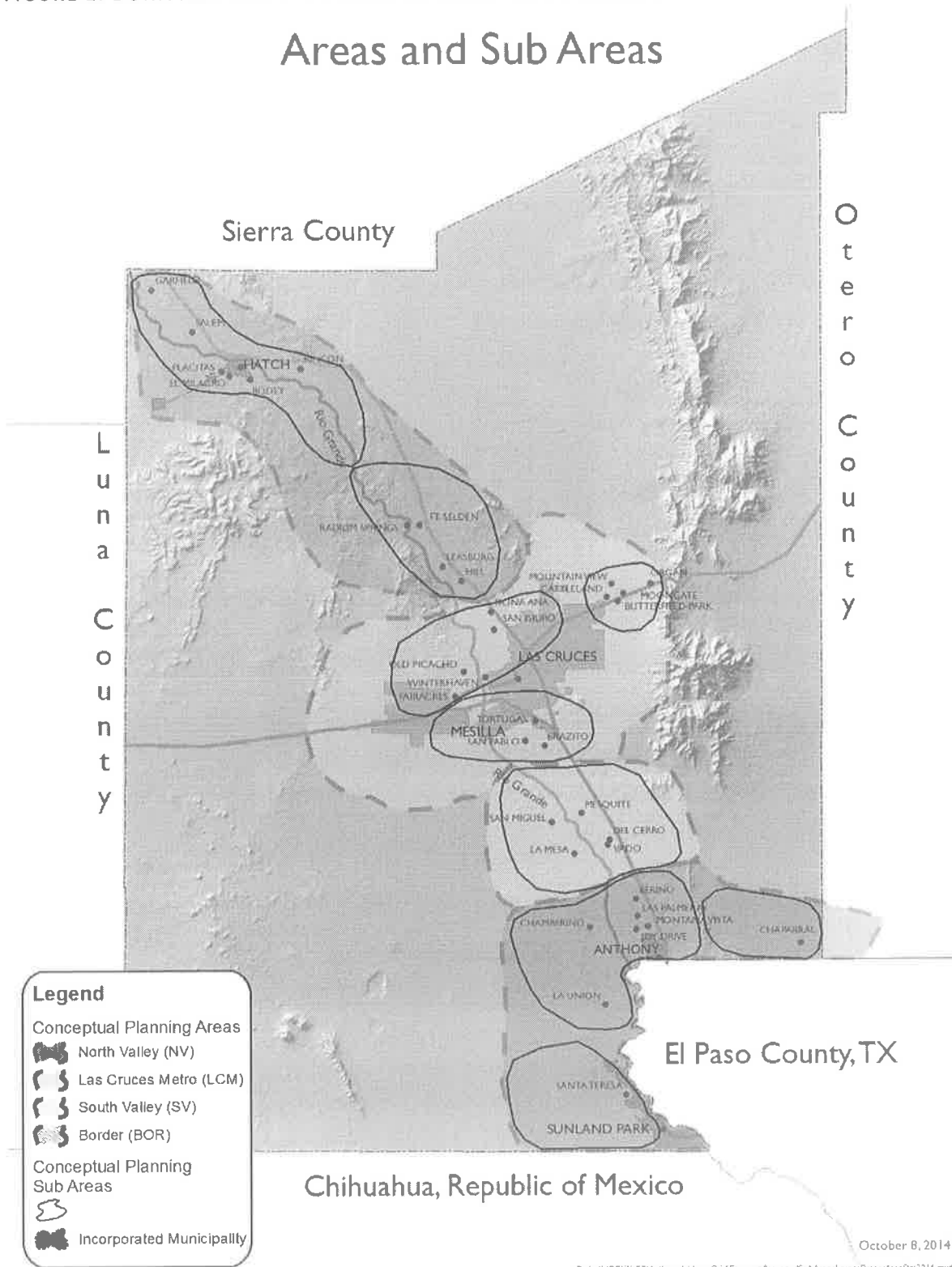
**Land Use and Policy Review,** including potential affordable housing sites and constraints to developing affordable housing.

**Goals, Policies and Quantifiable Objectives,** including the target number of new and rehabilitated units per year by type. This section identifies the incentives that the County intends to put in place and the responsible entities for implementing the plan.



FIGURE 1. DOÑA ANA COUNTY PLANNING AREAS AND SUBAREAS

# Areas and Sub Areas



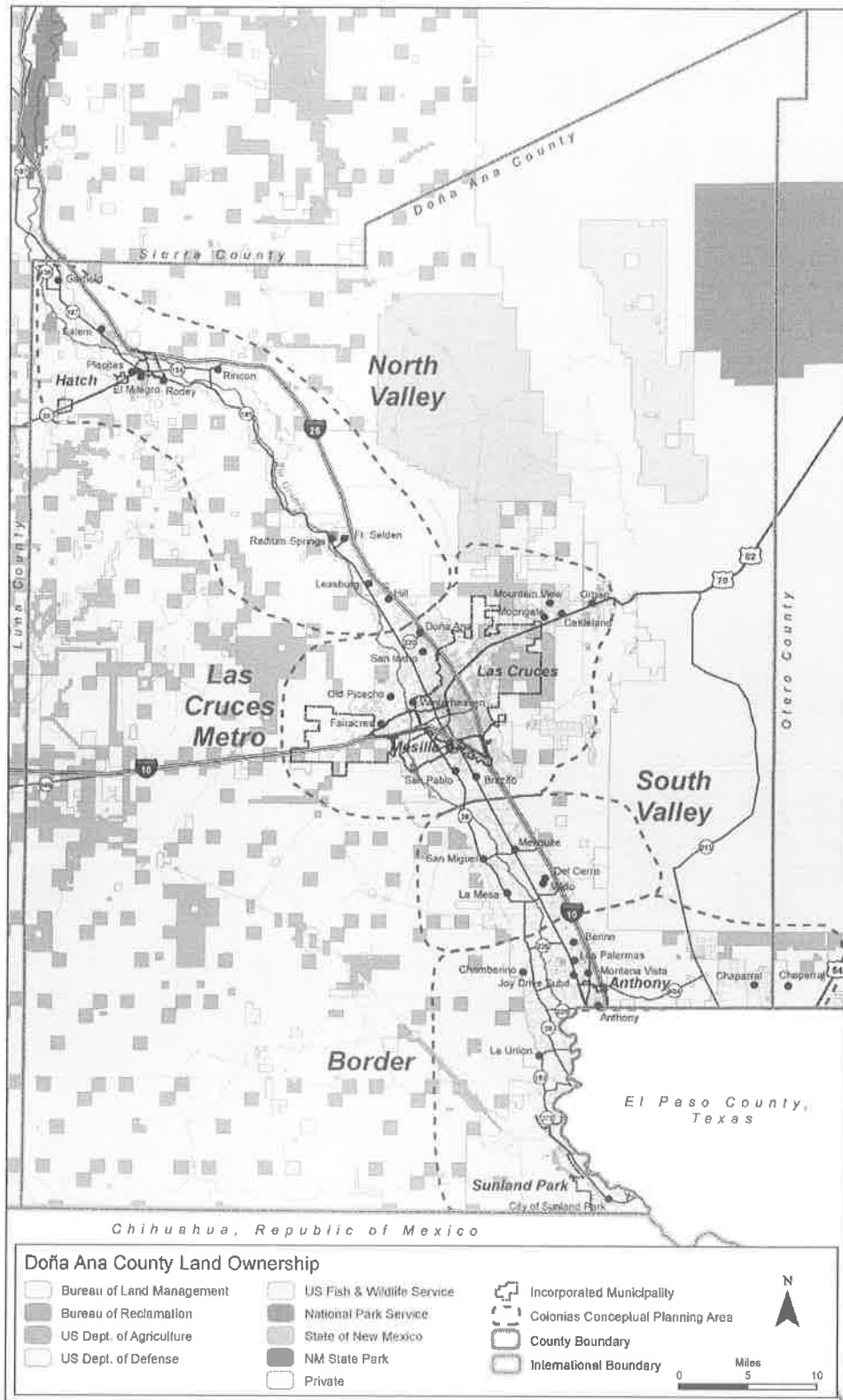
**Legend**

- Conceptual Planning Areas
- North Valley (NV)
- Las Cruces Metro (LCM)
- South Valley (SV)
- Border (BOR)
- Conceptual Planning Sub Areas
- Incorporated Municipality

October 8, 2014  
 Path: X:\DCI\GIS\Anthony\AddressGrid\PlanningAreas\SubAreas\Large\BorderArea012014.mxd



FIGURE 2. PRIVATE AND GOVERNMENT LAND OWNERSHIP, DOÑA ANA COUNTY



## **Methodology**

Data sources for the Affordable Housing Plan include US Census, existing planning documents, and original data collection and stakeholder interviews. The focus of this plan is the unincorporated areas of Doña Ana County and the smaller municipalities. Las Cruces and the Town of Mesilla have affordable housing plans in place and are not included except in data tables to give a picture of the entire County. Las Cruces and Mesilla are not included in the analysis and strategies of this document.

## **Population and Housing Characteristics**

The County has defined four conceptual planning areas, which are shown in Figure 1, and data are reported by these planning areas to the degree possible. Population and housing counts for Census blocks from the 2010 Census provide the most recent count of population and housing. The Census count is the basis for planning area estimates.

In addition to planning area data, which is only available for Census 100 percent counts, the plan includes data for incorporated municipalities and Chaparral. More detailed descriptions of the planning areas and the colonias located in each of these areas are included in “mini-plans” for each planning area.

To provide the most current social and economic information possible, the American Community Survey 2009-2013 five-year estimates were used for income and other sample data. ACS estimates are period estimates that represent data collected over a period of time, as opposed to the data collected from all households in the US for a single point in time for the decennial census. The five-year estimates use data collected over a 60-month period. For this report, the social and economic data used are the data collected from 2009 through 2013.

The smallest geographic unit for which social and economic data are available is the block group. Block groups outside of the urban areas of Doña Ana County can be quite large and do not match up well with the County’s planning areas. Social and economic data are reported for the County and municipalities supplemented by maps showing the geographic distribution of social and economic characteristics for all block groups. Data for the Chaparral Census Designated Place (CDP) include both Doña Ana and Otero County Census blocks and block groups.

## **Housing Market Analysis**

Real estate data were collected from the Las Cruces Association of Realtors (LCAR) and other real estate web sites that contain information about homes for sale and for rent. Additional information about homes for rent was obtained through Craig’s List and web sites of managers of rental property in the County. In addition to the LCAR (Multiple Listing Service (MLS) web site, specific web sites include Realtor.com, Homes.com, Craig’s list, and Trust-Properties. Listings for the communities near El Paso that are included in the El Paso MLS were obtained from Realtor.com and Homes.com.

Local stakeholders were interviewed to assess the issues and needs in the housing markets they serve. Stakeholders included for-profit developers and homebuilders, non-profit builders of housing for sale and rent, providers of housing and services to people with special needs, Realtors, lenders and community residents.



## COMMUNITY AND HOUSING PROFILE

Las Cruces is the largest city in Doña Ana County. The City of Las Cruces and the Town of Mesilla, which is immediately adjacent to Las Cruces, have developed their own Affordable Housing Plans and implementation strategies. The Doña Ana County plan focuses on the unincorporated areas of the County and outlying municipalities of Hatch, Anthony and Sunland Park. The report contains information for the County as a whole, the County outside of Las Cruces and Mesilla, the outlying municipalities in the County, and Chaparral.

### Population Characteristics

#### Population Trends

Doña Ana County has exhibited significant growth over the past twenty years, with nearly a 30 percent increase from 1990 to 2000 and nearly 20 percent increase from 2000 to 2010. The municipalities included in this study grew faster than the state as a whole from 1990 to 2000, but the growth rate slowed in the rural municipalities between 2000 and 2010. Population trends and data are shown in the following tables.

Table 2 shows growth trends for the County and the rural municipalities. Interesting trends to note are the dramatic growth in the border communities of Sunland Park, Anthony and the Chaparral Census Designated Place (CDP). The population in Sunland Park and Anthony grew by over 50% between 1990 and 2000, although Census data indicates that growth in these communities slowed down between 2000 and 2010. The population of the Chaparral CDP has more than doubled in each decade since 1990, with an increase of 239% from 2000 to 2010.

**TABLE 2. HISTORICAL POPULATION TRENDS**

	1990	2000	2010	2012	% change 1990-2000	% change 2000-2010
Doña Ana County	135,510	174,682	209,233	214,445	28.9%	19.8%
Village of Hatch	1,318	1,673	1,648	1,639	26.9%	-1.5%
City of Las Cruces	62,648	74,942	97,618	101,047	19.6%	30.2%
Town of Mesilla	1,976	2,474	2,196	1,913	25.2%	-11.2%
City of Sunland Park	8,357	13,309	14,106	14,776	59.3%	6.0%
Anthony CDP	5,160	8,125	9,360	NA	57.5%	15.2%
- City of Anthony	NA	NA	9,509	9,542	NA	NA
Chaparral CDP	2,962	6,117	14,631	NA	206.5%	239.2%
<b>New Mexico</b>	<b>1,515,069</b>	<b>1,819,046</b>	<b>2,059,179</b>	<b>2,085,287</b>	<b>20.1%</b>	<b>13.2%</b>

Source: US Census, UNM-BBER

The Bureau of Business and Economic Research at the University of New Mexico (BBER), projects population growth for all counties in New Mexico. According to these projections, Doña Ana County's population is projected to grow to about 300,000 by 2040, as shown in Table 3. This is an annual average growth rate of 1.2% over the 30 years from 2010 to 2040.



**TABLE 3. COUNTY POPULATION PROJECTIONS**

	2010	2015	2020	2025	2030	2035	2040
Doña Ana County	210,536	226,855	243,164	258,887	273,513	286,818	299,088

Source: UNM-BBER

**Age, Gender, Race and Ethnicity**

General population characteristics, including age, sex race and ethnicity are shown in Table 4 and Table 5, including a comparison between areas in Doña Ana County and the state of New Mexico. The County population as a whole is younger than the state population. Planning areas outside of the Central Planning Area have a higher proportion of population under age 19. The Central Planning Area, home to New Mexico State University, has a relatively high percentage of college age young adults. The percentage of population that is 65 years old and older is about the same in the North Valley and Central areas as the state as a whole. The southern part of the state has a lower percentage of seniors.

**TABLE 4. SELECT POPULATION CHARACTERISTIC**

	Doña Ana County	Las Cruces	Mesilla	Unincorporated County	% Doña Ana County	% Unincorporated County	% New Mexico
<b>Total Population</b>	<b>2111,175</b>	<b>99,186</b>	<b>2,168</b>	<b>84,765</b>	<b>100%</b>	<b>100%</b>	<b>2,059,179</b>
<b>Age Groups</b>							
Under 5 years	15,687	7,520	147	5,487	7.4%	6.5%	7.0%
5 to 9 years	15,113	6,122	43	6,922	7.2%	8.2%	7.0%
10 to 14 years	15,539	6,587	84	6,663	7.4%	7.9%	6.9%
15 to 19 years	17,994	7,734	83	7,871	8.5%	9.3%	7.3%
20 to 24 years	20,769	10,925	270	7,351	9.8%	8.7%	6.9%
25 to 34 years	27,276	14,748	176	9,192	12.9%	10.8%	13.0%
35 to 44 years	23,261	11,322	359	8,861	11.0%	10.5%	12.1%
45 to 54 years	25,847	10,866	351	11,289	12.2%	13.3%	14.1%
55 to 59 years	12,253	5,034	174	5,735	5.8%	6.8%	6.6%
60 to 64 years	10,450	4,839	107	4,500	4.9%	5.3%	5.8%
65 to 74 years	15,170	7,177	212	6,626	7.2%	7.8%	7.5%
75 to 84 years	8,801	4,514	139	3,214	4.2%	3.8%	4.2%
85 years or over	3,015	1,798	23	1,054	1.4%	1.2%	1.6%
Median Age	32.2	31.7	43.5	NA	NA	NA	36.7
Total Senior Population (65+)	26,986	13,489	374	10,894	12.8%	12.9%	13.3%
<b>Sex</b>							
Male	103,714	48,520	1,139	42,246	49.1%	49.8%	49.4%
Female	107,461	50,386	1,029	42,519	50.9%	50.2%	50.6%
<b>Race and Ethnicity</b>							
Hispanic or Latino, any race	139,372	56,743	1,154	57,633	66.0%	68.0%	46.3%
Not Hispanic or Latino	71,803	42,443	1,014	27,132	34.0%	32.0%	
White	62,794	36,778	988	23,969	74.1%	28.3%	68.4%
Black or African American	3,061	1,939	6	1,011	1.7%	1.2%	2.1%
Native American	1,702	1,478	6	551	1.5%	0.7%	9.4%
Asian	2,313	1,478	4	825		1.0%	1.4%
Native Hawaiian	15	1	0	11		0%	0.1%
Two or more races	1,728	955	10	728		0.9%	1.4%

Source: American Community Survey, 2009-2013 5-Year Estimate



**TABLE 5. SELECT POPULATION CHARACTERISTICS**

	Hatch	Sunland Park	Anthony	Chaparral	% Hatch	% Sunland Park	% Anthony	% Chaparral
<b>Total Population</b>	<b>1,701</b>	<b>14,517</b>	<b>8,838</b>	<b>13,366</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Age Groups</b>								
Under 5 years	203	1,338	992	1,021	11.9%	9.2%	11.2%	7.6%
5 to 9 years	133	1,105	788	1,463	7.8%	7.6%	8.9%	11.0%
10 to 14 years	137	1,329	739	1,138	8.1%	9.2%	8.4%	8.5%
15 to 19 years	111	1,555	640	1,607	6.5%	10.7%	7.2%	12.0%
20 to 24 years	191	1,260	772	831	11.2%	8.7%	8.7%	6.2%
25 to 34 years	164	1,944	1,052	1,612	9.6%	13.4%	11.9%	12.1%
35 to 44 years	125	1,737	857	1,621	7.4%	12.0%	9.7%	12.1%
45 to 54 years	284	1,831	1,226	1,576	16.7%	12.6%	13.9%	11.8%
55 to 59 years	118	684	508	666	6.9%	4.7%	5.8%	5.0%
60 to 64 years	82	460	462	415	4.8%	3.2%	5.2%	3.1%
65 to 74 years	93	690	372	914	5.5%	4.8%	4.2%	6.8%
75 to 84 years	33	501	400	435	1.9%	3.5%	4.5%	3.3%
85 years or over	27	83	30	67	1.6%	0.6%	0.3%	0.5%
Median Age	29.3	28.5	26.7	28.9	1.7%	0.2%	0.3%	0.2%
Senior Population (Aged 65+)	153	5,313	802	1,416	9.0%	36.6%	9.1%	10.6%
<b>Sex</b>								
Male	890	6,916	4,003	6,473	52.3%	47.6%	45.3%	48.4%
Female	811	7,601	4,835	6,893	47.7%	52.4%	54.7%	51.6%
<b>Race and Ethnicity</b>								
Hispanic or Latino, any race	1,362	13,455	8,629	11,704	80.1%	95.4%	97.6%	87.6%
Non-Hispanic	339	666	209	1,662	19.9%	4.6%	2.4%	12.4%
White	321	600	138	1,473	18.9%	4.1%	1.6%	11.0%
Black or African	0	64	41	70	0.0%	0.4%	0.5%	0.5%
Native American	4	2	0	39	0.2%	0.0%	0.0%	0.3%
Asian	6	0	0	2	0.4%	0.0%	0.0%	0.0%
Native Hawaiian	3	0	0	0	0.2%	0.0%	0.0%	0.0%
Two or more races	5	0	0	78	0.3%	0.0%	0.0%	0.6%

Source: American Community Survey, 2009-2013 5-Year Estimate



### Income

The median household income in Doña Ana County is \$38,000, which is approximately 84% of the state median household income, as shown in Table 6.

Median household incomes in the City of Las Cruces and Town of Mesilla are higher than those in the rural municipalities, with the lowest median household income in the City of Anthony.

**TABLE 6. MEDIAN HOUSEHOLD INCOME BY MUNICIPALITY**

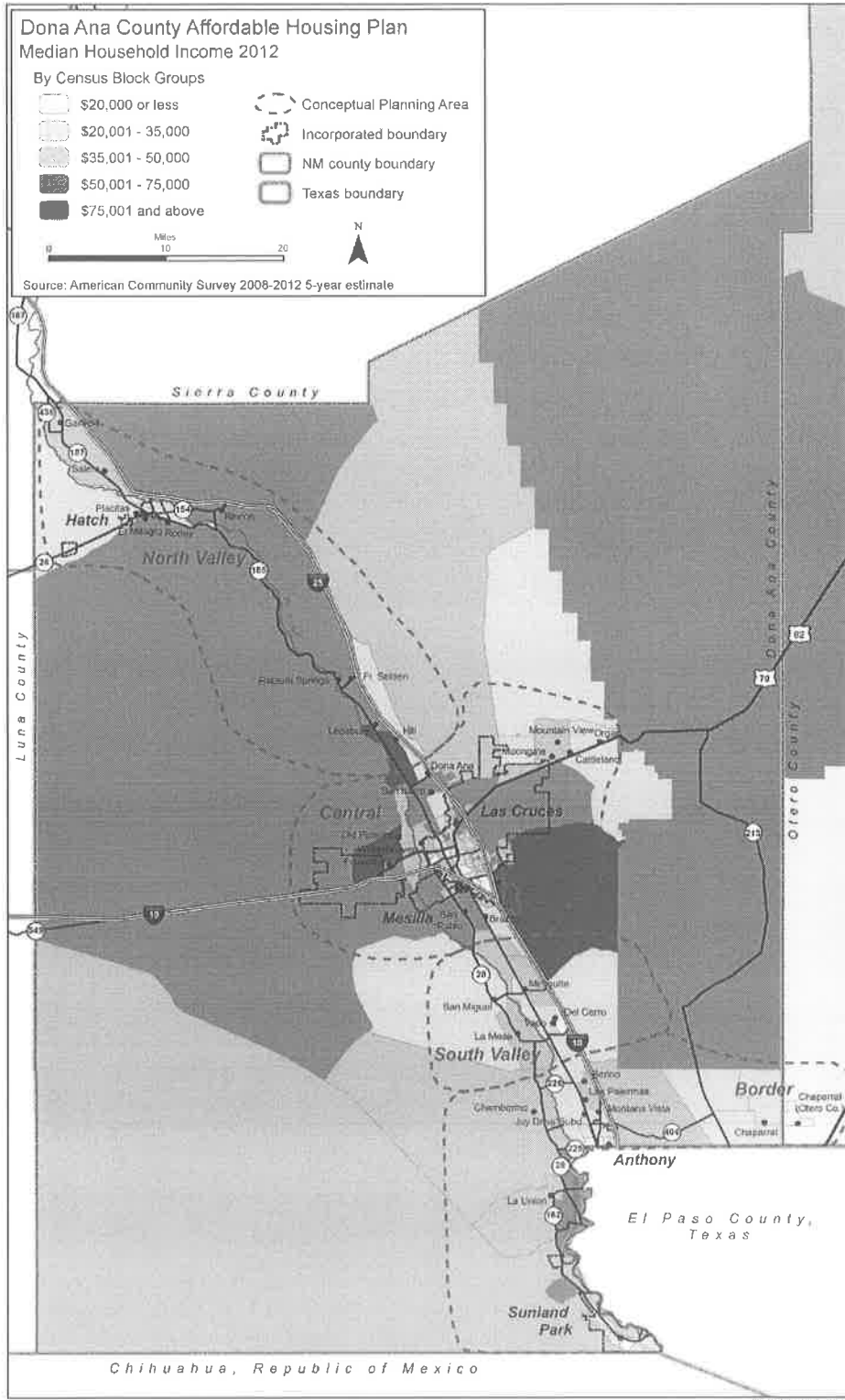
Area	Income
Doña Ana County	\$37,933
Village of Hatch	\$28,214
City of Las Cruces	\$40,040
Town of Mesilla	\$58,095
City of Sunland Park	\$28,119
City of Anthony	\$20,379
Chaparral CDP	\$26,326
<b>New Mexico</b>	<b>\$44,927</b>

Source: 2009-2013 ACS 5-Year Estimates

Figure 3 shows median household incomes for block groups in the County. The figure shows the distribution of household incomes within the County. Areas with the lowest household incomes outside of the Las Cruces and Mesilla municipal limits are concentrated in the rural colonias of the County, including rural communities north of Las Cruces, communities east of Las Cruces along US 70, and the colonias in the south county.



**FIGURE 3. HOUSEHOLD INCOME BY BLOCK GROUP**



Source: Doña Ana County



The distribution of household incomes in the County is shown in Table 7, including the County total, Las Cruces and Mesilla, and the rural remainder of the County. The estimated number and percentage of households in the remainder of the County by percentage of area median income are shown in Table 8. Approximately one-third of households have incomes over 120 percent of AMI, and 18 percent have incomes less than 30 percent of AMI.

When compared to the state, the areas of Doña County outside of Las Cruces and Mesilla have a higher percentage of households with incomes below \$25,000. An estimated 18 percent of households in rural Doña Ana County have household incomes less than 30% of the area median income, and about a third have incomes greater than 120% of the area median.

Median household income in the municipalities of Hatch, Sunland Park and Anthony and in Chaparral is significantly lower than the County median. The highest poverty rates, which are nearly three times the state rate, are in the communities of Sunland Park, Anthony and Chaparral.

**TABLE 7. HOUSEHOLDS BY INCOME RANGE**

Household Income	Doña Ana County	Las Cruces	Mesilla	Unincorporated Doña Ana County	% Distribution	New Mexico
<b>Total Households</b>	<b>73,797</b>	<b>38,068</b>	<b>904</b>	<b>27,798</b>	<b>27,798</b>	<b>761,938</b>
Less than \$10,000	7,994	4,256	66	2,554	9.2%	9.4%
\$10,000 to \$14,999	5,704	2,379	50	2,353	8.5%	6.4%
\$15,000 to \$24,999	12,152	6,434	40	4,357	15.7%	12.9%
\$25,000 to \$34,999	8,823	4,087	124	3,469	12.5%	11.4%
\$35,000 to \$49,999	10,264	5,374	121	3,858	13.9%	14.4%
\$50,000 to \$74,999	11,447	6,272	156	4,098	14.7%	17.2%
\$75,000 to \$99,999	7,644	4,163	91	2,973	10.7%	11.3%
\$100,000 to \$149,999	5,986	3,280	120	2,383	8.6%	10.6%
\$150,000 to \$199,999	2,236	1,165	64	955	3.4%	3.6%
\$200,000 or more	1,547	658	72	798	2.9%	2.9%
<b>Median Income</b>	<b>\$37,933</b>	<b>\$40,040</b>	<b>\$58,095</b>	<b>NA</b>	<b>NA</b>	<b>\$44,927</b>
<b>Mean Income</b>	<b>\$54,043</b>	<b>\$53,948</b>	<b>\$82,315</b>	<b>NA</b>	<b>NA</b>	<b>\$61,682</b>
<b>Persons Living In Poverty</b>	<b>27.0%</b>	<b>23.1%</b>	<b>20.5%</b>	<b>NA</b>	<b>NA</b>	<b>20.4%</b>
Household Income	Hatch	Sunland Park	Anthony	Chaparral		
<b>Total Households</b>	<b>506</b>	<b>3,954</b>	<b>2,567</b>	<b>3,965</b>		
Less than \$10,000	29	666	423	568		
\$10,000 to \$14,999	38	335	549	495		
\$15,000 to \$24,999	115	776	430	823		
\$25,000 to \$34,999	151	699	293	671		
\$35,000 to \$49,999	34	516	361	443		
\$50,000 to \$74,999	84	573	264	457		
\$75,000 to \$99,999	35	181	201	241		
\$100,000 to \$149,999	20	162	21	186		
\$150,000 to \$199,999	0	27	25	16		
\$200,000 or more	0	19	0	65		
<b>Median Income</b>	<b>\$28,214</b>	<b>\$28,119</b>	<b>\$20,379</b>	<b>\$26,326</b>		
<b>Mean Income</b>	<b>\$37,780</b>	<b>\$36,657</b>	<b>\$31,941</b>	<b>\$38,854</b>		
<b>Persons Living in Poverty</b>	<b>31.3%</b>	<b>39.1%</b>	<b>45.2%</b>	<b>40.4%</b>		

Source: American Community Survey, 2009-2013 5-Year Estimate





Table 8 shows the estimated distribution of households by percent of AMI in the County outside of Las Cruces and Mesilla. Approximately one-third of households have incomes over 120 percent of AMI, and 18 percent have incomes less than 30 percent of AMI.

**TABLE 8. ESTIMATED HOUSEHOLDS BY % AMI, COUNTY OUTSIDE OF LAS CRUCES AND MESILLA**

% AMI	Income Range from to		Census Income Range							Total	% of Total
			< \$10,000	\$10,000 to \$14,999	\$15,000 to \$24,999	\$25,000 to \$34,999	\$35,000 to \$49,999	\$50,000 to \$74,999	\$75,000 +		
LT 30%	\$0	\$14,160	3,672	2,725						6,397	18.4%
30-40%	\$14,160	\$18,880		550	2,203					2,753	7.9%
40-50%	\$18,880	\$23,600			2,680					2,680	7.7%
50-60%	\$23,600	\$28,320			794	1,531				2,326	6.7%
60-70%	\$28,320	\$33,040				2,177				2,177	6.3%
70-80%	\$33,040	\$37,760				904	878			1,781	5.1%
80-90%	\$37,760	\$42,480					1,501			1,501	4.3%
90-100%	\$42,480	\$47,200					1,501			1,501	4.3%
100-120%	\$47,200	\$56,640					890	1,333		2,223	6.4%
Over 120%	\$56,640							3,686	7,800	11,486	33.0%
<b>Total</b>			<b>3,672</b>	<b>3,275</b>	<b>5,678</b>	<b>4,612</b>	<b>4,769</b>	<b>5,019</b>	<b>7,800</b>	<b>34,825</b>	<b>100.0%</b>

Source: American Community Survey, 2009-2013 5-Year Estimate, Sites Southwest

## Employment

### Employment and Unemployment

Doña Ana County's civilian labor force grew by over 30,000 from 1990 to 2010 and has continued to grow since 2010. During the same time period, employment grew as well. While the unemployment rate increased from 2000 to 2010, it has remained steady at a little over or under 7.5% since 2010.

Unemployment in Doña Ana County has historically been higher than the state, but during the recession years, the County's unemployment rate did not increase as much as the state rate. In 2013, unemployment in Doña Ana County was similar to the state as a whole.

**TABLE 9. DONA COUNTY EMPLOYMENT AND UNEMPLOYMENT**

Las Cruces MSA (Doña Ana County)	1990	2000	2010	2011	2012	2013
Civilian Labor Force	60,163	76,503	91,381	91,601	92,285	92,830
Employment	55,312	71,808	84,276	84,568	85,538	85,859
Unemployment	4,851	4,695	7,105	7,033	6,747	6,971
Rate	8.10%	6.10%	7.80%	7.70%	7.30%	7.50%
<b>New Mexico Unemployment Rate</b>	<b>5.60%</b>	<b>4.00%</b>	<b>9.60%</b>	<b>8.90%</b>	<b>8.10%</b>	<b>7.40%</b>

Source: New Mexico Department of Workforce Solutions

### Industries

The largest private sector industry classes in the County in terms of number of employees are agriculture, retail trade, health care and social services, and accommodation and food services. The number of jobs in agriculture has declined since 2001; while there have been increases in the other three classes. Professional and technical services jobs have also exhibited growth since 2001. Government jobs account for about 26% of all jobs.



**TABLE 10. DOÑA ANA COUNTY EMPLOYMENT BY INDUSTRY CLASS**

Industry Class	2001	2010	2013
Agriculture, Forestry, Fishing & Hunting	4,313	3,433	3,317
Mining	--	40	20
Utilities	279	354	398
Construction	3,141	3,557	3,489
Manufacturing	3,129	2,826	2,709
Wholesale Trade	1,136	1,274	1,208
Retail Trade	6,368	6,947	7,575
Transportation & Warehousing	1,086	1,282	1,336
Information	900	848	907
Finance & Insurance	1,297	1,516	1,735
Real Estate & Rental & Leasing	651	722	703
Professional & Technical Services	2,414	3,749	3,938
Management of Companies & Enterprises	59	94	35
Administrative & Waste Services	3,052	3,942	3,175
Educational Services	229	384	524
Health Care & Social Assistance	6,835	10,685	12,230
Arts, Entertainment, and Recreation	850	1,146	1,025
Accommodation & Food Services	4,685	5,890	6,714
Other Services, Except Public Administration	1,231	1,417	1,291
Non-Classified	0	0	0
<b>Total Private</b>	<b>41,705</b>	<b>50,106</b>	<b>52,330</b>
<b>Total Government</b>	<b>15,984</b>	<b>18,967</b>	<b>17,988</b>
<b>Total All Industries</b>	<b>57,689</b>	<b>69,074</b>	<b>70,317</b>

Source: New Mexico Department of Workforce Solutions

Significant economic activity is taking place in the Santa Teresa area with the opening of the Union Pacific intermodal facility and related warehousing and distribution facilities and value-added services for imports and exports. This intermodal facility is expected to employ about 600 people by 2025.

**Wages**

Earnings are reported for the state of New Mexico and Metropolitan Statistical Areas (MSAs). The Las Cruces MSA encompasses Doña Ana County. Average hourly earnings in Dona Ana County are about the same as the state average; however, average weekly hours are below the state average. As a result, average weekly earnings are lower than the state average.

**TABLE 11. AVERAGE WEEKLY EARNINGS, DONA ANA COUNTY**

Area	Average weekly hours			Average hourly earnings			Average weekly earnings		
	Nov. 2013	Oct. 2014	Nov. 2014	Nov. 2013	Oct. 2014	Nov. 2014(p)	Nov. 2013	Oct. 2014	Nov. 2014
New Mexico	34.9	34.5	34.9	\$20.62	\$20.54	\$20.47	\$719.64	\$708.63	\$714.40
Las Cruces MSA	33.6	33.0	32.8	\$19.28	\$21.24	19.56	\$647.81	\$700.26	\$641.57

Source: US Department of Labor, Bureau of Labor Statistics



## Housing Characteristics

### Type

Housing in Doña Ana County is predominantly single family detached homes and mobile homes. In the County outside of Las Cruces and Mesilla, over 92 percent of housing is either single family detached or mobile homes.

In the outlying municipalities and Chaparral, the percentage of the housing stock that is mobile homes ranges from 24 to 69%, with the highest percentage in Chaparral. Most multifamily housing is in Sunland Park and Anthony. There are very few single family attached units, such as townhouses, except in Sunland Park.

**TABLE 12. HOUSING BY TYPE**

Units in Structure	Doña Ana County		Las Cruces		Mesilla		Remainder of County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
<b>Total housing units</b>	<b>82,049</b>	<b>100.0%</b>	<b>42,464</b>	<b>100.0%</b>	<b>1,003</b>	<b>100.0%</b>	<b>38,582</b>	<b>100.0%</b>
1-unit, detached	47,110	57.4%	24,434	57.5%	814	81.2%	21,862	56.7%
1-unit, attached	2,869	3.5%	2,368	5.6%	29	2.9%	472	1.2%
2 units	2,246	2.7%	1,802	4.2%	58	5.8%	386	1.0%
3 or 4 units	3,398	4.1%	2,659	6.3%	42	4.2%	697	1.8%
5 to 9 units	3,500	4.3%	2,669	6.3%	46	4.6%	785	2.0%
10 to 19 units	2,043	2.5%	1,875	4.4%	0	0.0%	168	0.4%
20 or more units	2,900	3.5%	2,551	6.0%	0	0.0%	349	0.9%
Mobile home	17,892	21.8%	4,060	9.6%	14	1.4%	13,818	35.8%
Boat, RV, van, etc.	91	0.1%	46	0.1%	0	0.0%	45	0.1%

Units in Structure	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
<b>Total housing units</b>	<b>604</b>	<b>100.0%</b>	<b>4,138</b>	<b>100.0%</b>	<b>2,826</b>	<b>100.0%</b>	<b>4,743</b>	<b>100.0%</b>
1-unit, detached	404	66.9%	2,371	57.3%	1,435	50.8%	1,404	29.6%
1-unit, attached	3	0.5%	180	4.3%	12	0.4%	11	0.2%
2 units	11	1.8%	160	3.9%	126	4.5%	0	0.0%
3 or 4 units	4	0.7%	164	4.0%	128	4.5%	49	1.0%
5 to 9 units	32	5.3%	112	2.7%	221	7.8%	0	0.0%
10 to 19 units	0	0.0%	0	0.0%	0	0.0%	0	0.0%
20 or more units	0	0.0%	166	4.0%	0	0.0%	0	0.0%
Mobile home	150	24.8%	985	23.8%	904	32.0%	3,279	69.1%
Boat, RV, van, etc.	0	0.0%	0	0.0%	0	0.0%	0	0.0%

Source: American Community Survey, 5-Year Estimates, 2009-2013



## Age of Housing Stock

Over 60 percent of Doña Ana County's housing stock has been built since 1980 and is less than 35 years old. However, over 4,000 homes in the rural communities and municipalities were built prior to 1960 and are more than 50 years old. An additional 9,000 homes were built between 1960 and 1980 and are 35 to 50 years old.

**TABLE 13. YEAR STRUCTURE BUILT**

Year Structure Built	Doña Ana County		Las Cruces		Mesilla		Remainder of County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Total housing units	82,049	100.0%	42,464	100.0%	1,003	100.0%	38,582	100.0%
Built 2010 or later	979	1.2%	604	1.4%	0	0.0%	375	1.0%
Built 2000 to 2009	17,859	21.8%	11,512	27.1%	75	7.5%	6,272	16.3%
Built 1990 to 1999	16,817	20.5%	7,111	16.7%	121	12.1%	9,585	24.8%
Built 1980 to 1989	15,747	19.2%	6,471	15.2%	62	6.2%	9,214	23.9%
Built 1970 to 1979	13,333	16.3%	5,996	14.1%	132	13.2%	7,205	18.7%
Built 1960 to 1969	5,915	7.2%	3,910	9.2%	134	13.4%	1,871	4.8%
Built 1950 to 1959	6,165	7.5%	4,243	10.0%	140	14.0%	1,782	4.6%
Built 1940 to 1949	1,989	2.4%	1,152	2.7%	20	2.0%	817	2.1%
Built 1939 or earlier	3,245	4.0%	1,465	3.4%	319	31.8%	1,461	3.8%

Year Structure Built	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Total housing units	604	100.0%	4,138	100.0%	2,826	100.0%	4,743	100.0%
Built 2010 or later	9	1.5%	62	1.5%	53	1.9%	31	0.7%
Built 2000 to 2009	28	4.6%	837	20.2%	527	18.6%	531	11.2%
Built 1990 to 1999	104	17.2%	1,192	28.8%	657	23.2%	1,565	33.0%
Built 1980 to 1989	93	15.4%	949	22.9%	793	28.1%	1,307	27.6%
Built 1970 to 1979	61	10.1%	694	16.8%	413	14.6%	1,049	22.1%
Built 1960 to 1969	67	11.1%	235	5.7%	223	7.9%	179	3.8%
Built 1950 to 1959	63	10.4%	90	2.2%	105	3.7%	28	0.6%
Built 1940 to 1949	80	13.2%	29	0.7%	8	0.3%	41	0.9%
Built 1939 or earlier	99	16.4%	50	1.2%	47	1.7%	12	0.3%

Source: American Community Survey, 5-Year Estimates, 2009-2013

## Household Characteristics

### Existing Households

Over two-thirds of households in the County are family households, which include the householder and one or more related people. However, the percentage of family households is highest in the communities outside of Las Cruces and Mesilla where there is a higher percentage of non husband-wife families, and particularly female headed households.



**TABLE 14. HOUSEHOLDS BY TYPE**

	Doña Ana County	Hatch	Sunland Park	Anthony	Chaparral
<b>Total Households</b>	<b>75,532</b>	<b>503</b>	<b>3,892</b>	<b>2,648</b>	<b>4,196</b>
<b>Family Households</b>	<b>51,863</b>	<b>391</b>	<b>3,324</b>	<b>2,294</b>	<b>3,443</b>
Husband-Wife Family	35,322	279	2,135	1,378	2,418
Other Family	16,541	112	1,189	916	1,025
Male Householder, no wife present	4,487	36	257	168	304
Female Householder, no husband present	12,054	76	932	748	721
<b>Non-Family Households</b>	<b>23,669</b>	<b>112</b>	<b>568</b>	<b>354</b>	<b>753</b>
Householder living alone	18,289	96	487	303	629
Householder not living alone	5,380	16	81	51	124

Source: ACS 2009-2013;

\*Excludes Las Cruces and Mesilla

**Housing Units By Tenure**

Of an estimated 38,582 housing units in Doña Ana County, 90 percent are occupied. For the County as a whole, approximately two-thirds are owner occupied and one-third are rentals. The ownership rate in the County outside of Las Cruces and Mesilla is higher than the County as a whole – 74 percent of occupied units outside of Las Cruces and Mesilla are owner occupied. The homeowner vacancy rate in the County is very low at two percent, and the rental vacancy rate is an estimated seven percent. Vacancy rates outside of Las Cruces and Mesilla are lower – 1.2 percent for owner housing and 5.2 percent for rentals.

The distribution between owner and renter occupied housing in Hatch, Sunland Park and Anthony is similar to the County as a whole. In Chaparral, on the other hand, over 80 percent of occupied housing is owner occupied. According to Census estimates, households are larger in the outlying municipalities and Chaparral. The owner vacancy rates are low. Rental vacancy rates are very low in Hatch and Sunland Park and higher in Chaparral.

**TABLE 15. HOUSING UNITS BY TENURE**

Subject	Doña Ana County		Las Cruces		Mesilla		Remainder of County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
<b>Total housing units</b>	82,049	100.0%	42,464	100.0%	1,003	100.0%	38,582	100.0%
Occupied housing units	73,797	89.90%	38,068	89.60%	904	90.10%	34,825	90.26%
Vacant units	8,252	10.10%	4,396	10.40%	99	9.90%	3,757	9.74%
Owner occupied units	48,269	65.4%	38,068	57.5%	535	59.2%	25,853	74.2%
Renter occupied units	25,528	34.6%	21,881	42.5%	369	40.8%	8,972	25.8%
Average HH size – owner	2.82	NA	2.56	NA	2.75	NA	NA	NA
Average HH size – renter	2.73	NA	2.49	NA	1.89	NA	NA	NA
Homeowner vacancy rate	2.1%	NA	3.2%	NA	0.0%	NA	1.2%	NA
Rental vacancy rate	7.0%	NA	8.1%	NA	0.0%	NA	5.2%	NA



Subject	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Total housing units	604	100.0%	4,138	100.0%	2,826	100.0%	4,743	100.0%
Occupied housing units	506	83.8%	3,954	95.6%	2,567	90.8%	3,965	83.6%
Vacant units	98	16.2%	184	4.4%	259	9.2%	778	16.4%
Owner occupied units	349	69.0%	2,614	66.1%	1,616	63.0%	3,167	79.9%
Renter occupied units	157	31.0%	1,340	33.9%	951	37.0%	798	20.1%
Average HH size – owner	3.68	NA	3.78	NA	3.67	NA	3.36	NA
Average HH size – renter	2.52	NA	3.44	NA	3.06	NA	3.4	NA
Homeowner vacancy rate	0.0%	NA	0.0%	NA	0.0%	NA	2.6%	NA
Rental vacancy rate	0.0%	NA	1.3%	NA	4.2%	NA	8.9%	NA

Source: American Community Survey, 5-Year Estimates, 2009-2013

### Housing Problems

The Census identifies “problems” that are considered to be indicators of substandard housing conditions: units lacking complete plumbing or kitchen facilities, no telephone service available and overcrowding. Housing in Doña Ana County is more likely than New Mexico to have complete plumbing and kitchen facilities. Households are also more likely to have phone service available.

TABLE 16. HOUSING UNITS LACKING COMPLETE FACILITIES

Selected Characteristics	Doña Ana County		County Outside of Las Cruces and Mesilla		New Mexico	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied housing units	73,797	100.0%	34,825	100.0%	100.0%	
Lacking complete plumbing facilities	516	0.7%	264	0.7%	1.2%	
Lacking complete kitchen facilities	433	0.6%	191	0.5%	1.2%	
No telephone service available	2,234	3.0%	1,034	2.7%	4.3%	

Selected Characteristics	Doña Ana County		Las Cruces		Mesilla		Remainder of County	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied housing units	73,797	100.0%	42,464	100.0%	904	100.0%	34,825	100.0%
Lacking complete plumbing facilities	516	0.7%	233	0.6%	19	2.1%	264	0.7%
Lacking complete kitchen facilities	433	0.6%	236	0.6%	6	0.7%	191	0.5%
No telephone service available	2,234	3.0%	1,167	3.1%	33	3.7%	1,034	2.7%

Selected Characteristics	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied housing units	506	100.0%	2,567	2,567	2,567	100.0%	3,965	100.0%
Lacking complete plumbing facilities	21	4.2%	68	68	68	0.8%	13	0.3%
Lacking complete kitchen facilities	4	0.8%	73	73	73	0.9%	8	0.0%
No telephone service available	17	3.4%	280	280	280	3.3%	147	3.7%

Source: American Community Survey, 5-Year Estimates, 2009-2013



Overcrowded housing conditions are defined as more than one person per habitable room, and severe overcrowding is defined as more than 1.5 persons per habitable room. Overcrowding in Doña Ana County is similar to conditions in New Mexico. Homes in the County outside of urban areas are more likely to be overcrowded, with 3.5% of housing units having 1 to 1.5 occupants per room compared to 2.5% for the state. Homes in Doña Ana County are slightly less likely than the state overall to be severely overcrowded. Although the percentage of total housing is low, 2,300 units outside of Las Cruces and Mesilla are overcrowded or severely overcrowded.

**TABLE 17. INDICATORS OF OVERCROWDING**

Occupants per Room	Doña Ana County		County Outside of Las Cruces and Mesilla		New Mexico	
	Estimate	Percent	Estimate	Percent	Estimate	Percent
<b>Occupied housing units</b>	<b>73,797</b>	<b>100.0%</b>	<b>34,825</b>	<b>100.0%</b>	<b>100.0%</b>	
1.00 or less	70,678	95.8%	32,477	84.2%	96.5%	
1.01 to 1.50	2,558	3.5%	1,946	5.0%	2.5%	
1.51 or more	561	0.8%	402	1.0%	1.0%	

Occupants per Room	Doña Ana County		Las Cruces		Mesilla		County Outside of Las Cruces and Mesilla	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
<b>Occupied housing units</b>	<b>73,797</b>	<b>100.0%</b>	<b>42,464</b>	<b>100.0%</b>	<b>904</b>	<b>100.0%</b>	<b>34,825</b>	<b>100.0%</b>
1.00 or less	70,678	95.8%	37,343	98.1%	858	94.9%	32,477	84.2%
1.01 to 1.50	2,558	3.5%	590	1.5%	22	2.4%	1,946	5.0%
1.51 or more	561	0.8%	135	0.4%	24	2.7%	402	1.0%

Occupants per Room	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
<b>Occupied housing units</b>	<b>506</b>	<b>100.0%</b>	<b>3,954</b>	<b>100.0%</b>	<b>2,567</b>	<b>100.0%</b>	<b>3,965</b>	<b>100.0%</b>
1.00 or less	449	88.7%	3,488	88.2%	2,346	91.4%	3,573	90.1%
1.01 to 1.50	54	10.7%	398	10.1%	179	7.0%	291	7.3%
1.51 or more	3	0.6%	68	1.7%	42	1.6%	101	2.5%

Source: American Community Survey, 5-Year Estimates 2009-2013

### Cost Burden

According to the US Department of Housing and Urban Development, housing is considered “affordable” when a household pays no more than 30 percent of its household income on housing. Households that pay more than 30 percent of their income in housing costs are considered to be “cost burdened.” The Census reports this information when it has enough information to compute selected monthly housing costs as a percentage of household income, as shown in Table 18 and Table 19. Selected monthly owner costs include mortgage payments, taxes and insurance, utilities and fuels. Gross rent is the contract rent paid plus the average monthly cost of utilities and fuels, if paid by the renter.

In Doña Ana County, 33% of homeowners with a mortgage and 58% of renters have a cost burden. Outside of the urban areas of Las Cruces and Mesilla, 36% of homeowners with a mortgage and 57% of renters have a cost burden. The cost burden for owners with a mortgage is particularly high in Chaparral, a community with a very high ownership rate, where over half of homeowners with a



mortgage pay more than 30 percent of income for housing. Over 65 percent of renters in Anthony pay more than 30 percent of their incomes in gross rent.

**TABLE 18. SELECTED MONTHLY OWNER COSTS AS A PERCENTAGE OF HOUSEHOLD INCOME (SMOCAPI)**

Subject	Doña Ana County		Las Cruces		Mesilla		County Outside of Las Cruces and Mesilla	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Housing units with a mortgage	27,931		14,496		323		13,112	
Less than 20.0 percent	10,197	36.5%	5,417	37%	160	49.5%	4,620	35.2%
20.0 to 24.9 percent	5,427	19.4%	3,137	21.6%	60	18.6%	2,230	17.0%
25.0 to 29.9 percent	2,857	10.2%	1,251	8.6%	33	10.2%	1,573	12.0%
<b>30.0 to 34.9 percent</b>	<b>2,774</b>	<b>9.9%</b>	<b>1,470</b>	<b>10.10%</b>	<b>0</b>	<b>0.0%</b>	<b>1,304</b>	<b>9.9%</b>
<b>35.0 percent or more</b>	<b>6,676</b>	<b>23.9%</b>	<b>3,221</b>	<b>22.20%</b>	<b>70</b>	<b>21.7%</b>	<b>3,385</b>	<b>25.8%</b>
Housing unit without a mortgage	19,941		7,197		212		12,532	
Less than 10.0 percent	9,448	47.4%	3,740	52.0%	158	74.5%	5,550	44.3%
10.0 to 14.9 percent	3,661	18.4%	1,330	18%	5	2.4%	2,326	18.6%
15.0 to 19.9 percent	1,969	9.9%	611	8.5%	13	6.1%	1,345	10.7%
20.0 to 24.9 percent	1,306	6.5%	424	5.9%	36	17.0%	846	6.8%
25.0 to 29.9 percent	1,000	5.0%	343	4.8%	0	0.0%	657	5.2%
<b>30.0 to 34.9 percent</b>	<b>776</b>	<b>3.9%</b>	<b>159</b>	<b>2.2%</b>	<b>0</b>	<b>0.0%</b>	<b>617</b>	<b>4.9%</b>
<b>35.0 percent or more</b>	<b>1,781</b>	<b>8.9%</b>	<b>590</b>	<b>8.2%</b>	<b>0</b>	<b>0.0%</b>	<b>1,191</b>	<b>9.5%</b>
Subject	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Housing units with a mortgage	172		1,165		905		1,489	
Less than 20.0 percent	70	40.7%	214	18.4%	386	42.7%	447	30.0%
20.0 to 24.9 percent	30	17.4%	228	19.6%	132	14.6%	137	9.2%
25.0 to 29.9 percent	36	20.9%	192	16.5%	0	0.0%	118	7.9%
<b>30.0 to 34.9 percent</b>	<b>10</b>	<b>5.8%</b>	<b>75</b>	<b>6.2%</b>	<b>111</b>	<b>12.3%</b>	<b>128</b>	<b>8.6%</b>
<b>35.0 percent or more</b>	<b>26</b>	<b>15.1%</b>	<b>459</b>	<b>39.4%</b>	<b>276</b>	<b>30.5%</b>	<b>659</b>	<b>44.3%</b>
Housing unit without a mortgage	177		1,395		701		1,662	
Less than 10.0 percent	54	30.5%	645	46.2%	277	39.5%	654	39.4%
10.0 to 14.9 percent	38	21.5%	276	19.8%	218	31.1%	166	10.0%
15.0 to 19.9 percent	45	25.4%	99	7.1%	55	7.8%	357	21.5%
20.0 to 24.9 percent	4	2.3%	107	7.7%	36	5.1%	79	4.8%
25.0 to 29.9 percent	24	13.6%	51	3.7%	29	4.1%	102	6.1%
<b>30.0 to 34.9 percent</b>	<b>9</b>	<b>5.1%</b>	<b>95</b>	<b>6.8%</b>	<b>12</b>	<b>1.7%</b>	<b>51</b>	<b>3.1%</b>
<b>35.0 percent or more</b>	<b>3</b>	<b>1.7%</b>	<b>122</b>	<b>8.7%</b>	<b>74</b>	<b>10.6%</b>	<b>253</b>	<b>15.2%</b>

Source: American Community Survey, 5-Year Estimates 2009-2013; Estimates exclude units where SMOCAPI cannot be calculated.





**TABLE 19. GROSS RENT AS A PERCENTAGE OF HOUSEHOLD INCOME (GRAPI)**

Subject	Doña Ana County		Las Cruces		Mesilla		County Outside of Las Cruces and Mesilla	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied units paying rent	22,997		15,068		359		7,570	
Less than 15.0 percent	2,597	11.3%	1,654	11.0%	31	8.6%	912	12.0%
15.0 to 19.9 percent	2,200	9.6%	1,353	9.0%	99	27.6%	748	9.9%
20.0 to 24.9 percent	2,336	10.2%	1,595	10.6%	13	3.6%	728	9.6%
25.0 to 29.9 percent	2,607	11.3%	1,679	11.1%	56	15.6%	872	11.5%
<b>30.0 to 34.9 percent</b>	<b>2,216</b>	<b>9.6%</b>	<b>1,507</b>	<b>10.0%</b>	<b>35</b>	<b>9.7%</b>	<b>674</b>	<b>8.9%</b>
<b>35.0 percent or more</b>	<b>11,041</b>	<b>48.0%</b>	<b>7,280</b>	<b>48.3%</b>	<b>125</b>	<b>34.8%</b>	<b>3,636</b>	<b>48.0%</b>

Subject	Hatch		Sunland Park		Anthony		Chaparral	
	Estimate	Percent	Estimate	Percent	Estimate	Percent	Estimate	Percent
Occupied units paying rent	119		1,220		837		668	
Less than 15.0 percent	21	17.6%	123	10.1%	63	7.5%	43	6.4%
15.0 to 19.9 percent	18	15.1%	146	12.0%	68	8.1%	88	13.2%
20.0 to 24.9 percent	35	29.4%	145	11.9%	45	5.4%	44	6.6%
25.0 to 29.9 percent	9	7.6%	171	14.0%	104	12.4%	125	18.7%
<b>30.0 to 34.9 percent</b>	<b>33</b>	<b>27.7%</b>	<b>137</b>	<b>11.2%</b>	<b>72</b>	<b>8.6%</b>	<b>48</b>	<b>7.2%</b>
<b>35.0 percent or more</b>	<b>3</b>	<b>2.5%</b>	<b>498</b>	<b>40.8%</b>	<b>485</b>	<b>57.9%</b>	<b>320</b>	<b>47.9%</b>

Source: American Community Survey, 5-Year Estimates 2009-2013; Estimates exclude units where GRAPI cannot be computed.

Housing cost burdened households in Doña Ana County outside of Las Cruces and Mesilla are disproportionately low and moderate income households. Nearly 60 percent of homeowners and over 90 percent of renters with incomes less than \$20,000 have a cost burden. The percentage of household with a cost burden decreases as incomes go up, but a substantial percentage of households with incomes at 80% of the area median (\$37,760) or below pay 30% or more of their incomes in either owner or renter costs. When compared to the state as a whole, residents of Doña Ana County outside of Las Cruces and Mesilla are somewhat less likely to bear a housing cost burden.

**TABLE 20. COST BURDEN BY TENURE AND INCOME RANGE, DOÑA ANA COUNTY OUTSIDE OF LAS CRUCES AND MESILLA**

Income Range	Doña Ana County Households	Housing Costs as a Percentage of Income					
		Doña Ana County			New Mexico		
		Less than 20%	20 to 29 %	30 % or more	Less than 20%	20 to 29 %	30 % or more
<b>Homeowners</b>							
Less than \$20,000	5,493	22.0%	19.7%	58.3%	22.2%	16.5%	61.3%
\$20,000 to \$34,999	5,151	50.3%	18.8%	30.9%	43.6%	16.0%	40.5%
\$35,000 to \$49,999	3,674	55.5%	21.9%	22.6%	48.6%	20.6%	30.8%
\$50,000 to \$74,999	4,215	62.6%	25.3%	12.0%	55.7%	27.3%	17.1%



Income Range	Doña Ana County Households	Housing Costs as a Percentage of Income					
		Doña Ana County			New Mexico		
		Less than 20%	20 to 29 %	30 % or more	Less than 20%	20 to 29 %	30 % or more
\$75,000 or more	7,111	75.4%	19.4%	5.1%	77.2%	17.9%	4.9%
<b>Zero or negative income</b>	<b>209</b>						
<b>Renters</b>							
Less than \$20,000	3,429	2.7%	7.1%	90.3%	2.8%	8.3%	89.0%
\$20,000 to \$34,999	1,803	17.8%	30.3%	51.9%	9.7%	27.8%	62.5%
\$35,000 to \$49,999	938	29.5%	54.2%	16.3%	28.3%	45.9%	25.8%
\$50,000 to \$74,999	737	51.0%	31.8%	17.2%	53.9%	37.5%	8.6%
\$75,000 or more	663	89.7%	10.3%	0.0%	86.4%	11.8%	1.8%
<b>Zero or negative income</b>	<b>189</b>						
<b>No cash rent</b>	<b>1,213</b>						

Source: American Community Survey, 5-Year Estimates 2009-2013

## Housing Market Analysis

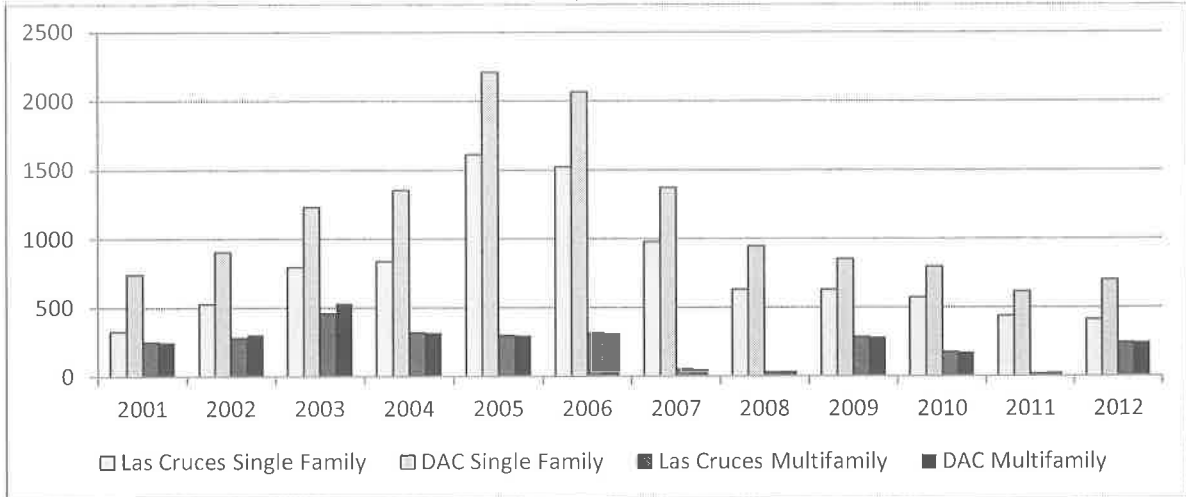
The housing market in Doña Ana County over the past eight years reflected national housing trends, with a dramatic peak in new construction in 2005 and 2006 followed by a steep decline in new construction, which stabilized in 2012 and 2013. The resale market experienced a decline in housing prices and increased days on the market as overbuilding created a glut of homes for sale. According to local real estate reports, resale prices stabilized in 2013.

### New Construction (Building Permits)

Residential construction information for Doña Ana County and Las Cruces was obtained from US Census residential building permit survey. The data in Figure 4 show residential building permits for the City of Las Cruces and for Doña Ana County as a whole. Since 2001, two-thirds of single family construction and 96 percent of multifamily construction has been within the City. The trend shows a peak in new construction in 2005-2006, with a dramatic decline since 2006. Construction decreased steadily to 2011, with a slight increase in 2012 due to an increase in construction outside of Las Cruces, primarily in Sunland Park.



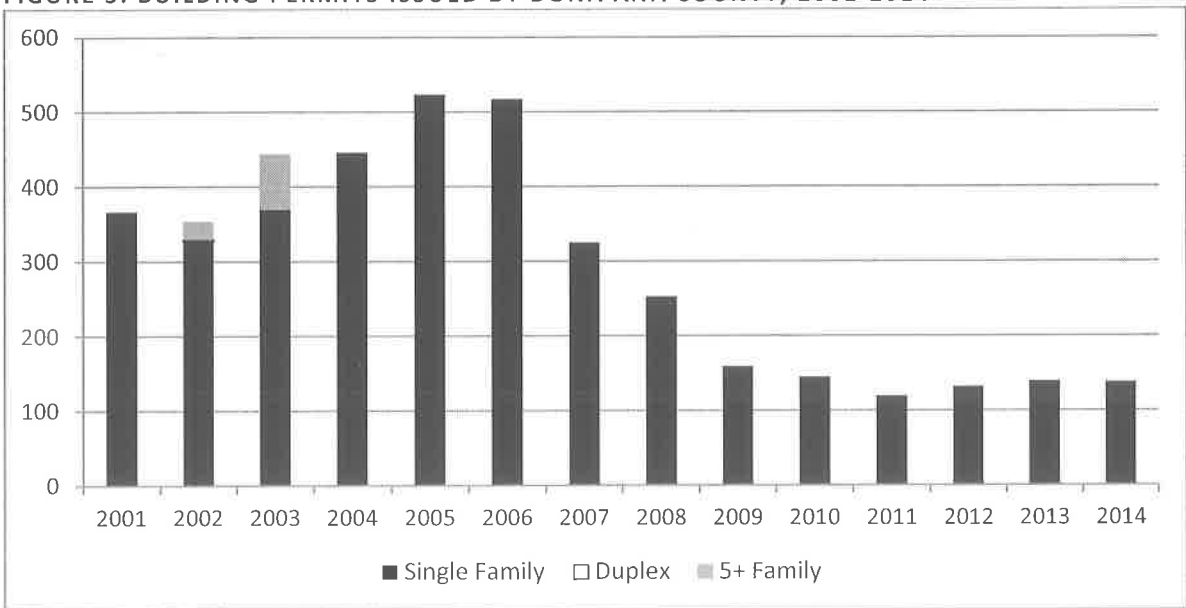
**FIGURE 4. NEW RESIDENTIAL CONSTRUCTION, 2001-2012**



Source: US Census, Residential Construction Report

Building permits issued in by the County are shown in Figure 5. Most of the permits issued by the County are for single family detached housing, although some apartments were built in 2002 and 2003. A duplex was built in 2002. The apartments are located in Anthony, which incorporated in 2010. However, additional apartments could be built in areas of the County that have water and sewer service in place. Consistent with national trends, new construction peaked in 2005, and the number of permits issued since then declined dramatically to 2009 and has remained fairly stable since then.

**FIGURE 5. BUILDING PERMITS ISSUED BY DONA ANA COUNTY, 2001-2014**



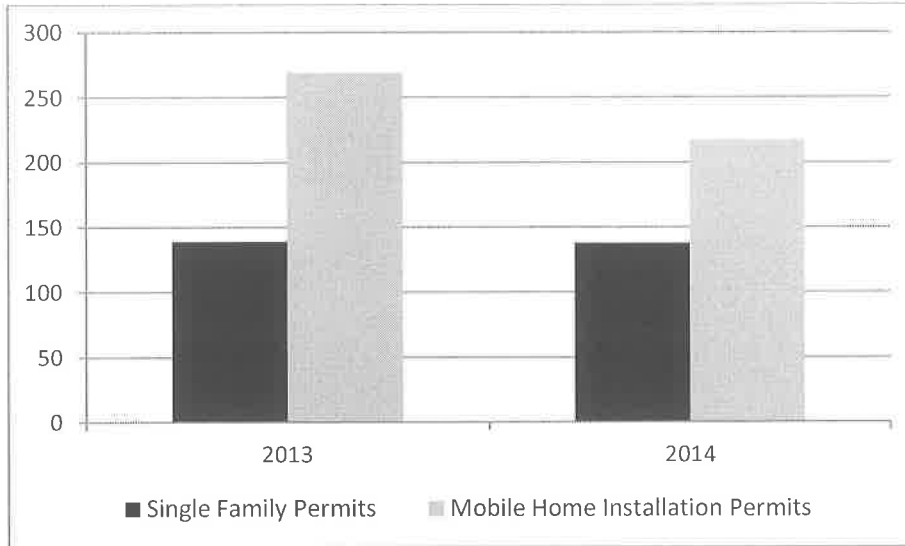
Source: US Census

In addition to building permits for new site built housing, the County issues mobile home installation permits. In 2013 and 2014, new site built single family construction was 30 to 40 percent of housing added to the County's housing stock. Sixty to 65% is mobile home installations. These are not necessarily



newly manufactured units, and the installation permits could represent mobile homes moved from one location in the County to another. It is common for residents to purchase an older mobile home and install it on a lot that they own.

**FIGURE 6. SINGLE FAMILY NEW CONSTRUCTION AND MOBILE HOME INSTALLATION PERMITS, 2013 AND 2014**



Source: Doña Ana County

### Housing for Sale

Information about homes for sale in December 2014 was gathered from a number of sources for unincorporated communities in Doña Ana County and the municipalities of Hatch, Sunland Park and Anthony. The Southern New Mexico Multiple Listing Service reported 2,622 listings in Dona Ana County in 2014, of which 1,466 were sold. The average sales price was \$172,752. On average, the sales price equal to 96% of the listing price. Eighty-seven percent of units sold were single family houses. The average sales price for a single family detached house was \$183,527, and the average sales price for a permanent manufactured unit was \$97,349. Average days on the market was 119, but single family homes sold faster than mobile homes or manufactured units.

Most of the sales activity is in the City of Las Cruces. Individual listings were tallied to report homes for sale outside of Las Cruces.

A total of 258 homes for sale were found for communities outside of Las Cruces and Mesilla. Of these, 227 were single family detached units, 27 were manufactured units, and four were condos, townhomes or zero lot line homes. Listings within the municipal limits of Las Cruces and Mesilla were excluded from this analysis.

Half of all homes for sale in the County o area are affordable to households with incomes above 120% of median income. Very few homes are available for households with incomes below 80% of median. Most of the homes for sale are within the Central and Border planning areas, which are the largest with urban or suburban areas within them.



**TABLE 21. HOUSING AFFORDABILITY BY %AMI**

% AMI	Price Range	Doña Ana County	% of Total	North Valley	Central	South Valley	Border
<30%	LT \$56,400	2	1%	1	0	0	1
30-40%	\$56,400-\$75,500	13	5%	1	7	2	3
40-50%	\$75,500-\$90,800	10	4%	1	5	1	3
50-60%	\$90,800-\$108,900	5	2%	3	0	1	1
60-70%	\$108,900-\$127,100	11	4%	2	3	0	6
70-80%	\$127,100-\$145,300	10	4%	0	5	2	3
80-90%	\$145,300-\$163,400	14	5%	2	3	0	9
90-100%	\$163,400-\$181,600	25	10%	0	7	3	15
100-120%	\$181,600-\$217,900	38	15%	0	12	3	23
120%+	GT \$217,900	130	50%	11	87	5	27
Total		258	100%	21	129	17	91

Sources: Las Cruces Association of Realtors and Realtor.com

A comparison of the distribution of household incomes in the County to the prices of homes for sale shows that very few of the homes currently on the market are affordable to households with incomes at 80 percent of AMI or below.

**TABLE 22. DISTRIBUTION OF FOR SALE HOUSING BY PRICE COMPARED TO INCOME**

Household Income*	Percentage of Area Median Income (AMI)	Estimated % of Doña Ana County Households at this Income Level	Price of Homes Affordable at this Income Level	Homes in Price Range Currently on the Market	Percent Total
<b>\$14,160 or less</b>	Up to 30% AMI	18.40%	\$54,500 or less	2	1.0%
<b>\$14,160 - \$18,880</b>	30-40% AMI	7.90%	\$54,500 to \$72,800	13	5.0%
<b>\$18,880 - \$23,600</b>	40-50% AMI	7.70%	\$72,800 to \$90,800	10	4.0%
<b>\$23,600-\$28,320</b>	50-60% AMI	6.70%	\$90,800 to \$108,900	5	2.0%
<b>\$28,320-\$37,760</b>	60-80% AMI	11.40%	\$108,900 to \$145,300	21	8.0%
<b>\$37,760-\$47,200</b>	80-100% AMI	8.60%	\$145,300 to \$181,600	39	15.0%
<b>\$47,200-\$56,640</b>	100-120% AMI	6.40%	\$181,600 to \$217,900	38	15.0%
<b>\$56,640+</b>	120% AMI+	33.00%	\$217,900 and up	130	50.0%

Sources: ACS 5-Year Estimates, 2009-2013, Las Cruces Association of Realtors and Realtor.com

The affordability gap between incomes and housing for sale is shown in Table 23. The data show that housing that is suitable for a married couple is available for households between 60% and 80% of AMI. The average price of housing for sale was reviewed by number of bedrooms and household size typical of that size unit. Two person households with incomes above 80% of AMI can afford a one bedroom unit. Three person households with incomes above 100% of AMI can afford a two-bedroom unit, but three and four bedroom units are not affordable to households even at 120% of AMI.



**TABLE 23. AFFORDABILITY OF HOUSING FOR SALE BY NUMBER OF BEDROOMS**

Number of Bedrooms	1 Bedroom	2 Bedrooms	3 Bedrooms	4 Bedrooms
Household Size	1-2 Person HH	3 Person HH	4 Person HH	5 Person HH
<b>Number for Sale</b>	<b>2</b>	<b>19</b>	<b>118</b>	<b>70</b>
<b>Average Price</b>	<b>\$114,925</b>	<b>\$164,653</b>	<b>\$252,852</b>	<b>\$303,212</b>
30% AMI Max Price	\$46,775	\$52,500	\$54,500	\$62,960
<b>Price Gap</b>	<b>\$68,150</b>	<b>\$112,153</b>	<b>\$198,352</b>	<b>\$240,252</b>
50% AMI Max Price	\$77,958	\$87,630	\$90,800	\$105,000
<b>Price Gap</b>	<b>\$36,970</b>	<b>\$77,023</b>	<b>\$162,052</b>	<b>\$198,212</b>
60% AMI Max Price	\$93,352	\$105,000	\$108,950	\$126,110
<b>Price Gap</b>	<b>\$21,570</b>	<b>\$59,653</b>	<b>\$143,902</b>	<b>\$177,102</b>
80% AMI Max Price	\$124,535	\$140,125	\$145,260	\$168,150
<b>Price Gap</b>	<b>None</b>	<b>\$24,528</b>	<b>\$107,592</b>	<b>\$135,062</b>
100% AMI Max Price	\$155,520	\$175,060	\$181,600	\$210,190
<b>Price Gap</b>	<b>None</b>	<b>None</b>	<b>\$71,252</b>	<b>\$93,022</b>
120% AMI Max Price	\$186,500	\$210,190	\$217,900	\$252,030
<b>Price Gap</b>	<b>None</b>	<b>None</b>	<b>\$34,952</b>	<b>\$51,182</b>

### Projects in Development

There are two large projects that are being discussed for development. These include a large subdivision in Chaparral near McCombs Road and potential mixed-use development of the 250 acre site of the former McAnally egg farm in Berino. Both of these properties are large enough to support mixed-use, mixed-income development in growing communities where there is demand for new housing. The County does not own either parcel, but could offer incentives for including housing that meets the goals of the Affordable Housing Plan. Expedited review, assistance with infrastructure, fee waivers, and direct funding of assistance to home buyers are potential incentives.

### Home Mortgage Loan Data

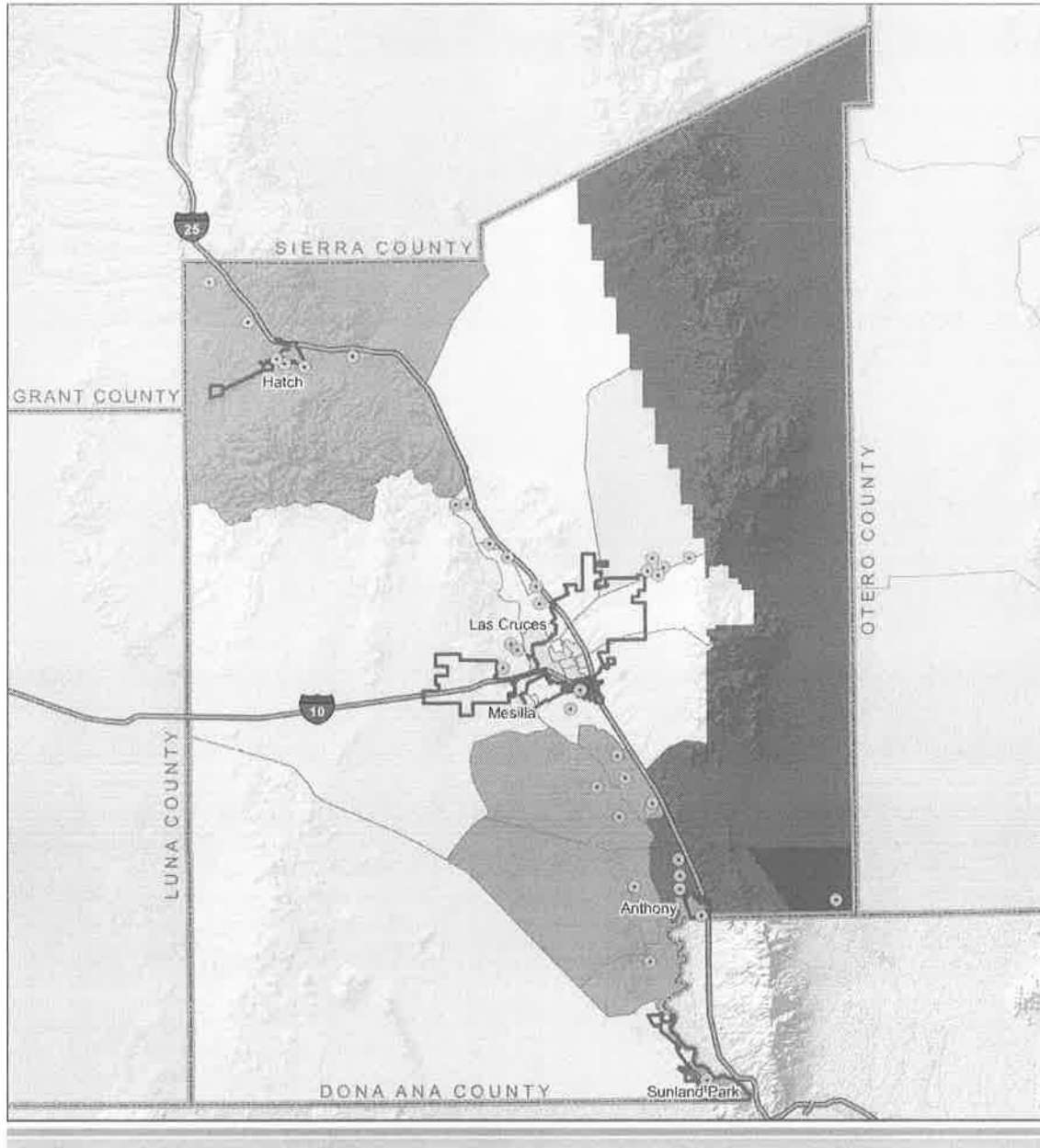
As part of the Viva Doña Ana projects, the County completed a Fair Housing Equity Assessment and Regional Analysis of Impediments (RAI) in 2013.<sup>1</sup> This document includes an analysis of HMDA data for the county. HMDA information was collected for all Census tracts in the County from 2004 through 2011. A total of 103,138 loan applications were reported in the HMDA system during that time period. Of these, 52% were for refinancing, and 7% were for home improvement loan applications. The remaining 40,980 loan applications were for home purchase. Of these, 34,031 loans over the eight years were for owner occupied homes.

Applications for home purchase loans by an owner occupant were further analyzed to determine denial rates and reasons for denials by applicant characteristics. During this time, 4,137 loans were denied. Figure 7 shows that rural colonias experienced a disproportionately high share of loan denials.

<sup>1</sup> Western Economic Services, LLC, for the Camino Real Consortium, Fair Housing Equity Assessment and Regional AI, Draft for Public Review, July 31, 2013.



FIGURE 7. DONA ANA COUNTY MORTGAGE LOAN DENIAL RATES BY LOCATION



A CAMBIANDO REAL CONSULTING PROYECTO  
**VIVA DOÑA ANA**  
 BUILDING A SUSTAINABLE FUTURE | CONSTRUYENDO UN FUTURO SOSTENIBLE

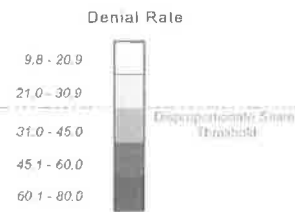


**2004–2011 Denial Rate Distribution**

2004–2011 Average Denial Rate in Doña Ana County = 20.9%

Disproportionate Share Threshold = 30.9% (A disproportionate share exists when the share of a population in a given area is at least 10 percentage points greater than the study area average.)

- Colonias
- City, Town, and Village Boundaries
- Census Tract Boundaries
- County Boundaries
- Major Roads



Data Source: 2004–2011 HMDA Data

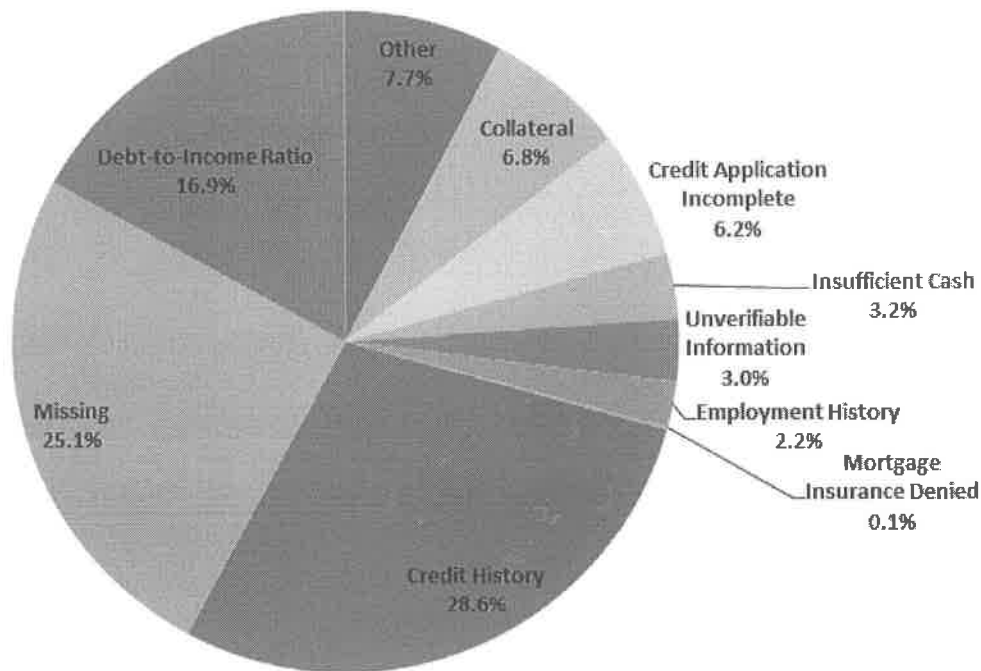
Source: Fair Housing Equity Assessment and Regional AI



Female applicants experience higher denial rates than male applicants – 23.2% over the eight years compared to 19.5% for males. Denial rates for Hispanic and minority applicants were higher than for non-Hispanic white applicants. The denial rate for Hispanic applicants of any race was 28%, compared to 13.2% for non-Hispanic applicants. The denial rate for American Indian applicants was 33%, for Black applicants, 20%, and for Asian applicants, 16.1%.

The most frequently cited reasons for denial were credit history and debt-to-income ratio, as shown in Figure 8. Loan application denial rates were highest for lower income applicants and decreased as income levels increased, as shown in Figure 9.

**FIGURE 8. REASON FOR DENIAL OF LOAN APPLICATIONS**

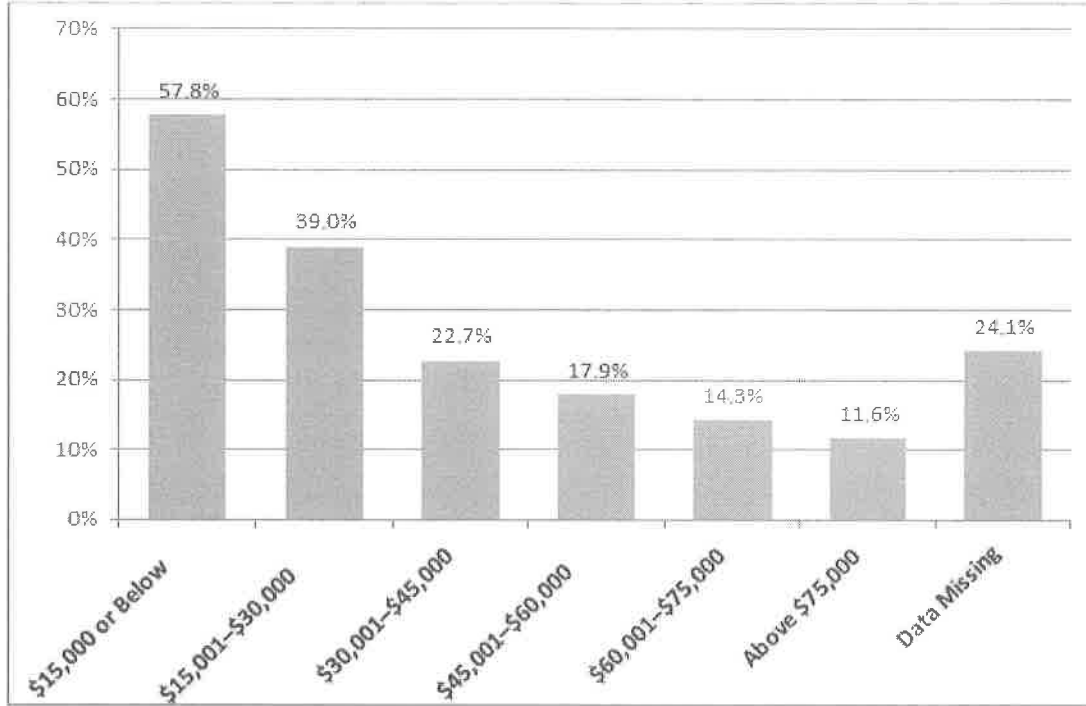


Source: Fair Housing Equity Assessment and Regional AI





**FIGURE 9. LOAN APPLICATION DENIAL RATES BY INCOME**



Source: Fair Housing Equity Assessment and Regional AI

**Housing for Rent**

A search for rental housing in the County outside of Las Cruces and Mesilla found 49 units for rent in December 2014. Sources of rentals included Homes.com listings, Craigs List, and a local management company. Duplicates among the lists were deleted. Most of the listings – 33 of the 49 – are located in the southern part of the County, seven are located in the area surrounding Las Cruces and the East Mesa, and 9 are in the Valley just south of Las Cruces. There were no listings in the valley north of Las Cruces to Hatch.

**TABLE 24. DISTRIBUTION OF HOUSING FOR RENT COMPARED TO INCOME**

Household Income*	Percentage of Area Median Income (AMI)	Approximate % of Doña Ana County Households at this Income Level	Affordable Monthly Rent at this Income Level, Including Utilities	Total Rentals in Price Range Currently on the Market	Percent Total
\$14,160 or less	Up to 30% AMI	18.40%	\$354	1	2.0%
\$14,160 - \$18,880	30-40% AMI	7.90%	\$354-472	2	4.1%
\$18,880 - \$23,600	40-50% AMI	7.70%	\$472-\$590	6	12.2%
\$23,600-\$28,320	50-60% AMI	6.70%	\$590-\$708	6	12.2%
\$28,320-\$37,760	60-80% AMI	11.40%	\$708-\$944	9	18.4%
\$37,760-\$47,200	80-100% AMI	8.60%	\$944-\$1,180	13	26.5%
\$47,200-\$56,640	100-120% AMI	6.40%	\$1,180-\$1,416	9	18.4%
\$56,640+	120% AMI+	33.00%	\$1,146 and up	3	6.1%

Sources: ACS 5-Year Estimates, 2009-2013, Craigs List, Homes.com, Trust-Properties.net



The affordability gap for existing rentals was calculated based on the average rents by number of bedrooms for the listings of housing for rent. A married couple with an income of just over 50% of AMI could afford a one bedroom rental unit, based on the average rent. A single parent with a child needing their own bedroom or two adults needing two bedrooms would need a household income of more than 60% of AMI to afford a two-bedroom unit. A 3-person household with an income of 80% of AMI and above could afford a two-bedroom unit at the average rent. A larger family would need a household income over 80% of AMI to afford a three or four bedroom unit.

**TABLE 25. AFFORDABILITY OF EXISTING RENTAL HOUSING BY NUMBER OF BEDROOMS**

<b>Number of Bedrooms</b>	<b>1 Bedroom</b>	<b>2 Bedrooms</b>	<b>3 Bedrooms</b>	<b>4 Bedrooms</b>
<b>Household Size</b>	<b>1-2 Person HH</b>	<b>3 Person HH</b>	<b>4 Person HH</b>	<b>5 Person HH</b>
<b>Number for Rent</b>	<b>5</b>	<b>12</b>	<b>23</b>	<b>9</b>
<b>Average Rent</b>	<b>\$465</b>	<b>\$681</b>	<b>\$971</b>	<b>\$1,178</b>
30% AMI Max Rent	\$265	\$298	\$330	\$357
<b>Rental Gap</b>	<b>\$200</b>	<b>\$383</b>	<b>\$641</b>	<b>\$821</b>
50% AMI Max Rent	\$441	\$196	\$551	\$595
<b>Rental Gap</b>	<b>\$24</b>	<b>\$485</b>	<b>\$420</b>	<b>\$583</b>
60% AMI Max Rent	\$529	\$595	\$661	\$714
<b>Rental Gap</b>	<b>None</b>	<b>\$86</b>	<b>\$310</b>	<b>\$464</b>
80% AMI Max Rent	\$706	\$793	\$881	\$952
<b>Rental Gap</b>	<b>None</b>	<b>None</b>	<b>\$90</b>	<b>\$226</b>
100% AMI Max Rent	\$882	\$992	\$1,101	\$1,190
<b>Rental Gap</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>
120% AMI Max Rent	\$1,058	\$1,190	\$1,322	\$1,428
<b>Rental Gap</b>	<b>None</b>	<b>None</b>	<b>None</b>	<b>None</b>

The rents from the survey conducted for the Affordable Housing Plan were compared to HUD Fair Market Rents (FMRs) for Doña Ana County. The HUD survey includes a larger set of properties, but also includes Las Cruces, which has a much larger supply of rental housing. The HUD FMRs for one to three bedroom units are higher than was found in the survey of properties outside of Las Cruces. The FMR for four bedrooms is about the same as in the Affordable Housing Plan survey. Lower rents outside of Las Cruces could be due to the condition of housing stock in rural communities where, according to the County's windshield survey and the difficulty finding units that meet HUD housing quality standards, a substantial percentage of units need repair. The 2014 HUD FMRs are as follows: one-bedroom - \$620, two-bedroom - \$736, three-bedroom - \$1,053 and four-bedroom - \$1,171. Based on HUD rents, one and two bedroom units would be affordable to households with incomes of 80% of AMI and above.

### Foreclosures

Data from RealtyTrac indicates a total of 404 homes in some stage of foreclosure in Doña Ana County. Of these, 325 units are in pre-foreclosure, and 30 are up for auction. Most of these units are located in Las Cruces, although there are units scattered throughout the County.



## Vacancy Rates

Overall, vacancy rates in the County outside of Las Cruces are low. The owner vacancy rate is very low, meaning that even if households can afford to buy a home, there are so few vacant units that there is little choice. Rental vacancy rates in Anthony and Sunland Park, where most apartment rental units are located, are lower than the five percent rate that is typical for a freely operating rental market.

**TABLE 26. VACANCY STATUS**

	Doña Ana County Total	Anthony	Hatch	Las Cruces	Mesilla	Sunland Park	Unincorp. County	Chaparral
<b>Total Units</b>	82,049	2,826	604	42,464	1,003	4,138	31,014	4,743
<b>Owner Occupied</b>	48,269	1,616	349	21,881	535	2,614	21,274	3,167
<b>Renter Occupied</b>	25,528	951	157	16,187	369	1,340	6,524	798
<b>Vacant Total</b>	8,252	259	98	4,396	99	184	3,216	778
For rent	1,957	42	0	1,455	0	17	443	78
Rented, not occupied	516	0	0	406	16	0	94	0
For sale only	1,028	0	0	724	0	0	304	83
Sold, not occupied	146	0	0	121	7	0	18	0
For seasonal, recreational, or occasional use	1,445	23	0	694	33	10	685	185
For migrant workers	68	0	0	0	0	4	64	0
Other vacant	3,092	194	98	996	43	153	1,608	432
<b>Owner Vacancy Rate</b>	2.1%	0.0%	0.0%	3.2%	0.0%	0.0%	1.4%	2.6%
<b>Renter Vacancy Rate</b>	7.0%	4.2%	0.0%	8.1%	0.0%	1.3%	6.3%	8.9%

Source: American Community Survey, 5-Year Estimates 2009-2013



# HOUSING NEEDS ASSESSMENT

## Existing Affordable Housing Resources

Within Doña Ana County several organizations that provide a range of programs. Information about these programs and the housing available was gathered through online affordable housing and agency data and interviews with housing managers. A summary of available housing in the County is shown in Table 27. More detailed discussion of each resource is below.

**TABLE 27. AFFORDABLE HOUSING RESOURCES**

Housing Type	Location	Total	Studio-1-BR	2BR	3+BR	Population Served	Income Eligibility
<b>Public Housing</b>							
Mesilla Valley PHA Vouchers	Scattered		130			Family	50% or below
Sunland Park PHA Units	Sunland Park	40	5	5	30	1-BR are elderly; rest are family	50% or below
<b>Mesilla Valley PHA Low Income Rental Housing</b>							
Tres Arboles	Las Cruces	64	28	8	28	Multi-family	
San Pedro Place	Las Cruces	38	38	16	0	Elderly/disabled	
Walnut Grove	Las Cruces	100	20	36	44	Multi-family	
Jardines Alegres	Las Cruces	47	43	4	0	Elderly/disabled	
<b>Subsidized Rental</b>							
Valle Verde I Apartments	Placitas Colonia/Hatch	36	6	12	18	Family	1-2 bedrooms 50% or below; 3+ bedrooms 60% or below
Valle Verde II&III	Placitas Colonia/Hatch	34	12	14	8	Farmworker/ Family	50% or below
Falcon Ridge Apts	Hatch	72	8	16	48	Family	
Tierra Encantada	Anthony	24	0	6	18	Farmworker families	50% or below
Cimarron II	Anthony	60	0	28	32	Family	
Cimmaron	Anthony	24				Family	
Franklin Vista I	Anthony	28	8	16	4	Family	
Franklin Vista II	Anthony	29	5	16	8	Family	
Franklin Vista III	Anthony	29	5	16	8	Family	
Franklin Vista IV	Anthony	21	5	16	0	Family	
Franklin V	Anthony	29	0	24	5	Family	50% or below
Franklin VI	Anthony	24	0	16	8	Family	50% or below
Franklin VII	Anthony	24	0	16	8	Farmworker families	50% or below
Loma del Norte Apartments	Anthony	40	4	32	4	Family	
Comerciantes Terrace Apartments	Santa Teresa	135	0	135	0		
Santa Teresa Terrace Apts	Santa Teresa	112	0	48	64		
Santa Teresa Family Homes	Santa Teresa	74	0	0	74		
Meadow Vista II	Sunland Park	16	0	8	8	Family	
Playa II	Sunland Park	44	12	14	18	Family	



Housing Type	Location	Total	Studio-1-BR	2BR	3+BR	Population Served	Income Eligibility
Vista del Rey	Sunland Park	42	0	26	16	Family	
Meadow Vista Homes	Sunland Park	26	0	2	24	Family	
Playa Apts	Sunland Park	36	0	18	18	Family	
Highland Park Apartments	Las Cruces	50	0	24	26	All	50% or below
Casa De Corazones	Las Cruces	14	11	2	0	All	50% or below
Chaparral Senior Housing Inc	Las Cruces	40	40	0	0	Senior	50% or below
Montana Meadows Apartments	Las Cruces	80	80	0	0	All	50% or below
Burley Court	Las Cruces	40	34	6	0	All	50% or below
Robledo Ridge	Las Cruces	60	12	22	24	Multi-family	50% or below
Dona Ana Park II Apartments	Las Cruces	59	10	20	29	ALL	50% or below
Jardines Verdes	Las Cruces	40	34	6		Elderly/disabled	
Stone Mountain Place*	Las Cruces	72	0	28	56	Multi-family	
Montana Senior Village I	Las Cruces	48	12	37	0	Elderly/Near Elderly	
Montana Senior Village II*	Las Cruces	84	60	24	0	Elderly	
Vista Montana	Las Cruces	80	0	24	56	Multi-family	
Desert Palms	Las Cruces	100	50	40	10	All	
Mesquite Village	Las Cruces	48	0	16	32	All	
Mira Vista Villas*	Las Cruces	76	76	0	0	All	
Los Altos Villas*	Las Cruces	72	0	18	54	All	
Saint Genevieve's Village	Las Cruces	41	41	0	0	Seniors 62 +	
Four Hills Apartments*	Las Cruces	72	0	20	52	Multi-family	
<b>Total Subsidized Rental</b>		<b>2,062</b>	<b>540</b>	<b>766</b>	<b>730</b>		
<i>* A portion of the units are set aside for low income subject to LIHTC requirements. Will accept Section 8 vouchers for market rate units.</i>							
<b>Special Needs/Elderly/Disabled/Supportive Housing</b>							
Villa del Sol Senior Housing	Sunland Park	30	30	0	0	Elderly	50% or below
Mesilla Valley Community of Hope	Las Cruces						
Sue's House (Group Home)			4			Disabled, homeless women	
Permanent Supportive Housing			20			Vouchers (MVPHA units, MVCH services)	
Abode, Inc. (Group Homes)	Las Cruces		15			Chronic homeless	
<b>Shelter and Transitional Housing</b>							
Mesilla Valley Community of Hope	Las Cruces					Homeless or Near Homeless	
Camp Hope			50			Homeless	
Transitional Housing			45			Homeless	
La Casa (emergency and transitional housing)	Las Cruces					Victims of Domestic Violence	



Housing Type	Location	Total	Studio-1-BR	2BR	3+BR	Population Served	Income Eligibility
<b>Subsidized Homebuyer/Owner</b>							
<b>New Construction</b>	South County	128 units in existing subdivisions				Families	40% to 60% AMI, up to 200% AMI
<b>Rehab</b>	Scattered	25 per year			Elderly, disabled, families	60% AMI and below	

Sources: Provider Interviews

Most affordable housing in Doña Ana County is located in Las Cruces. Of 289 public housing units, 249 are in Las Cruces. Of 2,100 subsidized rental units, 1,100 or 53 percent are located in Las Cruces.

## Affordable Housing Service Providers

### *Mesilla Valley Public Housing Authority (MVPHA)*

Mesilla Valley Public Housing Authority provides housing assistance to low income families by providing safe, affordable housing and associated services that provide opportunities to eligible persons in the City of Las Cruces and elsewhere in Doña Ana County.

### *Sunland Park Public Housing Authority*

Sunland Park Housing Authority provides housing assistance to low income residents through the management of Low Rent Public Housing.

### *Tierra del Sol Housing Corporation (TDS)*

Tierra del Sol provides affordable multifamily rental units, single family homes for sale, rehabilitation assistance, home buyers education and foreclosure prevention. Rental housing includes rural farm labor rental housing, senior congregate housing, supportive housing for the elderly and disabled, and LIHTC limited partnership owned mixed housing.

**Mesilla Valley Habitat for Humanity** builds new single family homes, currently only within the City of Las Cruces using City HOME funds.

### *Southwest Regional Housing and Community Development Corporation (SRHCDC)*

SRHCDC, based in Deming, provides weatherization and rehabilitation services in the County. SRHCDC has a satellite office in Doña Ana County.

### *USDA*

USDA is a major lender for affordable housing in rural areas of Doña Ana County. USDA also offers a number of business development programs that contribute to the economic health of the communities in the County.

### *Mesilla Valley Community of Hope (MVCH)*

MVCH provides supportive services to the homeless and near homeless through a collaboration of six separate agencies operating its campus site. MVCH is also an independent agency that provides a variety of services to approximately 2,500 clients over a year period.



### ***La Casa***

La Casa, Inc. is a non-profit that provides comprehensive services, including housing, to diminish domestic violence and abuse.

### ***Abode, Inc.***

Abode, Inc. provides housing in a group home setting and supportive services to chronically homeless residents.

## **Affordable Housing Programs**

### ***Public Housing***

**Mesilla Valley Public Housing Authority** provides a little over 1,000 Section 8 Housing Choice Vouchers, 87 percent of which are within the City of Las Cruces. The waiting list for these units has recently reopened. Prior to closing the list, the waiting list got to 1,800 families.

The agency also owns, manages, and maintains approximately 290 rental public housing units, most of which are located in Las Cruces. The agency maintains waiting lists by number of bedrooms. MVPHA limits the length of the waiting lists, closing the lists when they get too long. Right now, the larger units with three and four bedrooms have the lowest demand, and the waiting lists for these units are always open.

**Sunland Park Housing Authority** manages five one-bedroom units for elderly and five 2-bedroom units, 15 3-bedroom units and 15 4-bedroom units for families. As of December 2014, the waiting lists were 55 for one bedroom units, 291 for two bedroom units, 144 for three bedroom units and 7 for four bedroom units. The PHA does not close its waiting lists, but it sends notices annually to families on the lists to verify their current status. Applicants that do not respond to the notices are removed from the list. Applicants are from within Doña Ana County, El Paso and out of state.

PHA representatives note a need for homeless services. There is no emergency housing in Sunland Park, so homeless families are referred to other agencies.

### ***Affordable Rental Units***

**Tierra del Sol** currently has 200 rental units outside of Las Cruces, of which 30 are targeted to the elderly and 48 are targeted to farm worker families. Most rental units are targeted to households with incomes at 50% of median or less. The rest are family units. Projects are located in Hatch (and Placitas Colonia), Anthony and Sunland Park.

The **MVPHA** is a partner in three low and moderate income rental projects with a total of 156 units. These were developed using low income housing tax credits and target families with incomes at 50% of median and below.

The waiting lists for the affordable rental units total 566, with over half of the waiting lists for two-bedroom units and 30 percent for three+ bedroom units.



**Low to Moderate Income Rental Housing Summary**

There are approximately 1,025 subsidized rental apartment units in the rural communities of Doña Ana County, including those managed by the agencies listed above. Projects are located in Hatch, Anthony, Santa Teresa and Sunland Park. Forty units are owned, managed and maintained by the City of Sunland Park Housing Authority. The rest of the projects were developed through partnerships between for-profit and non-profit developers that are active in the County. Primary funding sources have included the USDA Rural Development 515 program, the HUD HOME Investment Partnerships Program and Low Income Housing Tax Credits.

Approximately 130 families who hold Section 8 vouchers have chosen to use their vouchers in the County outside of Las Cruces. .

In total, there are 3,000 families on waiting lists, although there may be duplication within the various lists. By far the largest waiting lists are for two and three bedroom units.

**Affordable Housing for Sale**

Tierra Del Sol (TDS) has 128 lots for single family detached homes in subdivisions and scattered sites. Homes are priced at \$105,000 to \$130,000, with a target population of 40% to 200% AMI, depending on the location. Subdivisions are located in Berino, Anthony, Vado, and Chaparral. TDS builds homes in all colonias. TDS provides housing fairs, homebuyer counseling, financial literacy, credit counseling and other assistance to prospective buyers. TDS maintains a waiting list of hundreds of potential buyers at its Las Cruces and Anthony Centers. To maintain affordability, TDS offers opportunities for sweat equity where buyers provide up to 1,200 hours of mutual self-help volunteer construction labor to reduce their home cost by about \$30,000 in lieu of a cash down payment. Homebuyers are organized into work groups who build their homes cooperatively. In addition, TDS assists homebuyers reduce principal through Individualized Development Accounts (IDAs – down payment savings) and through utility credits, and other types of assistance. The greatest need for housing for sale is for three and four bedroom units.

**TABLE 28. AFFORDABLE HOUSING FOR SALE**

Location/Subdivision Name	Total Units	Types of Housing	Target Population	Price Range
Parque Subdivision, Berino	80	Single Family	50% - 60% HUD AMI	\$105,000
Bishop’s Cap Subdivision, Berino	8	Single Family	40% - 60% HUD AMI	\$105,000
Norton Subdivision, Anthony	8	Single Family	50%-90% HUD AMI	\$105,000 - \$125,000
Salome Subdivision,	20	Single Family	60%-200% HUD AMI	\$105,000 - \$130,000
Tierra del Sol Subdivision, Vado	40	Single Family	50% - 200% HUD AMI	\$105,000 - \$130,000
Hermosa Subdivision I and II, Chaparral	16	Single Family	40% - 60% HUD AMI	\$105,000
Scattered lots, Sunland Park	6	Single Family	40% - 60% HUD AMI	\$105,000

MVPHA has Via Sereno, a 25-unit project in Anthony, is part of the HUD section 5(h) homeownership program. All but four of these units have been sold. Two of the remaining units are occupied by renters and two vacant units are in the process of being purchased.





Mesilla Valley Habitat for Humanity builds a few homes per year with City of Las Cruces Home funds. The Habitat for Humanity model relies on sweat equity by the future owner, donated materials and volunteer labor to keep its prices affordable.

### **Rehabilitation Assistance**

**Tierra del Sol** provides rehabilitation of about 25 units per year. This includes substantial rehabilitation and replacement of substandard homes and manufactured homes. This also includes installing natural gas mains and hookups to owner occupants, primarily in colonias, earning 60% AMI or below. Many of these homeowners are disabled or elderly or living in overcrowded conditions. The waiting list for rehabilitation assistance is approximately 150 households.

**SRHCDC** provides weatherization and rehabilitation services in the County. SRHCDC has a satellite office in Doña Ana County.

### **Special Needs Housing**

#### ***Victims of Domestic Violence***

**La Casa, Inc.** provides emergency and transitional housing, counseling for residents and non-residents, case management, advocacy, legal services, community outreach and education, parenting education, and counseling for offenders.

The Emergency Shelter has 45 beds, and uses common areas for overflow. La Casa's transitional housing program provides up to 24 months of rental assistance, case management and support services to victims and their children who are transitioning out of the residential program.

La Casa offers its counseling, outreach, advocacy and case management services in outlying areas of the County. A satellite office is located in Anthony, but staff travels to all communities in the County.

#### ***Homeless or Near Homeless***

**MVCH** provides supportive services to approximately 2,500 homeless and near homeless clients per year. The population served includes veterans, homeless females, people with disabilities, and homeless families. The agency estimates that it is able to provide housing for about 10% of the clients it serves, and that 50-60 percent of its clients need housing. The agency offers housing assistance on a first come/first served basis. Those clients who need housing but are not able to find housing through MVCH seek housing at the Rescue Mission, local motels, doubled up with friends and families or other means.

To fully assist clients, the organization sees a need in the County for more decent and safe housing units and housing vouchers. They observed that there is a shortage of standard housing in which to place their clients. Their clients will need ongoing supportive services, and Community of Hope could place staff on site at complexes that serve their clients.

Programs range from homelessness prevention to permanent supportive housing. Because the organization provides services on-site, they are able to do their own outreach and fill units with clients who need housing. Housing fills rapidly and MVCH does not maintain a waiting list.

- **Homelessness Prevention.** Homelessness prevention includes assistance with rent payments and utilities.



- **Camp Hope.** Camp Hope is a tent city on the MVCH site that has provided housing and services to the homeless for the past three years. The site houses up to a maximum of 45 tents and 50 homeless residents who manage the project themselves. The average length of stay is four months, and MVCH helps residents become housing ready and assist them in finding permanent supportive housing.
- **Transitional Housing.** MVCH provided transitional housing through the MFA rapid rehousing and HUD transitional housing programs.
- **Permanent Supportive Housing.** The MVCH operates several programs that provide permanent supportive housing. These include vouchers used in 20 unites operated by the Las Cruces Housing Authority. MVCH provides home visits, case management and self-sufficiency training to these tenants. HUD vouchers, Shelter + Care grant has 45 units for individuals and families. There is not much turnover in this program. There is a waiting list of five or fewer families because of the low turnover.
- Sue's House is a group home that provides permanent supportive housing for four women that are defined as permanently disabled and have been homeless for an extended period of time.

**Abode, Inc.** operates two group homes for 15 chronically homeless residents. Each group home has a case manager on site.

## Existing Needs

### Households with a Cost Burden

Based on Census estimates reported in the previous section, an estimated 6,500 homeowners and 4,300 renter households pay more than 30% of their incomes for housing. Households earning 50% of AMI and above are candidates for affordable homeownership. Households with incomes below 50% AMI are most likely to need subsidized rental housing.

### Overcrowded Households

Based on Census estimates reported in the previous section, nearly 2,000 households live in crowded conditions and 400 households live in extreme overcrowding. As with cost burdened households, the appropriate solution to relieving overcrowding will depend on tenure and household income.

### Need for Affordable Homeownership

Even though a large number of homeowners bear a cost burden, homeowners are less likely to move than renters. Based on interviews with housing providers and discussions with the County's Affordable Housing Review Team, an estimated 600 low to moderate income households are seeking to purchase a home. These include both cost burdened households and households living in crowded conditions that need a larger home.

### Need for Affordable Rental Housing

The analysis of properties for rent indicates that 1-3 person households with incomes of 60% of AMI and below cannot afford market rents, and 4+ person households with incomes of 80% of AMI and below cannot afford market rents. There are approximately 3,500 cost burdened renter households with incomes of 60% of AMI and below and 600 cost burdened renter households with incomes between 60% and 80% of AMI. There are approximately 3,000 households on the waiting lists for public and affordable housing.



There is likely duplication among all of these estimates. A portion of cost burdened renters may be represented on waiting lists, and some households may be on multiple waiting lists. For this analysis a total of 4,300 units is assumed for the current need for affordable rentals in the County outside of Las Cruces and Mesilla. This need could be met by new construction or by vouchers to reduce the cost burden on households who are in existing housing. Representatives of the MVPHA observed that when families receive Section 8 vouchers and have more housing choice, they often move to better housing. One goal of the County's Affordable Housing Plan is to increase housing options and the quality of housing that is available to households living and working in outlying areas of the County. The areas of highest demand are in the southern part of the County.

### **Housing Rehabilitation Needs**

While two-thirds of the County's housing stock has been built since 1980, there are a number of older units needing repair. The Doña Ana County Community Development Department estimates that 51% of all structures in the colonias are in poor condition, needing some level of repair. The types of repairs needed range from peeling paint need for replacement windows and moderate structural repair. An additional 3% are considered to be uninhabitable, and likely beyond repair. These estimates were the result of a windshield survey of selected areas of the County. This would result in approximately 8,500 structures needing repairs.

Sites Southwest estimated the number of units needing repair and rehabilitation based on age, tenure and type.



Table 29 contains the estimated number of units by type needing repair. These include 4,542 owner occupied units and 2,307 renter occupied units. The total of 6,849 derived from age and type is less than the need identified in the windshield survey.

When the two estimates of housing rehabilitation needs are compared, it is likely that the total need exceeds 8,000 units; more than a quarter of the County's housing stock. Most of these are outside of the municipalities of Anthony, Sunland Park and Hatch.



TABLE 29. ESTIMATE OF REHABILITATION NEEDS, DOÑA ANA COUNTY OUTSIDE OF LAS CRUCES AND MESILLA

	Estimate Based on Age, Tenure and Type					Estimate Based on
	Hatch	Anthony	Sunland Park	Chaparral	Doña Ana County*	Colonia Windshield Survey
<b>Owner Occupied</b>						
SF, detached or attached	120	132	128	75	2,413	NA
Multi-family	0	3	0	0	5	NA
Mobile homes	12	87	117	707	2,124	NA
<b>Total</b>	<b>132</b>	<b>222</b>	<b>244</b>	<b>782</b>	<b>4,542</b>	<b>NA</b>
<b>Renter Occupied</b>						
SF, detached or attached	57	11	108	13	1,209	NA
Multifamily	11	54	30	0	198	NA
Mobile homes	3	94	53	36	901	NA
<b>Total</b>	<b>72</b>	<b>159</b>	<b>191</b>	<b>49</b>	<b>2,307</b>	<b>NA</b>
<b>Total</b>	<b>204</b>	<b>381</b>	<b>435</b>	<b>831</b>	<b>6,849</b>	<b>8,500</b>

\*Includes County outside of Las Cruces and Mesilla

## Special Needs Populations

### Homeless

The estimate of existing needs for housing for the homeless is based on service provider interviews. An estimated 1,200 homeless people in the County as a whole that need housing and are not currently provided housing through existing programs. Assistance for the homeless is focused in Las Cruces, with very limited resources outside of the City. This estimate includes families and individuals who may be homeless for a variety of reasons, including lack of income, behavioral health or other disability issues or domestic violence.

### Elderly

The need for housing for the elderly in Doña Ana County outside of Las Cruces and Mesilla was estimated by looking at the number of households with a householder aged 65 and over with a cost burden. An estimated 1,400 elderly homeowners pay more than 30% of their income for housing, and an estimated 360 elderly renters pay more than 30% of their income for housing. These numbers represent 21 percent of elderly homeowners and 42% of elderly renters.

## Summary of Housing Needs

An estimate of housing needs in the County outside of Las Cruces and Mesilla by type of need is shown in Table 30. This shows current need based on the needs assessment and future need based on an anticipated County growth rate of 1.4% per year.



**TABLE 30. SUMMARY OF ESTIMATED CURRENT HOUSING NEEDS**

Type of Housing	Target Market	Current Total Need	Estimated Additional Future Need	Comments
Affordable Home Ownership	30-80% AMI	600 units total	40-50 units per year	Units to relieve overcrowding, replace substandard units and accommodate growth
Subsidized Rental Units	1-3 person households earning up to 60% of AMI  4+ person households earning up to 80% AMI	4,300 units,	50 to 100 units per year	Existing need is based on 1,300 cost burdened renters and half of existing waiting lists of approximately 3,000, assuming overlap among lists; greatest need is 2 and 3 bedroom units. Need may be met through new construction and vouchers.
Subsidized Senior Housing	Senior-headed renter households with a cost burden. Currently and estimated 42% of renters have a cost burden.	360 rental units		1-BR units; all units should be accessible
Housing Rehabilitation (focus on homeowners)	Housing rehabilitation is needed to bring homes up to code. Units that cannot be rehabilitated should be replaced.	8,000 units	25-50 units annually	Target elderly cost-burdened homeowners and other very low and low income homeowners with weatherization and repairs
Transitional housing	To provide transitional housing (3 months up to a year) and permanent housing in addition to services such as job training, education, life skills, counseling, etc.	Housing for 1,200 people County-wide; these will transition into subsidized rental housing		These services are provided by existing nonprofits. Existing resources to not meet existing needs.
Permanent Supportive Housing	To provide permanent housing for special needs populations needing ongoing supportive services through new housing or rental assistance in existing units.	400 units	20-30 units per year	Permanent housing may be provided in existing or new affordable rentals

## **LAND USE AND POLICY REVIEW**

The Affordable Housing Plan will serve as the plan for unincorporated Doña Ana County. The land use and policy review takes into account the impact of plans, policies and regulations for these entities. The land use and policy review also identifies barriers to affordable housing.

The County has a number of land use related ordinances in place, which were reviewed for the Affordable Housing Plan. The County is in the process of preparing a new Comprehensive Plan and a Unified Development Code (UDC) that will include all development related regulations, such as the zoning, subdivision and development standards. The Comprehensive Plan will establish a vision for the County, and the UDC will be the tool used to implement the vision.

In the near future, the new Comprehensive Plan and UDC will replace the existing policies. However, in the interim, the adopted documents create the regulatory framework for all development, including housing.

Barriers to affordable housing were identified through stakeholder interviews, review of existing documents, and discussions with the project review team. Stakeholders included non-profit housing providers, Realtors, homebuilders and developers. In addition, Spanish speaking interviews spoke to community residents at County community centers.

## **Viva Doña Ana**

### **Livability Principles**

The components of the Viva Doña Ana effort are intended to help Doña Ana County and its communities meet six Livability Principles:

- 1: Provide More Transportation Choices
- 2: Promote Equitable, Affordable Housing
- 3: Enhance Economic Competiveness
- 4: Support Existing Communities
- 5: Coordinate Policies & Leverage Investment
- 6: Value Communities & Neighborhoods

The Viva Doña Ana initiatives are aligned with these principles.

### **Comprehensive Plan**

The Comprehensive Plan in draft form recommends strategies, goals and actions to accomplish the livability principles. It recognizes that there are tradeoffs among the principles and that the ways that the County chooses to address the livability principles will be shaped by the County's existing character, heritage and culture. The plan identifies likely areas of future growth and lays out a Sector Plan that indicates growth sectors. The Sector Plan is a guiding framework for the Unified Development Code discussed below. An important premise of the draft plan is the intention to build complete communities of varying size and intensity over time. Complete communities have a mix of housing types, businesses and jobs, services and amenities that are easily accessible within the community and infrastructure that is appropriate to its scale and density. By prioritizing investments and coordinating new development, the County can direct public and private investment effectively.



County investments in affordable housing should be consistent with the goals of the Comprehensive Plan and coordinated with other community development.

### **Unified Development Code (UDC)**

Completion of the Unified Development Code will be a follow on process once the community is in agreement about the Comprehensive Plan vision and goals. The framework for the code has been established. Work on the UDC started concurrently with the Comprehensive Plan.

The UDC identifies community types permitted in each sector in the Comprehensive Plan's Sector Plan. The UDC then defines zone classifications and the anticipated zones that make up each community type, with intent to create complete communities. The UDC then establishes development standards and uses for each zone.

The most recent draft of the UDC was issued in June 2015. This version of the UDC indicates that higher density areas with adequate infrastructure will allow for smaller lots, narrower minimum lot widths, higher densities for multifamily projects, narrower streets and smaller setbacks than are in the current code. The draft also proposed administrative review of site plans for projects that meet all criteria of the UDC.

### **Analysis of Impediments to Fair Housing Choice**

As part of the Viva Doña Ana process, the County conducted a study of impediments to fair housing choice. The study found the following impediments to housing choice in the County and a draft is under review.

- Frequent discrimination against disabled people and failure to make reasonable accommodation for the disabled
- Discrimination due to national origin
- Discrimination due to family status
- Steering homebuyers to certain neighborhoods, resulting in an increasing concentration of minority populations and poverty in certain areas.
- Minorities denied home purchase loans more often than non-minorities and predatory lending practices
- Assisted rental properties concentrated in certain areas
- Discriminatory terms, conditions, privileges or facilities related to rentals
- Preferences stated in advertising for rentals

Public sector policies and programs are lacking. There is a need for policies, ordinances, programs and standard practices. The study recommended more outreach and education to landlords, lenders, tenants and buyers.

The study determined that some land use policies and practices result in unequal access to social and governmental services and that land use practices do not encourage inclusionary housing. The study recommended that more diverse housing types be allowed by zoning codes and that transit service be expanded to improve access to services.

The study noted the value of proximity to asset-rich communities to educational success and positive economic outcomes. These findings indicate that the location of affordable housing is as important as its





quantity. The study further analyzed areas with a high level of access to various opportunities, including education, jobs, transportation and a healthy environment.

The study identifies areas with the highest level of access to opportunity and recommends investments in affordable new housing and transit in these areas. The study further recommends infrastructure investments and demolition and removal of dilapidated housing in ethnically concentrated areas of poverty (ECAP) shown in Figure 10 to correct for past disinvestment. The ECAP communities are some of the fastest growing communities with a high level of demand for housing. County code enforcement to address dilapidated housing, rehabilitation programs, and the potential to acquire tax delinquent or substandard properties in the unincorporated ECAP areas has the potential to improve overall housing conditions. These are also high priority areas for public infrastructure investment. The unincorporated areas of greatest opportunity are areas where the County could consider providing incentives for new affordable housing and landlord participation in the Section 8 voucher program.

## **Existing Plans, Policies and Ordinances**

### ***Doña Ana County Comprehensive Plan, 1994***

The adopted Comprehensive Plan for the County includes a primary goal to encourage affordable housing and a variety of housing types. The plan recognized at that time there was a housing shortage at that time, with needs in the South Valley and Hatch areas. Issues included a lack of affordable apartments and houses, as well as a lack of emergency, transitional and special needs housing. Mobile homes comprised 43 percent of housing in unincorporated areas of the County, and a majority of existing housing was in need of rehabilitation. The plan also identified a need for homeownership assistance to young families. The plan projected a need for 104,000 housing units by 2015.

While the plan somewhat overestimated the total housing need, the affordable housing issues are still of concern today.

The policies of the plan called for flexibility in land use regulations and building codes to ensure that affordable housing can be built in the County and for zoning regulations that comply with fair housing and civil rights laws. The plan recommended partnerships to facilitate affordable housing development, acquisition of land from the BLM for housing development, infrastructure development to support housing, and incentives for all types of affordable housing including mobile home parks and subdivisions.

The County has made progress on its policies and actions, including growth in the capacity of local non-profits, wastewater infrastructure improvement, and the Viva Doña Ana projects.

### ***Doña Ana County Land Use Regulations and Zoning Ordinance (Ord. No. 158-95 as Amended)***

Most of the privately owned unincorporated land in County is zoned "Performance District", as shown in Figure 11.

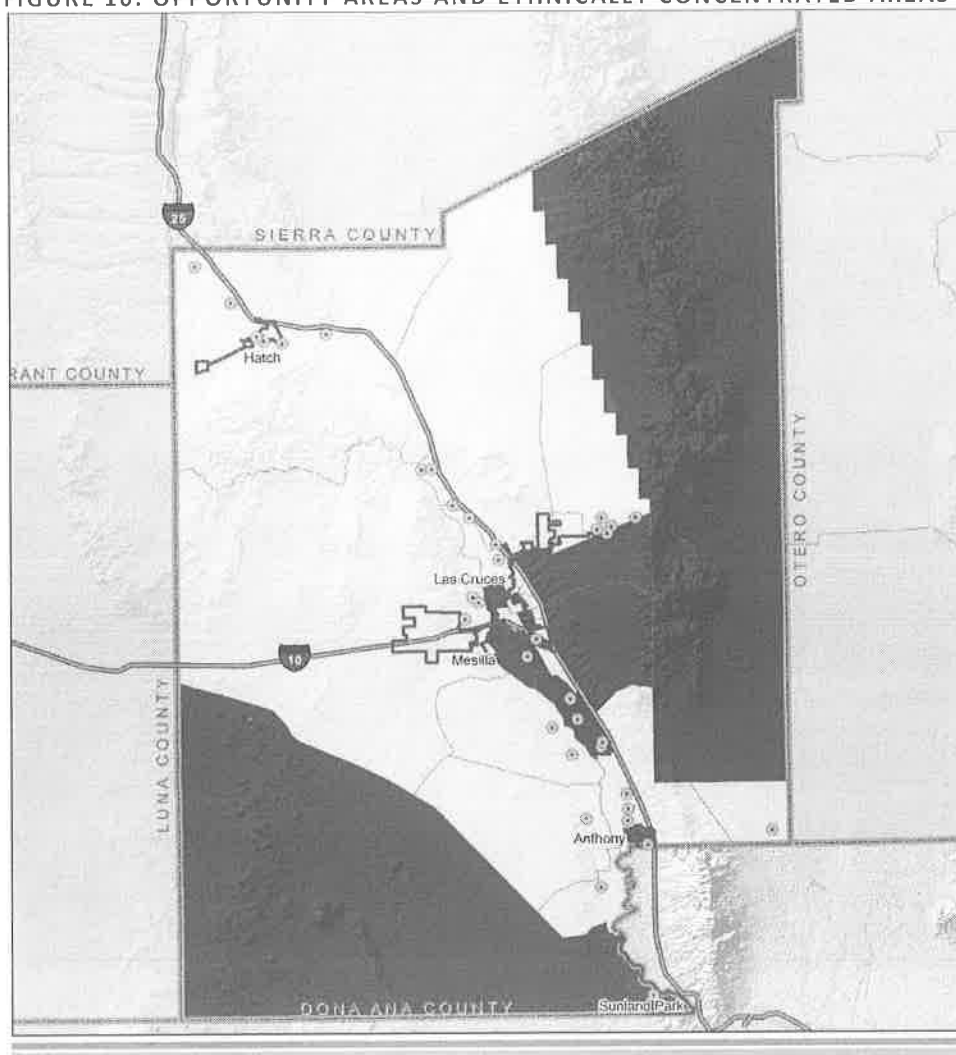
The most densely developed areas have specific Village or Community District zoning. These areas include Rodey, Vado, Del Cerro, La Union, and Santa Teresa. Within the village and community districts the County has mapped more specific zoning districts. Other areas are eligible for establishing a community or village district, but a district has not been mapped. The locations of village and community districts, as well as areas eligible for mapping such districts, are shown in Figure 11. More



detailed maps that show zoning categories within Village and Community districts and the ETZ are in Appendix B. These are by subarea of the County so that the details are readable.

The ordinance specifies that Community Development Department staff review all applications and in consultation with other agencies as appropriate make a recommendation supported and based on the provisions contained in the ordinance, the Doña Ana County Comprehensive Plan, One Valley, One Vision 2040 Regional Plan.

**FIGURE 10. OPPORTUNITY AREAS AND ETHNICALLY CONCENTRATED AREAS OF POVERTY**



**VIVA DOÑA ANA**  
 ENRIENDOS Y SOSTENEMOS EL PATRIMONIO | CONJUGUEMOS FUERZAS PARA EL FUTURO



**Areas of Greatest Opportunity and Ethnically Concentrated Poverty**

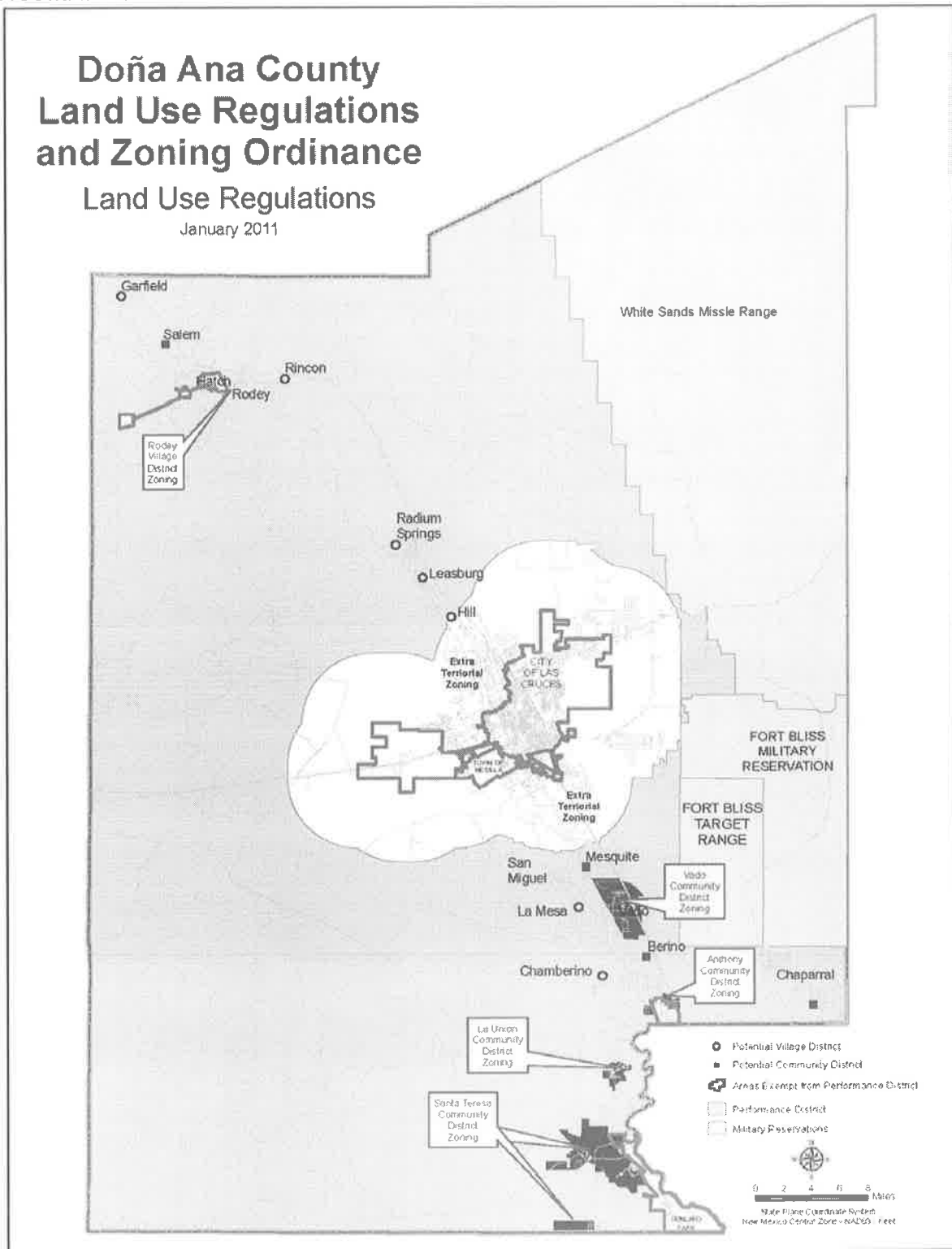
- Tracts with Greatest Opportunity Scores (0.49 - 0.55)
- ECAP Tracts
- Colonias
- Other Census Tracts
- City, Town, and Village Boundaries
- County Boundaries
- Major Roads

Data Source: 2012 HUD PDIR, 2000-2011 HUD, 2010 Census SF1, and 2007-2011 ACS

Source: Fair Housing Equity Assessment and Regional AI



FIGURE 11. COUNTY ZONING MAP



## Performance District

Within the Performance District are options for low, medium and high intensity land use, which may be mixed residential or non-residential, and a Planned Unit Development Overlay Zone (PUD). Each development application in the Performance District Zone undergoes an intensity review to determine potential impacts and the appropriate level of intensity based on the potential impacts.

The Performance District Zone is intended to allow flexibility for land use activities in rural areas of the County. Any use may be approved, provided that all standards for that use are met and that the use is consistent with the character of the surrounding area. Standards are based on the intensity of the primary use of a parcel, from low to high. The most intense uses require approval through a planned unit development (PUD) process. Mixed use projects go through the PUD process.

There are different options for development in the performance district. The development types in the performance district are listed below.

PR-1	Low-intensity residential
PR-2	Medium-intensity residential
PR-3	High-intensity residential
PR-MP	High-intensity residential, mobile homes
PC-1	Low-intensity nonresidential
PC-2	Medium-intensity nonresidential
PC-3	High-intensity nonresidential
Type 1 PUD	Mixed Residential and Commercial
Type 2 PUD	Commercial or industrial

The residential types allowed in the performance district are shown in Table 31. Each district has different standards for lot size, setbacks and the number of units allowed per lot. The standards for districts that allow residential uses are shown in Table 32. The minimum lot size for a single family home on one lot in the Low Intensity Residential Use category is 6,000 square feet. The more intense categories have larger minimum lot sizes but multiple units per lot, consistent with availability of sewer service or NMED standards for septic. Spaces in mobile home parks, which are allowed in the High-Intensity category, may be a minimum of 3,500 square feet.

**TABLE 31. RESIDENTIAL USES ALLOWED IN THE PERFORMANCE DISTRICT**

Residential Uses	PR-1	PR-2	PR-3	PC-1	PC-2	PC-3	PUD (Type)	Site Plan	Public Hearing (all PUDs)
Apartment Complexes			X				X(1)		X
Duplexes		X	X				X(1)	X	X
Fourplexes		X	X				X(1)	X	X
Mobile Home Parks and Mobile Home Subdivisions		X	X				X(1)	X	X
Single-family residential, site-built	X	X					X(1)	X	X
Single-family residential, mobile home	X	X	X		X		X(1)	X	X
Triplexes			X				X(1)	X	X



**TABLE 32. DEVELOPMENT STANDARDS FOR PERFORMANCE DISTRICT ZONES**

District	Permitted Residential Uses	Min. Lot Size*	Units per lot	Min Lot Width (ft)	Min Lot Depth (ft)	Height (ft)	Front Setback (ft)	Rear Setback (ft)	Side Setback (ft)
PR-1	Low-intensity residential	6,000	1	60	70	35	25	25	5
PR-2	Medium-intensity residential	9,000	2	60	70	35	25	25	7
PR-3	High-intensity residential								
	- 3 dwellings	13,500	3	100	100	45	30	30	10
	- 4 dwellings	18,000	4	100	100	45	30	30	10
	- Apartment complexes	18,000	3+	100	100	45	30	30	10
PR-MP	High-intensity residential, mobile homes	3,500 sf minimum space		40	70	35	10 (with a perimeter wall)	10	10

\*Lot size is the lesser of the area and dimensions show or NMED standards.

**Community and Village Districts**

The Community and Village districts allow higher densities, including apartments. Table 33 lists Community and Village districts and the development standards for each. The CR-3 Community Residential district requires a minimum lot width and depth of 60 and 70 feet, but does not specify a minimum lot size or density. The minimum lot size for a single family house in the medium intensity district is 6,000 square feet. The Community Districts may have mixed use zones with site built commercial and residential mixed uses on a single site and in a single structure. Within Village Districts, multifamily lot size minimums range from 9,000 square feet for a duplex to 23,000 square feet for an apartment complex, depending on sewer availability.

**TABLE 33. DEVELOPMENT STANDARDS FOR COMMUNITY AND VILLAGE DISTRICTS**

Zoning District	Allowed Residential Uses	Min. Lot Size*	Units per lot	Min Lot Width	Min Lot Depth	Height	Front Setback		
<b>Community Districts</b>									
CR-AG5	Community Residential: Agriculture, 5-Acre Minimum	5 acres	2	NA	NA	40	50	50	20
CR-AG	Community Residential: Agriculture	Per NMED standards	2	NA	NA	40	50	50	20
CR-1	Community Residential: Single-Family Residential	6,000	1	60	70	35	25	25	5
CR-1M	Community Residential, Single-Family, Mobile Homes	6,000	1	60	70	35	25	25	5
CR-2	Community Residential: Medium-Intensity								
	- Single family	6,000	1	60	70	35	25	25	7
	- Duplex	9,000	2	60	70	35	25	25	7
	- Triplex	13,500	3	60	70	35	25	25	7
	- Fourplex	18,000	4	60	70	35	25	25	7
CR-3	Community Residential: Apartments and High-Intensity	NA	NA	60	70	45	25	25	7
CR-MP	Community Residential: Mobile Home Park	3,500 (space)	1	40	70	35	25	25	25

Zoning District	Allowed Residential Uses	Min. Lot Size*	Units per lot	Min Lot Width	Min Lot Depth	Height	Front Setback		
<b>CMU</b>	Community District: Mixed Use								
<b>Village Districts</b>									
<b>VR-1</b>	Village Residential: Single-Family Residential	6,000	1	NA	NA	35	Match setbacks on adjacent properties		
<b>VR-1M</b>	Village Residential: Single-Family, Mobile Homes	6,000	1	60	70	35	25	25	5
<b>VR-2</b>	Village Residential: Multiple-Family								
	- Duplex	9,000	2	NA	NA	35	Match adjacent setbacks		
	- Triplex	13,500	3	NA	NA	35	Match adjacent setbacks		
	- Fourplex	18,000	4	NA	NA	35	Match adjacent setbacks		
	- Apartment complex	23,000	NA	NA	NA	35	Match adjacent setbacks		
<b>VR-AG</b>	Village Residential; Agriculture	NMED standards, if applicable	2	NA	NA	40	50	50	20
<b>VMU</b>	Village District: Mixed Land Use								
		6000	1	NA	NA	35	Match adjacent setbacks		

### Site Plans

Site plan requirements must be met for development in the County, with review and approval by the Zoning Administrator following review by applicable agencies. Grading and drainage plans are required for medium and high intensity residential uses and for low intensity residential uses within flood hazard areas or on steep slopes. Traffic impact analysis may be required if the development meets certain thresholds. Variance requests, planned unit developments, special use permits and high intensity residential uses are subject to review and final approval by the Planning & Zoning Commission. Decisions of the P&Z may be appealed to the Board of County Commissioners. Site plan review procedures depend upon the intensity of use as follows:

- Low and medium intensity residential uses in the Performance District: internal review by the Community Development Department, Building Services, County Engineering and Flood Commission, if appropriate. Plan is approved administratively if it meets all applicable requirements.
- All other uses in the Performance District: The County publishes notice of the application in a newspaper and makes the plan documents available to the public for review. The property owner posts signs for 15 days prior to approval. Plans are reviewed by affected County and state agencies. Plan is approved administratively following public notice and review if it meets all applicable requirements.
- High Intensity Residential and Planned Unit Development Permits: High intensity residential uses and PUDs to through a public hearing process. The applicant and the Community Development Department (CDD) staff confer in advance of an application to determine the proper process, forms and fees for the proposed development. Following review of the application by affected agencies, the CDD staff prepares a recommendation to be presented to the Planning & Zoning Commission (P&Z). The process from submittal to the P&Z hearing is 60 days. A



recommendation not to approve is made available to the applicant five days before the P&Z hearing.

- Developments of more than 100 acres or lots: The prospective applicant must hold one public town hall meeting before an application is considered complete. The property owner posts notice of the meeting on the property and provides information that the Community Development Department posts on the County web site. The completed application is reviewed and staff makes recommendations to P&Z, which holds a public hearing.
- Zone change requests are approved by the Board of County Commissioners (BOCC), so applications that establish a zoning district or amend the zone map must be approved by the BOCC following action by P&Z.

### **Development Districts**

The County has adopted ordinances to enable Public Improvement Districts and Tax Increment Development Districts, which can potentially help fund public infrastructure in larger development projects. The process for establishing these districts follows state law.

### **ETZ Comprehensive Plan, 1994**

The ETZ Comprehensive Plan sets policies for the area within the City of Las Cruces extraterritorial zone, which extends five miles from the Las Cruces corporate limits. The ETZ Comprehensive Plan promotes multicentered growth in areas that are planned for infrastructure and urban service delivery. The plan policies recommend urban village subarea plans where water and sewer infrastructure are available to support urban densities. The plan further promotes mixed use concentrations for development at nodes. The plan discourages inefficient and substandard large lot residential developments through density incentives.

The plan's housing goal seeks to

- Allow for a variety of residential densities and housing types.
- Promote housing availability and affordability.
- Promote housing and neighborhood enhancement and preservation.
- Provide for compatible, safe and attractive locations for site-built, manufactured homes and mobile housing units.
- Provide housing opportunities in rural and urban areas of the ETZ that meet the needs of present and future populations in all socioeconomic groups.

Key recommendations include ensuring a mix of housing types and prices in each area of the county and using incentives to encourage higher densities where infrastructure and services can support them. The overall intent is an efficient land use pattern that takes advantage of infrastructure and services and couples residential development with access to jobs and transportation.

### **Las Cruces Extra-territorial Zoning Ordinance (88-02)**

The ETZ ordinance implements the ETZ Comprehensive Plan by establishing zoning districts for the area within the City of Las Cruces extraterritorial zone. It is administered by Doña Ana County, but the decision making bodies that review and approve zoning requests within the ETZ are made up of majority County and minority City of Las Cruces representatives. The ETZ ordinance contains 17 residential zones of varying densities, with a separate zone for site built and mobile homes at each density level.



Suburban lots of 5,000 square feet and moderate density (15 units per acre) multifamily dwellings are allowed in the highest density residential zones. Maximum building height is 35 feet, except for the ER7 zone, which allows apartments and has a height maximum of 45 feet. A list of districts and applicable standards is shown in Table 34. The standards are for rural areas with large lots and large setbacks, although the highest density districts allow for traditional urban subdivisions, multifamily development up to 15 units per acre and mobile home parks. This limiting factor for density is water and sewer availability. The ordinance does not have mixed-use zones except for the Village Zone, which is intended to allow unincorporated communities to develop in their historic manner. These districts were identified when the ETZ ordinance was adopted, and there is no provision for mapping future villages. Villages are defined as places with an identifiable name and a post office, cluster of businesses, or an active community center. Organ, Doña Ana, Picacho, Tortugas and Brazito were assigned Village Zone status with the adoption of the ordinance.

**TABLE 34. ETZ ZONING DISTRICT STANDARDS**

Zoning Classification	Units per Lot	Minimum Front Setback (ft)	Minimum Rear Setback (ft)	Minimum Side Setback (ft)	Minimum Area	Minimum Width (ft)	Minimum Depth (ft)	Maximum Building Height (ft)
ER 1 & ER 1M	1	25	25	15	5 Acres	300	100	35
ER 2 & ER 2M	1	25	25	15	2 Acres	120	100	35
ER 3, ER 3M &	1	25	25	15	1 Acre	100	100	35
ER 3H ER 3/4 & ER 3/4M	1	25	25	10	3/4 Acre	100	100	35
ER 4 & ER 4M	1	25	25	10	1/2 Acre	100	100	35
ER 5 & ER 5M	1, allows for cluster development	20	25	10	1/3 Acre	80	80	35
ER 6 & ER 6M	1	20	25	7	5,000 sf	60	70	35
ER7 (single and multifamily)	Up to 15 units/ac.	20	20	7	5,000 sf	60	70	35
ER7M (mobile home parks)	10 units/ac.				5 Acres	35	100	
EV Village Zone	Permitted uses and standards of ER5M, ER6, ER7 and EC1 districts							

An approved site plan is required for any new construction. Site plans are approved administratively following review by applicable agencies.

A public hearing is required for all requests for initial zoning, zone changes, zoning ordinance amendments, special use permits and variances. Within the ETZ, projects that require a public hearing go through an Extra-territorial Zoning Commission. Major projects are also heard by an Extra-territorial Authority composed of elected officials and one at large resident. The Extra-territorial Zoning Commission has final authority on all subdivisions and special use permits, unless their decision is appealed to the Extra-territorial Authority. The ETZ Authority makes the final decision regarding zoning requests and requests for initial zoning following a hearing and recommendation by the ETZ Commission.

The new Comprehensive Plan and UDC may replace the ETZ Comprehensive Plan and Zoning Ordinance.





## **Doña Ana County Subdivision Ordinance**

The standards set for new development in the County subdivision ordinance requirements generally follow state standards for county development regulations. The developer is responsible for constructing infrastructure improvements.

Doña Ana County requires protection of cultural properties, archaeological sites, and unmarked burials. All developments go through review by multiple agencies that review the plans for water availability, access, flood hazard, impact on water rights, utility needs, and school sites. P&Z public hearings on preliminary plats are scheduled within 30 days. Final plats are heard by the Board of County Commissioners within 30 days after the date the final plat application package is deemed complete. An applicant for a development of more than 100 acres or lots must hold a public town hall style meeting before an application is considered complete.

Right of way requirements for a residential local street are 50' with 32' of pavement and a design speed of 25 mph. The County accepts alternative street cross sections if the developer addresses emergency vehicle access requirements.

Flooding is an issue in much of the valley. Floodplain, drainage and terrain management reports are required as part of the subdivision package. A typical solution is a drainage pond within each subdivision. The County could promote regional solutions based on the drainage masterplans. Construction of identified improvements could be handled incrementally as development occurs. Temporary drainage ponds might be required until the regional system is in place, but this land would eventually be made available for development. A regional approach to stormwater management would also allow for larger drainage areas that could become public amenities.

## **Camino Real Regional Utility Authority Subdivision, Zoning, Planning and Platting Jurisdiction**

In 2014, the County and the CRRUA established a joint powers agreement whereby a CRRUA Planning and Zoning Commission would be formed to take over the functions of the County P&Z in the extra-territorial jurisdiction of the City of Sunland Park. The CRRUA P&Z has been formed and has met several times, with most meetings focused on organization and the Comprehensive Plan and UDC. In the interim, the CRRUA will follow the existing County zoning and subdivision ordinances, but the CRRUA P&Z has the authority to adopt its own ETZ ordinance. The new Comprehensive Plan and UDC may fill this role for the CRRUA P&Z, preserving consistency in land use regulation in the County.

## **Constraints and Barriers to Affordable Housing**

### **Governmental Constraints**

#### ***Zoning and Permitting Process***

Stakeholders that are familiar with the County's development process, including Realtors, homebuilders and developers, were interviewed between January and March of 2015. Both for-profit and non-profit entities were included in the interviews. Comments from these stakeholder interviews were generally very favorable toward the County and the planning and zoning staff. The favorable fee structure is considered an asset for the County. There were, however, aspects of County processes that could be addressed to remove impediments, either actual or perceived, which would encourage greater investment in affordable housing.



Developers did not complain about the standards set by the County and ETZ Zoning Ordinances or by the Subdivision Ordinance. The County is rural, and the densities allowed are consistent with the types of development that are appropriate given existing conditions and compatibility with adjacent uses. Developers have been able to develop affordable housing within the provisions of the zoning ordinance. However, the process was considered to be an issue.

The approval processes for permits, zoning changes, and platting were unanimously thought to take too long, often taking months to finalize. According to stakeholders, even simple subdivisions or lot splits can take more than nine months. Delays occur as the developer works to prepare an application package that is considered to be complete and meets the provisions of the Doña Ana County Comprehensive Plan and One Valley, One Vision 2040 Regional Plan. Developers either modify plans following an initial staff recommendation not to approve or go forward with a negative staff recommendation. Developers did not oppose site plan requirements, public hearings or the PUD process other than the length of time it takes for an application package to be accepted as complete.

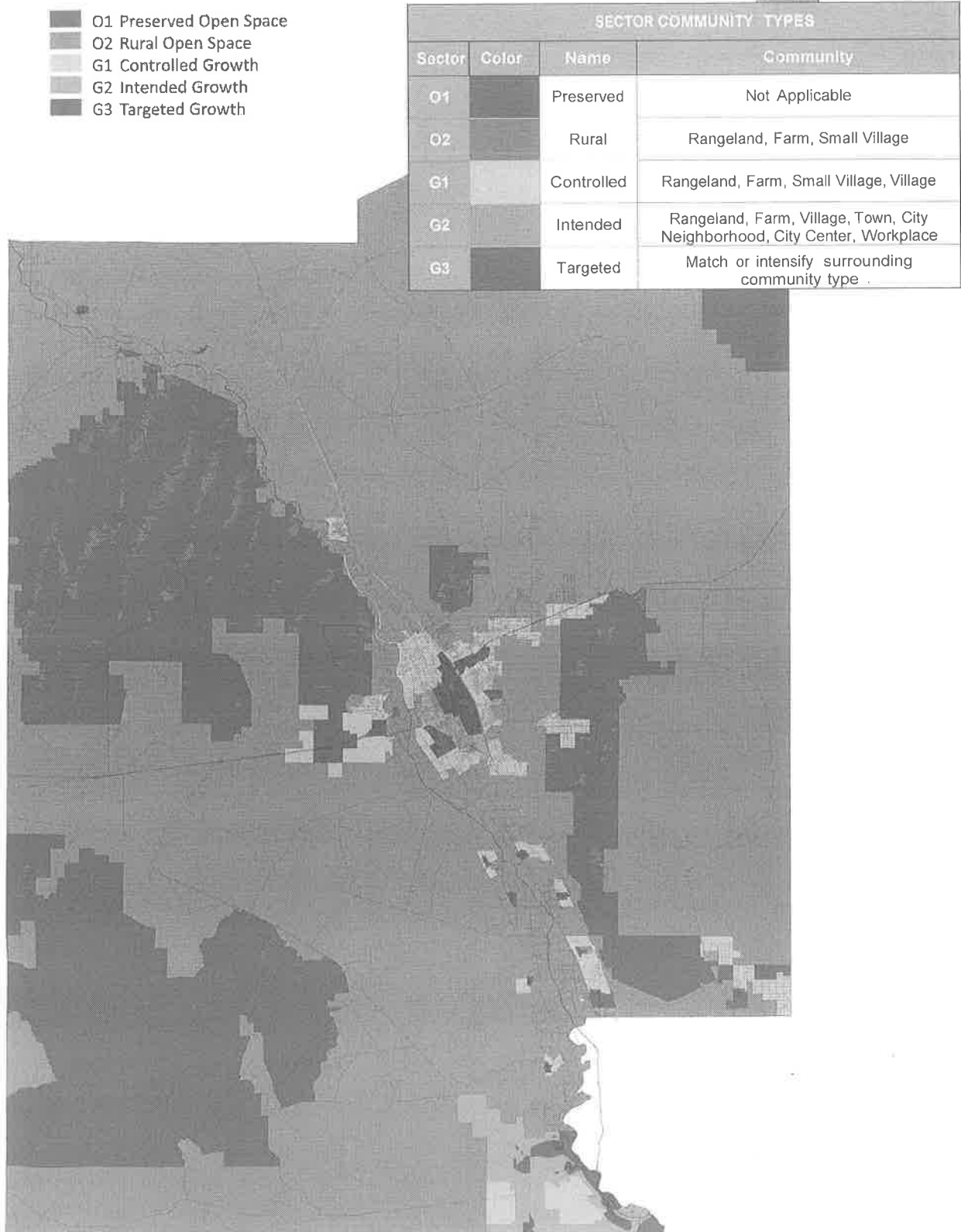
Many of the process delays were attributed to the County's Performance Zoning, which is the applicable zone in most of the unincorporated county outside of extraterritorial zones. County staff has indicated that this practice allows for greater flexibility in development, a position generally supported in the interviews. However, since there are no specific zoning districts within the Performance Zone, every project is subject to individual review and analysis for compatibility with adjacent properties and planning objectives. If planning objectives are not clear, a proposed development is subject to debate about appropriate uses and relationships to surrounding infrastructure and development. While more projects of different types can be considered, the time frame for approval becomes the impediment.

In the development process, the old adage "time is money" is very much in play. In most cases developers have either purchased the land or options on the land. In both cases, financing costs must be paid through the term of the County approval processes. As fees and/or interest are paid each month, the project profit margin decreases and the market risk of holding the land increases. Significant delays do not allow developers to take advantage of movements in the real estate market, which can fluctuate dramatically over periods of months. Uncertainty in the approval process prohibits some developers from pursuing projects that could meet housing needs and increases the cost of housing. The new Comprehensive Plan and UDO define areas that are approved for residential development and clarify the expectations of the final development in advance of purchasing or optioning land. Incorporating these specifics into the new policies would reduce risk and increase the speed of bringing housing to market. Essentially, developers have said that speed and consistency are preferable to the slower, yet more flexible process in place today.

A clear process, perhaps documented with a flow chart and timeline, and predictability of outcomes would help improve customer service. Additionally, even though developers were not opposed to the process outlined in the zoning and subdivision ordinances, the new Comprehensive Plan and Unified Development Code present an opportunity to eliminate public hearing requirements for high intensity residential projects that meet County goals for such projects in areas that are well-served and identified as targeted growth areas that are intended to become more dense. The May 15 draft of the Viva Doña Ana Comprehensive Plan indicates the areas shown in as targeted growth areas. There are also opportunities for higher densities in the areas shown as "intended growth" areas.



FIGURE 12. PROPOSED SECTOR PLAN, VIVA DONA ANA PLAN 2040, MAY 15, 2015 DRAFT



Source: Plan 2040, Draft 2, May 15, 2015

### ***Lack of Infrastructure***

Doña Ana County encompasses 3,814 square miles. Because of its large land area, roads and other infrastructure are dispersed and expensive to maintain. The cost of new infrastructure, especially if it is intended to serve a wide area, can be beyond the financial means of the County and cost-prohibitive on a project by project basis.

Water and sewer services, if they exist, are provided by municipalities and multiple mutual domestic water consumers associations. Lack of services and the cost to extend utility service is a barrier to new development. Colonias are characterized by inadequate infrastructure, and the County and service providers are scrambling to keep up with the demands of communities that have already been built. A recent affordable homeownership project had a cost of over \$2 million to extend infrastructure to a site that otherwise was well located with respect to schools, shopping and transportation.

Lack of drainage infrastructure is also a barrier to rehabilitation of existing homes that lie within designated flood hazard areas. Lack of programs to quickly rehouse and/or temporarily house people displaced by flooding is a barrier as well.

The maps in Appendix C show the locations of County sewer systems and flood hazard areas.

### **Non-Governmental Constraints**

#### ***Environmental Characteristics and Hazards***

Flood hazards are a major barrier to both new affordable housing and rehabilitation of existing housing in areas prone to flooding. Most development is along the Rio Grande valley, and existing communities as well as potentially developable land lie within designated flood hazard areas. During New Mexico's rainy season from June through September, flooding may occur as a result of intense thunderstorms. Drainage basins are large with multiple streams contributing to flooding. The large number of arroyos that lack well-defined flood paths, the number of older dams where development has occurred downstream, and the sheer size of the drainage basins mean that a resolution to flooding is a very expensive undertaking that cannot be accomplished by a single landowner, a single community or the County alone. The County has pursued Federal funds for disaster recovery associated with five major floods over the past 20 years. The Federal Emergency Management Agency and the County have completed a number of studies of the County and drainage masterplans for Chaparral, the East Mesa, Picacho Hills, Old Picacho, La Union and Jornada. The cost to build the recommended infrastructure is a barrier to affordable housing in areas that would otherwise be desirable housing locations.

#### ***Utilities – Availability and Costs***

In much of Doña Ana County water service is provided by private entities. While not independently verified, it was mentioned multiple times in stakeholder interviews that in excess of 100 water service providers exist in Doña Ana County. A review of a list of providers indicates that there are actually only about 70 providers. However, this number presents development issues, as there is little consistency between developments in regards to water availability, capacity to meet general housing and fire safety needs, water quality. There are two regional utility authorities in the County. The Lower Rio Grande Public Water Works Authority serves the residents of fourteen colonias communities in southern Doña Ana County, including Berino, Desert Sands, La Mesa, Mesquite, Vado, Butterfield Park, Organ and



Brazito. The Camino Real Regional Utility Authority serves Santa Teresa and Sunland Park. Continued regionalization of water utilities is a way to improve consistency in water service.

**TABLE 35. WATER AND WASTEWATER PROVIDERS IN DONA ANA COUNTY**

System Name	Area Served	ETZ	Type
Systems that merged to form the Camino Real Regional Utility Authority			
• Dona Ana County Utilities-border Region	(Serves 610 people)		
• Santa Teresa Water System	Santa Teresa (Serves 4,167 people)		
• Sunland Park Water System	Sunland Park (Serves 6,228 people)		Municipal
Systems that merged to form the Lower Rio Grande Public Water Works Authority			
• Desert Sands MDWCA	Anthony (Serves 1,535 people)		MDWCA / Coop
• Berino MDWCA	Berino (Serves 2,500 people)		MDWCA / Coop
• La Mesa MDWCA	La Mesa (Serves 980 people)		MDWCA / Coop
• Brazito MDWCA	Mesilla Park (Serves 485 people)		MDWCA / Coop
• Mesquite MDWCA	Mesquite (Serves 3,990 people)		
• Butterfield Park MDWCA	Organ (Serves 1,007 people)		MDWCA / Coop
• Organ Water And Sewer	Organ (Serves 1,265 people)		
• Vado MDWCA	Vado (Serves 482 people)		MDWCA / Coop
Other Water Systems:			
Madrid MHP	Las Cruces (Serves 72 people)		MHP
White Sands Missile Range	WSMR (Serves 4,300 people)		
Cielo Dorado Estates Homeowners Assoc	Anthony (Serves 263 people)		Private
La Union MDWCA	Anthony (Serves 418 people)		MDWCA / Coop
Anthony W&sd	Anthony (Serves 7,125 people)		Municipal
Chamberino MDWC & SA	Chamberino (Serves 485 people)		MDWCA / Coop
Desert Aire Md Water And Sewer Works Ass	Chaparral (serves 376 people)		MDWCA / Coop
Lake Section Water Company	Chaparral (Serves 7,980 people)		Private
Cbg Water Company	Chaparral (Serves 993 people)		Private
Valverde Mobile Home Park	Dona Ana (Serves 188 people)	ETZ	MHP
Dona Ana MDWCA	Dona Ana (Serves 8,929 people)	ETZ	MDWCA / Coop
Picacho MDWCA	Fairacres (Serves 1,200 people)	ETZ	MDWCA / Coop
Picacho Hills Utility Co	Fairacres (Serves 1,806 people)	ETZ	Private
Millers Mobile Manor	Fairacres (Serves 116 people)	ETZ	MHP
Fairview Estates Water System	Fairacres (Serves 152 people)	ETZ	Private
Garfield MDWCA	Garfield (Serves 2,394 people)		MDWCA / Coop
Hatch Water Supply System	Hatch (Serves 2,140 people)		Municipal
Valle Del Rio Water System	La Mesa (Serves 243 people)		
West Mesa Water System	Las Cruces (Serves 1,930 people)	ETZ	
Covered Wagon Mobile Home Manor	Las Cruces (Serves 101 people)	ETZ	MHP
Rancho Vista MHP	Las Cruces (Serves 120 people)	ETZ	MHP
Vista Real MHP	Las Cruces (Serves 131 people)	ETZ	MHP
De La Te Mobile Manor	Las Cruces (Serves 157 people)	ETZ	MHP
Talavera MDWCA	Las Cruces (Serves 157 people)	ETZ	MDWCA / Coop
Winterhaven MDWC And Swa	Las Cruces (Serves 163 people)	ETZ	MDWCA / Coop
Las Cruces Mobile Home Park	Las Cruces (Serves 174 people)	ETZ	MHP
Hacienda Acres Water System	Las Cruces (Serves 2,155 people)	ETZ	Private
Country Mobile Manor	Las Cruces (Serves 222 people)	ETZ	MHP
New Mexico State University	Las Cruces (Serves 24,302 people)	ETZ	



System Name	Area Served	ETZ	Type
Teresa Moreno Water System	Las Cruces (Serves 25 people)	ETZ	
Alameda Acres MHP	Las Cruces (Serves 285 people)	ETZ	Municipal
University Estates Water System	Las Cruces (Serves 3,206 people)	ETZ	Private
Moongate West (Serves 3,785 people)	Las Cruces (Serves 3,785 people)	ETZ	Private
Holly Garden MHP	Las Cruces (Serves 311 people)	ETZ	MHP
Los Arboles MHP	Las Cruces (Serves 330 people)	ETZ	MHP
West Mesa Water Company Inc	Las Cruces (Serves 418 people)	ETZ	Private
St Johns MHP	Las Cruces (Serves 476 people)	ETZ	MHP
Villa Del Sol Mobile Home Park	Las Cruces (Serves 516 people)	ETZ	MHP
San Pablo MDWCA	Las Cruces (Serves 570 people)	ETZ	MDWCA / Coop
Las Alturas Estates	Las Cruces (Serves 650 people)	ETZ	Private
Triple J Mobile Home Park	Las Cruces (Serves 72 people)	ETZ	MHP
San Andres Estates Water System	Las Cruces (Serves 741 people)	ETZ	Private
Las Cruces Municipal Water System	Las Cruces (Serves 81,025 people)	City of LC	Municipal
El Patio MHP #2	Las Cruces (Serves 86 people)	City of LC	MHP
Mesa Development Center Inc	Las Cruces (Serves 900 people)		
Mesilla Water System	Mesilla (Serves 1,548 people)		Municipal
Silver Spur Mobile Home Courts	Mesilla Park (Serves 143 people)		MHP
Dove Canyon Llc	Mesilla Park (Serves 157 people)		Private
Sontera Acres Mobile Manor	Mesilla Park (Serves 171 people)		MHP
Summer Wind Mobile Home Park	Mesilla Park (Serves 476 people)		MHP
Mesilla Park Manor Water System	Mesilla Park (Serves 848 people)		Private
Moongate Water System	Organ (Serves 6,555 people)		Private
Raasaf Hills Water System	Raasaf Hills (Serves 145 people)	ETZ	Private
Fort Selden Water Company	Radium Springs (Serves 903 people)		Private
Leasburg MDWCA	Radium Springs (Serves 903 people)		MDWCA / Coop
Rincon Water Consumers Co-op	Rincon (Serves 570 people)		MDWCA / Coop
Alto De Las Flores MDWCA	San Miguel (Serves 772 people)		MDWCA / Coop
High Valley Water Users Association	Vado (Serves 71 people)		MDWCA / Coop

Source:

The County provides wastewater service to the following areas and communities: South Central – Vado, Del Cerro, La Mesa, San Miguel, Berino and Chamberino; Rincon; Salem – Salem and Ogaz; and La Union. Doña Ana customers connect to City of Las Cruces wastewater system. Regional utility systems include the Lower Rio Grande Public Water Works Authority and the Camino Real Regional Utility Authority. The Anthony Water and Sanitation District serves the Anthony area, and the Hatch municipal system serves areas adjacent to the Village boundary. If sewer service is not available, the cost of individual systems has an impact on housing affordability. In areas with small lots, residents must provide an aerobic septic system, which is more costly to install and maintain than a standard anaerobic system.

Access to gas service is an important component of affordability – the cost of propane if gas service is not available is prohibitive. Housing providers noted that the cost of propane pushes the monthly cost to a homeowner above the total allowable housing costs set by HUD. Gas service to residents outside of the City of Las Cruces is provided by New Mexico Gas Company and Zia Natural Gas Company.

Electric service in Doña Ana County is provided by El Paso Electric.



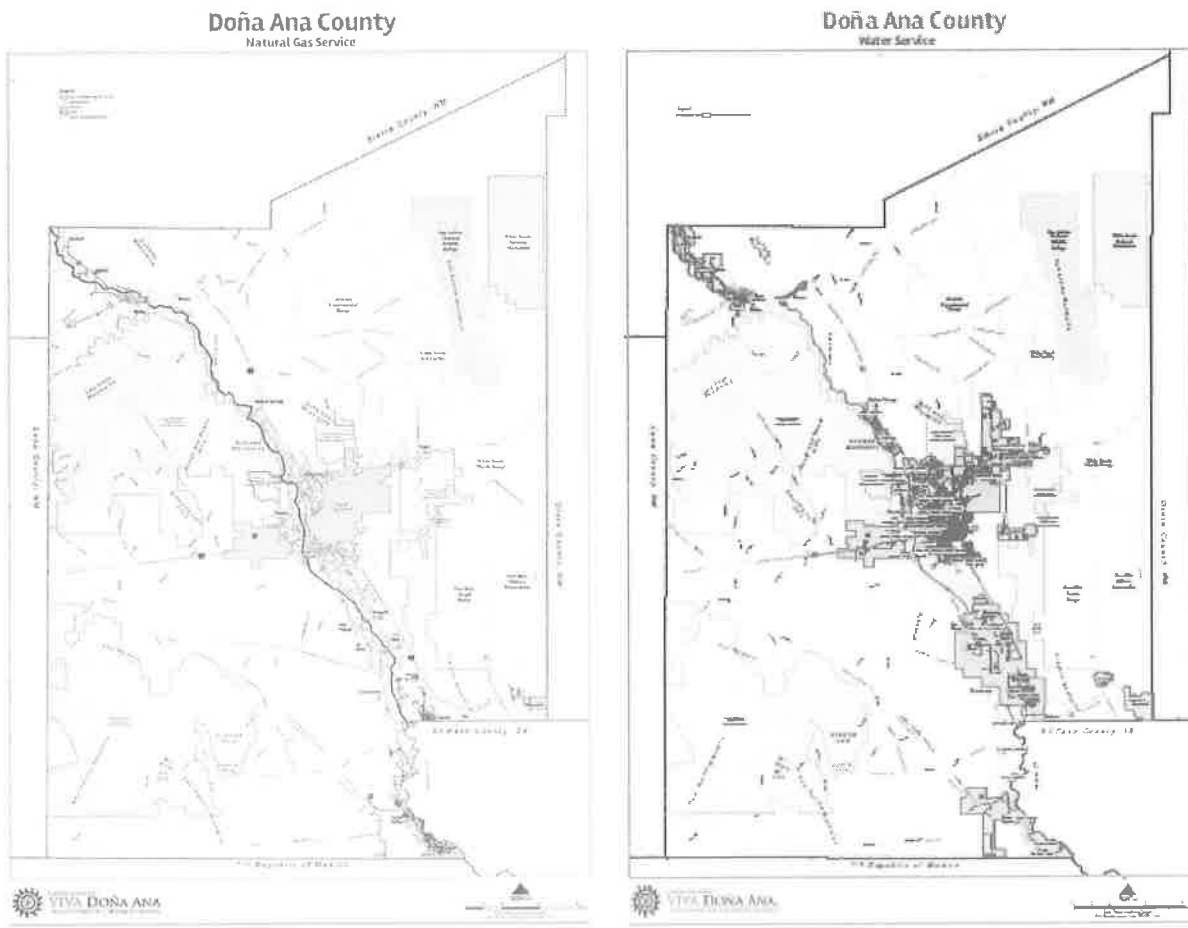
The maps below show the locations of gas and water service in the County.

### ***Individual Credit and Savings***

Credit and savings issues were mentioned as a barrier for some households, and HMDA data show that a poor credit history is the reason for nearly 30% of loan denials. First time homebuyers and veterans were mentioned by stakeholders as having difficulty purchasing a home because of a lack of a down payment and inability to qualify for a home loan. For these households, getting finances in order and possibly down payment assistance would help them move from renting to homeownership. Several non-profits in Doña Ana County and local lenders work with families, providing credit counseling, homebuyer education, pre- and post-purchase counseling and help with loans.

### **Development Capacity**

Doña Ana County has a population of over 200,000 and a history of permitting over 2,000 single family homes in a peak year for new construction. At the peak of the real estate boom in 2008, 500 multifamily units were built. Within the County and in El Paso are experienced developers of market rate and affordable housing projects, as well as service providers that meet special needs. Development capacity in terms of expertise is not a barrier to housing development in the County. However, the resources available to subsidize affordable housing, rehabilitation and support services have been decreasing, so that funding is the major limitation on the capacity to develop affordable housing. Donations by the County to enable existing providers to do more would help fill the funding gap.



## Density Calculations / Development Feasibility Analysis

Development feasibility was analyzed for single family homeownership and multifamily rentals. Single family units were assumed to be 1,250 square feet in size. Site built homes in a new subdivision, a modular home on an existing lot and a single family home on an existing lot were included in the homeownership analysis. A range of densities, depending on location and available utilities, were considered. The multifamily example assumes a typical garden style apartment building that would be built in an appropriate location – in a community with amenities, utilities and transportation access to support multifamily development. Each example considers development at market rates and the contribution that different contributions by the County would have on affordability. If the cost of development is less than the affordable price, then there is no affordability gap. If the development cost exceeds the affordable price, then a subsidy gap exists, as shown in the examples below.

### *Single Family Homes, Site Built in a Subdivision*

The analysis of a site built home in a new subdivision assumes densities of three to five units per acre in locations where water and sewer service exists. The home is assumed to be 1,250 square feet. Affordability is based on income for a four-person household. A loaded construction cost of \$105 per square foot is assumed for a basic site built home that is not a custom design. Additional costs include land, infrastructure, and fees. The analysis for this housing type assumes some efficiencies of scale, with the same developer building a number of homes at the same time.

**TABLE 36. SINGLE FAMILY SUBDIVISION DEVELOPMENT FEASIBILITY**

ITEM	Market Rate Construction			Land Donation	Land and Infrastructure Donation
	3	5	7	5	5
Number of Units	3	5	7	5	5
Unit size	1,250	1,250	1,250	1,250	1,250
Land (1 Acre)	\$25,000	\$25,000	\$25,000	\$0	\$0
Infrastructure (off site)	\$27,000	\$27,000	\$27,000	\$27,000	\$0
Permits/fees	\$15,000	\$25,000	\$35,000	\$25,000	\$12,500
Loaded build cost/sf - \$105	\$393,750	\$656,250	\$918,750	\$656,250	\$656,250
<b>TOTAL Development Cost</b>	<b>\$460,750</b>	<b>\$733,250</b>	<b>\$1,005,750</b>	<b>\$708,250</b>	<b>\$668,750</b>
<b>Cost Per Unit</b>	<b>\$153,583</b>	<b>\$146,650</b>	<b>\$143,679</b>	<b>\$141,650</b>	<b>\$133,750</b>
100% AMI Affordability	\$181,600	\$181,600	\$181,600	\$181,600	\$181,600
100% AMI Subsidy Gap	\$0	\$0	\$0	\$0	\$0
80% AMI Affordability	\$145,300	\$145,300	\$145,300	\$145,300	\$145,300
80% AMI Subsidy Gap	\$8,283	\$1,350	\$0	\$0	\$0
60% AMI Affordability	\$108,900	\$108,900	\$108,900	\$108,900	\$108,900
60% AMI Subsidy Gap	\$44,683	\$37,750	\$34,779	\$32,750	\$24,850

The analysis shows that smaller lots, land donation or infrastructure donation (including a waiver of County fees) allows for a house price that is affordable to households at 80 percent of AMI. Homeownership for households near 60 percent of AMI will require an additional subsidy.





**Single Family Homes, Manufactured/Mobile Homes**

This example assumes a 1,250 square foot, three bedroom, two bath modular unit in a new subdivision that has utilities and paved access nearby. The cost for the modular building includes the base price plus delivery, taxes, and setup on site. In this example, the lower cost of a modular unit brings the cost of housing into alignment with what a household with an income of 80 percent of AMI can afford. A household with an income of 60 percent of AMI would require additional subsidy.

**TABLE 37. MANUFACTURED OR MOBILE HOME SINGLE FAMILY DEVELOPMENT FEASIBILITY**

ITEM	Market Rate Construction	Land Donation	Land and Infrastructure Donation
Number of Units	5	5	5
Unit size	1,250	1,250	1,250
Lot cost	\$25,000	\$0	\$0
Loaded build cost/sf - \$97	\$606,250	\$606,250	\$606,250
Infrastructure	\$20,000	\$20,000	\$0
Permits and Fees	\$25,000	\$25,000	\$12,500
<b>TOTAL Development Cost</b>	<b>\$676,250</b>	<b>\$651,250</b>	<b>\$618,750</b>
<b>Cost Per Unit</b>	<b>\$135,250</b>	<b>\$130,250</b>	<b>\$123,750</b>
100% AMI Affordability	\$181,600	\$181,600	\$181,600
100% AMI Subsidy Gap	\$0	\$0	\$0
80% AMI Affordability	\$145,300	\$145,300	\$145,300
80% AMI Subsidy Gap	\$0	\$0	\$0
60% AMI Affordability	\$108,900	\$108,900	\$108,900
60% AMI Subsidy Gap	\$26,350	\$21,350	\$14,850

**Scattered Site Single Family Construction**

This example is for a site built home on an existing lot. The example assumes a basic 1,250 square foot home that is not custom designed. The example assumes that multiple lots are made available to a builder, enabling the builder to standardize the designs of homes to reduce costs. This example assumes that all utilities are available to the lots and that there is no infrastructure cost other than connecting utilities to the site and hookup fees.

**TABLE 38. SCATTERED SITE SINGLE FAMILY DEVELOPMENT FEASIBILITY**

ITEM	Market Rate Construction	Land Donation
Number of Units	1 Unit	1 Unit
Unit size	1,250	1,250
Lot cost	\$35,000	\$0
Loaded build cost/sf - \$110	\$137,500	\$137,500
Permits and fees	\$5,000	\$2,500
<b>TOTAL Development Cost</b>	<b>\$177,500</b>	<b>\$140,000</b>
100% AMI Affordability	\$181,600	\$181,600
100% AMI Subsidy Gap	\$0	\$0
80% AMI Affordability	\$145,300	\$145,300



ITEM	Market Rate Construction	Land Donation
80% AMI Subsidy Gap	\$32,200	\$0
60% AMI Affordability	\$108,900	\$108,900
60% AMI Subsidy Gap	\$68,600	\$31,100

**Multifamily Development Feasibility**

Multifamily projects in Doña Ana County, which are currently located in urban communities, are relatively low density, typically two stories with parking and open space. The feasibility analysis uses a density of 12 units per acre. A 1,150 square foot unit is assumed in this example. Monthly carrying costs were calculated based on an interest rate of 4.5 percent for a 30-year loan and insurance and taxes based on local property tax rates and insurance at \$3.50 per \$1,000 of value. Land costs are based on current vacant land listings where multifamily is indicated as a permitted use and utilities are available.

The analysis results in a per unit rent that is lower than the current market in Las Cruces and El Paso. However, households with incomes at 60 percent of median or below will require a subsidy, even with donation of land and infrastructure.

**TABLE 39. MULTIFAMILY DEVELOPMENT FEASIBILITY**

ITEM	Market Rate Construction	Cost with Land Donation	Cost with Land and Infrastructure Donation
<b>Units</b>	<b>12</b>	<b>12</b>	<b>12</b>
Unit size	1,150	1,150	1,150
Land (1 Acre)	\$47,000	\$0	\$0
Infrastructure	\$48,000	\$48,000	\$0
Fees	\$55,200	\$55,200	\$55,200
Loaded build cost/sf - \$102	\$1,407,600	\$1,407,600	\$1,407,600
<b>TOTAL Development Cost</b>	<b>\$1,557,800</b>	<b>\$1,510,800</b>	<b>\$1,462,800</b>
<b>Effective Cost Per Unit</b>	<b>\$129,817</b>	<b>\$125,900</b>	<b>\$121,900</b>
<b>Monthly Carrying Costs</b>	<b>\$816</b>	<b>\$791</b>	<b>\$766</b>
100% AMI Affordability	\$1,180	\$1,180	\$1,180
100% AMI Subsidy Gap	\$0	\$0	\$0
80% AMI Affordability	\$944	\$944	\$944
80% AMI Subsidy Gap	\$0	\$0	\$0
60% AMI Affordability	\$708	\$708	\$708
60% AMI Subsidy Gap	\$108	\$83	\$58
30% AMI Affordability	\$354	\$354	\$354
30% AMI Subsidy Gap	\$462	\$437	\$412



## GOALS, POLICIES AND QUANTIFIABLE OBJECTIVES

### Production Goals

The housing production goals address both current needs and the anticipated need for the next ten years based on projected growth of 5,200 households in the County outside of Las Cruces and Mesilla over the next ten years. The needs will be met throughout the County, although most growth is anticipated in the southern part of the County.

TABLE 40. AFFORDABLE HOUSING GOALS

Type of Housing	Target Income	Current Need	10-year Future Need
Home Ownership	30-80% AMI	600 units	600
Rental Housing, households with 4 or more persons	0-80% AMI	1,200 units	1,100
Rental Housing, households of 1-3 persons	60% AMI and below	3,000 units	900
Senior & People w/Disabilities Independent Living	60% AMI and below	360 units	200
Housing Rehabilitation	60% AMI and below	8,000 units	1,200
Transitional Housing	60% AMI and below	1,200 beds	--
Permanent Supportive Housing	30% AMI and below	400 units	60

### Policy and Regulatory Changes

#### Adoption of an Affordable Housing Plan and Ordinance

The County will adopt the Affordable Housing Plan by resolution and an Affordable Housing Ordinance that documents the implementation strategies that the County intends to use to meet affordable housing goals. The plan and the ordinance must be reviewed and approved by MFA prior to adoption by the County.

#### Establish a Housing Specialist Position in the County

The County will designate a staff position and/or establish a planning priority of affordable housing in the County, potentially in the Community Development Department, to be responsible for implementation of the plan. This would include a focus on affordable housing strategies. The staff would be responsible for working with MFA on implementation of the plan and continue to coordinate County initiatives with the work of the County's Affordable Housing Review Team which would convert to a standing Affordable Housing Advisory Committee. The intent of focusing on affordable housing as a community development priority would build capacity and develop affordable housing expertise within the County administration, develop RFPs for County grants and other donations, administer County grants, shepherd eligible projects through the development process and develop relationships with potential partners, including local non-profits, lenders, and developers. The affordable housing initiatives will direct efforts within the Department to ensure that affordable housing is considered in new development projects by participating in pre-application meetings and reviewing and commenting on zoning applications.



### **Consistency Among Plans and County Initiatives**

The County will ensure that affordable housing is recognized as an issue in other County plans and initiatives. The Comprehensive Plan and UDC, economic development plans, and other similar documents will reference the Affordable Housing Plan and ensure that policies are consistent among these documents.

### **Linking Affordable Housing and Economic Development Investments**

Stakeholders indicated that at present, there is not a direct linkage between housing investment and economic development strategy. As the county invests in economic development efforts, such as the recent earmark of funds for Mesilla Valley Economic Development Alliance (MVEDA) from the recent Gross Receipts Tax (GRT) increase, taking a detailed look at areas and projects of need as identified in the economic development strategy would be strongly recommended. Housing is essential to the success of new business recruitment efforts and existing business expansions, which are necessary to increase the overall tax base. Focusing housing investment in the same areas as the economic development investment, in other words, aligning the strategies, significantly strengthens both. The Comprehensive through its designation of targeted growth areas, sets the framework for coordinating development activities with the livability principles. Through the application of the UDC, the County will incentivize location of housing, community facilities and jobs in these targeted areas, as well as encouraging higher intensity of development in areas that are well served by transportation and utilities.

### **Reduce or Eliminate Performance Zoning in Targeted Growth Areas**

Performance Zoning, or the Uniform Code currently being discussed, is highly practical and likely necessary in many areas of the county given its size, the varying conditions within the many colonias and other unincorporated areas, and the small size of the planning and zoning staff, it is recommended that the areas in and around areas targeted for urban scale development be removed from the flexible zoning process and have predetermined zoning in place. In cases where land is under multiple ownership, a land use plan for each of these areas would set a framework for development; accomplish the complete communities envisioned in the plan and result in a more cohesive land use pattern. The Comprehensive Plan identifies targeted growth areas with desired intensities of use in each area. The UDC further specifies types and intensities of specific land uses. It also provides for administrative approvals of residential projects that meet the standard of the UDC rather than the hearing process that is required under current zoning. Both the Comprehensive Plan and UDC are works in progress. The simplification of review and approvals for projects is important to affordable housing projects. The UDC is also intended to serve the entire County outside of Las Cruces. It may be adopted by outlying municipalities, but in any case it is likely to replace existing ETZ zoning, reducing the number of zoning districts and hearing processes for development in the County.

### **Standardized Permitting for Approved Affordable Housing Projects**

New subdivisions in Doña Ana County are often financed through a state or federal agency that exercises its own oversight over the project. Affordable housing projects developed to U.S. Department of Agriculture (USDA) standards must meet higher standards of infrastructure development, housing quality, and efficiency than the existing neighborhoods that surround them. Because these projects must be approved by a Federal or state agency, the subdivision layout and infrastructure have been reviewed. Projects that meet the affordability criteria of this plan (60-80% of AMI for homeownership



and 60% of AMI or below for rentals) and have been approved by the USDA or other designated entity, standardized permitting could be employed. Less staff time should be required to approve these projects, as the standards are well documented and have been accepted nationally. Combined with zoning recommendations above, the process from application to construction can be significantly reduced. If projects meet the standards of USDA or similar and the standards of the UDC, projects should be approved administratively.

### **Standardized Permitting for Infill**

In areas where affordable housing will utilize existing lots (either as is or re-platted) that do not require a change in use, infrastructure is in place and the housing meets USDA or other designated standards, streamlined permitting could be utilized. Site plans for projects that meet the standards of the UDC should be approved administratively.

### **County Support for Infrastructure Financing**

The County has adopted ordinances that enable the use of Tax Increment Development Districts (TIDD)s and Public Improvement Districts (PIDs). These tools are used to finance infrastructure in a specific area, subject to planning and approval by the County Commission. TIDDs can capture the increase in property and, potentially, gross receipts taxes generated by a project. PIDs can assess special levies on property owners within the district to create revenue to finance infrastructure improvements. Both options allow for bond financing to be paid back through the district revenues. These tools are most appropriate for larger developments. For example, the County recommends that PIDs not be approved to finance less than \$3,000,000 because the cost to implement the PID makes financing for smaller projects inefficient.

Consider utilization of tax increment development districts or public improvement districts for projects that meet that need for affordable housing and are to be built in the target growth areas of the Comprehensive Plan. These projects should be large enough to justify the cost of creating and administering the district. County support is essential to the success of these tools. The County has ordinances in place to allow both of these solutions.

It is sometimes debated that financing tools that capture tax revenues for a specific area delay tax receipts to government entities. It must be noted that the slow pace of development and unmet demand for housing is preventing new property tax dollars from being generated currently. Therefore, it should be assumed that a program that delays tax revenue that otherwise would be nonexistent, while meeting the needs of county residents and helping secure new tax generating economic development projects through support of workforce, is preferable to the status quo.

There are two large projects in early planning stages that are potential candidates for this type of support. One potential is property near State Line Rd. and McCombs in Chaparral. This area is being considered for development of a mixed use project is large enough that it will transform the community of Chaparral.

The second opportunity is the former McAnally egg farm in Berino. This property is close to I-10 and to the existing community of Berino. It is adjacent to the Parque Subdivision, a new affordable homeownership project. The egg farm has closed, and there is local interest by private developers. At around 250 acres, this property is also an opportunity for a mixed-income, mixed use community that



meets the standards of the Comprehensive Plan through application of the new UDC once it is adopted. The site will require utilities and drainage infrastructure.

The private sector will be the driver of these projects. The County's role would be a streamlined review process and possibly assistance with utilities or hookup fees for homes priced for the target income levels of the plan and advocating for creative mixed use development to not only transform the community but to establish a model for community development that features affordable housing as an integral element .

## **Development Partnerships**

The recommendations of the Affordable Housing Plan assume that affordable housing and related services in Doña Ana County will be provided through the private sector, including for-profit and non-profit housing providers. Rather than acting as a developer or providing services directly, the County can partner with these entities to remove barriers to affordable housing and further the County's affordable housing goals. Doña Ana County is fortunate to have several non-profit housing providers that provide a broad range of services, from development to property management to consumer education. There is development capacity within the County to take on new housing projects. What is lacking is adequate funding to tackle the magnitude of need in a County as large as Doña Ana County. The County has a significant role to play as a partner in projects and programs to meet housing needs.

### **Partnerships with other governmental and private entities**

Potential partnerships might include joint projects where the County contributes land or infrastructure improvements, funding of specific programs that further County goals, support for legislative funding or grant requests or similar support to other entities.

In addition to housing providers, there are other private and public entities that promote economic development, provide utility and transportation services, provide social services and education, and in other ways contribute to the community development in the County. Coordination with these agencies will ensure that their short-term operations and long-term plans support the County's efforts to provide affordable housing and build complete communities.

Potential partners include the Gadsden Independent School District, municipal school districts that serve County communities, the two regional utility authorities, health clinics, and the Elephant Butte Irrigation District. Each of these entities owns property in the County, and surplus properties could be used as housing. As an example, the GSD owns schools that are no longer in use. These properties present an opportunity for reuse as housing or mixed use development. In such a scenario, the County could purchase the property, accept donation of the property or assist the school district in selling to a suitable developer; provide fee waivers and expedited permitting for a project that meets the goals of this plan; and/or help with zone changes or other regulatory requirements for the building reuse.

### **Acquisition and Donation of Land**

Donation of land or making land available at a below market rate is a common incentive that local governments use to attract affordable housing. Alternatively, surplus County property can be sold or leased to provide a revenue stream that funds affordable housing initiatives.



The County should identify surplus land that it owns that can be used for housing projects directly or sold or leased to create an affordable housing fund. A preliminary look at potential properties indicates that Doña Ana County has very little property that can be considered surplus. Two potential properties are located in La Mesa/San Miguel area and Del Cerro. The Las Mesa property is 11.75 acres with a drainage channel traversing it. Surrounding development is agricultural and low density, although there are nearby subdivisions with smaller lots. An elementary school, grocery store, post office and health clinic are nearby. The Del Cerro property is adjacent to existing subdivisions. Approximately half of the 15-acre site is a large drainage pond. It is close to the Del Cerro multipurpose center.

The County should also collaborate with other public entities, including school districts and municipalities, to identify surplus properties that might be donated by the other entities. The 1994 Comprehensive Plan recommended that the County look to the Bureau of Land Management (BLM) as a source of land. If BLM owned land is well located with respect to the County's land use goals, the County could facilitate transfer of the land to the County for housing development.

### **Infrastructure Assistance**

Because lack of infrastructure is a major barrier to affordable housing, one of the most important roles that the County can play is making sure that infrastructure appropriate to the sectors and community types envisioned in the Comprehensive Plan and UDC are in place.

The County provides roads, drainage improvements and wastewater systems. The County should continue to expand County wastewater service in growing communities and those with substandard infrastructure. The County should seek funds and collaborate with other agencies to complete the drainage improvements identified in drainage master plans.

Water service is provided through multiple individual providers. The Lower Rio Grande Public Water Works Authority was formed by the merger of five water systems, and additional mutual domestic water consumers associations have since merged into the larger authority. Regional systems allow for more efficient and cost effective services in rural areas. Coordination with private water systems and encouraging regionalization to reduce fragmentation of water service is a strategy that is low cost to the County.

### **Assistance to non-profit housing providers**

#### **Rehabilitation or replacement of existing structures**

Existing organizations provide rehabilitation programs in the County. Federal and state funds for these programs are limited, which means that the organizations are only able to repair a few homes per year. Because of the age and condition of the County's rural housing stock, rehabilitation is a huge need. The County could help existing organizations increase the number of homes that are rehabilitated or replaced by helping fund these programs. The County can work with MFA to identify an income stream that can fund a low interest loan program or direct grants.

#### **Grants or Other Assistance to Non-Profit Housing Providers**

Direct grants for programs or for administrative expenses are another way that the County could ensure that the County's non-profit housing providers continue to enhance affordable housing options for



residents of the County. The housing specialist position in the County administration would be responsible for issuing RFPs to identify qualifying grantees for County assistance.

Existing non-profits in the County, such as Community of Hope and Habitat for Humanity, operate primarily in Las Cruces, although services could be provided throughout the County. These agencies do not have the resources to provide full time staff in outlying communities. Assistance could include free office space, assistance with referrals, help publicizing the resources that are available and securing funding for offices and program expansion in the southern part of the County.

## **Funding/financing**

### **Partner with local mortgage lenders**

Local lenders provide credit counseling, homeownership classes, and similar support for first time homebuyers. If the County decides to provide assistance through development subsidies, downpayment assistance or second mortgages, the County will need to partner with local lenders or with non-profit organizations to manage loans, verify incomes and manage second mortgages. Partnerships could include fair housing education, seminars for local lenders regarding County land use and affordable housing initiatives, and funding a loan pool.

### **Low interest loans**

If the County identifies revenues that can be targeted to affordable housing, the County could fund a low interest loan program. Loans could be used for rehabilitation or for homeownership for households that meet income criteria. A program of this type would likely be coordinated or managed through an existing lender, non-profit or a Land (or Housing) Trust. The Housing Trust is a non-profit community development organization located in Santa Fe that provides a broad range of services, similar to non-profits in Doña Ana County, in northern New Mexico. The Housing Trust also administers a revolving loan fund.

### **Support for Non-profit Housing Initiatives**

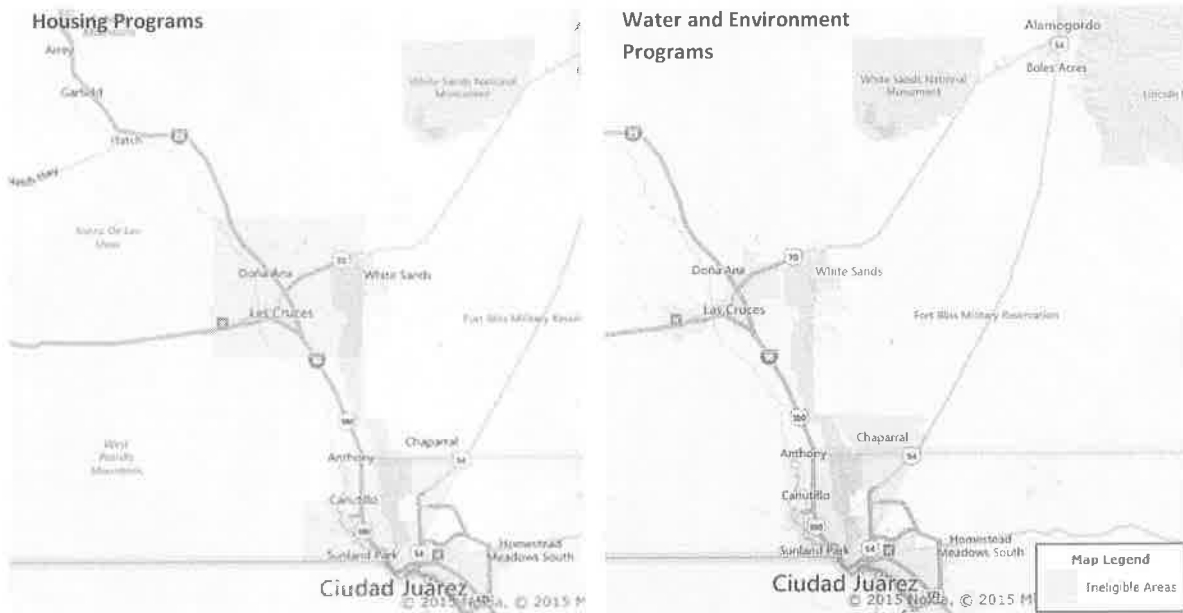
The County could provide political support for the initiatives of affordable housing providers. As an example, USDA is a major source of affordable housing loans and water and wastewater loans and grants in rural communities Doña Ana County. Unincorporated areas that are adjacent to Las Cruces and El Paso are ineligible for participation in USDA programs. Local non-profits are seeking an exception to allow USDA loan products to be used in the Santa Teresa area and rural communities outside of Las Cruces but within the area defined by USDA as ineligible. The County could support the efforts of affordable housing providers to secure state and federal funding and similar initiatives.

MFA is working with the Colonias Infrastructure Board on allowing Colonias Infrastructure funds to be used for affordable housing. County support for MFA's efforts would enable new funding for housing projects.





FIGURE 13. USDA PROGRAM ELIGIBILITY IN DOÑA ANA COUNTY



## Other Assistance

### Consistency in Utility Providers

As noted in interviews, the large number of utility providers presents development issues, as there is little consistency between developments in regards to water availability, capacity to meet general housing and fire safety needs, and water quality standards. Where larger water service providers have capacity to serve development, the review process for new subdivisions could be expedited.

As these are private sector providers, there are limitations to the actions the county could take in providing consistency in service. Though it is recommended that where possible, the county should support and encourage the expansion and/or the creation of utility district level providers in the recommended development areas. The goal would be to develop entities such as Camino Real Regional Utility District in order to provide consistency and ultimately meet the basic household needs and ensure new housing developments have the capacity for fire safety. To the degree possible, the county could utilize tax increment financing through a TIDD to assist in increasing capacity and availability of water service in the recommended development areas. This would require the approval of property owners within the area that benefits from these improvements. It also increases costs to the property owners in exchange for the benefits provided.

The County supported the formation of the two existing regional water utility authorities and is a partner in the CRRUA. In addition to support for regionalizing water utilities, the County could become a partner in water/wastewater utility districts in areas where it operates a County wastewater system.

## Conclusion

Doña Ana County is fortunate that there is already capacity within the County to provide affordable housing for low and moderate income County residents. The Doña Ana County Affordable Housing Plan documents that affordable housing needs exceed the funding available for affordable housing projects.



The Affordable Housing Plan Review Team has identified a number of opportunities to accelerate the work that is already being done in the County and to donate resources to affordable housing projects. Through ongoing work of the County's Affordable Housing Review Team, designated County staff and the MFA, with approval by the Board of County Commissioners, the County will select and implement the highest priority projects. The first priorities are adoption of the Affordable Housing Plan and ordinance, completion and adoption of the Comprehensive Plan and Unified Development Code, implementation of streamlined review processes through the UDC, and elevating affordable housing initiatives and projects as a priority for improving the quality of life for residents of Doña Ana County.



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## APPENDIX

Appendix A. Stakeholder Interview List

Appendix B. Zoning Maps

Appendix C. Utility Locations and Flood Hazard Areas

Appendix D. Housing Resources



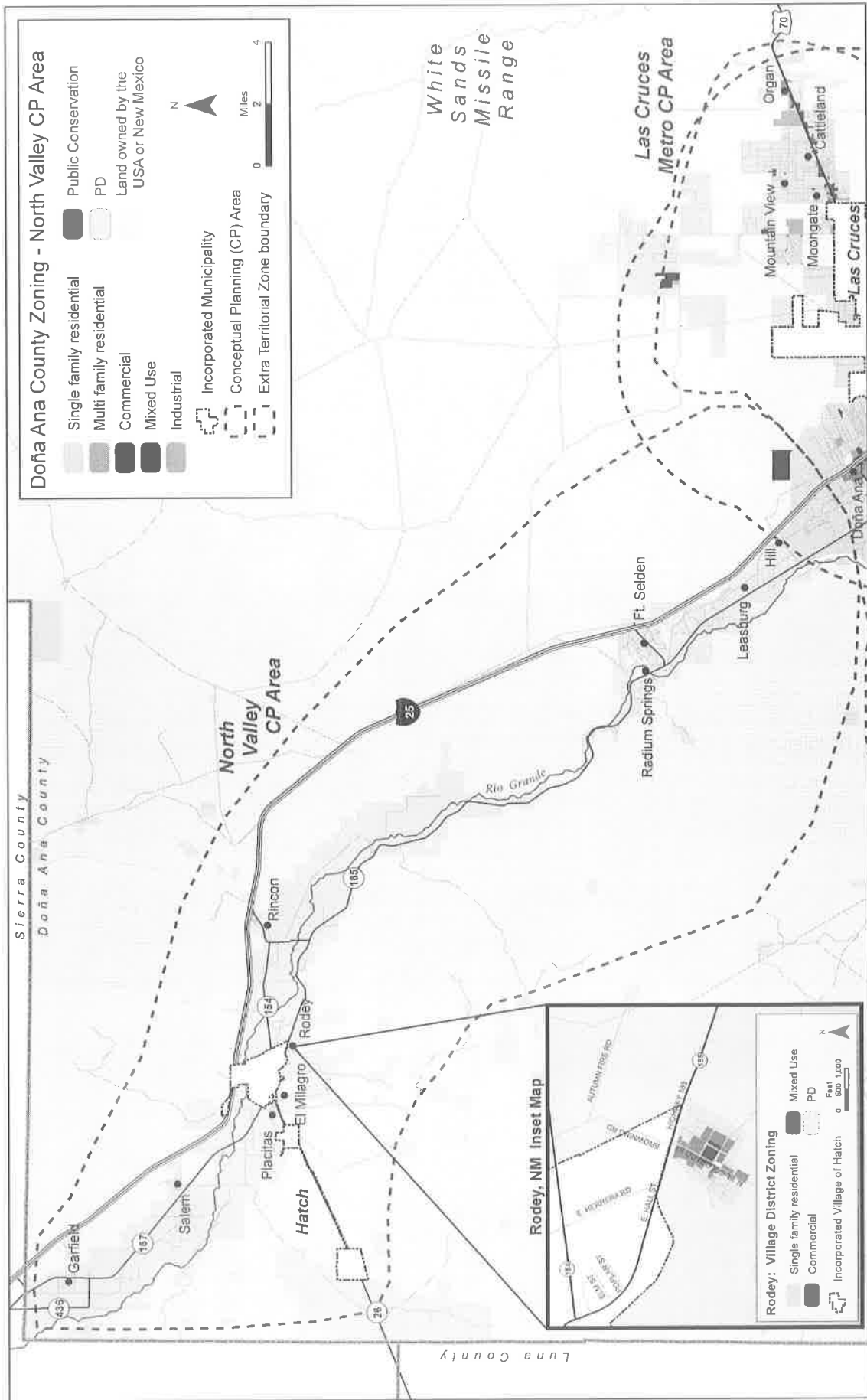
## Appendix A. Stakeholder Interview List

Linda Vasquez – City of Sunland Park  
Pat Banegas – City of Hatch  
Jose Terrones – Anthony Water and Sanitation District  
Rose Garcia – Executive Director, Tierra del Sol  
Gil Mendez - Tierra del Sol  
Erika Prieto – Tierra del Sol  
Olga Diaz – Tierra del Sol  
Nicole Martinez – Mesilla Valley Community of Hope  
Robbie Levey – Mesilla Valley Public Housing Authority  
Conception Medina – Sunland Park Housing Authority  
Steve Parsley – Doña Ana Title  
Steve Newby – Steve Newby Architects  
Bob Hearn – Dona Ana ETZ Commission  
Bob Pofahl – Community Builders International, Picacho Mountain  
Davin Lopez – Mesilla Valley Economic Development Alliance  
Ken Thurston - Ken Thurston Homes  
Kent Thurston – Ken Thurston Homes  
Kiel Hoffman – President, Pioneer State Bank/Board Chair, MVEDA  
Jack Curry – Curry Development



## Appendix B. Zoning Maps





**Doña Ana County Zoning - North Valley CP Area**

- Single family residential
- Multi family residential
- Commercial
- Mixed Use
- Industrial
- Public Conservation
- PD
- Land owned by the USA or New Mexico

Incorporated Municipality  
 Conceptual Planning (CP) Area  
 Extra Territorial Zone boundary

N  
 Miles  
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**Rodey, NM Inset Map**

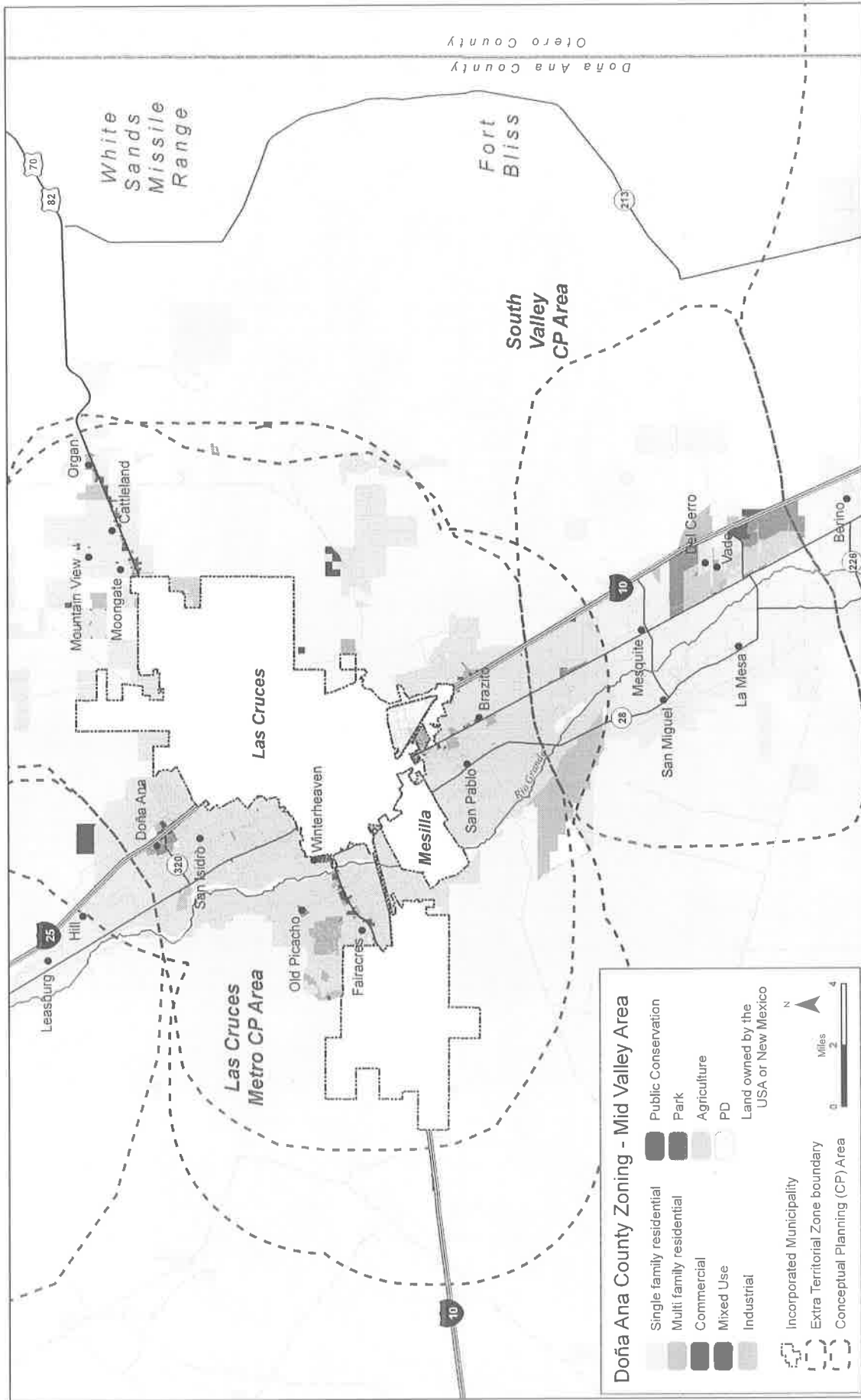
- Single family residential
- Commercial
- Mixed Use
- PD
- Incorporated Village of Hatch

Feet  
 0 500 1,000

N

June 5, 2015

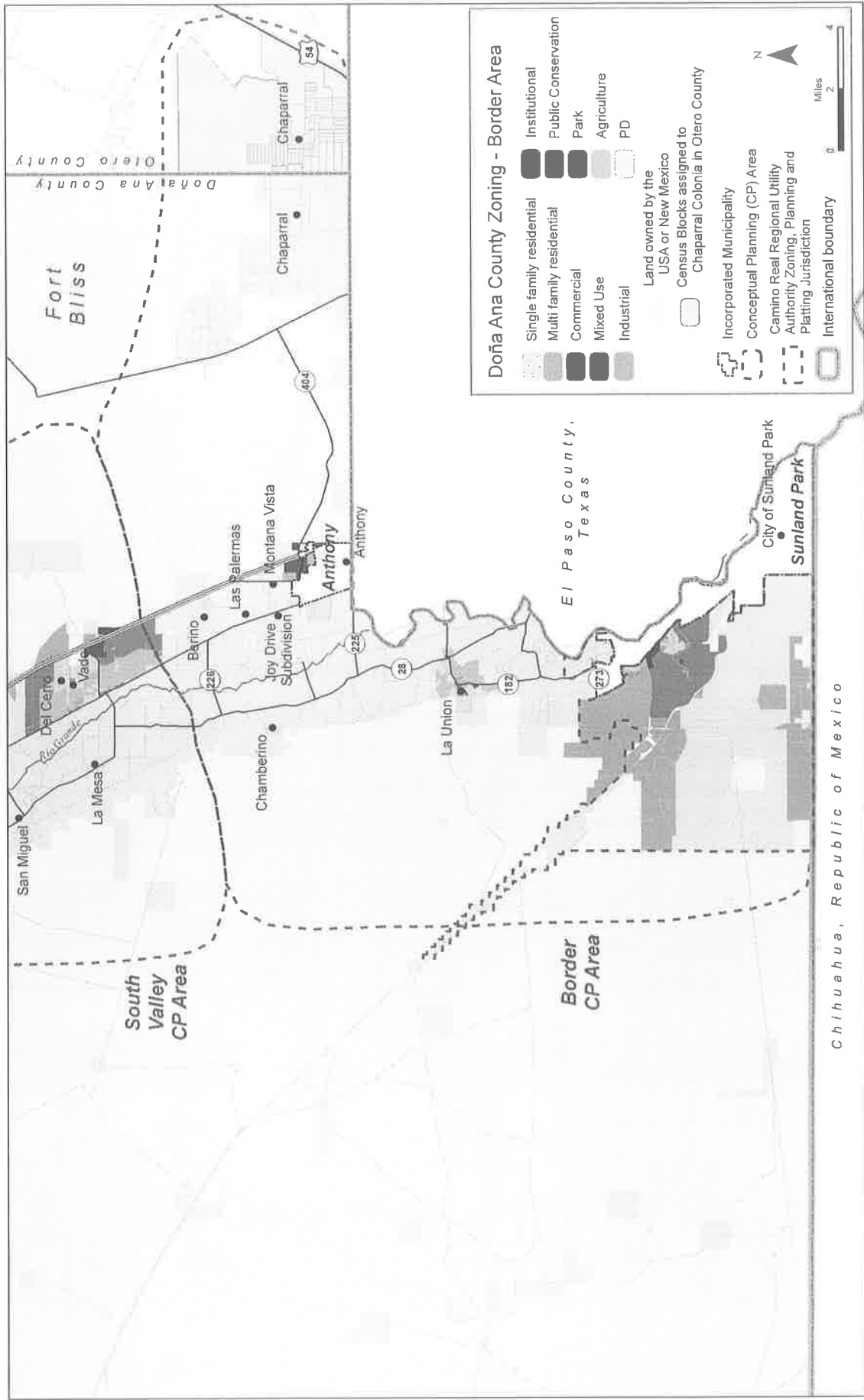
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## Appendix C. Utility Locations and Flood Hazard Areas

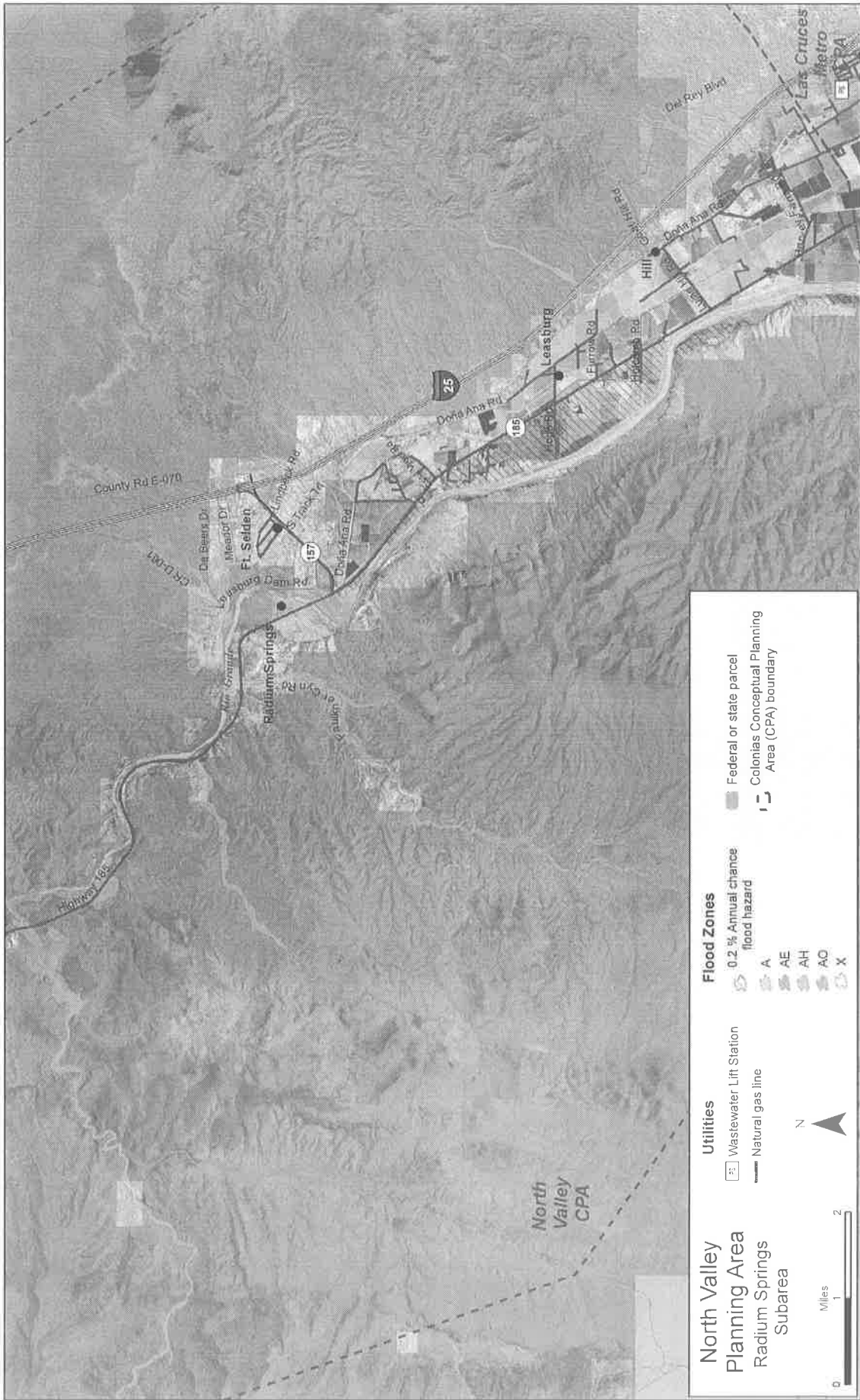
The locations of utilities and flood hazard areas are shown on the following maps.

Flood Insurance Rate Maps (FIRM) Zone Classifications are as follows:

- Zone X** Areas determined to be outside 500-year floodplain determined to be outside the 1% and 0.2% annual chance floodplains.
- Zone A** Areas subject to inundation by the 1-percent-annual-chance flood event generally determined using approximate methodologies. Because detailed hydraulic analyses have not been performed, no Base Flood Elevations (BFEs) or flood depths are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.
- Zone AE** Areas subject to inundation by the 1-percent-annual-chance flood event determined by detailed methods. Base Flood Elevations (BFEs) are shown. Mandatory flood insurance purchase requirements and floodplain management standards apply.
- Zone AH** Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply.
- Zone AO** Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements and floodplain management standards apply.
- Some Zone AO have been designated in areas with high flood velocities such as alluvial fans and washes. Communities are encouraged to adopt more restrictive requirements for these areas.
- Area Not Included (ANI)** An area that is located within a community or county that is not mapped on any published FIRM.

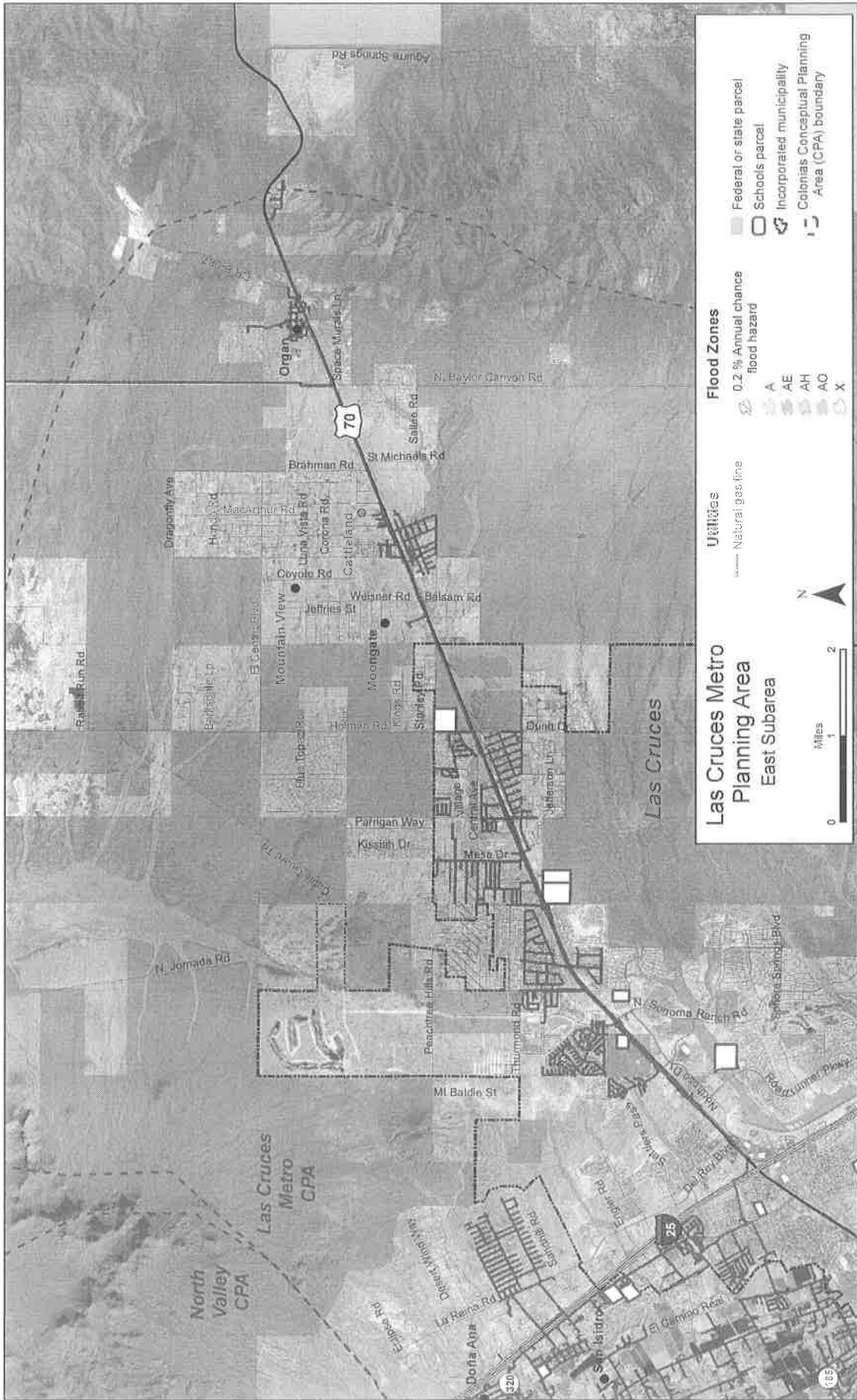






February 6, 2015

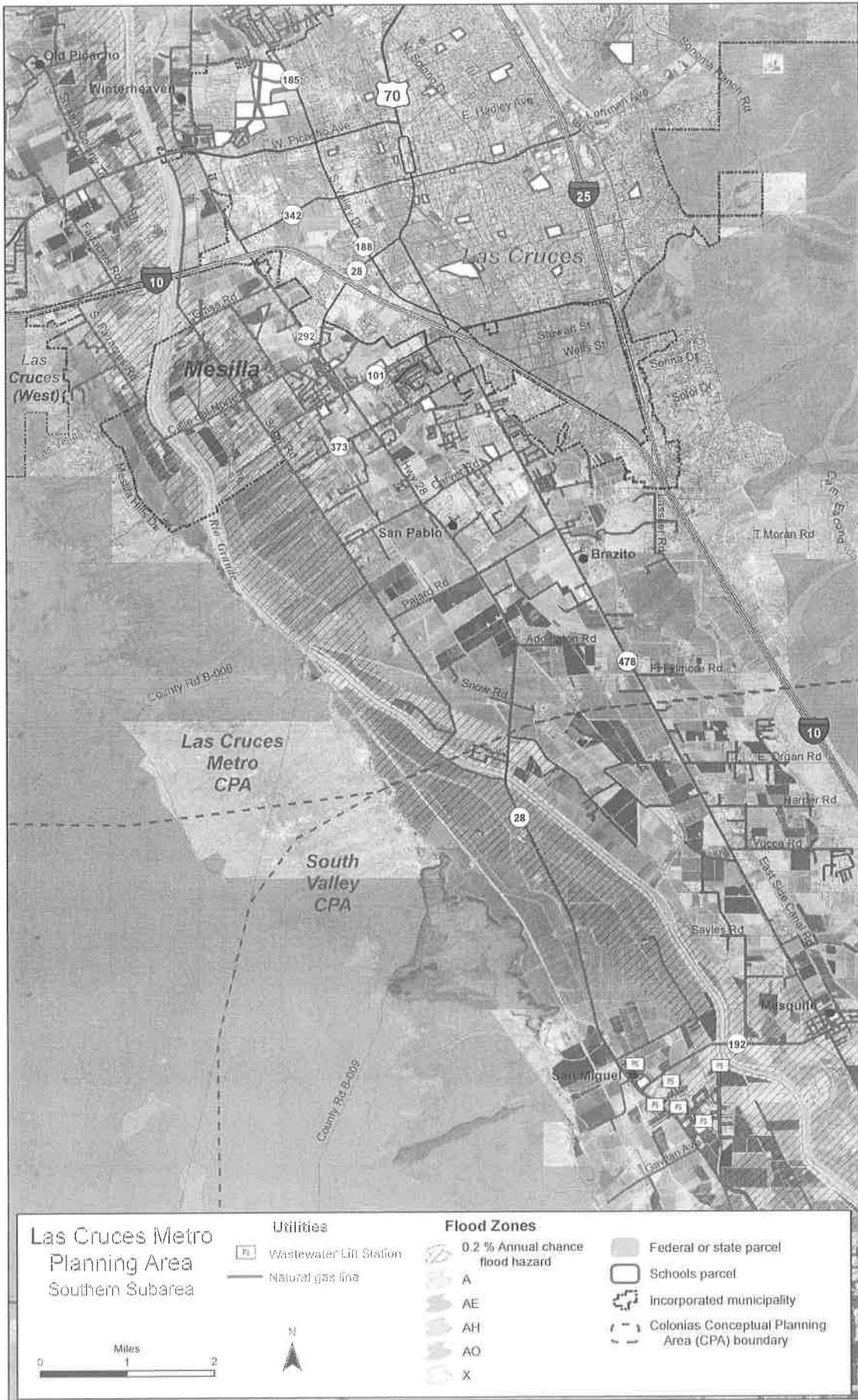
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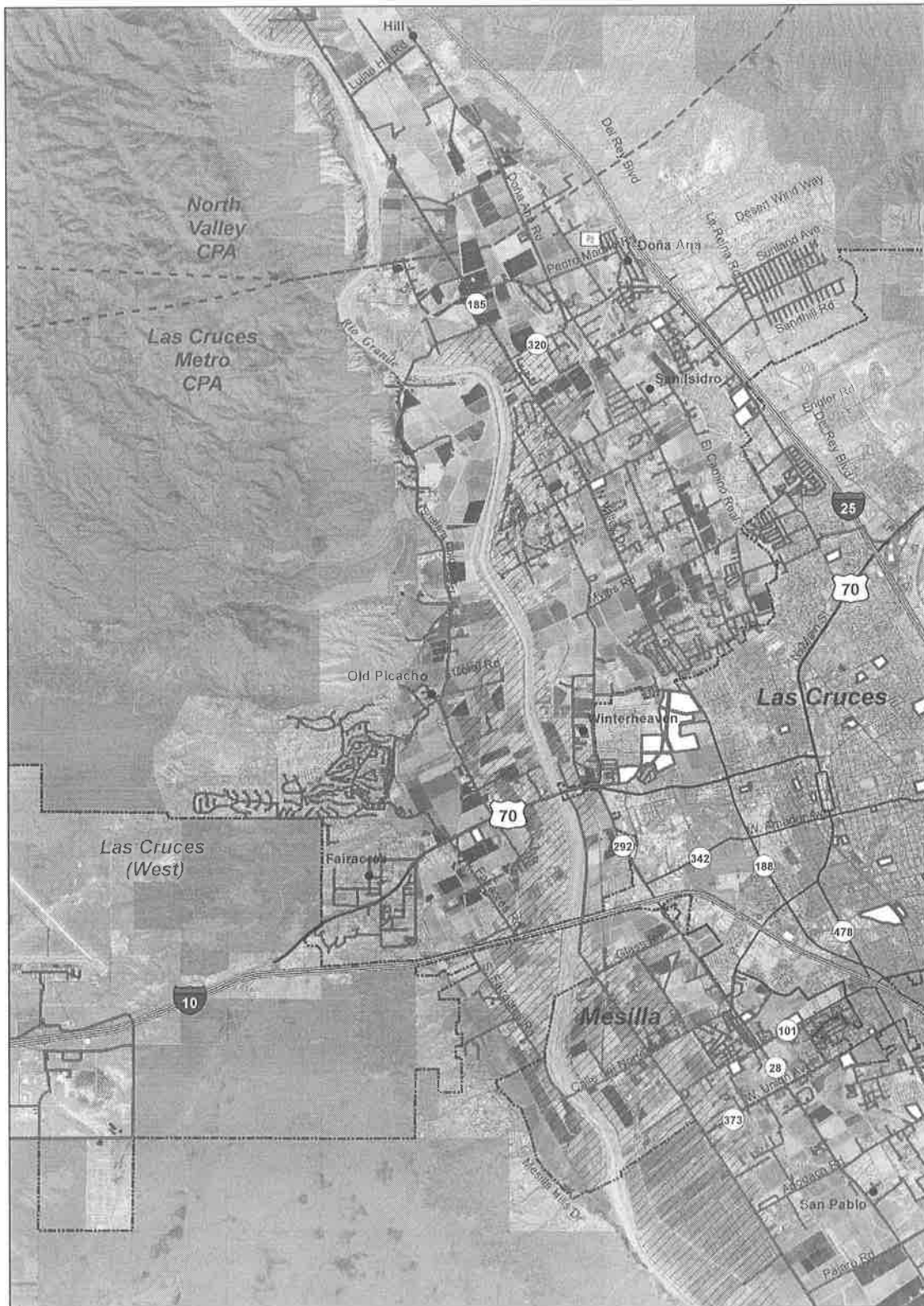


February 6, 2015

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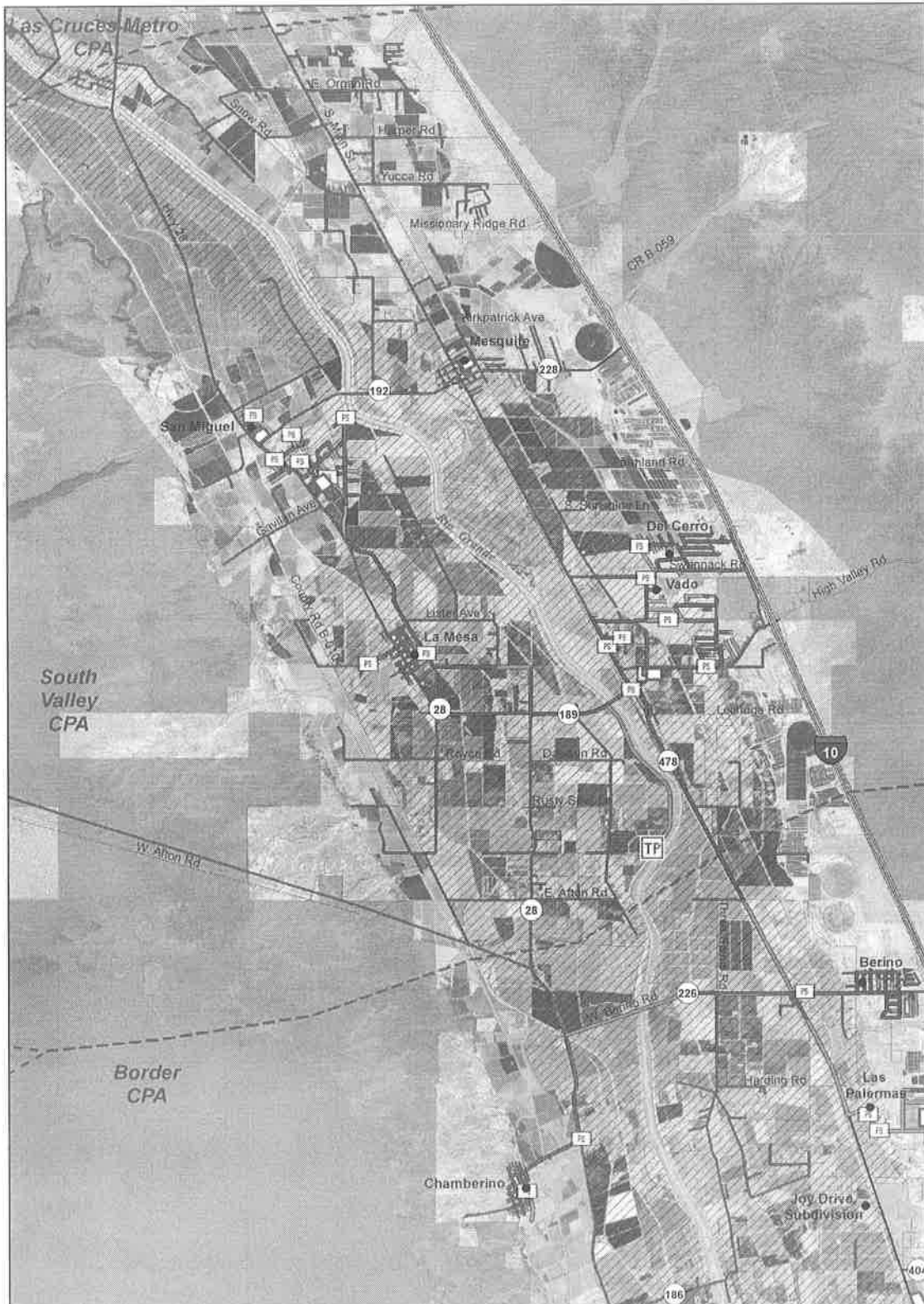


**Las Cruces Metro Planning Area Western Subarea**

<b>Utilities</b>	<b>Flood Zones</b>	<b>Parcel Types</b>
Wastewater Lift Station Natural Gas Line	0.2 % Annual chance flood hazard A AE AH AO X	Federal or state parcel Schools parcel Incorporated municipality Colonia Conceptual Planning Area (CPA) boundary

Miles 0 1 2  
 N  
 February 5, 2015

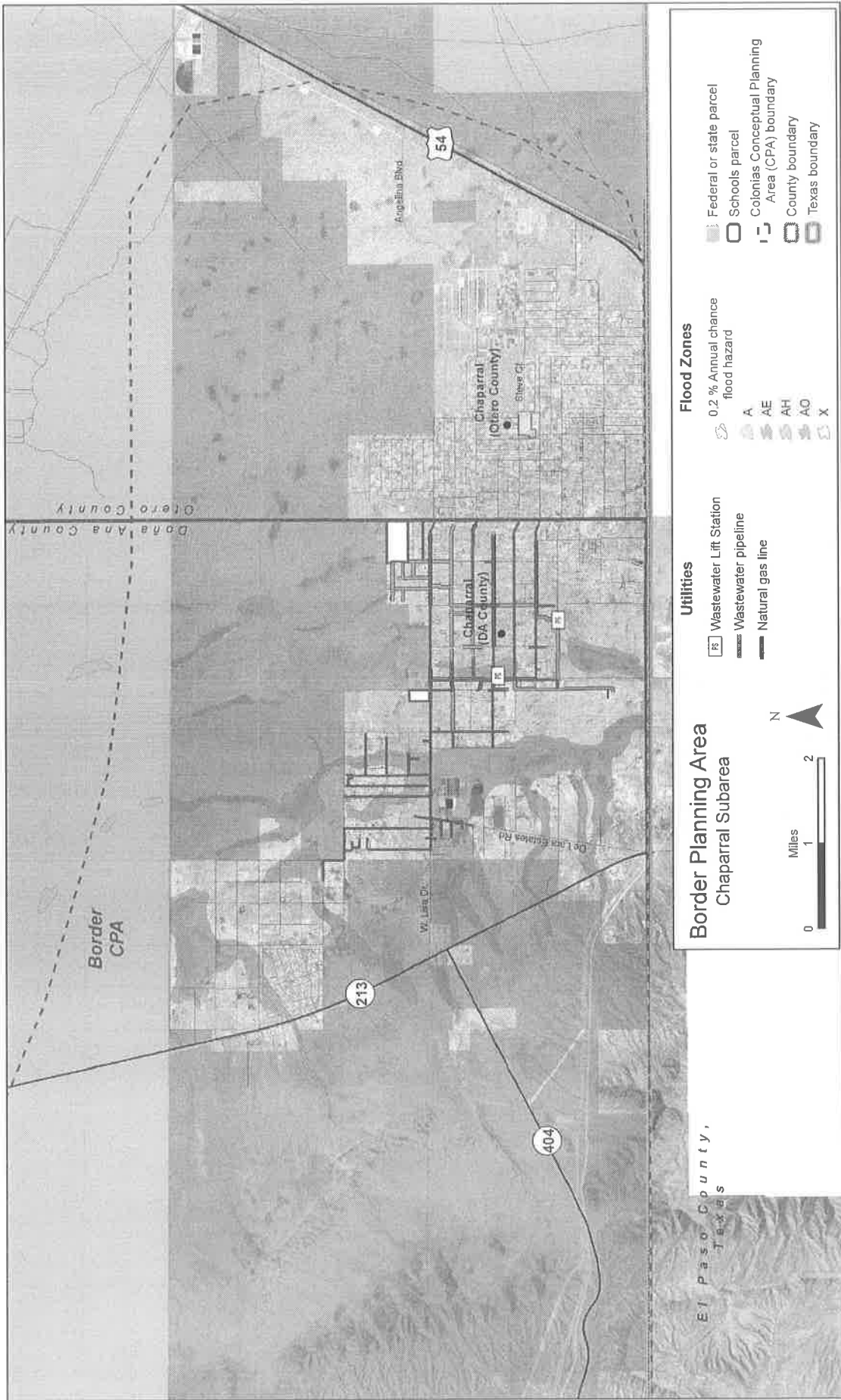
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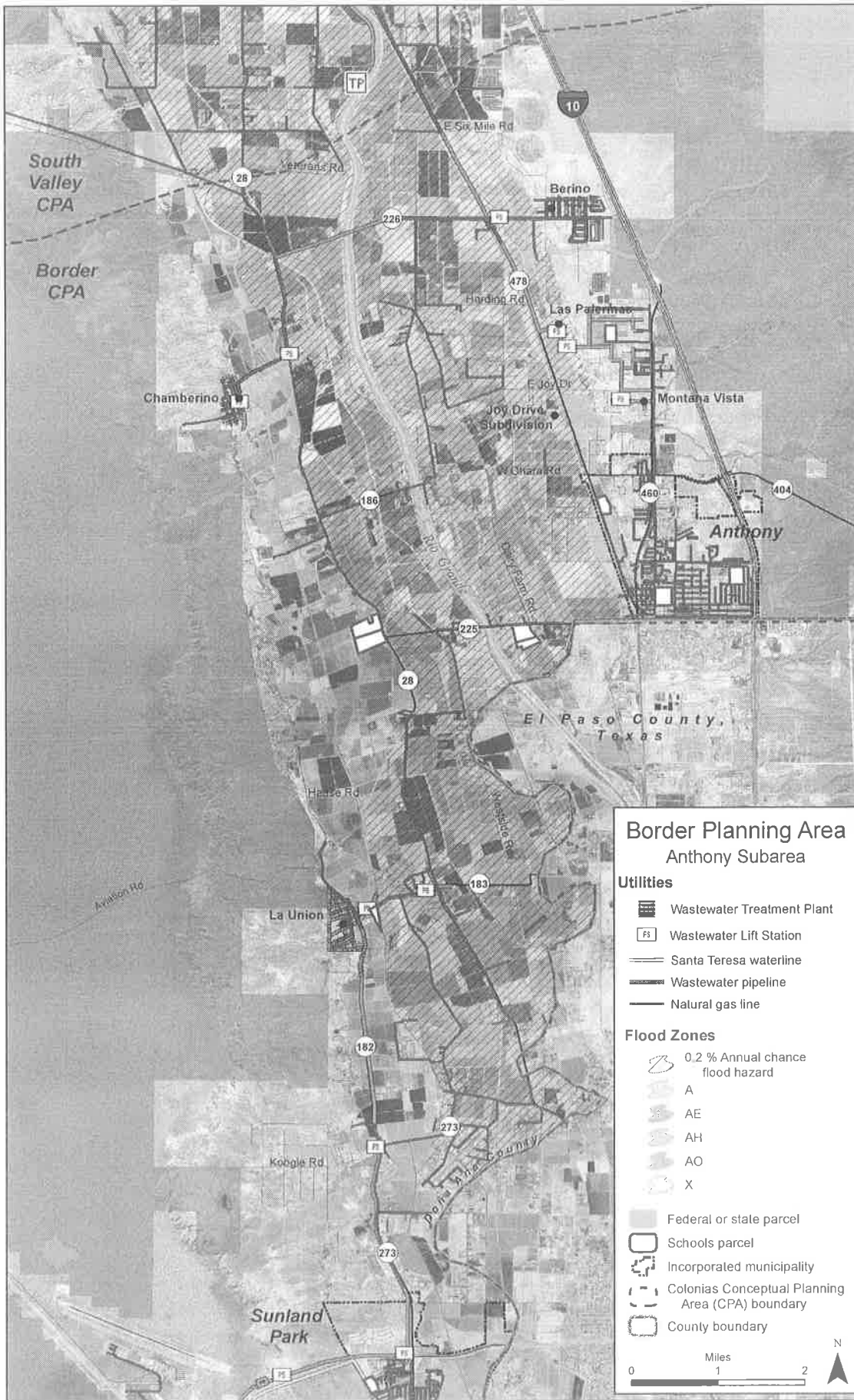
**South Valley Planning Area**

 	<b>Utilities</b> Wastewater Treatment Plant Wastewater Lift Station Wastewater pipeline Natural gas line	<b>Flood Zones</b> 0.2% Annual chance flood hazard A AE AH AO X	Federal or state parcel Schools parcel Colonias Conceptual Planning Area (CPA) boundary
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February 5, 2015



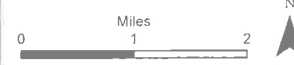
**Border Planning Area  
Anthony Subarea**

**Utilities**

- Wastewater Treatment Plant
- Wastewater Lift Station
- Santa Teresa waterline
- Wastewater pipeline
- Natural gas line

**Flood Zones**

- 0.2 % Annual chance flood hazard
- A
- AE
- AH
- AO
- X
- Federal or state parcel
- Schools parcel
- Incorporated municipality
- Colonias Conceptual Planning Area (CPA) boundary
- County boundary



February 5, 2015

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February 5, 2015

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## Appendix D. Housing Resources

The following lists potential sources of federal, state and local financing and subsidies to support affordable housing in New Mexico. Resources are listed by type of housing and funding agency or source. Primary resources include USDA, HUD, FHA and the New Mexico Mortgage Finance Authority (NMMFA). The information is not all-inclusive, but it provides the County with information about the most commonly used housing resources for non-profit and public agency housing providers, housing developers, and individual homeowners and renters. Many of these programs are competitive, so it will be important for County officials and staff to understand how a package of multiple sources can be combined to accomplish the desired project. In addition, the County will likely partner with a non-profit or other housing developer that will take the lead on the project.

The resources listed below include those generally available to individuals, non-profit and for-profit housing developers and other organizations in rural communities in New Mexico. Specific organizations that serve Dona Ana County are noted where appropriate.

### **Resources for Non-Profit and Organizations and Public Agencies**

Most capacity building resources are focused on nonprofit housing providers, although the NMMFA also works with public partners. In its Action Plan, the MFA commits to building capacity in the state to: provide decent housing; provide a suitable living environment; and expand economic opportunities for the state's low- and moderate-income residents. The MFA's capacity building programs as well as other capacity building resources include the following.

**Community Housing Development Organization (CHDO)** is a special status that a nonprofit or community based organization can obtain. This status can be provided by the Community Housing and Development (CHDO) department to organizations that provide and develop affordable housing. Through this status the nonprofit or community based organization has access to technical assistance, training, and networking opportunities. CHDO's are well suited to address affordable housing needs at the local level. Funding for certain CHDO activities is provided through the HOME program.

Other capacity-building resources for nonprofits that are eligible to receive assistance include:

**Local Initiatives Support Coalition and Rural Local Initiatives Support Coalition (LISC)** has helped nonprofit community development corporations acquire and preserve housing developments, build partnerships with housing authorities and other organizations, and advocate for government policies that can reduce the loss of affordable homes and apartments. LISC's Housing Authority Resource Center brokers relationships between local housing authorities, LISC local offices and other community developers to provide access to best practices, information and training.

**The Institute for Community Economics (ICE)** is a federally certified Institution that makes loans to create housing that is permanently affordable. ICE also provides technical assistance and training to community-based groups who seek to set up community land trusts. ICE's principal lending goes to community land trusts, limited equity cooperatives, and community-based nonprofit organizations creating housing.



**The Housing Counseling Assistance Program** enables anyone who wants to (or already does) rent or own housing-whether through a HUD program, a Veterans Affairs program, other Federal programs, a State or local program, or the regular private market-to get the counseling they need to make their rent or mortgage payments and to be a responsible tenant or owner in other ways. The counseling is provided by HUD-approved housing counseling agencies. HUD provides support to a nationwide network of Housing Counseling Agencies (HCA) and counselors. HCA's are trained and approved to provide tools to current and prospective homeowners and renters so that they can make responsible choices to address their housing needs in light of their financial situations. Previous and current funding: FY2014 \$45 million, FY2015 \$47 million,

**USDA Rural Development Housing Application Packaging Grants** provide government funds to tax-exempt public agencies and private non-profit organizations to package applications for submission to Housing and Community Facilities Programs.

**USDA Self-Help Technical Assistance Grants** provide financial assistance to qualified nonprofit organizations and public bodies that will aid needy very low and low-income individuals and their families to build homes in rural areas by the self help method. Any State, political subdivision, private or public nonprofit corporation is eligible to apply.

#### **Resources for Homeless and Special Needs**

**HUD Emergency Solutions Grant (ESG) Program** is a federal grant program designed to help improve the quality of existing emergency shelters for the homeless, to make available additional shelters, to meet the costs of operating shelters, to provide essential social services to homeless individuals, and to help prevent homelessness. The ESG program is designed to be the first step in a continuum of assistance to prevent homelessness and to enable homeless individuals and families to move toward independent living. The three programs are the Supportive Housing Program (SHP), Shelter Plus Care (SPC) program, and Section 8 Single Room Occupancy (SRO) program. These are all competitive grants that require the development of a Continuum of Care system in the community where assistance is being sought.

**HUD Supportive Housing Program (SHP)** is designed to promote, as part of a local Continuum of Care strategy, the development of supportive housing and supportive services to assist homeless persons in the transition from homelessness and to enable them to live as independently as possible. The program is provided to help homeless persons meet three overall goals: to help homeless people achieve residential stability, increase their skills and/or incomes, and obtain greater self-determination (i.e. more influence over decisions that affect their lives).

**The HUD Shelter Plus Care Program** is designed to provide housing and supportive services on a long-term basis for homeless persons with disabilities, (primarily those with serious mental illness, chronic problems with alcohol and/or drugs, and acquired immunodeficiency syndrome (AIDS) or related diseases) and their families who are living in places not intended for human habitation (e.g., streets) or in emergency shelters. The program allows for a variety of housing choices, and a range of supportive services funded by other sources, in response to the needs of the hard-to-reach homeless population with disabilities. Funds must be matched with in-kind funding to be used for supportive services. Assistance is provided through four component programs: Tenant-based, Sponsor-based, Project-based, and Single Room Occupancy Rental Assistance.



**HUD Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program** – Under the SRO program, HUD enters into Annual Contributions Contracts with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties that, when rehabilitation is completed, will contain multiple single room dwelling units. These PHAs make Section 8 rental assistance payments to participating owners (i.e., landlords) on behalf of homeless individuals who rent the rehabilitated dwellings. Assistance provided under the SRO program is designed to bring more standard SRO units into the local housing supply and to use those units to assist homeless persons. The SRO units might be in a rundown hotel, a Y, an old school, or even in a large abandoned home.

**The MFA Emergency Homeless Assistance Program (EHA: ESG and State funding)** provides assistance to units of local government or nonprofit organizations to improve the quality of existing emergency shelters and to help meet the costs of operating emergency shelters. Organizations may apply for EHA: ESG & State funding through a competitive RFP process. Funding may be used for acquisition, renovation, repair, rehabilitation, conversion, essential or supportive services, operating expenses, prevention activities associated with providing shelter or services to homeless individuals. Intended to supplement the ESG Program; applicants are not eligible to apply for both.

**HUD Housing Opportunities for Persons with AIDS (HOPWA)** provides housing assistance and related supportive services to low-income people and their families living with HIV/AIDS. The objective of the funding is to maintain housing stability, avoid homelessness, and improve access to HIV/AIDS treatment and care. States, cities, local governments and nonprofit organizations may apply for HOPWA Competitive funding. Previous Funding: FY2013 \$315, FY2014 \$330, FY2015 \$332

**HUD Section 811** provides funding to nonprofit organizations to develop rental housing with the availability of supportive services for very low-income adults with disabilities. The newly reformed Section 811 program is authorized to operate in two ways: (1) the traditional way, by providing interest-free capital advances and operating subsidies to nonprofit developers of affordable housing for persons with disabilities; and (2) providing project rental assistance to state housing agencies. The assistance to the state housing agencies can be applied to new or existing multifamily housing complexes funded through different sources, such as Federal Low-Income Housing Tax Credits, Federal HOME funds, and other state, Federal, and local programs. In FY 2012, no funding was appropriated for traditional 811 capital advances. Previous funding: FY2013 \$156 Million, FY2014 \$126 Million, FY2015 \$160 Millions

**HUD Section 202** provides capital advances to private nonprofit organizations (public entities are not eligible) to finance the development of supportive housing for the elderly. The capital advance does not have to be repaid as long as the project serves very low-income elderly persons for 40 years. Project rental assistance funds are provided to cover the difference between the HUD-approved operating cost for the project and the tenants' contribution towards rent. Project rental assistance contracts are approved initially for 3 years and are renewable based on the availability of funds. Applicants must submit a resolution that they will provide a minimum capital investment equal to 0.5 percent of the HUD-approved capital advance, up to a maximum of \$25,000 for national sponsors or \$10,000 for other sponsors. Previous Funding: FY 2013 \$355, FY 2014 \$384 million, FY 2015 \$440 million





**HUD Section 231** falls under the multifamily programs that HUD provides. Other Multifamily Programs include:

- *Manufactured Housing – Section 207* a program that assists with construction or rehabilitation
- *Cooperative Housing – Section 213* a program that facilitates the construction, rehabilitation and purchase of cooperative housing projects.
- *Rental Housing for Urban and Concentrated Development areas – Section 220* a program that facilitates the development of multifamily housing projects.
- *Rental and Cooperative Housing 221(d)(4)* a program that facilitates the construction and rehabilitation of cooperative housing developments, targeting moderate-income and displaced families.
- *Existing Multifamily Rental Housing – Sections 207/223(F)* a program that facilitates the purchase or refinancing of existing multifamily rental developments.
- *Risk-Sharing Program – Qualified Participating Entities (QPE) – Section 542(b)* a program that of manufactured homes, insures mortgage loans to facilitate the construction and substantial rehabilitation of multifamily rental housing for elderly persons (62 or older) and/or persons with disabilities. Insured mortgages may be used to finance the construction and substantial rehabilitation of detached, semidetached, walk-up, or elevator type rental housing designed specifically for elderly or handicapped individuals consisting of eight or more dwelling units. For nonprofit sponsors, the maximum loan amount is 100 percent of the estimated replacement cost of the building (or 100 percent of project value for rehabilitation projects). For all other sponsors, the maximum loan is 90 percent of the replacement cost (or 90 percent of project value for rehabilitation projects).
- *Housing Finance Agency Risk-Sharing – Section 524(c)* a program that provides credit enhancement for mortgages of multifamily projects with loans underwritten and serviced by HFAs.

**Community Services Block Grants** is a formula Service and Block Grant (CSBG) from the U.S. Department of Health and Human Services (HHS). The CSBG grants provide emergency funds to help with mortgage and utility payments and prevent homelessness. The Community Action Agency of Southern New Mexico (CAASN) administers block grants servicing in Doña Ana County.

**USDA Technical and Supervisory Assistance Grants** assist low-income rural families in obtaining adequate housing to meet their family's needs and/or to provide the necessary guidance to promote their continued occupancy of already adequate housing. These objectives will be accomplished through the establishment or support of housing delivery and counseling projects run by eligible applicants.

**USDA Farm Labor Housing Loans and Grants** provide capital financing for the development of housing for domestic farm laborers.

### **Resources for Rental Housing**

**HUD Section 8 Housing Choice Vouchers** The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments. The participant is free to choose any housing that meets the requirements of the program and is not limited to units located in subsidized housing projects.



Housing choice vouchers are administered locally by public housing agencies (PHAs),

**Project-Based Section 8 Vouchers** – Project-based vouchers are a component of a public housing agencies (PHAs) housing choice voucher program. A PHA can attach up to 20 percent of its voucher assistance to specific housing units if the owner agrees to either rehabilitate or construct the units, or the owner agrees to set-aside a portion of the units in an existing development.

**Mortgage Insurance for Single Room Occupancy Projects (SRO): Section 221(d)(3) and 221(d)(4)** insures mortgage loans for multifamily properties consisting of single-room occupancy (SRO) apartments. There are no Federal rental subsidies involved with this SRO program. It is aimed at those tenants who have a source of income but are priced out of the rental apartment market.

SRO projects generally require assistance from local governing bodies or charitable organizations in order to reduce the rents to affordable levels. Although SRO housing is intended for very low-income persons, the program does not impose income limits for admission.

**Local Initiatives Support Coalition (LISC) Affordable Housing Preservation Initiative** preserves affordable rental apartments that are in jeopardy because of expiring federal subsidies, and promotes preservation-oriented public policies. LISC helps nonprofit community development corporations acquire and preserve housing developments, build partnerships with housing authorities and other organizations, and advocate for government policies that can reduce the loss of affordable homes and apartments. Through its Housing Authority Resource Center, LISC assists local housing authorities identify financing structures that will leverage public resources with private investment as well as direct project financing such as predevelopment loans, bridge lending, lines of credit, working capital, and tax credit equity.

**USDA Rural Development Multi-Family Housing Programs** offer Rural Rental Housing Loans to provide affordable multi-family rental housing for very low-, low-, and moderate-income families; the elderly; and persons with disabilities. This is primarily a direct mortgage program, but funds may also be used to buy and improve land and to provide necessary facilities such as water and waste disposal systems. In addition, deep subsidy rental assistance is available to eligible families.

**USDA Rural Rental Housing Program** is adaptable for participation by a wide variety of owners. Loans can be made to individuals, trusts, associations, partnerships, limited partnerships, State or local public agencies, consumer cooperatives, and profit or nonprofit corporations.

**USDA Guaranteed Rental Housing Programs** guarantee loans under the Rural Rental Housing Guaranteed loan program for development of multi-family housing facilities in rural areas of the United States. Loan guarantees are provided for the construction, acquisition, or rehabilitation of rural multi-family housing.

**USDA Rental Assistance (RA) Program** provides an additional source of support for households with incomes too low to pay the HCFP subsidized (basic) rent from their own resources.

**USDA Multi-Family Housing Preservation and Revitalization (MPR) Loans and Grants** restructure Rural Rental Housing loans and Off-Farm Labor Housing loans and provide grants to revitalize Multi-Family





Housing projects in order to extend the affordable use of these projects without displacing tenants due to increased rents.

### **Resources for Homebuyers**

Several programs are available through the New Mexico Mortgage Finance Authority (NMMFA) to help low to moderate income homebuyers. The following NMMFA programs could benefit Bernalillo families:

**Helping Hand** – Up to \$8,000 down payment and closing cost assistance to first-time homebuyers with at least one family member that has a disability. This is a soft second loan that does not need to be paid back until the property is sold, refinanced, or transferred, and it is assumable if the buyer meets program eligibility requirements. The loan may be forgiven after 10 years. This program is targeted toward households earning 80% or less than AMI, adjusted for family size.

**Mortgage Booster** – A fixed-rate second mortgage that is used in conjunction with either a MortgageSaver or MortgageSaver Zero first mortgage. Mortgage Booster features a 30-year term and a maximum loan amount of \$8,000. Mortgage Booster is priced .5 percent higher than MortgageSaver's interest rate.

**MortgageSaver** – 30-year fixed-rate loans for low to moderate income buyers; available at below-market rates, with a one percent discount and one percent origination fee.

**MortgageSaver Zero** – Thirty-year fixed-rate mortgage loans priced with 0 percent discount and 0 percent origination fee for low- to moderate-income first-time homebuyers.

**MortgageSaver Plus** – 30-year fixed rate mortgage that includes a 3.5% grant to offset downpayment and closing costs for low to moderate income first time buyers. The interest rate is slightly higher than MortgageSaver or MortgageSaver Zero, but there is no origination fee or discount fee.

**MortgageSaver Xtra** features a deeply discounted interest rate for very low-income borrowers who are at or below 50 percent of the area median income.

**PaymentSaver Program** – A loan that provides the lesser of eight percent of the sale price of the home or \$8,000 for a down payment, closing costs, principal reduction and/or interest rate buy-down for lower income buyers who have not owned and occupied a primary residence for the past three years. This is a zero percent second mortgage loan due on sale, transfer or refinance, which may be forgiven after 10 years.

**PaymentSaver SmartChoice Program** – a soft second mortgage that borrower with a Section 8 Housing Boucher can use, with a loan amount of up to \$15,000. This loan has a 0 percent interest rate, and is paid back when the property is sold, refinanced or transferred.

**Mortgage Booster Program** – this program provides down payment and closing cost assistance, in the form of a second mortgage, to borrowers who qualify for the MortgageSaver loan. The maximum loan amount is \$8,000. These are repaid over 30 years.



**HERO program** – a special MFA first mortgage loan that includes a 3.5 percent down payment assistance grant to low- to moderate-income households in which at least one member is a teacher, police officer, healthcare worker, firefighter or an active member of the Armed Forces.

**Individual Development Account (IDA)** is a program that partners local non-profit organizations and financial institutions to encourage participants to save toward the purchase of a first home through a matching grant incentive. The local non-profit, the IDA program sponsor, recruits participants for the IDA program, provides financial education classes, and may also provide one-on-one counseling and training to participants. After signing up for an IDA program, each participant opens up an account with the partnering bank or credit union. Each deposit made by the participant is matched from a source of grant funding. The participant is allowed to withdraw funds when they have achieved their savings goal. Prosperity Works partners with local organizations in New Mexico to teach them how to develop and offer effective IDA programs. Southwest Regional Housing and Community Development Corporation and CAASNM are partners in the New Mexico Assets Consortium. HELP-New Mexico in Las Cruces, which provides Emergency Assistance for low income adults and migrant and seasonal farmworkers, is also a partner.

HUD's Federal Housing Administration (**FHA Section 203(b) mortgage insurance**) insures loans made to creditworthy borrowers who may not qualify for conventional mortgages on affordable terms. The downpayment requirements can be as little as 3.5% and some fees are limited. Mortgage insurance is available for one- to four-unit residences where the property is the owner's primary residence. The program has mortgage maximums, which vary depending on number of units.

HUD's **Energy Efficient Mortgage (EEM)** allows homeowners to finance energy efficiency features in new or existing housing as part of their FHA insured home purchase or refinancing mortgage. Home must be the owner's principal residence. The borrower doesn't have to qualify for the higher cost and doesn't make a downpayment on it. This can also be used with the FHA Section 203(k) rehabilitation program or HUD's Title I Home Improvement Loan Program.

**HUD's Graduated Payment Mortgage Insurance (Section 245(a))** enables a household with a limited income that is expected to increase to buy a home sooner by making mortgage payments that start small and increase gradually over time. All FHA-approved lenders may make GPMs available to persons who intend to use the mortgage property as their primary residence and who expect to see their income rise appreciably in the future.

The **Federal Home Loan Bank Mortgage Partnership Finance® Program** combines the retail expertise of community lenders with the wholesale funding advantages of the FHLBanks, resulting in an efficient method of financing mortgage loans. Mortgage lenders can continue to manage all aspects of their customer relationships and depending on the MPF product chosen, lenders may be paid credit enhancement fees for managing the credit risk of the loans they originate and sell.

The **USDA Rural Development** office in Las Cruces services Doña Ana County, providing assistance to individuals, communities and others related to USDA's programs for rural areas. These programs include home loans and grants. USDA funding extends to single family homes, apartments for low-income people and the elderly, farm laborer housing, and a wide range of community facilities. Local lenders provide USDA loans.



The USDA provides direct loans of up to \$160,900 for low (50% - 80% AMI) and very low (below 50% AMI) income households, with a maximum income of \$45,850 for a family of four. Payment subsidy is available to applicants to enhance repayment ability. USDA Rural Development guaranteed housing loans are geared to families with incomes of up to 115% of AMI. In Dona Ana County the moderate income limit for a guaranteed loan is \$75,650 for a household of up to four persons and \$99,850 for households of five or more. For both programs, families must be without adequate housing, but be able to afford the mortgage payments, including taxes and insurance. In addition, applicants must have reasonable credit histories.

**USDA Rural Development Single Family Housing Loans and Grants** provide homeownership opportunities to low- and moderate-income rural Americans through several loan, grant, and loan guarantee programs. The programs also make funding available to individuals to finance vital improvements necessary to make their homes decent, safe, and sanitary.

**USDA Section 502 Rural Housing Direct Loans** are primarily used to help low-income individuals or households purchase homes in rural areas. Funds can be used to acquire, build (including funds to purchase and prepare sites and to provide water and sewage facilities), repair, renovate or relocate a home.

**USDA Rural Housing Guaranteed Loans** are for applicants who have an income of up to 115% of the median income for the area. Families must be without adequate housing, but be able to afford the mortgage payments, including taxes and insurance. In addition, applicants must have reasonable credit histories.

**USDA Section 502 Mutual Self-Help Housing Loan Program** is used primarily to help very low- and low-income households construct their own homes.

**USDA Guaranteed Loan Refinance PILOT Program** helps rural borrowers refinance their mortgages to reduce their monthly payments. The Single Family Housing Guaranteed Rural Refinance Pilot Program operates in 19 states for homeowners who have loans that were made or guaranteed by USDA Rural Development.

### **Resources for Housing Development**

HUD/FHA and the New Mexico Mortgage Finance Authority provide several types of financing and mortgage insurance programs for single family and multi-family development. They include:

**The Low Income Housing Tax Credit Program (LIHTC)** provides federal income tax credits to individuals or organizations that develop affordable housing through either new construction or acquisition and rehabilitation. The tax credits provide a dollar for dollar reduction in the developer's tax liability for a ten year period. Tax credits can also be used by nonprofit or public developers to attract investment to an affordable housing project by syndicating, or selling, the tax credit to investors. In order to receive tax credits a developer must set-aside and rent restrict a number of units for occupancy by households below 60% of area median income. These units must remain affordable for a minimum of 30 years. This program is a resource provided by the Internal Revenue Service. In addition to tax credits, the financing "gap" for certain LIHTC projects may be filled with a below market rate HOME loan. Tax credits and



rental HOME loans are awarded annually through a competitive application process according to the state's Qualified Allocation Plan.

**The New Mexico State Affordable Housing Tax Credit (Rental)** provides charitable state tax credit for up to 50% of the value of donations (cash, land, buildings or services) for affordable housing projects approved by the MFA, or for donations made directly to the NM Affordable Housing Charitable Trust.

**FHA Mortgage Insurance for Rental Housing: Section 207.** Section 207 mortgage insurance is however, the primary insurance vehicle for the Section 223(f) refinancing program described below. A project is eligible for mortgage insurance if the sponsor can demonstrate that there is a definite market demand, that the project is economically self-sufficient, and that financing is secure. The program has statutory per unit mortgage limits, which vary according to the size of the unit, the type of structure, and the location of the project. There are also loan-to-value and debt service limitations. The mortgage is limited to 90 percent of HUD appraised value. Eligible mortgagors include investors, builders, developers, and others who meet HUD requirements for mortgagors. All families are eligible to occupy dwellings in a structure whose mortgage is insured under this program, subject to normal tenant selections.

**FHA Mortgage Insurance for Manufactured Home Parks: Section 207.** The Section 207 Program insures mortgage loans to facilitate the construction or substantial rehabilitation of multifamily manufactured home parks. Section 207 promotes the creation of manufactured home communities by increasing the availability of affordable financing and mortgages. The program insures HUD-approved lenders against loss on mortgage defaults. Insured mortgages may be used to finance the construction or rehabilitation of manufactured home parks. Home parks must consist of 5 or more spaces. Contractors for new construction and substantial rehabilitation projects must comply with prevailing wage requirements under the Davis-Bacon Act. Eligible mortgagors include investors, builders, developers and others who meet HUD requirements for mortgagors. Eligible Customers include families, individuals, or elderly persons owning manufactured homes or desiring to lease spaces in a manufactured park.

**FHA Section 207/223(f)** insures mortgage loans to facilitate the purchase or refinancing of existing multifamily rental housing. These projects may have been financed originally with conventional or FHA insured mortgages. Properties requiring substantial rehabilitation are not eligible for mortgage insurance under this program. The program allows for long-term mortgages (up to 35 years) that can be financed with Government National Mortgage Association (GNMA) Mortgage-Backed Securities. This eligibility for purchase in the secondary mortgage market improves the availability of loan funds and permits more favorable interest rates. The property must contain at least 5 residential units with complete kitchens and baths and have been completed or substantially rehabilitated for at least 3 years prior to the date of the application for mortgage insurance. The program allows for non-critical repairs that must be completed within 12 months of loan closing. The remaining economic life of the project must be long enough to permit a ten-year mortgage. The mortgage term cannot exceed 35 years or 75 percent of the estimated life of the physical improvements, whichever is less. Davis Bacon prevailing wage requirements do not apply to this program.



**The FHA Section 221(d)(3) and 221(d)(4) program** insures mortgage loans for multifamily properties consisting of single-room occupancy (SRO) apartments. There are no Federal rental subsidies involved with this SRO program. It is aimed at those tenants who have a source of income but are priced out of the rental apartment market. SRO projects generally require assistance from local governing bodies or charitable organizations in order to reduce the rents to affordable levels. Although SRO housing is intended for very low-income persons, the program does not impose income limits for admission.

**The BUILD IT! Loan Guaranty Program** was created to encourage other lenders to provide interim financing for “high risk” or unconventional projects when they might not otherwise do so – for “high risk” or unconventional projects, unfamiliar types of borrowers or unfamiliar markets. The program offers MFA guaranties of up to 50% of the risk of loss in the underlying loan. BUILD IT! Loan guaranties can be used for owner-occupied or rental developments or special needs facilities. Sites must be responsive to demonstrated community needs, and zoning must be pending or completed. Commitments for matching contributions from other public sector entities, equal to 10% of the total development costs, must be in place. Finally, at least 40% of the units in the development must be affordable to households earning no more than eighty percent of adjusted area median income.

**The NM Housing Trust Fund** provides flexible funding for housing initiatives that will provide affordable housing primarily for persons or households of low or moderate income. Non-profit organizations, for-profit organizations, governmental housing agencies, regional housing authorities, governmental entities, governmental instrumentalities, tribal governments, tribal housing agencies and other entities as outlined in the Notice of Funding Availability (NOFA). Costs of infrastructure, construction, acquisition, and rehabilitation necessary to support affordable single family or rental housing as outlined in the NOFA. MFA mortgage may be in first or junior lien position on the property. Rental projects must serve households earning 60% or less of AMI.

**The MFA Primero Loan Program** is a flexible, low cost loan program created to finance the development of affordable rental or special needs residential facilities in New Mexico that would be considered "high risk" by traditional lenders. Its goal is to leverage other public and private funds, and to expand the housing development capacity of New Mexico's nonprofit, tribal and public agency housing providers. The program can be used to finance all types of projects that cannot be accommodated by existing sources. Funding may be approved for specific housing developments, or for programs to be operated by agencies to meet local housing needs. Rental, owner occupied and special needs projects of any size maybe financed under this program, during any stage of the development process. New construction, conversion, and acquisition/rehabilitation projects may be financed.

**The HOME/Single Family Development Program** provides partial or “gap” financing to nonprofit and for-profit developers, public and tribal entities, and CHDOs for the construction, acquisition and rehabilitation of single family homes throughout New Mexico. Units financed with HOME funds must be affordable to households earning no more than 80% of the area median income adjusted for family size. HOME/SFD provides junior mortgages with below-market interest rates, and other advantageous loan terms tailored to the needs of the projects. HOME funds may be used in combination with other down payment and closing cost assistance programs. However, all HOME subsidies combined cannot exceed \$30,000 per unit. Homes must meet the Model Energy code, accessibility requirements under the Fair Housing Act, and local building codes.



**The HOME/Rental Loan Program** provides gap financing for a variety of affordable and special needs housing projects throughout the state of New Mexico. As gap financing, HOME funds are typically the last dollars committed to a project and are used in combination with other housing resources such as MFA's Tax Credit and 542(c) loan programs. MFA's HOME funds can be awarded as gap financing for projects that qualify for the Housing Tax Credit program. The maximum amount is \$20,000 per unit with a maximum of \$600,000 per project.

**542(c) FHA-Insured Multifamily Loan Program** provides construction and permanent loans for affordable rental developments, including new construction, substantial rehabilitation, refinancing or acquisition of projects having no less than five units per site. Structures may be detached, semi-detached, row houses or multi-family structures. Single asset mortgagors, including nonprofit organizations, for-profit corporations, joint ventures, limited liability companies, and partnerships are eligible borrowers.

**Access Loans** provide federally insured construction and permanent financing for small-scale affordable housing projects throughout New Mexico. This program is designed to minimize transaction and due diligence costs and expedite processing for small projects. Eligible projects include new construction, substantial rehabilitation, refinancing or acquisition of projects having no less than five units per site. Detached, semi-detached, row houses or multifamily structures are eligible. Eligible borrowers may be single asset mortgagors, including nonprofit organizations, for-profit corporations, joint ventures, limited liability companies, and partnerships.

**MFA Tax Exempt Bond Financing for Affordable Rental Housing** – MFA will provide bond financing for multifamily housing developments through the following mechanisms:

- Using Private Activity Bond Volume Cap (PABVC) multifamily project allocations from the State Board of Finance ("SBOF") for new tax exempt bond issues;
- Refunding outstanding bond issues; or
- Issuing new 501(c)(3) bonds.

**Section 108** is the loan guarantee provision of the Community Development Block Grant (CDBG) program. Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects. This makes it one of the most potent and important public investment tools that HUD offers to local governments. It allows them to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue larger renewal projects. Local governments borrowing funds guaranteed by Section 108 must pledge their current and future CDBG allocations to cover the loan amount as security for the loan. Loan commitments are often paired with **Economic Development Initiative (EDI)** or **Brownfield Economic Development Initiative (BEDI)** grants, which can be used to pay predevelopment costs of a Section 108-funded project. They can also be used as a loan loss reserve (in lieu of CDBG funds), to write-down interest rates, or to establish a debt service reserve. Eligible applicants include non-entitlement communities that are assisted in the submission of applications by the state.



**The Federal Home Loan Banks' Affordable Housing Program (AHP)** is funded with 10% of the Federal Home Loan Banks' net income each year. The AHP allows for funds to be used in combination with other programs and funding sources, like the Low-Income Housing Tax Credit. These projects serve a wide range of neighborhood needs: many are designed for seniors, the disabled, homeless families, first-time homeowners and others with limited resources. More than 776,000 housing units have been built using AHP funds, including 475,000 units for very low-income households. The Federal Home Loan Bank System is the largest single funding provider to Habitat for Humanity.

**The HUD Self-Help Homeownership Program (SHOP)** is a competitive grant program to national and regional nonprofit organizations and consortia that have experience in providing or facilitating self-help housing opportunities. Grants are to be used by the grantee or its affiliates for eligible expenses in connection with developing non-luxury housing for low-income families and persons who otherwise would be unable to purchase a house. Eligible expenses are limited to land acquisition (including financing and closing costs), infrastructure improvements (installing, extending, constructing, rehabilitating, or otherwise improving utilities and other infrastructure), and administrative costs (up to 20 percent of the grant amount). Homebuyers must contribute a significant amount of sweat equity toward the construction of their homes.

**The Enterprise Community Loan Fund** offers flexible, innovative loan products to help make it possible for developers and nonprofit organizations to create sustainable, affordable housing and community facilities. Loan products include predevelopment loans; building or land acquisition loans, predevelopment costs and critical repairs; mini-permanent loans for the operating buildings, predevelopment costs and critical repairs; and construction and bridge loans.

**Other Enterprise Programs** – Enterprise offers a variety of financing for housing project that meet specific objectives, including green development, transit oriented development, supportive housing, and others. Products include LIHTC and New Markets Tax Credit Equity, multifamily mortgage finance, predevelopment and acquisition loans and technical assistance. Enterprise often works through local partner organizations to accomplish their goals. Enterprise's Santa Fe office is a resource in New Mexico.

**USDA Rural Housing Site Loans** are made to provide financing for the purchase and development of housing sites for low- and moderate-income families.

### **Resources for Rehabilitation and Homeowner Support**

**The New Mexico EnergySmart Weatherization Assistance program** is administered through the New Mexico Mortgage Finance Authority. Federal, state and utility funds are used for the program. Weatherization services are performed by four non-profit providers located throughout the state. Households with incomes at or below 150 percent of the national poverty level are eligible for the program. Southwestern Regional Housing and CDC in Deming provides EnergySmart weatherization services in southern New Mexico. SRHCDC has an office in Las Cruces.

**MFA HOME Investment Partnership Program** provides assistance to low-income homeowners who lack the resources to make necessary repairs to their homes. Assistance can be used for reimbursement of costs for rehabilitation, which includes the following: applicable codes, standards or ordinances, rehabilitation standards, essential improvements, energy-related improvements, lead-based paint hazard reduction, accessibility for disabled persons, repair or replacement of major housing systems,



incipient repairs and general property improvements of a non-luxury nature, site improvements and utility connections. MFA relies on nonprofits, housing authorities, and local governments to administer the homeowner rehabilitation program. Funds are awarded through a competitive RFP process. The Tierra del Sol Housing Corporation is a rehab sub-grantee that currently administers owner-occupied HOME Rehabilitation program for Doña Ana County.

**HUD - Rehabilitation Mortgage Insurance (Section 203(k)).** Section 203(k) insurance enables homebuyers and homeowners to finance the purchase (or refinancing) of a house and the cost of its rehabilitation through a single mortgage or to finance the rehabilitation of their existing home. The program insures a single, long term, fixed or adjustable rate loan that covers both the acquisition and rehabilitation of a property. The home must be at least a year old, requiring rehabilitation of at least \$5,000, but the total value of the property must still fall within the FHA mortgage limit for the area. Eligible repairs may range from relatively minor to virtual reconstruction: a home that has been demolished or will be razed as part of rehabilitation is eligible, for example, provided that the existing foundation system remains in place. HUD requires that properties financed under this program meet certain basic energy efficiency and structural standards.

**USDA Rural Repair and Rehabilitation Loan and Grant Program** provides loans and grants to very low-income homeowners to repair, improve, or modernize their dwellings or to remove health and safety hazards. Rural Housing Repair and Rehabilitation Grants are funded directly by the Government. Grants are available for homeowners who are 62 or older and cannot repay a loan. Funds may only be used for repairs or improvements to remove health and safety hazards, or to complete repairs to make the dwelling accessible for household members with disabilities. Loans of up to \$20,000 and grants of up to \$7,500 are available. The interest on loans is 1%. Loans and grants can be combined.

**USDA Housing Preservation Grants Program** provides grants to sponsoring organizations for the repair or rehabilitation of low- and very low-income housing.

### **Other Programs**

**HUD 255 Home Equity Conversion Mortgage Program (HECM)** – Reverse mortgages are increasing in popularity with seniors (homeowners 62 or holder) who have equity in their homes and want to supplement their income. The only reverse mortgage insured by the U.S. Federal Government is called a Home Equity Conversion Mortgage or HECM, and is only available through an FHA approved lender. The HECM enables seniors to withdraw some of the equity in their home as a fixed monthly amount or a line of credit or a combination of both. The HECM can be used to purchase a primary residence if the owner is able to use cash on hand to pay the difference between the HECM proceeds and the sales price plus closing costs for the property being purchased. The property owner must own the property outright or have paid down a considerable amount, occupy the property as a principal residence, not be delinquent on any federal debt and participate in a consumer information session given by a HUD-approved counselor. Single family homes, 2-4 unit homes with one unit occupied by the borrower, and manufactured homes that meet FHA requirements are eligible property types.





RE-RECORDED TO ADD  
RESOLUTION NO. ON PAGE 1  
AND ORDINANCE NO. ON PAGE  
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ORDINANCE NO. 280-2015

**AN ORDINANCE ESTABLISHING AN AFFORDABLE HOUSING PROGRAM  
PURSUANT TO THE AFFORDABLE HOUSING ACT; DEFINING TERMS;  
ESTABLISHING APPLICATION REQUIREMENTS AND REVIEW CRITERIA;  
AND ESTABLISHING PROCEDURES TO ADMINISTER AN AFFORDABLE  
HOUSING PROGRAM**

**WHEREAS**, Doña Ana County, New Mexico (the "County") is a unit of local government under the laws of the State of New Mexico (the "State"); and

**WHEREAS**, Doña Ana County, New Mexico (the "County") affordable housing represents a critical component to enhance the quality of life of County residents; and

**WHEREAS**, the Board of County Commissioners of Doña Ana County commits to exploring a range of options to promote affordable housing in Doña Ana County; and

**WHEREAS**, under an exception to the "anti-donation" clause as set forth in Article IX, §14 of the New Mexico Constitution, the County is not prohibited from:

- A. Donating or otherwise providing or paying a portion of the costs of land for the construction on it of affordable housing ;
- B. Donating or otherwise providing or paying a portion of the costs of construction or renovation of affordable housing, or the costs of conversion or renovation of buildings into affordable housing ;
- C. Providing or paying the costs of financing or infrastructure necessary to support affordable housing projects; or
- D. Donating or otherwise paying a portion of the costs of acquisition, development, construction, financing and operating or owning affordable housing; and

**WHEREAS**, the Affordable Housing Act, NMSA 1978 § 6-27-1 *et seq.* (the "Act") implements the provisions of Subsections E and F of Section 14 of Article 9 of the New Mexico Constitution; and

**WHEREAS**, the County Commission ("Commission"), the governing body of Doña Ana County, desires to implement an affordable housing program for the County; and

**WHEREAS**, the Commission has adopted an Affordable Housing Plan (Resolution <sup>2015-64</sup>\_\_\_\_) pursuant to the Act and the New Mexico Mortgage Finance Authority Affordable Housing Rules ("Rules"); and

**WHEREAS**, this Ordinance has been drafted in accordance with the Affordable Housing Plan; and

**WHEREAS**, the New Mexico Mortgage Finance Authority (MFA) has reviewed and approved the Plan and the form and terms of this Ordinance prior to final adoption hereof ;

**NOW THEREFORE**, the governing body of Doña Ana County, State of New Mexico hereby adopts the following ordinance:

**Section 1. SHORT TITLE.**

This article may be cited as the "Affordable Housing Ordinance."

**Section 2. PURPOSE.**

This ordinance is adopted to implement the Doña Ana County Affordable Housing Plan. In accordance with the N.M. Constitution, Article IX, §14, the Affordable Housing Act, NMSA 1978, §6-27-1 *et seq.* (the "Act"), NMMFA Rules, the purpose of the Affordable Housing Ordinance is to:

- A. Establish procedures to ensure that State and local housing assistance grantees are Qualifying Grantees who meet the requirements of the Act and the Rules promulgated pursuant to the Act both at the time of the award and throughout the term of any grant or loan under the Program;
- B. Establish an application and award timetable for State housing assistance grants or loans to permit the selection of the Qualifying Grantee(s) by Doña Ana County.
- C. Create an evaluation process to determine in conjunction with the MFA:
  - 1. The financial and management stability of the Applicant;
  - 2. The demonstrated commitment of the Applicant to the community;
  - 3. A cost-benefit analysis of the project proposed by the Applicant;
  - 4. The benefits to the community of a proposed project;
  - 5. The type or amount of assistance to be provided;
  - 6. The scope of the Affordable Housing Project;
  - 7. Any substantive or matching contribution by the Applicant to the proposed project;
  - 8. A performance schedule for the Qualifying Grantee with performance criteria; and
  - 9. Any other rules or procedures the County believes are necessary for a full review and evaluation of the Applicant and the Application or which the MFA believes is necessary for a full review of the County's evaluation of the Applicant;
- D. Require long-term affordability of Doña Ana County's Affordable Housing Projects so that a project cannot be sold shortly after completion and taken out of the affordable housing market;
- E. Require that a grant or loan for a project must impose a contractual obligation on the Qualifying Grantee that the affordable housing units in any project be occupied by persons of low or moderate income as defined in this Ordinance;
- F. Provide for adequate security against the loss of public funds or property in the event that the Qualifying Grantee abandons or otherwise fails to complete the project;
- G. Require review and approval of a housing grant project budget by the County and/or the MFA before any expenditure of grant funds or transfer of granted property;

- II. Require that a condition of grant or loan approval be proof of compliance with all applicable State and local laws, rules and ordinances;
- I. Provide definitions for "low-income" and "moderate-income" and set out requirements for verification of income levels; and
- J. Require that the County enter into a contract with the Qualifying Grantee consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee and which contract shall be subject to the review of the MFA in its discretion;

### Section 3. DEFINITIONS.

The following words and terms shall have the following meanings.

- A. "Act" shall mean the Affordable Housing Act, NMSA 1978, §6-27-1 *et seq.*
- B. "Affordability Period" shall mean:
  - 1. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds that have been awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is from one dollar (\$1.00) to fourteen thousand nine hundred ninety nine dollars and ninety nine cents (\$14,999.99), then the Affordability Period shall be not less than five (5) years.
  - 2. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from fifteen thousand dollars (\$15,000.00) up to and including forty thousand dollars (\$40,000.00), then the Affordability Period shall be not less than ten (10) years.
  - 3. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from forty thousand dollars (\$40,000.00) up to and including one hundred thousand dollars (\$100,000.00), then the Affordability Period shall be not less than fifteen (15) years.
  - 4. If the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is greater than one hundred thousand dollars (\$100,000.00), then the Affordability Period shall be not less than twenty (20) years.
- C. "Affordable" shall mean consistent with minimum rent and/or income limitations set forth in the MFA Act and in guidelines established by MFA.
- D. "Affordable Housing" means residential housing primarily for persons or households of low or moderate income.
- E. "Affordable Housing Funds" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act.
- F. "Affordable Housing Plan" or "Plan" shall mean a plan pursuant to detailed research and analysis of the community and housing profile, including a review of land use and policy regarding land

use, which produces a housing needs assessment for low and moderate income households in that locality.

- G. "Affordable Housing Program" or "Program" shall mean any programs the County establishes pursuant to the Act and based on the findings of the approved Doña Ana County Affordable Housing Plan.
- H. "Affordable Housing Project" or "Project" shall mean any work or undertaking, whether new construction, acquisition of existing Residential Housing, remodeling, improvement, rehabilitation or conversion, which may be developed in one or more phases, as approved by the County and/or the MFA for the primary purposes as allowed by the Act and in compliance with the findings of the Doña Ana County Affordable Housing Plan.
- I. "Applicant" shall mean an individual, a governmental housing agency, regional housing authority, a for-profit organization, including a corporation, limited liability company; partnership, joint venture, syndicate, or association or a non-profit organization meeting the appropriate criteria set by the County and/or the MFA.
- J. "Application" shall mean an application to participate in one or more Affordable Housing Projects or Programs under the Act submitted by an Applicant to the County.
- K. "Builder" shall mean an individual or entity licensed as a general contractor to construct Residential Housing in the State that satisfies the requirements of a Qualifying Grantee and has been approved by the County and/or the MFA to participate in an Affordable Housing Program. The term "Builder" shall also include an individual or entity that satisfies the requirements of a Qualifying Grantee and has been approved by the County and/or the MFA to participate in an Affordable Housing Program, who is not licensed as a general contractor in the State, provided such individual or entity contracts with a general contractor licensed in the State to construct Residential Housing.
- L. "Building" shall mean a structure capable of being renovated or converted into Affordable Housing or a structure that is to be demolished and is located on land donated for use in connection with an Affordable Housing Project.
- M. "Congregate Housing Facility" shall mean Residential Housing designed for occupancy by more than four Persons of Low or Moderate Income living independently of each other. The facility may contain group dining, recreational, health care or other communal living facilities and each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities.
- N. "County" shall mean Doña Ana County, New Mexico, a unit of local government under the Constitution and laws of the State of New Mexico.
- O. "Federal Government" shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.
- P. "Household" shall mean one or more persons occupying a housing unit.
- Q. "Housing Assistance Grant" means the donation, provision or payment by the County of:
  - 1. Land upon which affordable housing will be constructed;

2. An existing Building that will be renovated, converted or demolished and reconstructed as as Affordable Housing; or
  3. The costs acquisition, development, construction, financing, and operating or owning affordable housing; or
  4. The costs of financing or infrastructure necessary to support Affordable Housing.
- R. "HUD" shall mean the United States Department of Housing and Urban Development.
- S. "Infrastructure" shall mean Infrastructure Improvements and Infrastructure Purposes.
- T. "Infrastructure Improvement" includes, but is not limited to:
1. Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
  2. Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
  3. Water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
  4. Areas for motor vehicle use for road access, ingress, egress and parking;
  5. Trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for access, ingress, egress and parking;
  6. Parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;
  7. Landscaping, including earthworks, structures, plants, trees and related water delivery systems;
  8. Electrical transmission and distribution facilities;
  9. Natural gas distribution facilities;
  10. Lighting systems;
  11. Cable or other telecommunications lines and related equipment;
  12. Traffic control systems and devices, including signals, controls, markings and signs;
  13. Inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and
  14. Heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.
- U. "Infrastructure Purpose" shall mean:
1. Planning, design, engineering, construction, acquisition or installation of Infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the Infrastructure, provided the County may

determine it appropriate to reduce or waive building permit fees, sewer and water hook-up fees and other fees with respect to an Affordable Housing Project for which Affordable Housing Funds and/or Housing Assistance Grants are awarded, loaned, donated or otherwise distributed under the Act;

2. Acquiring, converting, renovating or improving existing facilities for Infrastructure, including facilities owned, leased or installed by the owner;
  3. Acquiring interests in real property or water rights for infrastructure, including interests of the owner; and
  4. Incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.
- V. "MFA" shall mean the New Mexico Mortgage Finance Authority.
- W. "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27, inclusive, N.M.S.A (1978), as amended).
- X. "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the County and/or the MFA, on a fee interest in real property located within the State or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the Mortgage Loan.
- Y. "Mortgage Lender" shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution; provided that the mortgage lender maintains an office in the State, is authorized to make mortgage loans in the State and is approved by the County and/or the MFA and either the Federal Housing Authority, Veterans' Affairs, Federal National Mortgage Association (now known as Fannie Mae), or Federal Home Loan Mortgage Corporation.
- Z. "Mortgage Loan" shall mean a financial obligation secured by a Mortgage, including a Mortgage Loan for a Project.
- AA. "Multiple Family Housing Project" shall mean Residential Housing that is designed for occupancy by more than four persons or families living independently of each other or living in a Congregate Housing Facility, at least sixty percent (60%) of whom are Persons of Low or Moderate Income, including without limitation Persons of Low or Moderate Income who are elderly and handicapped as determined by the County and/or the MFA, provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by federal tax law.
- BB. "Multi-Family Housing Program" shall mean a program involving a Congregate Housing Facility, a Multiple Family Housing Project or a Transitional Housing Facility.
- CC. "Persons of Low or Moderate Income" shall mean persons and families who are

determined to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in the County and whose incomes are below the income levels established by the MFA and the Plan to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act. For purposes of this definition, the word "families" shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes. In accordance with the Plan, persons of low and moderate income who are eligible for assistance in accordance with the plan are as follows:

1. Persons of low income shall mean persons in households with annual gross incomes below 60% of Area Median Income for Doña Ana County as approved and published each year by MFA and verified by the County.
2. Persons of Moderate Income shall mean persons in households with annual gross incomes between 60% and 80% of Area Median Income for Doña Ana County as approved and published each year by MFA and verified by the County.
3. For purposes of this definition, "annual gross income" shall mean the annual anticipated income from assets, regular cash or noncash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR Section 5.609.

DD. "Ordinance" shall mean this Ordinance (No. 280-2015 ).

EE. "Policies and Procedures" shall mean Policies and Procedures of the MFA, including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation procedures, which the MFA may update and revise from time to time as the MFA deems appropriate.

FF. "Public Service Agencies" shall include, but are not limited to, any entities that support Affordable Housing and which believe that the program or project proposed by the Applicant is worthy and advisable, but which are not involved, either directly or indirectly, in the Affordable Housing Program or Project for which the Applicant is applying.

GG. "Qualifying Grantee" means:

1. An individual who is qualified to receive assistance pursuant to the Act and is approved by the County; and
2. A governmental housing agency, regional housing authority, corporation, a limited liability company, partnership, joint venture, syndicate, association or a non-profit organization that:
  - a) Is organized under State or local laws and can provide proof of such organization;
  - b) If a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
  - c) Is approved by the County.

- HI. "Recertification" shall mean the recertification of Applicants and/or Qualifying Grantees participating in any Affordable Housing Programs or in any programs under the Act as determined necessary from time to time by the County and/or the MFA.
- II. "Rehabilitation" shall mean the substantial renovation or reconstruction of an existing single-family residence or a Multi-Family Housing Project, which complies with requirements established by the MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.
- JJ. "Residential Housing" shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential Housing" includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons.
- KK. "Residential Use" shall mean that the structure or the portion of the structure to benefit from the Affordable Housing Funds or Housing Assistance Grant is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.
- LL. "RFP" shall mean any request for proposals made by the County.
- MM. "Rules" shall mean the New Mexico Mortgage Finance Authority Affordable Housing Rules adopted pursuant to Section 6-27-8(B) NMSA 1978.
- NN. "State" shall mean the State of New Mexico.
- OO. "Transitional Housing Facility" shall mean residential housing that is designed for temporary or transitional occupancy by Persons of Low or Moderate Income or special needs.

#### Section 4. GENERAL REQUIREMENTS.

The following requirements shall apply to all Housing Assistance Grants and/or Affordable Housing Funds awarded, loaned or otherwise distributed by the County under the Act to a Qualifying Grantee.

- A. Request for Proposals. The County, in its discretion, may issue one or more RFPs to solicit applications from Applicants or shall otherwise identify a Qualifying Grantee for the use of any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, donated or otherwise distributed under the Act.
- B. Applicant Eligibility. The following Applicants are eligible under the Act to apply for Affordable Housing Funds or a Housing Assistance Grant to provide housing or related services to Persons of Low or Moderate Income in the community:
- (i) All individuals who are qualified to receive assistance pursuant to the Act, the Rules, and this Ordinance that are approved by the County;
  - (ii) All regional housing authorities and any governmental housing agencies;
  - (iii) All for-profit organizations, including any corporation, limited liability company,



- partnership, joint venture, syndicate or association;
- (iv) All non-profit organizations meeting the following requirements:
    - (a) A primary mission of the non-profit organization must be to provide housing or housing-related services to Persons of Low or Moderate Income; and
    - (b) The non-profit organization must have received its 501(c)(3) designation prior to submitting an Application;
    - (c) Have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
  - (v) All non-individual Applicants must:
    - (a) Be organized under State or local laws and can provide proof of such organization and be approved by the County;
    - (b) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
    - (c) Have among its purposes significant activities related to providing housing or services to Persons or Households of Low or Moderate Income; and
    - (d) Have no significant outstanding or unresolved monitoring findings from the County, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the County, the MFA, or auditor stating that the findings are in the process of being resolved.

#### C. Applications.

- (i) Process for Applying. Applicants wishing to apply for a Housing Assistance Grant, including the use of any Affordable Housing Funds, or to participate in any Affordable Housing Program are required to submit to the County the following (as applicable):
  - (a) One original Application together with all required schedules, documents, or such other information which may be required by the County or in any RFP which may have been issued by the County;
  - (b) A proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act, and which documents the need for the requested funds or grant, describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income and documents the consistency of the proposal with the County's Affordable Housing Plan;
  - (c) Executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the County for the Affordable Housing Funds or the Housing Assistance Grant for which the Applicant is applying;

- (d) A proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;
- (e) Current independent financial audit;
- (f) If the Applicant is a non-profit organization:
  - (i) Proof of 501(c)(3) tax status;
  - (ii) Documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;
- (g) If an Applicant is a legal entity, including a non-profit organization:
  - (i) A current annual budget for the Applicant, including all sources and uses of funds not just those related to relevant programs and/or a current annual budget only for the program for which the Applicant is applying for a Housing Assistance Grant, or as otherwise may be required by the County and/or the MFA in its discretion;
  - (ii) An approved mission statement that the Applicant has among its purposes significant activities related to providing housing or housing-related services to Persons or Households of Low or Moderate Income;
  - (iii) A list of members of the Applicant's current board of directors or other governing body, including designated homeless participation, where required by the County;
  - (iv) Evidence (or a certification as may be allowed by the County) that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;
  - (v) Evidence that the Applicant has no significant outstanding or unresolved monitoring findings from the County, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the County, the MFA or its most recent independent financial audit, it has a certified letter from the County, the MFA or the auditor stating that the findings are in the process of being resolved;
  - (vi) An organizational chart, including job titles and qualifications for the Applicant's employees or as otherwise may be required by the County and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;
  - (vii) Documentation that the Applicant is duly organized under State or local law and certification that the Applicant is in good standing with any State authorities, including the Public Regulation Commission and the Secretary of State;

- (h) Information as may be required by the County in order for it to determine the financial and management stability of the Applicant;
  - (i) Information as may be required by the County in order for it to determine the demonstrated commitment of the Applicant to the community;
  - (j) A completed cost-benefit analysis of the Affordable Housing Project proposed by the Applicant. Any cost-benefit analysis must include documentation that clearly evidences that there is a need for the Housing Assistance Grant being requested from the County, that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act, and that the Affordable Housing Project will meet the needs and affordability criteria defined in the County's Affordable Housing Plan;
  - (k) Information supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;
  - (l) Proof of substantive or matching funds or contributions and/or in-kind donations to the proposed Affordable Housing Project in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;
  - (m) Any certifications or other proof which the County may require in order for the County to confirm that the Applicant is in compliance with all applicable federal, State and local laws, rules and ordinances;
  - (n) A verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge and belief;
  - (o) Certifications as may be required by the County and signed by chief executive officer, board president, or other authorized official of the Applicant;
  - (p) Applicant shall submit adequate information, as required by the County and /or MFA, of the Affordable Housing Project proposed by the Applicant. The information provided must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to Persons of Low or Moderate Income, and that there will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act.
- (ii) Additional Requirements for Multi-Family Housing Projects Applicants who are submitting Applications in connection with a Multi-Family Housing Program. The Applicant must also submit to the County following additional information:

- (a) A verified certificate that, among other things:
  - (i) Identifies every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;
  - (ii) States that, except as shown on such certificate:
    - (A) No mortgage on a project listed on such certificate has ever been in default, assigned to the Federal Government or foreclosed, nor has any mortgage relief by the mortgagee been given;
    - (B) There has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;
    - (C) Such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and
    - (D) The Applicant has not defaulted on an obligation covered by a surety or performance bond.

If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances that such Applicant believes will explain the lack of certification. The County may then determine if such Applicant is or is not qualified.

- (b) The experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects; and
  - (c) Whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.
- (iii) Additional Requirements for Mortgage Lenders. If the Applicant is a Mortgage Lender, the County shall consider, among other things:
- (a) The financial condition of the Applicant;
  - (b) The terms and conditions of any loans to be made;
  - (c) The aggregate principal balances of any loans to be made to each Applicant compared with the aggregate principal balances of the loans to be made to all other Applicants;
  - (d) The County's assessment of the ability of the Applicant or its designated servicer to act as originator and servicer of Mortgage Loans for any Multi-Family Housing Programs or other programs to be financed; and

- (e) Previous participation by the Applicant in the MFA's programs and HUD, Federal Housing Authority or Rural Housing Service programs.
- (iv) Submission Procedure.
- (a) Time, Place and Method of Submission Delivery.
- (i) If the County has issued an RFP, all Applications must be received by the County no later than the deadline set forth in the RFP; otherwise, all Applications must be received by the County by the deadline the County has established in connection with the respective award or grant. So that any Qualifying Grantees may be selected prior to January of the year in which any Housing Assistance Grant would be made, the County shall issue any RFP's, solicit any Applications, or otherwise identify any Qualifying Grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow the MFA not less than forty-five (45) days in which to review any such Applications or otherwise determine or confirm that an Applicant is a Qualifying Grantee under the Act and consistent with the Rules.
- (ii) Applications shall be submitted by Applicants to the County in the form required by the County and shall contain all information which is required by this Ordinance and any RFP which may have been issued.
- (b) Additional Factors. The Application procedures shall take into consideration:
- (i) Timely completion and submission to the County of an Application or other appropriate response to any solicitation by the County;
- (ii) Timely submission of all other information and documentation related to the program required by the County as set forth in this Ordinance or as set forth in the Rules;
- (iii) Timely payment of any fees required to be paid to the County at the time of submission of the Application; and
- (iv) Compliance with program eligibility requirements as set forth in the Act, the Rules and this Ordinance.
- (c) Submission Format.
- (i) County forms or MFA forms (if available) must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.
- (ii) An Applicant's failure to provide or complete any element of an Application, including all requirements of the County or as may be listed on any RFP, may result in the rejection of the Application prior to review.
- (iii) Illegible information, information inconsistent with other information

provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.

(iv) Doña Ana County and the MFA reserve the right to request further information from any Applicant so long as the request is done fairly and does not provide any Applicant an undue advantage over another Applicant.

(v) The County in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any Applicant.

(vi) Neither the County nor the MFA shall be responsible for any expenses incurred by an Applicant in preparing and submitting an Application. However, the County or the MFA, as applicable, may establish and collect fees from Applicants who file Applications. Notice that fees will be charged and the amount of any such fees shall be included by the County or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the Application solicitation process.

- (v) Review by the County. On receipt of an Application, the County shall:
- (a) Determine whether the Application submitted by the Applicant is complete and responsive;
  - (b) Determine whether the Applicant is a Qualifying Grantee as defined herein and in the Act;
  - (c) Review and analyze whether the Applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to Persons of Low or Moderate Income and that the proposal is consistent with the County's adopted Affordable Housing Plan;
  - (d) Determine whether the Applicant has demonstrated experience related to providing housing or services to Persons of Low or Moderate Income; as well as experience and/or the capacity of the Applicant to administer the Affordable Housing Program or Project for which the Applicant has applied;
  - (e) Determine whether the Applicant's proposal provides a plan for coordinating with other service providers in the community; whether the Applicant's plan addresses how Persons of Low Income or Moderate Income in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, State and local resources; and, whether the Applicant's plan addresses outreach efforts to reach the population to be served as identified by the County in any RFP, in the Affordable Housing Plan or otherwise;
  - (f) Determine whether the Applicant has support from Public Service Agencies, or such other support as may be required by the County and/or the MFA in its discretion, for its proposed services in the community;
  - (g) Ascertain the amount of any matching funds or in-kind services specific to the

program that may be utilized by the Applicant in connection with the program;

(h) Ascertain whether any local, private, or federal funds will be used by the Applicant in connection with the specific grant for which the Applicant is applying;

(i) Ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the Program for which the Applicant is applying;

(j) If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant had no outstanding findings or matters of non-compliance with program requirements from the County or the MFA, as applicable or if it has any such findings, it has a certified letter from the County, the MFA, or auditor stating that the findings are in the process of being resolved;

(k) If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant reasonably committed and expended the funds under the prior Program and/or met anticipated production levels as set forth in any contract with the County or the MFA, as applicable, for those prior Program funds;

(l) Evaluate the Applicants proposal in part based upon the Applicant's current financial audit;

(m) Evaluate the Applicant's proposed budget for the Project for which the Applicant is applying for Affordable Housing Funds or a Housing Assistance Grant which proposed budget must be approved by the County before the Applicant can be approved as a Qualifying Grantee and any expenditure of grant funds under the Act or granted property is transferred to the Applicant;

(n) On receipt of an Application from a Builder, the County will analyze the Builder's ability to construct and sell sufficient Residential Housing units to Persons of Low or Moderate Income within the time or times as may be required by the County.

(o) Consider other factors it deems appropriate to ensure a reasonable geographic allocation for all Affordable Housing Programs.

vi) Certification by the County to the MFA. The County shall certify an Application to the MFA in writing upon:

(a) Completion of its review of the Application;

(b) Determination that the Application is complete;

(c) Determination that the requirements of the Act, the Rules and this Ordinance have been satisfied; and

(d) Determination that the Applicant is a Qualifying Grantee.

vii) Review by the MFA. The MFA upon its receipt of the certification from the County may, in its discretion, review the Application and any of the materials submitted by the

Applicant to the County. The MFA may also request any additional information from the Applicant, which it may require in order to determine whether the Applicant is a Qualifying Grantee under the Act and the Application is complete. The MFA will then notify the County of its determination of whether or not the Application is complete and that the requirements of the Act and the Rules have been satisfied and the Applicant is a Qualifying Grantee. Unless the period is extended for good cause shown, the MFA shall act on an Application within forty-five (45) days of its receipt of any Application, which the MFA deems to be complete, and, if not acted upon, the Application shall be deemed to be approved.

(viii) Notification of Acceptance. The County, upon completion of its review of the Application and an evaluation of the criteria for approval of the Application as set forth in this Ordinance and in any RFP issued by the County and upon its determination that the Applicant is a Qualifying Grantee, and upon its receipt of notification from the MFA that it agrees that the Application is complete and that the Act and Rules have been satisfied and the Applicant is a Qualifying Grantee, by written notice, shall notify each Applicant which has submitted an Application of the approval or disapproval of its Application. Upon approval of its Application, the Applicant shall be considered approved to participate in the Affordable Housing Program. The County's and the MFA's determination of any Application shall be conclusive.

D. Additional Requirements. Upon acceptance, the following additional requirements shall apply to any Applicant who is a Qualifying Grantee:

(i) Contractual Requirements. The Qualifying Grantee shall enter into one or more contracts with the County, which contract(s) shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee.

(ii) Security Provisions; Collateral Requirements. In accordance with the Act, the Rules and this Ordinance, the County shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the County and/or the MFA may incur in enforcing the provisions of this Ordinance, the Rules, the Act and/or any agreement entered into by the County and the Qualifying Grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the County may require in order to allow for any funds which the Qualifying Grantee may receive under a Housing Assistance Grant or Affordable Housing Funds to be adequately secured and to allow the County and the MFA to ensure that such funds shall be used by the Qualifying Grantee in accordance with the Act, the Rules and this Ordinance.

(iii) Performance Schedule and Criteria. The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria that the County, in its



discretion, may establish.

(iv) Examination of Books and Records. The Qualifying Grantee shall submit to and the County shall cause to be made such examinations of the books and records of each Qualifying Grantee as the County and/or the MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, the Rules, this Ordinance and any contracts between the Qualifying Grantee and the County. The County and/or the MFA may require each Qualifying Grantee to pay the costs of any such examination.

(v) Infrastructure Cost Reimbursement Contracts.

(a) Cost Reimbursements. Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the County's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the County.

(b) Cost Reimbursements For Units of Service. Payment under any unit cost contract provisions shall be made upon the County's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

(c) Rate at which Costs Incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the County. If The County determines that the Qualifying Grantee is underspending or overspending, then the County may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

(d) Invoices. Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the County. Failure to submit invoices within twenty (20) calendar days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.

(e) No Dual Application of Costs. The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project) contract, or activity operated by the Qualifying Grantee and which has not been approved by the County in advance, in writing.

(f) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other amounts received by Qualifying Grantee may not be used by Qualifying Grantee to replace other amounts made available or designated by the State or local governments through appropriations for use for the purposes of the Act.

(g) Cost Allocation. The Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the County.

(vi) Additional Information. Qualifying Grantees shall provide the County with any and all information which the County may reasonably require in order for it to confirm that the Qualifying Grantees continue to satisfy the requirements of the Act, the Rules and this Ordinance throughout the term of any contract and/or any Affordability Period or otherwise as may be required by the County or the MFA in its discretion. At a minimum, on an annual basis, the County shall certify to the MFA in writing that to the best of its knowledge the Qualifying Grantee is in compliance with applicable provisions of the Act, the Rules and this Ordinance.

E. Affordable Housing Requirements. All Affordable Housing Funds or Housing Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the benefit of Persons of Low or Moderate Income subject to the provisions of the Act and with particular regard to their housing related needs.

(i) Single Family Property. Qualifying Grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.

(ii) Multi-Family Property.

(a) Single Apartment within a Multi-Family Property. Qualifying Grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed or otherwise are to benefit from Affordable Housing Funds, those apartments shall be leased to Persons of Low or Moderate Income at the time of any such award. Qualifying Grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least sixty percent (60%) of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying Grantees also shall agree that the Persons of Low or Moderate Income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.

(b) Multiple Apartments. Qualifying Grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed or otherwise are to benefit from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, they shall maintain not less than sixty percent (60%) of the housing units as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee

are unpaid and outstanding or the Affordability Period, whichever is longer.

(iii) Non-Residential Property. Qualifying Grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefitted from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as a facility which provides housing related-services to Persons of Low or Moderate Income for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.

(iv) Housing Assistance Grant Affordability Requirements. Qualifying Grantees shall agree that they shall maintain any land or buildings received as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing in accordance with Sections 4.E.(i) and (ii) of this Ordinance or as a facility which provides housing related-services to Persons of Low or Moderate Income in accordance with Section 4.E.(iii) of this Ordinance (as applicable) for the duration of the Affordability Period. Qualifying Grantees shall agree that they shall maintain any land or buildings for which they have received the costs of Infrastructure as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing or as a facility which provides housing related-services to Persons of Low or Moderate Income (as applicable) for the duration of the Affordability Period. In calculating the Affordability Period for Housing Assistance Grants of either land or buildings, the fair market value of the land or buildings or the costs of Infrastructure at the time of the donation by the County shall apply.

(v) Affordability Period. The County, in its discretion, may increase the Affordability Period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the County may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. (See definition of Affordability Period in Section 3.H. of this Ordinance.) Notwithstanding the foregoing, in the discretion of the MFA, weatherization funds conveyed from the State to the MFA and/or any other similar conveyances where an Affordability Period is not practical, shall not be subject to the Affordability Period requirements of this Section 4.E.; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the County and/or the MFA.

F. Consent to Jurisdiction. Each Qualifying Grantee shall consent to the jurisdiction of the courts of the State over any proceeding to enforce compliance with the terms of the Act, the Rules and this ordinance and any agreement between the Qualifying Grantee and the County and/or the MFA.

G. Recertification Procedures.

(i) The Qualifying Grantee must meet the requirements of the Act, the Rules and this Ordinance both at the time of any award and throughout the term of any grant and contract

related thereto.

(ii) The County may establish procedures for recertifying Qualifying Grantees from time to time.

(ii) Qualifying Grantees that fail to satisfy the requirements for Recertification shall cease to be eligible and shall be denied further participation in Affordable Housing programs until the requirements of the County and the MFA are satisfied.

H. Compliance with the Law. Qualifying Grantee shall provide the County with any certifications or other proof that it may require in order for the County and the MFA to confirm that the Qualifying Grantee and the Qualifying Grantee's proposed Project are in compliance with all applicable federal, State and local laws, rules and ordinances. At a minimum, on an annual basis, the Qualifying Grantee shall provide the County with certifications and proof of compliance, and the County shall certify to the MFA in writing that the Qualifying Grantee is still in compliance with the Act and the Rules.

I. Doña Ana County Grant Requirements.

(i) The County is authorized to make Housing Assistance Grants under the Act. Upon determination that the County will make a Housing Assistance Grant, including the use of any Affordable Housing Funds, the County shall provide the MFA with the following:

(a) Documentation that confirms that the County has an existing valid Affordable Housing Plan;

(b) Documentation that confirms that the County has an existing valid Affordable Housing Ordinance which provides for the authorization of the Housing Assistance Grant, including the use of any Affordable Housing Funds;

(c) Written certification that the proposed grantee is in compliance with Act and the Rules so that the MFA may confirm that the Application is complete, and that the proposed grantee is a Qualifying Grantee under the Act and the Rules.

(ii) Prior to the submission of the application and project authorization to the Commission, the Commission must approve the budget submitted by the Applicant.

(iii) An action authorizing the County to make a Housing Assistance Grant and/or distribute Affordable Housing Funds:

(a) Must authorize the grant, including use of Affordable Housing Funds, if any;

(b) Must state the requirements and purpose of the grant;

(c) Must authorize the transfer or disbursement to the Qualifying Grantee only after a budget is submitted to and approved by the Commission;

(d) Must comply with the Rules, as amended; and

(e) May provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through the MFA.

(iv) The MFA shall act to approve the proposed Housing Assistance Grant authorized by the County within forty-five (45) days of its receipt of the documentation required above in Section 4.J.(i), (ii) and (iii) of this Ordinance.

(v) The County, in its discretion, may also hold any award of Affordable Housing Funds or any Housing Assistance Grant made by the County in suspense pending the issuance by the County of any RFP or pending the award of the Affordable Housing Funds or of the Housing Assistance Grant by the County to the Qualifying Grantee without the issuance of an RFP by the County. Any award of Affordable Housing Funds or a Housing Assistance Grant by the County shall subject the Qualifying Grantee of the award or grant to the oversight of the County and the MFA under this Ordinance and the Rules.

J. School District and Public Post-Secondary Educational Institution Donations for Housing Projects. If a school district or a public post-secondary education institution intends to transfer land to the County to be further granted to a Qualifying Grantee as part or all of an Affordable Housing project, this transfer shall be subject to the limitations contained in the Act that the school district and the Commission enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a public post-secondary educational institution shall be subject to the additional limitations contained in the Act that:

(i) The property transferred shall be granted to a Qualifying Grantee by the County as part of a grant for an Affordable Housing project; and

(ii) The governing board of the public post-secondary educational institution and the Commission enter into a contract that provides the public post-secondary educational institution with Affordable Housing units.

As used in this section, "public post-secondary educational institution" means a state university or a public community college. The County, in its discretion, may also hold any Housing Assistance Grant made by any school district or public post-secondary educational institution in suspense pending the issuance by the County of any RFP or pending the award of the Housing Assistance Grant by the County to the Qualifying Grantee without the issuance of an RFP by the County. Any award of a Housing Assistance Grant by a school district or a public post-secondary educational institution shall subject the Qualifying Grantee of the grant to the oversight of the County and the MFA under the Rules.

#### **Section 5. DISCRIMINATION PROHIBITED.**

The development, construction, occupancy and operation of an Affordable Housing Program or an Affordable Housing Project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the County shall require compliance by all Qualifying Grantees with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.

**Section 6. ADMINISTRATION.**

The County shall administer any Affordable Housing programs in accordance with provisions of the Act, the Rules, this Ordinance, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The County, in establishing, funding and administering the Affordable Housing Programs and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound. Any proposed amendment to this ordinance shall be submitted to MFA for review prior to adoption by the Commission.

**Section 7. TERMINATION.**

The Commission may repeal this Ordinance and terminate the County's Affordable Housing Program and any or all contracts undertaken in its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the contract. If an ordinance or a contract is repealed or terminated, all contract provisions of the contract regarding termination shall be satisfied.

**Section 8. REPEALER.**

All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

**Section 9. SEVERABILITY.**

If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

**Section 10. EFFECTIVE DATE.**

This Ordinance shall be in full force and effect thirty (30) days after it is recorded with the County Clerk in accordance with Section 4-37-9 NMSA, 1978.







**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

  
Public Info/Special Projects  
Initiating Department

May 23, 2017  
Meeting Date

District 5 Commissioner John L. Vasquez  
Contact Person

7  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**  
**RESOLUTION DONATING A PAINTING FROM THE DOÑA ANA COUNTY PERMANENT  
COLLECTION TO THE LAS CRUCES ELK'S LODGE**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

A resolution requested by District 5 Doña Ana County Commissioner John L. Vasquez to donate the 'Elk Painting' to the Las Cruces Elk's Lodge as a way of thanking the Lodge for proving funding to stage the 2017 'Shattered Lives' program, which educates area teen about the dangers of driving while impaired and/or distracted.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Photographs of the painting and the text on the back indicating it was donated to Doña Ana County in 1991, and an email from District 5 Doña Ana County Commissioner John L. Vasquez requesting this resolution.

**SUMMARY OF FINANCIAL IMPACT**

None

**ADMINISTRATIVE REVIEW AND APPROVAL**

\_\_\_ Finance

 Legal



\_\_\_ County Manager/  
Agenda Review

DB Purchasing

\_\_\_ Human Resources

\_\_\_ Assistant County Manager

\_\_\_ Planning

 Public Info/Special Projects

**DOCUMENT CONTROL**

Original/s for signature? \_\_\_ Yes No      For Recording? \_\_\_ Yes No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

**A RESOLUTION**

**WHEREAS**, the Doña Ana County Board of Commissioners is tasked to represent and address the needs of its residents, and

**WHEREAS**, A painting of an elk in the Organ Mountains was donated to the Doña Ana County Permanent Collection in 1991 by Las Cruces artist Jorge W. Everbeek, and

**WHEREAS**, Until January of 2017, the painting was hung out of most public view in the offices of various elected officials, most recently the County Treasurer, and

**WHEREAS**, Upon entering office, the new county treasurer, Eric Rodriguez, indicated he was not interested in having the painting stay in his office, and it was then moved to the main hallway, just across from the Doña Ana County Clerk’s Office, and

**WHEREAS**, a member of the Las Cruces Elks Club approached District 5 Doña Ana County Commissioner John L. Vasquez to ask whether the county would consider donating the painting to the Elk’s Lodge, and

**WHEREAS**, in 2017, Doña Ana County lost its funding stream for the powerful ‘Shattered Lives’ program, which educates area teen about the dangers of driving while impaired and/or distracted, and

**WHEREAS**, the Las Cruces Elks Lodge stepped up to provide the funding necessary to stage the ‘Shattered Lives’ program at Santa Teresa High School on Thursday, April 27, thereby ensuring that those teens – and others who read or saw the subsequent publicity – would receive the important message of the program,

**NOW THEREFORE**, the Doña Ana County Board of Commissioners does hereby the transfer of ownership of the Elk Painting to the Las Cruces Elks Lodge and authorizes District 5 Doña Ana County Commissioner John L. Vasquez to make the formal donation of the painting on behalf of the full board at an appropriate upcoming date and time.

**PASSED, APPROVED AND ADOPTED** this 23<sup>rd</sup> day of May, 2017

**Board of County Commissioners for Doña Ana County, New Mexico**

\_\_\_\_\_ yea \_\_ nay  
**Isabella Solis, Chair**

\_\_\_\_\_ yea \_\_ nay  
**John L. Vasquez, Vice-Chair**

\_\_\_\_\_ yea \_\_ nay  
**Billy G. Garrett, Member**

\_\_\_\_\_ yea \_\_ nay  
**Ramon S. Gonzalez, Member**

\_\_\_\_\_ yea \_\_ nay  
**Benjamin L. Rawson, Member**

\_\_\_\_\_  
**Attested: Scott A. Krahling, County Clerk**

## Jess Williams

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**From:** John Vasquez  
**Sent:** Tuesday, May 2, 2017 11:26 AM  
**To:** Jess Williams  
**Cc:** Isabella Solis  
**Subject:** Elk Picture

Mr. Williams I was wondering if we can donate the picture of the Elk that is located across from the Clerk's office? The reason I want to do this is because the Elks Club has raised money and supported the shattered lives program that is no longer funded. They have worked countless hours on raising money and participated in providing high school students with a dramatic presentation about death that is caused by drinking and driving. Anything you can do to help me in this matter is greatly appreciated.

John L. Vasquez  
County Commissioner Dist. 5

## Jess Williams

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**From:** JC <crucescollier@gmail.com>  
**Sent:** Thursday, May 4, 2017 8:13 AM  
**To:** Jess Williams  
**Subject:** Elk painting



Este Cuadro al Oleo pintado por el  
Artista Jorge W. Everbeek, Destinado como  
Donación a la Housing Authority, del  
Condado de Doña Ana. Es un signo de merito  
de bondad a dicha Authority.  
N. M., 1991

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
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Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Detention Center  
Initiating Department

Chris Barela   
Contact Person

May 23, 2017  
Meeting Date

  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE OUT OF STATE TRAVEL FOR LIEUTENANTS TO ATTEND EEO TRAINING FOR  
NEW INVESTIGATORS, ONE IN ATLANTA, GEORGIA JUNE 12 - 16, 2017 AND 2<sup>ND</sup> IN  
WASHINGTON, DC OCTOBER 23 - 27, 2017.**

**SUMMARY OF ITEM TO BE CONSIDERED**

**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

The EEOC Training Institute is hosting a course on *EEO training for New Investigators*. The training will be held in Atlanta, Georgia, from June 12 - 16, 2017 and Washington, DC. October 23 - 27, 2017. Travel to and from the seminars will be on June 11, 2017, and June 16, 2017 and October 22, 2017 and October 27, 2017, respectively. The Lieutenants will be delegated the responsibility of investigating EEO complaints pursuant to the County's Human Resources Policies and Procedures Guidelines, on an as needed basis. The training will provide instruction according to the federal investigative guidelines. Participants will learn the basics regarding the EEO law and are provided with the opportunity to develop essential investigative techniques.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Event information

**SUMMARY OF FINANCIAL IMPACT**

50030-20301-72610-200 - \$1,075.00 x 2 = \$2,150.00 – Registrations  
50030-20301-72676-200 - \$480.00 x 2 = \$960.00 - Meals  
50030-20301-72677-200 - \$835.00 x 2 = \$1,670.00 - Travel  
50030-20301-72678-200 - \$2,150.00 x 2 = \$4300.00-- Lodging  
Total \$9,080.00

**ADMINISTRATIVE REVIEW AND APPROVAL**

\_\_\_\_ Finance

\_\_\_\_ Legal



County Manager/  
Agenda Review

\_\_\_\_ Purchasing

\_\_\_\_ Human Resources

\_\_\_\_ Assistant County Manager

\_\_\_\_ Planning

\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature? \_\_\_ Yes No **X** For Recording? \_\_\_ Yes No **X**

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No



Dona Ana County Detention Center

The Detention Center conducts 95% of its own routine investigations using our own trained officers. Those investigations might be simple personnel issues with administrative procedures for accountability, but others fall into the category of EEO investigations that may look into possible violations of the protected classes. When an investigation crosses into this area we want to make sure that the investigator is fully aware, educated and competent in performing those investigations in order to protect all parties involved and the County.

The Detention Center is looking at training two more lieutenants at this level. The trainings will take place in June, and October 2017.

Regards,



Chris Barela.

## **EEO Training for New Investigators**

### **Description:**

Skilled EEOC personnel deliver this interactive course that fulfills the requisite 32-hour training requirement for new federal investigators. Participants are taught basics regarding EEO law and provided with the opportunity to develop essential investigative techniques in a small group setting. Trainers also use instructive exercises to assist participants in completing two actual investigations, which include allegations of harassment, disparate treatment and disability discrimination.

### **Course Date(s):**

- April 24-28, 2017 (Washington, DC)
- May 22-26, 2017 (Washington, DC)
- June 12-16, 2017 (Atlanta, GA)
- July 10-14, 2017 (Washington, DC)
- August 14-18, 2017 (Washington, DC)
- August 21-25, 2017 (San Francisco, CA)
- September 11-15, 2017 (Washington, DC)
- October 23-27, 2017 (Washington, DC)

### **Prerequisite:**

Participants are encouraged to bring a laptop and/or flash drive.

### **Duration:**

Four Days, 8:30 a.m. - 5:00 p.m.; Half day, 8:30 a.m. - 12:00 p.m. Noon

Participants must be able to attend all 4.5 days of instruction to receive a certificate.

### **Price:**

\$1,075 per participant\*

\* includes comprehensive manual, certificate and snacks

### **Course Topics Include:**

- Basics of EEO law and theories of discrimination;
- The 1614 regulations and federal sector EEO process;
- Models of proof in employment discrimination cases;
- Elements of a disability discrimination case;
- Tools and techniques for planning and conducting interviews; and
- The Investigative Report and Investigative Summary



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Detention Center  
Initiating Department

May 23, 2017  
Meeting Date

Chris Barela, Detention Center Director  
Contact Person 

9  
Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE AWARD OF REQUEST FOR PROPOSAL 17-0015 INMATE TELECOMMUNICATION SERVICES AND DELEGATE SIGNATURE AUTHORITY TO THE COUNTY MANAGER FOR RELATED CONTRACT DOCUMENTS**

SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

Request For Proposal (RFP) #17-0015 Inmate Telecommunication Services was issued to solicit interest, was advertised in the local paper, and was sent to potential Offerors. Three (3) firms responded. In accordance with 13-1-117 of the Procurement Code, the Detention Center and the Purchasing Department request approval to award RFP 17-0015 to Legacy Inmate Services. Additionally, we are requesting authorization for the County Manager to have signature authority over the related contract documents, amendments, and renewals.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Executive Summary  
Evaluation Summary Sheet  
Cost Proposals

SUMMARY OF FINANCIAL IMPACT

50030-00000-55395 – Revenue up to \$30,000 per month

ADMINISTRATIVE REVIEW AND APPROVAL

\_\_\_ Finance

\_\_\_ Legal



\_\_\_ County Manager/  
Agenda Review

\_\_\_ Purchasing

\_\_\_ Human Resources

\_\_\_ Assistant County Manager

\_\_\_ Planning

\_\_\_ Other

DOCUMENT CONTROL

Original/s for signature? \_\_\_ Yes  No      For Recording? \_\_\_ Yes  No

Return original/s to: Donald Bullard Name Purchasing Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

Executive Summary  
*5/23/2017 BOCC Meeting*

Title: 17-0015 Inmate Telecommunication Services

Proposals were solicited by Doña Ana County (DAC) Purchasing Office to establish a contract to provide inmates with access to telecommunications services, which meets Doña Ana County's technical and functional requirements and provides for the lowest cost to inmates or any person who pays for inmate telecommunications services. The County is interested in entering into an agreement with Legacy Inmate Services from July 1, 2017 until June 30, 2018 with the option to renew at the discretion of the County for additional seven (7), one (1) year terms.

Proposals were evaluated on the following criteria: RFP Requirements and Response; Technical Competence; Fees; Qualifications; Experience; References and Capability. The

Evaluation Committee consisted of:

Chris Barela, Detention Center Director;  
Bryan Baker, Detention Center Captain;  
Pam Wood, Contract Administrator;  
Donald E. Bullard, Purchasing Manager.

The evaluation committee met on 3/9/2017 to evaluate and discuss all proposals. The committee determined that Legacy Inmate Services' proposal was the most advantageous to DAC taking into consideration the evaluation factors. The evaluation committee recommends award to Legacy Inmate Services.

RFP #17-0015 Inmate Telephone Services

Offeror Name	Evaluation Criteria Scores (out of 1,050 points)											Overall Scores	
	Evaluator	Response	Technical Competence	Cost/Fees	Qualifications	Experience	References	Capability	Instate Preference	Total Score	Overall Score	Rank	
<b>Legacy Inmate Services</b>	Don	145	245	145	150	100	145	40	-	970	<b>3,750</b>	<b>1</b>	
	Pam	145	250	140	140	95	140	35	-	945			
	Chris	150	250	150	150	90	140	40	-	970			
	Bryan	150	200	150	150	80	100	35	-	865			
<b>Securus Technologies</b>	Don	145	250	130	135	100	150	50	-	960	<b>3,625</b>	<b>2</b>	
	Pam	145	250	130	135	100	150	45	-	955			
	Chris	150	250	105	130	90	150	35	-	910			
	Bryan	150	200	100	100	100	100	50	-	800			
<b>ICS</b>	Don	145	200	120	130	100	140	50	-	885	<b>3,165</b>	<b>3</b>	
	Pam	140	200	100	130	90	130	50	-	840			
	Chris	150	150	90	75	100	150	25	-	740			
	Bryan	150	200	100	75	50	100	25	-	700			

# Cost Proposal

Organization Name: Legacy Inmate Communications Date: December 16, 2016

## I. PAYMENT SCHEDULE

Payments will be made in accordance with Article 5 -- Section I of this Agreement. (Purchasing Department must approve any other financial agreements in advance)

## II. COST PER UNIT OF SERVICE OR GOOD(S) PROCURED:

Provide a detailed schedule of fees or flat fee for each service requested.

### INMATE CALLING (COLLECT & PREPAID)

Local: \$0.15/min  
IntraLATA: \$0.15/min  
InterLATA: \$0.15/min  
Interstate: \$0.25/min (Collect) / \$0.21/min (Prepaid)  
International: \$1.15/min

### VIDEO VISITATION

Onsite: FREE  
Remote: \$0.35/min

### SECURE MESSAGING SERVICES

Voicemail: \$1.00/message  
E-mail: \$2.50/message (2-way)

### INMATE CALLING (DEBIT)

Local: \$0.12/min  
IntraLATA: \$0.12/min  
InterLATA: \$0.12/min  
Interstate: \$0.13/min  
International: \$1.00/min

### OTHER SERVICES

Automated Information System: FREE  
Continuous Voice Biometrics: FREE  
Inmate Kites/Forms: FREE  
Commissary Ordering: FREE

Law Library: FREE  
PREA Access: FREE

## III. RENT PAYMENTS TO THE COUNTY

Offerors shall indicate agreement to the thirty dollars (\$30.00) per square foot rental fee or provide an alternate amount. Check agree or alternate amount.

Agree

Alternate amount \$ 30,000.00

Payments will be calculated as follows: 10 square feet multiplied by the total amount of phones (i.e. 106 X 10sqf), plus 152 square feet of office space for the for the full time call system manager, multiplied by \$30.00, equals total monthly payment.

Signature

Date

12/20/16

## SECTION D. – COST PROPOSAL

### SECTION D. – COST PROPOSAL

Complete the Cost Proposal Form, sign and include with proposal response. (Part III)

#### **COST**

The cost proposal shall contain the following information:

1. Overall cost (if any) to the County with all factors considered.

Legacy has read, acknowledged, and agrees to comply.

All services and equipment will be provided at no cost to the County. We have provided an explanation of our rent payment proposal to the County at the end of this section.

2. Charges levied to call recipients, with the intent of obtaining the lowest cost passed on to the recipients. It is the intention of the County to hold as the price ceiling the FCC tariffs. Contractors will be required to follow time of day discounts applicable to FCC tariffs for non-sent-paid calls.

Legacy has read, acknowledged, and agrees to comply.

3. Current tariff information shall be included

Legacy has read, acknowledged, and agrees to comply.

4. Other costs not otherwise identified above.

Legacy has read, acknowledged, and agrees to comply.

There are no costs to the County for any aspect of service. Below we have provided information about end-user fees.

Applicable End-User Fees (No other fees will be applied)	
Account Transaction Fee (Prepaid Only - Processed via Live Agent)	\$5.95
Account Transaction Fee (Prepaid Only - Processed Online)	\$3.00
Bill Statement Fee (Collect Only)	\$2.00

#### **RENT PAYMENTS TO THE COUNTY**

Dona Ana County is seeking rental payments from the awarded inmate telecommunications service Provider for space rental in the amount of \$30.00 per square foot per month.

Offerors shall indicate on the cost proposal form an agreement to the amount indicated above or provide an alternate amount.

Payments will be calculated as follows: 10 square feet multiplied by the total amount of phones (i.e. 107 X 10sqf), plus 152 square feet of office space for the for the full time call system manager, multiplied by \$30.00, equals total monthly payment.

**(D)** Legacy has read, acknowledged, and is proposing an alternative solution.

As the County's current provider, Legacy is well aware of the typical revenue generated from inmate communications at the County's facilities. After careful analysis of this data, Legacy has deemed it impossible for *any* provider to be able to provide the rent payment amount requested here in the County's RFP since the revenue generated from inmate communications is simply insufficient to cover all costs involved in providing service and simultaneously allow for the provision of rent payments of the requested amount. Legacy is confident that doing so would make the provision of service to Dona Ana County unsustainable for *any* vendor, not just Legacy.

**Legacy is proposing to submit monthly rent payments to the County in the fixed amount of \$30,000.00 per month.**

In addition, **Legacy will continue to provide the County's current full-time Call System Manager, Sam Montoya.** As we have since 2013, we will continue to provide the annual wages for Mr. Montoya along with the medical and dental insurance necessary to ensure his well-being during his occupancy at DACDC.

Legacy will also continue to provide all equipment and hardware, software and system access, ongoing system updates, investigative and administrative tools, communication services, ongoing service and support of the facility, its inmate population, and its constituent population (Friends & Family), as well as all other services, tools, features, and items necessary for the operation of the County's inmate communication system **at no cost for the life of the agreement.**

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Jetport  
Initiating Department

Bill Provance, Airport Manager  
Contact Person

*WP*

May 23, 2017

Meeting Date

10

Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE ASSIGNMENT OF SANTA TERESA AIRPORT HANGAR T-11 CONDOMINIUMS. DEED FOR LEASEHOLD CONDOMINIUM INTEREST UNIT #5, FROM LEON DEVELOPMENT, LLC, TO MIKE MCNAMEE AND MARCIA MCNAMEE AND DELEGATE SIGNATURE AUTHORITY TO THE COUNTY MANAGER FOR THE ASSIGNMENT AND ALL RELATED DOCUMENTS.**

SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

Lot T-11 is currently leased to the Santa Teresa Airport Hangar Association (as Lessee). Unit #5 of that Condominium has been sold by Leon Development, LLC to Mike McNamee and Marcia McNamee. Staff recommends approval of the assignment of the land lease of Lot T-11 Unit #5 from Leon Development, LLC to Mike McNamee and Marcia McNamee and delegation of signature authority to the County Manager for the assignment and all related documents.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Assignment of Leasehold Condominium Interest Unit #5 from Leon Development LLC to Mike McNamee and Marcia McNamee  
Executive Summary  
Lease Contract DAC 05-185 to Santa Teresa Hangar Association

SUMMARY OF FINANCIAL IMPACT

No change to hangar lease rate for Lot T-11.

ADMINISTRATIVE REVIEW AND APPROVAL

*WP* Finance

*AK* Legal

*AK* County Manager/  
Agenda Review

Purchasing

Human Resources

Assistant County Manager

Planning

Other

DOCUMENT CONTROL

Original/s for signature? Yes For Recording? \_\_\_

Return original/s to: William Provance, Jetport Manager

Send copy of recorded original/s (resolution and ordinances only) to: Legal Department

Deadline for return of document/s? No

## **Executive Summary**

### **Re-Assign Lease to Mike and Marcia McNamee, 2017**

#### **SUMMARY:**

The land lease for T-Hangar identified as T-11 (Contract DAC 05-185) is assigned to Santa Teresa Airport Hangar Association. The hangar is registered as a Condominium Association which sold units to various individuals or companies.

Unit #5 is currently owned by Leon Development, LLC and is being sold to Mike McNamee and Marcia McNamee. The McNamee's wish to assume the lease of that portion of Hangar T-11

In order to complete the legal paper trail, we are requesting that the BOCC approve the assignment of lease from Leon Development to Mike and Marcia McNamee.

There will not be any change in the Hangar Lease rate because it is based on the total square feet of all nine units in the Condominium Association.



## ASSIGNMENT OF LEASE

### Names of Parties

THIS AGREEMENT is made between Leon Development, LLC, a Texas Limited Liability Company, called Assignor in this agreement and Mike McNamee and Marcia McNamee, called the Assignee in this agreement.

### Recitals

WHEREAS, a Lease ("Lease") was executed on or about the 21<sup>st</sup> day of September 2004, between Santa Teresa Hangar Association, as the Lessee, and Dona Ana County, New Mexico ("Dona Ana County") as Lessor, by the terms of which the following described real estate was leased to Santa Teresa Hangar Association as Lessee for an initial term of 25 years, with a renewal/extension term for an additional 10 years, commencing on or about September 21, 2004, subject to earlier termination as therein provided:

**UNIT 5, Santa Teresa Airport Hangar Lot T-11 Condominiums, a condominium located on Lot T-11, Dona Ana County Airport at Santa Teresa, New Mexico, being more fully described in Declaration thereof recorded on April 22, 2005, in Book 603 Pages 698 through 726 and Amendment recorded June 13, 2005, in Book 615 Pages 1924 through 1926 both of Official Records, together with an undivided 7.1% interest in the common areas and facilities.**

WHEREAS, Santa Teresa Hangar Association assigned the Lease to Benny Davis and Janet Davis, husband and wife, via Deed for Leasehold Condominium Interest filed in the Dona Ana County, NM records on April 1, 1999 as instrument #998712; and

WHEREAS, Benny Davis and Janet Davis, husband and wife assigned the Lease to Thomas L. Smith and Julia M. Smith, husband and wife via Deed for Leasehold Condominium Interest filed in the Dona Ana County, NM records on September 17, 2007 as instrument #0732117; and

WHEREAS, Thomas L. Smith and Julia M. Smith, husband and wife, assigned the Lease to Leon Development, LLC, a Limited Liability Company as filed in Dona Ana County, NM records on July 3, 2013 as instrument #1316948; and

WHEREAS, the Assignor now desires to assign the Lease to the Assignee, and the Assignee desires to accept the assignment; and

WHEREAS, the prior written consent of "Dona Ana County" is required for the "Lease" to be assigned and transferred; and

WHEREAS, Assignor is entitled to be relieved from all obligations under the "Lease" upon "Dona Ana County's" written consent to an Assignment and transfer of the "Lease".

### **Assignment**

In consideration of the sum of \$10.00 and other good and valuable consideration, the receipt of which is acknowledged by this agreement, and the agreement of the Assignee set forth below, the Assignor assigns and transfers to the Assignee and the Assignee's successors and assigns all right, title and interest of Assignor in and to the "Lease," a copy of which is recorded in Book 553, Pages 1623-1643, of the records of Dona Ana County, New Mexico. The Assignee accepts the assignment and in addition, expressly assumes and agrees to perform and fulfill all the terms, covenants, conditions and obligations required by the Assignor as the Lessee under the "Lease." Assignee hereby agrees to at all times hereafter indemnify, defend and hold Assignor harmless from and against any and all payments, liability and costs, including reasonable attorneys fees which Assignor may suffer or be requested or required to pay by virtue of the "Lease."

### **Binding on Successors**

This agreement shall be binding on and insure to the benefit of the parties to this agreement, their respective heirs, executors, administrators, personal representatives, successors in interest and assigns.

### **Consent of Lessor**

The undersigned, Dona Ana County, New Mexico, is the Lessor in the Lease described in the foregoing Assignment of Lease from Leon Development, LLC, a Texas Limited Liability Company, ("Assignor") to Mike McNamee and Marcia McNamee. The undersigned hereby consents to the Assignment of Lease to Mike McNamee and Marcia McNamee and expressly relieves and releases "Assignor" from all obligations and liability under the terms of said Lease.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

"See attached Exhibits A-C"

Exhibit A - Signature Page  
**LESSOR**

“Lessor”  
Dona Ana County, New Mexico

By: \_\_\_\_\_  
Charles B. McMahon, Interim County Manager

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by Charles B. McMahon, Interim County Manager of Dona Ana County, New Mexico as Lessor.

\_\_\_\_\_  
Notary Public

Exhibit B - Signature Page  
ASSIGNOR

"Assignor"

Leon Development, LLC, a Texas Limited Liability Company

By:   
K. Alan Russell

State of TEXAS )  
County of EL PASO )

This instrument was acknowledged before me this 28<sup>TH</sup> day of MARCH, 2017, by K. Alan Russell, Managing Member of Leon Development, LLC, a Texas Limited Liability Company, as Assignor.



  
Notary Public

Exhibit C - Signature Page  
ASSIGNEE

"Assignee"

*LP-008-116 Marcia McNamee*  
Mike McNamee and Marcia McNamee

State of TEXAS )  
County of EL PASO )

This instrument was acknowledged before me this 29<sup>TH</sup> day of MARCH, 2017, by Mike McNamee and Marcia McNamee, as Assignee.



*[Signature]*  
Notary Public

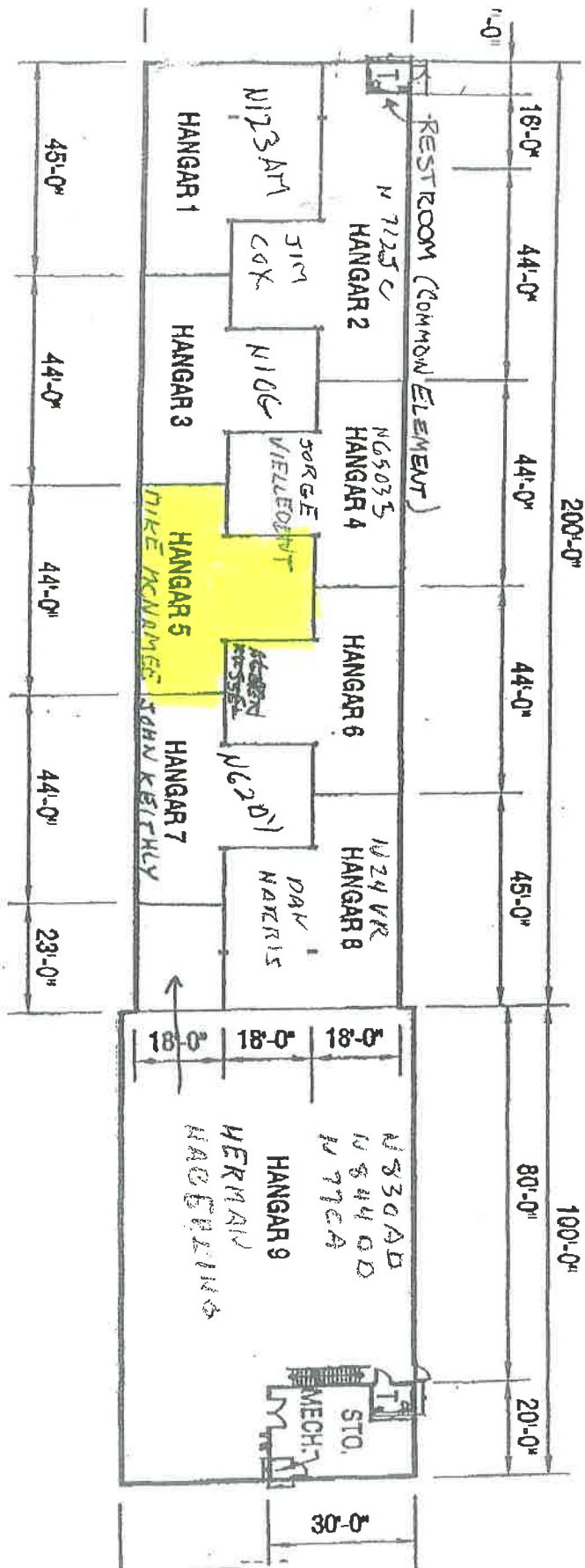


EXHIBIT C

16, 500 sq ft Building

Land base 19, 500

CONTRACT DAC 05-185

LEASE CONTRACT BETWEEN DOÑA ANA COUNTY  
AND SANTA TERESA HANGAR ASSOCIATION  
FOR LEASE OF AIRPORT SPACE AT THE DOÑA ANA COUNTY AIRPORT  
AT SANTA TERESA, NEW MEXICO

This Lease, made and entered into by and between the Board of County Commissioners of Doña Ana County, New Mexico, hereinafter referred to as the "Lessor," and Santa Teresa Hangar Association, hereinafter called the "Lessee." This Lease is the result of an award to the Lessee of its bid responding to the Lessor's request for responses to DAC Bid #04-0088 Lease of Airport Space. This Lease supersedes all prior agreements and negotiations between the parties.

WITNESSETH:

WHEREAS, Lessee has submitted a Letter of Intent to erect a hangar and support buildings upon a site designated as Lot T-11 at the Santa Teresa Airport, (hereinafter called the "Airport") which is owned by the Lessor, and

WHEREAS, Lessee has submitted to the Lessor the items set forth in Section 2.3.2 of the Santa Teresa Airport Development Guidelines and the Lessor has approved these items, and

WHEREAS, Lessee and the Lessor desire to enter into this Lease relating to the occupying of a facility to be constructed upon the hereinafter described Lot.

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained and other good and valuable consideration, the mutual sufficiency of which is hereby confessed and acknowledged, the parties agree as follows:

1. **LEASED PREMISES:** The Lessor leases to Lessee, the area of land referred to herein as Lot T-11, hereinafter referred to as "leased premises," at the Doña Ana County Airport at Santa Teresa, New Mexico, State of New Mexico, which is depicted and described upon Exhibit "A"

Santa Teresa Hangar Association.

Lease Lot T-11

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attached hereto and made a part hereof. The area of land to be leased is described in Exhibit A attached and contains 19,500 square feet.

2. **PERIOD OF CONTRACT:** The premises is hereby leased for a period of fifteen (15) years commencing from the date of approval by the New Mexico State Board of Finance. The term of the Lease may be extended once for an additional ten (10) year term upon the same terms and conditions provided that:

(i) Lessee notifies Lessor of its intention to renew one (1) year prior to the end of the term of this Lease;

(ii) Lessee, in Lessor's reasonable judgment and discretion, has maintained the leased premises in good workable condition consistent with Lessor's standards, resolutions, rules and regulations, the Doña Ana County Minimum Standards for Commercial Aeronautical Activities at Santa Teresa Airport, and the Santa Teresa Airport Development Guidelines as may be revised during the term of this Lease or any renewal terms;

(iii) Lessee, in Lessor's reasonable judgment and discretion, has continuously operated its facility and at the time of renewal notice is not in receivership or bankruptcy;

(iv) Lessee is not in violation of the Santa Teresa Airport Development Guidelines, the Doña Ana County Minimum Standards for Commercial Aeronautical Activities at Santa Teresa Airport, or any other Lessor standards, resolutions, rules or regulations then existing or adopted during the term of this Lease or any renewal terms;

(v) Lessee has not been more than 60 days late in making rent payments more than three times during the term of the lease or any renewal terms;

(vi) The Lessee is current in payment of land rentals, compensation and other fees and provided; and

(vii) Lessee is not then in breach of any material term, covenant or condition of this Lease as may be amended or revised, extended or renewed.

### 3. RENTAL RATE, OTHER FEES AND PAYMENT

A. Base Land Rent and Other Rent: Lessee shall pay the County rent for the leased premises on an annual basis, as follows:

(i) Commencing on the first day of this lease (approval by the State Board of Finance), Lessee shall pay the Lessor fifteen cents (15¢) per square foot per year as Base Land Rent based on the fact that the hangar will be used only for storage and not operated commercially and no gross receipts generated. In the event that commercial operations are initiated, the rental rate stated above shall be reduced to ten cents (10¢) per square foot per year during the term of this lease as Base Land Rent. The Base Land Rental Rate shall be renegotiated at the time of each contract renewal.

(ii) Commencing one year after Lessee starts commercial business, Lessee shall pay, in addition to the Base Land Rent in (i) above, to the Lessor two percent (2%) of the gross receipts of the Lessee, calculated in the same manner as Lessee calculates its New Mexico state income tax with the same exclusions that apply to such tax. Exclusions also include permitted aircraft fuel sales and sales or other income attributable to activities conducted out of the leased premises. Payments shall be made annually on the anniversary date of the first payment during the term of this Lease.



(iii) In addition to rent set forth in (i) and (ii) above, Lessee shall pay Lessor a fuel flowage fee of six cents (6¢) for each gallon of fuel delivered to Lessee at the Airport. Payment shall be made quarterly on January 1, April 1, July 1, and October 1, of each year during the term of this Lease.

**B. Rental Escalation:** The negotiated Base Rental Rate specified in 3.A (i) above, will be increased annually according to increases in the Consumer Price Index produced by the Bureau of Labor Statistics. On each lease anniversary date, the Lessor shall give written notice to the Lessee of the Base Land Rent to be charged during the ensuing year. The increase shall be based on the All Urban Consumer (CPI-U) for All Items Category, U. S. City Average (or, if said index is no longer published, an appropriate successor index), and shall be for the most recent period available; the percentage increase over the same index for the previous twelve months shall determine the percentage increase in the Base Rent.

**C. Additional Sublease Compensation:** It is understood and agreed that Lessee, in addition to its own use of the leased premises, may sublease the leased premises to other persons or entities with prior written approval of the Lessor. With respect thereto, Lessee shall pay two percent (2%) of the sublessee's Gross Receipts as additional rent, excepting subleases to Lessor. DRC ?

**D. Delinquency:** The payments set forth in paragraph A of this paragraph shall be kept current. Interest shall be charged on any payment overdue five (5) to thirty (30) days at the rate of one and one-half percent (1-1/2%) per month prorated for the number of days late. The rate for payments overdue more than thirty (30) days shall be two percent (2%) per month prorated for the number of days over thirty days. Lessor shall also be entitled to recover all collection costs and expenses including reasonable attorneys' fees, regardless of whether a court action is required to pursue delinquent payments.

**E. Gross Receipts:**

(i) "Gross receipts" means the total amount of money or the value or other consideration from selling or leasing property or from performing services, and includes any receipts from sales of tangible personal property handled on consignment. Excluded are New Mexico gross receipts tax payable on transactions for the reporting period and taxes imposed pursuant to the provisions of the Municipal Gross Receipts Tax Act, the Special Municipal Gross Receipts Tax Act, the Municipal Environmental Services Gross Receipts Tax Act, the Lessor Gross Receipts Tax Act, the County Fire Protection Excise Tax Act, the County Environmental Services Gross Receipts Tax Act, the Local Hospital Gross Receipts Tax Act or the County Health Care Gross Receipts Tax Act which are payable on transactions for the reporting period. Also excluded from Gross Receipts shall be the purchase, sale or exchange of aircraft fuel.

(ii) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

(iii) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the Lessee may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the Lessee transfers his interest in any such contract to a third person, then Lessee shall treat the receipts as gross receipts upon the full sale or leasing contract amount, excluding any type of time-price differential.

(iv) "Gross receipts," for the purpose of the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker, on a commission or fee basis, of any property, service, stock, bond or security, includes the total commissions or fees derived from the business.

(v) "Gross receipts," also includes the amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization.

**F. Place and Manner of Payments:** Payments by Lessee shall be made to the Airport Manager or at such other place as Lessor may hereafter designate in writing to Lessee. Lessee shall pay by check made payable to Treasurer, Doña Ana County, in legal tender of the United States. Checks shall be accepted by Lessor subject to collection. Lessee agrees to pay any bank charges for any costs incurred by Lessor on account of returned or dishonored checks. The Airport Manager shall not accept cash payments.

*Dept. 3 Finance*

**4. IMPROVEMENTS AND CONSTRUCTION OBLIGATIONS:**

**A. Required Construction:** Lessee shall cause to have erected upon the leased premises those improvements as set forth in the plans and specification as shall be subsequently approved by the Lessor at the sole cost and expense of Lessee.

**B. Development Plans:** Before any construction is initiated a pre-construction conference shall be held with the Airport Manager, County Building Inspector, County Engineer, County Planning Director and anyone else designated by the Airport Manager for the purpose of Lessor review and approval of all plans, specifications and a construction timetable. All construction plans, specifications and the timetable shall be reviewed and approved or disapproved by the Airport Manager, and the Doña Ana County Planning, Building Inspection and Engineering Departments prior to implementation.

**C. Construction Standards:** The improvements to be constructed on the leased premises shall conform to the Development Plan timetable required by the Lessor and shall be accomplished in a good and workmanlike manner, in accordance with the plans and specifications approved by the Lessor; in accordance with County and State Building Codes; pursuant to a Building Permit to be obtained from the Doña Ana County Building Inspection Department or the State Construction Industries Division and according to the customary terms and conditions thereof; in accordance with the terms, conditions and requirements of this Lease; and in a manner consistent with State and Federal requirements and subject to the requirements of the County.

**D. Hold Harmless, Indemnify and Defend:** Lessee agrees to hold harmless, indemnify, and defend Lessor, its agent or public employees, against liability claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to real property or improvements to real property, caused by or resulting from, in whole or in part, the negligence, act or omission of the Lessee, its agents or any legal entity for whose negligence, acts or omissions any of them may be liable. Incorporated herein, however, are the terms and conditions of Section 56-7-1, NMSA. This Hold Harmless provision is to be read and construed consistent with that statutory section. The Lessee's agreement to hold harmless, indemnify and defend the Lessor shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract.

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**E. INSURANCE:**

(i) Lessee agrees that it will at all times during the term of this Lease, at its own costs and expense, provide and keep in force a policy or policies of insurance as follows:

(a) Comprehensive General Liability, including at least Bodily Injury (including death) & Property Damage Liability, Premises, Product Liability, Hangar Keeper's Liability, Service Vehicle Liability, and Contractual Liability, with a single limit of no less than \$1,050,000.

(b) Insurance against loss or damage by fire, lightning, tornado, windstorm, hail, earthquake, explosion, riot, civil commotion, extended coverage and vandalism, covering all improvements on the leased premises in an amount not less than ninety percent (90%) of such improvements, but not to exceed one hundred fifty percent (150%) of the original cost. If any of the above coverage is unobtainable by Lessee for a reasonable price, then said coverage may be modified in the policy upon written approval of the County Risk Manager; said written approval shall not be unreasonably withheld.

(c) Lessee shall at all times maintain adequate Workers' Compensation insurance in accordance with any present or future state law with an authorized insurance company, or through the New Mexico State Compensation Insurance Fund, or through a self-insurance program approved by the State of New Mexico, insuring the payment of Workers' Compensation to all its employees at the Airport. D

(d) All policies of insurance required herein except Workers' Compensation shall name Lessor as an additional insured and shall be in a form and issued by a company or companies approved by the County Risk Manager and qualified to do business in the State of New Mexico. Each such policy shall provide that such policy may not be materially changed, altered, or canceled by the insurer during its term without first giving thirty (30) days written notice by registered mail, return receipt requested, to both the County Airport Manager and County Risk Manager. All such policies of insurance, or certified copies thereof, shall be delivered to and left in the possession of the County Risk Manager and all subsequent policies shall be delivered to the County Risk Manager at least ten (10) days before the expiration of existing policies.

(e) The Lessee shall have and keep in force contractual liability insurance or performance/completion bonds as may be reasonably requested by the County Risk Manager from time to time during this Lease in amounts necessary to insure the performance of the contract which is the subject of the Risk Manager's request. The contracting for such insurance by Lessee does not in any way limit, modify or negate the Lessee's agreement to hold harmless, indemnify and defend the Lessor as set forth elsewhere in this Lease.

(f) Lessee shall not violate the terms or prohibitions of any insurance policy herein required to be furnished by Lessee, and Lessee shall promptly notify the Lessor of any claim or loss exceeding the amount of the deductible under said insurance policy or policies, and certify that proper notice has been given to the appropriate insurance carrier.

(g) The Lessor shall not be under any obligations to prosecute, settle or adjust any claim which may accrue under any such policy of insurance lodged with the Lessor.

(h) It is agreed by and between the Lessor and Lessee that, in the event of a partial or total destruction of the improvements located upon the leased premises by any casualty insured against, the proceeds of the aforementioned insurance policy or policies shall be devoted exclusively to the repair or replacement of said improvements. This Lease shall terminate if such

improvements are not repaired or replaced within eight (8) months from the date of the event of a partial or total destruction.

(i) The Lessee shall require the Contractor to furnish (a) general liability insurance in such amounts as required by the New Mexico Tort Claims Act and (b) contractual liability insurance and/or performance and completion bonds in amounts sufficient to pay the cost of completion of all intended improvements.

**F. Other Construction Contract Requirements:** Lessee shall also include in any construction contract such provisions as may be required by Lessor relating to the operations of the Contractor on the Airport. It is further agreed and understood that all construction contracts and subcontracts for any improvements, replacements, repairs or renewals, constructed hereunder are subject to the standards, resolutions, rules and regulations of County and/or the State of New Mexico, any and all Federal Aviation Administration rules and regulations, the Santa Teresa Airport Development Guidelines, and the Doña Ana County Minimum Standards for Commercial Aeronautical Activities at Santa Teresa Airport. Prior to the commencement of any construction Lessee shall provide Lessor, a copy of all construction contracts let in connection with the leased premises.

**G. Completion:** When the improvements have been completed, Lessee shall deliver to Lessor a certificate of an architect or structural engineer licensed to practice in the State of New Mexico and familiar with the construction of said improvements, certifying that the improvements have been constructed in accordance with the approved plans and specifications and in strict compliance with all Federal, State and County rules, regulations, standards, resolutions, guidelines, laws, ordinances, orders and building codes and certifying that in the engineer's or architect's opinion such improvements have an expected useful life of a duration which is customary for such improvements under similar conditions and circumstances. Lessee shall pay for all necessary engineering testing as required by the County Engineer. If required testing indicates that construction is not meeting required specifications or engineering standards, then lessee shall reconstruct such construction. Copies of all testing results shall be provided immediately to the County Engineer.

**H. Performance:** Lessee shall begin construction no later than ninety (90) days after execution of this Lease by Lessor and shall complete such construction within 365 days after execution of this Lease by Lessor. Lessee shall conform to the deadlines and the timetable approved by Lessor for building improvements upon the leased premises subject, however, to reasonable delays caused by any act of Lessor or by weather conditions, strikes, lockouts, fire, unusual delays by common carriers, acts of God, or any cause beyond Lessee's control.

**I. Ownership and Removal of Improvements:** Except as otherwise mutually agreed by the parties, all alterations and improvements made to or placed in the premises by Lessee are and shall remain Lessee's property if such alterations or improvements can be removed without undue damage to the premises and are, in fact, removed by the Lessee prior to the termination of this Agreement or within a reasonable time after termination. Except as otherwise mutually agreed by the parties, alterations and improvements of a permanent nature which cannot be removed without undue damage to the premises shall immediately become the Lessor's property.

**J. Alteration of Construction Plans:** The improvements to be constructed on the leased premises may not be structurally changed or altered by Lessee unless the plans and specifications for the structural change or alteration are first approved in writing by the Lessor which approval will not be unreasonably withheld.

## 5. USE RESTRICTIONS:

Santa Teresa Hangar Association.

Lease Lot T-11

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**A. Permitted Uses:** The leased premises are located within that portion of the Santa Teresa Airport designated and reserved for general aviation. Only uses consistent with that designation and reservation and with the Airport Master Plan shall be permitted on the leased premises. The leased premises and/or improvements thereon shall only be used for aircraft storage, pilot education, and aircraft builder education. The leased premises and the improvements to be constructed thereon are intended to be for-profit and utilized solely for the purposes specified in this paragraph.

**B. Prohibited Uses:** All uses, except those uses specifically listed in Paragraph 5.A. above, are prohibited.

**C. No Implied Uses:** Lessee shall acquire no right to utilize the leased premises or the improvements thereon other than as specifically allowed under this paragraph, as may be amended.

**6. MAINTENANCE OBLIGATIONS:**

**A.** Lessee, at its own expense, shall keep the leased premises and improvements, including water, septic tanks, sewer and waste water drain lines, barrier fences, auto/pedestrian access ways, trench drains and utilities, upon and within the leased premises in good repair and maintenance, and in a safe, sanitary, orderly and sightly condition. Such leased premises and improvements shall be at all times maintained in compliance with all Federal, State and/or County rules, regulations, orders, building codes, ordinances and laws, as may be adopted, amended or modified from time to time. Lessee shall maintain the security of the leased premises and/or improvements.

**B.** Lessee shall be responsible for removal of all wastes from the leased premises at Lessee's expense. Lessee shall not permit rubbish, debris, waste materials or anything obnoxious or detrimental to safety or health or likely to create objectionable odors, a fire hazard, or conducive to deterioration, to remain on any part of the leased premises and/or improvements or to be disposed of improperly. The Lessee shall not permit any wastes, liquids, or other material to become a part of the effluent to the Lessee's septic tank, any sewage plant or other septic tank system which would cause malfunction of any septic tank, plant equipment or other septic tank system or impede the normal chemical and biological workings of any plant or septic tank process system. Lessee shall also be responsible for control of animals and rodent, insect and bird elimination upon the leased premises.

**7. SIGNS:** Lessee shall not erect, paint or maintain any sign(s) and/or advertising display(s) whatsoever, upon the leased premises without first securing the written consent of the Lessor. Signs must be in compliance with the Lessor's sign ordinance.

**8. TAXES, LICENSES AND LIENS:**

**A.** Lessee covenants and agrees to promptly pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable to its operation or levied or assessed against leased premises including personal property taxes on improvements to the leased premises and any and all utility and/or infrastructure improvement assessments applicable either to the leased premises or a prorata share (based on Lessee's percentage share of the total rentable land within the Airport) of such Airport assessments. Such improvements must benefit all tenants at the Airport and must be approved by the County, after notice to Lessee and other tenants, pursuant to applicable rules, regulations and statutes. Lessee further covenants and agrees to take out and keep current all licenses (County, State and Federal) required for the conduct of its business at and upon

Santa Teresa Hangar Association.

Lease Lot T-11

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the Airport, and further agrees not to permit any of said taxes, excises or license fees to knowingly become delinquent.

B. Lessee shall furnish to the Lessor, upon request, duplicate receipt or other satisfactory evidence showing the prompt payment by it of Social Security taxes, Unemployment Compensation taxes, all required licenses, and all other taxes.

C. Liens: Lessee also covenants and agrees not to permit any mechanic's or materialman's lien(s) or other lien(s) to be foreclosed upon the leased premises and/or Lessee's improvements thereon, and/or any part of the Airport thereof, by reason of any work or labor performed, or materials furnished by any mechanic, materialman or the like, if there is any authority allowed by state law to foreclose such liens against Lessor property including, but not limited to, the leased premises and/or the Airport. Lessee further covenants and agrees to pay promptly when due, all bills, debts, and obligations incurred by it in connection with its operations on the leased premises, and not to permit the same to become delinquent and to protect the Lessor from, and to suffer no lien, mortgage, judgment or execution to be filed against the leased premises and/or Lessee's improvements thereon and/or any part of the Airport thereof, if there is any authority allowed by state law to file such against Lessor property including, but not limited to, the leased premises and/or the Airport. The Lessor does not grant consent for and/or does not waive sovereign immunity from any and all such lien(s), mortgage(s), judgment(s), foreclosure(s), suit(s), and/or execution(s) against the Lessor and/or Lessor property, including but not limited to, the leased premises and/or the airport.

9. **INDEPENDENT CONTRACTOR:** Nothing in this Lease Contract is intended, or should be construed in any way, to create or establish a partnership relationship between the parties or to establish Lessee as an agent, representative or employee of the County for any purpose or any manner whatsoever. Lessee and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. The Lessee, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the county and shall not bind the County in any respect.

10. **SOVEREIGN IMMUNITY:** By entering into this Lease Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, supra, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, supra.

11. **PUBLIC EMPLOYEES:** As used in this Lease, "public employees" as defined in the New Mexico Tort Claims Act, means any officer(s), employee(s), servant(s) of the Lessor, including elected or appointed officials, law enforcement officers and persons acting on behalf or in service of the Lessor in any official capacity, whether with or without compensation and also including the appointed officials of the Doña Ana County Santa Teresa Airport Board or Commission and the Doña Ana County Santa Teresa Airport Architectural Control Committee, but the term does not include an independent contractor(s).

12. **PERSONAL LIABILITY:** No elected or appointed official, employee, servant, agent or law enforcement officer of the County shall be held personally liable under this Lease or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or Governmental duty and responsibility.

Santa Teresa Hangar Association.

Lease Lot T-11

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13. **THIRD PARTY BENEFICIARY:** It is agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create on behalf of the public or any member thereof the status of third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, personal injury, property damage or any other claim or cause of action whatsoever.

14. **INCONVENIENCE DURING CONSTRUCTION AND RELOCATION:**

A. **Airport Expansion and Construction:** Lessee recognizes that from time to time during the term of this Lease it will be necessary for the Lessor to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation. Such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or temporarily interrupt Lessee in its operation at the Airport. The Lessor reserves the right to further develop or improve the Airport as it sees fit, and without unreasonable interference or hindrance from Lessee.

B. **Relocation:** If the physical development of the Airport requires the relocation, removal or alteration of Lessee's facilities, the Lessor agrees to provide a comparable location without any unreasonable interruption to the Lessee's activities. The Lessor agrees to relocate all facilities, improvements and buildings from within the leased premises to the comparable premises at no cost to the Lessee. If such relocation of facilities is impractical, Lessor shall construct comparable facilities on such new location. In the alternative, Lessor shall have the option to terminate the lease if the cost to construct comparable facilities is deemed excessive by the Lessor. Lessee agrees that Lessor shall not be liable for claims or damages by reason of such inconvenience or interruption.

15. **PROHIBITION AGAINST LEASEHOLD PLEDGE AND ASSIGNMENT:**

A. **General Assignments Prohibited:** Lessee shall not assign nor delegate Lessee rights and obligations, any interest in this contract, or transfer any interest or assign any claims for money due or to become due under this lease without the written consent of the Lessor.

B. **Mortgages and Construction Financing:** Unless the Lessor previously consents in writing, which consent will not be unreasonably withheld or delayed, Lessee shall not pledge, mortgage, alienate, hypothecate, or otherwise encumber the Lease or any interest therein or grant or give any other security interest in the leased premises, voluntarily or by operation of law, except if the Lessor agrees to the construction of improvements on the leasehold by Lessee, the Lessor, upon request by the Lessee, shall permit Lessee to encumber the leasehold interest granted by the Lease for the purpose of financing such improvements, in a manner acceptable to the Lessor, but only on the leased premises on which said improvements are to be constructed; in which case, the Lessor agrees that this Lease shall be subordinate to the construction and permanent financing of such improvements. Provided, however, that in the event of a foreclosure of any mortgage or other security document granted by Lessee concerning all or any part of the leased premises created by this Lease, the foreclosing party following such foreclosure shall have no greater rights with respect to the leased premises than are granted to Lessee under this Lease and all other operations, if any, conducted by the secured foreclosing party shall be consistent with the terms, conditions, covenants and agreements of this Lease. Any mortgage or security document given by Lessee shall provide that all notices of default required to be given to Lessee by the holder hereof shall also be given to the

Santa Teresa Hangar Association.

Lease Lot T-11

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Lessor. Should Lessor later agree to amend this Lease to permit an assignment of this Lease, as a condition to the Lessor's consent to the Lessee to assign this Lease, Lessor shall have the right to increase the Base Land Rents, compensation and other fees.

16. **SUBLEASES:** If Lessee desires to sublease any portion of its hangar space to another entity, Lessee shall:

A. Obtain written approval from the Lessor for the intended sublease activity and the form of the sublease agreement shall also be approved by the Lessor prior to the execution of such sublease.

B. Insure that Subleases contain all the terms and conditions of this Lease as a minimum, but shall prohibit further subleases. Subleases shall be subordinate to and subject to this Lease.

C. Not be relieved of and from its duties, liabilities and obligations under this Lease for the entire premises including the sublease part.

17. **CANCELLATION AND TERMINATION:** A. The Lessor may cancel and terminate this Lease, and may repossess the leased premises, with or without process of law and without liability for including, but not limited to, any of the following circumstances:

(i) In the event any installment of land rental, compensation, fees and/or other payment provided for herein is in arrears and remains unpaid for a period of thirty (30) days after the same is due, upon giving ten (10) days written notice to Lessee of its intention to so terminate, at the end of which time all the rights of Lessee hereunder shall terminate unless such payment, which shall have been stated in such notice, shall have been paid within such ten (10) days; provided, however, Lessee will be allowed only two (2) such notices within any twenty-four (24) month period to cure within the time specified in this paragraph. The third such notice in any twenty-four (24) month period shall be final and shall cancel and terminate all of the rights hereunder of Lessee without any right on the part of Lessee to cure such default after receiving such notice.

(ii) In the event of any other default of Lessee as to the term(s), condition(s), agreement(s) and/or covenant(s) of this Lease, upon giving thirty (30) days written notice to Lessee to cure the default or suffer termination, at the end of which time all rights of Lessee hereunder shall be terminated unless the default specified in such notice shall have been cured within said thirty (30) days, or unless Lessee shall take diligent steps, as determined by the Lessor, to cure such default during said period.

(iii) In the event Lessee shall engage in any activity or practice (except as specifically permitted herein) which hinders or interferes with the proper use and operation of the Airport, then the Lessor may order Lessee to forthwith cease and desist from such activity or practice and should Lessee fail or refuse to comply with any such order, the Lessor may, at its option, cancel and terminate this Lease.

(iv) Upon occurrence of any of the following events, Lessor may terminate the Lease by giving thirty (30) days written notice to Lessee of its intention to terminate the Contract.

(a) If the Lessee shall apply for or consent to, in writing on behalf of Lessee by any of its agents or its duly authorized attorney, the appointment of a receiver, trustee or liquidator of Lessee or of all or a substantial part of its assets;

(b) If the Lessee shall file a voluntary petition in bankruptcy, or admit in writing its inability to pay debts as they come due;

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(c) If the Lessee shall make a general assignment for the benefit of creditors;

(d) If the Lessee shall file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law;

(e) If the Lessee shall file an answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization, or insolvency proceedings; or if during the term of this Lease, an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating Lessee bankrupt or approving a petition seeking reorganization of Lessee or appointing a receiver, trustee, or liquidator to marshal all or a substantial part of its assets, and such order, judgment or decree shall continue without stay and in effect for any period of ninety (90) consecutive days;

(f) If the Lessee shall have its estate herein divested by other operation of law;

(g) If the Lessee shall abandon its operations or conduct of business on the leased premises for sixty (60) days;

(h) If after the occurrence of damage or destruction, partial or total, to the improvements on the leased premises by fire, the elements or other casualty to such an extent that the Lessee is incapable of repairing and/or replacing such improvements within eight (8) months.

(v) Abandonment Defined: Abandonment of Lessee's conduct of business or operation shall occur when Lessee reports no gross receipts or fails to make any rental payment for gross receipts when any payment is due after Lessee constructs its improvements, or when the Lessee ceases its business activities or operation(s) after construction of the improvements required by this Lease.

**18. OBLIGATIONS AND RIGHTS FOLLOWING CANCELLATION AND TERMINATION OR EXPIRATION:**

A. Except as otherwise provided herein, in the event of cancellation and/or termination of this Lease by the Lessor, expiration of the term or any renewal, or any other termination, the Lessor shall have no further obligations hereunder, and that Lessee shall remain liable to Lessor for all damages, rentals, compensation and other fees accrued to the date of termination and for all damages, rentals, compensation and other fees accrued during any period of holding over.

B. Continuing Hold Harmless and Indemnity Obligations: Any and all of the Lessee's agreements to hold harmless, indemnify and defend to the Lessor and/or its "public employees" as defined in the New Mexico Tort Claims Act, shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other termination of this Lease for any reason and shall survive the cancellation, expiration of the term or any renewal or any other termination of this Lease.

C. Right to Premises: Upon the expiration of the term or any renewal, cancellation or any other termination of this Lease, the Lessee's rights to the leased premises, facilities, other rights, licensed services and privileges granted in this Lease shall immediately cease.

19. RIGHTS AND REMEDIES CUMULATIVE: Lessor shall have all rights and remedies specified herein, as well as any and all rights and remedies available to Lessor either under the common law or the laws of the State of New Mexico. The rights and remedies of the Lessor under this Lease are cumulative and are not intended to be, and shall not be, exclusive of one another. The Lessor shall have all rights and remedies provided herein (including the right to exercise any landlord's

or similar lien upon property of Lessee located on or used in connection with the leased premises), and all such rights and remedies may be exercised by the Lessor. Neither the delay nor the omission to exercise any right or power nor the exercise of any right or power accruing to the Lessor shall impair any such right or power, or shall it be construed to be a waiver thereof, or relieve the Lessee of any of its responsibilities or obligations under this Lease or from any liability resulting therefrom, or in any way amend, modify, alter, limit or otherwise affect the rights of the parties hereunder.

**20. SURRENDER OF LEASED PREMISES AND HOLDING OVER:**

A. On expiration of the term or any renewal hereof, cancellation of this Lease as herein provided or on any other termination, the Lessee shall immediately peacefully surrender and vacate the leased premises. Subject to Paragraph 4.I, supra, Lessee shall remove all alterations and improvements and restore the leased premises to its original condition as the same appeared at the commencement of the lease.

B. Notwithstanding the foregoing, the Lessor reserves the option to purchase any or all of such alterations and improvements, but not including alterations and improvements that may not be removed without material damage to the leased premises, for a sum equal to the fair market value of such improvements as determined by a qualified real estate appraiser jointly appointed by the Lessor and the Lessee. Should the Lessor and the Lessee be unable to agree on the selection of an appraiser, the Lessor's appraiser and the Lessee's appraiser will appoint a third party to determine the fair market value of the improvements. Any leasehold improvements that may not be removed without material damage to the leased premises shall not be removed by the Lessee at any time, but shall become the property of the Lessor upon the expiration of the term or any renewal, cancellation or any other termination.

C. Lessor shall have the right on such expiration of the term or any renewal, cancellation or any other termination to enter upon and take possession of said leased premises, with or without process of law, without liability for including, but not limited to, trespass.

D. Should Lessee hold over the use of or continue to occupy said leased premises after the expiration of the term or any renewal, cancellation or any other termination of this Lease, such holder over shall be deemed merely a tenancy from month to month upon the same conditions as provided in this Lease but at a rental rate, compensation and other fees as determined by the Lessor.

E. If Lessee fails to remove the leasehold improvements within sixty (60) days of the date of expiration of the term or any renewal, cancellation or any other termination, then title to the leasehold improvements shall vest in the Lessor.

F. No holding over by Lessee after expiration of the term or any renewal, cancellation or any other termination of this Lease, whether with or without the consent of the Lessor, shall operate to extend or renew this Lease.

**21. WAIVER:** Any waiver by the County of any breach of any covenant, term, condition or agreement in this Contract to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

22. **LITIGATION EXPENSES:** In any action brought by either party for the interpretation of this Lease or the enforcement of the obligation(s), duty(ies) and/or liability(ies) of the Lessee, the Lessor shall be entitled to recover reasonable fees of attorney(s), court costs and other litigation expenses from the Lessee but only if the Lessor is the prevailing party.

23. **NOTICES:** All notices and/or correspondence between the parties to this Contract shall be hand delivered or sent by certified mail with return receipt requested jointly to:

Doña Ana County Manager Doña Ana County Airport Manager 180 W. Amador Ave. Las Cruces, NM 88001	Santa Teresa Hangar Association Attn: Benny Davis 16000 Ashford Horizon City, Texas 79928
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The effective date of service of any such notice shall be the date such notice is hand delivered or mailed to Lessee or the Lessor. Either party may designate in writing from time to time subsequent or supplementary persons or addresses in connection with said notices. If Lessee changes address, Lessee shall given written notice to Lessor within thirty (30) days thereof.

24. **AIRPORT RULES AND REGULATIONS:** In addition to all other provisions of this Lease, Lessee shall comply with the Doña Ana County Minimum Standards for Commercial Aeronautical Activities at Santa Teresa Airport, the Santa Teresa Airport Development Guidelines, and any rules, regulations, standards, advisory circulars and/or resolutions as may be adopted or issued by the County, State of New Mexico and/or the Federal Aviation Administration, and all amendments thereto which from time to time may be adopted hereafter. Such Minimum Standards, Development Guidelines, rules, regulations, standards, advisory circulars and resolutions are incorporated by reference as if they were fully set forth in this Lease. Failure to fully comply with such Minimum Standards, Development Guidelines, rules, regulations, standards, advisory circulars and resolutions shall constitute a material breach of this Lease and serve as adequate grounds for termination.

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25. **LESSEE'S RECORDS:**

A. Lessee shall keep and maintain at Airport, or at such other place as may be approved in writing by the Lessor, true and accurate books and records of its operations under the terms of this Lease, in a form satisfactory to the Lessor. Such books and records as well as certified financial statements, reports of any external audits prepared for Lessee and its income tax return shall be made available to the County Airport Manager, other County staff designated by the Airport Manager, representatives or contractors of the State Auditor, at the Airport, for inspection and copying at any time without advance notice to Lessee during normal business hours during the term of this Lease and for two years thereafter.

B. Lessee shall, annually, during the term hereof, and any renewal term, submit to the County Airport Manager a statement, prepared in accordance with a system of accounting satisfactory to the Lessor showing the gross receipts of the Lessee and sublessee(s), if any, on, in and from the leased premises at the Airport, for the preceding twelve (12) months, which statement shall be subscribed and sworn to as correct by Lessee or one of its officers. Such statement shall show such reasonable detail and breakdowns as may be required by the Lessor.

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C. Lessee shall provide a monthly audit report to the Lessor for all fuel purchases and deliveries made by and/or to the Lessee for sale or use at the Airport.

26. FEDERAL MANDATED LEASE PROVISIONS:

A. In addition to the leased premises specifically designated for its exclusive use, this Lease grants Lessee the non-exclusive right to use the airfield and associated operational areas in common with others so authorized in accordance with the aviation and air navigation rules and regulations promulgated by the laws of the United States of America and the State of New Mexico, and all pertinent directives, ordinances, rules and regulations of Doña Ana County.

B. Lessee shall accommodate and serve the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, sex, age, or national origin.

C. Lessee shall accommodate and serve, on a fair and equal basis, all users thereof and it shall charge fair and reasonable prices to all users for each unit of service; provided, that Lessee may be allowed to make reasonable discounts, rebates or other similar type of price reductions to volume purchasers.

D. (i) Lessee shall not discriminate in any manner against any employee or applicant for employment because of political or religious affiliation, sex, race, creed, color, or national origin; and further, Lessee shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. Lessee understands and acknowledges that the Lessor has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances and respect to non-discrimination which have been required by Title VI of the Civil Rights Act of 1964, and by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation, as a condition precedent to the Government making grants in aid to the Lessor, for certain Airport programs and activities. Lessor is required under said regulations to include in every agreement or concession pursuant to which any person or persons other than the Lessor operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Lessee agrees:

"Lessee, in its operation at and use of the Santa Teresa Airport, covenants that it will not on the grounds of sex, race, color, or national origin: discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21. In the event of such discrimination, Lessee agrees that Lessor has the right to take such action against Lessee as the Government may direct to enforce this covenant."

(ii) The Lessee does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

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(iii) The Lessee does hereby covenant and agree that: (a) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (b) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (c) the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

E. It is clearly understood by the Lessee that no rights or privileges have been granted which would operate to prevent any person, firm or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform, provided, however, that such services shall be subject to the rules and regulations established by the Lessor and shall be consistent with the terms of any lease or sublease of hangar space.

F. (i) Lessor reserves the right (but shall not be obligated to the Lessee) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport together with the right to direct and control all activities of the Lessee in this regard. If the County fails to maintain and keep in repair the landing area and/or the publicly-owned facilities of the Airport and diminishes lessee's use, rights and/or operations on the leased premises, Lessee shall have the right to terminate the Lease upon reasonable notice to the Lessor.

(ii) Lessor reserves the right (but shall not be obligated to the Lessee) to establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport and/or to prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the Airport or necessary to service the civil aviation needs of the public.

G. The Lessor reserves the right to take any action it considers appropriate to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

H. (i) This Lease shall be subordinate to and subject to the provisions of any agreement between the Lessor and the United States, relative to the operation or maintenance of the Airport. This subordination includes, but is not limited to, the right of the Lessor, during time of war or national emergency, to lease the landing area, or any part thereof, to the United States for military or naval use, and if any such lease is made, the provisions of any contracts or leases with Lessee shall be suspended. This Lease shall also be subordinate to and subject to the provisions of any agreement between the Lessor and the State of New Mexico relative to the operation or maintenance of the Airport.

(ii) This Lease shall also be subordinate to and subject to the covenants and conditions of the Patent No. 30-82-0048 from the United States of America to the Lessor for the land for the Airport. If the United States exercises its right of entry and possession of title under Patent No. 30-82-0048 or if the property under Patent No. 30-82-0048 automatically reverts to the United States, then this Lease shall terminate immediately.

I. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Sub-part E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR

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Part 152, Sub-part E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

**27. LESSEE'S OPERATIONS:**

A. Lessee shall maintain at its own expense all necessary permits and licenses required in the conduct of its business at Airport.

B. Lessee shall at all times retain qualified and competent personnel to conduct its authorized activities and said personnel shall be authorized to represent and act for Lessee.

C. Lessee, its officers, employees, agents and servants shall observe and obey all laws, ordinances, rules and regulations of the United States of America, the State of New Mexico, the County of Doña Ana and the Santa Teresa Airport Board or Commission which may be applicable to its operations at the Airport, and shall make no unlawful or offensive use of the leased premises.

D. Lessee shall bear all costs of its operation at the Airport and/or of its use and occupancy of the leased premises and improvements and shall pay, in addition to the concession fees and payments herein, all other costs connected with the operation of said business and/or with the use and occupancy of the leased premises and improvements, including, but not limited to, insurance and taxes.

E. Lessee shall provide the County Airport Manager with a schedule of the hours of operation that Lessee will be open to the public and the names and telephone numbers of Lessee's officials who shall be available at all hours of Lessee's operations at the Airport to perform required management functions.

F. Lessee shall conform to all applicable safety, health, and sanitary codes and agrees to cooperate with the Lessor in its fire prevention efforts.

G. The Lessor or the Airport Manager may enter upon the leased premises and/or improvements to the lessee at any reasonable time and for any purpose necessary, incidental to or connected with the performance of the Lessee's obligations under this Lease or in the exercise of their function as County and/or Manager.

**28. PERFORMANCE SURETY:** Lessee shall furnish a payment guarantee in the form of a performance Bond, Cashier's Check, Certified Check, Money Order, or an irrevocable Letter of Credit from a bank in an amount equal to its anticipated obligations under this Lease for a six-month period as security for the full and faithful performance and observance by Lessee of the terms, covenants, agreements and conditions of this Lease. Such security shall be provided to the Airport Manager within thirty (30) days of the effective date of this Lease.

**29. EASEMENTS:** A. The Lessor may at any time locate, in whole or in part, any easement(s) for taxiway, auto/pedestrian access way, waste water drain-line, utility and/or barrier fence on the leased premises; provided however, that such location does not diminish or permanently interrupt such rights and/or operations of the Lessee nor increase the costs to be incurred by Lessee. In the Event the Lessee's operation is so affected by such action, Lessee shall have the right to terminate the lease upon reasonable notice to Lessor. During alteration work, Lessor may suspend work on such easements and restore the leased premises to a condition similar to the condition which

existed prior to alterations by the Lessor. After completion of alterations, Lessor agrees to restore the leased premises to a condition substantially similar to the condition which existed prior to any alterations thereto by the Lessor. Lessee agrees to take no action that will interfere with the designated purpose of the easement.

B. Lessor possesses a perpetual easement and right-of-way for the construction, maintenance, removal and replacement of taxiway, auto/pedestrian access way, waste water drain-lines, utility lines, manholes, barrier fence, and related facilities of such size and capacity as is necessary or required for the development of the Airport, through, over, across and under the utility easement, waste water drain-line easement, and/or barrier fence easement.

C. Except as specified above, Lessee shall have full and complete use of the surface of the Leased premises encumbered by easements.

D. The Lessor may at any time and from time to time relocate, in whole or in part, any easements provided that such relocation does not diminish or permanently interrupt the rights and/or operations of the Lessee nor increase the costs to be incurred by Lessee. In the Event the Lessee's operation is so affected by such action, Lessee shall have the right to terminate the lease upon reasonable notice to Lessor. The Lessor may temporarily interrupt such rights and/or operations with respect to such easement(s) during the period of relocation of easement, and the Lessor agrees to restore the leased premises to a condition substantially similar to the condition which existed prior to any alterations thereto by the Lessor.

### 30. EMINENT DOMAIN:

A. In the event that all or substantially all of the leased premises or any material portion of the Airport premises or facilities outside the leased premises which Lessee is entitled to use pursuant to this Lease shall be appropriated or taken under the power of eminent domain, or by purchase in lieu thereof, at any time during the lease term so as to substantially interfere with Lessee's operations as determined by Lessee in its sole discretion, this Lease may be terminated by Lessee as of the date that title to the property taken vests in such condemning authority. In the event of a condemnation of all or a portion of the leased premises, Lessee shall be entitled to the monetary award attributable to the condemnation or purchase of the Lease.

B. In all instances of an appropriation or taking of a portion of the leased premises under the power of eminent domain, or purchase in lieu thereof, when Lessee elects not to terminate this lease and Agreement, Lessee shall restore as promptly as practicable and to the extent permitted by application of the proceeds paid by the condemning authority pursuant to any exercise of such power of eminent domain the remaining portion of the leased premises to a condition which will permit Lessee to substantially carry on its operations. Any condemnation proceeds not required for the purposes of restoration shall belong to Lessee. In the event Lessee elects not to terminate this Lease, effective as of the date of such taking, the total square footage of the leased premises shall be reduced by the amount taken by eminent domain.

31. **FUEL IN HANGARS PROHIBITED:** Lessee, its officers, servants, representatives, employees, agents, sublessee, contractors, subcontractors, invitees, customers, patrons, successors, assigns, and/or suppliers, as well as all other persons doing business with lessee, shall not fuel aircraft in any hangar.

32. **FUEL STORAGE:** If Lessee stores, sells or supplies fuel, Lessee shall install above ground storage tanks in accordance with all Federal, State and County laws, rules, regulations, ordinances and building codes regulating such fuel storage. Such tanks shall be constructed in a specified fuel farm area designated in the Airport Master Plan.

33. **CHARGES:** Nothing in this Lease shall be deemed to relieve the Lessee and/or any and all of its officers, employees, representatives, agents, servants, invitees, patrons, customers, contractors, sublessee, subcontractors, successors, assigns and/or suppliers, as well as all other persons doing business with the Lessee, from any and all Airport use or activity charges as are or may be levied generally by the Lessor directly upon the operation of aircraft, including, but not limited to, fuel flowage fees.

34. **UTILITIES:**

A. Lessee shall obtain and install underground at its own expense any necessary electrical, gas, water, sewer and septic tank, and any other utility service, subject to the Development Guidelines, rules and regulations, and/or building codes of the State of New Mexico and the Lessor. Lessee shall pay the expense of connecting to existing utility lines and maintaining all utility facilities within the leased premises, and pay all charges for consuming such services. In the event it shall become necessary to make utility changes upon the leased premises or within any improvement covered by this Lease, or any wiring or similar installations, the Lessee will promptly make such changes and installations at its expense as directed and required by the utility company, County or the New Mexico Construction Industries Division.

B. **Hold Harmless, Indemnify and Defend:** Lessee agrees to hold harmless, indemnify, and defend Lessor, its agent or public employees, from any and all costs, expenses and/or charges for utility services furnished to the Lessee, necessary or required in the operation and maintenance of the leased premises, caused by or resulting from the sole or concurrent negligence of the Lessee, its agent or Lessee's employees or any independent contractor who is directly responsible to the Lessee or from any accident which occurs in operations carried on at the direction or under the supervision of the Lessee or representative of the Lessee. This provision shall not affect the validity of any insurance contract or any benefit conferred by the Workmen's Compensation Act. The Lessee's agreement to hold harmless, indemnify and defend the Lessor shall not be affected or terminated by the cancellation, expiration of the term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract.

35. **RESERVATION OF RIGHT:**

A. After the Lessor fulfills its assurances to the United States and the State of New Mexico under the respective grant agreements or if the Lessor is released from such assurances, the Lessor reserves the right to terminate all aviation activities at the Airport and to close the Airport because of insufficient funds, operation of law and/or any other reason whatsoever. The Lessor's right to do such shall be final. If such right is exercised by the Lessor, then this Lease shall terminate immediately. The Lessor's decision as to whether or not sufficient funds are available shall be accepted by Lessee and shall be final.



B. The assurances of the Lessor to the United States and the State of New Mexico under the respective grant agreements are not obligations of the Lessor to Lessee and shall not be construed as such.

36. **GOVERNING LAW:** This Lease Contract shall be construed in agreement with the Laws of the State of New Mexico. The Lessee shall also comply with all applicable Federal and local laws, ordinances, and the rules and regulations of the County.

37. **PARAGRAPH HEADINGS:** Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

38. **REPRESENTATION AND WARRANTIES:** Lessee has inspected the leased premises and is aware of the condition of the leased premises and improvements thereon, if any, and no representations as to leased premises or its conditions have been made to Lessee by Lessor except for those contained herein, if any. Lessee assumes all the risks incident to the use of the leased premises. Lessee accepts the leased premises in its present condition. Lessor and its "public employees" as defined in the new Mexico Tort Claims Act, shall not be liable to and shall be held harmless by the Lessee for any and all death(s), injury(ies) to person(s), damage(s) to property(ies) and/or damage(s) and/or liability(ies) of any other nature whatsoever resulting from hidden, latent or other dangerous condition(s) on the leased premises and/or the Airport, for which sovereign immunity has been waived or alleged have been waived under state law and/or for which an action(s) is allowable or alleged to be allowable under federal law.

39. **MERGER OF PRIOR AGREEMENTS:** This Lease Contract incorporates all the conditions, agreements and understandings of the parties concerning the subject matter of this Agreement. All such conditions, understandings and agreements have been merged into this written Contract. No prior condition, agreement or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Contract.

40. **AMENDMENTS:** This contract shall not be altered, changed or amended except by written instrument signed by both parties.

41. **SEVERABILITY:** If any clause or provision of the Lease Contract is held to be illegal, invalid or unenforceable, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either party, the Contract is voidable and no damages shall accrue to either party.

42. **PROCUREMENT CODE:** Both parties are bound by the terms of the Procurement Code, Sections 13-1-25 through 13-1-199, NMSA 1978 as amended. The Procurement Code imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

Santa Teresa Hangar Association.

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43. **CONFLICT OF INTEREST:** The Lessee warrants that he presently has no interest, and shall not, during the term of this Contract, acquire any interest which has the potential to conflict with performance under this contract. In the event such a conflict arises, the County shall be notified and appropriate corrective action taken. The Lessee's failure to inform the County of such conflict constitutes default and shall be grounds for immediate termination of contract by the County.

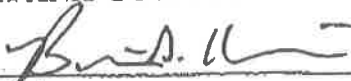
44. **ASSIGNMENT OF CONTRACT:** Lessee shall not assign nor delegate any interest in this contract or transfer any interest or assign any claims for money due or to become due under this contract, without the written consent of the County.

45. **BINDING EFFECT OF AGREEMENT:** Lessor and Lessee agree that the terms of this Agreement and any extension or renewal thereof shall extend to and be binding upon their heirs, executors, personal representatives, administrator, assigns, successors, and transferees.

46. **DUPLICATE ORIGINALS:** This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

47. **APPROVAL OF CONTRACT:** This Lease shall not become effective until the New Mexico State Board of Finance has approved it.

DOÑA ANA COUNTY

  
\_\_\_\_\_  
Brian Haines  
County Manager

Date: 9/21/04

Santa Teresa Hangar Association

  
\_\_\_\_\_  
Benny Davis

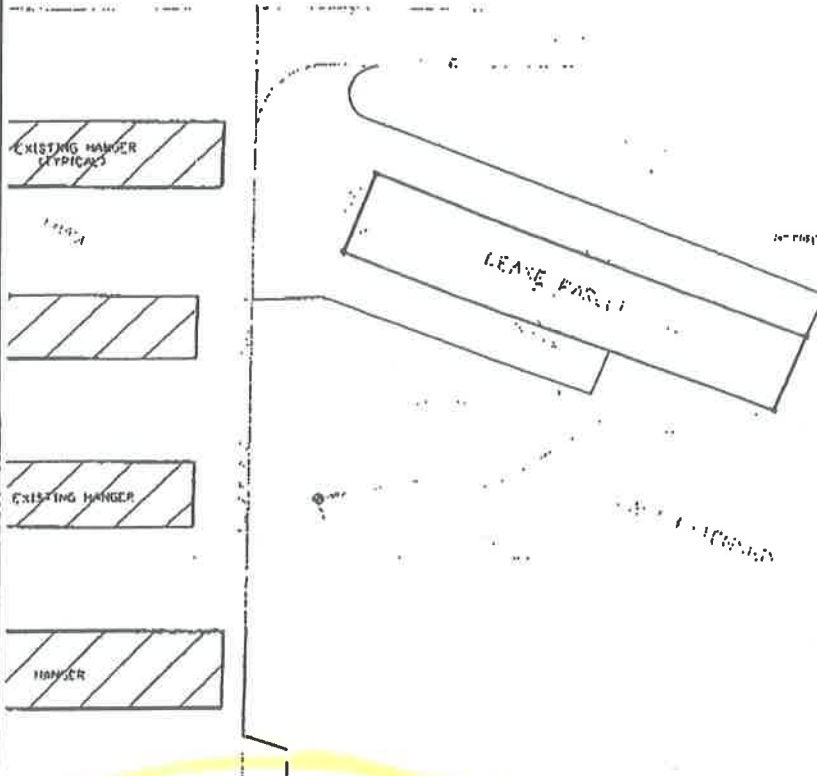
Date: 8/16/04

PLAT OF SURVEY  
OF

LEASE PARCEL T-11

A TRACT OF LAND SITUATE IN THE NW1/4 OF SECTION 13  
T.28 S., R.2 E., N.M.P.M., AS PART OF THE SANTA TERESA AIRPORT  
PLANNED UNIT DEVELOPMENT, COUNTY OF DONA ANA  
STATE OF NEW MEXICO  
JUNE, 2004

EXHIBIT A



State of New Mexico  
County of Dona Ana  
RECEPTION NO. 2917  
I hereby certify that this  
instrument was filed for  
recording and duly recorded on  
SEP 28 2004  
at 3:30 o'clock P.M.  
Book 533 Page 1023-1043  
of the Records of said County.  
Rita Torres, County Clerk  
D. [Signature]

NOTES:  
1. UNLESS NOTED OTHERWISE, SET MONUMENTS ARE  
NO. 5 REBAR W/ PLASTIC SURV. CAPS OR BRASS  
TAG (DONA ANA COUNTY-LS13473)

LOCATION MAP

INDEXING INFORMATION FOR COUNTY CLERK  
DONA ANA COUNTY  
SANTA TERESA AIRPORT PLANNED UNIT DEVELOPMENT  
NW1/4, SECTION 13, T.28S., R.2E., NMPM  
DONA ANA COUNTY, NEW MEXICO



DONA ANA COUNTY  
Engineering Department  
2825 East 57th St. Suite 1000, Santa Fe, NM 87505  
(505) 827-7121 Fax (505) 827-7125

LOT OWNER: DONA ANA COUNTY  
RECORD: DRAWN BY: JRS (05/20/04)

DONA ANA COUNTY  
LEASE PARCEL T-11  
(EAST EXTENSION)

SURVEYOR'S CERTIFICATION  
I, JOHNNY B. SOSAYA, HEREBY CERTIFY THAT I AM A REGISTERED LAND  
SURVEYOR IN THE STATE OF NEW MEXICO, THAT THIS PLAT WAS PREPARED  
BY ME OR UNDER MY SUPERVISION FROM FIELD NOTES OF AN ACTUAL SURVEY  
MEETING THE MINIMUM STANDARDS FOR SURVEYING IN THE STATE OF NEW  
MEXICO, THAT I AM RESPONSIBLE FOR THIS SURVEY AND PLAT, AND THAT  
THE SAME IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER  
CERTIFY THAT THIS IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN  
THE STATE OF NEW MEXICO.

JOHNNY B. SOSAYA  
L.S.M.F.L.S. NO. 13473

DAC

1043

D:\SHANE\WORK\1043\1043 EXTENSION\PARC\ACAD\1043-11.DWG

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

IT  
Initiating Department

Bob Bunting  
Contact Person

May 23, 2017  
Meeting Date

11  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE PURCHASE OF CENTURYLINK SERVICES UP TO \$65,000 ANNUALLY AND DELEGATE SIGNATURE AUTHORITY TO THE COUNTY MANAGER FOR ALL RELATED DOCUMENTS.**

**SUMMARY OF ITEM TO BE CONSIDERED**

**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

The Board of County Commissioners is asked to approve the purchase of Wide Area Network (WAN) services from CenturyLink using State Purchasing Agreement #20-361-12-01578AA up to \$65,000 annually and delegate signature authority to the County Manager for all related documents, contracts, change orders and amendments.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Executive summary  
Budgetary Impact Statement  
Upgrade proposal  
CenturyLink contracts

**SUMMARY OF FINANCIAL IMPACT**

Multiple line items. Please see attached Budgetary Impact Statement

**ADMINISTRATIVE REVIEW AND APPROVAL**

  
Finance

\_\_\_\_ Legal

  
County Manager/  
Agenda Review

  
Purchasing

\_\_\_\_ Human Resources

  
Assistant County Manager

\_\_\_\_ Planning

\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No      For Recording?  Yes  No

Return original/s to:      Name      Dept.

Send copy of recorded original/s (resolution and ordinances only) to:      Name      Dept.

Deadline for return of document/s? Yes, return by:      or  No

# Executive Summary CenturyLink WAN

The IT department proposes to upgrade our CenturyLink Wide Area Network (WAN) services and associated contracts at six sites. WAN services are connections between sites maintained by a service provider, such as CenturyLink. The upgrades will replace legacy copper wire based services, such as T1 and T3, with Metro fiber Optic Ethernet (MOE) services. MOE uses primarily fiber optic cable to deliver WAN services using the Ethernet protocol to establish connections and transfer data rather than copper cabling and older, more costly to implement, serial protocols. The proposed upgrades will not only increase the bandwidth provided to the county by CenturyLink; they will also reduce our overall, regular CenturyLink bill by approximately \$474 per month. CRRUA will see an even larger savings of nearly \$780 per month.

Changing our services from legacy copper services should also increase the availability of our WAN services. Because the MOE services rely on fiber optic cables, they are not subject to some of the problems with electrical services, such as grounding problems and short circuits. Further, fiber optic infrastructure is more central to CenturyLink’s business model going forward and will likely receive better support services than their legacy copper systems.

The proposed services are as follows:

Description	Location	Mbps	Proposed costs
1. MOE	Government Center	200	\$802.83
2. MOE EVC to Internet	Government Center	100	\$78.00
3. Internet Circuit 100Mbps	Government Center	100	\$2,000.00
4. MOE	Roads Complex	20	\$514.90
5. MOE	DASO Anthony Substation	10	\$478.80
6. MOE	DASO Chaparral Substation	7	\$358.00
7. MOE	CRRUA Payment Center	20	\$514.90
8. VDSL2 40 up 2 down	CRRUA Water Treatment Facility	40/20	\$144.00

**\$4,891.43**

Line item 1 acts as the hub for the other services. Each of them ultimately connects to that central point and uses some part of the 200 Mbps bandwidth there. Half of the hub bandwidth is dedicated to Internet service at 100 Mbps, as indicated by the next two line items. The remaining bandwidth at the Government Center terminates connections from the Roads Complex, Anthony Substation, Chaparral Substation and the CRRUA Payment Center. The final line item is high-speed DSL service for a small CRRUA office that will connect to the Government Center using site-to-site VPN over the Internet.

Budgetary Impact Statement

**DONA ANA COUNTY**

Department/Agency	Account	FY17 Projected Expenditure	FY18 Projected Expenditure	Budgetary Impact
IT	10001-10250-72414	\$33,332.28	\$30,149.52	-\$3,182.76
Sheriff's Office	10002-20105-72925	\$17,088.72	\$12,041.40	-\$5,047.32
Engineering	10080-30001-72925	\$2,605.68	\$5,142.48	\$2,536.80
		<b>\$53,026.68</b>	<b>\$47,333.40</b>	<b>-\$5,693.28</b>
<b>CRRUA</b>	<b>55110-40718-72925</b>	<b>\$20,700.00</b>	<b>\$11,364.00</b>	<b>-\$9,336.00</b>

## DAC IT Proposed Infrastructure WAN Service Modernization

In order to save money, get a better return on our Wide Area Network (WAN) services investments and address longstanding needs for better services in several locations, IT is proposing changes to several of our existing CenturyLink services. The existing services we recommend upgrading are as follows:

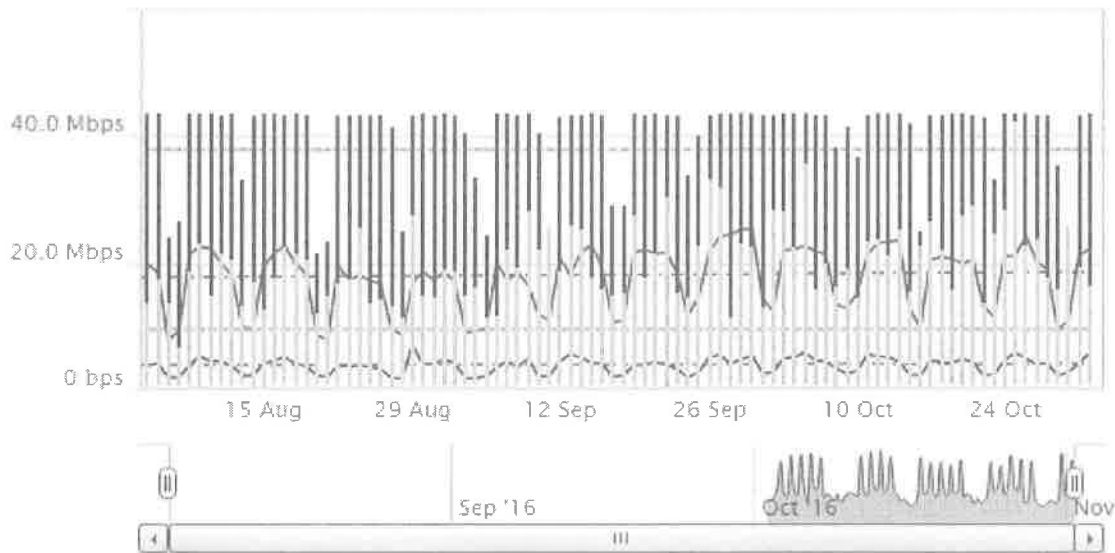
Description	Location	Mbps	Monthly Costs
DS-3 Loop	Government Center	45	<b>\$1,528.00</b>
Internet Port	Government Center	45	<b>\$1,249.69</b>
Roads T1 (point-to-point T1)	Roads Complex	1.54	<b>\$217.14</b>
Anthony T1 (point-to-point T1)	DASO Anthony Substation	1.54	<b>\$616.00</b>
Chaparral T1 (point-to-point T1)	DASO Chaparral Substation	1.54	<b>\$808.06</b>
MPLS Hub (MPLS over T1)	Government Center	3	<b>\$825.00</b>
CRRUA Payment Center MPLS (MPLS over T1)	CRRUA Payment Center	1.54	<b>\$450.00</b>
CRRUA Water MPLS (MPLS over T1)	CRRUA Water Treatment Facility	1.54	<b>\$450.00</b>

**\$6,143.89**

Each of these is briefly explained along with the rationale for upgrading the circuit.

### DS-3/Internet Port

The DS-3 loop and Internet port together are our current Internet service. The maximum throughput of this circuit is 45 Mbps symmetric (equal both upstream and downstream). Below is a graph of utilization of this link for the last several months:



- Average Receive bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191
- Average Receive bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191 Trend
- Average Receive bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191 Percentile 95%
- Min/Max Receive bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191
- Average Transmit bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191
- Average Transmit bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191 Trend
- Average Transmit bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191 Percentile 95%
- Min/Max Transmit bps MDF-3925 - Serial1/0 - T3 to Qwest Internet: Circuit DS3IT-14454191

solarwinds

Here are several points to keep in mind when reviewing this chart:

- Note that the blue “Average Receive” bps (bits per second) shows a pattern of roughly equal highs with lows in between. This is indicative of a network link that is quite congested during regular business hours.
- The Average Receive bps is higher than the Average Transmit bps. This is typical of connections used for web browsing and Internet access, where the requests for content are typically small and the responses containing the server data tend to be larger.
- Although the number is not clearly indicated in the graph, the 95<sup>th</sup> percentile of bandwidth for this connection is 37.9 Mbps downstream and 9.5 upstream. This is another indicator that the link is congested in the downstream direction. Ideally, the 95<sup>th</sup> percentile should remain below 80% of link bandwidth.
- This link is used for Internet connectivity, but also for site-to-site VPN, remote access VPN, public safety VPN and other purposes. Even though the bandwidth is constrained in one direction only, this still affects traffic in the other direction. Data requests and

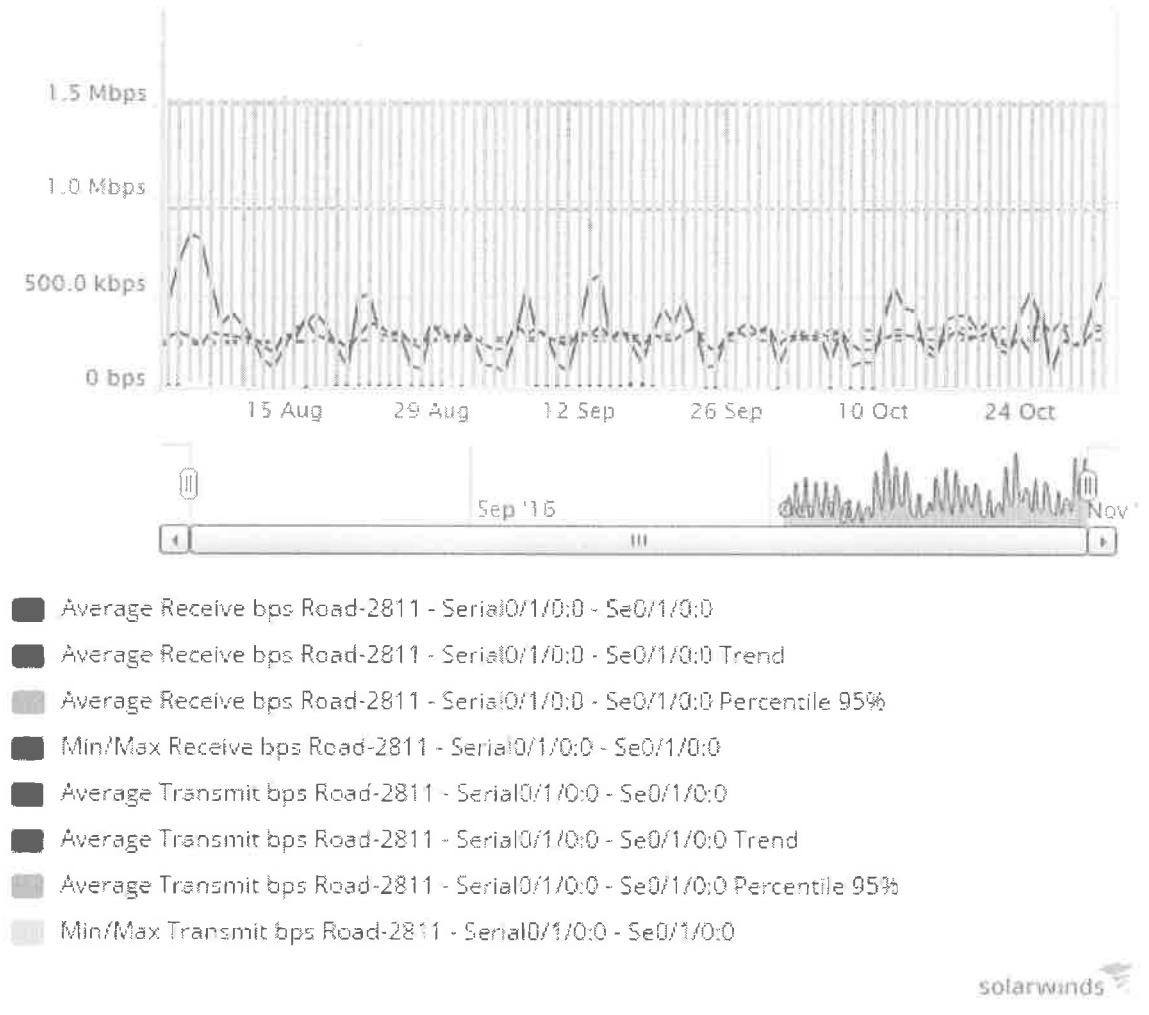


acknowledgements for outbound/upstream traffic share the same, congested pathway used inbound/downstream.

Based on the above, it is apparent that our Internet connection is a chokepoint in our network. Upgrading this connection will alleviate congestion and improve more than Internet service. The various VPN services mentioned above as well as other services will perform better if more bandwidth is made available here.

### Roads T1

The T1 at the "Roads Complex" provides services to Roads, Fleet and ACO/Codes. All of their nonlocal traffic, which is most of it, must cross the T1 back to the Government Center before reaching its destination. This includes both data and voice traffic. T1's offer 1.5 Mbps of symmetrical bandwidth. The following graph and statistics illustrate the state of this connection:



The 95<sup>th</sup> percentile statistics are 949 Kbps downstream and 1.5 Mbps upstream. This means that the upstream 95<sup>th</sup> percentile is exactly the same as the maximum bandwidth of the link. Examining the link at shorter intervals reveals a connection that is overwhelmed downstream during regular business hours, only to be overwhelmed again upstream after hours while data backups run. The end result is

poor service to the staff working at the site and overly long data backup windows that increase the risk data loss.

#### Anthony T1

The DASO Anthony T1 line is now used as a backup path in the event of a microwave radio system failure. Therefore, this link is not heavily used under normal circumstances. However, when it is pressed into service, the 1.5 Mbps symmetrical bandwidth that it offers is inadequate.

#### Chaparral T1

The DASO Chaparral T1 will be in a similar position to the Anthony T1, once the Chaparral leg of the MVRDA Backbone microwave radio system is completed. Because the Chaparral substation is significantly smaller than the one in Anthony, congestion has not been as much of an issue with this link.

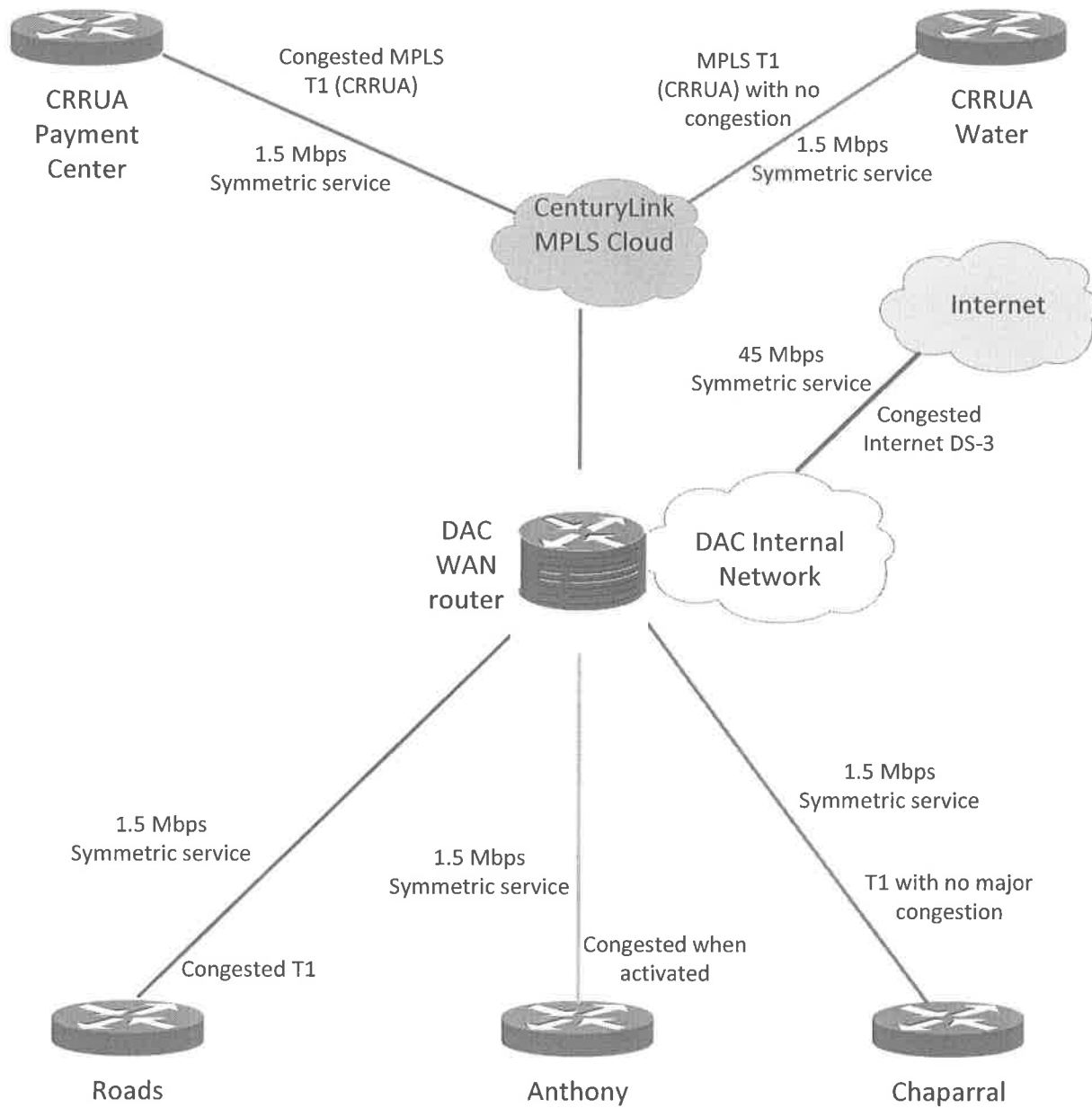
#### MPLS Hub, CRRUA Payment Center MPLS and CRRUA Water MPLS

The final three connections listed above (all MPLS T1's) are used by CRRUA. The 3 Mbps connection at the Government Center acts as a hub for traffic from and between both the Payment Center and the Water Treatment Facility. The Payment Center and Water Treatment Facility both have 1.5 Mbps service. The Payment Center link is consistently congested during backups, showing a pattern similar to the Roads Complex T1. It is also often congested during normal business hours, though not consistently. The Water Treatment Facility, on the other hand, is very lightly used and never congested.

While the DASO Anthony T1, DASO Chaparral T1 and CRRUA links are not in such dire need of upgrade as the other circuits mentioned here, they all share another common drawback, viz. cost. The T1's to Anthony and Chaparral are both point-to-point connections, meaning they are in effect a single set of wires dedicated to the county from point A to point B. This is significant because service providers, like CenturyLink, charge mileage when circuits of this type go beyond a certain distance. Both of these T1's incur mileage charges that drive up costs.

The CRRUA links are MPLS serviced T1s, meaning they take advantage of the CenturyLink MPLS cloud network. Using this service saved the county and CRRUA money versus the cost of point-to-point T1's for these sites, again due to mileage charges. While MPLS avoids mileage charges, but it is still expensive compared to other options. More significantly, the Water Treatment Facility does not require nearly as high a level of service as was initially installed. This provides an excellent opportunity for CRRUA to save money without compromising services by changing the type of service provided there.

The following diagram shows the layout of the network between these sites as it exists today.



### Proposed WAN Service Changes

Working with CenturyLink and Core Services LLC, the IT Infrastructure group developed the following plan of replacement services:

Description	Location	Mbps	Proposed costs
MOE	Government Center	200	<b>\$802.83</b>
MOE	Roads Complex	20	<b>\$514.90</b>
MOE( copper only)	DASO Anthony Substation	10	<b>\$478.80</b>
MOE(copper only)	DASO Chaparral Substation	7	<b>\$358.00</b>
MOE	CRRUA Payment Center	20	<b>\$514.90</b>

VDSL2 40 up 2 down	CRRUA Water Treatment Facility	40/20	\$144.00
MOE EVC to Internet	Government Center	100	\$78.00
Internet Circuit 100Mbps	Government Center	100	\$2,000.00

**\$4,891.43**

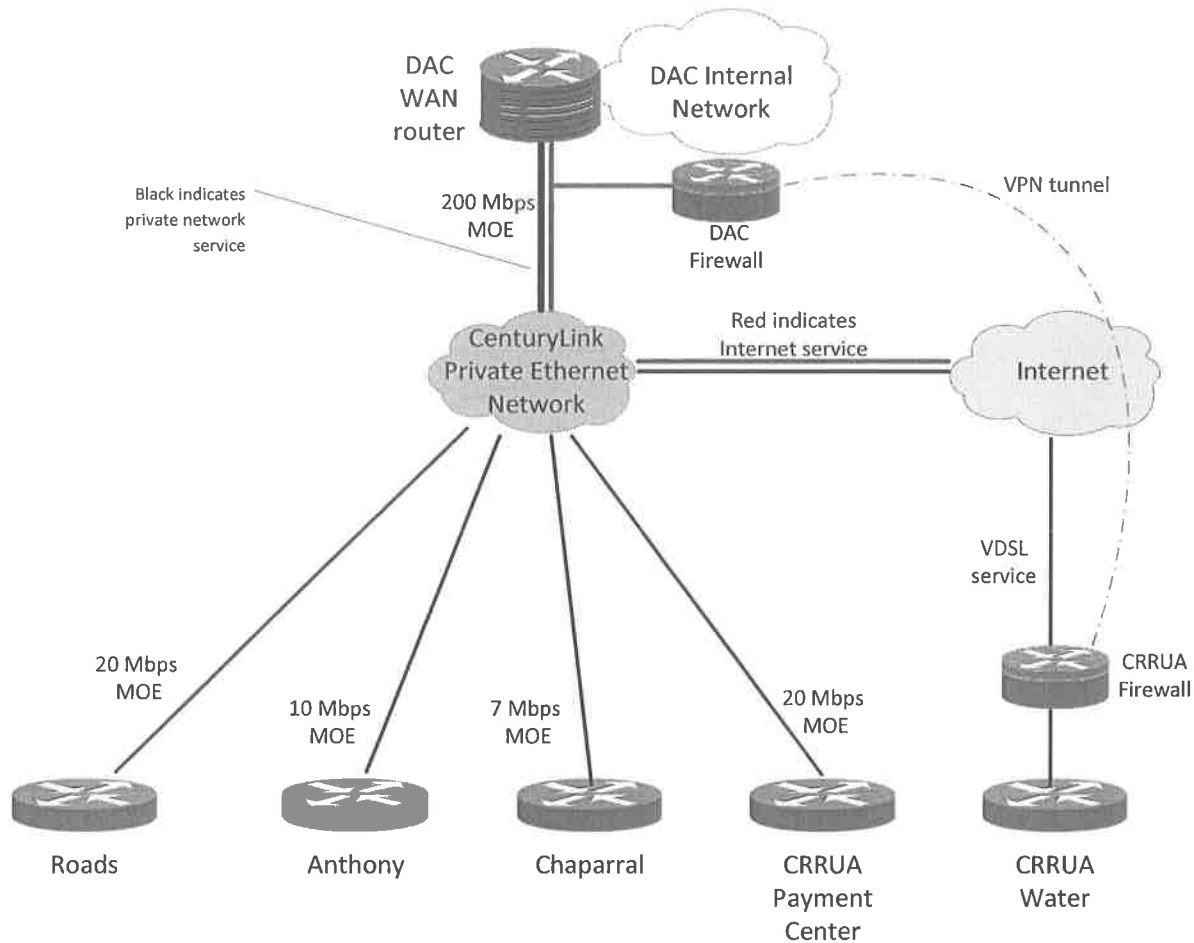
All costs in the above table are monthly service costs, excluding taxes and fees. The above services are almost all based on Metropolitan Optical Ethernet services (MOE). This offers a number of long term benefits to the county:

- Higher reliability (Fiber optic connections are inherently more reliable than buried copper links. In this case, they also take advantage of much newer infrastructure than traditional, purely copper-based connections.)
- Greater available bandwidth.
- Flexibility to increase bandwidth as needed without provisioning a new circuit. With MOE, the existing circuit is “upgraded” using a change in equipment programming. (This does not apply to the copper-based MOE services, because of their dependence on copper wiring for the “last mile” connection.)
- Lower cost per bit/kilobit/megabit than traditional telecom services.
- Lower cost line cards for connecting routers and other equipment to these services.

At an architectural level, the network bears more similarity to the MPLS network currently used by CRRUA than the point-to-point T1s employed at our other sites today. The 200 Mbps MOE connection on the first line is treated as a shared resource for whatever we decide to connect to it. In this proposal, the 200 Mbps is divided into a 100 Mbps Internet EVC (Ethernet Virtual Circuit), with 95 Mbps used for private network connectivity, such as servicing the connections to the Roads Complex, DASO’s substations and the CRRUA Payment Center.

The one service that is not MOE based in the above proposal is VDSL (a new/improved version of DSL service) at the CRRUA Water Treatment Facility. The VDSL service provides more than enough bandwidth for the site at a significant savings over either MPLS over T1 or MOE in this case. It is not as reliable as the other services included in the proposal, but it should more than suffice for their needs.

The planned network is illustrated below.



There is also an additional service added to the list above, but not included in the diagram. This is a MOE EVC to the State for BOE. In the past, a dedicated Frame Relay circuit was maintained for this purpose. The link guaranteed that BOE traffic to the state would have a minimum amount of bandwidth available at all times and also provided an alternate path to reach the Secretary of State’s election systems. This link was discontinued when CenturyLink discontinued support of Frame Relay and ATM services. Whether a similar connection over MOE can be arranged depends upon what State DoIT is willing and able to support.

A common problem in deploying MOE services is “build out” cost. The cost of a build out is the cost incurred to run fiber optic cable from the provider’s nearest Add/Drop point to the facility being serviced. In many cases, these costs are charged to the customer in advance of the service being provisioned. In other cases, the costs may be built-in into the service contract if the term is too short or the quantity of services ordered is too small. In addition, CenturyLink requires that customer provide conduit from the property edge into the building in every case where new cable must be pulled into a customer building. Both of these are potentially expensive and can kill a project of this type.

In our case, Core Services worked with a contractor to determine whether there were any instances where the county would face these challenges. Based on their review, there will be no build out costs for these services. This requires a 5 year term of service from the county, but also controls a significant county operating cost for that period of time.

Costs of hardware can also be a difficulty in some cases. However, the county has existing equipment that can provide the required connectivity at each location except the CRRUA Water Treatment Facility. In order to establish a site-to-site VPN connection there, a small firewall costing less than \$600 will be required. This will be more than paid for by CRRUA's savings in the just the first month of these services. In the future, upgrades to the routers at the Government Center could be required to provide full, line-rate service to all sites. However, that remains to be seen and will vary depending upon other projects the IT department may undertake in the future.

## Cost by Department

A final important topic is the allocation of costs. Under the current service model, costs are distributed among departments as follows:

Shared/IT Costs (DS-3 loop and Internet Service)	\$2,777.69
Engineering	\$217.14
DASO	\$1,424.06
CRRUA	\$1,725.00

More simply, the cost allocation today between the county and CRRUA is as follows:

Doña Ana County	\$4,418.89
CRRUA	\$1,725.00

Given the shared nature of MOE, it was determined that CRRUA should pay a portion of the cost of the MOE and Internet service provided through the county at the Government Center. A 10% charge was selected since the CRRUA Payment Center will have available bandwidth amounting to 10% of the 200 Mbps MOE bandwidth at the Government Center. Costs were similarly allocated to the Roads Complex, which is subsequently divided between Engineering and DASO. The division between Engineering and DASO was determined as follows:

- DASO will have 9 users in the former ACO/Codes building by the time these contracts are completed, whereas Engineering will have 24 users (13 in Fleet and 11 at Roads). Therefore, DASO will account for approximately 28% of expected traffic utilization, while Engineering (Roads and Fleet combined) will account for the remaining 72%.

No Internet costs are redistributed to internal county departments, since the IT department has traditionally paid all Internet service costs for the county. Also, MOE costs for the Government Center were not added to the DASO MOE Anthony and Chaparral expenses in this way because these will be backup rather than primary links. Therefore, DASO's costs for the new services is as follows:

- \$478.80/month for Anthony 10 MOE, with no MOE overhead charged because it's a backup link
- \$358/month for Chaparral 7 MOE, with no MOE overhead charged, because it's a backup link
- MOE services at the Roads Complex cost \$514.90/mo. Because this is a production link, charge 10% of the shared MOE infrastructure at the Government Center (\$802.83), which amounts to \$80.28/month. Therefore, the aggregate monthly cost of service for the Roads Complex is \$595.19.

- Engineering accounts for 72% of the headcount and DASO accounts for the other 28%.
- \$166.65/month is 28% of the monthly cost of service for the Roads Complex.

Therefore, DASO’s monthly responsibility comes out to \$1,003.45.

Similarly, Engineering’s cost was determined as follows:

- The cost of \$595.19/month was calculated for the Roads Complex as above.
- \$428.54 is 72% of the total Roads Complex monthly cost.

Thus, Engineering’s responsibility is \$428.54/month.

Based on this percentage cost sharing and the individual service costs outlined above, the costs of the new services would be allocated as follows:

Shared/IT Costs	\$2,512.46	(Net MRC change: - \$268.14)
Engineering (with 10% cost share)	\$428.54	(Net MRC change: + \$211.40)
DASO	\$1,003.45	(Net MRC change: - \$420.61)
CRRUA (with 10% cost share)	\$947.00	(Net MRC change: - \$778.00)

Thus, only Engineering sees an increase in expenses. However, their gains are very significant compared to the expense. Although the Roads complex monthly cost goes up significantly a little more than \$200 per month, the site (including Roads, Fleet and DASO) receives 13X greater bandwidth. Moreover, the extra cost of the services to the Roads Complex is more than offset by a monthly net reduction of about \$474 in the county’s CenturyLink bill once all services are cutover.

Doña Ana County Cost of new services	\$3,944.45
CRRUA Cost of new services	\$947.00

Assuming the county decides to purchase these services, it is important to note that there would be a brief period during which the old and the new services would be required. During that period, our costs would go up somewhat. Completing the cutovers from one service to another will be a three step process in each case. First, the county will test and accept the new circuit. Second, county IT will make the new circuit active in the network. Finally, the old circuit will be disabled and disconnected upon county IT’s request once it is clear that the new services are working as expected.

Because these steps all take some time to complete, there will necessarily be an overlap in services during each cutover. However, IT is working closely with CenturyLink and Core Business Solutions to identify the most efficient way to order and implement the services so that these overlaps can be kept to an absolute minimum. At this point, we expect to keep overlaps down to no more than 1 month per cutover. Our goal will be to cutover in days, rather than weeks, for each circuit.

Because of the financial and service benefits, the IT Infrastructure division strongly recommends these changes to the county, CRRUA and affected departments. Please direct any questions to Bob Bunting, IT Infrastructure Manager (575-525-5903, [bobb@donaanacounty.org](mailto:bobb@donaanacounty.org)).







**Government and Education Services**

To; BOB BUNTING Dona Ana County  
From: Jerry Newsom, Ben Romero  
Subject: Dona Ana County Internet Circuit via Price Agreement No. 20-361-12-01578AA  
Date; Friday, March 3, 2017

For purchases under the State of New Mexico Master CenturyLink Loyal Advantage Agreement a signed memorandum is all that is needed. Each Service should have a separate listing of the service description, in this case one for CenturyLink IQ Internet Services (IQ). The purchase order should include all of the following elements:

**CenturyLink Internet Port Services (IQ)**

(1) CenturyLink Internet Services (IQ) – Monthly recurring charges shall be: \$2,250.00 Nonrecurring charges shall be: \$0.00.

(2) Location of service:

<u>Address</u>	<u>Internet IQ Speed</u>	<u>Port</u>	<u>CPA</u>	<u>Total</u>	<u>NRC</u>
Address	100Mbps/1Gbps	\$2,000.00	\$250.00	\$2,250.00	\$0.00

(3) Term length which must match a term length available in the tariff for the service); 60 Months

(4) Quantities:1 circuit at each location above

(5) USOCs (if applicable) as required:

(6) This statement that the "This Purchase Order is governed by the terms and conditions of CenturyLink's/Qwest's applicable Tariff and the State of New Mexico Master Qwest Loyal Advantage Agreement, 20-361-12-01578AA, Pramata ID #: 959565\_, which are incorporated herein";

(7) This statement that "Any preprinted terms contained in the Purchase Order shall not amend, modify or supplement the CenturyLink/Qwest Loyal Advantage Agreement or the Tariff in any way whatsoever, notwithstanding any provisions in the Purchase Order to the contrary, or supplement the previously agreed upon CenturyLink/Qwest Loyal Advantage Agreement.

**(8) State of New Mexico Pricing agreement Number 20-361-12-01578AA CenturyLink OMR# N48895**

Please contact me any time for clarification or additional information on this or any other telecommunications matter.

Sincerely,

Jerry Newsom  
Core Business Systems  
Authorized CenturyLink Agent

Dona Ana County NM

Qwest Communications Company, LLC  
d/b/a CenturyLink QCC

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Mark Hallamore  
Name Typed or Printed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**State of New Mexico**

Department of Information Technology Agreement  
Price Agreement No. 20-361-12-01578CL

THIS Information Technology Agreement (“Agreement”) is made by and between the State of New Mexico, **Department of Information Technology**, hereinafter referred to as the “Procuring Agency” and **Qwest Communications Company, LLC d/b/a CenturyLink QCC**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.*; and Procurement Code Regulations, NMAC 1.4.1 *et. seq.*; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the RFP#20-361-12-01578 and the Contractor’s response to such document(s) are incorporated herein by reference; and

WHEREAS, this Agreement RFP#20-361-12-01578 Session Initiation Protocol (SIP) Trunking and Related Services, established and maintained by the New Mexico State Purchasing Division of the General Services Department;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN **THE PARTIES**:

**ARTICLE 1 – DEFINITIONS**

- A. **“Acceptance”** or **“Accepted”** shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.
- B. **“Application Deployment Package”** shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. **“Business Days”** shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. **“Change Request”** shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. **“Chief Information Officer (“CIO”)** shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. **“Confidential Information”** means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring

Agency or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed and (7) any information that is not generally available to the public, whether of a technical, business or other nature and that the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party or is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect such information against unrestricted disclosure.

- G. "Contract Manager" shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be a Designated Representative.
- H. "Default" or "Breach" or "Cause" shall mean a violation of this Agreement by either failing to perform one's own contractual obligations or by interfering with another Party's performance of its obligations, which failure or interference is not remedied: (a) for payment defaults by customer, within five days of separate written notice from Contractor of such default; or (b) for any other material breach, within 30 days after written notice.
- I. "Deliverable" shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.
- J. "Designated Representative" shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. "DoIT" shall mean the Department of Information Technology.
- L. "DFA" shall mean the Department of Finance and Administration; "DFA/CRB" shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. "Escrow" shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.
- N. "Enhancement" means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. "Executive Level Representative" shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency's executives or his/her Designated Representative.
- P. "GRT" shall mean New Mexico gross receipts tax.
- Q. "Intellectual Property" shall mean any and all proprietary information developed specifically for Customer at Customer's request and paid for pursuant to the terms of this Agreement.
- R. "Independent Verification and Validation ("IV&V")" shall mean the process of evaluating a Project and the Project's product to determine compliance with specified

- requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.
- S. "Know How" shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed and paid for under this Agreement specifically for Customer at Customer's request by Contractor.
- T. "Payment Invoice" shall mean a detailed, certified and written request for payment of Services or Deliverables by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.
- U. "Performance Bond" shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- V. "Project" shall mean a temporary endeavor as defined by a contract that may be issued under this Agreement undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIO to the DoIT. A Project, will not include order for the services pursuant to the Price List outlined in Exhibit A.
- W. "Project Manager" shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be a Designated Representative.
- X. "Qualified" means demonstrated experience performing activities and tasks with Projects.
- Y. "Quality Assurance" shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- Z. "Services" shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- AA. "State Purchasing Agent (SPA)" shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- BB. "State Purchasing Division (SPD)" shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- CC. "Software" shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- DD. "Software Maintenance" shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- EE. "Source Code" shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.

- FF. “Turnover Plan” means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

## ARTICLE 2 – SCOPE OF WORK

- A. Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.
- a. The Contractor shall be limited to the Products, Services, or Deliverables, awarded in this Price Agreement as outlined in Exhibit A, attached hereto and incorporated herein by reference. There are no volume or purchase commitments as to any specific dollar amount which will be contracted by the Procuring Agency or the State as a whole.
  - b. Under the terms and conditions of this DoIT Price Agreement and upon written approval in advance by the DoIT, State of New Mexico agencies, commissions, institutions, political subdivisions and local bodies (hereinafter “Authorized Entities” or “Customers”) may issue orders for items and/or services described herein. The terms and conditions of this Price Agreement shall form a part of each order issued hereunder. However, the State is not responsible for the transactions between the Contractor and non-state entities. The non-state entities will have the same obligations under this Agreement as the Procuring Agency with respect to any service transactions under this Agreement.
  - c. The Price List as outlined in Exhibit A, attached hereto and incorporated herein by reference will remain fixed for duration of the agreement, four(4) years. Any changes to the DoIT agreement(s) to include pricing reductions shall be submitted to DoIT and SPD for review and approval. The awarded pricing may be negotiated at any point throughout the duration of the agreement with the procuring entity.
  - d. Any new rate centers and related pricing that become available and provided by the Contractor during the term of this Agreement may be submitted to DoIT for review and approval. As a result, any approved changes shall be processed as an amendment to this Agreement.
- B. Performance Measures. The Contractor shall substantially perform to the satisfaction of the Procuring Agency the Performance Measures set forth in Exhibit A. In the event the Contractor fails to obtain the results described in Exhibit A, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.
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- C. Schedule. The Contractor shall meet the due dates established by DoIT as a result of any contracted scope of work, as set forth in Exhibit A, which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.
- D. License. Not Applicable. The Parties agree there is no License.
- E. Source Code. Not Applicable. The Parties agree there is no Source Code.
- F. The Procuring Agency's Rights.
1. Rights to Software. Not Applicable. The Parties agree the Procuring Agency does not have rights to the Software.
  2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico's copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
  3. Rights to Data. The Procuring Agency has right to its data when any of its data is stored on the Contractor's servers or within the Contractor's custody and is the sole property of the Procuring Agency. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Agency's data in any manner, or provide to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency.
- G. Session Initiation Protocol (SIP) Services.
1. Interoperate with Existing Procuring Agency Equipment. The Contractor shall interoperate with existing SIP compatible Procuring Agency equipment and switches which include Avaya, Cisco, and Mitel.
  2. Basic 911 or E911 Services. The Contractor shall provide Basic 911 or E911 emergency services in the calling coverage area(s) as outlined in Appendix G. The Contractor's emergency service limitations are found in Exhibit B.
  3. Electronic Call Data File. The Contractor shall provide the Procuring Agency a tab delimited text file on a CD for Inbound and Outbound Calling services by the 5<sup>th</sup> day of every month as part of any SIP Trunking Services. The electronic call data file shall have at a minimum the fields as outlined below:
    - a) Date of call start (mmddyyyy)
    - b) Time of call start/trunk seizure (hh:mm:ss)
    - c) Duration of call (minutes: seconds or minutes: tenths of minute)
    - d) Indication of inbound or outbound originating number (minimum 10 digits)

- e) Indication of terminating number (minimum 10 digits)
  - f) Indication of answer supervision (answered and unanswered)
  - g) Indication of feature(s) invoked, if applicable
  - h) Total Cost of Call, if available
  - i) Records for unanswered calls ('attempts')
4. Session Initiation Protocol (SIP) Training Services. The Contractor shall make available training for its SIP services. The training services and Price List are found in Appendix C-8.
5. Coverage Area Availability in the State of New Mexico. The Contractor shall provide SIP service coverage at the Rate Centers found in Appendix G.
- H. Service Limitations. The Contractor's Service limitations are found in Exhibit B.

### ARTICLE 3 - COMPENSATION

A. Compensation Schedule.

The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.

- B. Payment. The total compensation under this Agreement shall not exceed the maximum Price List for products purchased and/or services rendered, per the schedule outlined in Exhibit A, excluding New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half (1.5%) percent per month. All Payment Invoices MUST BE received by the Procuring Agency no later than thirty (30) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

C. Taxes.

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

The Price Lists as indicated in Exhibit A, do not include any applicable taxes and surcharges which may be required by law. If any federal, state, or local tax, fee or other charges are required by law to be collected by the Contractor, the Contractor shall provide the fees and/or charges as separate items when invoicing the Procuring Agency.

If Procuring Agency is exempt from any taxes, it must provide the Contractor with an appropriately completed and valid tax exemption certificate or other evidence acceptable to the Contractor. The Contractor is not required to issue any exemption, credit or refund of any tax payment for usage before the Procuring Agency submission of valid evidence of exemption.

D. Retainage. As a result of any Project subject to this Agreement, the Procuring Agency shall retain 20% of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. Not Applicable. The Parties agree there is no Performance Bond.

#### ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).



B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable:

1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A;
2. Complies with the terms and conditions of the this Agreement;
3. Meets the performance measures for the Deliverable(s), if any, set forth in this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

## ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT. This Agreement shall terminate on **June 30, 2015** with the option to extend, unless terminated pursuant to Article 6. The extension may be on an annual basis or for another two (2) years. No contract term, including extensions and renewals, shall not exceed four years, except as set forth in Section 13-1-150 NMSA 1978. This Agreement will apply to any signed and approved unexpired service orders properly placed during the Agreement's term.

## ARTICLE 6 – TERMINATION

- A. Grounds. The Procuring Agency may terminate this Agreement for convenience with 30 day written notice or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement. The Customer will remain liable for charges accrued but unpaid as of the termination date.
- B. Appropriations. The Procuring Agency may terminate the Agreement, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least twenty (20) Business Days prior to the effective date of the termination. Procuring Agency intends to continue this Agreement for its entire contract term and to satisfy its obligations hereunder. For each fiscal period for Procuring Agency: (a) Procuring Agency agrees to include its budget request appropriations sufficient to cover Procuring Agency's obligations under this Agreement; (b) Procuring Agency agrees to use all reasonable and lawful means to secure these appropriations; (c) Procuring Agency agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party. Procuring Agency may choose to reallocate funds appropriated for the Services or Deliverables to other products or services, if permitted by law, to the extent that the other products or services are not functionally equivalent to the Services or Deliverables and, in that case, deem the appropriations insufficient for the performance of this Agreement if no other funding source is available for such purpose. Procuring Agency reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose.
- C. Notice; Opportunity to Cure.
1. Except as otherwise provided in Paragraph (6)(C)(2) below, each party shall give written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Party's material breaches of this Agreement upon which the termination is based and (ii) state what the breaching Party must do to cure such material breaches. The notice of termination shall only be effective (i) if the breaching Party does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days,

the breaching party does not, within the thirty (30) day notice period, notify the other Party of its intent to cure and begin with due diligence to cure the material breach.

2. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency in good faith; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 6.B above, "Appropriations", of this Agreement.
- D. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination and any applicable Cancellation Charges; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE PARTY'S DEFAULT/BREACH OF THIS AGREEMENT.

#### ARTICLE 7 – TERMINATION MANAGEMENT

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency;
  2. Incur no further financial obligations for materials, Services, or facilities except for those already provided under the Agreement without prior written approval of the Procuring Agency;
  3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
  4. Take such action as the Procuring Agency may direct, for the protection and preservation of all its property and all confidential records related to and required by this Agreement;
  5. Agree that the Procuring Agency is not liable for any costs arising out of termination and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
  6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency's programs;
  7. In the event that this Agreement is terminated due to the Contractor's negligence or willful misconduct, negligence, or willful misconduct results in reductions in the Procuring Agency's receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction, subject to Article 18 below;

8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the Procuring Agency for all reasonable costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred that could not otherwise be reasonably mitigated under the circumstances, subject to Article 18 below;
  9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the Procuring Agency for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Agency and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, to which the Procuring Agency has been granted a license that remains in effect after the termination or that it owns pursuant to the terms of this Agreement, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Agency, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement to which the Procuring Agency has been granted a license that remains in effect after the termination or that it owns pursuant to the terms of this Agreement.
- B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:
1. Retain ownership of all work products and documentation created by the Contractor for the Procuring Agency at the Procuring Agency's request pursuant to this Agreement; and
  2. Pay the Contractor all amounts due for Services or Deliverables Accepted prior to the effective date of such termination or expiration.

#### ARTICLE 8 – INDEMNIFICATION

- A. General. The Contractor shall defend, indemnify and hold harmless the Procuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, reasonable attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of a third party claim with respect to the performance of this Agreement, and caused by the negligent act or negligent failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement

- B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

#### ARTICLE 9 – INTELLECTUAL PROPERTY

Contractor hereby acknowledges and grants to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.

#### ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

- A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any third party claim that any product or service provided under this Agreement when used in conformity with all instructions and documentation, infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor's trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys' fees and the amount of the judgment but only to the extent that Contractor is promptly notified of the claim and permitted to control the defense of the claim. To qualify for such defense and/or payment, the Procuring Agency shall:
1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
  2. Allow the Contractor to control the defense and settlement of the claim; and
  3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.
- B. Procuring Agency Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:
1. Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency's use of the product or service in accordance with Section 10A above;

2. Replace or modify the product or service with a non-infringing Service or Deliverable that is functionally equivalent in all material respects or
3. If (1) or (2) are not reasonably achievable by the Contractor, terminate provision of the affected product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.

The Contractor's obligations are applicable if the action arises from incorrect use of the Services or Deliverables, or combinations of Services or Deliverables provided by the Contractor with other products or services or transmission of customer supplied content,

or

Other information that gives rise to the claim. The Contractor's obligation to defend such an infringement claim will not apply to systems, services, equipment or software not provided by the Contractor, including any local exchange carrier or other service provider, notwithstanding that such provider is engaged on Customer's behalf by the Contractor. This subsection does not apply to any CPE supplied by the Contractor or its affiliates or to Services or Deliverables for which Customer both provided and controlled the design of such Service or Deliverable. THIS SUBSECTION SETS FORTH THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER, AND THE ENTIRE OBLIGATION AND LIABILITY THE CONTRACTOR, AS TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY PROPRIETARY RIGHTS IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER.

#### ARTICLE 11 - WARRANTIES

- A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and materially compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases unless the corrective action requires software or system development.
- B. Software. Not Applicable. The Parties agree there is no Software.

EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS." THE CONTRACTOR DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT

## ARTICLE 12 – CONTRACTOR PERSONNEL

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without prior written notice to the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be significant to the work to be performed under this Agreement. Key personnel shall be:

Mark Hallamore, CenturyLink State of New Mexico Account Manager

Sue Gonzales, Account Consultant

- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification. For all personnel, the Procuring Agency reserves the right to require submission of their resumes. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations. The Article 12 will only apply to the Services or Deliverables as an element of a Project or as outlined in Exhibit A.

## ARTICLE 13 – STATUS OF CONTRACTOR

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder may be personally reportable by it for income tax purposes as self-employment or business income.
- B. Subject of Proceedings. 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's ability to perform under this Agreement; nor, to the best knowledge of 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 promptly disclose such fact to the Procuring Agency.

#### **ARTICLE 14 - CHANGE MANAGEMENT**

- A. **Changes.** Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 and Exhibit A after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Exhibit A. Under no circumstance shall such change affect the:
1. Deliverable requirements, as outlined in Exhibit A;
  2. Due date of any Deliverable, as outlined in Exhibit A;
  3. Compensation of any Deliverable, as outlined in Exhibit A;
  4. Agreement compensation, as outlined in Article 3; or
  5. Agreement termination, as outlined in Article 5.
- B. **Change Request Process.** In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:
1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
    - (a) the name of the person requesting the change;
    - (b) a summary of the required change;
    - (c) the start date for the change;
    - (d) the reason and necessity for change;
    - (e) the elements to be altered; and
    - (f) the impact of the change.
  2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

#### **ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION**

- A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
1. Providing the Project documentation;



2. Allowing the IV&V vendor to sit in on the Project meetings; and
  3. Supplying the IV&V vendor with any other material as directed by the Project Manager.
- B. If this Agreement is for IV&V professional Services then the Contractor agrees to:
1. Submit all reports directly to the Department of Information Technology, Project Oversight and Compliance Division ([ivandv.reports@state.nm.us](mailto:ivandv.reports@state.nm.us)) according to the DoIT IV&V Reporting Template and Guidelines found on the DoIT website, [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html), and copy the Procuring Agency.
  2. Use a report format consistent with the current DoIT IV&V Reporting Template and Guidelines found on the DoIT website, [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html).

#### **ARTICLE 16 – DEFAULT/BREACH**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages to the extent that the Procuring Agency could not have reasonably mitigated the costs or damages under the circumstances and subject to Article 18 below.

#### **ARTICLE 17 – EQUITABLE REMEDIES**

Contractor acknowledges that its failure to comply with any provision of this Agreement may cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure could be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

#### **ARTICLE 18 - LIABILITY**

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement.

Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency's fault or negligence.

The remedies and limitation of liability for any claims arising between the Parties are set forth below:

1. **Personal Injury; Death; Property Damage.** For claims arising out of personal injury or death to a party's employee, or damage to a party's real or personal property, that are caused by the other party's negligence or willful misconduct in the performance of the Agreement, each party's liability, to the extent permitted by law, is limited to proven direct damages.
2. **Other Damages.** For all other claims arising out of the Agreement, each party's maximum liability will not exceed in the aggregate the total MRCs and usage charges paid by Customer to the Contractor under the Agreement in the three months immediately preceding the event giving rise to the claim ("Damage Cap").

#### ARTICLE 19 – ASSIGNMENT

Neither party shall assign or transfer this Agreement nor any rights or obligations thereunder without the express written consent of the other party. Such written consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Contractor may assign its rights and obligations under this Agreement without the approval of the Procuring Agency to a third party in connection with a merger, consolidation, liquidation or reorganization of the Contractor or its wholly owned subsidiaries or affiliates.

#### ARTICLE 20 – SUBCONTRACTING

- A. General Provision. The Contractor shall not subcontract any portion of the Services or Deliverables for Session Initiation Protocol (SIP) for this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.
- B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.

## ARTICLE 21 – RELEASE

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

## ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency 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 Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Neither party will without the prior written consent of the other party disclose or use (except as expressly permitted by, or required to achieve the purposes of, this Agreement) the Confidential Information of the other party. The Contractor's consent may only be given by its Legal Department. A Party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement, provided that the disclosing party gives the non-disclosing party reasonable prior written notice.

## ARTICLE 23 – CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

## ARTICLE 24 - RECORDS AND AUDIT

- A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement's term and effect and retain them for a period of a minimum of three (3) years from the date of each payment for Services or Deliverables covered by this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA and the New Mexico State Auditor's Office. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

## ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

## ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE

- A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.
- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwexico.state.nm.us/>.
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

**ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING**

- A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.
- B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.
- C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

**ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE**

- A. Severable. 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 agency or commission having jurisdiction over the subject matter hereof, such invalidity
-

shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

- B. Merger/Scope/Order. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement. If a conflict exists among provisions within the Agreement, the following order of precedence will apply in descending order of control: (1) This Agreement, (2) the appendices to this Agreement, (3) and Exhibit B as attached, (4) the Procuring Agency's approved purchase order (PO). If Services or Deliverables are provided pursuant to a Tariff, RSS, or ISS as described in the applicable Service Exhibit B, the order of precedence will apply in the following descending order of control: (1) Tariff, (2) this Agreement, (3) the appendices to this Agreement, (4) Exhibit B as it applies to RSS and ISS, (5) the Procuring Agency's approved purchase order (PO).

#### ARTICLE 29 – 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 by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

#### **For PROCURING AGENCY**

To SPA:

State Purchasing Agent  
Purchasing Division  
Joseph M. Montoya State Building, Room 2016  
1100 St. Francis Drive  
Phone: (505) 827-0472

With a copy to DoIT:

Phil Bachicha, Procurement Specialist  
Contracts and Procurement Bureau  
Department of Information Technology  
Simms Building  
715 Alta Vista  
Santa Fe, NM 87502  
Phone: (505) 476-3469

**For CONTRACTOR**  
Qwest Communications Company, LLC d/b/a CenturyLink QCC  
Attention Legal Department  
1801 California St. #900  
Denver, CO  
Fax: (888)778-0054

Any change to the Notice individual or the address, shall be effective only in writing.

**ARTICLE 30 – GENERAL PROVISIONS**

- A. 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, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
  2. 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 of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, 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.
  3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. 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 expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

### ARTICLE 31 – SURVIVAL

The Articles entitled or regarding Intellectual Property, Intellectual Property Ownership, Confidentiality, limitations of liability, payment, dispute resolution, Warranties and all other terms of this Agreement that should by their nature survive the termination of the Agreement shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

### ARTICLE 32 - TIME

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

### ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

### ARTICLE 34 – ADDITIONAL TERMS AND CONDITIONS

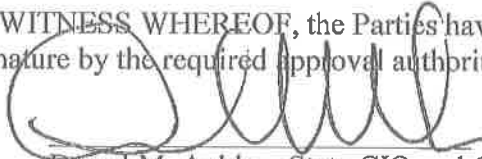
**ARRA**. The Customer will not pay for the Services or Deliverables with funds obtained through the American Recovery and Reinvestment Act or other similar stimulus grants or loans that would obligate the Contractor to provide certain information or perform certain functions unless each of those obligations are explicitly identified and agreed to by the parties in the Agreement or in an amendment to the Agreement.

**HIPAA**. The Contractor does not require or intend to access Customer data in its performance hereunder, including but not limited to any confidential health related information of Customer's



clients, which may include group health plans, that constitutes Protected Health Information (“PHI”), as defined in 45 C.F.R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Rules”). Any exposure to PHI will be random, infrequent and incidental to the Contractor’s provision of Service and is not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI. Such exposure is allowable under 45 CFR 164.502(a)(1)(iii). As such, if Customer is a Covered Entity or Health Care Provider under the HIPAA Rules or supports the health care industry, the Contractor and Customer agree that the Contractor is not a “Business Associate” or “Covered Entity” under the HIPAA Rules for the purposes of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By:  Date: 11 JUNE 13  
Darryl M. Ackley, State CIO and Cabinet Secretary  
Department of Information Technology

By: Mark Hallamore on Behalf of  
Richard Fernandez Date: 5/30/13  
Richard Fernandez, Director of Offer Management  
Qwest Communications Company, LLC d/b/a CenturyLink QCC

Approved for legal sufficiency:

By: Maria R. Sanchez Date: June 4 2013  
Maria R. Sanchez  
Department of Information Technology, General Counsel

By: N/A Date: \_\_\_\_\_  
Charles Martinez  
Department of Information Technology Chief Financial Officer

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 03-167543-00-3

By: Debbie Lopez Date: 6/7/13  
Taxation & Revenue Department

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By:  Date: 11 JUNE 13  
Darryl M. Ackley, State CIO and Cabinet Secretary  
Department of Information Technology

This Agreement has been approved by the State Purchasing Agent:

By: Lawrence O. Maxwell Date: 7/3/13  
Lawrence O. Maxwell  
Purchasing Agent for the State of New Mexico

## EXHIBIT A – SCOPE OF WORK

- I. Exhibit A includes Services and Price Lists for Session Initiation Protocol (SIP) Trunking and Related Services, coverage availability for SIP services, and Service Level Agreement and service limitations.
  - A. APPENDIX C-1 –SIP Trunk Services Price List
  - B. APPENDIX C-2 –Optional SIP Trunk Services Price List
  - C. APPENDIX C-3 – Optional Related Services Price List
  - D. APPENDIX C-4 – Enhanced Optional Service Levels: NOT APPLICABLE
  - E. APPENDIX C-5 – Enhanced Optional Features Price List
  - F. APPENDIX C-6 – Additional Emergency Services Price List
  - G. APPENDIX C-7 – Enhanced Business Continuity Features Price List
  - H. APPENDIX C-8 –SIP Training Course(s) Price List
  - I. APPENDIX G – SIP Trunking Coverage Area Availability
  - J. APPENDIX H – Service Level Agreement
- II. EXHIBIT B – SIP Trunk Service Exhibit and Service Limitations

**APPENDIX C-1 – SIP TRUNK SERVICES PRICE LIST**

Item No.	Description	Service Level Commitment Pricing				
		Month-to-Month	Allowance of Outbound Minutes per trunk	Year 1	Year 3	Year 5
1	SIP Trunk Setup (per Trunk)	\$1,000.00	Unlimited	\$0.00	\$0.00	\$0.00
2	SIP Trunk Monthly (per Trunk)	\$40.00*	Unlimited	\$15.00*	\$10.00*	\$10.00*

\*CenturyLink will offer the State of New Mexico pricing based on tiered volume structures as defined below:

<u>Number of trunks</u>	<u>Mo to Mo</u>	<u>1 Year</u>	<u>3 Year</u>	<u>5 Year</u>	<u>Install</u>
0 to 100 Trunks	\$40.00	\$15.00	\$10.00	\$10.00	\$0.00
101 to 300 Trunks	\$35.00	\$12.00	\$9.00	\$9.00	\$0.00
301 to 750 Trunks	\$33.00	\$10.00	\$8.00	\$8.00	\$0.00
751+ Trunks	\$33.00	ICB	ICB	ICB	\$0.00

**APPENDIX C-2 – OPTIONAL SIP TRUNK SERVICES PRICE LIST**

Item No.	Description	Pricing (\$)	Number of Minutes (if applicable per trunk per monthly allowance)	Service Level Commitment Pricing		
				Month-to-Month	Year 1	Year 3
1	SIP Trunk Pricing with Bundle Transport Options	N/A	N/A	N/A	N/A	N/A
	Option1:					
	Option2:					
2	Inbound Toll per Minute	\$0.0100 per min	Unlimited	\$0.0100 per min	\$0.0100 per min	\$0.0100 per min
3	Outbound Toll per Minutes	\$0.0100 per min	Unlimited	\$0.0100 per min	\$0.0100 per min	\$0.0100 per min
4	Conference Bridging Services Setup	\$0.00	Unlimited	\$0.00	\$0.00	\$0.00
5	Conference Bridging Services	\$0.014* for conference calls with Passcode & \$0.018* for reservationless conference calls	Unlimited	\$0.014* for conference calls with Passcode & \$0.018* for reservationless conference calls	\$0.014* for conference calls with Passcode & \$0.018* for reservationless conference calls	\$0.014* for conference calls with Passcode & \$0.018* for reservationless conference calls
6	Video Bridging Services Setup	N/A	N/A	N/A	N/A	N/A
7	Video Bridging Services	N/A	N/A	N/A	N/A	N/A

\*Conference calling services are available to calls originated from both SIP Trunks as well as all other TDM based phone services.

## APPENDIX C-3 – OPTIONAL RELATED SERVICES PRICE LIST

### Transport Options for SIP Trunk

SIP Trunk is available with IQ Internet, Private (MPLS Port) and/or Enhanced ports (Enhanced Port with SIG only) as well as a variety of networking access methods.

**Regarding ELA (Ethernet Local Access) with QoS**, all ELA QoS provisioning limitations that apply generally to CenturyLink IQ™ Networking also apply to SIP Trunk. For a standard order process, the SIP Trunk customer must use an IQ Networking Connection Type of Native ELA Premier or EoS ELA. Native ELA Premier is not offered for Internet Ports. VPLS VPNs are not supported for SIP Trunk. ATM Dedicated, ATM Partner, Frame Relay Dedicated and Frame Relay Partner are not SIP Trunk supported access types.

### Internet Port with SIP Trunk – Supported as Described

The customer's Internet Port is not part of the SIP Trunk service, but CenturyLink IQ™ Networking access is a requirement of the product. The Internet Port access provides transport from customer premises to the CenturyLink VoIP infrastructure and to the Internet as a whole. Voice packets are prioritized over data on the converged dedicated Internet access transport connection. Only T1 (PPP, HDLC) and up to 8xT1 (MLPPP) are available for Internet Port to support SIP Trunk. These are the only bandwidths that have QoS support. That QoS support is provided via Queuing Method E.

### Private Port with SIP Trunk – Supported as Described

The customer's Private Port (or MPLS Port) is not part of the SIP Trunk service, but CenturyLink IQ™ Networking access is a requirement of the product. The Private MPLS-VPN IP access provides transport from customer premises to the CenturyLink VoIP infrastructure and to the rest of that customer's MPLS-VPN. Voice packets are prioritized over data on the converged Private Port access transport connection. VPLS Private Port transport is NOT supported as access to CenturyLink VoIP services. SIP Trunk is supported on Private Ports using the Dedicated IP Connection Type of the following bandwidths and encapsulation options: DS1 (HDLC, PPP, FR, ATM), NxDS1 (MLPPP, MFR), DS3 (PPP, HDLC, FR, ATM), OC3 (PPP, ATM, HDLC) and OC12 (PPP, HDLC).

Type of the following bandwidths and encapsulation options: DS1 (HDLC, PPP, FR, ATM), NxDS1 (MLPPP, MFR), DS3 (PPP, HDLC, FR, ATM), OC3 (PPP, ATM, HDLC) and OC12 (PPP, HDLC).

### Enhanced Port with SIP Trunk – Supported as Described

The customer's Enhanced Port is not part of the SIP Trunk service, but CenturyLink IQ™ Networking access is a requirement of the product. The Enhanced Port MPLS VPN IP access provides transport from customer premises to the CenturyLink VoIP Infrastructure. The SIP Trunk service must use the Private access side of the Enhanced Port service. Voice packets are prioritized over data on the converged Enhanced Port access transport connection. The Enhanced Port also provides connectivity to the rest of the customer's MPLS VPN and connectivity to the Internet. Only Enhanced Port with SIG is supported for SIP Trunk transport. SIP Trunk is supported on Enhanced Ports with SIG using the Dedicated IP Connection Type of the following bandwidths: DS1 (HDLC, PPP, FR, ATM), NxDS1 (MLPPP, MFR), DS3 (PPP, HDLC, FR, ATM), OC3 (PPP, ATM, HDLC) and OC12 (PPP, HDLC).

## CENTURYLINK IQ NETWORK PORT PRICING

The State of New Mexico has a vast existing IQ Private Port and IQ Public Port Network from CenturyLink. We are proposing to reduce our rate structure for these network elements as follows:

Port Type	Package Type	Loop Speed	Service Speed	Monthly Charge	Install
Private	Flat	DS-1	1.5 Mbps	\$ 200.00	\$ 0.00
Private	Flat	2XDS-1	3 Mbps	\$ 450.00	\$ 0.00
Private	Flat	3XDS-1	4.5 Mbps	\$ 700.00	\$ 0.00
Private	Flat	4XDS-1	6 Mbps	\$ 950.00	\$ 0.00
Private	Flat	5XDS-1	7.5 Mbps	\$ 1,150.00	\$ 0.00
Private	Flat	6XDS-1	9 Mbps	\$ 1,300.00	\$ 0.00
Private	Flat	7XDS-1	10.5 Mbps	\$ 1,450.00	\$ 0.00
Private	Tiered	Ethernet	2 Mbps	\$ 250.00	\$ 0.00
Private	Tiered	Ethernet	4 Mbps	\$ 500.00	\$ 0.00
Private	Tiered	Ethernet	5 Mbps	\$ 550.00	\$ 0.00
Private	Tiered	Ethernet	6 Mbps	\$ 600.00	\$ 0.00
Private	Tiered	Ethernet	8 Mbps	\$ 650.00	\$ 0.00
Private	Tiered	Ethernet	10 Mbps	\$ 700.00	\$ 0.00
Private	Tiered	Fast Ethernet	20 Mbps	\$ 900.00	\$ 0.00
Private	Tiered	Fast Ethernet	30 Mbps	\$ 1,300.00	\$ 0.00
Private	Tiered	Fast Ethernet	40 Mbps	\$ 1,700.00	\$ 0.00
Private	Tiered	Fast Ethernet	50 Mbps	\$ 2,100.00	\$ 0.00
Private	Tiered	Fast Ethernet	60 Mbps	\$ 2,400.00	\$ 0.00
Private	Tiered	Fast Ethernet	70 Mbps	\$ 2,600.00	\$ 0.00
Private	Tiered	Fast Ethernet	80 Mbps	\$ 2,800.00	\$ 0.00
Private	Tiered	Fast Ethernet	90 Mbps	\$ 2,900.00	\$ 0.00
Private	Tiered	Fast Ethernet	100 Mbps	\$ 3,000.00	\$ 0.00

Private	Tiered	Ethernet	Mbps	\$ 3,000.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	200 Mbps	\$ 4,000.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	300 Mbps	\$ 5,000.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	400 Mbps	\$ 5,500.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	500 Mbps	\$ 6,000.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	600 Mbps	\$ 6,500.00	\$ 0.00





Private	Tiered	Gigabit Ethernet	700 Mbps	\$ 7,000.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	800 Mbps	\$ 7,500.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	900 Mbps	\$ 8,000.00	\$ 0.00
Private	Tiered	Gigabit Ethernet	1000 Mbps	\$ 8,500.00	\$ 0.00
Enhanced	Flat	DS-1	1.5 Mbps	\$ 225.00	\$ 0.00
Enhanced	Flat	2XDS-1	3 Mbps	\$ 475.00	\$ 0.00
Enhanced	Flat	3XDS-1	4.5 Mbps	\$ 775.00	\$ 0.00
Enhanced	Flat	4XDS-1	6 Mbps	\$ 1,050.00	\$ 0.00
Enhanced	Flat	5XDS-1	7.5 Mbps	\$ 1,250.00	\$ 0.00
Enhanced	Flat	6XDS-1	9 Mbps	\$ 1,350.00	\$ 0.00
Enhanced	Flat	7XDS-1	10.5 Mbps	\$ 1,450.00	\$ 0.00
Enhanced	Flat	8XDS-1	12 Mbps	\$ 1,550.00	\$ 0.00
Enhanced	Tiered	Ethernet	2 Mbps	\$ 275.00	\$ 0.00
Enhanced	Tiered	Ethernet	4 Mbps	\$ 550.00	\$ 0.00
Enhanced	Tiered	Ethernet	6 Mbps	\$ 650.00	\$ 0.00
Enhanced	Tiered	Ethernet	8 Mbps	\$ 700.00	\$ 0.00
Enhanced	Tiered	Ethernet	10 Mbps	\$ 750.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	20 Mbps	\$ 950.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	30 Mbps	\$ 1,350.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	40 Mbps	\$ 1,750.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	50 Mbps	\$ 2,150.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	60 Mbps	\$ 2,450.00	\$ 0.00

Enhanced	Tiered	Fast Ethernet	70 Mbps	\$ 2,650.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	80 Mbps	\$ 2,850.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	90 Mbps	\$ 2,950.00	\$ 0.00
Enhanced	Tiered	Fast Ethernet	100 Mbps	\$ 3,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	100 Mbps	\$ 3,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	200 Mbps	\$ 4,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	300 Mbps	\$ 5,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	400 Mbps	\$ 5,550.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	500 Mbps	\$ 6,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	600 Mbps	\$ 6,550.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	700 Mbps	\$ 7,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	800 Mbps	\$ 7,550.00	\$ 0.00

Enhanced	Tiered	Gigabit Ethernet	900 Mbps	\$ 8,050.00	\$ 0.00
Enhanced	Tiered	Gigabit Ethernet	1000 Mbps	\$ 8,550.00	\$ 0.00
Internet	Tiered	Ethernet	2 Mbps	\$ 271.00	\$ 0.00
Internet	Tiered	Ethernet	4 Mbps	\$ 380.00	\$ 0.00
Internet	Tiered	Ethernet	6 Mbps	\$ 440.00	\$ 0.00
Internet	Tiered	Ethernet	8 Mbps	\$ 478.00	\$ 0.00
Internet	Tiered	Ethernet	10 Mbps	\$ 502.00	\$ 0.00
Internet	Tiered	Fast Ethernet	10 Mbps	\$ 502.00	\$ 0.00
Internet	Tiered	Fast Ethernet	20 Mbps	\$ 725.00	\$ 0.00
Internet	Tiered	Fast Ethernet	30 Mbps	\$ 986.00	\$ 0.00
Internet	Tiered	Fast Ethernet	40 Mbps	\$ 1,205.00	\$ 0.00
Internet	Tiered	Fast Ethernet	50 Mbps	\$ 1,388.00	\$ 0.00
Internet	Tiered	Fast Ethernet	60 Mbps	\$ 1,545.00	\$ 0.00
Internet	Tiered	Fast Ethernet	70 Mbps	\$ 1,681.00	\$ 0.00
Internet	Tiered	Fast Ethernet	80 Mbps	\$ 1,800.00	\$ 0.00
Internet	Tiered	Fast Ethernet	90 Mbps	\$ 1,905.00	\$ 0.00
Internet	Tiered	Fast Ethernet	100 Mbps	\$ 2,000.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	100 Mbps	\$ 2,000.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	200 Mbps	\$ 3,479.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	300 Mbps	\$ 4,737.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	400 Mbps	\$ 5,782.00	\$ 0.00



Internet	Tiered	Gigabit Ethernet	500 Mbps	\$ 6,863.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	600 Mbps	\$ 7,417.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	700 Mbps	\$ 8,070.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	800 Mbps	\$ 8,640.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	900 Mbps	\$ 9,142.00	\$ 0.00
Internet	Tiered	Gigabit Ethernet	1000 Mbps	\$ 9,587.00	\$ 0.00

In addition to our port pricing above, local loops will vary by city and bandwidth types. **For any T1 local loop (or NxT1), CenturyLink is offering the State of New Mexico \$200 PER T1 wherever CenturyLink SIP services are available here in the State of New Mexico.** The State also has the option of provisioning SIP over the existing CenturyLink network in place today.

**Additional SIP services from CenturyLink include:**

**BILLING ELEMENT**

**#1 Telephone Number Fee (per TN)**

***\$.15 per telephone number per month***

***Install fee is waived if moving from existing CenturyLink service***

Local telephone numbers are the same as DID numbers on a PRI

**#2 Remote Direct Inward Dial (Per Remote DID)**

***\$.80 per telephone number per month plus long distance***

***\$5.00 install fee per number***

A remote DID is a telephone number homed to a rate center where the customer does not have a physical presence. The telephone number would normally be used in a customer support environment as an alternative to 8xx, foreign exchange or remote call forward numbers. Remote DID service is a metered service and supports only Inbound calls. Outbound calling, including emergency services (911) is not supported

**#3 SIP REFER (per usage Session)**

***\$2.00 per session per month***

***\$0.00 Install fee***

SIP Refer can be thought of as the SIP protocol version of TDM's "Transfer and Release" (although it really operates more like 2BCT in the network). It allows a SIP node to drop out of a call rather than using multiple trunks or sessions for hair pinning. SIP Refer is utilized after a call has been initially answered. A refer changes the destination signaling point and media point. CenturyLink SIP Refer Support white paper can be found at

<http://nts.qwest.net/voice/SIPT%20support%20details%20for%20SIP%20REFER%20V1-1%2012-28-11.zip>

- SIP Refer, by standard, can transfer and release to another IP address or another TN. CenturyLink only supports transfer to another TN at this time.
- There are two types of SIP Refer, Consultative and Blind. Consultative SIP Refer is supported on the local based trunk group and usage based trunk group combined. Blind transfer is only supported on the usage based trunk group.
- Because of the above stated restriction and other variables, it is recommended that all customers who want to use SIP Refer, test this feature prior to service turn up to guarantee proper functionality.

**#4 Business White Pages Listing**

***\$1.95 monthly per listing***

Listing of telephone numbers in the local white pages directory

**#5 Dedicated VoIP Interconnect (covers all locations)**

***\$2,500 monthly per trunk group location***

***\$5,000 Install fee***

A dedicated VoIP Interconnect (DVI) is for those customers who may have higher than normal security requirements. The standard MPLS provisioning model for the SIP Trunk service is for all customers to share the same VLAN on the Sonus BBS. This shared VLAN is why it is required that all customers use unique IP Address space when connection across the MPLS service. Some customers do not like sharing any part of their service with other customers, if, for example they have HIPPA requirements or are a financial institution with strong security guidelines. CenturyLink will provide a VLAN dedicated solely to their use for those customers who purchase a DVI. It is recommended that this solution only be offered to customers who express strong objections to standard configuration.

**#6 VoIP Switch Diversity**

**\$150.00 monthly per trunk group location**

**\$0.00 Install**

Switch Diversity provides the customer access to separate, physically diverse SBC in the CenturyLink network. IP Diversity is available to customers who have purchased multiple CenturyLink IQ™ Networking ports of the same service type in conjunction with their internal network to provide backup connectivity for their SIP Trunk service. In addition to the charges for the redundant CenturyLink IQ™ Networking ports (purchased separately), there is an IP Diversity setup NRC charge listed above that is associated with this feature.

**#7 QoS –Quality of Service**

**\$100 per service instance monthly**

**\$0.00 Install Fee**

SIP Trunk requires QoS and voice priority over any CenturyLink networking access/port that this service can occupy. Specifically, for Private Port and Enhanced Port with SIG, queuing method C is recommended, and where Queuing Method C is not suitable for the customer, Queuing Method B is allowed. Queuing Methods A and D are not permitted for use with SIP Trunk. For Internet Port, Queuing Method E is the only available choice. For QoS descriptions for the different port types, go to:

- Internet Port: [http://gbmq.gwest.net/bmqg/cgi\\_fwd/adbuilder/PO080444](http://gbmq.gwest.net/bmqg/cgi_fwd/adbuilder/PO080444)
- Private and Enhanced Ports: [http://gbmq.gwest.net/bmqg/cgi\\_fwd/adbuilder/PO090881](http://gbmq.gwest.net/bmqg/cgi_fwd/adbuilder/PO090881)

**#8 800 Service Activation**

**\$0.00 monthly**

**\$0.00 Install**

Toll free service activation on SIP will be waived per instance with three year term pricing

## APPENDIX C-4— ENHANCED OPTIONAL SERVICE LEVELS PRICE LIST

All of the below services described in the RFP can be made available to the State of New Mexico but are ICB based pricing:

- **Busy Ring No Answer (BRNA):**  
BRNA can cause calls to a TFN to route to a different destination if the trunk group on which BRNA is set up is either busy or rings with no answer. There can be up to four defined destinations for each 800 number.
- **Day of Year, Day of Week, Time of Day Routing:**  
Allows an 800 customer to define the destination of the 8XX call depending on when the call originates.
- **Direct Termination Overflow (DTO):**  
DTO can support terminating calls to three separate trunk groups in three separate switches (or a single switch), with a final overflow to a 10-digit ANI. DTO supports overflow in the event of a busy condition only.
- **SuperTrunks and SuperTrunk Overflow:**  
SIP Trunk SuperTrunks can contain up to 10 trunk groups and these trunk groups can be attached to any SBC within the SIP Trunk platform. SuperTrunks that carry 8XX calls must be ordered as part of the 8XX service. SuperTrunks that will handle calls to TN and RDIDs can be set up in the SIP Trunk Section of the Control Center.
- **In-Switch Overflow Trunk:**  
In-Switch Overflow Trunk allows traffic to route to multiple trunk groups that are located in the same switch. An In-Switch Overflow Trunk is similar to a SuperTrunk; however, traffic overflows from trunk group to trunk group, after the lower order trunk groups are at capacity. A trunk group can overflow to as many as 10 other trunk groups as defined by the route plan.
- **Geographic Routing:**  
Based on where the caller is dialing from, Geo Routing automatically routes calls to the appropriate trunk group, as pre-defined by the customer.
- **Percent Allocation:**  
Percent Allocation allows a customer to have calls routed to different trunk groups based on pre-defined percentages.
- **Route Advance Accelerator (RAA):**  
RAA is a Sonus NBS feature and is used to determine if a customer SIP server is reachable, providing the ability to "blacklist" a server IP address if it is found to be unreachable, as well as the ability to remove the server from the blacklisted state. RAA is off by default but can be activated on a per trunk group basis (via NBS SIP Service Table). It allows for a quick failover to a second route in the event the first choice is out of service. Without RAA, it takes ~ 7.5 seconds for each call to overflow to the next route choice. With RAA, once an address is blacklisted, it takes each call less than one second.

**APPENDIX C-5- ENHANCED OPTIONAL FEATURES PRICE LIST**

Optional features and pricing are described in Appendix C-3 & C-4



**APPENDIX C-6- ADDITIONAL EMERGENCY SERVICES PRICE LIST**

Emergency service pricing, like 911 are included in the price of our SIP Trunks. Other Emergency services are described in Appendix C-3 and C-4.



**APPENDIX C-7- ENHANCED BUSINESS CONTINUITY FEATURES PRICE LIST**

Enhanced Business Continuity features and pricing are described in Appendix C-3 and C-4.

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**APPENDIX C-8- SIP TRAINING COURSE(S) PRICE LIST**

#	Course Name	Type of Course (Webinar, Onsite, Other)	Brief Description	Prerequisites, if any	Number of Days	Min and Max Class Size	Special Requests for Equipment, Connectivity, or Other	Cost per person including discounts
1	CenturyLink Instructed Courses	Webinar, Onsite or other are available	CenturyLink Product Managers and for Engineers will agree to provide training as need to the State of New Mexico on our SIP Trunking solution.	None	TBD	TBD	TBD	NONE

**APPENDIX G – SIP TRUNKING COVERAGE AREA AVAILABILITY**

SIP TRUNKING COVERAGE				
No. Rate Centers	Basic 911 Service (Y)	E911 Service (Y)	Check Mark (Y)	RATE CENTER NAME
1				Abiquiu, NM
2	√	√	√	Alamogordo, NM
3	√	√	√	Albuquerque, NM
4				Alto, NM
5				Angel Fire, NM
6				Animas, NM
7				Antelope Ridge, NM
8	√	√	√	Anthony, NM
9				Anton Chico, NM
10				Arch, NM
11	√	√	√	Artesia, NM
12	√	√	√	Aztec, NM
13	√	√	√	Bayard, NM
14	√	√	√	Belen, NM
15				Bellview, NM
16	√	√	√	Bernalillo, NM
17				Biograph, NM
18				Bloomfield, NM
19				Cajillon, NM
20				Camron AFB, NM
21				Canoncito, NM
22				Capitan, NM
23				Carlsbad, NM
24				Carlsbad Caverns, NM
25				Carrizozo, NM
26				Causey, NM
27				Chama, NM
28	√	√	√	Chaparral, NM
29				Chimayo, NM
30				Cimarron, NM
31				Clayton, NM
32				Cliff, NM
33				Cloudcroft, NM
34	√	√	√	Clovis, NM
35				Columbus, NM
36				Conechas Dam, NM

37				Corona, NM
38				Cottonwood, NM
39				Crown Point, NM
40				Cuba, NM
41				Dahl, NM
42				Dell City, NM
43	√	√	√	Deming, NM
44				Des Moines, NM
45				Dexter, NM
46				Dixon, NM
47				Dora, NM
48				Dulce, NM
49				El Rito, NM
50				El Valle, NM
51				Elida, NM
52				Espanola, NM
53	√	√	√	Estancia, NM
54				Eunice, NM
55	√	√	√	Farmington, NM
56				Fence Lake, NM
57				Floyd, NM
58				Fort Sumner, NM
59				Gallina, NM
60	√	√	√	Gallup, NM
61				Glenwood, NM
62				Grady, NM
63	√	√	√	Grants, NM
64				Gundalupo Peak, NM
65				Hagerman, NM
66	√	√	√	Hatch, NM
67				Hillsboro, NM
68	√	√	√	Hobbs, NM
69				Hondo, NM
70				Hope, NM
71				House, NM
72				Jal, NM
73				Jemez Springs, NM
74				Kenton, NM
75	√	√	√	La Mesa, NM
76				Laguna Acoma, NM
77				Lakewood, NM
78	√	√	√	Las Cruces, NM

79	√	√	√	Las Vegas, NM
80				Lindrieth, NM
81				Loco Hills, NM
82				Logan, NM
83				Lordsburg, NM
84	√	√	√	Los Alamos, NM
85	√	√	√	Los Lunas, NM
86				Loving, NM
88				Lovington, NM
89				Luna, NM
90				Lybrook, NM
91				Magdalena, NM
92				Maljamar, NM
93				Maxwell, NM
94				Maybill, NM
95				McIntosh, NM
96				Mescalero, NM
97				Milnesand, NM
98				Mitubres, NM
99				Mora, NM
100	√	√	√	Moriarty, NM
101				Mosquero, NM
102	√	√	√	Mountainair, NM
103				Nara Viva, NM
104				Naschitti, NM
105				Navajo, NM
106				Newcomb, NM
107				Ojo Caliente, NM
108				Pecos, NM
109	√	√	√	Pena Blanca, NM
110	√	√	√	Penasco, NM
111				Pine Hill, NM
112				Playas, NM
113				Pleasant Hill, NM
114				Pojoaque, NM
115				Portales, NM
116				Pueblo Pintado, NM
117				Queen, NM
118				Quemado, NM
119	√	√	√	Quetta, NM
120				Ragland, NM
121				Ramah, NM
122				Ranchvale, NM

123	√	√	√	Raton, NM
124				Red River, NM
125				Reserve, NM
126				Rodeo, NM
127	√	√	√	Roswell, NM
128				Roy, NM
129				Ruidoso, NM
130				Ruidoso Downs, NM
131				San Jon, NM
132				San Ysidro, NM
133				Sanostee, NM
134	√	√	√	Santa Fe, NM
135				Santa Rosa, NM
136				Santa Teresa, NM
137				Shiprock, NM
138	√	√	√	Silver City, NM
139	√	√	√	Socorro, NM
140				South Clovis, NM
141	√	√	√	Springer, NM
142	√	√	√	Taos, NM
143				Tatum, NM
144				Texico, NM
145				Tierra Amarilla, NM
146	√	√	√	Tijeras, NM
147				Timberon, NM
148				Toadlena, NM
149				Tohatchi, NM
150				Torreón, NM
151				Trementina, NM
152				Truchas
153				Truth or Consequences, NM
154				Tse Bonito, NM
155				Tuoumcarí, NM
156				Tularosa, NM
157				Twin Lakes, NM
158				Vallecitos, NM
159				Vanderwagen, NM
160				Yaughn, NM
161				Velarde, NM
162				Yiriden, NM
163				Wagon Mound, NM
164				Weber City, NM
165				White Lakes, NM

166	√	√	√	White Rock, NM
167				White Sands, NM, NM
168				Zuni, NM

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APPENDIX H – STANDARD LEVEL AGREEMENT

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**QWEST COMMUNICATIONS COMPANY, LLC, d/b/a CENTURYLINK QCC  
("CENTURYLINK")**

**SIP TRUNK RETAIL SERVICE LEVEL AGREEMENT**

**(not applicable to services offered under CenturyLink Wholesale and Enhanced Services Agreements)**

This SLA applies to SIP Trunk Service ordered by CenturyLink's customer ("Customer") pursuant to a signed agreement ("Agreement") with Qwest Communications Company, LLC, d/b/a CenturyLink QCC ("CenturyLink"). Capitalized terms not defined in this SLA are defined in the Agreement. This SLA will not apply to Approved Connectivity. The CenturyLink IQ™ Networking SLA applies to such Approved Connectivity, and is available for review at <http://qwest.centurylink.com/legal/sla.html>. This SLA is effective as of the first day of the second month after initial installation of Service.

**VOICE AVAILABILITY:**

Voice Availability is based on "Voice Platform Downtime," which exists when a particular SIP Trunk Flat Rate Session is unable to transmit inbound and/or outbound voice calls. Such failure is recorded in the CenturyLink IP Network trouble ticket system. Voice Platform Downtime is measured from the time a master trouble ticket is opened in the CenturyLink trouble management system to the time the Affected Service is able to transmit inbound and outbound voice calls. In order to qualify for credits, the outage must be deemed a "Major Service Outage," which is defined as a service outage network condition causing major service disruption to the customer base relative to a network segment for which a master trouble ticket is opened, and which impacts more than one customer. This Voice Availability SLA does not apply to call quality. Subject to the foregoing limitations, each time Voice Availability is less than CenturyLink's 100% availability goal, Customer qualifies for a percentage credit as shown in the table below, prorated from the Session and TN MRC of the Affected Service, up to the maximums indicated in the Remedies section

Goal	Voice Platform Downtime	Amount of Monthly Bill Credit
100%	10 to 30 minutes	1 day's credit
	31 to 60 minutes	2 days' credit
	61 to 120 minutes	4 days' credit
	121 to 240 minutes	6 days' credit
	Over 241 minutes	10 days' credit

**NETWORK AVAILABILITY**

Network Availability is based on "Network Downtime," which exists when an individual customer's SIP Trunk Flat Rate Sessions are unable to transmit inbound and/or outbound voice calls as a result of a CenturyLink network event. Such failure is recorded in the CenturyLink VoIP Network trouble ticket system. Network Downtime is measured from the time the trouble ticket is opened in the CenturyLink trouble management system to the time the affected SIP Trunk Flat Rate Sessions service is again able to transmit inbound and/or outbound calls. This SLA does not cover anything on the Customer's side of the external demarcation point (e.g. Customer's data network, CPE (including CPE purchased, leased or rented from CenturyLink), extended wiring, and inside wiring) or other equipment at the Customer address.

Goal	Remedy
100%	Each cumulative hour of Network Availability less than 100% qualifies Customer for one day's charges pro-rated from the Session and TN MRCs of the Affected Service.

**Remedies.** To be eligible for service credits under this SLA, Customer must be in good standing with CenturyLink and current in its obligations. To receive service credits, Customer must contact either their CenturyLink account representative or CenturyLink Billing Inquiries at 1-800-860-1020 to request the credit and open a trouble ticket. Such requests must be made within thirty (30) calendar days from the date when the relevant SLA goal was not met. A credit will be applied only to the month in which the event giving rise to the credit occurred. "Affected Service" refers to the particular SIP Trunk Flat Rate Session that fails to meet the Voice Availability or Network Availability goal. The total in the aggregate of all credits issued in one month will not exceed the equivalent of 100% of the relevant MRCs for the Affected Service. The maximum credits given for a specific outage will not exceed ten (10) days' credit.

**Service Credit Exceptions.** Service credits will not be issued where the SLA is not met as a result of: (a) the acts or omissions of Customer, its employees, contractors or agents or its End Users; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by CenturyLink; (c) Force Majeure Events; (d) scheduled service maintenance, alteration or implementation; (e) the unavailability of required Customer personnel, including as a result of failure to provide CenturyLink with accurate, current contact information; (f) Customer's failure to use Approved Connectivity, and Customer's failure to provide CenturyLink with remote and/or on-site access to CPE upon request, including router logon IDs and passwords; (g) Customer's failure to release the Service for testing or repair and continuing to use the Service on an impaired basis; (h) CenturyLink's termination of Service for Cause or Customer's use of Service in an unauthorized or unlawful manner; or (i) improper or inaccurate network specifications provided by Customer.

**Maintenance Window Definition.** Maintenance will be classified as one of the following two types:

**Normal Maintenance.** "Normal Maintenance" refers to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible outages. Such effects related to Normal Maintenance will not give rise to service credits under this SLA. Normal Maintenance will be undertaken between the hours of 11:00 PM and 6:00 AM Local Time. For purposes of this SLA, "Local Time" means the local time in the time zone in which an Affected Service is located.

**Urgent Maintenance.** "Urgent Maintenance" refers to efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Urgent Maintenance may degrade the quality of the Service, including possible outages. Such effects related to Urgent Maintenance will entitle Customer to service credits as set forth in this SLA. CenturyLink may undertake Urgent Maintenance at any time deemed necessary and will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

**Customer Termination Rights.** Customer may terminate the Affected Services without incurring a Cancellation Charge in the event Customer becomes entitled to terminate the Approved Connectivity over which Service is provided due to CenturyLink's failure to meet the CenturyLink IQ Networking SLA. Such termination must be conducted by written notice to the CenturyLink Dublin Service Center, with a courtesy copy to the attention of CenturyLink's General Counsel, and within five business days following the end of the relevant calendar month. Such termination will be effective 45 days after receipt of written notice by CenturyLink.

The provisions of this SLA state Customer's sole and exclusive remedies for Service interruptions or Service deficiencies of any kind whatsoever.

**EXHIBIT B**

**SIP Trunk Service Exhibit and Service Limitations**

CENTURYLINK TOTAL ADVANTAGE™ AGREEMENT  
SIP TRUNK SERVICE  
EXHIBIT B

**1. General; Definitions.** Capitalized terms not defined herein are defined in the Agreement. CenturyLink QCC will provide SIP Trunk ("SIP Trunk" or "Service") under the terms of the Agreement and this Service Exhibit.

"Affiliate" means any entity controlled by, controlling, or under common control with a party.

"ANI" means automatic number identification.

"Approved Connectivity" means a CenturyLink IQ™ Networking Private Port, CenturyLink IQ Networking Enhanced Port with Secure IP Gateway or CenturyLink IQ Networking Internet Port. All Approved Connectivity used with Service, whether Internet Port, Private Port or Enhanced Port, must support QoS.

"AUP" means the Acceptable Use Policy incorporated by this reference and posted at [qwest.centurylink.com/legal/](http://qwest.centurylink.com/legal/).

"Calling Party Number" (CPN) means the originating party's telephone number, as displayed on Caller ID (when Caller ID privacy is not restricted).

"Cancellation Charge" means the cancellation charge described in the applicable Service Exhibit and charges incurred by CenturyLink from a third party provider as a result of an early termination.

"CenturyLink-Approved 911 Location" means Customer's current 911 location that is displayed on the CenturyLink Control Center Business portal (<https://controlcenter.centurylink.com>), which may be the 911 location of a customer PPU, or an updated temporary location that CenturyLink has previously approved. Service may only be used at a CenturyLink-Approved 911 Location.

"Convenience" means any reason other than for Default.

"CPE" means any customer equipment, software, and/or other materials of Customer used in connection with the Service.

"CPNI" means Customer Proprietary Network Information, which includes confidential account, usage, and billing-related information about the quantity, technical configuration, type, destination, location, and amount of use of a customer's telecommunications services. CPNI reflects the telecommunications products, services, and features that a customer subscribes to and the usage of such services, including call detail information appearing in a bill. CPNI does not include a customer's name, address, or telephone number.

"Customer Environment" means Customer's data network/equipment and premises environment.

"Early Termination Charge" means an amount equal to 35% of the average monthly charges billed under this Agreement through the date of termination multiplied by the number of months remaining in the Term.

"End User" means Customer's members, end users, customers, or any other third parties who use or access the Services or the CenturyLink network via the Services.

"IP" means Internet Protocol.

"ISS" means Information Services Schedule which can be found at [http://www.centurylink.com/tariffs/qcc\\_info\\_services.pdf](http://www.centurylink.com/tariffs/qcc_info_services.pdf) and which is subject to change. The ISS contains the current rates for domestic and international Off-Net Calls and toll free calls.

"Local Session" means a Session used for the origination and termination of local and long distance telephone calls.

"MATR" means minimum average time requirement.

"MRC" means monthly recurring charge.

"NRC" means nonrecurring charge.

"Off-Net Calls" means any calls that are not (a) local calls, (b) 8xx outbound calls, or (c) On-Net Calls.

Off-Net Calls Include RDID calls.

"On-Net Calls" means calls between the Service and any of SIP Trunk, Managed VoIP, CenturyLink™ Broadband Phone Service, Analog VoIP, Digital VoIP, or Integrated Access services that are transmitted through the Service entirely over the CenturyLink IP network and not the PSTN or another carrier's IP network.

"Order Form" means the Customer approved purchase order from the Customer.

"Ported Telephone Number" means an existing telephone number that is currently subscribed to a local exchange carrier for local, local toll and/or long distances telecommunications services and ported to CenturyLink for use with the Service.

"PPU" means the location given by the Customer as the Primary Place of Use for a particular TN, Remote DID or 8xx TN.

"PSAP" means public safety answering point.

"PSTN" means public switched telephone network.

"QoS" means Quality of Service.

"Regulatory Activity" is a regulation or ruling by any regulatory agency, legislative body or court of competent jurisdiction.

"Remote DID TN" means a telephone number in a rate center where the Customer may not have a physical presence. These telephone numbers are for inbound use only and do not support outbound calling, including emergency services.

"RSS" means as applicable CenturyLink's Rates and Services Schedules Incorporated by this reference and posted at [http://www.centurylink.com/tariffs/fcc\\_qcc\\_lxc\\_rss\\_no\\_2.pdf](http://www.centurylink.com/tariffs/fcc_qcc_lxc_rss_no_2.pdf) for CenturyLink's International RSS and at [http://www.centurylink.com/tariffs/fcc\\_qcc\\_lxc\\_rss\\_no\\_3.pdf](http://www.centurylink.com/tariffs/fcc_qcc_lxc_rss_no_3.pdf) for CenturyLink's Interstate RSS.

"Session" means a single unit of simultaneous call capacity.

"SIP" means Session Initiation Protocol.

"SIP Diversion Header" means a header used to support PSTN redirecting services such as Call Forwarding.

"SLAs" means service level agreements posted at <http://qwest.centurylink.com/legal> which are subject to change.

"Start of Service Date" means the date CenturyLink notifies Customer that the Service is provisioned and ready for use.

"Tariff" includes as applicable: CenturyLink state tariffs, price lists, price schedules, administrative guidelines, catalogs, and rate and term schedules Incorporated by this reference and posted at <http://www.centurylink.com/tariffs>.

"Tax" or "Taxes" means foreign, federal, state, and local excise, gross receipts, sales, use, privilege, or other tax (other than net income) now or in the future imposed by any governmental entity (whether such Taxes are assessed by a governmental authority directly upon CenturyLink or the Customer) attributable or measured by the sale price or transaction amount, or surcharges, fees, and other similar charges that are required or permitted to be assessed on the Customer. These charges may include state and federal Carrier Universal Service Charges, as well as charges related to E911, and Telephone Relay Service.

"TN" means a telephone number.

"Trunk Group" means a group of Sessions used for local or usage-based voice services.

"Usage Session" means a Session used for the termination of inbound toll free or Remote DID service.

## 2. Service.

**2.1 Description.** Service provides the delivery of origination and termination of local, including 911, voice traffic and optionally long-distance, toll-free and Remote DID traffic via a SIP signaling interface enabled to the Customer Premise Equipment (CPE). All voice traffic will be delivered in an IP format over separately purchased Approved Connectivity.

**2.2 Local, 8XX and On-Net Calls.** Local calls, 8XX outbound calls, and On-Net calls are included in the Service MRC. The local calling service area that applies to a Service location is based on the area code and prefix assigned to the numbers for that location and does not depend on Customer's physical location.

**2.3 Optional Services.** The following optional services are available for the additional charges shown in the Pricing Attachment or other pricing document identified below.

**(a) Directory Assistance.** A flat per call charge applies to directory assistance.

**(b) IP Diversity.** Customer may order more than one CenturyLink IQ Networking port for the purpose of maintaining diverse IP access to the Service. Redundant CenturyLink IQ Networking ports will be purchased separately under the CenturyLink Domestic Network Diversity Service Exhibit for an additional charge. In order for Customer to use CenturyLink IQ Networking port diversity with the Service CenturyLink must configure the Service to make use of the diverse ports. An IP Diversity NRC will apply for such configuration.

**(c) Directory Listings.** An additional MRC applies to each basic business white page listing of a telephone number. White page listings are not supported for Remote DIDs.

**(d) Off-Net Long-Distance:** Off-Net Calls are available at the per minute rates for domestic and international Long Distance service shown in the ISS. Additional per minute charges may apply to each Off-Net Call leg of a conference call.

**(e) Usage-Based Trunk Groups.** Customer may direct long distance calls to a usage-based Trunk Group. Off-Net LD calls directed to a usage-based Trunk Group will incur usage charges, but will not be charged a per Session charge. LD usage-based trunks are not intended to be used for placing local calls, including 911 calls. Since CenturyLink cannot always capture and provide the correct end user location for 911 calls when made over LD usage-based trunks, 911 calls placed over those trunks may not route to the proper PSAP. In those circumstances, CenturyLink may need to route the 911 call to a default national emergency call routing center, and additional third-party charges may apply. If CenturyLink incurs such additional third-party charges, CenturyLink may bill Customer for such charges. Additionally, Customer acknowledges that if it sends local calls down a usage-based Trunk Group, those calls will incur charges at the Off-Net LD rate. To avoid incremental LD charges on local calls, Customer must configure its PBX to send all local calls to a Session-based Trunk Group.

**(f) Operator Services.** Available for calling or credit card billed calls only. No collect or third party billing calls are supported. Pricing for Operator Services is located in the FCC Operator Services Informational Tariff posted at: [http://www.centurylink.com/tariffs/fcc\\_qcc\\_ops\\_t.pdf](http://www.centurylink.com/tariffs/fcc_qcc_ops_t.pdf).

**(g) Dedicated VoIP Interconnect.** Dedicated VoIP Interconnect provides Customers using CenturyLink IQ Networking Private Ports or CenturyLink IQ Networking Enhanced Ports with completely separate VPN access to the first network element of the Service. An additional NRC and MRC apply for this Dedicated VoIP Interconnect option. Standard Service (i.e., without the Dedicated VoIP Interconnect option) provides customers using CenturyLink IQ Networking Private Ports or CenturyLink IQ Networking Enhanced Ports with shared VPN access to the same elements at no additional cost.

**(h) Remote DID.** Remote DID service is a usage billed service that provides Customer with a Remote DID TN in any rate center covered by the Service for inbound calling only. CenturyLink does not support directory listings (either white, blue or yellow page) for Remote DID telephone numbers, and Customer may not purchase or otherwise arrange for directory listings for Remote DID telephone numbers with other providers of directory listings. Remote DID TNs do not support outbound calling, including emergency services (911) calls, and Customer is strictly prohibited from using any Remote DIDs in connection with any outbound calls on the CenturyLink network or any other network, or from reconfiguring Service or any Remote DIDs to support such use, either by originating calls via the Remote DID or by using the Remote DID as an identifier for any outbound calls. If Customer fails to comply with the terms of this Section, CenturyLink may (i) immediately suspend or terminate the Remote DID Service (without notice or opportunity to cure), and (ii) CenturyLink will charge Customer an additional \$0.04 per minute of use for all Remote DID service provided to Customer from and after the date of any violation of this Section. Any charges owing by Customer to CenturyLink, its affiliates or third party vendors under this Section will be in addition to any and all other charges that may be due and owing under the Agreement.

**(i) SIP REFER.** SIP REFER allows Customer to transfer a call using a specific network protocol that causes the network to complete the call transfer rather than CPE. If Customer purchases SIP REFER with Enterprise Session Pooling, the SIP REFER MRC will be applied to all Sessions in the usage-based pool.

**(j) Switch Diversity.** Customer may purchase optional switch diversity with the Service. Switch diversity divides Customer's Sessions between multiple network elements across separate network facilities in the CenturyLink network. Switch diversity does not provide diverse physical access to the Service.

**(k) Enterprise Session Pooling.** Customer may purchase optional Enterprise Session Pooling with the Service. Enterprise Session Pooling enables Customer to share SIP Trunk Sessions among SIP Trunk termination locations. CenturyLink provides the first Flat Session Pool at no charge. Additional Flat Session Pools after the first one will be charged as shown in the Pricing Attachment. Customer may also order Usage Pools so long as Customer has purchased Flat Pools. The number of Usage Pools cannot exceed the number of Flat Pools. There is no charge for Usage Pools.

**(l) Toll-Free:** Inbound Toll Free services are available with the Service. CenturyLink is required by the FCC to state in this Service Exhibit that Customer is prohibited from using any Toll Free TN, or other TN advertised or widely understood to be Toll Free, in a manner that would violate FCC rule 47 CFR 64.1504. Rates for domestic and international Toll Free service are in the ISS.

**2.4 Service Conditions.** The following conditions apply to the Service:

**(a) Site Conditions.** Customer Environment must meet certain performance specifications designated by CenturyLink to use the Service. Customer is responsible for ensuring that its Customer Environment is fully prepared for the convergence of voice and data services, and continuing to meet specifications designated by CenturyLink during the Term. Customer is responsible for fully understanding how changes in its data network will affect voice quality and reliability of the Service. The addition of new data network applications, increased usage, movement of Customer personnel, and equipment failures can all have an impact on Service using that network. CenturyLink has no liability for Service deficiencies or interruptions caused by failures or malfunctions in the Customer Environment. A CenturyLink representative will assist Customer in a technical interview to determine if the Customer Environment meets the specifications. Customer is responsible for providing all the necessary information to complete the technical interview. If CenturyLink determines in the technical interview that the Customer Environment does not meet the specifications needed to use the Service, Customer may terminate this Service Exhibit without liability for any Cancellation Charge.



**(b) Voice Services (Long Distance and Toll Free).** CenturyLink will provide the voice services under the terms of the Agreement, ISS, and this Service Exhibit.

**(i) Description; Service Guide and SLA.** Long Distance accepts domestic and international dedicated long distance traffic in IP format and converts such traffic for transmission across the telecommunications network. Toll Free accepts domestic and international toll free traffic and converts it into IP format for transmission to Customer. The voice services are dedicated offerings. The pricing for the voice services can be found in the ISS. All use of the voice services will comply with and be subject to the Services Guide and applicable sections of the SIP Trunk SLA, which is posted at [qwest.centurylink.com/legal/](http://qwest.centurylink.com/legal/). CenturyLink reserves the right to refuse to accept, suspend, or limit any or all of Customer's IP traffic not complying with the Service Guide technical specifications or that CenturyLink believes is adversely affecting other customers on the CenturyLink network. The Service Guide is incorporated into this Service Exhibit by this reference. CenturyLink may reasonably modify the Service Guide to ensure compliance with applicable laws and regulations and to protect CenturyLink's network and customers, and such change will be effective upon posting to the Web site.

**(ii) Telemarketing.** With respect to any outbound Long Distance: (a) Per the Federal Trade Commission ("FTC"), telemarketers are required to transmit their telephone number to Caller ID services. As such, all telemarketers using CenturyLink commercial services are required to provide CPN/pseudo-CPN and a CGN provisioned with the service: IF A TELEMARKETER DOES NOT PROVIDE CENTURYLINK WITH A NUMBER FOR THIS PURPOSE, THE CALL WILL BE BLOCKED BY CENTURYLINK; and (b) Federal Do Not Calls rules require that companies that telemarket or engage in telephone solicitations adhere to the requirements set forth in 47 C.F.R. section 64.1200 (FCC) and 16 C.F.R. Part 310 (FTC). Please consult with your company's legal advisor for more information.

**(iii) Non-Completed Calls.** "Non-completed Call Percentage Threshold" means 30% of all attempted calls, both completed and non-completed. If the percentage of Customer's calls that do not complete (out of all attempted calls) meets or exceeds the Non-completed Call Percentage Threshold for any given monthly billing cycle, CenturyLink may, upon 30 calendar days notice to Customer, disconnect any and all circuit(s) providing Service on which the Non-completed Call Percentage Threshold was exceeded.

**(iv) International Toll Free.** International Toll Free Service "ITFS"/Universal International Freephone Number "UIFN" billing increments:

ITFS/UIFN	Initial Billing Period	Incremental Billing Period
Inbound International (excluding Mexico) to US	30 seconds	6 seconds
Inbound Canada to US	30 seconds	6 seconds
Inbound US to Canada	30 seconds	6 seconds
Inbound Mexico to US	60 seconds	60 seconds

**ITFS/UIFN** In certain countries, the following applications are not permitted for ITFS/UIFN: calling card, VRU (Voice Response Unit), operator services, third-country termination, dial tone, dial up access, dead air or any other response the individual carrier deems inappropriate to ITFS. Originating carriers treat all carriers equally regarding these restrictions. Restrictions on usage are imposed on all other carriers, including CenturyLink, by the originating carriers. ITFS service orders violating the restrictive guidelines of the originating carrier will not be processed by CenturyLink's ITFS/UIFN implementation group. Toll-free originating carriers finding usage in violation of their guidelines can, and will, block toll-free numbers on the originating side of the call without notice or appeal. Carriers may change their restrictions to be more restrictive without notice to CenturyLink. Information regarding which country has this type of

limitation is located in the "ITFS/UIFN Availability Matrix". CenturyLink is able to supply a copy of the ITFS/UIFN Availability Matrix upon request.

CenturyLink cannot guarantee that all new ITFS/UIFN numbers are tested due to random voluntary testing of ITFS/UIFN numbers by the foreign PTTs. ITFS/UIFN numbers may be disconnected by foreign PTTs without advanced notification due to Customer fraudulent use or no usage. Customer agrees to maintain minimum usage for each number on a regular basis and adhere to the restricted application guideline (as stated in Availability Matrix). In situations when an ITFS/UIFN is disconnected by a foreign PTT, it is the Customer's responsibility to submit an order for a new number. CenturyLink does not guarantee that the same number can be re-instated. All PTT's reserve the right to decline, cancel, or change international services at any time with or without notice.

UIFN is a service which allocates 1 toll free number to be used in multiple foreign countries to call the United States and bill to the number in the United States. Countries which are currently available for UIFN are: Argentina, Australia, Belgium, Brazil, China, Denmark, Finland, France, Germany, Hong Kong, Hungary, Ireland, Israel, Italy, Japan, South Korea, Luxembourg, Macau, Malaysia, Netherlands, New Zealand, Norway, Philippines, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, and United Kingdom. There is an NRC and an MRC, which are applicable per number, regardless of the number of countries in which the number is active. The per minute rates using the UIFN number are the same as the ITFS rates. The UIFN nonrecurring charge and monthly rate applies to any CenturyLink product where the customer subscribes to UIFN(s). All rates are located in the ISS.

**(c) Connectivity.** As of the effective date of this Service Exhibit, the Service may only be used with Approved Connectivity. Customer must purchase Approved Connectivity separately. CenturyLink may add to the Approved Connectivity list from time to time. The then current list of Approved Connectivity is available to Customer upon request. CenturyLink has no liability for Service deficiencies or interruptions caused by Customer, its employees, contractors or agents, or End Users reconfiguring or misconfiguring the Approved Connectivity.

**(d) Off-Net Call Billing.** Off-Net Call charges are quoted in full minutes. Each domestic Off-Net Call is measured and billed for an initial 18 seconds and rounded up to the next 6 second increment after the first 18 seconds. Domestic Off-Net Calls are also subject to a 30 second MATR per call. If the MATR is not met in a particular month, CenturyLink may add \$0.01 to the per minute charge for all domestic Off-Net Calls during that month. Each international Off-Net Call (except to Mexico) is measured and billed for an initial 30 seconds and rounded up to the next 6 second increment after the first 30 seconds. Each International Off-Net Call to Mexico is measured and billed for an initial one minute and rounded up to the next minute after the first minute.

**(e) Unsupported Calls.** The Service does not support collect or third party billing. The Service may not support 311, 511 and/or other x11 services (other than 911, 711 and 411 dialing) in all service areas. The Service does not support remote bridged line appearances ("Remote BLAs"). Customer is specifically instructed not to enable Remote BLAs on its IP devices used with the Service. Additional information regarding potential issues with Remote BLAs is found in the "911 Emergency Service" section of this Service Exhibit.

**(f) Area of use.** The Service is intended to be used only at one of the Customer PPU locations in the 48 contiguous United States and Hawaii. Additionally, Customer may not use IP enabled stationary devices that are assigned to, designated for, or configured for use at one PPU location in any other location, unless Customer has requested a temporary change of its 911 location, and has received approval and the 911 Update Confirmation from CenturyLink as set forth in subpart (g) below. 911 emergency calls automatically route to the appropriate 911 center based upon the CenturyLink-Approved 911 Location. If Customer or an End User tries to use the Service (i) at a location other than a CenturyLink-Approved 911 Location (including without limitation, using IP enabled devices assigned to,

designated for, or configured for use at one location in a different location) or (ii) outside of the 48 contiguous United States and Hawaii, they do so at their own risk (*including without limitation, the risk that Customer will not have access to 911 emergency services and/or such activity violates local laws in the jurisdiction where Customer or an End User tries to use the Service*).

**(g) Use of Service at a Temporary Location.** Customer may temporarily use the Service at a location other than the Customer PPU location only after obtaining CenturyLink's approval either (i) by contacting CenturyLink at 1-877-878-7543 or (ii) by submitting a 911 location change request through the CenturyLink Business portal. Customer must submit a 911 location change request both before using Service at the temporary location and before returning to the Customer PPU location. Failure to obtain CenturyLink's approval is prohibited and constitutes a misuse of the Service. Such misuse will result in 911 calls being routed to the incorrect 911 operator based on incorrect address information. Use of Service at a temporary location may not exceed six (6) months in duration. Upon submission of Customer's 911 location change request, CenturyLink will reject the request, or accept and begin processing the request. Customer is responsible for checking the CenturyLink Control Center Business portal to confirm if the request was rejected or accepted. Customer will be notified of the 911 Update Interval (defined in Section 3.1 below) at the time the request is accepted via the CenturyLink Control Center Business portal. Upon completion of the 911 location change and the 911 Update Interval, an e-mail will be sent to Customer's e-mail address notifying Customer that 911 service has been successfully moved and is ready for use ("911 Update Confirmation"). In the event Customer does not receive such confirmation by expiration of the 911 Update Interval, Customer agrees to contact CenturyLink at 1-877-878-7543. Any 911 calls placed prior to receiving the 911 Update Confirmation will be routed according to the last CenturyLink-Approved 911 Location. If, upon submission of a 911 location change request, CenturyLink rejects the change request, Customer understands that CenturyLink has not approved using the Service at that new location and, as such, Customer is prohibited from using the Service there.

**(h) Compliance.** The Service cannot be used for any unlawful, abusive, or fraudulent purpose, including without limitation, using the Service in a way that: (i) interferes with CenturyLink's ability to provide service to CenturyLink customers; (ii) avoids Customer's obligation to pay for communication services; (iii) constitutes a criminal offense; (iv) gives rise to a civil liability; (v) otherwise violates any laws; or (vi) constitutes a resale arrangement with a third party (e.g., wholesaling of the Service is not permitted). Without limiting the foregoing, the Service cannot be used for auto-dialing, continuous or extensive call forwarding, fax broadcasting or fax blasting, or for uses that result in excessive usage inconsistent with normal usage patterns.

**(i) Authorized Use.** Customer and its End Users are the only parties authorized to access the Service. Customer and its End Users are responsible for maintaining the confidentiality of passwords used by Customer and its End Users and will ensure that all use of the Service complies with the Agreement and this Service Exhibit. Customer is responsible for unauthorized use of the Service.

**(j) Power Outages; Network Connectivity, Customer Data Network and CPE Failures; Maintenance Work; Moving Equipment.** The Service will not operate (*including, without limitation, End Users will be unable to access emergency 911 services*) if any of the following items fail: (i) power used with the Service; (ii) the Approved Connectivity used with the Service (including without limitation, failures caused by suspension or termination of the Approved Connectivity under the terms of that service); (iii) the Customer Environment; (iv) the Approved Connectivity router; (v) Customer premises routers and switches; (vi) the IP enabled devices used with the Service; or (vii) customer's SIP signaling interface. Additionally, the Service will not operate (*including, without limitation, End Users will be unable to access emergency 911 services*) while maintenance work is being performed. If Customer has requested a temporary change of its 911 location, and has received approval and the 911 Update Confirmation from CenturyLink as set forth in subpart (g) above, Customer may move the IP handset only.

**(k) Privacy.** CenturyLink, its affiliates and third-party vendors, may access and use information regarding Customer bandwidth usage and performance of CPE, software, and Service to: (a) perform related registration (equipment serial number, activation date, and WTN provided to manufacturer), maintenance, support, and other service-quality activities and (b) verify AUP compliance and network performance.

**(l) Telephone Numbers.** Customer must provision at least one TN for use with the Service. The TNs may be new TNs or Ported TNs. If Customer requests Ported TNs, Customer authorizes CenturyLink to process its order for Service and notify Customer's current carrier of Customer's decision to switch its local and local toll services to the Service. Customer will be responsible to promptly provide CenturyLink with its Customer Service Record (CSR) from customer's current carrier to facilitate porting of numbers. If Customer does not order new TNs from CenturyLink, and Ported TNs are not ported within 60 days of the Start of Service Date for a specific location, CenturyLink reserves the right to terminate Service at that location. Additionally, the Start of Service Date and commencement of billing will not depend on completion of porting. If Customer requests cancellation of Service, it is Customer's sole responsibility to arrange porting of any telephone numbers Customer wants to retain. If porting of numbers is not completed within 30 days following Customer's request for Service cancellation, CenturyLink may terminate Service and Customer will lose all telephone numbers. There may be limitations to number porting between providers. Due to the portability of VoIP services, for example, providers may allow non-geographic numbers to be used in connection with their service. CenturyLink will deny a request to port a TN to a location that is not within the rate center where the Service will be used. Other limitations might also apply and can be addressed on an individual basis.

**(m) Trunk Group Utilization.** Customer must maintain a peak utilization of Trunk Groups used to support usage-based services of 60 percent or higher. "Peak utilization" means the maximum utilization for a Trunk Group reached at any point during the month. Each month, CenturyLink will calculate the peak utilization over Customer's usage-based Trunk Groups. If peak utilization is less than 60% for three consecutive months, CenturyLink reserves the right to reduce the number of Sessions in the affected usage-based Trunk Group such that the peak utilization of the Trunk Group is at least 75%.

**(n) Third Party Billed Services.** The Service does not support billing for third party services such as online subscription services, equipment leases and wireless services. Customer will be responsible for payment of all such charges directly to the third party provider.

**(o) Local Origination.** Customer agrees that the SIP Diversion Header, ANI and Calling Party Number delivered with each outbound call will accurately reflect the location of the originating party so that appropriate long distance charges may be applied for each call, where applicable. For example, Customer may not utilize tail end hop off routing to route long distance calls across a private WAN VoIP network and drop off the long distance calls to the PSTN as local calls at a remote gateway. Failure to comply will constitute a material breach of the Agreement.

**2.5 SLA.** Service is subject to the SIP Trunk SLA. Approved Connectivity (purchased separately) is subject to the CenturyLink IQ Networking SLA, and not to the SIP Trunk SLA. Both SLAs are posted at <http://qwest.centurylink.com/legal/>. CenturyLink reserves the right to amend the SLAs effective upon posting to the website or other notice to Customer. All other services, facilities, and components relating to the SIP Trunk Service, including without limitation any CPE, the Customer Environment, the Customer SIP Signaling Interface, Customer premise switches and routers, devices used with the Service, another carrier's IP network, and the PSTN are not included in the SLA measurement. The SLA credit will provide Customer's sole remedy for any interruptions or deficiencies in the Service.

### 3. 911 Emergency Service.



**POTENTIALLY HAZARDOUS SITUATION WHICH IF NOT AVOIDED COULD RESULT IN DEATH OR SERIOUS INJURY. PLEASE READ CAREFULLY.**

**3.1 Required Federal Communications Commission ("FCC") Warning.** *The FCC requires that CenturyLink inform Customer of potential limitations to 911 services using SIP Trunk Service and bundles or packages that include SIP Trunk Service. The Service provides access to 911 emergency service only on stationary devices (and not mobile devices). The Service does not support any outgoing calls, including calls to 911 emergency service from a mobile device. 911 emergency services will not be available or may not function properly (e.g., they may not route to the correct public safety answering point or "PSAP") under the following circumstances: (i) if the Service is used at a location other than a CenturyLink-Approved 911 Location in the 48 contiguous United States and Hawaii, or if an IP-enabled stationary device is moved within the CenturyLink-Approved 911 Location and not reconfigured; (ii) if Customer selects a telephone number that is not associated with the geographic area of the installed service (e.g., if Customer chooses a California number for use in a Colorado location); (iii) for initial installation of Service - on average 5 days, but for as long as 30 days after installation of Service due to time required to update 911 databases with customer information; (iv) for use of Service at a temporary location - until CenturyLink has completed the 911 Update Interval and sent the 911 Update Confirmation to Customer's e-mail address of record. "911 Update Interval" is approximately 15 minutes, unless further address verification is required, in which case the 911 Update Interval could be up to 72 hours (**Important:** Customer and End Users should always check for the 911 Update Confirmation before using 911 service after a temporary move); (v) if the Service fails or degrades for any reason, such as failures resulting from power outages, CPE failure (e.g., Internet connectivity routers, Customer's data network and equipment, Customer premises switches and routers, phones, handsets, and other IP-enabled devices), cable cuts, or any Service or broadband outage or degradation (including without limitation, failures caused by suspension or termination of the Service); (vi) while maintenance work is being performed; or (vii) if Customer's area does not have 911 emergency service. Additionally, CenturyLink does not support Remote BLAs on IP devices used with the Service. If a Remote BLA is enabled, and Customer or an End User make a 911 call from the Remote BLA line, the 911 call will incorrectly route to the PSAP associated with the 911 location of the telephone number assigned to the Remote BLA, and not to the 911 location of the calling party. For example, if an End User has a Remote BLA for a colleague in Chicago on a phone located in San Francisco, and End User in San Francisco places a 911 call on the Remote BLA line, emergency services will be routed to the 911 location in Chicago associated with the phone number of the Remote BLA, not to the 911 location in San Francisco.*

**3.2 Additional Information Regarding the Limitations of 911 Services.** *When dialing 911 with the Service, End Users should always state the nature of the emergency, and include End User location and number. The default PSAP may not be able to call the End User back if the call is not completed, is dropped or is disconnected, or if End User is unable to tell the PSAP their number and physical location. The PSAP to which the call is directed will be based on the street address and calling party number for the CenturyLink-Approved 911 Location. The 911 emergency service provided is Enhanced 911 emergency service in that the calling party number will be delivered to the PSAP with the 911 call and the PSAP will have the CenturyLink-Approved 911 Location associated with that calling party number. End User's CenturyLink-Approved 911 Location may not sufficiently pinpoint the specific location of the emergency; therefore, End Users must immediately tell the dispatcher the specific location of the emergency so the PSAP can locate the End User and assist with the emergency.*

**CENTURYLINK RECOMMENDS THAT CUSTOMER AND END USERS ALWAYS HAVE AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.**

**3.3 No Privacy Rights.** Customer acknowledges that there is no right of privacy with respect to the transmission of number, name, or address when the Service is used to access 911 or other numbers used in conjunction with 911 or similar emergency services, either by Customer or End Users.

**3.4 Customer Must Notify End Users of 911 Limits.** Customer will notify all End Users (i) of the limitations on access to 911 emergency service described in the Agreement and this Service Exhibit; and (ii) that access to 911 emergency service and an appropriate PSAP is only available at the CenturyLink-Approved 911 Location and is not available using an IP enabled mobile device. CenturyLink will provide labels that will indicate that 911 service has limited availability and functionality when used with SIP Trunk, and CenturyLink recommends that the labels be placed on or near the equipment associated with the Services.

**3.5 Limitation of Liability.** CENTURYLINK, ITS AFFILIATES, AGENTS AND CONTRACTORS (INCLUDING WITHOUT LIMITATION, ANY SERVICE PROVIDER PROVIDING SERVICES ASSOCIATED WITH ACCESS TO 911 EMERGENCY SERVICE) WILL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY PERSONAL INJURY TO OR DEATH OF ANY PERSON, FOR ANY LOSS, DAMAGE OR DESTRUCTION OF ANY PROPERTY RELATING TO THE USE, LACK OF ACCESS TO OR PROVISION OF, 911 EMERGENCY SERVICE.

**3.6 Acknowledgement of 911 Limitations.** By initialing below, Customer acknowledges that CenturyLink has advised it of the 911 limitations set forth in this Service Exhibit, that Customer understands this information, and that Customer accepts the Service with these limitations. Using CenturyLink's electronic signature process for this Acknowledgment is acceptable.

**PRINT CUSTOMER COMPANY NAME:** \_\_\_\_\_

**PRINT CUSTOMER REPRESENTATIVE'S NAME:** \_\_\_\_\_

**CUSTOMER REPRESENTATIVE'S INITIALS:** \_\_\_\_\_

**4. Term; Cancellation.** In accordance with Article 6 of the Department of Information Technology Price Agreement#20-361-12-01578CL. This Service Exhibit will commence upon the Effective Date of the Agreement (or, if applicable, an amendment to the Agreement if this Service Exhibit is added to the Agreement after its Effective Date) and will conclude upon the termination of the last-to-terminate Service ordered hereunder. Either party may cancel Service by providing notice of such cancellation to the other party at least 30 days prior to the date of cancellation. Customer will remain liable for charges accrued but unpaid as of the cancellation date of Service, including charges for Service used by Customer or its End Users if cancellation has been delayed for any reason, such as delays for porting Customer telephone numbers to another carrier. The initial Trunk Group will have a minimum term equal to <SELECT ONE> ("Minimum Service Term") except for termination for non-appropriation. The Minimum Service Term will commence on the Start of Service Date for the Initial Trunk Group. Customer will be eligible for Service rates applicable to the Minimum Service Term selected. Trunk Groups added after the initial Trunk Group will be coterminous with the initial Trunk Group, and will receive the same Service rates as the initial Trunk Group. If prior to the conclusion of the Minimum Service Term (including before the Start of Service Date), Customer cancels Service for reasons other than for Cause, or CenturyLink cancels the Service for Cause, Customer will also be liable for: (i) the amount of any NRCs discounted or waived; (ii) all installation costs and expenses incurred by CenturyLink to install such Service, if applicable; (iii) 100% of the balance of the Session, TN and Remote DID (if applicable)

**5. Charges.** Charges for the Service are as set forth in the Pricing Attachment. The MRCs and usage charges will be used to calculate Contributory Charges. Charges will commence within five days of the Start of Service Date. Customer will not be eligible for any discounts or promotional offers other than those specifically set forth in the Agreement and this Service Exhibit. Service will remain taxed based on the PPU locations where Customer utilizes Service, and not on a temporary CenturyLink-Approved 911 Location. Domestic and international Off-Net Call charges and inbound toll free charges, can be modified immediately upon notice to Customer (including without limitation, upon CenturyLink's posting such

modifications in the ISS or other Web site designated by CenturyLink for that pricing, or providing any other notice to Customer). Remote DID charges can be modified upon 60 days prior written notice to Customer.

**6. AUP.** All use of the Services will comply with the AUP, posted at <http://qwest.centurylink.com/legal/> and incorporated by reference into this Service Exhibit. CenturyLink may reasonably modify the AUP to ensure compliance with applicable laws and regulations and to protect CenturyLink's network and customers, and such change will be effective upon posting to the website. Any changes to the AUP will be consistent with the purpose of the AUP to encourage responsible use of CenturyLink's networks, systems, services, web sites, and products.

**7. E-Mail Information/Updates.** Customer acknowledges and agrees that CenturyLink may contact Customer via e-mail at the e-mail address provided to CenturyLink when Customer ordered the Service for any reason relating to the Service.

**8. Installation, Maintenance and Repair**

**(a)** Provision of Services or Deliverables is subject to availability of adequate capacity and CenturyLink's acceptance of a complete Order Form.

**(b)** Customer will reasonably cooperate with CenturyLink or its agents to install, maintain, and repair Services or Deliverables. Customer will provide or secure at Customer's expense appropriate space and power; and rights or licenses if CenturyLink must access the building of Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment. CenturyLink may refuse to install, maintain, or repair Services or Deliverables if any condition on Customer's premises is unsafe or likely to cause injury.

**(c)** Customer is responsible for any facility or equipment repairs on Customer's side of the demarcation point. Customer may request a technician dispatch for Service problems. Before dispatching a technician, CenturyLink will notify Customer of the dispatch fee. CenturyLink will assess a dispatch fee if it determines the problem is on Customer's side of the demarcation point or was not caused by CenturyLink's facilities or equipment on CenturyLink's side of the demarcation point.




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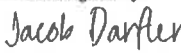
This CenturyLink® Loyal Advantage® Agreement ("Agreement") is between CenturyLink Sales Solutions, Inc. as contracting agent on behalf of the applicable CenturyLink company providing the Services under this Agreement ("CenturyLink") and State of New Mexico – Judicial Information Division ("Customer") and is effective on the date the last party signs it ("Effective Date"). The name of the CenturyLink operating company providing Services to Customer is listed in the Agreement, each acting separately and individually responsible for all of its own obligations. CenturyLink may withdraw this offer if Customer does not execute and deliver the Agreement to CenturyLink on or before [insert date] ("Cutoff Date"). Using CenturyLink's electronic signature process for the Agreement is acceptable.

Customer and CenturyLink agree to allow Eligible Purchasers to sign up for Service at the same terms and conditions and rates as outlined under this Agreement. Eligible Purchasers are defined as State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law. CenturyLink will apply charges to each Eligible Purchaser individually. Each Eligible Purchaser will sign a Participating Addendum to purchase from this Agreement. The Template Participating Addendum to this Agreement is attached hereto as Attachment 1. Customer shall have no liability for the acts/omissions of Eligible Purchasers or for early termination of Eligible Purchasers.

State of New Mexico – Judicial Information Division

**CENTURYLINK SALES SOLUTIONS, INC.**

  
\_\_\_\_\_  
Authorized Signature  
Name Typed or Printed Tim Elshereck  
Title Deputy C.T.O.  
Date 11/17/17

DocuSigned by:  
  
\_\_\_\_\_  
Authorized Signature  
Name Typed or Printed Jacob Darfler  
Title Manager – Offer Management  
Date 1/26/2017

Customer's address for notices: 2905 RODEO PARK DR EAST BLDG #5 SANTA FE, NM 87505  
Customer's facsimile number: (505) 476-6952  
Person designated for notices: PAT MENTE

1. **Services.** Customer may purchase the products and services ("Services") in the service exhibits ("Service Exhibits") attached to the Agreement. The parties agree that any notation to the "CenturyLink Total Advantage® Agreement" or "Interstate Private Line and Network Services Agreement" on the Service Exhibits will be disregarded and such exhibits will be governed by the Agreement. The Service Exhibits attached to the Agreement as of the Effective Date and incorporated by this reference are shown below. For an interim period of time until all work is completed to update the Service Exhibits, Tariffs and other terms and conditions incorporated by attachment or reference into this Agreement, all references to Qwest Communications Company, LLC mean CenturyLink Communications, LLC.

**CenturyLink Communications, LLC f/k/a Qwest Communications Company, LLC Services:**

Qwest Corporation d/b/a CenturyLink QC Services (CenturyLink QC Services are available only in CenturyLink's local service areas in the following states: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. )

**INTRASTATE METRO ETHERNET SERVICE EXHIBIT**

2. **Filing Concurrence.** CenturyLink QC may be required to submit this Agreement, Service Exhibits, Pricing Attachments, and any subsequent addenda for Service to certain regulatory agencies for approval because the Rates or certain other terms are being offered on an individual case basis ("ICB"). Although the general terms and conditions of this Agreement are effective on the Agreement Effective Date, those service-specific Rates and/or terms, and conditions that require filing with or approval by regulatory agencies ("ICB Terms") will not become effective for a given jurisdiction until the filing and approval requirements for that jurisdiction are fulfilled. Service will be offered in accordance with the applicable Tariff until the ICB terms become effective. If Customer receives reduced pricing under a Pricing Attachment and a regulatory agency later invalidates the ICB Terms after they became effective, Customer will pay CenturyLink QC any difference in the amounts listed in the applicable Tariff for the Service and the amounts Customer was charged for the Service. When approved by the regulatory agencies, Customer may add additional quantities of Services under the same terms and conditions with no further filing required. In the event a regulatory agency does not approve the ICB Terms, the parties will enter into good faith negotiations to mutually resolve the failure to receive the necessary approval. The subject Service Exhibit, Pricing Attachment, and subsequent addenda containing the ICB Terms will remain in effect in all other jurisdictions. Each Service Exhibit or subsequent addenda will explain which Rates or terms are ICB.

3. **Term.** Customer selects the following "Initial Term" of the Agreement: five year (Code 600055). The Initial Term begins on the Effective Date. At the end of the Initial Term, the Agreement will automatically renew for consecutive renewal periods equal to the Initial Term (a "Renewal Term") if not terminated earlier in accordance with the Agreement. The Initial Term and each Renewal Term are referred to as the "Term."

4. **Rates.** Unless specified otherwise in a Service Exhibit, CenturyLink QCC Services will receive the applicable rates specified in a

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Service Exhibit, valid Order Form, or CenturyLink-approved quote form, for the duration of the Term. Notwithstanding the preceding sentence, CenturyLink reserves the right to modify rates and charges due to Regulatory Activity and will provide as much prior written notice as practicable but not less than 14 calendar days' notice. If Regulatory Activity causes an increase in the rates for Customer's ordered CenturyLink QCC Services that materially and adversely affects Customer, then Customer may terminate the affected CenturyLink QCC Service upon 30 days' prior written notice to CenturyLink QCC without liability for Cancellation Charges for the affected Service, provided, however that Customer: (e) provides such notice within 30 days after the increase occurs; and (f) provides CenturyLink QCC 30 days to cure such increase. If Customer does not provide CenturyLink QCC such notice during the time permitted in this Section, Customer will have waived its right to terminate the affected Service under this Section. The parties agree that the rates set forth in the Service Exhibit are in lieu of all other rates, discounts, or promotions. The rates for any CenturyLink QC Service provided will be those in effect at the time the Service is installed and CenturyLink QC Services will renew at the rate and for the term specified in the applicable Tariff, RSS, or Service Exhibit.

**5. Payment.** CenturyLink may begin invoicing for specific Services as specified in the applicable Service Exhibit. Customer must pay CenturyLink all charges within 30 days after the invoice date or by the due date on the invoice if specified. Any amount not paid when due is subject to late interest at the lesser of 1.5% per month or the maximum rate allowed by law. In addition to payment of charges for Services, Customer must also pay CenturyLink any applicable Taxes assessed in connection with Services. Taxes may vary and are subject to change. If Customer is exempt from any Tax, it must provide CenturyLink with an appropriately completed and valid Tax exemption certificate or other evidence acceptable to CenturyLink. CenturyLink is not required to issue any exemption, credit or refund of any Tax payment for usage before Customer's submission of valid evidence of exemption. Customer may access its invoices and choose paperless invoices online through CenturyLink Control Center located at controlcenter.centurylink.com. If Customer does not choose paperless invoices through Control Center, CenturyLink may in its discretion assess a \$15 MRC for each full paper invoice provided to Customer or a \$2 MRC for each summary/remit only (where available) paper invoice provided to Customer. Those charges will not apply to an invoice that is not available through Control Center. Customer's payments to CenturyLink must be in the form of electronic funds transfer (via wire transfer or ACH), cash payments (via previously-approved CenturyLink processes only), or paper check. CenturyLink reserves the right to charge administrative fees when Customer's payment preferences deviate from CenturyLink's standard practices.

**6. Confidentiality.** Except to the extent required by an open records act or similar law, neither CenturyLink nor Customer will, without the prior written consent of the other party: (a) disclose any of the terms of the Agreement; or (b) disclose or use (except as expressly permitted by, or required to achieve the purposes of, the Agreement) the Confidential Information of the other party. Each party will use reasonable efforts to protect the other's Confidential Information, and will use at least the same efforts to protect such Confidential Information as the party would use to protect its own. CenturyLink's consent may only be given by its Legal Department. A party may disclose Confidential Information if required to do so by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under the Agreement. CenturyLink will not be deemed to have accessed, received, or be in the possession of Customer Confidential Information solely by virtue of the fact that Customer transmits, receives, accesses or stores such information through its use of CenturyLink's Services.

**7. CPNI.** CenturyLink is required by law to treat CPNI confidentially. Customer agrees that CenturyLink may share CPNI within its business operations (e.g., wireless, local, long distance, and broadband services divisions), and with businesses acting on CenturyLink's behalf, to determine if Customer could benefit from the wide variety of CenturyLink products and services, and in its marketing and sales activities. Customer may withdraw its authorization at any time by informing CenturyLink in writing. Customer's decision regarding CenturyLink's use of CPNI will not affect the quality of service CenturyLink provides Customer.

**8. Use of Name and Marks.** Neither party will use the name or marks of the other party or any of its Affiliates for any purpose without the other party's prior written consent. CenturyLink's consent may only be given by its Legal Department.

**9. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ALL SERVICES AND PRODUCTS ARE PROVIDED "AS IS." CENTURYLINK DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CENTURYLINK MAKES NO WARRANTIES OR REPRESENTATIONS THAT ANY SERVICE WILL BE FREE FROM LOSS OR LIABILITY ARISING OUT OF HACKING OR SIMILAR MALICIOUS ACTIVITY, OR ANY ACT OR OMISSION OF THE CUSTOMER.

**10. Limitations of Liability.** The remedies and limitations of liability for any claims arising between the parties are set forth below.

**10.1 Consequential Damages.** NO PARTY OR THEIR AFFILIATES, AGENTS, OR CONTRACTORS IS LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES OR FOR ANY LOST PROFITS, LOST REVENUES, LOST DATA, LOST BUSINESS OPPORTUNITY, OR COSTS OF COVER. THESE LIMITATIONS APPLY REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF FORESEEABILITY.

**10.2 Claims Related to Services.** For Customer's claims related to Service deficiencies or interruptions, Customer's exclusive remedies are limited to: (a) those remedies set forth in the SLA or applicable Tariff for the affected Service or (b) the total MRCs or usage charges paid by Customer for the affected Service in the one month immediately preceding the event giving rise to the claim if an SLA or applicable Tariff does not exist for the affected Service.

**10.3 Personal Injury; Death; Property Damages.** For claims arising out of personal injury or death to a party's employee, or damage to a party's real or personal property, that are caused by the other party's negligence or willful misconduct in the performance of the Agreement, each party's liability, to the extent permitted by law, is limited to proven direct damages.

**10.4 Other Direct Damages.** For all other claims arising out of the Agreement, the maximum liability for Customer and CenturyLink will not exceed in the aggregate the total MRCs and usage charges paid by Customer to CenturyLink under the Agreement in the three months immediately preceding the event giving rise to the claim ("Damage Cap"). The Damage Cap will not apply to a party's

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obligations under the Responsibilities Section below or Customer's payment obligations under the Agreement.

**11. Responsibilities.** To the extent permitted under law, each party agrees to be responsible to the other, their Affiliates, agents, and contractors against all third party claims for damages, liabilities, or expenses, including reasonable attorneys' fees, arising directly from performance of the Agreement and related to personal injury or death, or damage to personal tangible property that is alleged to have been caused by the negligence or willful misconduct of the responsible party unless otherwise stated in a CenturyLink QC Service Exhibit or Tariff. To the extent permitted under law, Customer also agrees to be responsible for all third party claims for damages, liabilities, or expenses, including reasonable attorneys' fees against CenturyLink, its Affiliates, and contractors, related to the modification or resale of the Services by Customer or End Users, or any AUP violation.

**12. Termination.**

**12.1 Service.** Either party may terminate an individual Service or a Service Exhibit: (a) in accordance with the individual Service Exhibit's term requirements with 60 days' prior written notice to the other party, or (b) for Cause. If Service or a Service Exhibit is terminated by Customer for Convenience or by CenturyLink for Cause, then Customer will pay Cancellation Charges.

**12.2 Agreement.** Either party may terminate the Agreement and all Services by: (a) providing written notice to the other party of its intention not to renew the Agreement at least 60 days prior to the expiration of the then current Term or (b) for Cause. Cause to terminate an individual Service Exhibit will not constitute Cause to terminate the Agreement; rather, Cause to terminate the entire Agreement for Service-related claims will exist only if Customer has Cause to terminate all or substantially all of the Services under the applicable SLA, Service Exhibit, RSS, ISG or Tariff. If the Agreement is terminated by Customer for Convenience or by CenturyLink for Cause prior to the conclusion of the Term, then Customer will pay: (c) for CenturyLink QCC Services the higher of the Early Termination Charge or the sum of all CenturyLink QCC Cancellation Charges that apply for terminating all CenturyLink QCC Services at the time the Agreement is terminated; and (d) for CenturyLink QC Services, the CenturyLink QC termination charges as set forth in the Tariff or the applicable Service Exhibit(s).

**12.3 Unpaid Charges.** Customer will remain liable for charges accrued but unpaid as of the termination date.

**13. Non-Appropriations.** Customer intends to continue this Agreement for its entire Term and to satisfy its obligations hereunder. For each fiscal period for Customer: (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under this Agreement; (b) Customer agrees to use all reasonable and lawful means to secure these appropriations; (c) Customer agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose. In the event that Customer is appropriated insufficient funds, by appropriation, appropriation limitation or grant, to continue payments under this Agreement and has no other funding source lawfully available to it for such purpose (as evidenced by notarized documents provided by Customer and agreed to by CenturyLink), Customer may terminate this Agreement without incurring an Early Termination Charge or CenturyLink QCC Cancellation Charges by giving CenturyLink not less than 30 days' prior written notice. Upon termination and to the extent of lawfully available funds, Customer will remit all amounts due and all costs reasonably incurred by CenturyLink through the date of termination.

**14. Miscellaneous.**

**14.1 General.** The Agreement's benefits do not extend to any third party (e.g., an End User). If any term of the Agreement is held unenforceable, the remaining terms will remain in effect. Except for time requirements as specifically stated in a Service Exhibit or SLA, neither party's failure to exercise any right or to insist upon strict performance of any provision of the Agreement is a waiver of any right under the Agreement. The terms and conditions of the Agreement regarding confidentiality, the Responsibilities Section, limitation of liability, warranties, payment, dispute resolution, and all other terms of the Agreement that should by their nature survive the termination of the Agreement will survive. Each party is not responsible for any delay or other failure to perform due to a Force Majeure Event.

**14.2 Conflicts Provision.** If a conflict exists among provisions within the Agreement, the following order of precedence will apply in descending order of control: Service Exhibit, the Agreement, Order Form, Centurylink QC records, and if applicable, CenturyLink QC Tech Pubs. If Services are provided pursuant to a Tariff, RSS, ISG or ISS as described in the applicable Service Exhibits, the order of precedence will apply in the following descending order of control: Tariff, Service Exhibit, the Agreement, RSS, ISG, ISS, Order Form Centurylink QC records, and if applicable, CenturyLink QC Tech Pubs.

**14.3 Independent Contractor.** CenturyLink provides the Services as an independent contractor. The Agreement will not create an employer-employee relationship, association, joint venture, partnership, or other form of legal entity or business enterprise between the parties, their agents, employees or affiliates.

**14.4 ARRA.** Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those obligations are explicitly identified and agreed to by the parties in the Agreement or in an amendment to the Agreement.

**14.5 HIPAA.** CenturyLink does not require or intend to access Customer data in its performance hereunder, including but not limited to any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F. R. §160.103 under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA Rules"). To the extent that any exposure to PHI is incidental to CenturyLink's provision of Service and not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI, such exposure is allowable under 45 CFR 164.502(a)(1)(iii).

**14.6 Installation, Maintenance and Repair**

(a) Provision of Services is subject to availability of adequate capacity and CenturyLink's acceptance of a complete Order Form.

(b) Customer will reasonably cooperate with CenturyLink or its agents to install, maintain, and repair Services. Customer will

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provide or secure at Customer's expense appropriate space and power; and rights or licenses if CenturyLink must access the building of Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment. CenturyLink may refuse to install, maintain, or repair Services if any condition on Customer's premises is unsafe or likely to cause injury.

(c) Customer is responsible for any facility or equipment repairs on Customer's side of the demarcation point. Customer may request a technician dispatch for Service problems. Before dispatching a technician, CenturyLink will notify Customer of the dispatch fee. CenturyLink will assess a dispatch fee if it determines the problem is on Customer's side of the demarcation point or was not caused by CenturyLink's facilities or equipment on CenturyLink's side of the demarcation point.

**14.7 Governing Law; Dispute Resolution.**

(a) **Billing Disputes.** If Customer disputes a charge in good faith, Customer may withhold payment of that charge if Customer makes timely payment of all undisputed charges when due and provides CenturyLink with a written explanation of the reasons for Customer's dispute of the charge within 90 days after the invoice date of such amount. If CenturyLink determines, in its good faith, that the disputed charge is valid, CenturyLink will notify Customer and within five business days after CenturyLink's notification, Customer must pay the charge and accrued interest.

(b) **Governing Law; Forum.** The Agreement will be governed by the laws of the State in which the Customer's principal office is located without regard to its choice of law principles. Any legal proceeding relating to the Agreement will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in Denver, Colorado. This provision is not intended to deprive a small claims court or state agency of lawful jurisdiction that would otherwise exist over a claim or controversy between the parties.

(c) **Waiver of Jury Trial and Class Action.** Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a jury trial and any right to pursue any claim or action relating to the Agreement on a class or consolidated basis or in a representative capacity. If for any reason the jury trial waiver is held to be unenforceable, the parties agree to binding arbitration for any dispute relating to the Agreement under the Federal Arbitration Act, 9 U.S.C. § 1, et. seq. The arbitration will be conducted in accordance with the JAMS Comprehensive Arbitration Rules. Judgment upon the arbitration award may be entered in any court having jurisdiction.

(d) **Limitations Period.** Any claim relating to the Agreement must be brought within two years after the claim arises other than Customer disputing an amount in an invoice, which must be done by Customer within 90 days after the invoice date of the disputed amount.

**14.8 No Resale; Security.** Customer represents that it is not a reseller of any telecommunication services provided under this Agreement as described in the Telecommunications Act of 1996, as amended, or applicable state law and acknowledges it is not entitled to any reseller discounts under any laws. CenturyLink has adopted and implemented, and will maintain, a corporate information security program designed to protect Customer information, materials and data accessed and possessed by CenturyLink from loss, misuse and unauthorized access or disclosure. Such program includes formal information security policies and procedures. The CenturyLink information security program is subject to reasonable changes by CenturyLink from time to time. CenturyLink's standard service offerings do not include managed security services such as encryption, intrusion detection, monitoring or managed firewall. Customer is responsible for selecting and using the level of security protection needed for all Customer data stored or transmitted via the Service and using reasonable information security practices, including those relating to the encryption of data.

**14.9 Transport Services.** The parties acknowledge that the Federal Communications Commission's reliability rules mandates the identification and tagging of any circuits or equivalent data paths ("Transport Services") to public safety answering points that are used to transport 9-1-1 calls and information ("9-1-1 Data"). Customer agrees to cooperate with CenturyLink regarding compliance with these rules and will notify CenturyLink of all Transport Services Customer purchases under this Agreement that are utilized to transport 9-1-1 calls and 9-1-1 Data.

**14.10 Assignment.** Either party may assign the Agreement without the other party's prior written consent: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; or (c) to an Affiliate provided such party gives the other party 30 days' prior written notice. Any assignee of the Customer must have a financial standing and creditworthiness equal to or better than Customer's, as reasonably determined by CenturyLink, through a generally accepted, third party credit rating index (i.e. D&B, S&P, etc.). Any other assignment will require the prior written consent of the other party. But Customer may not assign this Agreement or any Service to a reseller or a telecommunications carrier under any circumstances.

**14.11 Amendments; Changes.** The Agreement may be amended only in a writing signed by both parties' authorized representatives. However, any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. Each party may, at any time, reject any handwritten change or other alteration to the Agreement. CenturyLink may change features or functions of its Services; for material changes that are adverse to Customer, CenturyLink will provide 30 days' prior written notice, but may provide a shorter notice period if the change is based on Regulatory Activity or Tariff provisions. CenturyLink may amend, change, or withdraw the Tariffs, RSS, ISG, ISS or AUP, with such updated Tariffs, RSS, ISS or AUP effective upon posting or upon fulfillment of any necessary regulatory requirements.

**14.12 Websites.** References to websites in the Agreement include any successor websites designated by CenturyLink.

**14.13 Required Notices.** Unless provided otherwise in the Agreement, all required notices to CenturyLink must be in writing, sent to 1801 California St., #900, Denver, CO 80202; Fax: 888-778-0054; Attn.: Legal Dept., and to Customer as provided above. All notices are effective: (a) when delivered via overnight courier mail or in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; or (c) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

**14.14 Service Termination Notices.** Customer's notice of termination for CenturyLink QCC Services must be sent via mail, facsimile or e-mail to: CenturyLink, Attn.: GBM Disconnects, 112 Sixth St., Bristol, TN 37620, Fax: 866.887.6633, e-mail:

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[GBMdisconnects@CenturyLink.com](mailto:GBMdisconnects@CenturyLink.com). Such termination is effective 30 days after CenturyLink's receipt of the notice, unless a longer period is otherwise required. For Services under the Select Advantage Service Exhibit or for CenturyLink QC Services, Customer must call the customer care number specified on Customer's invoice to provide notice of termination.

**14.15 Entire Agreement.** The Agreement (including any applicable Service Exhibit, CenturyLink accepted Order Forms, and all referenced documents) constitutes the entire agreement between the parties and supersedes all prior oral or written agreements or understandings relating to the same service, ports, or circuits at the same locations as covered under the Agreement.

**15. Clauses for CenturyLink ISG Services.** The clauses in this section apply only to the CenturyLink QC Service Exhibits stating that service is offered out of CenturyLink ISG.

**15.1 Jurisdiction.** Customer understands that Service is an interstate telecommunications service, as defined by Federal Communications Commission regulations and represents that during the Term, more than 10% of its usage will be interstate usage.

**15.2 Construction and Funding Approval.** CenturyLink QC may assess separate Construction charges if facilities are not available to meet an order for Service and CenturyLink QC constructs facilities under one or more of the following circumstances: (a) if the amount of Customer's expected payments over the term of the Agreement does not exceed CenturyLink QC's calculated cost of providing the Service plus its expected rate of return; (b) Customer requests that Service be furnished using a type of facility, or via a route that CenturyLink QC would not normally utilize in providing the requested Service; (c) more facilities are requested than would normally be required to satisfy an order; and (d) Customer requests that Construction be expedited, resulting in added cost to CenturyLink QC. Service provided under this Agreement is subject to Funding approval and that approval will be evidenced in the Funding Concurrence block on the Pricing Attachment. That approval will be granted at the sole discretion of CenturyLink QC. In the event contract documents are signed, under which Customer is ordering Service for which Funding is not approved, CenturyLink QC will cooperate with Customer in good faith to develop an alternative service solution if Funding cannot be achieved on the contracted solution and CenturyLink QC may immediately terminate, without penalty, the Pricing Attachment under which Customer ordered the Service, when Funding of the contracted and alternate Service solutions is determined to not be possible.

**15.3 Expedite.** Any Customer requests for CenturyLink QC to Expedite the delivery of Service before the standard or negotiated Service Due Date will be deemed an expedited order and Expedite charges will apply. Upon CenturyLink QC's receipt of an Expedite request from Customer, Customer and CenturyLink QC will mutually agree to a new Service Due Date.

**15.4 Service Changes.** Customer may add, move, or upgrade each Service in a Pricing Attachment via an Amendment to this Agreement. New Service and any addition, move, or upgrade to existing Service is subject to the terms of the RSS in effect when the Amendment to add, move, or upgrade existing Service is executed or for new Service when the new Service is installed. Existing terms and conditions will continue to apply to existing Service. But if an RSS change results in a conflict with the terms and conditions applicable to the Service, then Customer must agree to an amendment modifying the terms and conditions before CenturyLink QC will provision the new Service or the additions, moves, or upgrades to existing Service.

**15.5 Service Interruptions.** Service interruption means a total disruption of the Service subject to restrictions and exclusions outlined in an SLA or in the ISG. Services with a Service-specific SLA are subject to the credit for service interruptions contained in the applicable SLA and posted at <http://www.centurylink.com/legal>. Services without a Service-specific SLA are subject to the credit for service interruptions contained in the ISG. The credits outlined in the SLAs are Customer's sole and exclusive remedy for interruptions of any kind to the Service. CenturyLink QC may, from time to time, suspend Service for routine maintenance or rearrangement of facilities or equipment. CenturyLink QC will give advance notification of any such suspension of Service. Such suspension of Service is not considered an out-of-service condition unless Service is not restored by the end of the period specified in the notification.

**15.6 Additional Payment Language.**

(a) Rates, including Rates for optional features or functions, are set forth in each Pricing Attachment applicable to the Service. The Rates shown on each Pricing Attachment are for informational purposes. Customer will receive the Rates in effect in the ISG on the Service Acceptance Date. CenturyLink QC will keep an archive of the ISG Web pages listing Rates, including dates of Rate changes. Customer agrees that CenturyLink QC's archive is conclusive evidence in the event of a dispute.

(b) If Customer requests items from the ISG for which charges do not appear in a Pricing Attachment, CenturyLink QC will inform Customer of the charges at the time of the request, giving Customer the opportunity to cancel the request, rather than incurring the charges. Those items may include, but are not limited to: (a) Expedites, including third-party charges incurred by CenturyLink QC in connection with the Expedite; (b) CPE; (c) Construction; (d) Termination Charges; (e) charges for labor, testing, or design changes; (f) inside wiring; and (g) additional administrative charges that may be applied for services not described on Pricing Attachments or for requests to provision Services in a manner inconsistent with CenturyLink QC's then-current practices. Customer will pay such charges regardless of whether Customer cancels Service or CenturyLink QC fails to deliver on the requested Expedite date, unless such failure was caused by CenturyLink QC.

(c) CenturyLink QC will require Customer to accept Service by the end of the Grace Period, in which case CenturyLink QC will commence with regular monthly billing for the Service and Customer agrees to pay for the billed Service. If Customer has not accepted the Service by the end of the Grace Period, then CenturyLink QC may terminate the Service subject to the Termination section of this Agreement.

**15.7 Customer Responsibilities.** Customer is responsible for the following:

- (a) **Access.** Customer will provide prompt access to its premises to CenturyLink QC authorized personnel and other authorized parties, responding to Service restoration, equipment failure, maintenance, or other relevant situations.
- (b) **On-Site Operations.** All Customer operations concerning Service at Customer's premises will be performed at Customer's expense, and Customer will be required to conform to all applicable specifications that CenturyLink QC may adopt as necessary to

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maintain Service. Any special structural work required for supporting telecommunications facilities needed to provide Service on Customer's premises will be provided only at Customer's expense.

(c) Customer will properly use the Service. Customer will not itself or permit others to use the Service in ways it is not intended or alter, tamper with, adjust, or repair the Service.

15.8 ISG Service Termination.

(a) Service; Service Exhibit Before Service Due Date. If Customer cancels an order for Service before the Service Due Date or does not accept the Service by the conclusion of the Grace Period, and CenturyLink QC terminates the Service at the end of the Grace Period, Termination Charges will apply, including the full NRCs that would have otherwise applied and any non-reusable and non-recoverable portions of expenditures or liabilities, such as Construction charges incurred exclusively on behalf of the Customer by CenturyLink QC and not fully reimbursed by NRCs.

(b) Service; Service Exhibit After Service Acceptance Date. Either party may terminate an individual Service ordered under a Service Exhibit after the Service Acceptance Date under the terms of the applicable Service Exhibit. CenturyLink QC will waive the Termination Charge in excess of the Minimum Service Period if Customer terminates due to a move or upgrade of all or a portion of Service and all of the following conditions are met ("Waiver Policy"):

(i) Customer must have satisfied the Minimum Service Period for the existing Service or be subject to the Termination Charge applicable to the unexpired portion of the Minimum Service Period;

(ii) Customer must agree to a new service term and Minimum Service Period for the new service;

(iii) The total value of the new Service must be equal to or greater than 115% of the remaining value of the Service being terminated. NRCs and Construction charges will not contribute toward the 115% calculation;

(iv) The request to disconnect the existing Service and the request for the new service are received by CenturyLink QC at the same time and both requests must reference this Waiver Policy;

(v) For ATM, FR, and Metro Ethernet, the new Service installation due date must be within 30 days of the due date of the disconnection of the existing Service, unless the installation is delayed by CenturyLink QC; for SHNS, SST, GeoMax, and HDTV-NET the new Service installation due date must be on or before the due date of the disconnection of the existing Service, unless the installation is delayed by CenturyLink QC;

(vi) Customer agrees to pay all outstanding MRCs and NRCs for existing Service;

(vii) The NRCs in effect at the time the Service is moved or upgraded will apply to the move or upgrade; and

(viii) This Waiver Policy only applies to moves or upgrades to other CenturyLink QC services that are subject to a CenturyLink QC Tariff or the ISG.

15.9 CenturyLink ISG Service Definitions.

"Construction" means when Service may not be available due to facilities limitations and it is necessary for CenturyLink QC to construct facilities.

"Demarcation Point" means the CenturyLink QC designated: (a) physical interface between the CenturyLink QC Domestic Network and Customer's telecommunications equipment; or (b) physical interface between a third-party carrier connecting the CenturyLink QC Domestic Network to Customer's telecommunications equipment. "CenturyLink QC Domestic Network" means the CenturyLink QC operated facilities located within CenturyLink QC's 14-state local service area (those states are listed in the opening paragraph of this Agreement) and which consists of transport POPs, physical media, switches, circuits and/or ports that are operated solely by CenturyLink QC.

"Expedite" means Customer's request to CenturyLink QC to provision a Service more quickly than the CenturyLink QC standard or negotiated interval for which an additional Expedite charge will apply.

"Funding" means Customer charges over the term of a Service contract that covers CenturyLink QC's calculated costs for providing Service and its expected rate of return when network infrastructure is not available to provide Service to Customer.

"Grace Period" means a period of 30 business days from the later of the Service Due Date or the date when Service is made available to the Customer, and during which the applicable Service will be held available for Customer upon Customer's request.

"Minimum Service Period" means 12 months following the Service Acceptance Date, as evidenced by CenturyLink QC records. In the case of Frame Relay, this means 6 months following the Service Acceptance Date.

"Pricing Attachment" means each document containing Service Rates, Term, and location-specific information, all of which are incorporated by this reference and made a part of each Service Exhibit.

"Rates" means the MRCs and NRCs for the Service.

"Service Acceptance Date" means the date Customer accepts the Service and billing commences, as evidenced by CenturyLink QC records.

"Service Due Date" means the date CenturyLink QC makes the Service available to Customer for testing.

"SONET" means Synchronous Optical Network.

"Termination Charge" means the termination charges detailed in the Service Exhibits.

16. Definitions.

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"Affiliate" means any entity controlled by, controlling, or under common control with a party.

"AUP" means the Acceptable Use Policy incorporated by this reference and posted at <http://www.centurylink.com/legal/>.

"Cancellation Charge" means cancellation or termination charges that apply when Customer cancels Service without Cause: (a) as described in a Service Exhibit (or in the Tariff for applicable CenturyLink QC Services); and (b) when charges are incurred by CenturyLink QCC from a third party provider as a result of an early termination.

"Cause" means the failure of a party to perform a material obligation under the Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default; or (b) for any other material breach, within 30 days after written notice.

"CenturyLink QCC" means the former Qwest Communications Company, LLC d/b/a CenturyLink QCC. On April 1, 2014, CenturyLink completed an internal reorganization resulting in the merger of multiple CenturyLink owned companies into Qwest Communications Company, LLC. Simultaneously with the merger, Qwest Communications Company, LLC changed its name to CenturyLink Communications, LLC. The term "CenturyLink QCC" refers to the former "d/b/a CenturyLink QCC" company and not to any other CenturyLink owned companies now a part of CenturyLink Communications, LLC.

"Confidential Information" means any information that is not generally available to the public, whether of a technical, business, or other nature, (including CPNI), and that: (a) the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party; or (b) is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect the information from disclosure. Confidential Information will not include information that is in the public domain through no breach of the Agreement by the receiving party or is already known or is independently developed by the receiving party.

"Convenience" means any reason other than for Cause.

"CPE" means any customer equipment, software, and/or other materials of Customer used in connection with the Service.

"CPNI" means Customer Proprietary Network Information, which includes confidential account, usage, and billing-related information about the quantity, technical configuration, type, destination, location, and amount of use of a customer's telecommunications services. CPNI reflects the telecommunications products, services, and features that a customer subscribes to and the usage of such services, including call detail information appearing in a bill. CPNI does not include a customer's name, address, or telephone number.

"Early Termination Charge" means an amount equal to 35% of the average monthly charges billed under this Agreement through the date of termination multiplied by the number of months remaining in the Term.

"End User" means Customer's members, end users, customers, or any other third parties who use or access the Services or the CenturyLink network via the Services.

"Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, explosion, lightning, hurricane, labor dispute, cable cuts by third parties, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services.

"ISG" means CenturyLink QC's Interstate Service Guide No. 11 located at <http://www.centurylink.com/Pages/AboutUs/Legal/Tariffs/displayTariffInfoPage.html>.

"ISS" means CenturyLink's Information Services Schedule incorporated by this reference and posted at [http://www.centurylink.com/tariffs/clc\\_info\\_services.pdf](http://www.centurylink.com/tariffs/clc_info_services.pdf).

"MRC" means monthly recurring charge.

"NRC" means nonrecurring charge.

"Order Form" includes both order request forms and quotes issued by CenturyLink. If a CenturyLink service requires a quote to validate the Order Form pricing, the quote will take precedence over the order request form, but not over the Service Exhibit.

"Regulatory Activity" is a regulation or ruling by any regulatory agency, legislative body or court of competent jurisdiction.

"RSS" means as applicable CenturyLink QCC's Rates and Services Schedules incorporated by this reference and posted at [http://www.centurylink.com/tariffs/fcc\\_clc\\_ixc\\_rss\\_no\\_2.pdf](http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_2.pdf) for CenturyLink QCC's International RSS and at [http://www.centurylink.com/tariffs/fcc\\_clc\\_ixc\\_rss\\_no\\_3.pdf](http://www.centurylink.com/tariffs/fcc_clc_ixc_rss_no_3.pdf) for CenturyLink QCC's Interstate RSS.

"SLA" means the service level agreement applicable to a Service as described in a Service Exhibit.

"State" means one of the 50 states of the United States or the District of Columbia.

"Tariff" includes as applicable: CenturyLink QCC or CenturyLink QC FCC #1state tariffs, price lists, price schedules, administrative guidelines, catalogs, and rate and term schedules incorporated by this reference and posted at <http://www.centurylink.com/tariffs>.

"Tax" or "Taxes" means foreign, federal, state, and local excise, gross receipts, sales, use, privilege, or other tax (other than net income) now or in the future imposed by any governmental entity (whether such Taxes are assessed by a governmental authority directly upon CenturyLink or the Customer) attributable or measured by the sale price or transaction amount, or surcharges, fees, and other similar charges that are required or permitted to be assessed on the Customer. These charges may include state and federal Carrier Universal Service Charges, as well as charges related to E911, and Telephone Relay Service.

"Tech Pub" means the technical publication specific to each CenturyLink QC service, all of which are located at <http://www.centurylink.com/techpub/>. Each CenturyLink QC Service Exhibit stipulates the Tech Pub that applies to that service, if any.

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**CENTURYLINK<sup>®</sup> LOYAL ADVANTAGE<sup>®</sup> AGREEMENT**  
**INTRASTATE METRO ETHERNET SERVICE EXHIBIT**

**1. General; Definitions.** Capitalized terms not defined in this Service Exhibit are defined in the Agreement. CenturyLink QC will provide Intrastate Metro Ethernet Service ("Service" or "Metro Ethernet") under the terms of the Agreement, Tariff, and this Service Exhibit. Service is subject to technical publication 77411 located at <http://centurylink.com/techpub/> ("Tech Pub").

"Minimum Service Period" means 12 months following the date service is made available to Customer, as evidenced by CenturyLink records.

"Pricing Attachment" means the document containing Rates, Term, and other location-specific information, which is incorporated by reference and made a part of this Service Exhibit.

"Rates" means the MRCs and NRCs for the Service.

"Term" means the term length for the Service established on a Pricing Attachment and which commences on the Start of Service.

"SLA" means the service level agreement specific to the Service, located at <http://www.centurylink.com/legal/>, which is controlled by the Tariff and Tech Pub, which are subject to change. The SLA provides Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever for Service.

"Start of Service" means the effective bill date of the service order to add Service to Customer's account, as evidenced by CenturyLink records.

**2. Service.**

**2.1 Description.** Customer orders Service as indicated on a Pricing Attachment. Service is a flexible transport service that uses established Ethernet transport technology. The Service provides connections between multiple Customer locations within a metropolitan area using native Ethernet protocol. The transmission speed depends on the Ethernet port ("Port") selected and the amount of bandwidth ordered over the Port ("Bandwidth Profile"). Service extends to the Demarcation Point. "Demarcation Point" means the CenturyLink-designated physical interface between the CenturyLink-owned network and Customer's telecommunications equipment. Service is available over three designs: (a) Customer Premises, supporting transmission speeds as low as 1 Mbps and up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps, and in increments of 100 Mbps from 100 to 1,000 Mbps; (b) Central Office, supporting transmission speeds of 100 Mbps, 600 Mbps and 1,000 Mbps; and (c) Ethernet with Extended Transport (DS3 required), supporting transmission speeds as low as 5 Mbps and up to 40 Mbps. The SLA provides Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever for Service. Customer understands that Service is an intrastate telecommunications service, as defined by Federal Communications Commission regulations and represents that during the Term, 10% or less of its usage will be interstate usage. If more than 10% of Customer's usage is interstate, then Customer will notify CenturyLink so the appropriate service agreement can be used, allowing CenturyLink to bill Customer out of the appropriate Tariff.

**2.2 Installation; Provisioning of Service.** CenturyLink will notify Customer of the date Service is available for use. In the event Customer informs CenturyLink that it is unable or unwilling to accept Service at such time, the subject Service will be held available for Customer for a period not to exceed 30 business days from such date ("Grace Period"). If after the Grace Period, Customer still has not accepted Service, CenturyLink may either: (a) commence with regular monthly billing for the subject Service; or (b) cancel the subject Service. If Customer cancels an order for Service prior to the date the Service is available for use, or is unable to accept the Service during the Grace Period and CenturyLink cancels the Service at the end of the Grace Period, the Tariff cancellation charges may apply. CenturyLink will provide the Service at the locations specified in the Pricing Attachment. At Customer's request, mutual testing may be performed in accordance to the service parameters outlined in the Tariff.

**2.3 Changes to Service.** Customer may add or change Service via a Pricing Attachment. Subsequent Pricing Attachments adding new Service port(s) will be coterminous with the original Term, provided the individual Service Minimum Service Period can be met. All Service ports ordered under this Service Exhibit will expire on the same date regardless of when they are ordered (e.g., if the original Service is in month 10 of a 60-month Term when Customer orders a new Service port for a 60-month fixed period rate plan, the new Service port will be billed at the 60-month rate for the next 50-months). In the event the Minimum Service Period cannot be met, an amendment adding a new Pricing Attachment containing a new iLink Contract Number must be signed. A subsequent Pricing Attachment to change or add a Service port during the Term will be assessed an NRC. A subsequent Pricing Attachment to change Service Bandwidth during the Term will not be assessed the NRC, however, the MRC will be changed to the new Service bandwidth profile charge. Customer may be assessed an early Termination Charge for any decrease in bandwidth during the Term. Customer request for a physical move of Service to a new location will be treated as a termination of service at the original location. NRC's will apply and Term requirements must be met in the new location. In the event the Minimum Service Period cannot be met, an amendment adding a new Pricing Attachment with a new iLink Contract Number will be required. Customer request for a physical move of Service to a location within the same building as the existing Service will be charged a fee equal to one half the applicable NRC charge. There will be no changes to the Minimum Service Period.

**3. Term; Termination.**

**3.1 Term.** This Service Exhibit will begin on the Effective Date of the Agreement (or an amendment to the Agreement if Customer adds this Service Exhibit after the Effective Date of the Agreement) and will continue until the expiration or cancellation of the last to expire (or cancel) Service. The Term for the Service will be indicated on a Pricing Attachment. Each Service ordered will have its own Minimum Service Period. At the conclusion of the Term, the Rates will revert to the month-to-month Rates in the Tariff, unless Service

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INTRASTATE METRO ETHERNET SERVICE EXHIBIT**

is renewed for a new Term on a Pricing Attachment or unless a party notifies the other party in writing of its desire not to renew Service at least 60 calendar days, and no more than 120 calendar days, prior to the end of the Term.

**3.2 Termination.** Either party may terminate Service and/or this Service Exhibit in accordance with the applicable Tariff or for Cause. "Cause" means the failure of a party to perform a material obligation under this Service Exhibit, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default (unless a different notice period is specified in the Tariff); or (b) for any other material breach, within 30 days of written notice (unless a different notice period is specified in the Tariff or this Service Exhibit). Customer will remain liable for charges accrued but unpaid as of the termination date. If, prior to the conclusion of the Term, Service and/or this Service Exhibit is terminated either by CenturyLink for Cause or by Customer for any reason other than Cause, then Customer will also be liable for any termination charges ("Termination Charge"). Prior to the conclusion of the Term, if Service and/or this Service Exhibit are terminated or bandwidth is decreased below the original contracted level ("decreased bandwidth"), either by CenturyLink for Cause or by Customer for any reason other than Cause, then Customer will also be liable for and pay CenturyLink the following Termination Charge: (a) all accrued and unpaid charges for the terminated Service or decreased bandwidth provided through the effective date of such termination or decrease; plus (b) a termination charge of 100% of the balance of the MRCs for the unexpired portion of the Minimum Service Period for the terminated Service and/or a charge of 100% of the difference between the original bandwidth MRC and the decreased bandwidth MRC; plus (c) 40% of the balance of the MRCs due for the unexpired portion of the Term in excess of the Minimum Service Period for the terminated Service and/or 40% of the difference between the original bandwidth MRC and the decreased bandwidth MRC; plus (d) any and all third party costs and expenses incurred by CenturyLink in so terminating such Service or decreasing bandwidth and all applicable non-recurring charges that may have been waived.

**4. Charges.** Charges for Service, including Metro Ethernet optional features, are set forth in the Pricing Attachment. The actual charges for Service will be those in effect in the Tariff on the date the first Service element ordered under the original Pricing Attachment is installed, as evidenced by CenturyLink records. If Service is renewed for a new Term on a Pricing Attachment, the rates will be those in effect at the time the Service is renewed, as evidenced by CenturyLink's records. CenturyLink will inform Customer of its then-current rates for Service upon written request. Renewed Service is subject to a new Minimum Service Period.

**5. Pricing Schedule.** The Pricing Attachment to this Exhibit details the charges that CenturyLink will assess for Services ordered under this Agreement or a Participating Addendum for Eligible Purchasers at any location where CenturyLink can offer the Services. If facilities are not available, CenturyLink may charge Special Construction charges in accordance with Section 15.2 of the Agreement. While CenturyLink will make all commercially reasonable efforts to advise Customer or Eligible Purchasers of Construction charges prior to executing a Pricing Attachment or Participating Addendum, there may be circumstances where such charges are discovered after ordering and Customer or Eligible Purchaser will be provided the opportunity to review and accept these charges prior to installation or cancel the order without Cancellation Charges.



**CENTURYLINK™ LOYAL ADVANTAGE® AGREEMENT  
INTRASTATE METRO ETHERNET SERVICE EXHIBIT  
PRICING ATTACHMENT**

iLink Contract Number

State of New Mexico – Judicial Information Division

Service expires 60 months from the Start of Service ("Term").\*

Promotional Pricing:  Yes  No Promotion Expiration Date: \_\_\_\_\_

Promotion Description, Title, or Code: \_\_\_\_\_

Port Speed	Band-width Profile	State	Service Term	Band-width MRC per each	Port Speed NRC per each
10/100 Mbps Port	3 Mbps	NM	60	\$285.00	\$0.00
10/100 Mbps Port	5 Mbps	NM	60	\$358.00	\$0.00
10/100 Mbps Port	10 Mbps	NM	60	\$478.80	\$0.00
10/100 Mbps Port	20 Mbps	NM	60	\$514.90	\$0.00
10/100 Mbps Port	30 Mbps	NM	60	\$550.05	\$0.00
10/100 Mbps Port	40 Mbps	NM	60	\$555.30	\$0.00
10/100 Mbps Port	50 Mbps	NM	60	\$588.60	\$0.00
10/100 Mbps Port	60 Mbps	NM	60	\$622.80	\$0.00
10/100 Mbps Port	70 Mbps	NM	60	\$656.10	\$0.00
10/100 Mbps Port	80 Mbps	NM	60	\$690.30	\$0.00
10/100 Mbps Port	90 Mbps	NM	60	\$723.60	\$0.00
10/100 Mbps Port	100 Mbps	NM	60	\$756.00	\$0.00
1000 Mbps Port	100 Mbps	NM	60	\$787.50	\$0.00
1000 Mbps Port	200 Mbps	NM	60	\$802.83	\$0.00
1000 Mbps Port	300 Mbps	NM	60	\$994.50	\$0.00
1000 Mbps Port	400 Mbps	NM	60	\$1,213.29	\$0.00
1000 Mbps Port	500 Mbps	NM	60	\$1,400.82	\$0.00
1000 Mbps Port	600 Mbps	NM	60	\$1,650.21	\$0.00
1000 Mbps Port	700 Mbps	NM	60	\$1,869.00	\$0.00
1000 Mbps Port	800 Mbps	NM	60	\$2,088.13	\$0.00
1000 Mbps Port	900 Mbps	NM	60	\$2,306.58	\$0.00
1000 Mbps Port	1000 Mbps	NM	60	\$2,524.70	\$0.00
10G Port	1000 Mbps	NM	60	\$2,560.00	\$0.00
10G Port	2000 Mbps	NM	60	\$3,200.00	\$0.00
10G Port	3000 Mbps	NM	60	\$3,830.00	\$0.00
10G Port	4000 Mbps	NM	60	\$4,460.00	\$0.00
10G Port	5000 Mbps	NM	60	\$5,090.00	\$0.00
10G Port	6000 Mbps	NM	60	\$5,720.00	\$0.00
10G Port	7000 Mbps	NM	60	\$6,350.00	\$0.00
10G Port	8000 Mbps	NM	60	\$6,980.00	\$0.00
10G Port	9000 Mbps	NM	60	\$7,610.00	\$0.00
10G Port	10000 Mbps	NM	60	\$8,240.00	\$0.00

Optional Features for Metro Ethernet:

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**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT  
ATTACHMENT 1**

**PARTICIPATING ADDENDUM  
FOR  
CENTURYLINK METRO OPTICAL ETHERNET SERVICE  
BETWEEN**

**AND  
CENTURYLINK SALES SOLUTIONS, INC.**

The undersigned hereby represents, acknowledges, and agrees as follows:

1. The undersigned represents that it is a State of New Mexico agency, commission, institution, political subdivision or local public body, and, as such, that it is qualified to purchase CenturyLink telecommunication services ("Service(s)") pursuant to the terms and conditions of the CenturyLink Metro Optical Ethernet Service Agreement, Content ID: /OMR: N259965, approved and signed by the State of New Mexico – Judicial Information Division, on or about , by and between Qwest Corporation d/b/a CenturyLink QC ("QC" or "CenturyLink") and the State of New Mexico, as amended, including its Exhibits and Attachments (hereafter the "Underlying Agreement").
2. The undersigned ("Customer") is executing this Participating Addendum for the purpose of purchasing Service from CenturyLink pursuant to the Underlying Agreement, by and between the State of New Mexico – Judicial Information Division and CenturyLink. The parties understand and agree that all terms and conditions of this Participating Addendum and the Underlying Agreement will apply to Services purchased by Customer hereunder. Customer will be responsible for any and all use of Services provided hereunder, including but not limited to responsibility for all payment obligations. Customer will be CenturyLink's customer of record for the Services provided hereunder.
3. **DESCRIPTION OF SERVICES.** CenturyLink will provide to Customer the intrastate telecommunications service(s) described in the Underlying Agreement (the "Services"). The specific Services purchased by Customer are set forth in Exhibit 1 to this Participating Addendum. Customer will pay the amounts set forth on Exhibit 1 to this Participating Addendum and as set forth in the Underlying Agreement. Per Section 1.6 of the Underlying Agreement, "Construction" means when Service may not be available due to facilities limitations and it is necessary for CenturyLink to construct facilities. "Funding" means charges to Customer over the term of a Service contract covering CenturyLink's calculated costs for providing Service and its expected rate of return when network infrastructure is not available to provide Service to Customer. CenturyLink may assess separate Construction charges if facilities are not available to meet an order for Service and CenturyLink constructs facilities under one or more of the following circumstances: (a) the amount of Customer's expected payments over the term of the Agreement does not exceed CenturyLink's calculated cost of providing the Service plus its expected rate of return; (b) Customer requests that Service be furnished using a type of facility, or via a route that CenturyLink would not normally utilize in providing the requested Service; (c) more facilities are requested than would normally be required to satisfy an order; and (d) Customer requests that Construction be expedited, resulting in added cost to CenturyLink. Service provided under this Agreement is subject to Funding approval and that approval will be evidenced in the Funding Concurrence block on this Agreement. That approval will be granted at the sole discretion of CenturyLink. In the event contract documents are signed under which Customer is ordering Service for which Funding is not approved, CenturyLink will cooperate with Customer in good faith to develop an alternative service solution if Funding cannot be achieved on the contracted solution and CenturyLink may immediately terminate this Agreement, without penalty, if Funding of the contracted and alternate Service solutions are determined to not be possible.
4. **TERM.** This Participating Addendum is effective on the latest signature date ("Effective Date"), and it expires coterminously with the Underlying Agreement on TBD, provided the Minimum Service Period can be met ("Initial Term"). CenturyLink's records will document the actual date of installation of the Service.
5. **PRIMARY CONTACT.** The primary Customer contact individual for this Participating Addendum is as follows:
6. This Participating Addendum and the Underlying Agreement set forth the entire agreement between the parties and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Underlying Agreement will not be added to or incorporated into this Participating Addendum or the Underlying Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Underlying Agreement will prevail and govern in the case of any such inconsistent or additional terms.

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**CENTURYLINK® LOYAL ADVANTAGE® AGREEMENT  
ATTACHMENT 1**

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

**CUSTOMER:**

**Qwest Corporation d/b/a CenturyLink QC**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Address for Notices:

Address for Notices:  
CenturyLink  
1801 California Street, 9<sup>th</sup> Floor  
Denver, Colorado 80202  
Attn: Legal Department

<b>(FOR CENTURYLINK INTERNAL USE ONLY)</b>	
<b>FUNDING CONCURRENCE REQUIRED PRIOR TO EXECUTION</b>	
AQCB Quote No.	_____
Date Concurred:	_____

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### Certificate Of Completion

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Supplemental Document Pages: 0	Initials: 0
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Time Zone: (UTC-08:00) Pacific Time (US & Canada)	930 15th St
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	Denver, CO 80202
	casey.stone@insnetworks.com
	IP Address: 65.152.209.134


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### Signer Events

Jacob Darfler  
pomdirectorsignature@centurylink.com  
Director - Offer Management  
CenturyLink Communications, LLC and CenturyLink,  
Embarq Florida  
Security Level: Email, Account Authentication (None)  
Electronic Record and Signature Disclosure:  
Accepted: 1/26/2017 12:53:09 PM  
ID: 67f53493-6324-4f03-bc44-0ce67149aa13

### Signature

DocuSigned by:  
  
C9E8AAC7847E468...  
Using IP Address: 73.153.129.128

### Timestamp

Sent: 1/24/2017 1:21:31 PM  
Viewed: 1/24/2017 5:39:54 PM  
Signed: 1/26/2017 12:54:02 PM

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Notary Events		Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	1/24/2017 1:21:32 PM
Certified Delivered	Security Checked	1/25/2017 3:26:03 PM
Signing Complete	Security Checked	1/26/2017 12:54:03 PM
Completed	Security Checked	1/26/2017 12:54:03 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, CenturyLink BSG-DfS (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

**How to contact CenturyLink BSG-DfS:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [esign@centurylink.com](mailto:esign@centurylink.com)

**To advise CenturyLink BSG-DfS of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [esign@centurylink.com](mailto:esign@centurylink.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from CenturyLink BSG-DfS**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [esign@centurylink.com](mailto:esign@centurylink.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with CenturyLink BSG-DfS**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [esign@centurylink.com](mailto:esign@centurylink.com) and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**



To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify CenturyLink BSG-DfS as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by CenturyLink BSG-DfS during the course of my relationship with you.

# OM Contract Cover Sheet -- GES

⇒ To avoid processing delays, a completed **OM Contract Cover Sheet** must be included w/ 2 customer-signed original contracts, including all exhibits, when sent to Contract Management. Please be sure to check-off your Regional Sales Director for proper contract return. OM Director signature is required on all non-standard contracts.

\*Sales Executive complete this information (**REQUIRED INFORMATION IS IN THE FIRST COLUMN**):

Customer Name	OMR # / OM Analyst	Contract #	Is this an Existing Customer? (Y/N)?	Customer Acct. #	Monthly \$ value of contract
State of New Mexico	N29286/Nakhavanit		Y		N/A
Sales Executive Information		Sales Executive Address & Phone #			
<b>Name:</b> Mar k Hallamore <b>Sales office code:</b> GESALBU (must use ONE sales office code from list below) <b>e-mail address:</b> mark.hallamore@qwest.com		400 Tijeras Avenue, NW Room 410 Albuquerque, NM 87102 505-924-0408			

- Sales Executive – **YOU MUST PROVIDE YOUR NAME, YOUR SALES OFFICE CODE AND YOUR EMAIL ADDRESS OR YOUR CONTRACT WILL BE REJECTED.** Choose the appropriate Sales Office Codes described on the list attached below.
- Sales Executive check appropriate Regional Sales Director with an **X** from address list below in OM Group Task #1
- Sales Office Admin or Sales Executive complete the overnight information & send to the Offer Management contact listed below. Before sending the contracts review for hand written changes & log the overnight tracking number (if there are hand written changes reject back to the Sales Executive – the Sales Executive will need to involve Offer Management to resolve.) Please note: you must send (2) two customer-signed original contracts, including all exhibits regardless of whether a signature is required on such exhibit.

Date overnight sent:	Overnight tracking number:
Name & phone number	Address
Kim Mortensen Financial/Business Analyst 303-992-6971	CenturyLink 930 15 <sup>th</sup> Street, 3 <sup>rd</sup> Floor Denver, CO 80202

**OM Group Task #1** send one counter-signed original to the Sales contact, listed above, who is within the checked Regional Sales Director's group below.

Date sent (and overnight tracking number if applicable – regular mail is fine in most cases) :		
Sales (X) Here	Regional Sales Director Name & phone number	Qwest Communications Address
	Marjorie Fredd – 612.664.4500	Qwest: 600 Stinson Blvd, Minneapolis, MN 55413
XX	Al Macaluso – 602.512.2500	Qwest: 4041 N Central Ave, Room 1800, Phoenix, AZ 85012
	Mike Stepan – 503.425.3366	Qwest: 421 Sw Oak St, Room 710, Portland, OR 97204-1817

**-Resources for Promo Code Status:** Upon review and acceptance of your completed coversheet and customer signed originals, OMCM requests Promo Codes from the Billing Promo Group (If applicable for GES).

As OM and OMCM do not create Promo Codes there are two resources you should check prior to calling OM or OMCM regarding the status of your Promo Codes.

- 1) The OM database located at the following URL: <http://theq.qwest.net/Departments/Sales&Marketing/SPR/>
  - a) This database may be accessed using Internet Explorer only and requires authentication via cuid and network password.
  - b) It allows you to search by OMR# or Customer Name and view the current status of the deal.
  - c) If the Status column does not state "Sold", track the overnight package and confirm that it was received by OMCM at least 2 business days prior. If it was received by OMCM, contact the OM analyst and ask about the delay.
- 2) The Billing Promo Code group (<mailto:billingpromocodes@qwest.com>) is responsible for creating Promo Codes once OMCM sends the executed contracts to them. Billing Promo Group maintains a spreadsheet on their shared drive that provides the status of promo codes. The following steps will take you to the SPR Promo Codes Folder:
  - a) Click Start in the Windows Taskbar
  - b) Click Run
  - c) Type: \\dub2kfil002\lci
  - d) Scroll over and Double Click on 'SPR Promo Codes' folder
  - e) Open the After May 16th spreadsheet for OMRs released after May 16th, 2001. Select 'Read-Only' if prompted.
  - f) For help setting up your L drive - call 1-877-828-4357 option #1

Agreement Number: \_\_\_\_\_

This CenturyLink Metro Ethernet Service Agreement ("Agreement") between the State of New Mexico ("Customer") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") is effective on the date of execution by State of New Mexico.

## 1. Scope.

1.1 Metro Ethernet Service ("Service") is a flexible transport service that uses established Ethernet transport technology. The Service provides connections between multiple Customer locations within a metropolitan area using native Ethernet protocol. The transmission speed depends on the Ethernet port ("Port") selected and the amount of bandwidth ordered over the Port ("Bandwidth Profile"). Service extends to the Demarcation Point. "Demarcation Point" means the CenturyLink-designated physical interface between the CenturyLink-owned network and Customer's telecommunications equipment. Service is available over three designs: (a) Customer Premises, supporting transmission speeds as low as 5 Mbps in all markets (3 Mbps and 7Mbps are available in select markets) and up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps, and in increments of 100 Mbps from 100 to 1,000 Mbps; (b) Central Office, supporting transmission speeds of 100 Mbps, 600 Mbps and 1,000 Mbps; and (c) Ethernet with Extended Transport (DS3 required), supporting transmission speeds as low as 5 Mbps and up to 40 Mbps. Service is subject to technical publication 77411 located at <http://www.qwest.centurylink.com/techpub/> ("Tech Pub"). "SLA" means the service level agreement specific to the Service, located at <http://www.qwest.centurylink.com/legal/> and attached as Exhibit 2, which is controlled by the Tariff and Tech Pub, which are subject to change. The SLA provides Customer's sole and exclusive remedy for service interruptions or service deficiencies of any kind whatsoever for Service.

1.2 Any CenturyLink tariff, price list, price schedule, administrative guideline, catalog, and other rate and term schedules (hereinafter, whether individually or together, "Tariff") applicable to the Service is incorporated into this Agreement by reference and made a part of this Agreement. The Service will be governed by: (a) the Tariff applicable to the Service; and (b) the statewide price agreement number 30-000-00-00002 (the "NMSPA"); and (c) to the extent a comparable Tariff term or condition does not apply to the Service, the terms and conditions set forth in this Agreement. CenturyLink reserves the right to amend, change, withdraw, or file additional Tariffs in its sole discretion, with such updated Tariffs effective upon posting or upon fulfillment of any necessary regulatory requirements.

1.3 For clarity, to determine whether CenturyLink has offered a more favorable warranty to another customer under the statewide NMSPA, the parties will only compare the warranties for identical services and supplies which are delivered by CenturyLink using the same equipment and software in the state of New Mexico. Customer hereby grants CenturyLink permission to subcontract portions of this Agreement for construction services.

1.4 Service provided herein is subject to network infrastructure availability and may require the expenditure of CenturyLink capital funds ("Funding") to provide Service to Customer. If a location requires Funding, CenturyLink will only provide Service if Funding has been approved as evidenced on the signature page of this Agreement. Such approval will be granted at the sole discretion of CenturyLink. In the event this Agreement is executed and the required Funding is not approved, CenturyLink agrees to cooperate with Customer in good faith to develop an alternative service solution and may terminate this Agreement immediately without penalty.

1.5 Customer understands and agrees that CenturyLink supplies Service as an intrastate, intraLATA telecommunications service, as defined by State and/or Federal Communications Commission ("F.C.C.") regulations, which are incorporated herein by this reference. It is Customer's responsibility to ensure that Customer uses Service as an intrastate, intraLATA telecommunications service consistent with such regulations. F.C.C. regulations permit interstate usage of Service if such usage does not exceed 10% of the total usage. If Customer should use this Service for any other purpose, or if interstate usage exceeds 10%, it is Customer's responsibility to immediately notify CenturyLink of such use and to place an order for appropriate service. CenturyLink will bill, and Customer will promptly pay, appropriate monthly recurring charges, for such use of and changes to Customer's telecommunications service including, but not limited to all applicable CenturyLink Rates and Services Schedule No. 1 Interstate access charges or intrastate Tariff access charges.

1.6 "Construction" means when Service may not be available due to facilities limitations and it is necessary for CenturyLink to construct facilities. "Funding" means charges to Customer over the term of a Service contract covering CenturyLink's calculated costs for providing Service and its expected rate of return when network infrastructure is not available to provide Service to Customer. CenturyLink may assess separate Construction charges if facilities are not available to meet an order for Service and CenturyLink constructs facilities under one or more of the following circumstances: (a) the amount of Customer's expected payments over the term of the Agreement does not exceed CenturyLink's calculated cost of providing the Service plus its expected rate of return; (b) Customer requests that Service be furnished using a type of facility, or via a route that CenturyLink would not normally utilize in providing the requested Service; (c) more facilities are requested than would normally be required to satisfy an order; and (d) Customer requests that Construction be expedited, resulting in added cost to CenturyLink. Service provided under this Agreement is subject to Funding approval and that approval will be evidenced in the Funding Concurrence block on this Agreement. That approval will be granted at the sole discretion of CenturyLink. In the event contract documents are signed under which Customer is ordering Service for which Funding is not approved, CenturyLink will cooperate with Customer in good faith to develop an alternative service solution if Funding cannot be achieved on the contracted solution and CenturyLink may immediately terminate this Agreement, without penalty, if Funding of the contracted and alternate Service solutions are determined to not be possible.

## 2. Term.

2.1 This Agreement is effective on the date it is signed by State of New Mexico ("Customer") and Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") ("Effective Date"), and it expires sixty (60) months from the date Service is available to Customer, as evidenced by CenturyLink records ("Initial Term"). The Service shall have a "Minimum Service Period" of 12 months. After the expiration of the Initial Term, this Agreement will continue automatically on a month-to-month basis unless a party notifies the other

party in writing of its desire not to renew this Agreement at least 60 calendar days, and no more than 120 calendar days, prior to the end of the Initial Term. After the Initial Term, either party may terminate this Agreement upon 30 calendar days prior written notice. The Initial Term and any month-to-month period thereafter will be collectively referred to as the "Term." If special construction is required for Service, then the Minimum Service Period may not apply and will be determined at the time of such request.

2.2 After the Initial Term, Customer will pay for Service at CenturyLink's then-current rates. CenturyLink will inform Customer of its then-current rates for Service upon written request.

2.3 If CenturyLink materially offers rates to any customers ordering products or services under the statewide NMSPA (other than school districts that are eligible for E-Rate funding) that are materially less than the rates listed in Exhibit 1 for identical products and services delivered by CenturyLink using the same technology in the state of New Mexico, then Customer and CenturyLink will amend Exhibit 1 to reflect the more beneficial offer

### 3. Installation/Provisioning of Service.

3.1 CenturyLink will provide the Service at the locations specified in Exhibit 1, attached hereto and made a part of this Agreement.

3.2 CenturyLink will notify Customer of the date Service is available for use. In the event Customer informs CenturyLink that it is unable or unwilling to accept Service at such time, the subject Service will be held available for Customer for a period not to exceed 30 business days from such date ("Grace Period"). If after the Grace Period, Customer still has not accepted Service, CenturyLink may either: (a) commence with regular monthly billing for the subject Service; or (b) cancel the subject Service. If Customer cancels an order for Service prior to the date the Service is available for use, or is unable to accept the Service during the Grace Period and CenturyLink cancels the Service at the end of the Grace Period, the Tariff cancellation charges may apply.

3.3 Start of service for each Service ("Start of Service Date") will begin on the date on which Customer accepts delivery of such Service. CenturyLink will provide notice that a Service is ready for acceptance. At Customer's request, mutual testing may be performed in accordance to the service parameters outlined in the Tariff.

### 4. Payment.

4.1 Customer must pay CenturyLink all charges by the payment due date on the invoice. Any amount not paid when due will be subject to a late charge as specified by the Tariff, or if there is no such late charge specified in the Tariff, the amount due will be subject to late interest at the lesser of 1½% per month or the highest rate permitted by applicable law. Customer must also pay CenturyLink any applicable federal, state, and local taxes, surcharges, and other similar charges ("Taxes") assessed in connection with Customer's Service. Taxes are subject to change. CenturyLink may reasonably modify the payment terms or require other assurance of payment based on Customer's payment history or a material and adverse change in Customer's financial condition. Customer will pay the charges listed on Exhibit 1, including the charges for any Service optional features on Exhibit 1. The charges for Services under this Agreement, including any and all discounts to which Customer may be entitled, will be offered and charged to Customer independently from, and regardless of, Customer's purchase of any customer premises equipment or enhanced services from CenturyLink. Customer will not pay for the Services with funds obtained through the American Recovery and Reinvestment Act (or ARRA) or other similar stimulus grants or loans that would obligate CenturyLink to provide certain information or perform certain functions unless each of those functions and obligations is explicitly identified and agreed to by the parties in this Agreement or in an amendment to this Agreement.

4.2 The monthly recurring charge ("MRC") and nonrecurring charge ("NRC") for Service, specified on Exhibit 1, reflect the rates currently in effect in the Tariff. Service's MRC and NRC will be those in effect in the Tariff on the first date of installation of Service. CenturyLink will fix the MRCs during the Term so that CenturyLink will not pass through any CenturyLink initiated price increases to Customer during the Term. Any rate increases directed or mandated by a regulatory body will be applied as required.

Promotional Pricing:  Yes  No Promotion Expiration Date: \_\_\_\_\_  
Promotion Description, Title, or Code: \_\_\_\_\_

### 5. Changes to Service.

5.1 Subsequent orders to add new Service port(s) will be for the remainder of the Term, provided the Minimum Service Period can be met. All Service ports ordered under this Agreement will expire on the same date regardless of when they are ordered (e.g., if the original Service is in month 10 of a 60-month Term when Customer orders a new Service port for a 60-month fixed period rate plan, the new Service port will be billed at the 60-month rate for the next 50-months). In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.2 A subsequent order to change or add a Service port during Term will be assessed an NRC only if such a move or change is within an area where CenturyLink's facilities do not exist.

5.3 A subsequent order to change Service Bandwidth during the Term will not be assessed the NRC, however, the MRC will be changed to the new Service bandwidth profile charge provided Customer's total bandwidth does not fall below 15%. Customer may be assessed an early Termination liability charge for any decrease in bandwidth during the Term of the Agreement.

5.4 If Customer requests a physical move of Service to a new location, the move will be treated as a termination of service at the original location. NRC's will apply and Term requirements must be met in the new location. In the event the Minimum Service Period cannot be met, a new Agreement must be signed.

5.5 If Customer requests a physical move of Service to a location within the same building, there will be no changes to the Minimum Service Period.

## 6. Customer Termination Rights

**6.1 Appropriations.** This Agreement may be terminated by the Customer, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement and Customer has no other funding source lawfully available to it for such purpose (as evidenced by notarized documents provided by Customer and agreed to by CenturyLink). If the Customer terminates this Agreement pursuant to this subsection, the Customer shall provide CenturyLink written notice of such termination at least twenty (20) Business Days prior to the effective date of the termination. Customer intends to continue this Agreement for its entire Term and to satisfy its obligations hereunder. For each fiscal period for Customer: (a) Customer agrees to include in its budget request appropriations sufficient to cover Customer's obligations under this Agreement; (b) Customer agrees to use all reasonable and lawful means to secure these appropriations; (c) Customer agrees it will not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party. Customer may choose to reallocate funds appropriated for the Services to other products or services, if permitted by law, to the extent that the other products or services are not functionally equivalent to the Services and, in that case, deem the appropriations insufficient for the performance of this Agreement if no other funding source is available for such purpose. Customer reasonably believes that sufficient funds to discharge its obligations can and will lawfully be appropriated and made available for this purpose.

**6.2 Failure to Provide Product or Service.** If CenturyLink materially fails to provide a Product or Service and CenturyLink fails to cure after Customer provides CenturyLink with written notice of the failure and a reasonable opportunity to cure within 30 days from receipt of notice, Customer may terminate the affected Products or Services without early termination liability 5 days after CenturyLink's receipt of Customer's written notice to terminate. CenturyLink's material failure does not include a failure caused by circumstances outside CenturyLink's sole control, a failure caused by a third party access provider, a Force Majeure Event, or Customer or Customer-provided software or equipment.

**6.3 Reconfiguration.** In the event that the Customer needs to reconfigure the mix of Services purchased under this Agreement in order to meet the requirements of changing technologies, CenturyLink will waive associated Termination Charges, provided the following conditions are met: (1) Customer's purchase level of Services under this Agreement does not decrease more than 15% below Customer's total bandwidth(2) any replacement services are purchased from CenturyLink or one of its affiliates; and (3) any local, state, and federal regulatory agencies permit the waiver to take effect through any required filings or approvals.

**6.4 Technology Upgrade** Customer may, at its sole option and discretion, elect, in writing, to replace all of a Service type with Comparable Services (a "Technology Migration") at (A) CenturyLink's published rates, whether by Tariff or otherwise, for the Comparable Services, or (B) such other rates as may be mutually agreed upon between the parties. "Comparable Service(s)" means any service of a "higher level", as compared to the existing Service, that is functionally equivalent or superior to the Service(s) and that is first generally offered by CenturyLink at any time during the applicable Order Term after the Service's Commencement Date. For purposes of this section, "higher level" means improvements, upgrades or changes to telecommunications or information transmission technology producing higher functionality or increased capacity, where such improvements are determined according to recognized industry standards. Upon Customer's election of this option, the parties will amend the Agreement to add the Comparable Services, and Customer's Commitment Level may be adjusted as may be relevant under the circumstances, by Customer's commitment to maintain an identical pro-rata portion of the Comparable Services until the end of the Agreement Term or the applicable Order Term. Notwithstanding any other provision hereof, Customer will not be liable for any termination charges or other similar charges of CenturyLink under this Agreement, any tariff or any other agreement or instrument whatsoever, by virtue of replacing Services by a Technology Migration.

## 7. Termination for Cause

Either party may terminate Service and/or this Agreement in accordance with the applicable Tariff or for Cause. "Cause" means the failure of a party to perform a material obligation under this Agreement, which failure is not remedied: (a) for payment defaults by Customer, within five days of separate written notice from CenturyLink of such default (unless a different notice period is specified in the Tariff); or (b) for any other material breach, within 30 days of written notice (unless a different notice period is specified in the Tariff or this Agreement). Customer will remain liable for charges accrued but unpaid as of the termination date. If, prior to the conclusion of the Term, Service and/or this Agreement is terminated either by CenturyLink for Cause or by Customer for any reason other than Cause, then Customer will also be liable for any termination charges ("Termination Charge").

## 8. Obligations and Waiver.

By termination pursuant to Sections 6 or 7, neither Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS SECTION DOES NOT CONSTITUTE A WAIVER OF ANY OTHER LEGAL RIGHTS AND

REMEDIES AFFORDED THE A PARTY CAUSED BY THE OTHER PARTY'S DEFAULT OR BREACH OF THIS AGREEMENT. This Section 6 is intended to be in addition to and not conflicting with the terms of the NMSPA and will be interpreted to fullest extent possible to be consistent with the NMSPA.

## 9. EARLY TERMINATION LIABILITY.

**9.1 Calculation of Early Termination Liability for Termination of Orders.** If Customer terminates a Product or Service in whole or in part, before expiration of the Order Term except as expressly permitted under Section 6 without liability, or CenturyLink terminates a Product or Service or applicable Order for Cause under Section 7, Customer will pay the following early termination charges, which represent CenturyLink's reasonable liquidated damages and not a penalty:

**A. General Liability.** A lump sum equal to a) 40% of the applicable monthly charges, multiplied by the number of months remaining in the Order Term, plus b) a pro rata amount of i) any waived installation charges and ii) initialization fees waived based upon the number of months remaining in the applicable Order Term at the time of termination; and

**B. Third Party Liability.** Any liabilities imposed on CenturyLink by third parties, such as other local exchange carriers and all nonrecoverable costs incurred by CenturyLink as a result of ordering third party products and services required to operate the Product or Service, and are imposed on CenturyLink as a result of Customer's early termination. In no event shall Customer be assessed charges under this Section B to the extent the same charges are assessed under Subsection A above.

**9.2 Waiver of Early Termination Liability.** With CenturyLink's written approval, Customer will not be liable for the early termination liability described in this Section for a Service if Customer purchases another Service at the same time with the same or greater monthly recurring charge for an Order Term at least equal to the greater of: the remaining months in the original Order Term or one year.

## 10. Licenses; Dispatch Fee.

**10.1** If CenturyLink must access a building that houses Customer's premises to install, operate, or maintain Service or associated CenturyLink equipment, Customer will provide or secure at Customer's expense the following items: (a) appropriate space and power; and (b) rights or licenses.

**10.2** Any facility or equipment repairs on Customer's side of the demarcation point are Customer's responsibility. If Customer requests a technician visit for a problem that CenturyLink determines: (a) not to be caused by CenturyLink facilities or equipment on the CenturyLink side of the demarcation point; or (b) is on Customer's side of the demarcation point, CenturyLink will assess a separate dispatch fee. CenturyLink will notify Customer and obtain Customer's authorization before dispatching a technician.

**11. Disclaimer Of Warranties.** CENTURYLINK DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY CENTURYLINK, ITS AFFILIATES, AGENTS, OR CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES WILL CREATE ANY WARRANTY. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE.

**12. Personal Injury, Death, and Property Damage:** Each party will be responsible for the actual physical damages it directly causes to the other party in the course of its performance under the Agreement, limited to damages resulting from personal injury or death to a party's employees and loss or damage to a party's personal tangible property arising from the negligent acts or omissions of the liable party; **Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.**

**12.1 Indemnification.** - CenturyLink shall defend, indemnify and hold harmless the Customer and its employees from all actions, proceedings, claims, demands, costs, damages, reasonable attorneys' fees and all other liabilities and expenses of any kind arising out of a claim by a third party which may arise out of the performance of this Agreement, and which is caused by the negligent act or failure to act of CenturyLink, its officers, employees, servants, subcontractors or agents, during the time when CenturyLink, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement.

**12.2** The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for CenturyLink or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to CenturyLink under this Agreement may be retained by the Customer, as necessary, to satisfy any outstanding claim that the Customer may have against CenturyLink.

**13. HIPAA.** CenturyLink does not require or intend to access Customer data in its performance hereunder, including but not limited to any confidential health related information of Customer's clients, which may include group health plans, that constitutes Protected Health Information ("PHI"), as defined in 45 C.F.R. §164.501 under the Health Insurance Portability and Accountability Act of 1996



("HIPAA Rules"). Any exposure to PHI will be random, infrequent and incidental to CenturyLink's provision of Service and is not meant for the purpose of accessing, managing the PHI or creating or manipulating the PHI. Such exposure is allowable under 45 CFR 164.502(a)(1)(iii). As such, if Customer is a Covered Entity or Health Care Provider under the HIPAA Rules or supports the health care industry, CenturyLink and Customer agree that CenturyLink is not a "Business Associate" or "Covered Entity" under the HIPAA Rules for the purposes of this Agreement.

#### 14. Governing Law; Dispute Resolution.

**14.1 Governing Law; Forum.** This Agreement will be governed by the laws of the state of New Mexico, except with regard to matters which are within the exclusive jurisdiction of the state or federal regulatory agency. Those matters alone will be governed by the laws of the appropriate jurisdiction. Any legal proceeding relating to this Agreement will be brought in a U.S. District Court, or absent federal jurisdiction, in a state court of competent jurisdiction, in the location of the party to this Agreement not initiating the action, as indicated in the Notices section. But CenturyLink may, at its discretion, initiate proceedings in Denver, Colorado to collect undisputed amounts billed. This provision is not intended to deprive a small claims court or state agency of lawful jurisdiction that would otherwise exist over a claim or controversy between the parties.

**15. Notices.** Unless otherwise provided herein, all required notices to CenturyLink must be in writing, sent to 1801 California St., # 900, Denver, CO 80202; fax: 888-778-0054; Attn.: Legal Dept., and to Customer at its then current address as reflected in CenturyLink's records Attn.: General Counsel or other person designated for notices. Unless otherwise provided herein, all notices will be deemed given: (a) when delivered in person to the recipient named above; (b) three business days after mailed via regular U.S. Mail; (c) when delivered via overnight courier mail; or (d) when delivered by fax if duplicate notice is also sent by regular U.S. Mail.

**16. General Provisions.** Either party may assign the Agreement without the other party's prior written consent: (a) in connection with the sale of all or substantially all of its assets; (b) to the surviving entity in any merger or consolidation; or (c) to an Affiliate provided such party gives the other party 30 days' prior written notice. Any assignee of the Customer must have a financial standing and creditworthiness equal to or better than Customer's, as reasonably determined by CenturyLink, through a generally accepted, third party credit rating index (i.e. D&B, S&P, etc.). Any other assignment will require the prior written consent of the other party. Customer may not assign to a reseller or a telecommunications carrier under any circumstances, and represents that it will not resell the Service. Customer expressly consents to allow CenturyLink to assign the Agreement in accordance with this Section. This Agreement is intended solely for CenturyLink and Customer, and not to benefit any other person or entity (e.g., End User). If any term of this Agreement is held unenforceable, such term will be construed as nearly as possible to reflect the original intent of the parties and the remaining terms will remain in effect. Neither party's failure to insist upon strict performance of any provision of this Agreement will be construed as a waiver of any of its rights hereunder. All terms of this Agreement that should by their nature survive the termination of this Agreement will so survive. In the event of a conflict in any term or condition of any documents that govern the provision of the Service hereunder, the following order of precedence will apply in descending order of control: NMSPA, the Tariff, this Agreement, and CenturyLink records. Neither party will be liable for any delay or failure to perform its obligations hereunder if such delay or failure is caused by a Force Majeure Event. "Force Majeure Event" means an unforeseeable event beyond the reasonable control of that party, including without limitation: act of God, fire, flood, labor strike, sabotage, fiber cuts, acts of terror, material shortages or unavailability, government laws or regulations, war or civil disorder, or failures of suppliers of goods and services. Except for Tariff or Service modifications initiated by CenturyLink, all amendments to this Agreement must be in writing and signed by the parties' authorized representatives. However, any change in rates, charges, or regulations mandated by the legally constituted authorities will act as a modification of any contract.

**17. Entire Agreement:** This Agreement together with the Statewide Price Agreement constitutes the entire agreement between Customer and CenturyLink and supersedes all prior oral or written agreements or understandings relating to this subject matter, including the prior **Qwest Metro Optical Ethernet Service Agreement** (Content ID: 236283) with an effective date of February 7, 2008, as may have been previously amended, ("Prior Agreement") without liability, as of the Effective Date and provided Customer is in compliance with its obligations under the Prior Agreement.

The parties have read, understand and agree to all of the above terms and conditions of this Agreement and hereby execute and authorize this Agreement. Electronic signatures on this Agreement will be accepted only in the form and manner prescribed by CenturyLink.

State of New Mexico

*Jacqueline Miller*  
Authorized Signature  
Jacque Miller

Name Typed or Printed  
Deputy CIO - State of New Mexico

Title  
*Nov 7, 2012*

Date  
Address for Notices:  
715 Alta Vista St  
Santa Fe, NM

Qwest Corporation d/b/a CenturyLink QC

*Betty Reynolds*  
Authorized Signature  
Betty Reynolds

Name Typed or Printed  
Area Vice President

Title  
*11/7/12*

Date

<b>FOR CQC INTERNAL USE ONLY</b>
FUNDING CONCURRENCE REQUIRED PRIOR TO EXECUTION FOR NEW SERVICE (NOT REQUIRED FOR RENEWALS AND IN SITUATIONS WHERE THE AQCB PROCESS IS NOT NECESSARY)
AQCB Quote No.
Date Concurred:



Agreement Number: \_\_\_\_\_

State of New Mexico

EXHIBIT 1

Bandwidth Profiles available on 10/100 Mbps Ports:

Element	5-Year Bandwidth MRC (each)	NRC
3 Mbps Bandwidth Profile	\$285.00	\$0.00
5 Mbps Bandwidth Profile	\$352.00	\$0.00
7 Mbps Bandwidth Profile	\$358.00	\$0.00
10 Mbps Bandwidth Profile	\$504.00	\$0.00
20 Mbps Bandwidth Profile	\$542.00	\$0.00
30 Mbps Bandwidth Profile	\$579.00	\$0.00
40 Mbps Bandwidth Profile	\$617.00	\$0.00
50 Mbps Bandwidth Profile	\$654.00	\$0.00
60 Mbps Bandwidth Profile	\$692.00	\$0.00
70 Mbps Bandwidth Profile	\$729.00	\$0.00
80 Mbps Bandwidth Profile	\$767.00	\$0.00
90 Mbps Bandwidth Profile	\$804.00	\$0.00
100 Mbps Bandwidth Profile	\$840.00	\$0.00

Bandwidth Profiles available on 1000 Mbps Ports:

Element	5-Year Bandwidth MRC (each)	NRC
100 Mbps Bandwidth Profile	\$875.00	\$0.00
200 Mbps Bandwidth Profile	\$944.50	\$0.00
300 Mbps Bandwidth Profile	\$1,170.00	\$0.00
400 Mbps Bandwidth Profile	\$1,427.40	\$0.00
500 Mbps Bandwidth Profile	\$1,648.02	\$0.00
600 Mbps Bandwidth Profile	\$1,941.42	\$0.00
700 Mbps Bandwidth Profile	\$2,198.82	\$0.00
800 Mbps Bandwidth Profile	\$2,456.62	\$0.00
900 Mbps Bandwidth Profile	\$2,713.62	\$0.00
1000 Mbps Bandwidth Profile	\$2,970.24	\$0.00

(COCC MRC required for Central Office design)

(EwET Customer Interface MRC and Total Chan Term & Transport Mileage MRC required for Ethernet with Extended Transport design)

(Show N/A, if an MRC does not apply)

Location (Address, City, State)	Band-width Profile	Band-width MRC per each	Port Speed	Port Speed NRC per each	COCC MRC		EwET Customer Interface MRC	DS3 Total Chan Term & Transport Mileage	
					MRC	NRC		MRC	NRC
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$
	SELECT	\$	SELECT	\$	\$	\$	\$	\$	\$



**EXHIBIT 2  
CENTURYLINK DOMESTIC METRO ETHERNET ("Metro Ethernet" or "Service")  
SERVICE LEVEL AGREEMENT ("SLA")**

Any Qwest Corporation d/b/a CenturyLink QC ("CenturyLink") intrastate tariff, price list, price schedule, administrative guideline, catalog, and other rate and term schedules, whether individually or together, will be referred to as "Tariff" in this SLA. CenturyLink offers this SLA in accordance with the applicable Tariff and Technical Publication 77411 ("Tech Pub"). All customer-provided backup power, racks, and cabinets must meet the requirements described in CenturyLink Technical Publication Nos. 77368 and 77419. Any service disruption deemed by CenturyLink in its sole discretion to have resulted from issues related to Customer-provided backup power, racks, or cabinets relieves CenturyLink of all its obligations under this SLA. In the event of a conflict between the terms of this SLA and the Tariff or Tech Pub, the terms of the Tariff and Tech Pub will control. If Service becomes de-Tariffed, this SLA will be offered in accordance with this SLA and the Tech Pub, rather than the applicable Tariff. Interstate Metro Ethernet is offered in accordance with this SLA and the Tech Pub. Capitalized terms not defined in this SLA are defined in customer's agreement for Metro Ethernet.

Metro Ethernet is a flexible, easy-to-use, transport service that uses established Ethernet transport technology. Metro Ethernet allows customers to connect multiple enterprise locations within a service area using native Ethernet protocol. Metro Ethernet is available over three distinct designs: Customer Premises, Central Office, and Ethernet with Extended Transport (EwET).

Customer Premises Metro Ethernet supports transmission speeds as low as 5 Mbps in all markets (3 Mbps and 7Mbps are available in select markets) up to 1 Gbps in increments of 10 Mbps from 10 to 100 Mbps and in increments of 100 Mbps from 100 to 1,000 Mbps. Central Office Metro Ethernet supports transmission speeds of 100 Mbps, 600 Mbps and 1,000 Mbps. EwET Metro Ethernet supports transmission speeds as low as 5 Mbps and up to 40 Mbps.

**1. Service Availability Objective.**

Service availability is defined as the ability of a customer to exchange data packets with the Metro Ethernet network at the User-Network Interface ("UNI") via customer provided equipment ("CPE"). Availability specifies the percentage of time the customer's Metro Ethernet meets (or exceeds) the throughput, latency, and packet loss performance objectives over any calendar month and may be expressed as:

$$\% \text{ Availability} = \frac{\text{Total Time} - \text{Outage Time}}{\text{Total Time}} \times 100$$

All User-Network Interfaces	Availability Objective (Monthly)
With Single Cable Entrance	99.9%
With Dual Cable Entrances (see Note a. below)	99.95%

**Notes:**

- Equipment located on the customer's premises will have a single cable entrance unless the building owner elects to provide two physically separated cable entrances into the building. A second entrance to the customer's premises affords further diversity protection. When desired, it is a customer's responsibility to provide a second entrance. That second entrance must meet existing CenturyLink entrance facility standards. For additional information see CenturyLink Technical Publication 77344, *Diversity and Avoidance*.
- Service availability includes all components of the Metro Ethernet network from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro.
- Service interruptions caused by CenturyLink planned network maintenance activities, maintenance at the customer premises, or loss of customer traffic due to malfunction of CPE are excluded from the availability calculation. The Metro Ethernet availability objective assumes two hours every six months for the network maintenance window.

**2. Throughput Objective.**

The Metro Ethernet bandwidth profile is a limit on the rate at which Ethernet frames can traverse the User Network Interface ("UNI"). Metro Ethernet offers a better than best effort bandwidth or throughput for each customer network access link. Specifically, the Metro Ethernet Committed Information Rate (CIR) is the minimum bandwidth or throughput that the Metro Ethernet network will deliver for at least 256 byte frames in both ingress and egress directions under normal operating conditions. For smaller frame sizes customer packets may be dropped.

Through CIR, bandwidth will be available in the increments ordered by the customer. CIR rates will be met by adequate rate-limiting of the Metro Ethernet Layer 2 edge and core switches, and SONET transport infrastructure where applicable.

**3. Latency Objective.**

Latency or delay is defined as the time interval between the transmission of a signal at one point and the reception or detection of the same signal at another point. Unidirectional or One-Way Delay ("OWD") is the elapsed time between when a node sends a packet and when the packet is received by another node. OWD is also referred to as end-to-end transit delay.

For Metro Ethernet service, the one-way delay is the time measured between when the first bit of an Ethernet frame enters the ingress User-Network Interface to when the last bit of the same frame leaves the egress UNI. Specifically, from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro. The latency performance objective across a single Metro Ethernet network will be as indicated below:

Latency (One-Way)	Objective (Monthly Average)
Maximum	Less than 25 milliseconds
Typical	Less than 15 milliseconds

Thus, over any calendar month, 100% of the successfully delivered egress frames (discarded or lost frames are not counted) will have an average one-way delay of less than 25 milliseconds. This Metro Ethernet performance parameter applies to all supported Ethernet line / data rates (at the UNI), i.e. access ports and bandwidth profiles, frame sizes, alternate fiber routes where applicable and represents the total delay attributable to the Metro Ethernet network.

#### 4. Packet Loss Objective.

The packet loss performance parameter identifies the percentage of in-profile Ethernet frames ("green" frames that are within CIR) not reliably delivered between UNIs over a given measurement interval. Any frames that are out-of-profile ("yellow" or "red" frames, i.e. exceeding the CIR) are not counted towards the number of lost frames.

Customer frames that may additionally be blocked or discarded at the UNI and not counted towards the packet loss objective include the following:

- Runts or frame size less than 64 bytes
- Jumbo frames with a maximum transmission unit greater than 1522 bytes
- Corrupted frames with cyclic redundancy check, frame check sequence or alignment errors

Packet loss is defined as the percentage of packets that are dropped within, or between switches that are a part of, the Metro Ethernet network. Specifically, from edge site / switch to edge site / switch within a metro region for customers with two or more locations or from edge site / switch to core switch for customers with one location in a metro. CenturyLink will engineer the Metro Ethernet network to minimize packet loss such that the performance objective will not exceed the following:

Performance Parameter	Dropped Packets Objective (Monthly Average)
Packet Loss Ratio	No more than 0.1%
	No more than 0.001% for priority 1 ("P1") packets in the Metro Ethernet core network

**Note:** The Metro Ethernet core network is defined as from the first (CenturyLink-provided) core switch to the last core switch in a metro for a particular Ethernet Virtual Connections ("EVC") traffic flow. Thus, over any calendar month the Metro Ethernet network will successfully deliver at least 99.9% of the customer's packets from UNI to UNI or 99.999% for P1 traffic in the core.

#### 5. VLAN Leakage Objective.

There will be zero VLAN or MAC address leakage across the Metro Ethernet network. Metro Ethernet does not currently support the routing or communication of traffic between VLANs or EVCs.

#### 6. Quality of Service Objective.

When Quality of Service is purchased by the customer then the following applies:

- The service level availability commitment for Quality of Service is that 99.999% of the packets will conform to the bandwidth profile delivered across the core network, without being dropped or lost as a result of a fault within the Virtual Ethernet Network. This equates to a Quality of Service Pack loss ratio of no more than 0.001%. Thus, over any calendar month the Metro Ethernet network will successfully deliver at least 99.999% of a customer's packets from core to core.
- When the SLA is not met, the SLA credit will apply to the monthly recurring charge ("MRC") for every increment of 3 Mbps (in select markets) or 5 Mbps of P1 traffic.
- The credit will equal 1/30<sup>th</sup> of the MRC for every 5 Mbps of affected Priority 1 traffic.
- The maximum amount of credit provided in a given month will not exceed the total MRC for the affected Service.

#### 7. Protect Routing Objective.

When protect routing is purchased by the customer then the following applies:

- The service guarantee will be for a 99.99% circuit availability over a 30 day period which equates to 4 minutes 20 seconds of downtime.
- No credit will be allowed for an interruption of less than 4 minutes 20 seconds, multiple outages of each less than 4 minutes 20 seconds will not be added together.
- A credit of 1/30<sup>th</sup> of the MRC will be paid out for any outage occurrence that exceeds 4 minutes 20 seconds. Credit will be limited to one credit for each 24 hour period in which an outage(s) occur. Credit will be comprised of all affected MRC elements.
- The Maximum amount of credit provided in a given month will not exceed the total MRC for the affected Metro Ethernet.

#### 8. Mean Time to Repair Objective.

CenturyLink is responsible for maintaining all equipment and cable on the Metro Ethernet network side of the UNI at customer locations, and the transmission facility between UNIs.

CenturyLink will furnish the customer with a trouble reporting telephone number.

Upon receipt of a trouble alarm or report, CenturyLink will initiate action within 20 minutes to clear the trouble and will commit to the following service restoration times for Metro Ethernet:

- Four hours maximum in the event of a service interruption due to an electronic component failure

- Eight hours maximum if the trouble is caused by a cable failure

**Pricing & Offer Management (POM)  
DECISION SUMMARY**

**NOT CONTRACTUALLY BINDING. FOR INTERNAL USE ONLY.**

POM Deal #: <b>N29286</b> NSDC # (if applicable): AQCB # (if applicable): Funding required Date AQCB funding concurred: SDC Engineer who concurred funding:	Date of POM Decision: 1/05/12 POM Decision Version: 1
Customer Legal Name: <b>State of New Mexico</b> Customer Location: <b>NM</b>	POM Decision Status: <b>approved</b>
Sales Rep. Name: <b>Mark Hallamore</b> Sales Director and/or Region: <b>Al Macaluso</b>	POM Decision is valid for 45 days from the date of approval
Partner Involved?: <b>No</b>	OM Analyst Name: <b>JJ Nakhavanit</b>
Current Contract Vehicle: (see related contract history below)	

Contract Vehicle	OMR#(s)	Content ID(s)
QMOE	Q9838	236283

<b>Commission Adjustments:</b> Qwest Representative: <b>TBD%</b> Partner Representative: <b>TBD%</b> To be determined based on funding	<b>Term and Revenue Commitment:</b> Initial Term of: 36/60 months is: <input checked="" type="checkbox"/> Restart (new) Revenue Commitment: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> No Changes <input type="checkbox"/> Increased <input type="checkbox"/> Decreased
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**Applicable Service(s) or Service Exhibit(s) information: QC Metro Ethernet Intrastate**  
**Approved Non-Standard Pricing:**

Check those that apply:  Net Rates    Custom Discounts    Delete/Replace existing pricing    Add all new rates/locations  
 NRC Waiver per below

Bandwidth Profile (1000 Mbps Ports)	36 Mo. MRC	60 Mo. MRC	36 Mo. NRC	60 Mo. NRC
3 Mbps Bandwidth Profile	\$307.00	\$285.00	\$600.00	\$0.00
5 Mbps Bandwidth Profile	\$379.00	\$352.00	\$600.00	\$0.00
7 Mbps Bandwidth Profile	\$380.85	\$358.00	\$600.00	\$0.00
10 Mbps Bandwidth Profile	\$536.17	\$504.00	\$600.00	\$0.00
20 Mbps Bandwidth Profile	\$576.60	\$542.00	\$600.00	\$0.00
30 Mbps Bandwidth Profile	\$615.96	\$579.00	\$600.00	\$0.00
40 Mbps Bandwidth Profile	\$656.38	\$617.00	\$600.00	\$0.00
50 Mbps Bandwidth Profile	\$695.74	\$654.00	\$600.00	\$0.00
60 Mbps Bandwidth Profile	\$736.17	\$692.00	\$600.00	\$0.00
70 Mbps Bandwidth Profile	\$775.53	\$729.00	\$600.00	\$0.00
80 Mbps Bandwidth Profile	\$815.96	\$767.00	\$600.00	\$0.00
90 Mbps Bandwidth Profile	\$855.32	\$804.00	\$600.00	\$0.00
100 Mbps Bandwidth Profile	\$893.62	\$840.00	\$600.00	\$0.00

**QWEST CONFIDENTIAL**  
**NOT CONTRACTUALLY BINDING. FOR INTERNAL USE ONLY.**

11.106

**Pricing & Offer Management (POM)  
DECISION SUMMARY**

**NOT CONTRACTUALLY BINDING. FOR INTERNAL USE ONLY.**

Bandwidth Profile (1000 Mbps Ports)	36 Mo. MRC	60 Mo. MRC	36 Mo. NRC	60 Mo. NRC
100 Mbps Bandwidth Profile	\$893.62	See Exhibit 1 of Contract	\$600.00	\$0.00
200 Mbps Bandwidth Profile	\$1,244.68	See Exhibit 1 of Contract	\$600.00	\$0.00
300 Mbps Bandwidth Profile	\$1,595.74	See Exhibit 1 of Contract	\$600.00	\$0.00
400 Mbps Bandwidth Profile	\$1,946.81	See Exhibit 1 of Contract	\$600.00	\$0.00
500 Mbps Bandwidth Profile	\$2,296.81	See Exhibit 1 of Contract	\$600.00	\$0.00
600 Mbps Bandwidth Profile	\$2,647.87	See Exhibit 1 of Contract	\$600.00	\$0.00
700 Mbps Bandwidth Profile	\$2,998.94	See Exhibit 1 of Contract	\$600.00	\$0.00
800 Mbps Bandwidth Profile	\$3,350.00	See Exhibit 1 of Contract	\$600.00	\$0.00
900 Mbps Bandwidth Profile	\$3,701.06	See Exhibit 1 of Contract	\$600.00	\$0.00
1000 Mbps Bandwidth Profile	\$4,051.06	See Exhibit 1 of Contract	\$600.00	\$0.00

\$35.00 MRC per 5 Mbps QoS increment.

**Special Instructions/Notes:**

- Standard Channel Integration Engagement (CIE) rules apply.
- Funding approval may require commission adjustment and customer may need to pay special construction charges.
- Pricing approval is net of all discounts.
- Pricing is subject to Network Availability.
- Pricing does not include any Taxes, Fees, or Surcharges.
- No promotions may be included with this offer unless specifically approved by P&OM.
- All costs associated with the local access interconnections and access-related charges without limitation, inside wiring charges assessed by the Local Exchange Carrier (LEC), construction charges assessed by the LEC and distance and termination charges assessed by the LEC shall be paid by Customer.
- Should customer elect to terminate local access circuit, prior to the end of the initial 12 month period, any previously waived NRCs will be assessed for that local access circuit, unless specifically addressed in 'Special Instructions/Notes' section above.
- It is understood that if the customer provides their own local access to the proposed solution and services above, Qwest will assess the customer 'Customer Provided Access (CPA)' fees as provided in Q.Pricer.
- **Qwest Internal Document - Not for Customer Distribution.**
- **Sales is responsible for creating customer facing document based on this P&OM Approval.**

**Regulatory Requirements: yes**

**QWEST CONFIDENTIAL  
NOT CONTRACTUALLY BINDING. FOR INTERNAL USE ONLY.**

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

IT  
Initiating Department

Bob Bunting  
Contact Person

May 23, 2017  
Meeting Date

12  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE PURCHASE OF SERVER EQUIPMENT IN THE AMOUNT OF \$63,936.04 UNDER THE ADVANCED NETWORK MANAGEMENT STATE PURCHASING AGREEMENT #40-000-13-00020 WAN/LAN. ADDITIONALLY APPROVE ASSOCIATED BUDGET REVISION AND RESOLUTION TO REALLOCATE OPERATING BUDGET TO CAPITAL AND DELEGATE SIGNATURE AUTHORITY TO THE COUNTY MANAGER FOR ALL RELATED DOCUMENTS.**

**SUMMARY OF ITEM TO BE CONSIDERED**

**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

The Board of County Commissioners is asked to approve a budget revision and resolution transferring operating funds to capital from the County Manager Contingency Fund for the purchase of servers and associated equipment. In addition, the Board is asked to approve the purchase of servers and associated equipment in the amount of \$63,936.04 and delegate signature authority to the County Manager for all related documents, contracts, change orders and amendments.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Budget Revision, Budget Resolution, executive summary and quote.

**SUMMARY OF FINANCIAL IMPACT**

Equipment will be purchased from the approved budget:

10005-10225-74140-900: \$63,936.04  
Please see attached Budget Revision for details.

**ADMINISTRATIVE REVIEW AND APPROVAL**

[Signature] Finance

\_\_\_\_\_ Legal

[Signature] County Manager/  
Agenda Review

DB Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No      For Recording?  Yes  No

Return original/s to:      Name      Dept.

Send copy of recorded original/s (resolution and ordinances only) to:      Name      Dept.

Deadline for return of document/s? Yes, return by:      or  No



STATE OF NEW MEXICO  
COUNTY OF DOÑA ANA

BUDGET RESOLUTION NO. 17 \_\_\_\_\_

2016 – 2017 BUDGET RESOLUTION  
(105th FISCAL YEAR)

**WHEREAS**, the governing body in and for the County of Doña Ana, State of New Mexico, has developed a budget revision attached hereto for the fiscal year 2016 –2017; and

**WHEREAS**, said budget revision was developed on the basis of need of the County; and

**WHEREAS**, it is the majority opinion of this Board that the proposed budget revision meets the requirements as currently determined for the fiscal year 2016 – 2017.

**NOW THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Doña Ana County, State of New Mexico, hereby adopts this budget revision attached hereto and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

Resolved in the Board session this 23<sup>th</sup> of May, 2017.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
**Isabella Solis, Chair, District 4** For / Against

\_\_\_\_\_  
**John L. Vasquez, Vice-Chair, District 5** For / Against

\_\_\_\_\_  
**Billy G. Garrett, District 1** For / Against

\_\_\_\_\_  
**Ramon S. Gonzalez, District 2** For / Against

\_\_\_\_\_  
**Benjamin L. Rawson, District 3** For / Against

**ATTEST:**

\_\_\_\_\_  
**Scott A. Krahlng**  
County Clerk

# DOÑA ANA COUNTY

## BUDGET REVISIONS

(STD 1001 - Updated 08/06/15)

**Meeting Date:** May 23, 2017

**FUND/ORGANIZATION:** Manager's Contingency Fund  
(SPELL OUT NAMES)

**ACCOUNT NUMBERS:** 10005-10225-71030-100/10005-10225-74140-900  
(FUND NUMBER - ORGANIZATION NUMBER - ACCOUNT NUMBER)

1.) Item was \_\_\_\_\_ was not X included in the department's original budget request.

2.) Type of Expenditure:  
R - Recurring Costs are items which will occur more than once  
OT - Non-recurring costs are for one-time expenses that are unlikely to occur again

3.) Type of Adjustment:  
A.) Inter-departmental transfer (between funds or different departments)  
B.) Supplemental appropriation (new funds requested from new revenue sources)  
C.) Use of Cash Reserves (fund request from reserves)

4.) The Budget Adjustment Requested Will Require The Following Revisions:

ACCOUNT NUMBER	2) Type Of Expend.	3) Type Of Adjust.	APPROVED BUDGET	INCREASE OR <DECREASE>	REVISED BUDGET
			\$0.00	\$0.00	\$0.00
<b>Total - Revenues</b>			<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>TOTAL - REVENUES</b>			<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
10005-10225-71030-100 Professional Services	OT	A	\$294,700.00	(\$63,936.04)	\$230,763.96
10005-10225-74140-900 Capital Outlay/Data Equip	OT	A	\$0.00	\$63,936.04	\$63,936.04
<b>TOTAL EXPENDITURES</b>			<b>\$294,700.00</b>	<b>\$0.00</b>	<b>\$294,700.00</b>
<b>TOTAL - EXPENDITURES</b>			<b>(\$294,700.00)</b>	<b>\$0.00</b>	<b>(\$294,700.00)</b>
<b>TOTAL - REVENUE (PLUS)</b>			<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>GRAND TOTALS (NET EFFECT) -</b>			<b>(\$294,700.00)</b>	<b>\$0.00</b>	<b>(\$294,700.00)</b>

5.) Reasons For the Budget Adjustment Requests:  
Reallocate operating budget to capital in order to purchase server equipment.

6.) Approval Requested By:  Date: 5/2/2017  
(Department Head Signature Required)

7.) Approved By Budget Office.:  Date: 5/2/17  
(Budget Office Signature Required)

8.) Approved By Finance Dept.: \_\_\_\_\_ Date: \_\_\_\_\_  
(Approved as to availability of Funds Only)

9.) Approved By County Manager: \_\_\_\_\_ Date: \_\_\_\_\_

10.) Approved by County Commission: \_\_\_\_\_ Date: \_\_\_\_\_  
(Resolution Number) \_\_\_\_\_

**11.) For Finance Department Use Only:**

Budget Revision (Per Approved Resolution And/Or County Manager):

Batch Number: \_\_\_\_\_

Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Completed by: \_\_\_\_\_

Date: \_\_\_\_\_

# Executive Summary Server Replacements

The IT department proposes to replace 12 servers no longer supported by their manufacturers, in accordance with the IT department's Server Replacement Plan. Each of these servers plays a critical role in our on premise, virtualized environment. As such, they are mission critical IT hardware and continuing to use them at this point would create unacceptable risk of unrecoverable hardware failure.

The servers with which we propose to replace them are "blade servers". They are designed to save space and reduce cabling by running up to eight servers in a single chassis. We will also gain other benefits such as

- Servers with the latest generation Intel CPUs
- Very large amounts of server memory (256GB RAM each), with the ability to add even more if needed in the future (up to 768GB)
- Increased system performance
- Simplification of our systems, by replacing "Boot from Fibre Channel" with "Boot from Flash", thus eliminating an entire legacy protocol suite from our environment
- A more flexible environment, since each blade server can have different profiles applied to give it different characteristics and capabilities
- All of which translates to greater ability to meet future demands without buying more equipment or, at least, while buying less equipment

Thus, the proposed purchase resolves concerns regarding warranty/support coverage on existing servers, saves space in our computing environment and improves performance. Each of these servers has an expected lifetime of 5 years or more.



# QUOTE

Number ANMQ13967

Date Apr 3, 2017

Expiration Date Apr 30, 2017

4601 Columbine Ave. NE, Albuquerque, NM 87113  
t. 5058888822 f. 5058889452

### Sold To

### Ship To

### Your Sales Rep

**Dona Ana County**  
Bob Bunting  
845 N Motel Blvd  
Las Cruces, NM 88007  
United States

**Dona Ana County**  
Bob Bunting  
845 N Motel Blvd  
Las Cruces, NM 88007  
United States

**James Covey and Teresa Esparza**  
5058888822  
james.covey@anm.com;  
teresa.esparza@anm.com

**Phone** (575) 525-5903  
**Fax**

**Phone** (575) 525-5903  
**Fax**

Terms	P.O. Number	Ship Via	Contract Number
-------	-------------	----------	-----------------

Net 30

SPA 40-000-13-00020 WAN/LAN

Description	Qty	Unit List	Unit Price	Ext. Price
<b>Government Center</b>				
UCS-SP-5108-AC	1	\$14,490.00	\$5,506.20	\$5,506.20
UCS SP Select 5108 AC2 Chassis w/2208 IO, 4x SFP cable 3m				
CON-OSP-5108AC	1	\$273.00	\$223.86	\$223.86
ONSITE 24X7X4 UCS SP Select 5108 AC2 Chassis w/2208 IO, 4x S				
CAB-US515P-C19-US	4	\$0.00	\$0.00	\$0.00
NEMA 5-15 to IEC-C19 13ft US				
N20-FAN5	8	\$0.00	\$0.00	\$0.00
Fan module for UCS 5108				
SFP-H10GB-CU3M	4	\$0.00	\$0.00	\$0.00
10GBASE-CU SFP+ Cable 3 Meter				
UCSB-PSU-2500ACDV	4	\$0.00	\$0.00	\$0.00
2500W Platinum AC Hot Plug Power Supply - DV				
UCSB-5108-PKG-HW	1	\$0.00	\$0.00	\$0.00
UCS 5108 Packaging for chassis with half width blades.				
N01-UAC1	1	\$0.00	\$0.00	\$0.00
Single phase AC power module for UCS 5108				
UCS-IOM-2208XP	2	\$0.00	\$0.00	\$0.00
UCS 2208XP I/O Module (8 External, 32 Internal 10Gb Ports)				
N20-CBLKB1	8	\$0.00	\$0.00	\$0.00
Blade slot blanking panel for UCS 5108/single slot				
N20-CAK	1	\$0.00	\$0.00	\$0.00
Accessory kit for UCS 5108 Blade Server Chassis				
N20-FW014	1	\$0.00	\$0.00	\$0.00
UCS 5108 Blade Chassis FW Package 3.1				
UCS-SP-B200M4-BA3	4	\$0.00	\$0.00	\$0.00
UCS SPSelect B200M4 Adv3 w/2xE52650v4,8x32GB,VIC1340				
UCS-SP-B200M4-B-A3	4	\$18,000.00	\$6,840.00	\$27,360.00
B200M4 Adv3 w/2xE52650v4,8x32GB,VIC1340				
CON-OSP-B200BA3	4	\$386.00	\$316.52	\$1,266.08
SNTC 24X7X4OS, (Not sold standalone)B200M4 Adv3 w/2xE52650v4				
UCS-CPU-E52650E	8	\$0.00	\$0.00	\$0.00
2.20 GHz E5-2650 v4/105W 12C/30MB Cache/DDR4 2400MHz				
UCS-MR-1X322RV-A	32	\$0.00	\$0.00	\$0.00
32GB DDR4-2400-MHz RDIMM/PC4-19200/dual rank/x4/1.2v				

12.5

Description	Qty	Unit List	Unit Price	Ext. Price
UCS-SD-32G-S	8	\$162.00	\$61.56	\$492.48
UCS-SP-M32-RVA	32	\$1,190.00	\$452.20	\$14,470.40
UCSX-TPM2-002	4	\$75.00	\$28.50	\$114.00
UCSB-MLOM-40G-03	4	\$0.00	\$0.00	\$0.00
UCSB-LSTOR-BK	8	\$0.00	\$0.00	\$0.00
UCS-M4-V4-LBL	4	\$0.00	\$0.00	\$0.00
UCSB-HS-EP-M4-F	4	\$0.00	\$0.00	\$0.00
UCSB-HS-EP-M4-R	4	\$0.00	\$0.00	\$0.00
<b>SubTotal</b>				\$49,433.02
<b>Detention Center</b>				
UCS-SP-B200M4-BS1	3	\$0.00	\$0.00	\$0.00
UCS-SP-B200M4-B-S1	3	\$11,565.00	\$4,394.70	\$13,184.10
CON-OSP-B200BS1	3	\$386.00	\$316.52	\$949.56
UCS-CPU-E52630E	6	\$0.00	\$0.00	\$0.00
UCS-MR-1X161RV-A	24	\$0.00	\$0.00	\$0.00
UCS-SD-32G-S	6	\$162.00	\$61.56	\$369.36
UCSB-MLOM-40G-03	3	\$0.00	\$0.00	\$0.00
UCSB-LSTOR-BK	6	\$0.00	\$0.00	\$0.00
UCS-M4-V4-LBL	3	\$0.00	\$0.00	\$0.00
UCSB-HS-EP-M4-F	3	\$0.00	\$0.00	\$0.00
UCSB-HS-EP-M4-R	3	\$0.00	\$0.00	\$0.00
<b>SubTotal</b>				\$14,503.02

<b>SubTotal</b>	\$63,936.04
<b>Tax</b>	\$0.00
<b>Shipping</b>	\$0.00
<b>Total</b>	<b>\$63,936.04</b>

I agree to the above pricing and all Terms and Conditions as stated on the accompanying document. I hereby authorize ANM to order products and/or perform services as stated.

Additional Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors. Prices subject to change. NTTC required for non-taxable sales.

Signature

Date

12.6



## Terms and Conditions

**TERMS OF PAYMENT** - Payment is due NET 30 days from invoice date for customers with established credit standing, unless otherwise indicated on the Advanced Network Management (ANM) agreement, quote, or proposal. A service charge of 1-1/2% per month will be added to all past due balances. Accounts that are more than 30 days past due may be referred to a third party for collections.

**TAXES** - Applicable taxes will be added to all prices unless a proper tax exemption certificate is on file at our office at the time the order is placed.

**SECURITY INTEREST** - Customer hereby grants to ANM a continuing purchase money security interest, and ANM retains a purchase money security interest under the Uniform Commercial Code as enacted in the State of New Mexico, for any and all goods and equipment sold to Customer (and any proceeds arising from the sale, assignment or transfer of such goods and equipment) until payment in full has been made to ANM. In the event of default by Customer under the terms herein, ANM shall have all the rights and remedies of a secured creditor under New Mexico U. C. C. provisions. Customer agrees to execute financing statements and other documents as ANM may request in order to perfect ANM's security interest hereunder.

**ORDERS** - All orders are subject to credit approval. All orders placed with ANM, regardless of how transmitted, are subject to our approval and acceptance. Orders involving special merchandise not regularly stocked by us are subject to cancellation only with the approval and terms of the supplier on whom our order in turn has been placed.

**SHIPPING** - ANM will use our judgment in selecting the best carrier for all orders without shipping instructions. Terms are F.O.B. shipping point.

**EQUIPMENT WARRANTIES** - ANM does not warranty any of the hardware or software provided to customer unless such warranty is purchased by the customer for specific equipment under an Extended Protection Plan (EPP). Customer agrees specifically to rely only upon the manufacturer's warranty as to the hardware and software installed. This warranty is in lieu of all other warranties, expressed or implied, including, but not limited to any implied warranties of merchantability or fitness for a particular purpose.

**DAMAGE CLAIMS** - Claims for shortages or damaged equipment on deliveries by ANM personnel must be made within 5 days of delivery date. Claims for damage or loss in transit on shipments made by common carrier must be made to the carrier by the purchaser and in accordance with the terms of the carrier. All merchandise shipped direct is F.O.B. shipping point.

**SOFTWARE** - The sale of or rights to the use of software is subject to the manufacturer's warranties and applicable licensing agreements. It is the policy of ANM not to install or configure software that is not legally licensed. ANM will assist the customer in maintaining appropriate legal software licensing.

**ADDITIONAL TERMS & CONDITIONS** - The standard terms and conditions of sales of the manufacturer whose products are being resold by ANM are made a part of this agreement. Additional shipping charges may apply. Prices may be subject to change.

**CUSTOMER RESPONSIBILITY** - The customer shall be solely and exclusively responsible for the following: (A) Approve the design specifications and scope of work covered by this agreement. (B) Insure that the operational system meets applicable designs, specifications, standards, laws, safety requirements, environmental requirements, and good practices. (C) Obtain and/or pay for any permits or fees which may be necessary in order to perform the requested Customer Support Services.

**LIABILITY** - Except to the extent finally determined to have resulted from Advanced Network Management, Inc.'s gross negligence or willful misconduct: (1) Advanced Network Management, Inc.'s maximum liability to the customer for any reason, including Advanced Network Management, Inc.'s negligence, relating to the services and/or product sold under this agreement shall be limited to the fees paid to Advanced Network Management, Inc. for the services or product giving rise to liability and (2) the customer will indemnify and hold harmless Advanced Network Management, Inc. and its personnel from any claims, liabilities, costs and expenses arising for any reason, including Advanced Network Management, Inc.'s negligence, relating to the services under this agreement.

**DISPUTE RESOLUTION** - Each party agrees that they have a common interest in preventing and resolving misunderstandings and differences of interpretation that may arise out of or related to this Agreement. In the event of any controversy or claim arising out of this agreement, such controversy or claim shall be settled in Albuquerque, New Mexico, in accordance with the commercial rules of the American Arbitration Association then in affect, and judgment of the award may be entered in any court having jurisdiction thereof.

**SEVERABILITY** - If any provision of this agreement shall be held invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this agreement is invalid or unenforceable-but that by limiting such provision will it become valid and enforceable then such provision shall be deemed to be written, construed and enforced as so limited. Interpretation of this agreement shall be governed by the laws of the State of New Mexico.

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Sheriff's Department  
Initiating Department

May 23, 2017  
Meeting Date

Enrique Vigil, Sheriff   
Contact Person

13  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE UTILIZATION OF SPA 70-000-16-00037AA TO PURCHASE 160 TACTEC CARRIERS  
AND SPECIAL THREAT PLATES**

**SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

Approve utilization of SPA 70-000-16-00037AA to purchase 160 vest carriers and special threat plates. These body armor vests will withstand rifle ammunition. This purchase will be covered by \$63,506 in Confiscated Assets money, and \$33,934 in existing DASO Law Enforcement Operating accounts.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Executive Summary  
Equipment Quote

**SUMMARY OF FINANCIAL IMPACT**

25210-20102-72492 - \$63,506  
10002-20101-72492 - \$33,934

**ADMINISTRATIVE REVIEW AND APPROVAL**

 Finance

\_\_\_\_\_ Legal

 County Manager/  
Agenda Review

 Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature? \_\_\_ Yes No      For Recording? \_\_\_ Yes No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No



Executive Summary

*5/23/2017 BOCC Meeting*

Title: Approve Utilization of SPA 70-000-16-00037AA to Purchase 160 Tactec Carriers and Special Threat Plates

**Background:**

We are requesting permission to use \$63,506 in Confiscated Assets funds and \$33,934 in existing DASO Law Enforcement operating accounts to purchase 160 vest carriers and special threat plates. These body armor vests will withstand rifle ammunition and provide for officer safety. Current body armor is not rated to withstand rifle ammunition. This could pose grave danger to our deputies in an active shooter situation.

2420 Comanche Rd. NE Ste. B-5  
 Albuquerque, NM 87109  
 Ph: 505-359-6690  
 Fax: 505-890-8421



# QUOTE

## IPS Tactical

Go Tactical or Go Home

TO: KEN ROBERTS  
 DONA ANA COUNTY  
 845 N. MOTEL BLVD.  
 LAS CRUCES, NM 88007  
 505-525-1911  
 KENR@DONAANACOUNTY.ORG

QUOTE # DAC 0039  
 DATE: APRIL 21, 2017

EXPIRATION DATE: MAY 1, 2017

SALESPERSON	FOP	INSTORE OR DROP SHIP	SHIPPING TERMS	DELIVERY DATE	PAYMENT TERMS	DUE DATE
J. Waters		TBD				

QTY	ITEM #	DESCRIPTION	UNIT PRICE	LINE TOTAL
320	L210/H Shock 10x12	Hard Armor Special Threat Plate 10x12	\$210	\$67,200.00
160	56100-328	5.11 Tactec Plate Carrier Sandstone	\$189.00	\$30,240.00
<p style="text-align: center;"><b>Quotation Prepared by: Josh Waters</b></p> <p>This is a quotation on the goods named, subject to the conditions noted below: all products are provided with manufacture's warranties; no other warranties are expressed or implied by the seller.</p>			<b>SUBTOTAL</b>	\$97,440.00
			<b>TAX</b>	
			<b>TOTAL</b>	\$97,440.00

To accept this quotation, sign here and return: \_\_\_\_\_  
 Date: \_\_\_\_\_

Thank you for your business!!!

13.2



State of New Mexico  
General Services Department  
Purchasing Division

Statewide Price Agreement Amendment

**Awarded Vendor:**  
Central Lake Armor Express, Inc.  
dba Armor Express  
PO Box 516  
7915 Cameron St.  
Central Lake MI49622  
  
Telephone No.: 231-544-6090 Ext. 373

Price Agreement Number: 70-000-16-00037AA

Price Agreement Amendment No.: One

Term: December 20, 2016 through March 15, 2018

**Ship To:**  
All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public bodies  
allowed by law.

Procurement Specialist: Kathy Sanchez

Telephone No.: (505) 827-0487

**Invoice:**  
As Requested


**Title: Body Armor Products**

**This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof and is issued to reflect the following effective immediately:**

**See attached list of Distributors**

**The provisions of the Price Agreement shall remain in full force and effect, except as modified by this amendment.**

**Accepted for the State of New Mexico**

  
New Mexico State Purchasing Agent

Date: 1/25/2017

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472  
KS



**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Sheriff's Department  
Initiating Department

Enrique Vigil, Sheriff  
Contact Person

May 23, 2017  
Meeting Date

14  
Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE UTILIZATION OF GSA CONTRACT #GS07F0004Y TO PURCHASE 3 AUTOMATED LICENSE PLATE READER SPEED TRAILERS AND ASSOCIATED BUDGET REVISION AND RESOLUTION**

SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

Approve utilization of GSA contract #GS07F0004Y to purchase 3 automated license plate reader speed trailers as well as the associated budget revision and resolution. This purchase will be covered by a transfer of \$60,000 from DASO DWI Forfeiture Operating and \$101,096 DASO Law Enforcement Operating accounts.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Executive Summary  
Budget Resolution  
Budget Revision  
Equipment Quote

SUMMARY OF FINANCIAL IMPACT

10002-20101-74146 - \$161,096

ADMINISTRATIVE REVIEW AND APPROVAL

 Finance

\_\_\_\_\_ Legal

 County Manager/  
Agenda Review

 Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Other

DOCUMENT CONTROL

Original/s for signature? \_\_\_ Yes No      For Recording? \_\_\_ Yes No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

Executive Summary

*5/23/2017 BOCC Meeting*

Title: Approve Utilization of GSA Contract #GS07F0004Y to Purchase 3 Automated License Plate Reader Speed Trailers and Associated Budget Revision and Resolution

**Background:**

We are requesting permission to transfer \$60,000 in DWI Forfeiture operating accounts, and \$101,096 in Law Enforcement operating accounts to Law Enforcement Capital to purchase 3 automated license plate reader and speed trailers. These trailers will be utilized in school zones as well as other areas of high public safety concern.

STATE OF NEW MEXICO  
COUNTY OF DOÑA ANA

BUDGET RESOLUTION NO. 17 \_\_\_\_\_

2016 – 2017 BUDGET RESOLUTION  
(105th FISCAL YEAR)

**WHEREAS**, the governing body in and for the County of Doña Ana, State of New Mexico, has developed a budget revision attached hereto for the fiscal year 2016 –2017; and

**WHEREAS**, said budget revision was developed on the basis of need of the County; and

**WHEREAS**, it is the majority opinion of this Board that the proposed budget revision meets the requirements as currently determined for the fiscal year 2016 – 2017.

**NOW THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Doña Ana County, State of New Mexico, hereby adopts this budget revision attached hereto and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

Resolved in the Board session this 23<sup>rd</sup> day of May, 2017.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
**Isabella Solis, Chair, District 4** For / Against

\_\_\_\_\_  
**Billy G Garrett, District 1** For / Against

\_\_\_\_\_  
**Ramon Gonzalez, District 2** For / Against

\_\_\_\_\_  
**Benjamin L. Rawson, District 3** For / Against

\_\_\_\_\_  
**John Vasquez, District 5** For / Against

**ATTEST:**

\_\_\_\_\_  
**Scott A. Krahling**  
County Clerk

# DOÑA ANA COUNTY

## BUDGET REVISIONS

(STD 1001 - Updated 08/06/15)

Meeting Date: May 23, 2017

FUND/ORGANIZATION: \_\_\_\_\_ As Listed  
(SPELL OUT NAMES)

ACCOUNT NUMBERS: \_\_\_\_\_ As Listed  
(FUND NUMBER - ORGANIZATION NUMBER - ACCOUNT NUMBER)

1.) Item was  X  was not \_\_\_\_\_ included in the department's original budget request.

2.) Type of Expenditure:  
 R - Recurring Costs are items which will occur more than once  
 OT - Non-recurring costs are for one-time expenses that are unlikely to occur again

3.) Type of Adjustment:  
 A.) Inter-departmental transfer (between funds or different departments)  
 B.) Supplemental appropriation (new funds requested from new revenue sources)  
 C.) Use of Cash Reserves (fund request from reserves)

4.) The Budget Adjustment Requested Will Require The Following Revisions:

ACCOUNT NUMBER	2) Type Of Expend.	3) Type Of Adjust.	APPROVED BUDGET	INCREASE OR <DECREASE>	REVISED BUDGET
10002-20104-54227-200 DWI Forfiture Program	OT	A	\$150,000.00	\$10,300.00	\$160,300.00
<b>Total - Revenues</b>			<b>\$150,000.00</b>	<b>\$10,300.00</b>	<b>\$160,300.00</b>
<b>TOTAL - REVENUES</b>			<b>\$150,000.00</b>	<b>\$10,300.00</b>	<b>\$160,300.00</b>
10002-20104-73260-200 Sheriff's Supplies	OT	A	\$46,025.00	\$10,300.00	\$56,325.00
					\$0.00
10002-20101-74146-900 Capital Outlay/Equip	OT	A	\$0.00	\$161,096.00	\$161,096.00
					\$0.00
10002-20104-72416-200 Contractual Services	OT	A	\$49,500.00	(\$2,700.00)	\$46,800.00
10002-20104-72476-200 Equipment Under \$5,000	OT	A	\$15,000.00	(\$1,800.00)	\$13,200.00
10002-20104-73260-200 Sheriff's Supplies	OT	A	\$56,325.00	(\$55,500.00)	\$825.00
					\$0.00
10002-20101-71030-200 Professional Services	OT	A	\$157,000.00	(\$84,966.00)	\$72,034.00
10002-20101-72410-200 Building Rental	OT	A	\$10,500.00	(\$10,500.00)	\$0.00
10002-20101-72416-200 Contractual Services	OT	A	\$99,000.00	(\$5,630.00)	\$93,370.00
<b>TOTAL EXPENDITURES</b>			<b>\$433,350.00</b>	<b>\$10,300.00</b>	<b>\$443,650.00</b>
<b>TOTAL - EXPENDITURES</b>			<b>(\$433,350.00)</b>	<b>(\$10,300.00)</b>	<b>(\$443,650.00)</b>



TOTAL - REVENUE (PLUS)			\$150,000.00	\$10,300.00	\$160,300.00
GRAND TOTALS (NET EFFECT) -			(\$283,350.00)	\$0.00	(\$283,350.00)

5.) Reasons For the Budget Adjustment Requests:  
 Increase revenue within the DWI Forfeiture org to reflect unanticipated revenues. Also to transfer available budget from DWI Forfeiture Operating and Law Enforcement Operating section of accounts to Law Enforcement - Capital Equipment to allow for purchase of 3 Automated License Plate Reader speed trailers.

6.) Approval Requested By:  Date: 5-16-17  
 (Department Head Signature Required)

7.) Approved By Budget Office.:  Date: 5/16/17  
 (Budget Office Signature Required)

8.) Approved By Finance Dept.: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Approved as to availability of Funds Only)

9.) Approved By County Manager: \_\_\_\_\_ Date: \_\_\_\_\_

10.) Approved by County Commission: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Resolution Number) \_\_\_\_\_

**11.) For Finance Department Use Only:**  
 Budget Revision (Per Approved Resolution And/Or County Manager):

Batch Number: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_

## QUOTE

Prepared By: Desiree Dorrie desiree.dorrie@elsag.com

Phone: 970-560-7990

Please include the quote number on your purchase orders and email them to sales@elsag.com for processing

Quote#: 14047	Quote Date: 3/30/2017
Funding Source:	Quote Expiry Date: 6/30/2017
Grant Details:	Requested Delivery Date: 5/31/2017
Payment Method:	Rate Sheet: Gsa Price
Terms: Net 30 days from date of shipment. If installation is required then Net 30 days from the Installation Date. Elsag agrees not to ship equipment until an Installation Date is agreed upon by the Parties. All orders shipped FOB Greensboro	

Contracts: GSA Schedule 84 Contract #GS07F0004Y

Comments: RESELLER GTV LOCATED IN ELEPHANT BUTTE FOR LOCAL SERVICE  
FIRST YEAR WARRANTY ON LPR SYSTEM IS FREE  
MPH TRAILER WITH TWO LPR CAMERAS AND POWER UPGRADE KIT  
50ft RANGE / 10-12 DAYS RUN TIME

<b>Bill To:</b>	Dona Ana County Sheriff's Office - NM 845 North Motel Boulevard Las Cruces, NM 88007 United States	<b>Ship To:</b>	Dona Ana County Sheriff's Office - NM 845 North Motel Boulevard Las Cruces, NM 88007
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Product Qty	Product/Service	Unit Price	Amount
3	140302U - Radar Trailer w/ 2 Camera Upgrade Model (3) 411256 - Radar Trailer Speed Ctrl 18 (3) 421752-2 - LOW POWER RADAR TRAILER- 2 CAM - Kit (6) 412624-16 - F2 LP Bulkhead Cable 16ft (3) 510033-CSC - Car System Version 6.X - EOC Connected <i>MPH Speed Patrol 18" Trailer</i>	\$16,635.00	\$49,905.00
3	421753 - RADAR TRAILER UPGRADE KIT - FACTORY <i>Upgraded power supply for 10-12 day runtime</i>	\$9,875.00	\$29,625.00
3	421554 - (421554) - AD3-FH Cam 25/35mm 740nm <i>FH camera/processor with 50ft range</i>	\$8,950.00	\$26,850.00
3	421554 - (421554) - AD3-FH Cam 25/35mm 740nm <i>FH camera/processor with 50ft range</i>	\$8,950.00	\$26,850.00
3	413030 - WIRELESS MODEM AIRLINK GX450 VERIZON ATT	\$790.00	\$2,370.00
1	210022 - EOC Initial Configuration <i>One-time setup charge for back-office server configuration - NONRECURRING COST</i>	\$1,250.00	\$1,250.00
6	510322-5.X - EOC Operation Center License 5.X <i>One-time software license fee per processor - NONRECURRING COST</i>	\$1,275.00	\$7,650.00
844	210012 - Shipping Service	\$4.00	\$3,376.00

Date Printed: 5/3/2017

14.5

Product Qty	Product/Service	Unit Price	Amount
1	210003-F - Engineering Day - Field Support <i>Initial deployment and on-site training</i>	\$1,250.00	\$1,250.00
6	520001-Covert - 1 Year Standard Hardware & Software Extended Warranty Covert System <i>Years 2 and 3 for three trailers</i>	\$1,995.00	\$11,970.00
Subtotals	Goods & Services Sub-total (Pre-tax): Contract Items		\$161,096.00
	Goods & Services Sub-total (Pre-Tax): Non Contract Items		\$0.00
Upfront	Goods & Services Sub-total (Pre-tax):		\$161,096.00
Tax	Tax Exempt		\$0.00
Total	Goods & Services Total:		\$161,096.00

## Purchasing Terms and Conditions

Unless the Purchase Order is pursuant to a State or Federal cooperative purchasing agreement, or a separately executed Master Agreement, these Terms and Conditions supersede and replace any prior estimate, offer, quote, agreement, understanding or arrangement whether written or oral between the parties. If there is a discrepancy, please contact your account manager for correction.

These Terms and Conditions may not be changed or modified unless in writing and signed by authorized representative of Selex ES, Inc. Selex ES, Inc. will not be bound by any terms of Buyer's purchase order unless expressly agreed to in writing and signed by an authorized representative of Selex ES, Inc.

**Shipment and Delivery.** All orders shipped FOB Greensboro.

For purchases of Products that require installation: Unless otherwise agreed to by the Parties, Supplier agrees not to ship Product until an Installation date is scheduled.

**Title.** Ownership of and Title to the Products shall transfer to the Customer upon shipment. All intellectual property rights, including without limitation, patents and /or the relevant applications, in or relating to the Products, to the Documentation and to the Software are and shall remain the property of the Supplier or its licensors. **Refer to the Selex ES Software License Agreement documentation provided with the shipment.**

**Payment Terms.** Supplier shall invoice Customer no later than sixty (60) calendar days after shipment of the Products and/or performance of any Work or Services. Payment is due Net 30 days.

**Warranty. One year of warranty, 24 hour telephone support, and initial training are included your purchase. Refer to the Selex ES Warranty Coverage documentation as provided. EXCEPT AS SET FORTH IN THIS AGREEMENT AND IN THE SELEX ES WARRANTY COVERAGE DOCUMENTATION, SUPPLIER MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED RELATING TO SUPPLIER'S PRODUCTS OR SERVICES.**

**FORCE MAJEURE.** Either Party shall be excused for delays in delivery or in performance where such delay is directly due to act of God, acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, or other similar causes beyond such Party's reasonable control. Such Party shall promptly give written notice to the other Party specifying the nature and probable extent of such delay. The Parties shall then immediately attempt to determine what fair and reasonable extension of schedules may be necessary. The parties agree to use their best efforts to mitigate the effects of the delay.

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Sheriff's Department  
Initiating Department

Enrique Vigil, Sheriff *EV*  
Contact Person

May 23, 2017  
Meeting Date

15  
Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE UTILIZATION OF SPA 70-000-16-00004 TO PURCHASE THREE 2017 CHEVROLET TAHOES**

SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

Approve utilization of SPA 70-000-16-00004 to purchase Three 2017 Chevrolet Tahoes as well as the associated budget revision and resolution. The three Tahoes will be used for training purposes. This purchase will be covered by \$95,223 in existing DASO Fleet Capital.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Executive Summary  
Vehicle Quotes

SUMMARY OF FINANCIAL IMPACT

60020-20101-74175 - \$95,223

ADMINISTRATIVE REVIEW AND APPROVAL

*el* Finance

Legal

*dm* County Manager/  
Agenda Review

*D3* Purchasing

Human Resources

Assistant County Manager

Planning

Other

DOCUMENT CONTROL

Original/s for signature?  Yes  No      For Recording?  Yes  No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or  No

Executive Summary

*5/23/2017 BOCC Meeting*

Title: Approve Utilization of SPA 70-000-16-00004 to Purchase Three 2017 Chevrolet Tahoes

**Background:**

We are requesting permission to use \$95,223 in existing Fleet – DASO Capital funds for the purchase of these vehicles. The Tahoes are crucial to officer safety. Currently EVOC (Emergency Vehicle Operating Course) tactics are taught in Crown Victorias. As the department is phasing out use of these vehicles, it is imperative that officers be trained on the correct platform. Failure to do so could lend the department to liability exposure in the event of an automobile accident due to lack of training.

Nobody Beats...  
**BRAD FRANCIS**  
AUTOMOTIVE GROUP



SPORTS  
CENTER

COLLISION  
CENTER

April 28, 2017

DONA ANA COUNTY/SHERIFF  
Las Cruces, New Mexico

NEW MEXICO STATE PRICE AGREEMENT #70-000-16-00004 *Track Vehicles*  
ITEM #6 2017 CHEVROLET TAHOE PPV

Base Price		\$31,171.00
Bluetooth		150.00
Window Tint		<u>420.00</u>
	SUB-TOTAL	\$31,741.00
		<u>X3</u>
	TOTAL	\$95,223.00

P.O. Box 2580 ★ Los Lunas ★ New Mexico 87031  
Chevrolet: (505) 866-3000 ★ Ford: (505) 866-3100 ★ Collision Center: (505) 866-3190  
Sports Center: (505) 268-1975

15.2

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Financial Services  
Initiating Department

May 23, 2017  
Meeting Date

Jo Ann Rowe, Financial Services Director  
Contact Person

16  
Agenda Item Number



**TITLE OF AGENDA ITEM TO BE CONSIDERED**  
**APPROVE RESOLUTION ADOPTING DOÑA ANA COUNTY'S FY2017-2018 PRELIMINARY BUDGET**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**  
Approval of Preliminary Budget Resolution for Fiscal Year 2017-2018 to properly reflect the transactions as identified by the staff of the DAC Finance Department. This resolution is necessary to maintain compliance with New Mexico Department of Finance and Administration (DFA) rules and regulations.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**  
Budget Resolution  
FY18 Budget Recapitulation  
FY18 Schedule of Transfers

**SUMMARY OF FINANCIAL IMPACT**  
This budget resolution will establish the County's preliminary operating budget for FY2017-2018 and will become effective when approved by DFA for operations beginning July 1, 2017.

**ADMINISTRATIVE REVIEW AND APPROVAL**

 <u>Jo Ann Rowe</u> Finance	_____ Legal	 County Manager/ Agenda Review
_____ Purchasing	_____ Human Resources	_____ Assistant County Manager
_____ Planning	_____ Other	

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No      For Recording?  Yes  No

Return original/s to: Marisol Richardson Name Finance Dept.

Send copy of recorded original/s (resolution and ordinances only) to:      Name      Dept.

Deadline for return of document/s? Yes, return by:      or  No



**STATE OF NEW MEXICO  
COUNTY OF DOÑA ANA**

**BUDGET RESOLUTION NO. 17 \_\_\_\_\_**

**2016 – 2017 BUDGET RESOLUTION  
(105th FISCAL YEAR)**

**WHEREAS**, the governing body in and for the County of Doña Ana, State of New Mexico, has developed a preliminary budget for the fiscal year 2017 –2018; and

**WHEREAS**, said preliminary budget was developed on the basis of need of the County; and

**WHEREAS**, it is the majority opinion of this Board that the proposed preliminary budget revision meets the requirements as currently determined for the fiscal year 2017 – 2018.

**NOW THEREFORE, BE IT RESOLVED** that the Board of County Commissioners of Doña Ana County, State of New Mexico, hereby adopts this preliminary budget revision attached hereto and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

Resolved in the Board session this 23<sup>rd</sup> of May, 2017.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

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**Isabella Solis, Chair, District 4** **For / Against**

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**John L. Vasquez, Vice-Chair, District 5** **For / Against**

---

**Billy G. Garrett, District 1** **For / Against**

---

**Ramon S. Gonzalez, District 2** **For / Against**

---

**Benjamin L. Rawson, District 3** **For / Against**

**ATTEST:**

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**Scott A. Krahling  
County Clerk**

**Budget Recap For FY18**

	Begin Cash	Revenue	Transfer	Expenditures	End Cash	Reserve	Adj. End Cash
10001 General Fund	10,224,436	47,689,953	(14,994,011)	33,865,169	9,055,209	8,466,292	588,916
10002 DASO General Fund	6,206,910	219,900	16,525,092	18,150,864	4,801,039	4,537,716	263,323
10003 Fire Chief - General Fund	558,910	82,150	1,471,495	1,532,031	580,524	383,008	197,516
10004 Gross Receipts	610,723	21,939,519	(22,491,696)	-	58,546	-	58,546
10005 Manager's Strategic Contingency Fd.	143,436	1,500	935,905	370,000	710,841	92,500	618,341
10008 Community Services	21,950	106,825	-	126,341	2,434	-	2,434
10010 County Clerk Equipment Recording	257,081	219,877	-	338,950	138,008	-	138,008
10020 Cost to State/Treasurer	1,000	-	-	-	1,000	-	1,000
10025 County Treasurer's Fees	15,759	2,747	-	12,600	5,906	-	5,906
10030 Environmental Expense Fund	290,616	591,799	1,820,000	2,138,365	564,050	534,591	29,459
10050 Environmental GRT Income	56,481	792,003	(820,000)	-	28,484	-	28,484
10055 Hospital Revenue	3,318,523	27,931	-	-	3,346,454	-	3,346,454
10060 Payment in Lieu of Taxes	212,913	3,044,325	(2,625,000)	478,442	153,796	119,611	34,186
10080 Road	1,850,068	3,327,581	4,007,835	8,287,813	897,671	690,651	207,020
21135 Federal Grants	33	492,158	-	491,977	214	-	214
21241 Housing Grants	460	-	-	-	460	-	460
22251 DWI Grant Fund	98,928	1,549,349	-	1,645,165	3,112	-	3,112
23111 State Appropriations	69,740	12,411,159	-	12,402,850	78,049	-	78,049
23120 Colonia's Initiative	5,579	546,235	-	547,590	4,223	-	4,223
23300 Sheriff's Grants-State	25,957	1,678,512	-	1,617,091	87,378	-	87,378
25110 Civil Preparedness - State	101,966	284,199	(261,894)	118,258	6,013	-	6,013
25112 Inmate Trust Fund	40,917	-	-	-	40,917	-	40,917
25113 Inmate Welfare Fund	1,051,058	266,400	(500,000)	201,800	615,658	-	615,658
25115 Corrections Fees	323,505	431,476	-	307,925	447,056	-	447,056
25118 Emergency Fund	666,867	5,500	-	150,000	522,367	37,500	484,867
25120 Farm & Range	5,004	12,650	25,000	36,500	6,154	-	6,154
25125 Fire Protection Excise Tax	236,738	1,583,647	(1,600,000)	-	220,385	-	220,385
25130 Fire Protection Expense Fund	6,101,074	48,718	1,600,000	3,964,500	3,785,292	-	3,785,292
25135 Flood Control	9,621,407	2,602,699	69	4,811,571	7,412,604	-	7,412,604
25140 Health Services Fund	3,739,929	7,219,076	(1,946,003)	6,088,450	2,924,552	-	2,924,552
25141 Hospital Lease	8,405,916	141,464	-	-	8,547,380	-	8,547,380
25142 Province Health Care Gt	1,766,401	14,968	-	300,000	1,481,369	75,000	1,406,369
25144 Crisis Triage Center	1,590,757	12,000	-	73,000	1,529,757	-	1,529,757
25145 Indigent Hospital Care	910,238	5,658,174	-	5,537,000	1,031,412	-	1,031,412
25150 Reappraisal/Administrative Fees	979,285	1,157,153	-	2,066,797	69,641	-	69,641
25153 TIDD Development Districts	-	-	-	-	-	-	-
25160 Spaceport Gross Receipts Tax	-	2,039,790	-	2,039,790	-	-	-
25210 Confiscated Assets	55	-	-	-	55	-	55
25230 Law Enforcement Protection	-	105,800	-	105,800	-	-	-
25305 Anthony EMS	1,150	9,050	-	10,200	-	-	-
25310 Chamberino EMS	2,103	7,062	-	9,165	-	-	-
25315 Chaparral EMS	1,505	8,360	-	9,865	-	-	-
25320 Dona Ana EMS	1,930	8,070	-	10,000	-	-	-
25325 Fairacres EMS	1,085	5,038	-	6,123	-	-	-
25330 Garfield EMS	84	-	-	84	-	-	-

**Budget Recap For FY18**

	Begin Cash	Revenue	Transfer	Expenditures	End Cash	Reserve	Adj End Cash
25335 Las Alturas EMS	1,348	-	-	1,348	-	-	-
25340 La Mesa EMS	742	5,538	-	6,280	-	-	-
25345 La Union EMS	1,173	5,042	-	6,215	-	-	-
25350 Mesquite EMS	2,215	-	-	2,215	-	-	-
25355 Organ EMS	844	8,056	-	8,900	-	-	-
25365 Radium Springs EMS	1,296	8,064	-	9,360	-	-	-
25370 Rincon EMS	341	5,034	-	5,375	-	-	-
25375 Santa Teresa EMS	1,077	5,038	-	6,115	-	-	-
25385 South Valley EMS	2,315	6,550	-	8,865	-	-	-
25395 University EMS	798	8,732	-	9,530	-	-	-
25410 EMS - Emergicare/Anthony	918	11,092	-	12,010	-	-	-
25415 EMS - Emergicare/Las Cruces	1,404	20,156	-	21,560	-	-	-
25420 EMS - Emergicare/Sunland Park	4,201	9,484	-	13,685	-	-	-
25422 EMS - NASA	199	7,036	-	7,235	-	-	-
25426 EMS - SW Ambulance-Chaparral	1,303	11,052	-	12,355	-	-	-
25430 EMS - Southwest MediVac - Las Cruces	1,575	-	-	1,575	-	-	-
25435 EMS - Americare/Hatch	2	-	-	2	-	-	-
25505 Anthony Fire District	41,690	80,460	-	122,150	-	-	-
25510 Chamberino Fire District	26,220	80,270	-	106,490	-	-	-
25515 Chaparral Fire District	111,653	80,852	-	192,505	-	-	-
25520 Dona Ana Fire District	8,546	75,821	-	84,367	-	-	-
25525 Fairacres/Picacho Fire District	80,020	76,647	-	156,667	-	-	-
25530 Garfield/Salem Fire District	349,800	78,867	-	428,667	-	-	-
25535 Las Alturas Fire District	97,675	80,770	-	178,445	-	-	-
25540 La Mesa Fire District	156,010	77,467	-	233,477	-	-	-
25545 La Union Fire District	69,234	73,451	-	142,685	-	-	-
25550 Mesquite Fire District	85,990	72,695	-	158,685	-	-	-
25555 Organ Fire District	364,218	163,082	-	527,300	-	-	-
25565 Radium Springs Fire District	96,800	80,850	-	177,650	-	-	-
25570 Rincon Fire District	45,740	76,677	-	122,417	-	-	-
25575 Santa Teresa Fire District	131,168	77,767	-	208,935	-	-	-
25580 Santa Teres Substation #2	128,700	1,177,967	-	1,306,667	-	-	-
25585 South Valley Fire District	31,040	76,427	-	107,467	-	-	-
25590 Talavera Fire District	225,386	81,950	-	307,336	-	-	-
25595 University Park Fire District	136,040	92,559	-	228,599	-	-	-
30040 GO Bond - Judicial	1,426	-	(1,426)	-	-	-	-
30042 Debt Service South Central 28-52/02	226	-	187,518	187,518	226	-	226
30043 Debt Service La Union 30-61/02	77	-	68,474	68,474	77	-	77
30044 Debt Service Salem 29-53/02	41	-	33,892	33,892	42	-	42
30045 Reserve- NMED CWSRL #1438047	289,884	-	-	-	289,884	-	289,884
30090 Reserve - Flood Loan	-	69	(69)	-	-	-	-
30100 Bond Retirement - 2001A Airport Rd	25,557	5	240,719	258,574	7,706	-	7,706
30101 Reserve - 2001A Airport Road	240,646	40	-	-	240,686	-	240,686
30102 Bond Retirement - 2001B Border Pk	67,087	5	607,769	630,681	44,179	-	44,179
30103 Reserve - 2001B SAD Border Park	603,220	-	-	-	603,220	-	603,220

16.3

**Budget Recap For FY18**

	Begin Cash	Revenue	Transfer	Expenditures	End Cash	Reserve	Adj End Cash
30112 Debt Service-2012 GRT Ref Rev Bond	1	-	412,017	412,017	1	-	1
30123 Debt Service - GO Bond Series 2013	379,307	466,497	1,426	444,300	402,930	-	402,930
30124 2014 Sub Lien GRT Ref Rev Bond	1	-	758,092	758,092	1	-	1
41010 Utility Department	52,402	50	250,000	219,973	82,480	54,993	27,487
41020 Airport FAA Projects	17,295	778,655	-	660,227	135,723	-	135,723
42010 Wastewater Projects/Grants	83,754	-	-	-	83,754	-	83,754
43010 Utility Projects	24,838	-	-	-	24,838	-	24,838
45070 HH Capital Improvement Projects	2,591,320	-	792,165	1,970,052	1,413,433	-	1,413,433
45075 Griggs/Walnut Superfund Project	73,587	1,500	220,000	231,644	63,443	57,911	5,532
45091 E-911 Emergency Dispatch Ctr	-	-	-	-	-	-	-
50020 DAC/Santa Teresa Airport	264,824	323,000	-	258,431	329,393	64,608	264,785
50030 Detention Center Fund	208,767	13,503,645	11,979,503	25,600,877	91,038	-	91,038
50043 Salem/Ogas-Wastewater	22,868	63,337	(18,892)	61,655	5,659	-	5,659
50044 South Central WWTP	229,553	788,065	787,113	1,729,042	75,688	-	75,688
50045 Reserves - Utilities	358,205	5,746	33,798	-	397,750	-	397,750
50046 La Union	67,686	73,485	21,526	119,030	43,667	-	43,667
50063 Chaparral Wastewater Systems-RUS	-	333,807	-	333,807	-	-	-
50064 Dona Ana Wastewater System	1,367	-	-	-	1,367	-	1,367
50067 Rincon Wastewater	5,694	27,597	30,000	52,531	10,760	-	10,760
50070 Chaparral WW System	101,843	471,120	31,571	575,010	29,525	-	29,525
60010 DAC Acquisition Fund	601,074	-	(600,000)	-	1,074	-	1,074
60020 Fleet	78,045	2,059,350	3,866,500	5,924,603	79,292	-	79,292
70010 Children's Trust Fund	5,130	-	-	-	5,130	-	5,130
70040 Property Tax Fund	19,484,903	-	-	-	19,484,903	-	19,484,903
70050 Airport Rd-Special Assessment-2001A	26,835	240,719	(240,719)	-	26,835	-	26,835
70060 Border Park-Special Assessment2001B	1	607,769	(607,769)	-	1	-	1
	<b>87,633,626</b>	<b>138,804,729</b>	<b>-</b>	<b>153,305,640</b>	<b>73,132,714</b>	<b>15,114,381</b>	<b>58,018,334</b>

16.4

**DOÑA ANA COUNTY**  
**SCHEDULE OF TRANSFERS**  
**FOR**  
**FISCAL YEAR 2017-2018**

**Transfers Out of Fund (82012)**

**Transfers Into Fund (81011)**

Description	Fund	Amount
General Fund	10001	\$ (15,255,905.00)

Description	Fund	Amount
DASO Fund	10002	\$ 1,550,000.00
FMO Fund	10003	\$ 525,000.00
Manager's Strategic Contingency Fd.	10005	\$ 935,905.00
Environmental Fund	10030	\$ 1,000,000.00
Road Fund	10080	\$ 700,000.00
Detention	50030	\$ 8,300,000.00
Salem/Ogaz Wastewater	50043	\$ 15,000.00
South Central WWTP	50044	\$ 990,000.00
La Union	50046	\$ 90,000.00
Rincon Wastewater	50067	\$ 30,000.00
Chaparral WW System	50070	\$ 50,000.00
Utility Fund	41010	\$ 250,000.00
Griggs/Walnut Superfund Project	45075	\$ 220,000.00
Fleet	60020	\$ 600,000.00

Gross Receipts Tax	10004	\$ (10,191,696.00)

DASO Fund	10002	\$ 8,075,092.42
FMO Fund	10003	\$ 946,494.58
2012 GRT Ref Rev Bond	30112	\$ 412,017.00
2014 Sub Lien GRT Ref Rev Bond	30124	\$ 758,092.00

HH Gross Receipts Tax	10004	\$ (12,300,000.00)

DASO Fund	10002	\$ 4,100,000.00
Road Fund	10080	\$ 3,307,835.00
HH Capital Projects	45070	\$ 792,165.00
Detention Center Fund	50030	\$ 633,500.00
Fleet	60020	\$ 3,266,500.00
PILT Fund	10060	\$ 200,000.00

Environmental GRT	10050	\$ (820,000.00)
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Environmental Fund	10030	\$ 820,000.00
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PILT Fund	10060	\$ (2,825,000.00)

DASO Fund	10002	\$ 2,800,000.00
Farm & Range	25120	\$ 25,000.00

Fire Protection Excise Tax	25125	\$ (1,600,000.00)

Fire Protection Expense Fund	25130	\$ 1,600,000.00
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Assessment - 2001A	70050	\$ (240,718.76)

2001A Airport Rd	30100	\$ 240,718.76
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Assessment - 2001B	70060	\$ (607,768.76)

2001B Border Park	30102	\$ 607,768.76
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Acquisition	60010	\$ (600,000.00)
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Detention	50030	\$ 2,546,003.00
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Health Fund	25140	\$ (1,946,003.00)
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Chaparral WW System	50070	\$ (18,429.00)
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Reserves - Utilities	50045	\$ 33,798.23
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South Central WWTP	50044	\$ (15,369.23)
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South Central WWTP	50044	\$ (187,518.00)

Debt Service South Central 28-52/02	30042	\$ 187,518.00
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La Union	50046	\$ (68,474.00)

Debt Service La Union 30-61/02	30043	\$ 68,474.00
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Salem/Ogaz Wastewater	50043	\$ (33,892.00)

Debt Service Salem 29-53/02	30044	\$ 33,892.00
-----------------------------	-------	--------------

Inmate Welfare Fund	25113	\$ (500,000.00)

Detention	50030	\$ 500,000.00
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Civil Preparedness - State	25110	\$ (261,894.00)

General Fund	10001	\$ 261,894.00
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Reserve - Flood Loan	30090	\$ (68.53)

Flood Control	25135	\$ 68.53
---------------	-------	----------

GO Bond - Judicial	30040	\$ (1,426.30)

GO Bond Series 2013	30123	\$ 1,426.30
---------------------	-------	-------------

**Total**      \$ (47,474,162.58)

**Total**      \$ 47,474,162.58

16.5

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Utilities Department  
Initiating Department

Nora Oliver, Office Supervisor  
Contact Person

May 23, 2017  
Meeting Date

17  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE RESOLUTION INCREASING LIQUID WASTE DISCHARGE FEE**

**SUMMARY OF ITEM TO BE CONSIDERED**

**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

Request Board approve resolution increasing the liquid waste discharge fees. Fees will be increased annually by five cents (\$.05) per gallon each year for the next three years. In subsequent years, fees will increase annually in an amount corresponding to any increase in the Consumer Price Index.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Final Rate Study  
Resolution

**SUMMARY OF FINANCIAL IMPACT**

Estimated yearly additional revenue \$55,000

**ADMINISTRATIVE REVIEW AND APPROVAL**

UN Finance

JK Legal

\_\_\_\_\_ County Manager/  
Agenda Review

\_\_\_\_\_ Purchasing

\_\_\_\_\_ Human Resources

USP Assistant County  
Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Public Works

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No For Recording?  Yes  No

Return original/s to: Utilities Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Nora Oliver/Utilities \_\_\_\_\_ Dept.

Deadline for return of document/s?  Yes, return by: \_\_\_\_\_ or  No

**DONA ANA COUNTY  
UTILITY WIDE  
SEWER RATE STUDY**

**MAY 8, 2017**

Prepared for:

**DONA ANA COUNTY UTILITIES DEPARTMENT  
845 N. MOTEL BLVD  
LAS CRUCES, NM 87007**

Prepared By:

**BOHANNAN HUSTON, INC.  
425 S. TELSHOR BLVD. SUITE C-103  
LAS CRUCES, NM 88011**

PREPARED BY:

---

Tyler Hopkins, P.E.

Date

---

Rob Richardson, P.E.

Date

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## APPENDICES

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APPENDIX H – SEPTAGE RATE INFORMATION

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## 1 BASIS FOR THE STUDY

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### 1.1 BACKGROUND AND OBJECTIVE

The Dona Ana County (DAC) Utilities Department began operating centralized wastewater collection and treatment facilities in 2003. There are four separate wastewater collection and treatment systems that make up the County's wastewater utility infrastructure. These four systems include Salem, Rincon, Chaparral and South Central and are financially managed as a single entity enterprise fund. At the time the Utility started up, the rates for sewer service were established based on estimates of operations and maintenance costs for the various community facilities that were being implemented. No changes in the sewer rate structure have been made since the Utility's inception. The purpose of this study is to provide a review of the financial condition of the utility under the existing sewer rate structure to determine if changes to the current financial structure of the utility are warranted after 14 years of operation.

### 1.2 SCOPE OF WORK

In order to accomplish the study's purpose, Bohannon Huston, Inc. (BHI) completed the following seven tasks:

- Task 1 – Compile Existing Revenue and Cost Data
- Task 2 – Determine Operating and Capital Revenue Requirements
- Task 3 – Develop Equitable Rates Based on Customer Class
- Task 4 – Perform Billing and Impact Analysis
- Task 5 –Septage Rate Analysis
- Task 6 – Compile Sewer Rate Study
- Task 7 – Public Participation

Detailed descriptions of the process and results of each of these tasks are described in the following sections.

### 1.3 ASSUMPTIONS USED IN THE STUDY

A summary of assumptions made for the development of this study are as follows:

- Cost and revenue projections in this study are for a ten year period. Every 5 years the proposed rate schedule should be revisited to determine if any changes are needed based on changes in growth rates, capital improvement projections, etc.

- Because the five service areas are served by a single utility enterprise, one rate structure is developed for all customers of the utility.
- Some sewer utilities have stepped sewer rates depending on the likely percentage of individual customer metered water usage entering the sewer system. Customer metered water usage volumes and meter sizes are not available to DAC at this time as each service area is served by one or more private or mutual domestic water utilities. Therefore, the sewer rates developed as a result of this study are based on sewer utilities cost and revenue data only. Provisions are made for sewer rate surcharge for large volume water users should this data become more readily available to DAC in the future. The rate structure proposed is adequate to meet cost projections without this additional surcharge for high volume users.

#### 1.4 SYSTEM COMPONENTS AND OPERATIONS

DAC currently has 5 separate wastewater service areas: Chaparral, South Central, Rincon, Salem, and La Union. Chaparral, South Central, Rincon, and Salem all have their own separate treatment plants and sanitary sewer collection systems comprising of lift stations, force mains, manholes, and gravity sewer lines. La Union however, does not have its own individual treatment plant, but instead has a contract with the Camino Real Regional Utility Authority (CRRUA) to discharge to their treatment plant. La Union is comprised of lift stations, force mains, manholes, and gravity sewer lines. Figure 1 shows the locations of each of the collection systems with two in the northeastern part of the county and three in the southeastern part of the county. These two areas are approximately 60 miles apart. Table 1-1 is a summary of the major components in the individual service areas.



**Table 1-1. Wastewater Service Area Summary**

<b>Area</b>	<b>WWTP Capacity (GPD)</b>	<b>Lift Stations</b>
<b>Chaparral</b>	300,000	3
<b>Rincon</b>	66,000	1
<b>Salem</b>	200,000	1
<b>South Central</b>	1,000,000	21
<b>La Union</b>	n/a	3

## **Customer And Usage Characteristics**

### **1.4.1 CUSTOMER BASE AND POPULATION PROJECTION**

Local planning documents were reviewed to determine a reasonable growth rate for the planning area that would not overestimate growth and cause a possible shortfall in actual versus projected revenues. The *Dona Ana Comprehensive Plan 1995 – 2015* (Comprehensive Plan)<sup>1</sup> was adopted by the County in 1994. The service areas of the County's sewer system fall in the South, Central and Border regions of the County as identified in Figure 5 of the Comprehensive Plan. The plan identifies projected populations for each of these areas in Table 1 of the Comprehensive Plan. The corresponding growth rates vary from 1.8 percent to 5.0 percent with an average growth rate of 2.9 percent. However, according to 2000 and 2010 U.S. Census data, and estimated populations for 2011, 2012 and 2013, growth in Dona Ana County has been significantly slower than anticipated by the Comprehensive Plan. Table 1-2 shows the population projection from the Comprehensive Plan compared to actual U.S. Census data and projections.

---

<sup>1</sup> Dona Ana County and NMSU, *Dona Ana County Comprehensive Plan 1995 – 2015*, 1994.

**Table 1-2. Historic and Estimated Dona Ana County Population**

Year	DAC Comprehensive Plan		U.S. Census	
	Population	Annual Growth Rate	Population	Annual Growth Rate
1990	135,510	-	135,510	-
2000	189,434	3.4%	174,682	2.6%
2010	261,290	3.3%	209,233	1.8%
2011	-	-	212,772	1.7%
2012	-	-	213,952	0.6%
2013	-	-	213,460	-0.2%
2015	322,387	2.1%	-	-
2020	-	-	-	-
<b>Average Annual Growth Rates:</b>		2.9%		1.3%

In 2005, the State of New Mexico granted the City of Las Cruces (City), the County and New Mexico State University (NMSU) funds to create the *One Valley, One Vision 2040* (Vision 2040)<sup>2</sup> planning document that was completed and adopted in 2012 by the City and the County. The purpose of the Vision2040 document was to establish guiding principles for planning and growth in the region. The plan examined local population projections developed by NMSU, the New Mexico Bureau of Business and Economics Research (BBER), UTEP Border Regional Modeling Project (UTEP), and the City of El Paso’s Regional Economic Model (REMI). The population projections varied among the several studies, but the Vision2040 document chose a likely population increase from approximately 200,000 to 325,000 people from 2010 through 2040. This corresponds to an annual regional growth rate of 1.6 percent.

Currently, the County, City, NMSU and several other local municipalities and organizations are in the process of completing the Viva Dona Ana Regional Planning Initiative which will include an update to the Comprehensive Plan as well as several other planning documents dealing with transportation, border economic development, housing, etc. This effort is not expected to be completed until 2015.

In 2012, the City completed the *Water and Wastewater Impact Fee – Land Use Assumptions and Capital Improvements Plan 2011-2016*<sup>3</sup>. The document referenced U.S.

<sup>2</sup> Dona Ana County and City of Las Cruces, *One Valley, One Vision 2040 Regional Plan*, 2012.

<sup>3</sup> Duncan Associates, *Water and Wastewater Impact Fee Land Use Assumptions and Capital Improvements Plan 2011-2016*, 2012.

Census data to show that the City grew at a rate of 2.87 percent from 2000 through 2010, while the County grew at the lower rate of 1.82 percent over the same time period. The Plan chose an average annual population growth of 1.87 percent over a 20-year planning period to project growth in the City.

Based on the Census data and more recent regional available planning documents, the fact that unincorporated regions of the County historically grow at a slower rate than the City, a growth rate of 1.0 percent was chosen to project the expected increase in the customer base for this sewer rate study.

In 2017, DAC had a total of 3,283 residential customer connections, 53 commercial customer connections, and 16 institutional customer connections. Table 1-3 shows the projected number of customer connections for all four service areas over the five year revenue projection period assuming a 1.0 percent growth rate.

**Table 1-3. DAC Projected Sewer Connections for All Service Areas**

Year	Residential Connections	Commercial Connections	Institutional Connections	Total Projected Connections
2017	3,283	53	16	3,352
2018	3,316	54	16	3,386
2019	3,349	54	16	3,419
2020	3,382	55	16	3,454
2021	3,416	55	17	3,488
2022	3,450	56	17	3,523
2023	3,485	56	17	3,558
2024	3,520	57	17	3,594
2025	3,555	57	17	3,630
2026	3,591	58	17	3,666
2027	3,626	59	18	3,703

## 2 WASTEWATER REVENUE REQUIREMENTS

### 2.1 OPERATING AND MAINTENANCE COSTS

BHI worked with the DAC Utility staff to compile existing revenue and cost data for fiscal years 2011 through 2017 to date for each of the five service areas. DAC also provided customer counts by rate class and service area. BHI compiled the data into a tabulated summary for the utility as a whole. The results are included as Appendix A.

## 2.2 CAPITAL PROJECTS

According to DAC Utility staff there is a number of upcoming capital improvement projects planned. They are Chaparral Phase 1C (\$2.0 million), South Central WWTP Improvements (\$3.5 million), and South Central Collection System Improvements (\$1.5 million). Each of these projects is in various states of planning and design. The funding source for these projects has yet to be determined. The funding source for these projects will determine the debt service requirements that will have an impact on the projected revenue requirements.

## 2.3 DEBT SERVICES

Table 2-1 shows are the annual payments made by DAC for current loan obligations as well as the estimated future debt service payments for future capital improvement projects.

These are capital improvement projects that were funded through state and federal programs that require a portion of the total amount of funding to be awarded as a loan. Depending on the funding source, the percentage of the loan component can vary. For the purpose of this report it was assumed that funding for the future projects included a 10% loan component and a 2% interest rate as part of estimating the future debt service payments for these projects.

**Table 2-1. Annual Debt Service Payments**

<b>Existing (Year Ending)</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
NMED CWSRL # 1438047 (FY2029)	\$289,884	\$289,884	\$289,884	\$289,884	\$289,884
NMED CWSRL # 195002/14503R (FY2019)	\$ 51,091	\$ 51,091			
Mesquite Lease	\$ 24,073				
Colonias 2988-CIF (FY2034)	\$ 1,750	\$ 1,750	\$ 1,750	\$ 1,750	\$ 1,750
Colonias 2985-CIF (FY2034)	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000
Colonias 3348-CIF (FY2035)	\$ 4,687	\$ 4,687	\$ 4,687	\$ 4,687	\$ 4,687
USDA, Loan #92-09 (FY2034)	\$ 12,389	\$ 12,389	\$ 12,389	\$ 12,389	\$ 12,389
<b>Future<sup>1</sup> (Total Funding)</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>
South Central WWTP Imp. (\$3.5M)	\$ 21,405	\$ 21,405	\$ 21,405	\$ 21,405	\$ 21,405
South Central Collection Imp. (\$1.5M)	\$ 9,174	\$ 9,174	\$ 9,174	\$ 9,174	\$ 9,174
Chaparral Phase 1C (\$2.0M)	\$ 12,231	\$ 12,231	\$ 12,231	\$ 12,231	\$ 12,231
<b>TOTAL DEBT SERVICE PAYMENTS</b>	<b>\$433,684</b>	<b>\$409,610</b>	<b>\$358,520</b>	<b>\$358,520</b>	<b>\$358,520</b>

<sup>1</sup>Assume 10% loan, 2.0% interest rate

## 2.4 RESERVES

Currently DAC is only contributing to reserve accounts related to debt service requirements. These reserve accounts are necessary to fulfill obligations required by previous capital improvement loans through state and federal funding sources. Once the amount of money stored in these reserves is met, annual payments to the reserve account are no longer required. Currently DAC is making two annual contributions to reserves. One is for La Union in the amount of \$11,412.33 and the other is for Salem in the amount of \$5,648.63. For FY2016 only partial payments of \$4,837.67 and \$813.11, respectively, will be required to fulfill their current minimum reserve requirements.

## 2.5 REVENUE REQUIREMENTS FROM USER RATES

The revenue requirements were projected for the next ten years. These projections were based on historical O&M expenses, existing debt service payments, and estimated debt service payments related to future capital improvement projects. The average for each category of variable O&M expenses was used along with the 10 year average federal inflation rate of 2.35% to project the O&M expenses in these categories. For Expenses related to employee salaries and benefits all vacant positions were projected to be fulfilled in FY2017 and then assumed growth of 4% per year to account for inflation and employee raises. The projected revenue requirements from FY2018 to FY2022 are tabulated in Table 2-2. The full ten year projected revenue requirements are tabulated in Appendix B.



Table 2-2. Revenue Requirements

	FY2018	FY2019	FY2020	FY2021	FY2022
<b>FIXED COSTS</b>					
Utility Reserve	\$ -	\$ -	\$ -	\$ -	\$ -
FEMA-Fed/State Public Assistance					
Bond Expenses					
Loan Payments					
Debt Services	\$ 433,684	\$ 409,610	\$ 358,520	\$ 358,520	\$ 358,520
<b>O&amp;M EXPENSES</b>					
Salaries and Benefits	\$ 792,004	\$ 823,684	\$ 856,632	\$ 890,897	\$ 926,533
Liability Insurance	\$ -	\$ 34,000	\$ -	\$ 36,000	\$ -
<b>FIXED COST TOTAL</b>	<b>\$1,225,688</b>	<b>\$1,267,295</b>	<b>\$1,215,151</b>	<b>\$1,285,417</b>	<b>\$1,285,052</b>
<b>VARIABLE COSTS</b>					
<b>O&amp;M EXPENSES</b>					
Office and Miscellaneous	\$ 54,543	\$ 55,825	\$ 57,137	\$ 58,479	\$ 59,854
Utilities	\$ 215,571	\$ 220,637	\$ 225,822	\$ 231,129	\$ 236,560
Professional Services	\$ 264,439	\$ 270,653	\$ 277,013	\$ 283,523	\$ 290,186
Small Tools and Equipment	\$ 9,173	\$ 9,388	\$ 9,609	\$ 9,835	\$ 10,066
Operation Parts and Equipment	\$ 114,814	\$ 117,512	\$ 120,274	\$ 123,100	\$ 125,993
Supplies (Chemicals)	\$ 91,949	\$ 94,110	\$ 96,322	\$ 98,585	\$ 100,902
Supplies (Fuel)	\$ 41,992	\$ 42,979	\$ 43,989	\$ 45,023	\$ 46,081
Maintenance	\$ 67,508	\$ 69,095	\$ 70,718	\$ 72,380	\$ 74,081
Disposal and Testing	\$ 35,281	\$ 36,110	\$ 36,959	\$ 37,827	\$ 38,716
Gross Receipts Tax	\$ 59,122	\$ 60,511	\$ 61,933	\$ 63,389	\$ 64,878
Travel Expenses	\$ 536	\$ 549	\$ 562	\$ 575	\$ 588
<b>CAPITAL EXPENSES</b>					
Construction and Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
<b>VARIABLE COSTS TOTAL</b>	<b>\$954,928</b>	<b>\$977,369</b>	<b>\$1,000,337</b>	<b>\$1,023,845</b>	<b>\$1,047,906</b>
<b>TOTAL EXPENDITURES</b>	<b>\$2,180,616</b>	<b>\$2,244,664</b>	<b>\$2,215,489</b>	<b>\$2,309,262</b>	<b>\$2,332,958</b>

### 3 WASTEWATER RATE AND FEE DESIGN

#### 3.1 CURRENT RATE DESIGN

The current monthly user charges are listed in Table 6.

Table 3-1. Current DAC Monthly Rate Schedule

Customer Classification	FIXED CHARGES	VARIABLE CHARGES
	Minimum Charge (up to 7,000 gallons)	Per 1,000 gallons at 80% of Water Usage
Residential	\$21.00	
Commercial	\$42.00	
Institutional	\$60.00	\$1.40 per 1,000 gallons
Industrial	\$100.00	\$1.40 per 1,000 gallons
Multi-Use	\$21.00 per dwelling unit	

Currently residential and commercial users are charged only the fixed minimum charge. Institutional users are charged the fixed rate along with the variable charge depending on their water use. The majority of institutional users are schools located throughout the county. Data provided by DAC showed that the average institutional monthly bill is approximately \$350. The \$350 is made up of a \$60 fixed rate and approximately \$290 in variable charges. The County currently has no industrial customers. The County also has several set-up charges for administrative and set-up costs. Table 3-2 and Table 3-3 show some of the set-up charges for new customers connecting to the system.

**Table 3-2. Current DAC Administrative Set-up Charges**

<b>Customer Classification</b>	<b>Less than 6 months to Connect</b>	<b>Greater than 6 months to Connect</b>
Residential	\$150.00	\$300.00
Commercial	\$300.00	\$600.00
Institutional	\$500.00	\$1,000.00
Industrial	\$700.00	\$1,400.00

**Table 3-3. Current DAC One-Time Charges**

<b>Water Meter Size</b>	<b>One Time Charge</b>
5/8" x 3/4"	\$1,000
1"	\$1,600
1 1/2"	\$2,500
2"	\$6,000

From the tables, the minimum set-up charge that would be charged to a new residential customer is \$1,150. The rate schedule states that these charges may not be applicable if the sewer system is expanded to connect customers if funded by a local, state or federally funded project. The complete wastewater rate schedule including all administrative, stand-by, deposit, installation, multi-unit, large subdivision, late, reactivation and late charges can be found in Appendix F.

### 3.2 RATES FROM OTHER COMMUNITIES

Table 3-4 contains residential and commercial rates from similar communities as well as the state-wide average sewer rate.

**Table 3-4. Rate Structures from Similar Communities**

Community	Number of Connections	Monthly Connection Charge		Residential Customer %
		Residential	Commercial	
Aztec <sup>4</sup>	2,660	\$44.50	\$45.00	88%
Belen <sup>4</sup>	3,036	\$35.87	\$35.87	89%
Bloomfield <sup>4</sup>	2,527	\$40.38	\$60.72	89%
Espanola <sup>5</sup>	4,158	\$47.01	\$43.52	85%
Grants <sup>4</sup>	3,108	\$27.88	\$27.88	86%
Hurley <sup>5</sup>	649	\$40.80	\$45.93	95%
Logan <sup>5</sup>	1,031	\$25.00	\$31.00	98%
Milan <sup>4</sup>	778	\$30.10	\$34.00	76%
Red River <sup>4</sup>	582	\$45.63	\$45.04	83%
Santa Rosa <sup>4</sup>	792	\$28.03	\$57.83	78%
Average of Similarly Sized Communities:	1,932	\$36.52	\$42.68	87%
State-Wide Average:	5,318	\$23.77	\$33.54	89%

<sup>4</sup>New Mexico Environment Department Construction Programs Bureau, *Municipal Water and Wastewater User Charge Survey for 2012 Rates (Based on 6,000 gallons/month)*, 2013.

<sup>5</sup>New Mexico Environment Department Construction Programs Bureau, *Municipal Water and Wastewater User Charge Survey for 2011 Rates (Based on 6,000 gallons/month)*, 2012.

Because the DAC Utility Department essentially owns and operates 4 separate wastewater treatment facilities to serve the needs of 3,000 plus residential, commercial, and institutional users, there is no other municipal wastewater system in the state that can be directly comparable in this regard. The County's wastewater system is unique with regards to geographical separation, percentage of residential customers, and the number of individual systems operated by one entity.

- As discussed in Section 1.4, there are two wastewater service areas in the northwestern part of the county and three in the southern part of the county. Approximately 60 miles separate these two areas.
- Currently there are 3,352 wastewater customers. 3,283 of them are residential customers accounting for over 98% of the customer base.
- In conjunction with the geographic differences, each of the 4 WWTPs require their own staff and equipment as the distance between them makes it difficult to share resources.

### 3.3 BILLING AND IMPACT ANALYSIS

From the historical expense and revenue information provided by DAC, the wastewater system has had higher expenses than it does revenue. In order to balance this difference, funds from the general fund are being transferred to the utility fund. In the last six years, an average of \$500,000 per year has been transferred into the utility fund. In order to minimize or eliminate the general fund subsidy the wastewater usage rates would need to be increased. Three scenarios were analyzed to better understand the extent at which monthly bills would need to be increased and how they would affect revenue generation.

#### 3.3.1 1 YEAR SUBSIDY ELIMINATION

In this scenario, the monthly bills were set for each customer class to eliminate the subsidy in the first year of implementation. This required the monthly bills to more than double what they currently are and increase by 2.5% per year after that to keep pace with rising expenses. Thus, the expected monthly bills for each user group are summarized in Table 3-5.

**Table 3-5. Estimated Monthly Bill**

<b>Customer Rate</b>	<b>Current</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
Residential <sup>1</sup>	\$21	\$42.00	\$43.05	\$44.13	\$45.23	\$46.36
Commercial <sup>1</sup>	\$42	\$84.00	\$86.10	\$88.25	\$90.46	\$92.72
Institutional <sup>2</sup>	\$350	\$700.00	\$717.50	\$734.54	\$753.82	\$772.67

<sup>1</sup>Fixed rate    <sup>2</sup>Fixed rate plus usage

Both the residential and commercial rates are fixed monthly charges and not related to water usage. The institutional user monthly bill would include a fixed rate as well as usage rate. At these rates transfers from the general fund would no longer be necessary as the projected revenues would be greater than the projected expenses for each of the 5 years. The revenue projections for this scenario are summarized in Appendix B.

#### 3.3.2 5 YEAR PROGRESSIVE SUBSIDY ELIMINATION

In this scenario, the monthly bills were raised incrementally to reduce the need for a subsidy year over year and within 5 years the subsidy would be eliminated. This required the monthly bills to increase 18% per year. Table 3-6 shows a summary of the expected monthly bills for each user group from FY2018 to FY2022 for this scenario.

**Table 3-6. 5 Year Progressive Rate Increase Monthly Bill**

Customer Rate	Current	FY18	FY19	FY20	FY21	FY22
Residential <sup>1</sup>	\$21	\$24.78	\$29.24	\$34.50	\$40.71	\$48.04
Commercial <sup>1</sup>	\$42	\$49.56	\$58.48	\$69.01	\$81.43	\$96.09
Institutional <sup>2</sup>	\$350	\$413.00	\$487.34	\$575.06	\$678.57	\$800.72

<sup>1</sup>Fixed rate                      <sup>2</sup>Fixed rate plus usage

Both the residential and commercial rates are fixed monthly charges and the institutional monthly bill would include a fixed rate plus usage charges. The revenue projections for this scenario are summarized in Appendix C.

**3.3.3 10 YEAR PROGRESSIVE SUBSIDY ELIMINATION**

Another scenario would be to expand the 5 Year Progressive Rate Increase to 10 years to eliminate the need to subsidize from the General Fund. This scenario would require the monthly bills to increase approximately 9% per year. Table 3-7 shows the estimated monthly bill for each user class for this scenario. The revenue projections for this scenario are summarized in Appendix D.

**Table 3-7. 10 Year Progressive Rate Increase Monthly Bill**

Customer Rate	Current	FY18	FY19	FY20	FY21	FY22
Residential <sup>1</sup>	\$21	\$22.89	\$24.95	\$27.20	\$29.64	\$32.31
Commercial <sup>1</sup>	\$42	\$45.78	\$49.90	\$54.39	\$59.29	\$64.62
Institutional <sup>2</sup>	\$350	\$381.50	\$415.84	\$453.26	\$494.05	\$538.52

Customer Rate	FY23	FY24	FY25	FY26	FY27
Residential <sup>1</sup>	\$35.22	\$38.39	\$41.84	\$45.61	\$49.71
Commercial <sup>1</sup>	\$70.44	\$76.78	\$91.22	\$91.22	\$99.43
Institutional <sup>2</sup>	\$586.99	\$639.81	\$697.40	\$760.16	\$828.58

<sup>1</sup>Fixed rate                      <sup>2</sup>Fixed rate plus usage

**3.4 RATE ALTERNATIVES**

DAC Utilities does not provide water to their wastewater customers and water usage data is not readily available for all customers. This information is typically used to determine what percentage each customer class contributes to wastewater generation, which allows for the rates to be distributed fairly between the customer classes. For example, if the

residential customer class generated 80% of the wastewater, then the residential class as a whole would be responsible for 80% of the costs associated with wastewater treatment. However, this information is not readily available and for this report it is assumed that the current ratio of fixed rates for residential and commercial will be similar. Currently that ratio is approximately 1:2, with the residential fixed rate being \$21 and the commercial fixed rate being \$42.

#### 3.4.1 1 YEAR SUBSIDY ELIMINATION

If the goal is to eliminate any subsidy to the utility fund, the projected growth and revenue requirements showed that the fixed usage rates would need to be increased as shown by the estimated monthly bills for this scenario in Section 3.3.1. The residential and commercial user classes are charged only a fixed rate.

The institutional user group is charged a fixed rate plus a variable charge. The variable charge is based on 80% of water consumption during the months of December, January, and February at a rate of \$1.40 per 1,000 gallons. On average the variable rate charged to institutional customers is approximately \$290.00 per month. It is expected that the institutional customers will maintain their current usage levels so any additional revenue generation would need to come from an increase in the fixed rate, variable rate, or a combination of the two. The institutional user class makes up a low percentage of all users so changing the variable rate would have a minimal effect on the overall revenue generation for the utility. Because of this, this scenario was not analyzed with changing the variable rate. For this case that fixed rate was increased from \$60 to \$410.00 per month to help meet the projected revenue requirements. Table 3-8 shows the minimum fixed rates for this scenario.

**Table 3-8. Fixed Rates**

Customer Rate	Current	FY18	FY19	FY20	FY21	FY22
Residential	\$21	\$42.00	\$43.05	\$44.13	\$45.23	\$46.36
Commercial	\$42	\$84.00	\$86.10	\$88.25	\$90.46	\$92.72
Institutional	\$60	\$410.00	\$427.50	\$445.44	\$463.82	\$482.67
Industrial	\$100	\$500.00	\$520.00	\$540.50	\$561.51	\$583.05

#### 3.4.2 5 YEAR PROGRESSIVE SUBSIDY ELIMINATION

As with the previous scenario the goal was to eliminate any subsidies to the Utility fund. In this scenario the goal was to eliminate the need for subsidies incrementally over a

5 year period with equal yearly rate increases over that same timeframe. Table 3-9 shows the minimum fixed rates to eliminate any subsidies over a 5 year time period.

**Table 3-9. 5 Year Progressive Fixed Rates**

<b>Customer Rate</b>	<b>Current</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
Residential	\$21	\$24.78	\$29.24	\$34.50	\$40.71	\$48.04
Commercial	\$42	\$49.56	\$58.48	\$69.01	\$81.43	\$96.09
Institutional	\$60	\$123.00	\$197.34	\$285.06	\$388.57	\$510.72
Industrial	\$100	\$172.00	\$256.96	\$357.21	\$475.51	\$615.10

**3.4.3 10 YEAR PROGRESSIVE SUBSIDY ELIMINATION**

In this scenario, the fixed rates were set to result in the monthly bills discussed in Section 3.3.3. As discussed in the previous sections, the residential and commercial customers are only charged a fixed rate and would be equal to the expected monthly bill for this scenario. The institutional users are charge charged a fixed rate plus a usage rate based on their water use. Since it is expected that the institutional user's water consumption will remain similar in the future, the fixed rate for institutional users was increased to help meet revenue requirements. Table 3-10 shows a summary of the fixed rates for each user class for this scenario.

**Table 3-10. 10 Year Progressive Fixed Rates**

<b>Customer Rate</b>	<b>Current</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
Residential	\$21	\$22.89	\$24.95	\$27.20	\$29.64	\$32.31
Commercial	\$42	\$45.78	\$49.90	\$54.39	\$59.29	\$64.62
Institutional	\$60	\$91.50	\$125.84	\$163.26	\$204.05	\$248.52
Industrial	\$100	\$136.00	\$175.24	\$218.01	\$264.63	\$315.45

<b>Customer Rate</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>
Residential	\$35.22	\$38.39	\$41.84	\$45.61	\$49.71
Commercial	\$70.44	\$76.78	\$83.69	\$91.22	\$99.43
Institutional	\$296.99	\$349.81	\$407.40	\$470.16	\$538.58
Industrial	\$370.84	\$431.22	\$497.03	\$568.76	\$646.95

### 3.5 CONNECTION FEES

The existing connection fees are described in Section 3.1 and are categorized by the water meter size of the service location. Comparatively the City of Las Cruces' wastewater connection fees are based on the sewer service line size, either 4" or 6". Their standard connection fee is \$1,560 for a 4" service line and \$1,585 for a 6" service line. Additionally, the City charges impact fees based on water meter sizes. They range from \$389 for a sewer service with a 3/4"x5/8" water meter connection to \$31,088 for a service with an 8" water meter connection.

### 3.6 CUSTOMER FINANCIAL IMPACT ANALYSIS

A financial impact analysis was complete to consider the effects of an increase in the sewer rates. The full report is attached as Appendix I.

## 4 SEPTAGE RATE ANALYSIS

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### 4.1 CURRENT RATE AND PREVIOUS STUDY

Currently DAC only accepts septage at the South Central Wastewater Treatment Plant (SCWWTP). The septage is then treated as part of the normal plant processes. Septage typically has a lower water quality and higher levels of debris and solids. The WWTP was not designed to receive and treat septage. This has a negative impact on the operation of the WWTP which increases cost as well as reducing the operational life of equipment.

Presently the SCWWTP facility charges \$0.05 per gallon of septage disposed of at the facility. Per the *Dona Ana County Septage Facility Study*<sup>4</sup> completed in April 2006, the recommended rate for 2006 was \$0.11 per gallon to cover operation, maintenance, and proposed capital improvements costs. The septage facility was built in 2007 and included three 25,000 gallon storage tanks and four dewatering boxes.

### 4.2 COMPARABLE RATES

The most comparable septage facility is at the City of Alamogordo wastewater treatment plant. Currently the City of Alamogordo wastewater treatment plant charges \$0.20 per gallon of septage disposed at their facility. The septage intake facility at the WWTP was built in 2015.

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<sup>4</sup> Bohannon Huston Inc., Aegean Consulting Dona Ana county Septage Facility Study 2006, 2017



#### 4.3 EXISTING AND PROJECTED SEPTAGE VOLUMES

The monthly septage volume received from January 2016 to January 2017 (13 months) was provided by DAC Utility staff for the SCWWTP. An average of 110,000 gallons per month was received during this time frame. An assumed growth of 1% was then projected based on this monthly average volume for the next 5 years.

**Table 16. Projected Septage Volumes**

<b>Year</b>	<b>Volume (gal)</b>
<b>2016<sup>1</sup></b>	1,274,240
<b>2017</b>	1,286,982
<b>2018</b>	1,312,851
<b>2019</b>	1,325,979
<b>2020</b>	1,339,239
<b>2021</b>	1,352,631

<sup>1</sup>Known Volume

It should be noted it is likely that the volumes reported is less than what is actually being received. Currently there is no way to accurately measure the incoming volumes, which are measured manually in the outlet box receiving septage and is inaccurate. It is assumed the volumes for the septage will increase by as much as 25% when measured accurately with a calibrated flow meter.

#### 4.4 CAPITAL IMPROVEMENT REQUIREMENTS

The septage handling process installed at the South Central facility in 2007 was not able to maintain pace with the delivered septage volumes on a daily basis and substantial changes have occurred at the facility since to enable the process to continue. Currently the septage is being introduced into one of the aeration basins in the facility and ultimately being dewatered with a new belt press to allow proper dewatering for landfill disposal. The current septage handling process must be renovated to remove it from the aeration basins and sludge holding tanks of the main treatment plant.

Recommended improvements to the facility include the following:

- 1) Belt Press Building Improvements: Enclosure of existing structure.
- 2) Septage Receiving Station: An equipment specifically designed for septage offloading that separates rocks, grinds rags and trash debris, and washes this debris and physically removes this from the solids stream for dumpster disposal.

- a. Solids Handling Pumps: To allow the remaining septage to be pumped to the belt press, sludge beds, or holding tanks.
- 3) Sludge Drying Beds: To allow a redundant drying method in case of belt press mechanical failure.
- 4) Site Piping Improvements: New piping between septage receiving station, holding tanks, sludge beds, and belt press

These total capital cost for these improvements are detailed in Appendix H – Septage Rate Information. The total cost for the improvements including gross receipts tax is \$1,192,000. The amortized cost for a 20 year loan at 3.5% is approximately \$83,000 per year.

#### 4.5 RECOMMENDED SEPTAGE RATE

To calculate the expected septage rate that will properly provide the revenue necessary to finance this handling system will include the amortized capital costs expected, as well as the expected operation and maintenance costs anticipated.

Operation and maintenance costs anticipated for this facility are summarized in Table 17 below. These O&M costs are further detailed in Appendix H – Septage Rate Information.

**Table 17. Septage Facility O&M Cost Summary**

Item	Annual Cost
Power	\$4,500
Equipment Replacement	\$19,000
Labor	\$97,000
Sludge Disposal Fees	\$56,810
<b>TOTAL</b>	<b>\$177,310</b>

With an expected capital cost loan payment totaling \$83,000 per year and an O&M cost totaling \$177,310, the cumulative cost per year of approximately \$260,293. With the anticipated volume of accurately measured septage expected to average 140,000 gallons per month, the minimum required septage rate is \$0.16 per gallon, and the recommended septage rate is \$0.20 per gallon. The septage rate should be increased, at a minimum, to reflect the region adjusted 12-month percent change in the *Consumer Price Index (CPI)* published by the US Bureau of Labor Statistics. It is also recommended that the septage rate be reviewed every 2 years to ensure that the revenue requirements for operating and maintaining the septage facility is being met.

## 5 PUBLIC PARTICIPATION

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To allow DAC's sewer customers the opportunity to discuss and provide feedback to the *Sewer Rate Study*, three public meetings were organized and held in Chaparral, Hatch, and Vado. Notice of these meetings were given to the customers in advance through their monthly bills. The meetings were held at 6:00 PM at each location on April 24<sup>th</sup>, April 25<sup>th</sup>, and May 1<sup>st</sup>, respectively. At each of the meetings a presentation was given by Bohannan Huston giving an overview of the *Sewer Rate Study* and *Customer Financial Impact Analysis Report*. Staff from both Bohannan Huston and DAC participated in the Q&A sessions following the presentation at each of the meetings. A translator was present at each of the meetings providing an English to Spanish translation of the presentation and subsequent discussion.

The number of attendees varied at each of the meetings with 7 public participants at the Chaparral meeting, 1 at the Hatch meeting, and 12 at the Vado meeting. Generally, the attendees indicated they understood the reasoning for the need to increase the sewer rates. However, the Q&A discussion centered on the affordability of a rate increase. This concern was particularly raised by attendees who declared they were living on a fixed income.

Attendees were also provided comment forms addressed to Bohannan Huston that they could write down any comments or concerns about the *Sewer Rate Study* and would be included as part of the final report. These forms were provided in both English and Spanish. As of today, May 4<sup>th</sup>, no comment forms have been received.

## 6 CONCLUSIONS AND RECOMMENDATIONS

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### 6.1 CONCLUSIONS

The current sewer rate structure was implemented during the inception of the DAC Wastewater Utility in 2003. These rates were based on estimated operating and maintenance costs and have not been adjusted since. The wastewater utility has expanded in that time to gain more customers, but the cost of operating and maintaining the utility has increased as well. Financial data from the previous 6 fiscal years has shown that the operating and maintenance expenses have exceeded the revenue by an average of \$560,000 per year. This shortfall was made up by transferring funds from the DAC General Fund to the Wastewater Utility which affects other County projects and programs. To

reduce the amount of transfers from the General Fund and eventually eliminating those transfers the sewer rates will need to be increased.

Three scenarios with a goal of eliminating the transfers were developed to determine what the rates would need to be for this to be accomplished. The 3 scenarios were eliminating the transfers with a single rate increase, 5 incremental rate increases spread out over 5 years, and 10 incremental rate increases over a 10 year period. After reviewing the study with DAC staff and commission, a fourth option was suggested that is a combination of the 1 year and 5 year scenarios. This option included a \$12.50 rate increase the first year, instead of the \$21.00 rate increase from the 1 year scenario, and smaller increases the remaining 4 years of the 5 year plan. These rates are summarized in Table 6-1.

**Table 6-1 – Recommended Fixed Rates**

<b>Customer Rate</b>	<b>Current</b>	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>FY22</b>
Residential	\$21	\$33.50	\$37.25	\$40.75	\$44.50	\$48.25
Commercial	\$42	\$84.00	\$86.25	\$88.25	\$90.50	\$92.75
Institutional	\$60	\$120.00	\$130.25	\$140.75	\$151.50	\$162.75
Industrial	\$100	\$168.75	\$180.50	\$192.50	\$204.75	\$217.25

This initial rate increase is a balanced approach between eliminating the revenue shortfall and minimizing the immediate financial impact on the sewer utility customers.

## 6.2 RECOMMENDATIONS

Based on the analysis and results of this report as well as feedback from the DAC Commissioners and public participation it is recommended that the fixed rates for DAC's Sewer Utility be adjusted to something similar to those shown in Table 6-1. Beyond the 5 years shown in Table 6-1 the sewer rates should be increased, at a minimum, to reflect the region adjusted 12-month percent change in the *Consumer Price Index (CPI)* published by the US Bureau of Labor Statistics. It is also recommended that the sewer rates be reviewed every 2 years to ensure that the revenue requirements for operating and maintaining the utility are being met.

## **APPENDICES**

**APPENDIX A – TABULATED SUMMARIES OF COST  
AND REVENUE FOR FISCAL YEARS 2011 THROUGH  
2016**

**Appendix A – TABULATED SUMMARY OF COST AND REVENUE, FY11-FY16**

	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016
<b>REVENUES</b>						
Wastewater User Charges	\$ 845,077	\$ 881,593	\$ 870,624	\$ 909,418	\$ 923,680	\$ 948,158
Bulk Rate Charges	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000
One Time Fees	\$ 51,501	\$ 84,450	\$ 107,899	\$ 87,410	\$ 147,540	\$ 91,613
Reconnect Fees	\$ 1,620	\$ 1,980	\$ 2,025	\$ 1,440	\$ 1,485	\$ 860
Administrative and Misc. Fees	\$ 29,942	\$ 48,921	\$ 22,156	\$ 153,398	\$ 79,196	\$ 58,443
Late Charges	\$ 69,691	\$ 59,710	\$ 59,122	\$ 61,287	\$ 77,724	\$ 68,206
Investment Interest	\$ 5,981	\$ 2,021	\$ 1,533	\$ 1,563	\$ 7,235	\$ 5,555
	\$ -	\$ -	\$ -	\$ -	\$ 106,237	\$ 1,410,541
O & M Contracts	\$ 59,148	\$ 46,680	\$ 67,453	\$ 51,913	\$ 32,315	\$ 7,072
Gross Receipts Tax	\$ 41,057	\$ 49,253	\$ 48,299	\$ 48,292	\$ 53,692	\$ 55,336
Septage Fees	\$ -	\$ 216,092	\$ 101,983	\$ 81,008	\$ 136,605	\$ 54,226
<b>REVENUES TOTAL</b>	<b>\$1,154,017</b>	<b>\$1,224,608</b>	<b>\$1,229,110</b>	<b>\$1,364,721</b>	<b>\$ 1,479,105</b>	<b>\$ 2,695,785</b>
<b>FIXED COSTS</b>						
Utility Reserve	\$ 6,400	\$ 8,046	\$ 3,137	\$ 27,271	\$ 17,061	\$ 5,651
FEMA-Fed/State Public Assistance	\$ -	\$ -	\$ -	\$ -	\$ 3,485	\$ -
Bond Expenses	\$ -	\$ -	\$ -	\$ -	\$ 12,389	\$ 13,161
Loan Payments	\$ -	\$ -	\$ -	\$ -	\$ 8,750	\$ 9,700
Debt Services	\$ 56,834	\$ 120,782	\$ 48,314	\$ 272,695	\$ 384,346	\$ 401,264
<b>O&amp;M EXPENSES</b>						
Salaries and Benefits	\$ 450,683	\$ 489,655	\$ 529,924	\$ 511,675	\$ 539,993	\$ 531,703
Liability Insurance	\$ 28,622	\$ -	\$ 29,001	\$ -	\$ 26,118	\$ -
<b>FIXED COST TOTAL</b>	<b>\$ 542,540</b>	<b>\$ 618,483</b>	<b>\$ 610,376</b>	<b>\$ 811,640</b>	<b>\$ 992,143</b>	<b>\$ 961,479</b>
<b>VARIABLE COSTS</b>						
<b>O&amp;M EXPENSES</b>						
Office and Miscellaneous	\$ 34,984	\$ 55,655	\$ 49,593	\$ 51,075	\$ 58,698	\$ 69,739
Utilities	\$ 181,289	\$ 184,166	\$ 195,750	\$ 208,008	\$ 300,522	\$ 193,993
Professional Services	\$ 213,674	\$ 205,690	\$ 195,226	\$ 204,103	\$ 363,445	\$ 368,063
Small Tools and Equipment	\$ 11,502	\$ 9,569	\$ 9,678	\$ 8,570	\$ 6,121	\$ 8,332
Operation Parts and Equipment	\$ 115,468	\$ 242,032	\$ 106,520	\$ 6,413	\$ 91,938	\$ 110,696
Supplies (Chemicals)	\$ 85,550	\$ 77,858	\$ 99,862	\$ 92,891	\$ 85,116	\$ 97,752
Supplies (Fuel)	\$ 39,614	\$ 48,804	\$ 47,654	\$ 45,650	\$ 38,564	\$ 25,882
Maintenance	\$ 62,833	\$ 53,592	\$ 60,109	\$ 49,893	\$ 52,495	\$ 116,826
Disposal and Testing	\$ 36,450	\$ 34,743	\$ 33,737	\$ 31,201	\$ 34,829	\$ 35,867
Gross Receipts Tax	\$ 41,057	\$ 49,253	\$ 48,299	\$ 48,292	\$ 53,692	\$ 55,336
Travel Expenses	\$ 470	\$ 718	\$ 44	\$ 666	\$ 842	\$ 404
<b>CAPITAL EXPENSES</b>						
Construction and Equipment	\$ 6,917	\$ 600,401	\$ 296,485	\$ 84,605	\$ 63,985	\$ 1,368,997
<b>VARIABLE COSTS TOTAL</b>	<b>\$ 829,810</b>	<b>\$1,562,482</b>	<b>\$1,142,956</b>	<b>\$ 831,368</b>	<b>\$ 1,150,247</b>	<b>\$ 2,451,887</b>
<b>TOTAL EXPENDITURES</b>	<b>\$1,372,349</b>	<b>\$2,180,965</b>	<b>\$1,753,332</b>	<b>\$1,643,008</b>	<b>\$ 2,142,389</b>	<b>\$ 3,413,366</b>
<b>NET TOTAL INCOME (LOSSES)</b>	<b>\$ (218,332)</b>	<b>\$ (956,357)</b>	<b>\$ (524,222)</b>	<b>\$ (278,287)</b>	<b>\$ (663,284)</b>	<b>\$ (717,581)</b>
<b>TRANSFERS</b>						
From General Fund	\$ 89,600	\$ 653,083	\$ 460,677	\$ 225,495	\$ 685,755	\$ 951,972
Reconciliation	\$ 128,732	\$ 303,274	\$ 63,545	\$ 52,792	\$ (22,470)	\$ (234,391)
<b>TRANSFERS TOTAL</b>	<b>\$ 218,332</b>	<b>\$ 956,357</b>	<b>\$ 524,222</b>	<b>\$ 278,287</b>	<b>\$ 663,284</b>	<b>\$ 717,581</b>
<b>NET INCOME AFTER TRANSFERS</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**APPENDIX B – PROJECTED REVENUE  
REQUIREMENTS, FY18-FY27**



**Appendix B - PROJECTED REVENUE REQUIREMENTS, FY18-FY27**

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027
<b>FIXED COSTS</b>	<b>Projections</b>									
Utility Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FEMA-Fed/State Public Assistance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bond Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Loan Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Services	\$ 433,684	\$ 409,610	\$ 358,520	\$ 358,520	\$ 358,520	\$ 358,520	\$ 358,520	\$ 358,520	\$ 358,520	\$ 358,520
<b>O&amp;M EXPENSES</b>										
Salaries and Benefits	\$ 792,004	\$ 823,684	\$ 856,632	\$ 890,897	\$ 926,533	\$ 963,594	\$ 1,002,138	\$ 1,042,224	\$ 1,083,912	\$ 1,127,269
Liability Insurance	\$ -	\$ 34,000	\$ -	\$ 36,000	\$ -	\$ 38,000	\$ -	\$ 40,000	\$ -	\$ 42,000
<b>FIXED COST TOTAL</b>	<b>\$1,225,688</b>	<b>\$1,267,295</b>	<b>\$1,215,151</b>	<b>\$1,285,417</b>	<b>\$1,285,052</b>	<b>\$1,360,114</b>	<b>\$1,360,658</b>	<b>\$1,440,743</b>	<b>\$1,442,432</b>	<b>\$1,527,789</b>
<b>VARIABLE COSTS</b>										
<b>O&amp;M EXPENSES</b>										
Office and Miscellaneous	\$ 54,543	\$ 55,825	\$ 57,137	\$ 58,479	\$ 59,854	\$ 61,260	\$ 62,700	\$ 64,173	\$ 65,681	\$ 67,225
Utilities	\$ 215,571	\$ 220,637	\$ 225,822	\$ 231,129	\$ 236,560	\$ 242,119	\$ 247,809	\$ 253,633	\$ 259,593	\$ 265,693
Professional Services	\$ 264,439	\$ 270,653	\$ 277,013	\$ 283,523	\$ 290,186	\$ 297,005	\$ 303,985	\$ 311,129	\$ 318,440	\$ 325,924
Small Tools and Equipment	\$ 9,173	\$ 9,388	\$ 9,609	\$ 9,835	\$ 10,066	\$ 10,302	\$ 10,544	\$ 10,792	\$ 11,046	\$ 11,305
Operation Parts and Equipment	\$ 114,814	\$ 117,512	\$ 120,274	\$ 123,100	\$ 125,993	\$ 128,954	\$ 131,984	\$ 135,086	\$ 138,260	\$ 141,509
Supplies (Chemicals)	\$ 91,949	\$ 94,110	\$ 96,322	\$ 98,585	\$ 100,902	\$ 103,273	\$ 105,700	\$ 108,184	\$ 110,726	\$ 113,329
Supplies (Fuel)	\$ 41,992	\$ 42,979	\$ 43,989	\$ 45,023	\$ 46,081	\$ 47,164	\$ 48,272	\$ 49,406	\$ 50,567	\$ 51,756
Maintenance	\$ 67,508	\$ 69,095	\$ 70,718	\$ 72,380	\$ 74,081	\$ 75,822	\$ 77,604	\$ 79,427	\$ 81,294	\$ 83,204
Disposal and Testing	\$ 35,281	\$ 36,110	\$ 36,959	\$ 37,827	\$ 38,716	\$ 39,626	\$ 40,557	\$ 41,510	\$ 42,486	\$ 43,484
Gross Receipts Tax	\$ 59,122	\$ 60,511	\$ 61,933	\$ 63,389	\$ 64,878	\$ 66,403	\$ 67,963	\$ 69,561	\$ 71,195	\$ 72,868
Travel Expenses	\$ 536	\$ 549	\$ 562	\$ 575	\$ 588	\$ 602	\$ 616	\$ 631	\$ 646	\$ 661
<b>CAPITAL EXPENSES</b>										
Construction and Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>VARIABLE COSTS TOTAL</b>	<b>\$954,928</b>	<b>\$977,369</b>	<b>\$1,000,337</b>	<b>\$1,023,845</b>	<b>\$1,047,906</b>	<b>\$1,072,531</b>	<b>\$1,097,736</b>	<b>\$1,123,533</b>	<b>\$1,149,936</b>	<b>\$1,176,959</b>
<b>TOTAL EXPENDITURES</b>	<b>\$2,180,616</b>	<b>\$2,244,664</b>	<b>\$2,215,489</b>	<b>\$2,309,262</b>	<b>\$2,332,958</b>	<b>\$2,432,645</b>	<b>\$2,458,393</b>	<b>\$2,564,276</b>	<b>\$2,592,368</b>	<b>\$2,704,748</b>

**APPENDIX C – TABULATED REVENUE PROJECTIONS  
FOR 100% SUBSIDY ELIMINATION**

**Appendix C – TABULATED REVENUE PROJECTIONS FOR 100% SUBSIDY ELIMINATION**

	FY2018	FY2019	FY2020	FY2021	FY2022
<b>REVENUES</b>			<b>Projections</b>		
Wastewater User Charges	\$ 1,860,096	\$ 1,923,646	\$ 1,990,270	\$ 2,067,527	\$ 2,139,242
Bulk Rate Charges	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000
One Time Fees	\$ 34,600	\$ 33,000	\$ 34,600	\$ 36,500	\$ 35,600
Reconnect Fees	\$ 1,584	\$ 1,600	\$ 1,616	\$ 1,632	\$ 1,648
Administrative and Misc. Fees	\$ 65,996	\$ 66,656	\$ 67,323	\$ 67,996	\$ 68,676
Late Charges	\$ 66,616	\$ 67,283	\$ 67,955	\$ 68,635	\$ 69,321
Investment Interest	\$ 4,021	\$ 4,061	\$ 4,102	\$ 4,143	\$ 4,185
O & M Contracts	\$ 44,538	\$ 44,983	\$ 45,433	\$ 45,887	\$ 46,346
Gross Receipts Tax	\$ 59,122	\$ 60,511	\$ 61,933	\$ 63,389	\$ 64,878
Septage Fees	\$ 99,302	\$ 100,295	\$ 101,298	\$ 102,311	\$ 103,334
<b>REVENUES TOTAL</b>	<b>\$ 2,186,573</b>	<b>\$ 2,251,740</b>	<b>\$ 2,323,232</b>	<b>\$ 2,405,708</b>	<b>\$ 2,479,897</b>
<b>FIXED COSTS</b>					
Utility Reserve	\$ -	\$ -	\$ -	\$ -	\$ -
FEMA-Fed/State Public Assistance					
Bond Expenses					
Loan Payments					
Debt Services	\$ 433,684	\$ 409,610	\$ 358,520	\$ 358,520	\$ 358,520
<b>O&amp;M EXPENSES</b>					
Salaries and Benefits	\$ 792,004	\$ 823,684	\$ 856,632	\$ 890,897	\$ 926,533
Liability Insurance	\$ -	\$ 34,000	\$ -	\$ 36,000	\$ -
<b>FIXED COST TOTAL</b>	<b>\$1,225,688</b>	<b>\$1,267,295</b>	<b>\$1,215,151</b>	<b>\$1,285,417</b>	<b>\$1,285,052</b>
<b>VARIABLE COSTS</b>					
<b>O&amp;M EXPENSES</b>					
Office and Miscellaneous	\$ 54,543	\$ 55,825	\$ 57,137	\$ 58,479	\$ 59,854
Utilities	\$ 215,571	\$ 220,637	\$ 225,822	\$ 231,129	\$ 236,560
Professional Services	\$ 264,439	\$ 270,653	\$ 277,013	\$ 283,523	\$ 290,186
Small Tools and Equipment	\$ 9,173	\$ 9,388	\$ 9,609	\$ 9,835	\$ 10,066
Operation Parts and Equipment	\$ 114,814	\$ 117,512	\$ 120,274	\$ 123,100	\$ 125,993
Supplies (Chemicals)	\$ 91,949	\$ 94,110	\$ 96,322	\$ 98,585	\$ 100,902
Supplies (Fuel)	\$ 41,992	\$ 42,979	\$ 43,989	\$ 45,023	\$ 46,081
Maintenance	\$ 67,508	\$ 69,095	\$ 70,718	\$ 72,380	\$ 74,081
Disposal and Testing	\$ 35,281	\$ 36,110	\$ 36,959	\$ 37,827	\$ 38,716
Gross Receipts Tax	\$ 72,870	\$ 74,582	\$ 76,335	\$ 78,129	\$ 79,965
Travel Expenses	\$ 536	\$ 549	\$ 562	\$ 575	\$ 588
<b>CAPITAL EXPENSES</b>					
Construction and Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
<b>VARIABLE COSTS TOTAL</b>	<b>\$ 954,928</b>	<b>\$ 977,369</b>	<b>\$ 1,000,337</b>	<b>\$ 1,023,845</b>	<b>\$ 1,047,906</b>
<b>TOTAL EXPENDITURES</b>	<b>\$ 2,180,616</b>	<b>\$ 2,244,664</b>	<b>\$ 2,215,489</b>	<b>\$ 2,309,262</b>	<b>\$ 2,332,958</b>
<b>NET TOTAL INCOME (LOSSES)</b>	<b>\$ 5,957</b>	<b>\$ 7,076</b>	<b>\$ 107,744</b>	<b>\$ 96,447</b>	<b>\$ 146,939</b>

**APPENDIX D – TABULATED REVENUE PROJECTIONS  
FOR 5 YEAR PROGRESSIVE SUBSIDY ELIMINATION**

**Appendix D – TABULATED REVENUE PROJECTIONS FOR PROGRESSIVE  
5 YEAR SUBSIDY ELIMINATION**

	FY2018	FY2019	FY2020	FY2021	FY2022
<b>REVENUES</b>			<b>Projections</b>		
Wastewater User Charges	\$ 1,097,457	\$ 1,306,578	\$ 1,556,254	\$ 1,861,134	\$ 2,216,892
Bulk Rate Charges	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000	\$ 50,000
One Time Fees	\$ 34,600	\$ 33,000	\$ 34,600	\$ 36,500	\$ 35,600
Reconnect Fees	\$ 1,584	\$ 1,600	\$ 1,616	\$ 1,632	\$ 1,648
Administrative and Misc. Fees	\$ 65,996	\$ 66,656	\$ 67,323	\$ 67,996	\$ 68,676
Late Charges	\$ 66,616	\$ 67,283	\$ 67,955	\$ 68,635	\$ 69,321
Investment Interest	\$ 4,021	\$ 4,061	\$ 4,102	\$ 4,143	\$ 4,185
O & M Contracts	\$ 44,538	\$ 44,983	\$ 45,433	\$ 45,887	\$ 46,346
Gross Receipts Tax	\$ 59,122	\$ 60,511	\$ 61,933	\$ 63,389	\$ 64,878
Septage Fees	\$ 99,302	\$ 100,295	\$ 101,298	\$ 102,311	\$ 103,334
<b>REVENUES TOTAL</b>	<b>\$ 1,423,934</b>	<b>\$ 1,634,672</b>	<b>\$ 1,889,216</b>	<b>\$ 2,199,315</b>	<b>\$ 2,557,546</b>
<b>FIXED COSTS</b>					
Utility Reserve	\$ -	\$ -	\$ -	\$ -	\$ -
FEMA-Fed/State Public Assistance					
Bond Expenses					
Loan Payments					
Debt Services	\$ 433,684	\$ 409,610	\$ 358,520	\$ 358,520	\$ 358,520
<b>O&amp;M EXPENSES</b>					
Salaries and Benefits	\$ 792,004	\$ 823,684	\$ 856,632	\$ 890,897	\$ 926,533
Liability Insurance	\$ -	\$ 34,000	\$ -	\$ 36,000	\$ -
<b>FIXED COST TOTAL</b>	<b>\$1,225,688</b>	<b>\$1,267,295</b>	<b>\$1,215,151</b>	<b>\$1,285,417</b>	<b>\$1,285,052</b>
<b>VARIABLE COSTS</b>					
<b>O&amp;M EXPENSES</b>					
Office and Miscellaneous	\$ 54,543	\$ 55,825	\$ 57,137	\$ 58,479	\$ 59,854
Utilities	\$ 215,571	\$ 220,637	\$ 225,822	\$ 231,129	\$ 236,560
Professional Services	\$ 264,439	\$ 270,653	\$ 277,013	\$ 283,523	\$ 290,186
Small Tools and Equipment	\$ 9,173	\$ 9,388	\$ 9,609	\$ 9,835	\$ 10,066
Operation Parts and Equipment	\$ 114,814	\$ 117,512	\$ 120,274	\$ 123,100	\$ 125,993
Supplies (Chemicals)	\$ 91,949	\$ 94,110	\$ 96,322	\$ 98,585	\$ 100,902
Supplies (Fuel)	\$ 41,992	\$ 42,979	\$ 43,989	\$ 45,023	\$ 46,081
Maintenance	\$ 67,508	\$ 69,095	\$ 70,718	\$ 72,380	\$ 74,081
Disposal and Testing	\$ 35,281	\$ 36,110	\$ 36,959	\$ 37,827	\$ 38,716
Gross Receipts Tax	\$ 59,122	\$ 60,511	\$ 61,933	\$ 63,389	\$ 64,878
Travel Expenses	\$ 536	\$ 549	\$ 562	\$ 575	\$ 588
<b>CAPITAL EXPENSES</b>					
Construction and Equipment	\$ -	\$ -	\$ -	\$ -	\$ -
<b>VARIABLE COSTS TOTAL</b>	<b>\$954,928</b>	<b>\$977,369</b>	<b>\$1,000,337</b>	<b>\$1,023,845</b>	<b>\$1,047,906</b>
<b>TOTAL EXPENDITURES</b>	<b>\$2,180,616</b>	<b>\$2,244,664</b>	<b>\$2,215,489</b>	<b>\$2,309,262</b>	<b>\$2,332,958</b>
<b>NET TOTAL INCOME (LOSSES)</b>	<b>\$ (756,682)</b>	<b>\$ (609,992)</b>	<b>\$ (326,273)</b>	<b>\$ (109,947)</b>	<b>\$ 224,588</b>

**APPENDIX E – TABULATED REVENUE PROJECTIONS  
FOR 10 YEAR PROGRESSIVE SUBSIDY ELIMINATION**

**Appendix E – TABULATED REVENUE PROJECTIONS FOR PROGRESSIVE 10 YEAR SUBSIDY ELIMINATION**

	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027
<b>REVENUES</b>					<b>Projections</b>					
Wastewater User Charges	\$1,013,752	\$1,114,870	\$1,226,631	\$1,355,051	\$1,490,964	\$1,639,942	\$1,804,582	\$1,984,568	\$2,183,978	\$2,412,552
Bulk Rate Charges	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
One Time Fees	\$34,600	\$33,000	\$34,600	\$36,500	\$35,600	\$35,000	\$36,600	\$35,000	\$37,600	\$39,100
Reconnect Fees	\$1,584	\$1,600	\$1,616	\$1,632	\$1,648	\$1,665	\$1,715	\$1,698	\$1,715	\$1,732
Administrative and Misc. Fees	\$65,996	\$66,656	\$67,323	\$67,996	\$68,676	\$69,363	\$71,464	\$70,757	\$71,464	\$72,179
Late Charges	\$66,616	\$67,283	\$67,955	\$68,635	\$69,321	\$70,014	\$72,136	\$71,422	\$72,136	\$72,857
Investment Interest	\$4,021	\$4,061	\$4,102	\$4,143	\$4,185	\$4,226	\$4,354	\$4,311	\$4,354	\$4,398
O & M Contracts	\$44,538	\$44,983	\$45,433	\$45,887	\$46,346	\$46,809	\$48,228	\$47,750	\$48,228	\$48,710
Gross Receipts Tax	\$59,122	\$60,511	\$61,933	\$63,389	\$64,878	\$66,403	\$67,963	\$69,561	\$71,195	\$72,868
Septage Fees	\$99,302	\$100,295	\$101,298	\$102,311	\$103,334	\$104,368	\$105,411	\$106,465	\$107,530	\$108,605
<b>REVENUES TOTAL</b>	<b>\$1,340,230</b>	<b>\$1,442,964</b>	<b>\$1,559,593</b>	<b>\$1,693,232</b>	<b>\$1,831,618</b>	<b>\$1,983,423</b>	<b>\$2,157,043</b>	<b>\$2,335,068</b>	<b>\$2,540,671</b>	<b>\$2,774,397</b>
<b>FIXED COSTS</b>										
Utility Reserve	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
FEMA-Fed/State Public Assistance										
Bond Expenses										
Loan Payments										
Debt Services	\$433,684	\$409,610	\$358,520	\$358,520	\$358,520	\$358,520	\$358,520	\$358,520	\$358,520	\$358,520
<b>O&amp;M EXPENSES</b>										
Salaries and Benefits	\$792,004	\$823,684	\$856,632	\$890,897	\$926,533	\$963,594	\$1,002,138	\$1,042,224	\$1,083,912	\$1,127,269
Liability Insurance	\$0	\$34,000	\$0	\$36,000	\$0	\$38,000	\$0	\$40,000	\$0	\$42,000
<b>FIXED COST TOTAL</b>	<b>\$1,225,688</b>	<b>\$1,267,295</b>	<b>\$1,215,151</b>	<b>\$1,285,417</b>	<b>\$1,285,052</b>	<b>\$1,360,114</b>	<b>\$1,360,658</b>	<b>\$1,440,743</b>	<b>\$1,442,432</b>	<b>\$1,527,789</b>
<b>VARIABLE COSTS</b>										
<b>O&amp;M EXPENSES</b>										
Office and Miscellaneous	\$54,543	\$55,825	\$57,137	\$58,479	\$59,854	\$61,260	\$62,700	\$64,173	\$65,681	\$67,225
Utilities	\$215,571	\$220,637	\$225,822	\$231,129	\$236,560	\$242,119	\$247,809	\$253,633	\$259,593	\$265,693
Professional Services	\$264,439	\$270,653	\$277,013	\$283,523	\$290,186	\$297,005	\$303,985	\$311,129	\$318,440	\$325,924
Small Tools and Equipment	\$9,173	\$9,388	\$9,609	\$9,835	\$10,066	\$10,302	\$10,544	\$10,792	\$11,046	\$11,305
Operation Parts and Equipment	\$114,814	\$117,512	\$120,274	\$123,100	\$125,993	\$128,954	\$131,984	\$135,086	\$138,260	\$141,509
Supplies (Chemicals)	\$91,949	\$94,110	\$96,322	\$98,585	\$100,902	\$103,273	\$105,700	\$108,184	\$110,726	\$113,329
Supplies (Fuel)	\$41,992	\$42,979	\$43,989	\$45,023	\$46,081	\$47,164	\$48,272	\$49,406	\$50,567	\$51,756
Maintenance	\$67,508	\$69,095	\$70,718	\$72,380	\$74,081	\$75,822	\$77,604	\$79,427	\$81,294	\$83,204
Disposal and Testing	\$35,281	\$36,110	\$36,959	\$37,827	\$38,716	\$39,626	\$40,557	\$41,510	\$42,486	\$43,484
Gross Receipts Tax	\$59,122	\$60,511	\$61,933	\$63,389	\$64,878	\$66,403	\$67,963	\$69,561	\$71,195	\$72,868
Travel Expenses	\$536	\$549	\$562	\$575	\$588	\$602	\$616	\$631	\$646	\$661
<b>CAPITAL EXPENSES</b>										
Construction and Equipment	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>VARIABLE COSTS TOTAL</b>	<b>\$954,928</b>	<b>\$977,369</b>	<b>\$1,000,337</b>	<b>\$1,023,845</b>	<b>\$1,047,906</b>	<b>\$1,072,531</b>	<b>\$1,097,736</b>	<b>\$1,123,533</b>	<b>\$1,149,936</b>	<b>\$1,176,959</b>
<b>TOTAL EXPENDITURES</b>	<b>\$2,180,616</b>	<b>\$2,244,664</b>	<b>\$2,215,489</b>	<b>\$2,309,262</b>	<b>\$2,332,958</b>	<b>\$2,432,645</b>	<b>\$2,458,393</b>	<b>\$2,564,276</b>	<b>\$2,592,368</b>	<b>\$2,704,748</b>
<b>NET TOTAL INCOME (LOSSES)</b>	<b>\$(840,386)</b>	<b>\$(801,700)</b>	<b>\$(655,896)</b>	<b>\$(616,030)</b>	<b>\$(501,340)</b>	<b>\$(449,222)</b>	<b>\$(301,350)</b>	<b>\$(229,208)</b>	<b>\$(51,697)</b>	<b>\$ 69,649</b>

**APPENDIX F – SUMMARY OF PUBLIC  
PARTICIPATION INPUT AND COMMENTS**

**NO PUBLIC PARTICIPATION COMMENT SHEETS RECEIVED**



**APPENDIX G – CURRENT WASTEWATER RATE  
SCHEDULE**

# DOÑA ANA COUNTY WASTEWATER SYSTEM

## RATE SCHEDULE 1

### ADMINISTRATIVE CHARGES:

**APPLICABILITY:** County utility customers shall be charged an Administrative Set-up Charge to cover all costs related to the application process, including verifying service, locating the service line installation, and any other tasks necessary to establish availability of service. Other charges as set forth in this Rate Schedule may be required as determined by the Utility Administrator. Applicable gross receipts taxes will be added to all charges.

**SERVICE APPLICATION:** Customers must request service by completing an Application for Wastewater Service and User Agreement available at the offices of the Doña Ana County Utilities Department or designated agent. All Administrative Charges and other required charges must be paid or payment arrangements made prior to approving the customer's Application for Wastewater Service and User Agreement.

#### A. Administrative Set-Up Charge:

Customer Classification:		Non-Compliance to Mandatory Connection (> 6 months to connect)
Residential:	\$150.00	\$300.00
Commercial:	\$300.00	\$600.00
Institutional:	\$500.00	\$1,000.00
Industrial:	\$700.00	\$1,400.00

The Administrative Set-up Charge shall increase when the hook-up of any occupied home or business exceeds six (6) months as required by the Doña Ana County Wastewater Ordinance. For each wastewater service area identified, the County shall conduct an inventory of all dwellings at the time the "Notice of Availability" is announced. The announcement of "Notice of Availability" shall start the six-month mandatory connection period.

B. Stand-By Charge: All applicants that have paid the Administrative Set-Up Charge within the mandatory connection period but have not physically connected to the wastewater system shall be billed the minimum fixed monthly charge for the appropriate customer classification (Rate Schedule 3), beginning on the seventh month. If a customer has not paid the Administrative Set-Up Charge and is not physically connected to the wastewater system, the customer shall pay the increased Administrative Set-up Charge as described in Paragraph A, above, and the minimum fixed monthly charge for the

appropriate customer classification (Rate Schedule 3). All uncollected Stand-by charges must be paid prior to connection to the system.

C. Customer Deposit: A deposit may be required pursuant to Rule No. 16, Security Deposits, Guarantees of Payments. Initial deposit amounts are as follows:

Customer Classification:	
Residential:	\$100.00
Commercial:	\$150.00
Institutional:	\$150.00
Industrial:	\$250.00

D. Installation Charges: If a customer's property does not yet have a wastewater service connection to their property, but does have a main wastewater line within 300 feet of their property, the customer is required to pay for service connection installation charges including materials and labor. At the time of application for service, the County will provide the residential and small commercial prospective customer with a set of standards that describe the type of service required. The size of the installation shall be based on the recommendation of the customer's licensed plumber. Only licensed contractors are permitted to connect to the County's main wastewater line. The County shall determine the location of the wastewater service installation. Wastewater services involving an Industrial User, shall require the recommendation of a licensed plumber or engineer and shall comply with all applicable requirements of the customer's discharge permit.

If a customer chooses to have the County or its designated representative connect to the main wastewater line, the County charges will be based on actual costs plus an administrative fee of 10%.

E. Exclusions: Charges described in this Rate Schedule may not be applicable to wastewater system customers where the installation of new connections, wastewater lines and facilities have been completed with the support of federal, state, and/or other grant funds. Further, Dona Ana Village is excluded from this rate schedule until further action by the County. Dona Ana Village rates are presently provided for under a pre-existing and detailed contract which includes Dona Ana Village, the County and the City of Las Cruces as parties.

# DOÑA ANA COUNTY WASTEWATER SYSTEM

## RATE SCHEDULE 2

### ONE - TIME CHARGE:

**APPLICABILITY:** The One-Time Charge is applicable to all new customers who connect to the County's system. Service will be furnished in accordance with the County's Rules and Regulations addressing wastewater service. Applicable governmental gross receipts taxes will be added to all charges.

#### A. One-Time Charge:

Water Meter Size:	
5/8" x 3/4"	\$1,000.00
1"	\$1,600.00
1 1/2"	\$2,500.00
2"	\$6,000.00

The One-Time Charge for customers with water meter size greater than 2" shall be determined on a case-by-case basis. The evaluation will include but is not limited to consideration of the volume and characteristics of wastewater discharge, pretreatment requirements, and the cost to the wastewater utility's infrastructure and treatment capacities. The determination shall be described and executed by contract.

#### B. Multi-unit Service Lines with Individual Meters:

A customer may request individual meters to be installed for a multi-unit property. A master meter shall be required and the One-Time Charge for the applicable meter size will be applied. For each individual meter requested to be installed beyond the master meter, a Multi-Unit Surcharge will be required at \$157.50 per unit.

#### C. Residential Volume Discounts:

In the case of a large subdivision (>40 lots), the County will offer volume discounts for the One-Time Charge (Residential classification only), when payments are made in advance of construction (60 days after subdivision approval). The discounts shall apply according to the following table:

Subdivision Size (Lots)	Discount Per Lot
40-100 Lots	10%
101-200 Lots	15%
>200 Lots	20%

Version: 1/12/2004

Wastewater Rate Schedules

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D. Exclusions: Charges described in this Rate Schedule may not be applicable to wastewater system customers where the installation of new connections, wastewater lines and facilities have been completed with the support of federal, state, and/or other grant funds. Further, Dona Ana Village is excluded from this rate schedule until further action by the County. Dona Ana Village rates are presently provided for under a pre-existing and detailed contract which includes Dona Ana Village, the County and the City of Las Cruces as parties.

# DOÑA ANA COUNTY WASTEWATER SYSTEM

## RATE SCHEDULE 3

### MONTHLY USER CHARGES:

**APPLICABILITY:** The Residential and Commercial Rates are available only for normal wastewater dischargers at individual residences, individual dwelling units, individual farm units, apartments, and commercial establishments. Service shall be provided through a single wastewater service line at a location to be designated by the County.

Service will be furnished in accordance with the County's ordinances and Rules and Regulations addressing wastewater service, available at the County Utilities Department.

**SERVICE AREA:** The service areas are designated in the Doña Ana County Wastewater Ordinance (Section 5). The Utilities Department maintains maps of the service areas.

A. **Monthly Fixed and Variable Charges:** The charge for wastewater service provided shall be the sum of Fixed (F) and Variable (V). Applicable governmental gross receipts taxes will be added to all charges.

	FIXED (F)	VARIABLE (V)
Customer Classification:	Minimum Charge (up to 7,000g)	Per 1,000g @ 80% of usage <sup>1</sup>
Residential:	\$21.00	\$1.40/1000g <sup>2</sup>
Commercial:	\$42.00	\$1.40/1000g
Institutional:	\$60.00	\$1.40/1000g
Industrial:	\$100.00	\$1.40/1000g
Multi-Use	\$21.00/dwelling unit	\$1.40/1000g

1. Commercial, Institutional, and Industrial Variable Charge: Gallons in excess of 7,000 are charged at the rate of \$1.40 per 1,000 gallons as measured by taking 80% of the monthly water usage as determined from water records. Customer usage is measured monthly or estimated where water service data is not available

2. Residential Variable Charge (RVC): Only residential customers within the Santa Teresa - Border Area will be charged the RVC due to the debt burden required for the construction of the water and wastewater systems serving that area. There will be no variable charges for residential customers in all other Service Areas, unless the County determines that a variable charge is necessary for the financial viability of the utility. In the event that the County determines that a variable charge is required, the first 7,000 Gallons is included in the Fixed Monthly Charge as measured by the winter months average from water use records (December, January and February). All Gallons over 7,000 will be charged at the rate of \$1.40 per 1,000 gallons.

3. Monthly charges for new customers or customers for which water data is not available will be determined based on similar customer of the same classification. If and when water data is available the monthly charge shall be adjusted.

B. Minimum Charge: The minimum charge under this Schedule shall be the Fixed Monthly Charge regardless of volume of flow measured.

C. Surcharge for Excess Waste Strength: A Surcharge shall be applied to all users for excess wastewater strength above domestic levels as defined by this ordinance. The Utility Administrator shall determine the charge on a case-by-case basis.

D. Exclusions: Dona Ana Village is excluded from this rate schedule until further action by the County. Dona Ana Village rates are presently provided for under a pre-existing and detailed contract which includes Dona Ana Village, the County and the City of Las Cruces as parties.

# DOÑA ANA COUNTY WASTEWATER SYSTEM

## RATE SCHEDULE 4

### SPECIAL CHARGES

**APPLICABILITY:** Applicable to special services as defined in the County's Rules and Regulations regarding wastewater service. Applicable governmental gross receipts taxes will be added to all charges.

A. **Collection Charge:** If the customer does not pay for wastewater service within the time specified by the bill, the County shall charge \$5.00 or 15% of the outstanding balance, whichever is greater, for each month the bill is unpaid.

B. **Reactivation Charge:** Whenever service is discontinued for nonpayment of charges, nonuse, or similar reasons, as described in Rule No. 12, Discontinuance and Denying Restoration of Service, a charge of \$20.00 shall be assessed by the County for the cost of reactivating service during normal County business hours. If the customer requests reactivation of service after normal business hours, the County shall assess a charge of \$40.00.

C. **Returned Check Or Bank Draft Charge:** The County shall assess a charge of \$25.00 to the customer's account balance in the event the customer's check or bank draft is returned for insufficient funds, cancellation of account or for any other reason attributable to the customer.

D. **Exclusions:** Dona Ana Village is excluded from this rate schedule until further action by the County. Dona Ana Village rates are presently provided for under a pre-existing and detailed contract which includes Dona Ana Village, the County and the City of Las Cruces as parties.



## **APPENDIX H – SEPTAGE RATE INFORMATION**

**Appendix H - DAC SCWWTP Septage  
O&M COST ANALYSIS  
March 15, 2017**

**POWER**

Item	HP	Total run time, hr/week	Daily Power Cons. (kwh/week)	Power Cost (\$/kwh)	Annual Power Cost
Belt press, washwater, polymer	10	40	268	\$ 0.15	\$ 2,100
Solids Transfer Pumps	5	40	134	\$ 0.15	\$ 1,100
Septage Receiving Station	6	40	161	\$ 0.15	\$ 1,300
<b>TOTAL</b>			<b>564</b>		<b>\$ 4,500</b>

*BHP is assumed to be 90% of the motor HP.*

**EQUIPMENT REPLACEMENT & MATERIALS**

Item	Replacement Cost* (\$/ea)	Useful Life (years)	Quantity	Annual Replacement Cost
<b>Equipment of 5-yr replacement interval</b>				
Belt Press Misc parts	\$ 10,000	1	1	\$ 10,000
Receiving Station Parts	\$ 5,000	1	1	\$ 5,000
Solids Pumps	\$ 7,500	5	1	\$ 1,500
Polymer	\$ 2,500	1	1	\$ 2,500
<b>TOTAL</b>				<b>\$ 19,000</b>

*\* including installation of equipment.*

**LABOR**

Item	Salary	Benefits	Percent of Time Applicable	Annual Labor Cost
<b>Setage Operations Team</b>				
W/WW Operator 3	\$ 42,000	\$ 25,000	1	\$ 67,000
W/WW Operator 1	\$ 20,000	\$ 10,000	1	\$ 30,000
<b>TOTAL</b>				<b>\$ 97,000</b>

**DEWATERED SLUDGE DISPOSAL FEES**

Item	Tons Disposed	Cost per Ton	Annual Labor Cost
Landfill Costs*	1,235	\$ 46	\$ 56,810
<b>TOTAL</b>			<b>\$ 56,810</b>

*\* \$42 (Current cost)+10%=\$46*

**Summary of Annual Operation and Maintenance Cost Estimate**

Item	Unit	Annual Cost
Power	LS	\$ 4,500
Equipment replacement	LS	\$ 19,000
Labor	LS	\$ 97,000
Sludge Disposal Fees	LS	\$ 56,810
<b>Total</b>		<b>\$ 177,310</b>

**Appendix H - DAC SCWWTP Septage**  
 Engineers Preliminary Opinion of Construction Cost  
 March 15, 2017

Bid Item	Description	Unit	Quantity	Unit Cost	Extension
1	Mobilization and Demobilization- Including equipment transportation and storage, construction staking, traffic control, SWPPP, and all other related administration tasks (Maximum of 15% of total contract)	LS	1	\$117,698	\$117,698
<b>BELT PRESS BUILDING IMPROVEMENT</b>					
2	Demolition	LS	1	\$15,000	\$15,000
3	Metal and Insulation	LS	1	\$120,000	\$120,000
4	Doors	LS	1	\$40,000	\$40,000
5	Misc. Painting and Coatings	LS	1	\$25,000	\$25,000
6	Interior Process Piping	LS	1	\$20,000	\$20,000
7	HVAC	SF	2400	\$20	\$48,000
8	Electrical System	SF	2400	\$10	\$24,000
Belt Press Building Construction Cost Subtotal					\$292,000
<b>SEPTAGE RECEIVING STATION</b>					
9	JWC Honey Monster Equipment	LS	1	\$190,400	\$190,400
10	10'x15'x5' Solids Vault & Shade Structure	LS	1	\$50,000	\$50,000
11	Solids Pumps & Submersible Mixer	LS	1	\$65,000	\$65,000
Septage Receiving Station Construction Cost Subtotal					\$305,400
<b>SLUDGE BEDS</b>					
12	Sludge Drying Beds	SF	2400	\$60	\$144,000
Sludge Beds Construction Cost Subtotal					\$144,000
<b>SITE PIPING IMPROVEMENTS</b>					
13	8" Gravity Sewer, including TBC	LF	400	\$35.00	\$14,000
14	4' Manholes	EA	4	\$3,500.00	\$14,000
15	4" PVC Solids Process Piping	LF	450	\$25.00	\$11,250
16	4" Plug Valves	EA	10	\$400.00	\$4,000
Site Piping Construction Cost Subtotal					\$43,250
Subtotal Construction Cost					\$902,348
Contingency, 10%					\$90,235
Estimated Construction Cost					\$992,582
NMGRT (8.3125%)					\$82,508
<b>Total Estimated Probable Construction Cost</b>					<b>\$1,075,091</b>
Design Engineering and Construction Admin and Inspection, 12%					\$108,282
NMGRT (8.3125%)					\$9,001
<b>Total Estimated Professional Engineering Fees</b>					<b>\$117,283</b>
<b>Total Estimated Probable Bid Cost</b>					<b>\$1,192,373</b>

**Appendix H - DAC SCWWTP Septage  
RATE ANALYSIS**

March 15, 2017

**COST SUMMARY**

Item	Annualized Cost
Existing Debt Service	\$ -
New Capital Cost Debt Service	\$ 82,983
O&M Costs	\$ 177,310
<b>TOTAL</b>	<b>\$ 260,293</b>

**RATE ANALYSIS**

Item	Annualized Cost
Total Annualized Costs	\$ 260,293
Volume of Septage (annual Average Recorded)	1,341,822
Volume of Septage (assumed actual measured )	1,677,277
<b>Minimum Proposed Septage Rate</b>	<b>\$ 0.16</b>

**APPENDIX I – CUSTOMER FINANCIAL IMPACT  
ANALYSIS**

# Doña Ana County Utility Sewer Rate Study – Customer Financial Impact Analysis

*Prepared by: Bohannan Huston, Inc.  
For: Doña Ana County  
March 6, 2017*

## Purpose

The purpose of the Doña Ana County Utility Rate Study Customer Financial Impact Analysis is to consider the effects of potential rate increases on residents of Doña Ana County that are served by the Utility Authority. The current rates for Doña Ana County residents are not particularly high relative to other places in New Mexico. However, residents of the unincorporated portions of Doña Ana County that are served by the Utility Authority have relatively low household income in comparison to Doña Ana County, New Mexico, and the US overall. Rate increases may therefore have a disproportionate impact on this population. This study considers the typical housing costs, including wastewater utilities, and income levels for Doña Ana County households to shed light on the potential financial impacts of utility rate increases.

## Methodology

The study utilizes Census data and other resources to examine overall economic conditions in different parts of Doña Ana County. In addition to income data across Doña Ana County, this analysis considers housing costs, including how those costs vary across the County. An overall profile for unincorporated Doña Ana County is provided based on poverty rates and median household income, among other factors. There is a high degree of variability among household expenditures depending on the household composition. To simplify the analysis and provide a standard set of comparisons, expenditures are based on average housing costs by jurisdiction and by Census tract, and are contrasted against the median household income for the same geography.

### *Note on Sources*

All household income data are taken from the 2011-2015 American Community Survey (ACS). Census tract-level housing data are taken from the Center for Neighborhood Technologies' Housing + Transportation Affordability Index (HTAI). Due to the lower degree of certainty surrounding transportation data, only the HTAI housing data, which is itself based on analysis of data contained in the ACS, are included in this analysis. The HTAI provides average housing costs based on an analysis of Census data and assuming a "typical" household profile for all communities in Doña Ana County of 2.79 residents and 1.1 commuters per household.

### *Study Area*

The first step in the analysis was to develop baseline estimates for the households served by the Doña Ana County Utility Authority. Data for Doña Ana County is somewhat distorted by the City of Las Cruces, whose residents have higher incomes than the County overall, as well as subdivisions in unincorporated areas with particularly high standards of living, such as Las Alturas and the A Mountain area. The true household income for the unincorporated portions of Doña Ana County that comprise the study area is therefore a different value entirely.

The adjusted median household income for the study area was ascertained by aggregating data at the Census tract level and weighting each tract based on the number of households. These conditions can be contrasted against household incomes for other portions of Doña Ana County, including incorporated communities. Data for individual Census tracts is also displayed in the figures at the end of this document in order to highlight variability within Doña Ana County.<sup>1</sup>

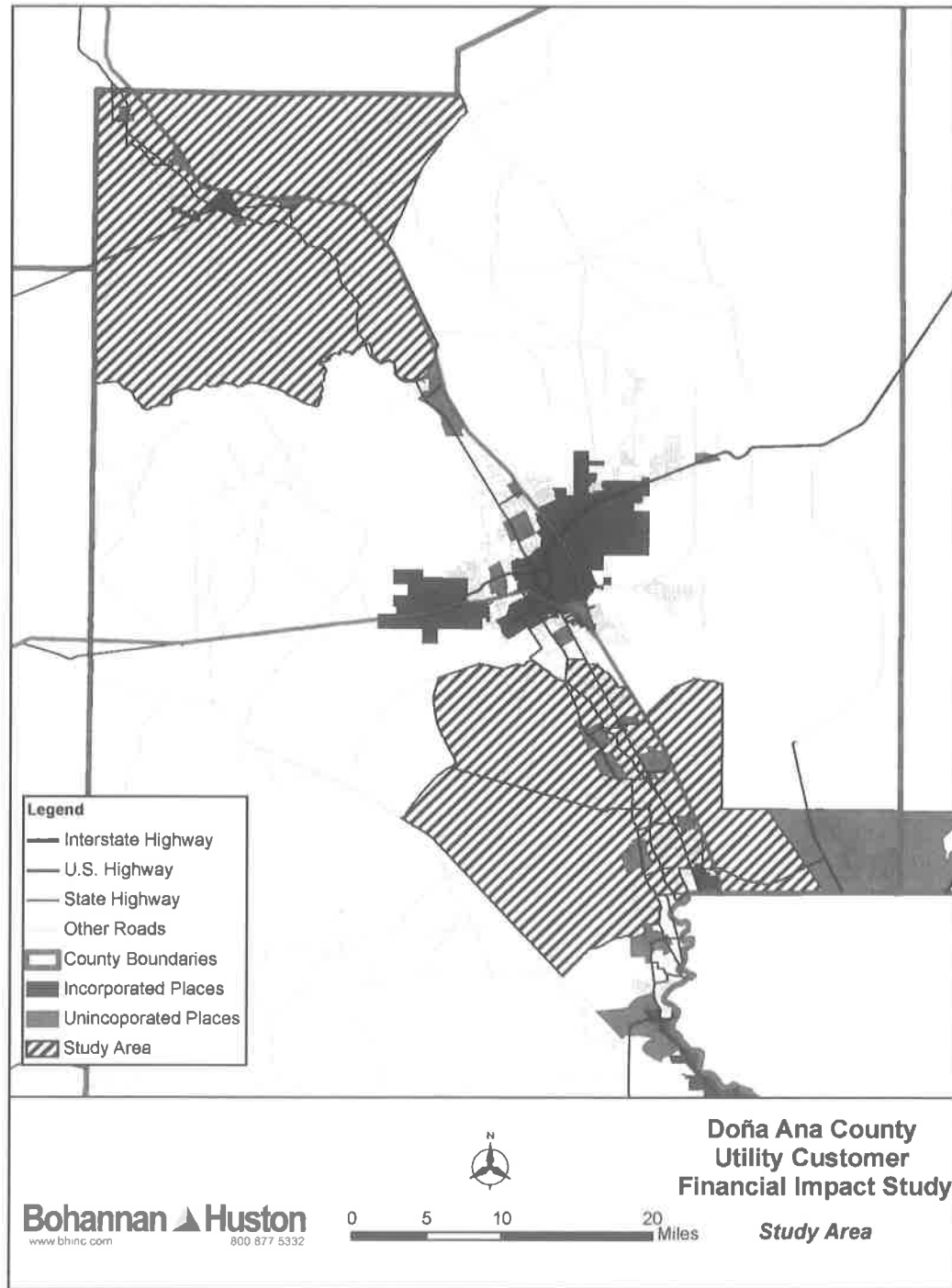
### *Household Costs and Remaining Income*

The US Department of Housing and Urban Development (HUD) defines a household as being cost-burdened if it spends more than 30% of its income on housing. (The Center for Neighborhood Technologies considers households that spend 45% of their income on the combined costs of housing and transportation to be burdened.) Average housing costs are contrasted against the median household income to determine the expenditures and the remaining income for a “typical” household. Through this approach, the study can shed light on which areas within Doña Ana County can be considered cost burdened at present.

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<sup>1</sup> The analysis by community does not include all incorporated communities; data for small communities is generally excluded due to the small sample sizes. Despite its relatively small population, Mesilla is included in this analysis because the household income is substantially higher than the County-wide median total.

Figure 1: Doña Ana County Customer Financial Impact Analysis Study Area



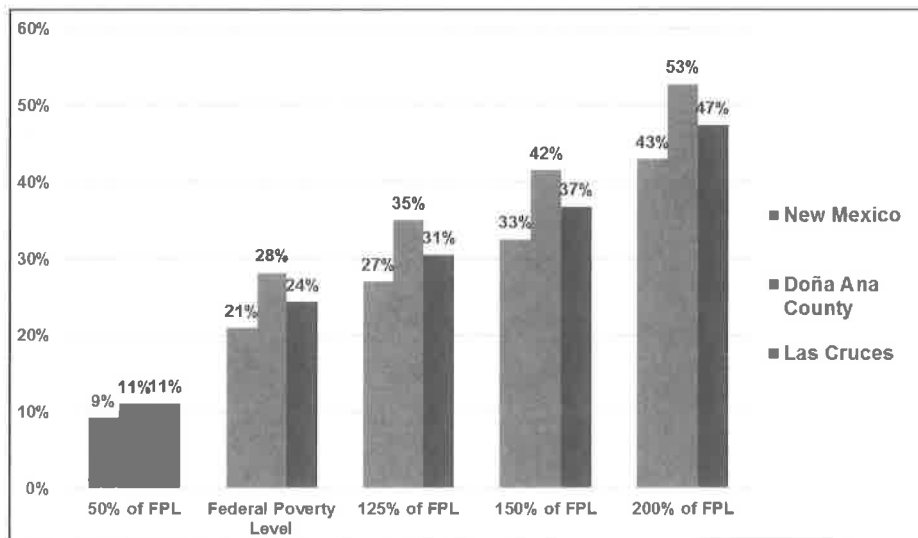


## Economic Conditions in Doña Ana County

As shown in Figure 2, a disproportionate percentage of Doña Ana County residents live below or near the federal poverty level in comparison to the state of New Mexico overall. Overall, 28% of Doña Ana County residents live below the federal poverty line, while more than half of residents earn twice the federal poverty level or less. It is important to note that the data shown in Figure 2 displays overall conditions in Doña Ana County *only*. About 37.4% of the population for the study area lives below the poverty line.

The adjusted median household income for the study area is \$30,276, compared to nearly \$39,000 for Doña Ana County (see Figure 3). By contrast, the median household income for the state of New Mexico is \$44,963, while the poverty rate is 21.0%. The median household income for the United States, based on 2011-2015 ACS data, is \$53,889 and the poverty rate is 15.5%.<sup>2</sup>

**Figure 2: Percent of Residents Below or Near Federal Poverty Level (FPL)<sup>3</sup>**



There is a high level of variability for household incomes within Doña Ana County (see Figure 3). The Town of Mesilla and the City of Las Cruces have median household incomes above the overall Doña Ana County value, while the median Sunland Park household earns almost \$11,000 less than the median Doña County household. The study area, which comprises about one-seventh of the overall County population, is noteworthy not only for lower incomes and higher poverty levels, but a higher persons-per-household ratio (3.24) than the County overall (2.71).

<sup>2</sup> According to the 2015 1-year ACS data, which cannot be contrasted directly against the Doña Ana County data but provides a more accurate picture of present-day conditions for large population sets, the nationwide median household income is \$55,775 and the poverty rate is 14.7.

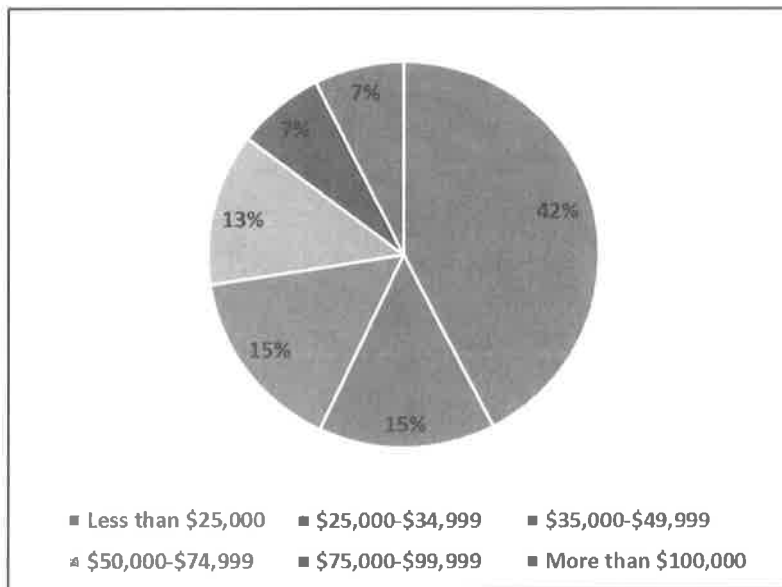
<sup>3</sup> Source: ACS, 2011-2015 Five-Year Data

**Figure 3: Population, Household, and Income Characteristics by Location<sup>4</sup>**

	<b>Doña Ana County</b>	<b>Las Cruces</b>	<b>Sunland Park</b>	<b>Mesilla</b>	<b>Other Doña Ana County</b>	<b>Study Area</b>
<b>Population - 2010</b>	209,233	97,618	14,106	2,196	64,959	<b>30,354</b>
<b>Housing Units - 2010</b>	81,492	42,370	4,060	1,076	23,642	<b>10,344</b>
<b>Households - 2010</b>	75,530	39,433	3,884	980	21,871	<b>9,362</b>
<b>Persons per Household</b>	2.71	2.43	3.63	2.24	2.84	<b>3.24</b>
<b>Median Household Income</b>	\$38,853	\$41,330	\$28,047	\$46,000	\$39,657	<b>\$30,276</b>
<b>Individuals with Income Below Poverty Level</b>	28.2%	24.4%	37.1%	20.9%	27.9%	<b>37.4%</b>

Figure 4 depicts the share of households by jurisdiction within the study area at various household income levels. About 42% of households in the study area earn less than \$25,000 per year, while only about 15% earn more than \$75,000.

**Figure 4: Household Income Ranges, Doña Ana County Study Area**



<sup>4</sup> Housing unit and population data are taken from the 2010 Census. Median household income data is taken the 2011-2015 American Community Survey.

## Housing Costs and Available Income

Average annual housing costs for a typical household in various jurisdictions – based on data from the American Community Survey and compiled by the Center for Neighborhood Technologies – are presented in Figure 5. Housing costs include mortgage or rental fees, homeowner’s insurances and taxes, and utilities fees. The data reveals general cost burdens for residents of Doña Ana County, though households in unincorporated portions of the County, including the study area, spend a particularly high share of their income on housing expenditures.

HUD suggests that households that spend more than 30% of their income on housing are cost-burdened. Average housing costs require a household in the Doña Ana County making the median income level to spend close to 35% of its income on housing. This does not suggest that *all* households in the study area are cost burdened or that expenditures for all households are as high as the average assumed values provided in Figure 5. However, the data confirms that the combination of low household incomes and high expenditures places financial strain on many families.

**Figure 5: Average Household and Transportation Expenditures by Location**

Place	Households	Median Household Income	Avg Monthly Household Housing Cost	Avg Annual Household Housing Cost	Household Costs as % of MHI	Percent MHI Remaining
Doña Ana County	75,530	\$38,853	\$1,025	\$12,300	31.7%	68.3%
Las Cruces	39,433	\$41,330	\$991	\$11,892	28.8%	71.2%
Sunland Park	3,884	\$28,047	\$683	\$8,196	29.2%	70.8%
Mesilla	980	\$46,000	\$1,141	\$13,692	29.8%	70.2%
Other Doña Ana County	21,871	\$39,657	\$1,205	\$14,462	36.5%	63.5%
<b>Study Area</b>	<b>9,362</b>	<b>\$30,276</b>	<b>\$877</b>	<b>\$10,524</b>	<b>34.8%</b>	<b>65.2%</b>

Due to increased distances to services and job sites and greater vehicle dependency, households in rural and unincorporated portions of Doña Ana County also have the highest transportation costs in the area. Data from the Center for Neighborhood Technologies indicates that transportation costs for households in the study area are about 12% higher than the Doña Ana County average. It is worth noting that, according to Census data, housing costs are also higher in unincorporated portions of Doña Ana County than in many incorporated areas.

## Wastewater Utility Costs

It is valuable to contrast median household income for the Doña Ana County study area against other communities for which utility rate data is available, and to compare Doña Ana County Utility Authority costs against general research on utility costs relative to income. According to the Water Research Foundation, affordability issues arise when water utilities costs exceed 2.5% of the median household income.<sup>5</sup> Demand for utilities appears to be somewhat elastic; data from the Bureau of Labor Statistics National Consumer Expenditures Survey indicate that lower income households generally spend less on energy and utilities than higher income households. Still, those expenditures comprise a larger share of their income.

It is important to note that the average housing costs values provided in Figure 6 include utilities, such as sewer. Since the amount spent on utilities is known, an increase in rates should be added to the monthly housing costs value to determine the new share of income spent on housing expenditures.

Residents in the Doña Ana County study area pay a lower share of median household income on wastewater utilities than peer communities identified in the Utility Rate Study (see Figure 6). However, since water is provided by a range of mutual domestic water associations with varying rates, it is difficult to make standard assumptions about total utility costs (i.e. water *and* wastewater) across Doña Ana County. Data from the 2013 NMED Water and Sewer Rate Survey indicate that average monthly water rates, assuming 6,000 gallons per month consumed, are about \$25.43. Therefore, the combined costs of wastewater and water (using the current fixed rate for wastewater and the annualized New Mexico average for water), are roughly equal to 1.8% of the median household income. Together, this information suggests that rates could be raised without causing a cost burden *specifically* due to utility costs.

**Figure 6: Median Household Income and Wastewater Costs<sup>6</sup>**

Community	Median Household Income	Monthly Wastewater Utility Costs	Annual Wastewater Utility Costs	Utility Costs as Share of MHI
Española	\$30,257	\$47.01	\$564.12	1.86%
Belen	\$29,486	\$35.87	\$430.44	1.46%
Aztec	\$41,414	\$44.50	\$534.00	1.29%
Milan (Cibola County)	\$34,565	\$30.10	\$361.20	1.04%
Bloomfield	\$49,070	\$40.38	\$484.56	0.99%
Grants	\$39,014	\$27.88	\$334.56	0.86%
<b>Doña Ana County (Study Area)</b>	<b>\$30,276</b>	<b>\$21.00</b>	<b>\$252.00</b>	<b>0.83%</b>

<sup>5</sup> Water Research Foundation, <http://www.waterrf.org/knowledge/utility-finance/revenue/Pages/faqs.aspx>, accessed March 1, 2017. "To address this issue, water utilities have developed customer assistance programs to ensure that necessary water services remain available to those who cannot afford them. Affordability programs can include a variety of fixed or variable discounts and credits as well as specifically tailored (or "lifeline") rates."

<sup>6</sup> Median household income data is taken from the 2011-2015 ACS. Wastewater costs are from the 2013 NMED Water and Sewer Rate Survey, apart from data for Bloomfield, which is from the 2012 Survey. Monthly costs are annualized for comparative purposes.

## Discussion

According to analysis from the Pew Charitable Trusts, housing expenditures have increased steadily over the last decade, though median incomes have not.<sup>7</sup> At the national level, median household income in 2014 was 13% below 2004 levels – due largely to the sharp decrease related to the Great Recession – while expenditures increased by 14% in that span.<sup>8</sup> The result of expenditures rising faster than incomes is that low-income families have less disposable income after basic necessities are obtained. Households typically spend about two-thirds of their income on housing (including utilities), food, and transportation. In the Doña Ana County study area, housing expenditures are greater than the national average (35% in the study area compared to about 25% nationally), and meet the definition of cost-burdened. In all likelihood, households must spend well over two-thirds of their incomes on housing, food, and transportation combined.

This analysis demonstrates that household incomes in the study area are low relative to the County overall and to the state of New Mexico, and that housing costs place a strain on financial resources. At the same time, utility rates represent a modest cost for most households and comprise a smaller share of household income for residents of the study area than peer communities across New Mexico. In short, a rate increase will have an impact on the residents of unincorporated areas of Doña Ana County that receive sewer service through the Utility Authority. The economic conditions therefore validate the approach of incremental increases as having the most manageable impact on these residences.

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<sup>7</sup> Pew Charitable Trusts Issue Brief: March 30, 2016

<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/household-expenditures-and-income>

<sup>8</sup> Pew also reports that households in the lower-third of national income generally have a deficit of \$2,300 per year when factoring in all expenditures (i.e. housing, transportation, food, medical, childcare, etc.).

Figure 7: Median Household Income by Census Tract, Doña Ana County

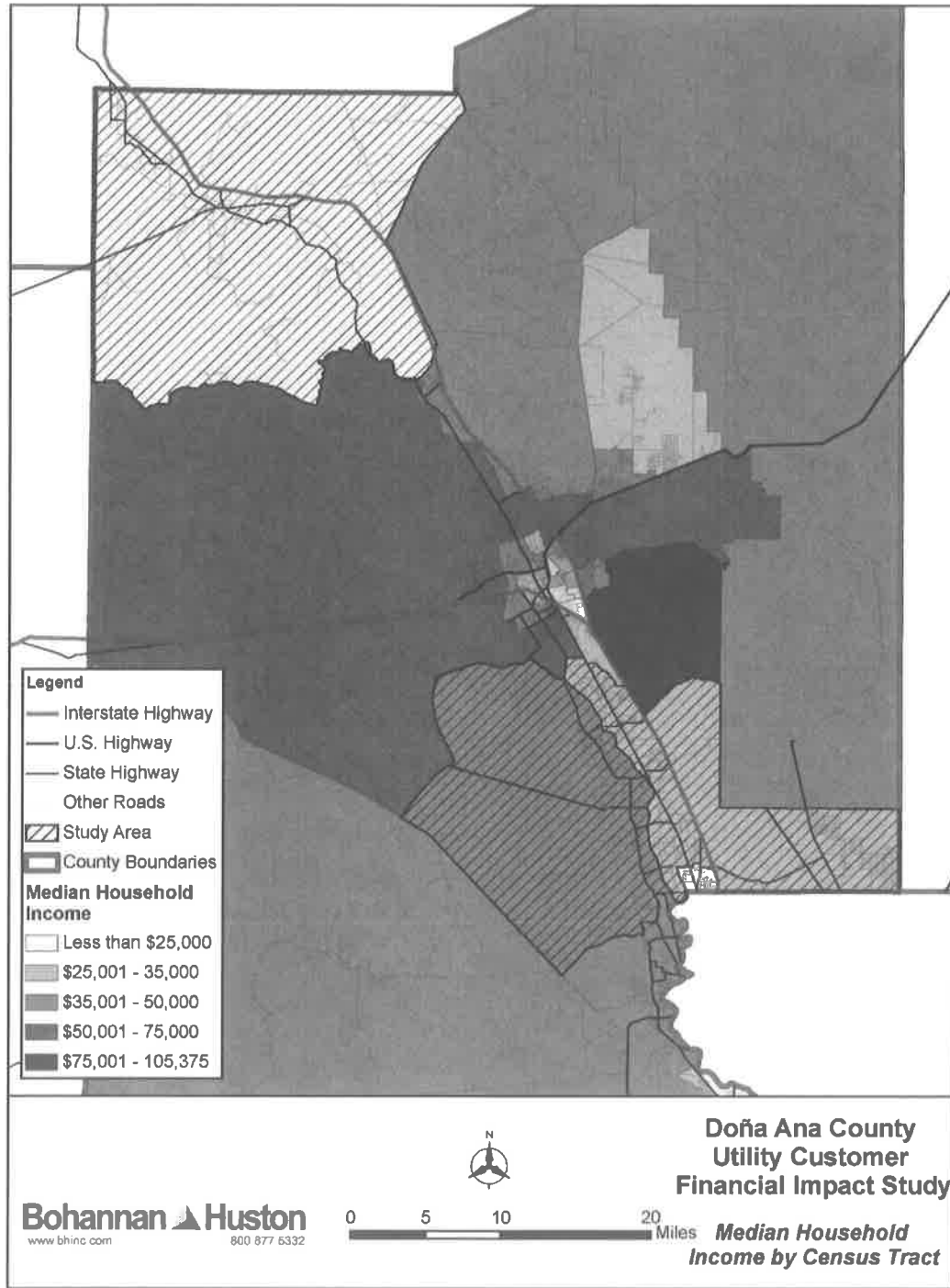
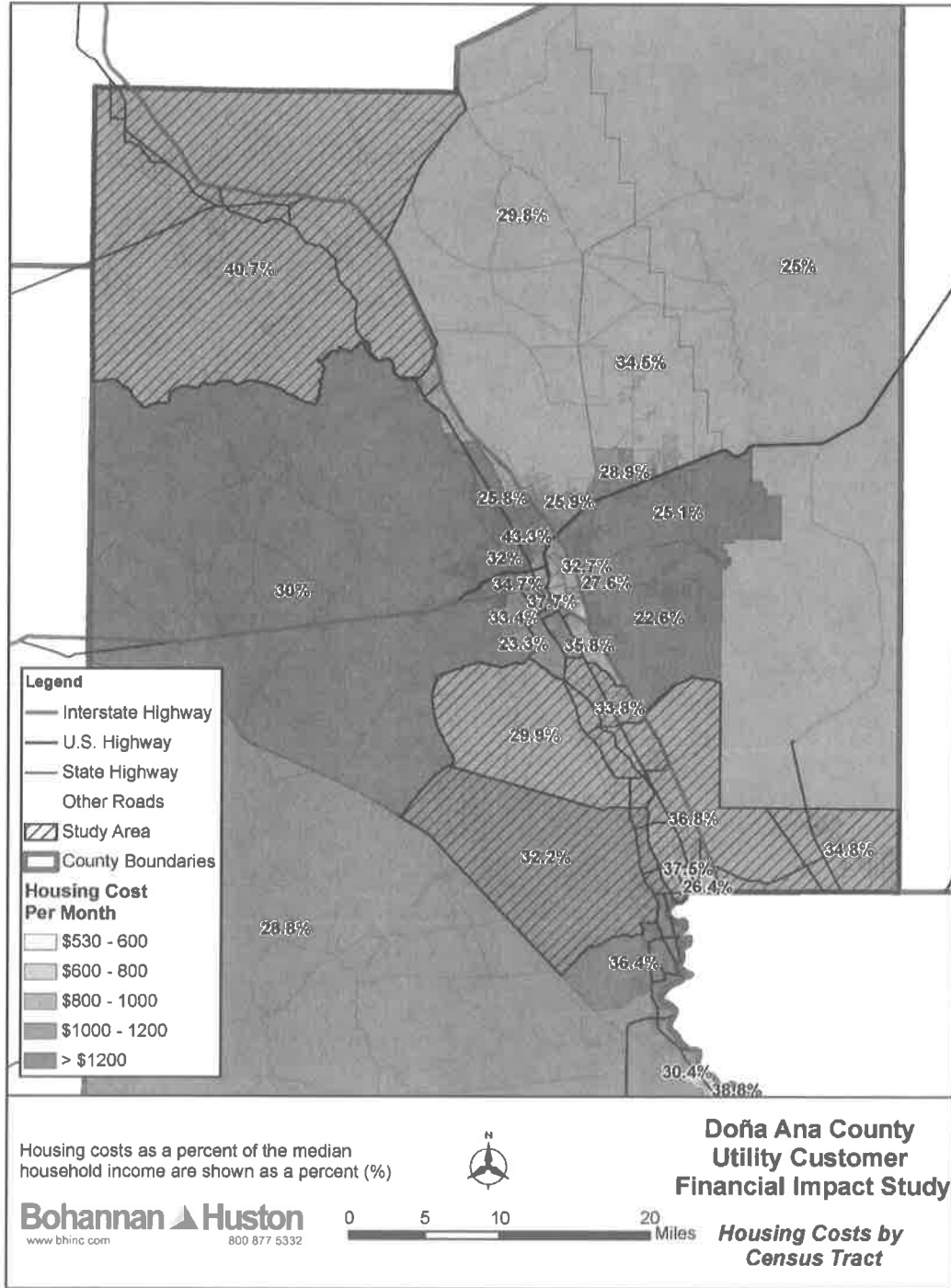


Figure 8: Average Housing Costs by Census Tract, Doña Ana County



DOÑA ANA COUNTY RESOLUTION NO. 2017-\_\_\_\_\_

**A RESOLUTION AMENDING THE DISCHARGE FEE FOR DISPOSAL OF LIQUID WASTE**

**WHEREAS**, the Doña Ana County Wastewater Ordinance No. 197-2001, codified at Chapter 254 of the Doña Ana County Code, provides at §5 (Discharge Fees) that the fee for disposal of liquid waste at the Doña Ana County Liquid Waste Facility shall be reviewed by the Utilities Department every year and, when appropriate, shall be adjusted, by resolution of the Doña Ana County Board of Commissioners; and

**WHEREAS**, the Utilities Department has reviewed the fee for disposal of liquid waste and has determined the fee should be increased an annual increments to five cents (\$.05) per gallon each year over the next three years;

**THEREFORE, BE IT RESOLVED** that commencing June 1, 2017, the discharge fee is hereby increased in annual increments of five cents (\$.05) per gallon each year over the next three years. In subsequent years, rates will increase annually in an amount corresponding to any increase in the Consumer Price Index.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the Board of County Commissioner of Doña Ana County, New Mexico.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
**Isabella Solis, Chair, District 4** For / Against

\_\_\_\_\_  
**John L. Vasquez, Vice-Chair, District 5** For / Against

\_\_\_\_\_  
**Billy G. Garrett, District 1** For / Against

\_\_\_\_\_  
**Benjamin L. Rawson, District 3** For / Against

\_\_\_\_\_  
**Ramon S. Gonzalez, District 2** For / Against

**ATTEST:**

\_\_\_\_\_  
**Scott Krahling  
County Clerk**



**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Utilities Department  
Initiating Department

Nora Oliver, Office Supervisor  
Contact Person



May 23, 2017  
Meeting Date

18  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE RESOLUTION INCREASING WASTEWATER UTILITY RATES**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

Request Board approve resolution increasing wastewater utility rates. Rates will be increased in annual increments over the next five years as shown in the rate schedule. In subsequent years, rates will increase annually in an amount corresponding to any increase in the Consumer Price Index.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Final Rate Study – included with the Liquid Waste Discharge fee agenda item  
Resolution with Exhibit A

**SUMMARY OF FINANCIAL IMPACT**

Estimated yearly additional annual revenue \$534,474

**ADMINISTRATIVE REVIEW AND APPROVAL**

lln Finance

SPK Legal

\_\_\_\_\_ County Manager/  
Agenda Review

\_\_\_\_\_ Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County  
Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Public Works

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No For Recording?  Yes  No

Return original/s to: Utilities Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Nora Oliver/Utilities \_\_\_\_\_ Dept.

Deadline for return of document/s?  Yes, return by: \_\_\_\_\_ or  No

DOÑA ANA COUNTY RESOLUTION NO. 2017-\_\_\_\_\_

**A RESOLUTION INCREASING WASTEWATER RATES FOR WASTEWATER SERVICE**

**WHEREAS,** the Doña Ana County Wastewater Ordinance No. 210-04, codified at Chapter 319 of the Doña Ana County Code, provides at §10 (Rates and Charges) that the rates for wastewater service for the Doña Ana County customer base may be changed or modified by the Board of County Commissioners by subsequent resolution as the need requires or deemed in the County’s best interests;

**NOW, THEREFORE, BE IT RESOLVED** that commencing July 10, 2017, the wastewater rates are hereby increased annually the next five fiscal years as set forth in the 2017 Amended Rate Schedule 3, attached and incorporated herein as Exhibit A. In subsequent years, rates shall increase annually in an amount corresponding to any increase in the Consumer Price Index.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the Board of County Commissioner of Doña Ana County, New Mexico.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
Isabella Solis, Chair, District 4 For / Against

\_\_\_\_\_  
John L. Vasquez, Vice-Chair, District 5 For / Against

\_\_\_\_\_  
Billy G. Garrett, District 1 For / Against

\_\_\_\_\_  
Benjamin L. Rawson, District 3 For / Against

\_\_\_\_\_  
Ramon S. Gonzalez, District 2 For / Against

**ATTEST:**

\_\_\_\_\_  
Scott Krahling  
County Clerk

## DOÑA ANA COUNTY WASTEWATER SYSTEM

### RATE SCHEDULE 3

#### MONTHLY USER CHARGES:

**APPLICABILITY:** The Residential and Commercial Rates are available only for normal wastewater dischargers at individual residences, individual dwelling units, individual farm units, apartments, and commercial establishments. Service shall be provided through a single wastewater service line at a location to be designated by the County.

Service will be furnished in accordance with the County's ordinances and Rules and Regulations addressing wastewater service, available at the County Utilities Department.

**SERVICE AREA:** The service areas are designated in the Doña Ana County Wastewater Ordinance (Section 5). The Utilities Department maintains maps of the service areas.

- A. **Monthly Fixed and Variable Charges:** The charge for wastewater service provided shall be the sum of Fixed (F) and Variable (V) rates shown in the tables below. Applicable governmental gross receipts taxes will be added to all charges.

FY18	FIXED (F)	VARIABLE (V)
CUSTOMER CLASSIFICATION:	Minimum Charge (up to 7,000g)	Per 1,000g @ 80% of usage <sup>1</sup>
Residential:	\$33.50	\$1.40/1000g <sup>2</sup>
Commercial:	\$84.00	\$1.40/1,000g
Institutional:	\$120.00	\$1.40/1,000g
Industrial:	\$168.75	\$1.40/1,000g
Multi-Use:	\$33.50/dwelling unit	\$1.40/1,000g

FY19	FIXED (F)	VARIABLE (V)
CUSTOMER CLASSIFICATION:	Minimum Charge (up to 7,000g)	Per 1,000g @ 80% of usage <sup>1</sup>
Residential:	\$37.25	\$1.40/1000g <sup>2</sup>
Commercial:	\$86.25	\$1.40/1,000g
Institutional:	\$130.25	\$1.40/1,000g
Industrial:	\$180.50	\$1.40/1,000g
Multi-Use:	\$37.25/dwelling unit	\$1.40/1,000g

FY20	FIXED (F)	VARIABLE (V)
CUSTOMER CLASSIFICATION:	Minimum Charge (up to 7,000g)	Per 1,000g @ 80% of usage <sup>1</sup>
Residential:	\$40.75	\$1.40/1000g <sup>2</sup>
Commercial:	\$88.25	\$1.40/1,000g
Institutional:	\$140.75	\$1.40/1,000g
Industrial:	\$192.50	\$1.40/1,000g
Multi-Use:	\$40.75/dwelling unit	\$1.40/1,000g

FY21	FIXED (F)	VARIABLE (V)
CUSTOMER CLASSIFICATION:	Minimum Charge (up to 7,000g)	Per 1,000g @ 80% of usage <sup>1</sup>
Residential:	\$44.50	\$1.40/1000g <sup>2</sup>
Commercial:	\$90.50	\$1.40/1,000g
Institutional:	\$151.50	\$1.40/1,000g
Industrial:	\$204.75	\$1.40/1,000g
Multi-Use:	\$44.50/dwelling unit	\$1.40/1,000g

FY22	FIXED (F)	VARIABLE (V)
CUSTOMER CLASSIFICATION:	Minimum Charge (up to 7,000g)	Per 1,000g @ 80% of usage <sup>1</sup>
Residential:	\$48.25	\$1.40/1000g <sup>2</sup>
Commercial:	\$92.75	\$1.40/1,000g
Institutional:	\$162.75	\$1.40/1,000g
Industrial:	\$217.25	\$1.40/1,000g
Multi-Use:	\$48.25/dwelling unit	\$1.40/1,000g

Subsequent years will increase annually in an amount corresponding to any increase in the Consumer Price Index (CPI).

1. Commercial, Institutional, and Industrial Variable Charge: Gallons in excess of 7,000 are charged at the rate of \$1.40 per 1,000 gallons as measured by taking 80% of the monthly water usage as determined from water records. Customer usage is measured monthly or estimated where water service data is not available
2. Residential Variable Charge (RVC): Only residential customers within the Santa Teresa – Border Area will be charged the RVC due to the debt burden required for the construction of the water and wastewater systems serving that area. There will be no variable charges for residential customers in all other Service Areas, unless the County determines that a variable charge is necessary for the financial viability of the utility. In the event that the County determines that a variable charge is required, the first 7,000 Gallons is included in the Fixed Monthly Charge as measured by the winter months average from water use records (December, January and February). All Gallons over 7,000 will be charged at the rate of \$1.40 per 1,000 gallons.
3. Monthly charges for new customers or customers for which water data is not available will be determined based on similar customers of the same classification. If and when water data is available, the monthly charge shall be adjusted.

B. Minimum Charge: The minimum charge under this Schedule shall be the Fixed Monthly Charge regardless of volume of flow measured.

C. Surcharge for Excess Waste Strength: A Surcharge shall be applied to all users for excess wastewater strength above domestic levels as defined by this ordinance.

A monthly Biochemical Oxygen Demand (BOD) surcharge of \$.35 will be assessed for every milligram per liter (mg/L) BOD higher than 250 mg/L per pound per million gallons of industrial waste discharged, and a monthly Total Suspended Solids (TSS) surcharge of \$0.28 will be assessed for every milligram per liter (mg/L) TSS higher than 200 mg/L per pound per million gallons of industrial waste discharged.

D. Exclusions: Doña Ana Village is excluded from this rate schedule until further action by the County. Doña Ana Village rates are presently provided for by contract between Doña Ana Mutual Domestic Water Consumers Association, Doña Ana County and the City of Las Cruces as parties.

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Health and Human Services Department  
Initiating Department

May 23, 2017  
Meeting Date

Jamie Michael, Director  
Contact Person

19  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE RESOLUTION AMENDING RESOLUTION 2013-57 CLARIFYING THE PURPOSE OF THE CRISIS TRIAGE CENTER.**

**SUMMARY OF ITEM TO BE CONSIDERED  
INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

The Board is asked to approve a resolution amending resolution 2013-57 clarifying the purpose of the crisis triage center. County staff and community partners have been participating in the national Stepping Up Initiative for the last two years. In doing, it has become evident that the crisis triage center has a valuable role in achieving the goal of that initiative, which is to reduce the number of people in the jail that have a serious mental illness. This resolution will allow the county to seek operators for the CTC that can provide services in support of achieving this goal.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Summary  
Resolution  
Sequential intercept map description

**SUMMARY OF FINANCIAL IMPACT**

None

**ADMINISTRATIVE REVIEW AND APPROVAL**

\_\_\_ Finance

AJC Legal

[Signature] County Manager/  
Agenda Review

\_\_\_ Purchasing

\_\_\_ Human Resources

\_\_\_ Assistant County Manager

\_\_\_ Planning

[Signature] Other

**DOCUMENT CONTROL**

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Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No

## Executive Summary Board of County Commissioners Meeting - May 23, 2017

### **Requested Action:**

Approve a resolution superseding resolution 2013-57 to amend the purpose of the crisis triage center.

### **Background:**

This resolution will allow the county to seek operators for the crisis triage center to provide a service that will help meet the goal of reducing the number of people with serious mental illness in the county jail. It is proven that there is a better return on investment when people can be safely diverted from the criminal justice system into the healthcare system. Through the Stepping Up Initiative, key stakeholders have used the sequential intercept mapping process to identify five intercepts in the current system where people can be diverted.

The sequential intercept model allowed our community to assess available resources, determine gaps in services, and plan for community change. During the sequential intercept mapping workshop stakeholders created a map that illustrated how people with behavioral health needs come in contact with and flow through the local criminal justice system, and identify opportunities for linkages to services and for prevention of further penetration into the criminal justice system.

Two recommendations included developing diversion and re-entry programs. Including these as functions of the CTC in the resolution will make for a more effective, valuable, and sustainable operation. The crisis triage center can serve as a diversion resource for the following intercepts:

- 1) Pre-booking diversion – The CTC can serve as a receiving center for people that have been identified by law enforcement officers. This will give officers an option other than the jail for people that have committed a crime as a result of their illness.
- 2) Re-entry – The CTC can also serve as a re-entry center to assist people with serious mental illness as they leave the jail and transition back into the community.

These two functions have similar staffing and capacity needs, therefore by combining them it becomes a more cost-effective and efficient operation. Additionally, having the CTC located near the detention center makes it convenient for law enforcement and accessible for people leaving the detention center.

The table on the following page summarizes staffing and capacity for each function.

DOÑA ANA COUNTY RESOLUTION NO. 2017-**RESOLUTION AMENDING RESOLUTION 2013 - 57 CLARIFYING  
THE ROLE OF THE CRISIS TRIAGE CENTER**

**WHEREAS**, the Doña Ana County Board of County Commissioners is tasked to represent and address the needs of its residents; and

**WHEREAS**, a significant number of ~~residents of Doña Ana County suffer from a variety of mental and behavioral health issues, including debilitating mental disorders that may have the "likelihood of serious harm to oneself" or the "likelihood of serious harm to others"; and people in county jails have a mental health disorder or are receiving mental health services; and~~

**WHEREAS**, individuals experiencing a mental ~~disorder in health~~ crisis are ~~currently taken to either the~~ cared for in emergency rooms of local hospitals, ~~or at~~ the Doña Ana County Detention Center, or other appropriate facility as defined by law; and

**WHEREAS**, Doña Ana County ~~has an active Stepping Up Initiative that involves many community agencies working together to reduce the number of people in the Doña Ana County Detention Center that have a mental health disorder by identifying intercepts where people can safely move out of a criminal justice system into a healthcare system; and has developed the Crisis Triage Center for the express purpose of providing individuals with mental disorders in crisis with emergency evaluation and certification or referral, thereby reducing the potential of harm to themselves or others, and reducing the potential for either incarceration or inappropriate hospitalization; and~~

**WHEREAS**, the Crisis Triage Center is dedicated to facilitating access to ~~care from~~ community-based care and resources that are specifically designed to provide appropriate care to people with mental health disorders; and

**WHEREAS**, the Crisis Triage Center is one of the important individual components of a much larger system addressing those issues in Doña Ana County; and

**WHEREAS**, the Mission Statement for the Crisis Triage Center, developed with input from the community, is to provide a safe and secure environment for adults with serious mental health issues until they are stabilized beyond the crisis moment, and to establish linkages with services beyond the Crisis Triage Center through collaboration with community services.

**NOW THEREFORE, BE IT RESOLVED** that the Doña Ana County Board of County Commissioners, in the interest of the health and safety of all residents, does hereby direct that:

- The preeminent intent of the Crisis Triage Center is respectful assistance and support for individuals experiencing mental health crisis so that they do not harm themselves or others; and
- Jail and hospital diversion is to be the primary purpose of the Crisis Triage Center; and
- Through the Stepping Up Initiative pre-booking jail diversion and community re-entry programs it has been determined to be effective and well-suited functions of the Crisis Triage Center; and



- ~~• The Crisis Triage Center will conduct appropriate evaluations in a secure environment for persons detained by law enforcement in accordance with constitutional and statutory protections; and~~
- Operation of the Crisis Triage Center will be designed to meet the professional standards of law enforcement, and the requirements of law; and
- Doña Ana County will actively support larger community efforts to address mental health issues throughout the region-- including consideration of additional functions and services at the Crisis Triage Center once the initial operation of the Center is fully in place, so long as any such changes to the operation are compatible with the primary purpose of the Center.

**RESOLVED** this 23<sup>d</sup> day of May 2017

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
**Isabella Solis, Chair, District 4 For / Against**

\_\_\_\_\_  
**John L. Vasquez, Vice-Chair, District 5 For / Against**

\_\_\_\_\_  
**Billy G. Garrett, District 1 For / Against**

\_\_\_\_\_  
**Benjamin L. Rawson, District 3 For / Against**

\_\_\_\_\_  
**Ramon S. Gonzalez, District 2 For / Against**

**ATTEST:**

\_\_\_\_\_  
**Scott A. Krahling  
County Clerk**

### CTC Operations

	<b>Diversion Center</b>	<b>Safe Reentry Center</b>
<b>Target Population</b>	Individuals in crisis Deflected by LE	Individuals released from jail
<b>Primary Purpose</b>	<b>Divert from jail or avoid emergency calls</b> Stabilize Connect to services	<b>Reduce recidivism</b> Connect to services and assist with transition Stabilize (if needed)
<b>Staffing</b>	Staff to greet/triage Trained, qualified, and licensed clinicians Medical oversight Case managers Peers	
<b>Length of stay</b>	23 hours or less	
<b>Linkages to care</b>	Established relationships with treatment and social service providers Referrals to timely and culturally appropriate care	

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Commissioner John Vasquez  
Initiating Department

May 23, 2017  
Meeting Date

Commissioner John Vasquez  
Contact Person

20  
Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE RESOLUTION ESTABLISHING A FILM ADVISORY COMMITTEE**

SUMMARY OF ITEM TO BE CONSIDERED

New Mexico State University and the Doña Ana Community College offer programs in filmmaking and related fields. Increased film production and related activities would enhance Doña Ana County's economic development and provide increased employment opportunities to students and graduates of New Mexico State University and Doña Ana Community College. A committee of community members knowable of the needs of the film industry and interested in promoting economic development through the film industry would assist the Board of County Commissioners in developing policies that will promote the film industry and related economic development

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Proposed Resolution

SUMMARY OF FINANCIAL IMPACT

N/A

ADMINISTRATIVE REVIEW AND APPROVAL

\_\_\_ Finance

AV Legal

AV County Manager/  
Agenda Review

\_\_\_ Purchasing

\_\_\_ Human Resources

\_\_\_ Assistant County Manager

\_\_\_ Planning

\_\_\_ Other

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Deadline for return of document/s?:  Yes, return by: \_\_\_\_\_  No

**DOÑA ANA COUNTY  
RESOLUTION NO. 2017-\_\_\_\_\_**

**A RESOLUTION ESTABLISHING A FILM ADVISORY COMMITTEE**

**WHEREAS**, New Mexico offers one of the most competitive incentive packages in the film industry which includes a 25% or 30% Refundable Film Production Tax Credit and the Film Crew Advancement Program; and

**WHEREAS**, New Mexico State University's Creative Media Institute for Film and Digital Arts offers a Bachelor of Arts Creative Media degree which a dynamic cross-disciplinary program that prepares students in Digital Filmmaking and Animation & Visual Effects; and

**WHEREAS**, Doña Ana Community College offers Associated Degrees in Creative Media Technology and Digital Graphics Technology and Certificates other areas related to film and technology; and

**WHEREAS**, industry groups have expressed increased interest in filming in the Doña Ana County area; and

**WHEREAS**, increased film production and related activities would enhance Doña Ana County's economic development and provide increased employment opportunities to students and graduates of New Mexico State University and Doña Ana Community College; and

**WHEREAS**, the Doña Ana County Board of County Commissioners would be able to better work with the film industry to promote increased economic development if it were kept better informed of film production opportunities and the needs of the film industry; and

**WHEREAS**, a committee of community members knowable of the needs of the film industry and interested in promoting economic development through the film industry would assist the Board of County Commissioners in developing policies that will promote the film industry and related economic development;

**NOW, THEREFORE BE IT RESOLVED**, that there is hereby created the Doña Ana County Film Advisory Committee; and

**BE IT FURTHER RESOLVED**, that the Doña Ana County Film Advisory Committee will be composed of five (5) volunteer members to be selected by majority vote of the Board of County Commissioners. The initial term of the committee member shall be through December 31, 2018 after which the terms of the members shall be two (2) years; and

**BE IT FURTHER RESOLVED**, that no later than August 31, 2017, the Doña Ana County Film Advisory Committee will report to the Board of County Commission and provide an Action Plan setting out the objectives of the committee and proposal on how those objective will be met. Thereafter, the Doña Ana County Film Advisory Committee will provide quarterly updates to the Board of County Commissioners outlining the results obtained and additional proposals.

**RESOLVED** this 23rd day of May, 2017.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
**Isabella A. Solis, Chair, District 4 For/Against**

\_\_\_\_\_  
**John L. Vasquez, Vice Chair, District 5 For/Against**

\_\_\_\_\_  
**Billy G. Garrett, District 1 For/Against**

\_\_\_\_\_  
**Ramon S. Gonzalez, District 2 For/Against**

\_\_\_\_\_  
**Benjamin L. Rawson, District 3 For/Against**

**ATTEST:**

\_\_\_\_\_  
**Scott Krahling  
County Clerk**

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

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Las Cruces, New Mexico 88007  
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Toll-Free: (877) 827-7200

Treasurers

Initiating Department

May 23, 2017

Meeting Date

Eric L Rodriguez

Contact Person

21

Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE THE RE- APPOINTMENT OF TWO MEMBERS FROM THE LOCAL BANKING COMMUNITY, WILLIAM JACOBS (WHITE SANDS FEDERAL CREDIT UNION) AND GEORGE RUTH (CITIZENS BANK), AND A PRIVATE CITIZEN, DR. CHRIS ERICKSON (NMSU), TO THE DONA ANA COUNTY INVESTMENT ADVISORY COMMITTEE.**

SUMMARY OF ITEM TO BE CONSIDERED

INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED

County Treasurer Eric L. Rodriguez, acting as Chairman of the Dona Ana County Investment Advisory Committee, is requesting approval to have William Jacobs, George Ruth, and Dr. Chris Erickson re-appointed to the Investment Advisory Committee. Pursuant to Resolution No. 2011-15, Dona Ana County Investment Policy, the Board of County Commissioners, acting as the Board of Finance, is responsible for the appointment of two members from the local banking community and a private citizen to the committee.

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Resume or Bio for each candidate. Also attached, is the investment policy.

SUMMARY OF FINANCIAL IMPACT

Not Applicable. The Investment Advisory Committee does not need a budget, and acts only in an advisory role.

ADMINISTRATIVE REVIEW AND APPROVAL

\_\_\_\_\_ Finance

\_\_\_\_\_ Legal

  
County Manager/  
Agenda Review

\_\_\_\_\_ Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Other

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Deadline for return of document/s? Yes, return by:      or  No

**Dr. Christopher A. Erickson**  
New Mexico State University  
ECONOMICS AND INTERNATIONAL BUSINESS

## Education

Ph D, Arizona State University, 1989.  
BA, Willamette University, 1980.

## Professional Positions

### Academic - Post-Secondary

Professor, New Mexico State University, College of Business Administration and Economics, Las Cruces, NM. (August 2012 - Present).  
Associate Professor, New Mexico State University, College of Business Administration and Economics, Las Cruces, NM. (1987 - 2012).  
Visiting Professor, National Chung Hsing University, Taichung, Taiwan. (June 2004 - August 2004).  
Visiting Professor, Instituto Tecnológico y Estudios Superiores de Monterrey, Juarez, Chihuahua, Mexico. (August 2003 - December 2003).  
Visiting Professor, NIRMA Institute of Management, Ahmedabad, Gujarat, India. (August 2000 - December 2000).

## Awards and Honors

Stan Fulton Research Award, College of Business. (August 2012).  
Domenici Fellow, Domenici Institute. (May 2012).  
College of Business Faculty Graduate Teaching Award, New Mexico State University. (August 2011).  
Daniels Ethics Fellow, Daniels Fund. (April 2011).  
College of Business Faculty Service Award, New Mexico State University. (2007).

## Teaching Experience

### New Mexico State University (since 2009)

ECDV 325, Economic Development of Latin America  
ECDV 625, Economic Development Theory  
ECON 304, Money and Banking  
ECON 324, Developing Nations  
ECON 503, Managerial Economics

## Directed Student Learning

Masters Theses: 35 students; chair 6  
Doctoral Dissertaions: 6; chair 1

## Publications

### Refereed Journal Articles

- Erickson, C. A., and Raghuram, G. Impact of Capital Market Reform on the Asset Pricing Behavior in the Indian Market Emerging Markets Review. Submitted Emerging Markets Review.
- Erickson, C. A. Power Generation in the U.S.-Mexican Border Region: Regulation of Transborder Power Generation. *Journal of Borderland Studies*, Revise and Resubmit.
- Erickson, C. A. Owensby, F. and Owusu-Nantwi V. (Forthcoming). The Government Spending Multiplier: Evidence from County Level Data, *Social Sciences Journal*.
- Archambault, S. J., Downes, C. M., Van Voorhies, W., Erickson, C. A., Lammers, P. (2014). Nannochloropsis sp. algae for use as biofuel: Analyzing a translog production function using data from multiple sites in the southwestern United States. *Algal Research (Elsevier)*.
- Sankaran, H., Saxena, M., Erickson, C. A. (2011). Average Conditional Volatility : A Measure of Systemic Risk for Commercial Banks. *Journal of Business and Economics Research*, 9(2), 79-93.
- Erickson, C. A., Mariani, M. C., Valles, J., Libbin, J. (2009). Long Correlations applied to the study of Agricultural Indices in comparison with S & P 500. *Australian Journal of Math Analysis and Applications*, 5(2), 1-11.
- Mariani, M. C., Libbin, J., Martin, K. J., Ncheuguim, E., Mani, V., Erickson, C. A., Beccar Varela, M., Valles, D. (2009). Levy models and Long Correlations applied to the study of Exchange Traded Funds(SI-Financial derivatives). *International Journal of Computer Mathematics*, 86(6), 1040-1053.
- Erickson, C. A., Mariani, M. C., Libbin, J. D., Mani, V. K., Valles-Rosales, D. J., Varela, M.P. B. (2008). "Long correlations and Normalized Truncated Levy Models applied to the study of Indian Market Indices in comparison with other emerging markets". *To appear in Physica A*, 387(5-6), 1273-1282.
- Downes, C. M., Erickson, C. A. (2008). "Economic Analysis of the Solar Distillation of Ethanol". *International Journal of Ambient Energy*.
- Erickson, C. A., Libbin, J. D., Bullock, V. A. (2007). "Real Estate Appraisers Who Share Sales Information Are Appraisers Unique or Just Weird?". *Journal of the ASFMRA*, 249-258.
- Erickson, C. A. (2003). "Japanese Financial Reform and East Asia". *Thammasat Economic Journal*.
- Erickson, C. A., Lujan, C., Falk, C., Mexal, J., Lujan Alvarez, H. (2001). Desarrollo Agroforestal Comunitario Sostenible en la Region Fronteriza Mexico-Estados Unidos de America. *Ciencia Forestal*, 26, 81-91.
- Erickson, C. A., Falk, C., Mexal, J., Lujan, C. (1999). Development of a Commercial Community Forestry Project in a Mexican Border Town. *Arid Lands Journal*, 36-45.
- Erickson, C. A., Ghosh, S., Enomoto, C. E. (1992). "Revenue-Stabilizing Tax Rates over the Business Cycle". *Quarterly Journal of Business and Economics*, 31(3), 84-97.
- Erickson, C. A. (1989). Chaos, Coffee Cups and Butterflies: Implications for Financial Investment. *Business Forum*, 3-6.

### Books

- Erickson, C. A., Ghosh, S., Molina, D. (2004). *The U.S.-Mexican Border Environment: Improving Transborder Air Quality with Binational Emission Reduction Credit Trading*. San Diego State Press.
- Erickson, C. A. (1997). *Workbook to Accompany Money, Banking and the Financial System* by R. Glen Hubbard. Cambridge: Addison-Wesley.
- Erickson, C. A., Ross, E., Maltz, A. (1995). *Partnerships for Progress: Trade Along the U.S.-Mexico Border*. Dallas Federal Reserve.

### Book Chapters

- Erickson, C. A. (2007). "Land Application of Wastewater in Arid Lands: Theory and Case Study" in Lehr, J.H., and Keeley, J. and Lehr J. (eds). New York: John Wiley and Sons: Water Encyclopedia: Domestic, Municipal and Industrial Water Supply and Water Disposal.
- Erickson, C. A. (2003). In Stacy Lee (Ed.), "Banking and Finance". London: Brown Partworks.



- Erickson, C. A. (2003). In Stacy Lee (Ed.), *"NADBank" the United States and Mexico*. London: Brown Partworks.
- Erickson, C. A., Lujan, C., Falk, C., Mexal, J. (2002). *Un Proyecto Forestal Comunitario en la Región Fronteriza*" (pp. 189-202).
- Erickson, C. A., Eaton, D. (2001). *"Border Finances: Paying for Environmental Infrastructure"* in Paul Ganster (ed.). *The U.S.-Mexican Border Environment: Border Environmental Infrastructure: Now to 2020*, SCERP Monograph Series, No. 3, San Diego: Southwest Center for Environmental Research and Policy.
- Erickson, C. A. (2000). *Banking and Finance*. London: Brown Partwork: The United States and Mexico.
- Erickson, C. A. (2000). *NADBank*. London: Brown Partworks: The United States and Mexico, London: Brown Partworks.
- Erickson, C. A. (2000). *Sustainable Use of Waste Water for Small Communities: A Model System for Short Rotation Woody Crop Production*. San Diego State Press: San Diego, CA: The U.S.-Mexican Border Environment: Water Issues Along the U.S.-Mexican Border, SCERP Monograph Series, No. 2.
- Erickson, C. A., Willman, E. (1994). In Dilip K. Ghosh and Edgar Ortiz (Ed.), *International Lending and Sovereign Debt in the Presence of Agency Costs: the Case of Mexico* (pp. 139-146). *The Changing Environment of International Financial Markets: Issues and Analysis*.
- Erickson, C. A. (1991). *"GNP, Actual and Potential"* (pp. 1041-1046). *Magill Survey of Social Sciences: Economics*.
- Erickson, C. A. (1991). *"Indicators, Economic"* (pp. 922-927). *Magill Survey of Social Sciences: Economics*.
- Erickson, C. A. (1991). *"Unemployment Fluctuations"* (pp. 2362-2367). Pasadena, CA: Magill Survey of Social Sciences: Economics.

#### Conference Proceedings

- Erickson, C. A., Ghosh, S., Molina, D. (2005). *"Using Emission Permit Trading to Coordinate Environmental Policy: The U.S.-Mexico Border"*. *New Research in Development Economics*.
- Erickson, C. A. (2003). *"China, Maquilas Employment and the WTO: An Investigation"*. Pan-Pacific Business Conference, XX, Shanghai, China.
- Erickson, C. A. (2003). *"Use of the Internet in Global Marketing: Business to Person Strategies for Small and Medium Enterprises"*.
- Erickson, C. A. (1992). *Commodity Market Folklore: The 'Permanent' Value of the Gold-Oil Price Ratio* (pp. 297-316). *International Trade and Finance in A Rapidly Changing Environment*.
- Erickson, C. A., Hagerty, M. (1989). *"Macroeconomic Implications of U.S. Sanctions on Panama"* (pp. 38-44). *Proceedings of the 37th Annual Conference of the Rocky Mountain Council of Latin American Scholars*.

#### Non-Referrred Journal Articles

- Erickson, C. A. (2007). *"Las Cruces is Sizzling: How Come and Can it Continue?"*. *New Mexico Business Journal*, 31(4), 33-35.
- Erickson, C. A., Vallotton, A., Mexal, J., Lujan, C. (1997). *Using Trees for Wastewater Treatment: A Pilot Study in Ojinaga, Mexico*. *New Mexico Journal of Science*.
- Erickson, C. A. (1995). *U.S.-Mexico Border Retailers May Feel the Pinch*. *New Mexico Business Journal*.
- Erickson, C. A. (1995). *Economic Outlook*. *New Mexico Business Journal*.
- Erickson, C. A. (1994). *Trade with Mexico: An Unfulfilled Promise*. *New Mexico Business Journal*.
- Erickson, C. A. (1992). *"The New Mexico Economy"*. *Economy Watch*.
- Erickson, C. A. (1992). *The New Mexico Economy*. *Business Forecaster*.

## Periodicals

Erickson, C. A. (1999). *Foreign Trade Continues to Affect Outlook for New Mexico*. Various newspapers throughout New Mexico.

## Regular Column in Journal or Newspaper

Erickson, C. A. Economic Matters. *Las Cruces Bulletin*. Weekly (2008-Present).  
<http://www.lascrucesbulletin.com/ee/lascrucesbulletin/index.php?pSetup=lascrucesbulletin>  
Erickson, C. A. Talking Points. *New Mexico Business Outlook*. Monthly (2003-Present).

## Sponsored Research

Erickson, C. A. (Co-Principal), Downes, C. M. (Principal), Archambault, S. J. (Co-Principal), Erickson, C. A. (Co-Principal), Downes, C. M. (Principal), "Algae Transition Support Project Modeling Support to Algae HTL Pathway," Sponsored by Pacific Northwest National Laboratory, Federal, \$155,312.00. (May 29, 2013 - January 31, 2014).  
Erickson, C. A. (Principal), "Internal Award - Domenici Fellowship - Erickson," Other, \$27,681.00. (May 1, 2012 - October 31, 2013).  
Erickson, C. A. (Co-Principal), Erickson, C. A. (Co-Principal), Sohn, H. (Principal), "On the Management of the North Korea's Potential Proliferation Ambitions: Models and Methods," Sponsored by National Science Foundation, Other, \$140,614.00. (January 1, 2010 - December 31, 2011).  
Erickson, C. A. (Principal), "Tax Study," Sponsored by Lea County Community Improvement Corporation, Other, \$8,500.00. (July 1, 2005 - December 31, 2005).  
Erickson, C. A. (Principal), "Economic Impact Analysis for Lea County and the City of Hobbs," Sponsored by Economic Development Corporation of Lea County, Private, \$30,000.00. (January 3, 2005 - June 30, 2005).  
Ward, E. (Co-Principal), Erickson, C. A. (Principal), "NMEDD Professional Services Contract," Sponsored by NM Economic Development Department, Local, \$10,175.00. (October 28, 2003 - June 30, 2004).  
Erickson, C. A. (Principal), Mexal, J., Erickson, C. A. (Principal), "Alternative Utilization of Agricultural Lands Using Low-Water Native Plants," Sponsored by ZZZ Agency Not Mapped - Do Not Use-, Other, \$99,950.00. (November 30, 2002 - December 1, 2002).

## Consulting

Laguna Development Corporation. (January 1, 2014 - January 13, 2014).  
Coronado Partners, LLC. (July 1, 2012 - July 31, 2012).  
Coronado Partners, LLC. (January 1, 2011 - December 31, 2011).  
New Mexico Rural Electric Cooperative Association, Santa Fe, NM. (June 1, 2009 - December 31, 2010).  
Miller Stratvert, Las Cruces, NM. (August 15, 2010 - December 10, 2010).  
Sunland Park Race Track and Casino, Sunland Park, NM. (August 15, 2010 - November 15, 2010).  
City of Sunland Park, NM, Sunland Park, NM. (December 2007).  
Double Eagle, Inc. (December 1, 2006 - May 1, 2007).  
Committee to Protect Dona Ana County, Las Cruces, NM. (October 2003 - October 2004).

**George F. Ruth  
6745 Cordova Circle  
Las Cruces, New Mexico 88007**

**Home  
Work  
Cell  
E-mail**

**PROFESSIONAL EXPERIENCE**

**Citizens Bank of Las Cruces, Las Cruces, New Mexico**  
October 2014 to Present  
President, CEO, Director

**Citizens Bank of Las Cruces, Las Cruces, New Mexico**  
March 2008 to October 2014  
Senior Vice President  
Credit and Branch Administration

**The Philippou Group, Las Cruces, New Mexico**  
December 2007 to March 2008  
President and CEO  
\$100 Million Real Estate Company

**State National Bank, Las Cruces, New Mexico, Branch of  
State National Bank of West Texas, purchased by BBVA**  
March 1998 to December 2007  
President – New Mexico Region  
Ten Offices, 80 employees  
\$260 Million in Loans & \$230 Million in Deposits  
Member of Senior Loan Committee  
Member of ALCO Committee  
Member Executive Committee  
Mortgage Banking Division Manager

**NationsBank Roswell, Roswell, New Mexico**  
Formally, Sunwest Bank of Roswell, N.A.  
August 1997 to March 1998  
Market President

**Sunwest Bank of Roswell, N.A., Roswell, New Mexico**

\$165 Million Commercial Bank- 1992 to August 1997  
Six Offices, 90 employees  
President, CEO and Director

**Sunwest Bank of Raton, N.A., Raton, New Mexico**

\$84 Million Commercial Bank – 1986 to 1991  
Four Offices, 38 employees  
President, CEO and Director  
Executive Vice President-Senior Lender

**Sunwest Bank of Farmington, N.A., Farmington, New Mexico**

\$35 Million Commercial Bank - 1981 to 1986  
Senior Vice President and Director-Senior Lender  
Vice President-Commercial Lender

**Valley Trust Company, Palmyra, Pennsylvania 1974 to 1981**

Assistant Vice President/Branch Manager  
Branch Management- All phases of lending: Consumer,  
Real Estate, Commercial

**Harris Savings Association, Harrisburg, PA – 1973 to 1974**

Branch Manager  
-Residential real estate lending and Branch management

**Bankers Investment Company, Albuquerque, NM -1972 to 1973**

Consumer Lender

**EDUCATION**

**BBVA Executive Management School;** University of Texas, Austin, Texas – 2007

**Bank Administration Institute;** Raleigh Durham, NC, 1991

Duke University – Executive Management School  
Certificate of Completion – 1991

**Stonier Graduate School of Banking;** Rutgers, NJ, 1977 to 1980

Rutgers University – Graduated 1980

**Pennsylvania School of Banking;** Lewisburg, PA, 1976 to 1977

Bucknell University – Graduated with honors, 1977

**Adams State College; Alamosa, CO, 1972**  
B.A. Business Administration - Graduated, 1972  
Attended on Baseball Scholarship

**University of New Mexico; Albuquerque, NM 1968 to 1971**  
Attended on Baseball Scholarship

**Annville – Cleona High School; Annville, PA, 1963 to 1968**  
Graduated 1968

## **PERSONAL**

**Born:**

**Raised:**

**Date of Birth**

**Height:**

**Weight**

**Married:**

## **CIVIC ACTIVITIES**

### **Pennsylvania**

Scouting  
Member Exploring Post Committee  
United Way Volunteer  
Kiwanis Club – President  
United Church of Christ – Trustee

### **Farmington**

San Juan United Way – Board Member  
San Juan United Way – Campaign Chairman 1985  
San Juan Medical Foundation – Board Member  
Kiwanis Club – Treasurer  
First Presbyterian Church – Trustee/Elder  
Elks Club Member

### **Raton**

Boy Scouts of America District Chairman Encantada District – 1989  
Raton Chamber and Economic Development Council –  
President and Board Member  
Raton Country Club Board of Directors – 1991  
First Presbyterian Church – Elder  
Governor’s Business Advisory Council- Member  
New Mexico Business Leaders Forum – Council Member  
Kiwanis Club – President and Board Member

Elks Club Member

**Roswell**

Roswell Chamber of Commerce – Past President  
Boys Scouts of America – Board Member Conquistador Council  
Kiwanis Club – Board Member  
Eastern New Mexico Medical Center Foundation - Board Member  
Region VI Housing Authority – Board of Commissioners  
Governor’s Business Advisory Council – Member  
New Mexico Business Leaders Forum – Council Member  
Roswell Museum Foundation – Board Member  
CASA – Board Member  
First Presbyterian Church – Church Management, Elder

**Las Cruces**

Chamber of Commerce – Former Board Chairman and Board Member  
MMC Foundation – Former Investment Committee Chairman and Trustee  
New Mexico State Business Advisory Council – Former Member  
Community Foundation of New Southern New Mexico – Former President and Board Member  
New Mexico State University – President’s Associate – Former Board Member  
New Mexico State University – Aggie Scholarship Association Former Board Member  
Las Cruces Economic Forum – Member  
Association of Commerce and Industry (ACI) – Former Board Member  
New Mexico Bankers Association - Past President  
Mesilla Valley Economic Development Alliance – Former Chair and Board Member  
The New Mexico Amigos – Member  
The Bridge of Southern New Mexico – Former Chair and Board member  
NMSU Arrowhead Center – Former Council Member  
Advanced Care Hospital of Southern NM – Current Board Member  
NMSU Town and Gown Committee – Current member  
Border-Plex Alliance – Current Board Member

**INTERESTS:**

Golf and Sports enthusiast  
Family & Grandchildren  
Yard Work



**William Jacobs**  
**President / CEO of White Sands Federal Credit Union**  
**Bio**

**Summary**

I am very blessed to be President / CEO of White Sands Federal Credit Union and reflect upon that blessing often. Children are my passion and if I could waive a magic wand to keep them all safe I would! I love the underdog in sports and love to see the big guys get beat. Same in business, I love to see the little guys dent the big players and make them take notice!

My biggest job is a Dad and Husband with my two daughters that are grown and my 12 year old son who teaches me strength and courage everyday along with the latest music that I have no clue who is singing. I am passionate in competitive golf and bicycling and participate every year in the Tour de Tucson for kid's charities.

I am a proud member of the Drug Enforcement Advisory Council for the State of New Mexico in which I have been appointed by two different Governors. I also serve on the Las Cruces Crime Stoppers Board of Directors along with the Dona Ana County Investment Committee.

**Experience**

President / Chief Executive Officer

White Sands Federal Credit Union

October 1997 – Present (19 years 8 months) Las Cruces, New Mexico Area

White Sands Federal with a membership of over 30,000 was chartered in 1952 and spans two states and four communities. WSFCU consists of five branches located in three different cities and two states. Responsible for the overall management of a \$296 million credit union to include strategic planning, Asset Liability Management, budget and finance. The organization encompasses 130 employees. Primary duties include: management of investments and loan polices, achieving strategic and operational credit union objectives, providing ongoing management and oversight of daily operations, identifying and advocating exemplary service to members and ensuring financial stability.

Vice President

Ft. Bliss Federal Credit Union

1985 – 1997 (12 years) El Paso, Texas Area

Responsible for supervision of the main branch consisting of 75 employees in various departments ranging from lending, collection, mortgage, credit card, member services and teller operations; administration and documentation of all departments; hiring, training and development of the employees' individual skills; management of the Consumer, Mortgage, and Credit Card departments and delinquency control for the credit union, as well as all aspects of member services and teller operations; consistently maintained above average ratings for member satisfaction and employee productivity.



**Education**

Troy University

Troy University

Degree Name Bachelor of Applied Science (B.A.Sc.) Field Of Study Business Administration and Management, General

Dates attended or expected graduation 1998 – 2002

Doña Ana County Investment Policy

DOÑA ANA COUNTY BOARD OF FINANCE  
RESOLUTION NO. 2011- 15

WHEREAS, the Board of County Commissioners sits as the County Board of Finance pursuant to § 6-10-8 NMSA 1978; and

WHEREAS, pursuant to said statute, the County Board of Finance is the entity authorized to establish the County's Deposit and Investment Policy for public monies the County receives; and

WHEREAS, the existing County Deposit and Investment Policy was adopted on July 25, 2006, and modified on July 22, 2008, and requires some revision and approval of the current Board of County Commissioners.

NOW, THEREFORE, BE IT RESOLVED BY THE DOÑA ANA COUNTY BOARD OF FINANCE, THE FOLLOWING BE ADOPTED AS THE NEW DOÑA ANA COUNTY DEPOSIT AND INVESTMENT POLICY EFFECTIVE JANUARY 25, 2011 , SUPERSEDING RESOLUTIONS NO. 06-66, 06-17, AND 2008-68.

DOÑA ANA COUNTY  
DEPOSIT AND INVESTMENT POLICY

AUTHORITY:

This policy is based on the authority of, enacted and promulgated under § 6-10-1 et. seq. NMSA 1978.

SCOPE OF THE POLICY:

This Deposit and Investment Policy applies to all county funds entrusted to the care, custody and control of the Dona Ana County Treasurer.

INVESTMENT OBJECTIVES

The primary objective with respect to investments is the safety of principal. The second objective is to have liquidity of county funds for available use. The maximum rate of return on investments is the third objective, taking into consideration markets available to county treasurers and the interest rate policy on public funds. Dona Ana County seeks to at least attain and maintain state required rates of return on all investments. Investment income will be allocated to the various funds based on their respective participation and in accordance with the generally accepted accounting principles.

1. *Safety*

Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the

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## Doña Ana County Investment Policy

overall portfolio. The objective will be to mitigate concentration credit risk, custodial credit risk - deposits, custodial credit risk - investments, credit risk and interest rate risk.

### Concentration Credit Risk -

Concentration of credit risk is the risk of loss attributed to the magnitude of Doña Ana County's investment in a single issuer. Generally Accepted Accounting Principles (GAAP) requires disclosure when any one issuer is 5% or more of the investment portfolio. Diversification strategies will be employed to avoid incurring concentration risk. The following general policies and constraints shall apply: Portfolio maturities shall be staggered to avoid undue concentration of assets in a specific maturity sector. With the exception of U.S. Treasury securities, securities backed by the full faith and credit of the United States government and authorized pools, no more than 35% of the total investment portfolio will be invested in a single security type or with a single financial institution or at a single maturity.

### Custodial Credit Risk - Deposits

Custodial credit risk is the risk that in the event of a bank failure, Doña Ana County's funds (in excess of FDIC insurance) may not be returned to it. The County shall obtain from each bank that is a depository for public funds pledged collateral in an aggregate amount equal to one half (50%) of the public money to be received for deposit (Section 6-10-17 NMSA 1978). No security is required for the deposit of public money that is insured by the Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration or other federal deposit insurance fund.

### Custodial Credit Risk - Investments

Custodial credit risk is the risk that in the event of the failure of the counterparty, the County will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. The County's investment policy requires that all security transactions, including collateral for repurchase agreements, entered into by the County shall be conducted on a delivery-versus-payment basis. The investment policy further requires that all collateral securities held by a third party custodian, designated by the County Treasurer, shall be held in the County's name and evidenced by a safekeeping receipt or Federal Reserve book-entry reporting.

### Credit Risk

Credit risk is the risk that in the event an issuer or other counterparty to an investment does not fulfill its obligations, Doña Ana County will not be able to recover the value of its principal. The County's general investment policy is to apply the prudent-person rule: Investments are made as a prudent person would be expected to act, with discretion and intelligence, to seek reasonable income, preserve capital and, in general, avoid speculative investments. The County Board of Finance or the Investment Committee shall periodically review its asset allocation strategies and guidelines for the percentage of its total portfolio that may be invested in securities other than repurchase agreements, U.S. Treasury bills and notes or

## Doña Ana County Investment Policy

insured/collateralized certificates of deposit. The guidelines are to be reviewed considering the probability of market and default risk in various investments sectors as part of its allocation evaluation.

### Interest Rate Risk - Investment Type

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of Doña Ana County's investments. The County's investment policy shall limit the County's exposure to interest rate risk by requiring that no less than 60% of the funds invested in the internal investment pool or in other discretionary funds be in maturities of no more than three years from date of purchase. No more than 40% of the funds may be invested in maturities of up to five years. Investment of non-discretionary assets, including funds to be held in trust, may be committed to maturities up to ten years from the date of purchase. In no case will the interest rate on investments be less than one hundred percent of the asked-price on U. S. Treasury Bills of the same maturity on the day of deposit.

### *2. Liquidity*

The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity). Alternatively, a portion of the portfolio may be placed in money market mutual funds or local government investment pools, which offer same-day liquidity for short-term funds.

### *3. Yield*

The County's investment portfolio shall be designed with the objective of regularly meeting or exceeding a performance benchmark, *which could be the average return on three-month U.S. Treasury bills*. The investment program shall seek to augment returns above this threshold, consistent with risk limitations identified herein and prudent investment principles.

### *1. Local Considerations*

Where possible, funds shall be invested in local banks for the betterment of the economy of Doña Ana County.

## INVESTMENTS:

1. Consistent with § 6-10-36(B), county funds may be deposited in non-interest-bearing checking accounts in one or more banks, savings and loan associations or credit unions designated as checking depositories and located within the geographical boundaries of the county to the extent the deposits are insured by an agency of the United States.

Dofia Ana County Investment Policy

2. Consistent with § 6-10-36, all county funds available for investment may be placed in interest-bearing deposits in qualified banks and savings and loan associations within the geographical boundaries of the county. The funds are to be equitably distributed among the depositories in the proportion that each bank's or savings and loan association's deposits bears to the total deposits of all bank and savings and loan associations within the geographical boundaries of the county. Also, funds may be placed in interest-bearing deposits in credit unions located within the geographical boundaries of the county to the extent that such deposits are insured by an agency of the United States. Public money in excess of that for which banks, savings, and loan associations and credit unions within the geographical boundaries of the government unit have qualified may be invested as provided by law.
3. Consistent with § 6-10-44, if the County Treasurer has on hand more money that can be equitably and ratably divided among the qualified depositories (per § 6-10-36 above), the County Treasurer may temporarily invest such excess funds in United States bonds or treasury certificates.
4. Consistent with § 6-10-10.1 ("Participating Government Investment Fund"), where the County Treasurer is unable to receive interest on county funds as set forth in § 6-10-36, and said funds are not required for current expenditure, the Treasurer may remit some or all such money to the State Treasurer for deposit for the purpose of investment.
5. Consistent with § 6-10-10 where the County Treasurer has on hand sinking funds or money remaining unexpended from proceeds of any issue of bonds or other negotiable securities of the county and all money not immediately necessary from public use, the Treasurer may invest said monies in (1) bonds or negotiable securities of the United States, the state or any county, municipality or school district as specified in the statute; or (2) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; or (3) shares of a diversified investment company registered pursuant to the Investment Company Act of 1940 that invests in fixed income securities or debt instruments as specified in the statute; or (4) individual, common or collective trust funds of banks or trust companies that invest in fixed income securities or debt instruments as specified in the statute; or (5) shares of pooled investments managed by the state investments managed by the state investment officer, as provided for in subsection E of section 6-8-7 NMSA 1978; or (6) contracts with banks, savings and loan associations or credit unions for the present purchase and resale at a specified time in the future of specific securities at specified prices at a price differential representing the interest income to be earned by the investor (i.e. "Repurchase agreements") secured as required by statute.

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## Dofia Ana County Investment Policy

6. Pursuant to § 6-10-36(E), the rate of interest to be paid on county funds deposited in interest bearing accounts is that amount set by the State Board of Finance, but in no case is the amount to be less than one hundred percent of the asked price on United States Treasury Bills of the same maturity on the day of deposit.

### SECURITY/COLLATERALIZATION:

1. Consistent with § 6-10-16.1, all deposits of county funds shall be secured by securities as defined by § 6-10-16 in the amount required by law or by surety bonds as provided for in § 6-10-15.
2. Consistent with § 6-10-16, all deposits shall be secured by securities of the United States, the state of New Mexico, its agencies, its counties, municipalities, or other subdivision, or by securities that are guaranteed by the United States or the state of New Mexico; or by revenue bonds underwritten by a member of the National Association of Securities Dealers; or by letters of credit issued by a federal home bank.

### DECISION-MAKING:

1. Under § 6-10-8, the Board of County Commissioners sits as the County Board of Finance and has supervision over the determination of the qualifications and selection of banks, savings and loan associations and credit unions which shall qualify as financial institutions to receive the deposit of county funds.
2. Under § 6-10-8, the County Treasurer has supervision of the deposit and safekeeping of county money and, with the advice and consent of the Board of Finance, designates the banks, savings and loan associations and credit unions to receive deposits and determines how to deposit and invest county funds.
3. Consistent with § 6-10-8 and with Bd. Of Co. Commissioner v. Padilla, 111 N.M. 278 (Ct. APP. 1990), the County Board of Finance of Dofia Ana County delegates to the County Treasurer the decision-making for deposits and investments under this Deposit and Investment Policy; however, said decisions must be made within the parameters of the Investment Policy as set forth herein.
4. Bonding---The County Treasurer and Deputy Treasurer shall be bonded according to State Statutes, 10-1-13, 6-10-38, and 4-44-35 NMSA 1978.
5. Ethics ~ The Treasurer office maintains a high standard of ethical conduct in pursuing the interest of the County and seeks to avoid conflicts of interest. In particular, under no circumstances shall the County Treasurer and key employees involved with county investments purchase or sell personal securities with the same individual with which securities are bought and sold on behalf of the County. All investment trades require two signatures.

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## Dofia Ana County Investment Policy

### INVESTMENT COMMITTEE:

An Investment Committee shall be appointed with the specific purpose and responsibility of monitoring for compliance and evaluating the effectiveness of the investment policy. The Investment Committee consists of seven (7) voting members:

The County Treasurer, a member appointed from the County Board of Finance, the County Manager, the Director of Financial Services, two (2) members of the local banking community appointed by the County Board of Finance, and a private citizen appointed by the County Board of Finance.

The appointment of the County Commissioner as a member of the Investment Committee will be made annually in January at the first meeting of the Board of County Commissioners, in its capacity as the County Board of Finance. One of the first two members of the local banking community will serve until June 30, 2008, at which time the Board of County Finance will replace or reappoint this member for a new two-year term to end June 30, 2010. The second member from the local banking community will serve an initial term through June 30, 2009, at which time the Board of County Finance will replace or reappoint this member for a two-year term. The private citizen's initial term of appointment will end June 30, 2009, at which time the Board of County Finance may reappoint or replace this member for a two-year term. If a vacancy occurs before the end of the public sector appointees, the Board of County Finance will appoint a new member to complete the term of the vacant position.

The Investment Committee will select a chairperson and a vice-chairperson annually at its first meeting after March 1<sup>st</sup>.

The Investment Committee is charged with the following responsibilities:

- A. To review and recommend changes to the Investment Policy at least annually.
- B. Monitor the investment transactions to insure that proper controls are in place to guarantee the integrity and security of the Treasurer's investment portfolio.
- C. Assure that county investments are in compliance with current state laws and policies of the County Board of Finance.
- D. Recommend written investment procedures.
- E. Meet quarterly to deliberate such topics as: economic outlook, portfolio diversification and maturity structure, potential risks and the target rate of return on the investment portfolio.
- F. Recommend depositories, custodians and broker/dealers.


Doña Ana County Investment Policy

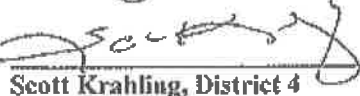
G. Compose requirements for, and give advice related to the hiring of an Investment Advisor to assist Doña Ana County with its Investments Policy.

PASSED, ADOPTED, SIGNED and APPROVED this 25<sup>th</sup> day of January, 2011.


BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO  
SITTING AS THE BOARD OF FINANCE

  
Dolores Saldaña-Caviness, Chair, District 2  For /  Against

  
Karen G. Perez, Vice Chair, District 3  For /  Against


  
Scott Krahlung, District 4  For /  Against

  
Leticia Duarte Benavidez, District 5  For /  Against

  
Billy G. Garrett, District 1  For /  Against



ATTEST:

  
Lynn Ellins  
County Clerk

COUNTY OF DONA ANA ) RESOLUTION  
STATE OF NEW MEXICO ) ss PAGES: 7

I Hereby Certify That This Instrument Was Filed for  
Record On The 26TH Day Of January, 2011 at 09:01:41 AM  
And Was Duly Recorded as Instrument #1102780  
Of The Records Of Dona Ana County

Witness My Hand And Seal Of Office  
Lynn J. Ellins  
Deputy County Clerk, Doña Ana, NM



Recorded 01/26/2011 DAC

21.18



**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

County Management  
Initiating Department

May 23, 2017  
Meeting Date

Chuck McMahon, Assistant County Manager  
Contact Person

22  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE PUBLICATION OF TITLE AND GENERAL SUMMARY AND OF NOTICE TO HOLD A PUBLIC HEARING TO CONSIDER AND ADOPT AN ORDINANCE APPROVING THE LAS CRUCES COMMUNITY FARMS, LLLP LOCAL DEVELOPMENT ACT ("LEDA") PROJECT PROPOSAL AND APPROVING THE PROJECT PARTICIPATION AGREEMENT, THE INTERGOVERNMENTAL AGREEMENT AND THE GUARANTY AGREEMENT AND DELEGATE SIGNATURE AUTHORITY TO THE INTERIM COUNTY MANAGER FOR THE DOCUMENTS CITED AND OTHER REQUIRED DOCUMENTS.**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

The Las Cruces Community Farms, LLLP ("The Company") has submitted an application, pursuant to the County's Economic Development Plan Procedures (Doña Ana County Code Chapt. 166) seeking a LEDA grant of economic development funds in the amount of up to \$620,000, to repair, refurbish and/or renovate the farmer egg production facility in Berino, NM, to establish and operate a greenhouse and agricultural distribution facility at 415 San Benito Rd., in Berino, NM ("The Project"). The Company will convert some 24 existing 25,000 square foot buildings (previously used as chickenhouses) into greenhouses and will employ an estimated 80 full-time persons by June 30, 2022.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

- |   |                                   |
|---|-----------------------------------|
| 1. Proposed Ordinance                       | 5. Proposed Notice of Publication |
| 2. Proposed Project Participation Agreement | 6. LEDA Project Application       |
| 3. Proposed Intergovernmental Agreement     | 7. Economic Impact Executive Summ |
| 4. Proposed guaranty                        |                                   |

**SUMMARY OF FINANCIAL IMPACT**

Creation of jobs; broaden County and State tax base

**ADMINISTRATIVE REVIEW AND APPROVAL**

 Finance

 Legal

 County Manager/  
Agenda Review

 Purchasing

\_\_\_\_\_ Human Resources

\_\_\_\_\_ Assistant County Manager

\_\_\_\_\_ Planning

\_\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature?  No      For Recording? No

Return original/s to: Chuck McMahon, County Management

Send copies of recorded original/s (resolution and ordinances only) to: Legal Department

Deadline for return of document/s? Yes, return by: May 25, 2017

DOÑA ANA COUNTY ORDINANCE NO. \_\_\_\_\_-2017

**AN ORDINANCE APPROVING THE LAS CRUCES COMMUNITY FARMS, LLLP,  
PROPOSAL FOR AN ECONOMIC DEVELOPMENT PROJECT**

**WHEREAS**, the County of Doña Ana (the “County”), acting through its Board of County Commissioners, is a political subdivision duly organized and existing under the laws of the State of New Mexico (the “State”); and

**WHEREAS**, Article 9, Section 14 of the State Constitution permits counties to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources; and

**WHEREAS**, pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the “Act”), no public support for economic development may be provided until the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan; and

**WHEREAS**, On September 22, 2009, pursuant to Doña Ana County Ordinance No. 246-2009 (the “Economic Development Plan Ordinance”), the County established the Doña Ana County Economic Development Plan (the “Plan”) as the County’s economic development plan as required by Section 5-10-6, NMSA 1978; now codified as Chapter 166 of the Code of Doña Ana County; and

**WHEREAS**, as provided in the Economic Development Plan Ordinance, the County considered an application from Las Cruces Community Farms, LLLP, which proposed that the County serve as local government conduit for an appropriation up to \$620,000 from the Legislature of the State of New Mexico (the “LEDA Funds”) in order to establish hand operate a greenhouse and agricultural distribution facility in Berino, NM that will grow and produce bedding plants, fruits, vegetables and other products for distribution to retail stores; and

**WHEREAS**, the County has determined that Las Cruces Community Farms, LLLP, is a “qualifying entity” and the Project is an “economic development project” as those terms are defined by the Act,

**NOW, THEREFORE, BE IT ORDERED BY THE DOÑA ANA COUNTY BOARD OF COUNTY COMMISSIONERS:**

Section 1. Short Title.

This ordinance may be cited as the “Las Cruces Community Farms, LLLP, Economic Development Project Ordinance.”

Section 2. Purpose.

Board of County Commissioners, Doña Ana County  
Las Cruces Community Farms, LLLP, Economic Development Project Ordinance  
May 23, 2017  
Page 1 of 3

This Las Cruces Community Farms, LLLP, Economic Development Project Ordinance is adopted to approve the Project and the above identified Agreements related to the Project.

Section 3. The Project.

The County hereby approves Las Cruces Community Farms, LLLP, as a qualifying entity and the Project as an economic development project under the Act and Section 5 of the Economic Development Plan Ordinance. This approval is conditioned upon those matters set forth in the Project Participation Agreement to be entered into by the County and Las Cruces Community Farms, LLLP, and all applicable local, state and federal laws.

Section 4. Project Revenue Fund.

The Las Cruces Community Farms, LLLP, Fund (the "Project Revenue Fund") is hereby established pursuant to the Economic Development Plan Ordinance. All revenue related in any way to the Project shall be deposited into the Project Revenue Fund and any such revenue deposited into the Project Revenue Fund shall be expended only for the Project. Any unexpended and encumbered balances in the Project Revenue Fund shall be transferred to the New Mexico Economic Development Department upon termination of the Project as set forth in Section 6, herein.

Section 5. Project Agreements.

The County hereby authorizes the County Manager to enter into a Project Participation Agreement, an Intergovernmental Agreement and a Guaranty Agreement in substantially the forms attached to this Ordinance. Those said Agreements shall be incorporated into this Ordinance by reference and made a part of this Ordinance.

Section 6. Termination.

Termination of the Project that is the subject of this Ordinance shall be by a subsequent ordinance. Any termination ordinance shall provide for termination of the above-referenced Agreements and shall provide for satisfying the rights of the parties thereunder.

Section 7 Ratification.

The County hereby ratifies and accepts all actions consistent with this Ordinance that the County or its agents may have taken in furtherance of the Project.

Section 8. Severability.

If any section, paragraph, sentence, clause or word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

Section 9. Effective Date.

This ordinance shall become effective thirty (30) days after it is approved by the Board of County Commissioners and recorded in the office of the Doña Ana County Clerk, as provided in Section 4-37-9, NMSA 1978.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2017.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

\_\_\_\_\_  
**Isabella Solis, Chair, District 4** **For / Against**

\_\_\_\_\_  
**John L. Vasquez, Vice-Chair, District 5** **For / Against**

\_\_\_\_\_  
**Billy G. Garrett, District 1** **For / Against**

\_\_\_\_\_  
**Ramon S. Gonzalez, District 2** **For / Against**

\_\_\_\_\_  
**Benjamin L. Rawson, District 3** **For / Against**

**ATTEST:**

\_\_\_\_\_  
**Scott Krahling**  
**County Clerk**

Exhibit A

PROJECT PARTICIPATION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2017, by and between DONA ANA COUNTY, NEW MEXICO (the "County"), a political subdivision of the State of New Mexico (the "State"), and LAS CRUCES COMMUNITY FARMS, LLLP ("the "Company").

Recitals.

- A. Article 9, Section 14 of the New Mexico Constitution provides counties with the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.
- B. Pursuant to Doña Ana County Ordinance No. 246-2009 (the "Economic Development Plan Ordinance"), on September 22, 2009, the County established the Doña Ana County Economic Development Plan (the "Plan") as the County's economic development plan as required by Section 5-10-6, NMSA 1978.
- C. As provided in the Economic Development Plan Ordinance, the County considered an application from the Company, which proposed the County serve as local government conduit for an appropriation of up to \$620,000 from the Legislature of the State of New Mexico (the "State Contribution") to go toward the Company's repair, refurbishment, and/or renovation as part of the redevelopment of the former egg production facility in Berino to establish a greenhouse and agricultural distribution facility at 415 San Benito Rd. in Berino, New Mexico (the "Project"). The company will convert as many as 24 existing 25,000 square foot buildings previously used to house chickens into greenhouses and will employ an estimated 80 full-time persons by June 30, 2022.
- D. The County has adopted Ordinance No. \_\_\_\_\_ finding the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Project Participation Agreement (this "Agreement") as meeting the requirements of the Act.

1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. **Substantive Contribution from the Company.**

a. **Facility.** The Company will repair, refurbish, and/or renovate multiple buildings at the former egg production facility in Berino to establish a greenhouse and agricultural distribution facility at 415 San Benito Rd. in Berino (the "Facility").

b. **Investment.** The Company will make capital investments in the Project and costs associated therewith (including, services associated with the repair, refurbishment, renovation, expansion, improvement, and construction of the Project) in the amount of approximately \$12,000,000 by June 30, 2022 ("the "Project").

c. **Job Creation.** The Company will employ, directly or through one or more affiliates, at least 80 full-time employees at the facility by June 30, 2022 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company (the "Job Target").

d. **Security.** As security for the faithful performance and payment of all of Company's obligations under this Agreement, prior to the Company's receipt of the State Contribution, Company shall furnish the County with a Standby Letter of Credit in a form mutually acceptable to the parties (the "Guarantee").

- i. The maximum obligation secured by the Guarantee (the "Maximum Obligation") will be \$620,000 as of the date the Guarantee is granted.
- ii. The Guarantee shall be provided by the Company or by an affiliate of one of the principals in the Company, on behalf of the Company.
- iii. The County may draw on the Guarantee in order to satisfy any unpaid Clawback Penalty which shall become due and payable. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction and may be made without Company's consent.
- iv. Provided the Company has not been required to pay any Clawback, the Guarantee will terminate on December 31, 2022, or if the Job Target Date is deferred pursuant to this Agreement, 30 calendar days after the Deferred Job Target Date.
- v. If the State reduces the amount of LEDA Funds made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds available upon the expiration of the Distribution Period, the Maximum Obligation will be reduced proportionately to reflect the actual amount of LEDA Funds actually received by the Company.
- vi. If the Company achieves and then sustains the Minimum Job Number of 80 employees for 12 consecutive months prior to December 31, 2022 or the deferred job target date, if applicable, the Company may request the guarantee

be released. Said request shall be made in writing and accompanied by documentation comprised of the reports required under this Agreement, demonstrating such employment. In that event, the County's consent to such release of the Company's letter of credit shall not be unreasonably withheld. A request for release of the letter of credit may not be submitted prior to June 30, 2020.

e. **Schedule.** A preliminary Project schedule is as follows, but failure to meet these milestones will not constitute a breach of this Agreement.

Summer 2017	Acquire property
Fall 2017	Conversion and operation of 2 or more greenhouses
Spring 2018	2 or more greenhouses in operation

**3. The State Contribution**

a. The County anticipates the State Contribution of up to \$620,000 will be delivered by the State to the County for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of these documents and the intergovernmental agreement between the State and the County, after which time the County will request transfer of the State funds. Upon receipt, the County will place the State contribution into a separate account established in connection with the Project, as required by law. The County will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement. The County will disburse the State Contribution as reimbursement for LEDA statutorily eligible expenditures including, but not limited to, land, building and infrastructure in accordance with this and the subsequent Intergovernmental Agreement and subject to the Company's achievement of the hiring targets provided in this Agreement. Disbursements shall be paid on a reimbursement basis and the Company shall incur the initial expense of eligible capital expenditures and, in turn, will submit requests for reimbursement to the County.

b. The State Contribution is composed of \$620,000 for the use of the Company for such purposes as set forth in LEDA and this Agreement and to be disbursed to the Company in accordance with the provisions of this Agreement.

**4. The County Contribution.**

a. The County will account for receipts and disbursements of the State contribution and will provide financial documentation to the State pertaining to said contribution. The County will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and disbursement of the State contribution.

b. The State Contribution will be disbursed to the Company through the County for reimbursement of LEDA eligible expenditures.

**5. Disbursement of State Contribution**

a. Conditions to Disbursement; Performance Milestones. The State Contribution will be disbursed in four separate portions (each a “Tranche”). Each disbursement will be conditioned on (i) the Company’s having incurred expenses which are eligible for reimbursement under LEDA prior to the disbursement and (ii) the Company’s satisfaction of the performance milestones set forth below (the “Disbursement Performance Milestones”) for each Tranche prior to the disbursement:

<b>Amount of State Contribution Available for Disbursement/Tranche</b>	<b>Disbursement Performance Milestone</b>
up to \$180,000	Acquire land and existing buildings and hire 1 employee
up to \$320,000	Employ a minimum of 32 total full time employees AND is operating greenhouses from a minimum of 4 of the converted buildings
up to \$110,000	Employ a minimum of 64 total full time employees AND is operating greenhouses from a minimum of 7 of the converted buildings
up to \$10,000	Employ a minimum of 80 total full time employees AND complete Annual Performance Review for 2021 or later

b. Disbursement Requests. From time to time, after the Company has satisfied the conditions to disbursement set forth above, the Company may submit to the County a written request for disbursement of a portion of the State Contribution (the “Disbursement Request”). All Disbursement Requests shall be accompanied by (i) documentation substantiating expenses eligible for reimbursement under LEDA and (ii) certification by the Company that it has met the Disbursement Performance Milestones with respect to the applicable Tranche, together with such information as may be necessary to confirm the satisfaction of the Disbursement Performance Milestone for the respective Tranche. The Company will not submit a Disbursement Request for less than \$50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution then available to the Company at any time. The County may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.



c. Review. County will deliver the Disbursement Request to the Economic Development Department for review to assure the charges submitted are LEDA eligible. The Department's review and approval or objection shall not be unreasonably withheld and shall occur within 15 calendar days of receipt of the disbursement request by the Department.

d. No Offset of County costs. The County may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.

**6. Clawbacks.**

Notwithstanding any other provision of this Agreement, the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided pursuant to Section 2), shall be the sole and exclusive remedy of the County for any breach of this Agreement by the Company.

a. Facility Closure Clawback. If the Company ceases operations in the County on or before June 30, 2022, the Company will repay to the County all LEDA Funds the Company actually received from the County as of that date (the "Facility Closure Clawback.")

b. Performance Clawback. It is the Company's intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned "Target Job Number" on the Job Measurement Dates set forth below. If the Company does not achieve the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Measurement Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the County which will be applied in the percentage set forth in the table below:

<b>Job Determination Period</b>	<b>Target Job Number</b>	<b>Minimum Job Number</b>	<b>Clawback Penalty if Minimum Job Number not met</b>
June 30, 2018	20	16	100% of Clawback Penalty
June 30, 2019	29	25	100% of Clawback Penalty
June 30, 2020	47	42	75% of Clawback Penalty
June 30, 2021	81	77	75% of Clawback Penalty
June 30, 2022	93	80	50% of Clawback Penalty

For the purposes of this Section:

The "Clawback Penalty" is a penalty the Company will be required to pay to the County upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the

Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "Percentage Hiring Shortfall" shall be the quotient of (i) the Target Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Target Job Number for applicable Job Determination Date.

"Cure Period" is the period of 180 days after each Job Determination Date during which time the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. If the Company meets the Minimum Job Number at any time during the Cure Period, the Company shall have no obligation to pay a Clawback Penalty. If the Company fails to reach the Minimum Job Target during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

A "Job" for this purpose of this section will mean an employment position that consists of at least 32 paid hours of work per week and which provides the employee with a full range of benefits offered to other similarly situated Company employees.

If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

c. **Job Reporting.** For the purposes of determining compliance with this Agreement, the Company shall submit its quarterly employment reports in the form of an affidavit signed by an officer of the Company and shall also submit Schedule A of the Company's ES-903A reports to the New Mexico Department of Workforce Solutions. The Company will provide such reports each quarter of each year commencing on July 1, 2017 and ending on December 31, 2022. The County or the State may request a copy of that form, at any time while this Agreement is in effect, and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the County and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without the quarterly job reporting as set forth herein.

d. **Notification of Failure to Maintain Minimum Job Number.** In the event the Company falls below the Minimum Job Number after its corresponding Disbursement Performance Milestone, the Company shall notify the County in writing. Upon receipt of such notification, future payments shall be suspended until the Minimum Job Number for the current target year is achieved and sustained for 90 consecutive days.

**7. Fees.**

Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

**8. Annual Performance Review.**

To ensure the prudent use of the taxpayer's funds as required by the LEDA statute and Ordinance No. 246-2009, the Project will be subject to an annual performance review conducted by County or New Mexico Economic Development Department staff. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this agreement or the LEDA program and may request any assistance it deems necessary. The County or State may request the company to provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary. If the requirements are not being met, the County may terminate assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, the County may enact an ordinance revoking the LEDA Ordinance and dissolving or terminating any or all Projects thereunder. In the event the County terminates the LEDA Ordinance or this Agreement, the County will specify the disposition of all obligations of the Project after satisfying this Agreement and all rights of the parties arising under this Agreement through the date of such termination.

At the end of the 2021 calendar year, upon successful completion of the Annual Performance Review, the Company will be entitled to receive the final \$10,000 LEDA payment. The Annual Performance review for the 2021 calendar year will measure the overall effectiveness of the public LEDA support of the Project.

**9. Termination.**

This Agreement shall terminate at the close of business on December 31, 2022, or when otherwise terminated by ordinance.

**10. Liability.**

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.

Neither party shall be liable to the other party for any failure to perform any provisions or obligations of this Agreement if such failure is caused by or results directly or indirectly from Force Majeure. "Force Majeure" means any cause beyond the reasonable control of a party affected, including but not limited to, any acts of God, fire, flood, storm, strike, riot or civil disturbance, war, earthquake, lightning,

epidemic, labor disturbance, sabotage, or restraint by court or public authority, or any other cause beyond the reasonable control of a party affected whether similar or dissimilar to the ones listed, which makes it impossible or unreasonably difficult for a party to perform its obligations under this Agreement. Nothing contained in this paragraph shall be construed to require either party to prevent or settle a strike against its will. The party unable to perform its obligations due to a Force Majeure will provide notice to the other party within five business days of its becoming aware of the Force Majeure or its inability to perform and its expectations as to when, if ever, it will be able to resume its obligations. If a Force Majeure occurs, the County, the State and the Company will work in good faith to determine how to address the impact of the Force Majeure on each party's obligations under this Agreement.

**11. Amendments.**

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto including the New Mexico Economic Development Department.

**12. Governing Law.**

This Agreement shall be governed by the laws of the State of New Mexico.

**13. Miscellaneous.**

This Agreement binds and inures to the benefit of the County and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the New Mexico Economic Development Department; provided, however, with notice to the County and the New Mexico Economic Development Department, the Company may assign this Agreement to any affiliate or purchaser of substantially all of the Company's assets or stock that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may not be amended or modified, and the performance by any party of its obligations under this Agreement may be not waived, except through a written instrument duly executed by both parties. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument. This Agreement is governed by and is to be construed in accordance with the laws of New Mexico applicable to agreements made and to be performed in New Mexico.

**14. Ratification.** The County and the Company hereby ratify all actions consistent with this Agreement the County or the Company or their respective agents may have taken in furtherance of the Project.

**15. Notice.** All notices or other written communications, including requests for disbursement, are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other parties to this Agreement. The initial notice addresses for the parties are as follows:

If to the County:

Doña Ana County with copy to the County Attorney  
Attention: County Manager  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007-8100  
Tel: (575) 525-5802  
Fax: (575) 525-5812  
If to the Company:

Las Cruces Community Farms, LLLP  
1155 S Telshor Blvd, Suite B  
Las Cruces, NM 88011  
Attn: Randy McMillian

Effective Date: \_\_\_\_\_

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

DOÑA ANA COUNTY, NEW MEXICO  
By the DOÑA ANA BOARD OF  
COMMISSIONERS, a governmental  
entity organized and existing under the  
laws of the State of New Mexico

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

LAS CRUCES COMMUNITY FARMS, LLLP

By \_\_\_\_\_

Name: Greg McPhie

Title: Partner

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT  
AND DOÑA ANA COUNTY**

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and Doña Ana County ("County"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

**SECTION 1. RECITALS:**

**WHEREAS**, the New Mexico State Legislature appropriated funding to EDD "for economic development projects pursuant to the Local Economic Development Act" (the "Appropriation"); and

**WHEREAS**, the purpose of the Local Economic Development Act, NMSA 1978 §5-10- 1 through §5-10-13 (2007) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

**WHEREAS**, the County has adopted LEDA by Ordinance No. 246-2009, which established the Doña Ana County Economic Development Plan that promotes economic development within the County; and

**WHEREAS**, Las Cruces Community Farms, LLLP (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the County and, pursuant to the terms of that PPA, the Qualifying Entity will redevelop the former egg production facility in Berino to establish a greenhouse and agricultural distribution facility at 415 San Benito Rd. in the County (the "Project") and will employ at least 80 full-time persons by June 30, 2022. A copy of the PPA is attached hereto as Exhibit A; and

**WHEREAS**, EDD and the County desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

**NOW THEREFORE**, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

**SECTION 2. PURPOSE OF AGREEMENT:**

The purpose of this Agreement is to place the primary responsibility on the County for overseeing and administering EDD's use of up to \$620,000 of the Appropriation for the Project. It is the intent of the parties that the County will receive an amount not to exceed six hundred and twenty thousand dollars (\$620,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by County as the fiscal agent for EDD in accordance with the procedures the County uses to account for its own funds.

**SECTION 3. SCOPE OF WORK:**

The County will act as fiscal agent for \$620,000 of the Appropriations for the Project. Pursuant to the provisions of LEDA, EDD will transfer \$620,000 to the County for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 80 full-time employees at the facility by June 30, 2022. All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the County agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA will result in a violation of the terms and conditions of the PPA. Such violation will require that the County foreclose on the security interest. Any monies recovered by the County as a result of foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the County a Standby Letter of Credit prior to Qualifying Entity's receipt of funds. Said Letter of Credit will provide collateral equal to the LEDA funds provided to the Qualifying Entity and will be retained by the County until such time as all terms of the Project Agreements have been met.



**SECTION 4. DOÑA ANA COUNTY RESPONSIBILITIES:**

The County shall:

- A. Pay the costs and expenses incurred for the Project from the LEDA Appropriations;
- B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the County as the result of enforcing the provisions of the PPA shall be returned to EDD;
- C. Notify EDD in writing of any default by the Qualified Entity within 15 business days of learning of the event of default;
- D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;
- E. Distribute the funds transferred to the County by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;
- F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the Doña Ana County Commission accepting the Project as a qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the County and the Qualifying Entity, a fully executed copy of the security interest, and copies of invoices and other documentation as required by EDD within the time required;
- G. Not impose any obligations on EDD with respect to the administration of this Project except as set forth herein; and
- H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary; and
- I. Monitor job creation by the Qualified Entity and report the number of jobs created to EDD. Job reports shall include a copy of FORM-903 provided by the Qualified Entity to Doña Ana County, on file with the New Mexico Department of Workforce Solutions.

**SECTION 5. COUNTY CERTIFICATIONS:**

As Fiscal Agent, the County hereby assures and certifies that:

- A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of State funds;
- B. It has the legal authority to receive and expend the funds;
- C. It will enforce the provisions of the Ordinance approving the Project and of the County's Economic Development Plan;
- D. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;
- E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation County receives from the Qualifying Entity;
- F. It has entered into a PPA with the Qualifying Entity and has obtained all financial documentation necessary to protect the County's and State's investments in the Project;
- G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;
- H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;
- I. No member, officer or employee of the County or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The County shall incorporate in all contracts or subcontracts a provision

prohibiting such interest pursuant to this certification; and

K. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

**SECTION 6. EDD RESPONSIBILITIES:**

EDD shall:

A. Transfer to the County for costs and expenses incurred for the Project an amount not to exceed six hundred twenty thousand dollars (\$620,000). The funds shall be used only for the purpose stated in this Agreement;

B. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

C. Reimburse the County for any costs associated with litigation to enforce the terms of the Guaranty.

**SECTION 7. TERM OF AGREEMENT:**

This Agreement shall become effective on the date it is fully executed and shall terminate at the latest after the County certifies that the job hallmark, as set out in the PPA, has been fulfilled.

**SECTION 8. LIABILITY:**

No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The County and EDD may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the party responsible for payment.

**SECTION 9. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS**

A. The County shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.

B. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by County, County shall return said funds to EDD for disposition in accordance with law.

**SECTION 10. STRICT ACCOUNTABILITY:**

The County shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

**SECTION 11. REPORTS:**

The County shall submit bi-annual reports in May and November of each year during the life of this Agreement to EDD respecting job retention and creation attributable to the State appropriation and submit a Final Report to EDD on or before the termination of this Agreement. The Final Report shall contain a description of work accomplished, the methods and procedures used, a detailed budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by EDD.

**SECTION 12. NOTICES; REPRESENTATIVES OF THE PARTIES:**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

**To EDD:**

Juan Torres  
Finance Development Team Leader  
Joseph Montoya Building  
1100 St. Francis Drive  
Santa Fe, New Mexico 87505

**To the County:**

Charles McMahon  
Assistant County Manager  
Doña Ana County  
845 N. Motel Blvd  
Las Cruces, New Mexico 88007

**SECTION 13. AMENDMENTS:**

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

**SECTION 14. GOVERNING LAW:**

This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

**DOÑA ANA COUNTY, NEW MEXICO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

Doña Ana County Attorney

**NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

By: \_\_\_\_\_

Matt Geisel

Cabinet Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM

By: \_\_\_\_\_

David Mathews  
General Counsel

# IRREVOCABLE LETTER OF CREDIT

Borrower: [REDACTED]

Lender: Western Heritage Bank  
230 S. Alameda Boulevard  
Las Cruces, NM 88005  
(575) 541-0058

Beneficiary: El Paso Electric  
PO Box 982  
El Paso, TX 79960

NO.: [REDACTED]

**EXPIRATION DATE.** This letter of credit shall expire upon the close of business on \_\_\_\_\_ and all drafts and accompanying statements or documents must be presented to Lender on or before that time (the "Expiration Date").

**AMOUNT OF CREDIT.** Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of One Hundred Fifty Thousand & 00/100 Dollars (\$150,000.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

**WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.**

**DRAFT TERMS AND CONDITIONS.** Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

**USE RESTRICTIONS.** All drafts must be marked "DRAWN UNDER Western Heritage Bank IRREVOCABLE LETTER OF CREDIT NO. [REDACTED] DATED \_\_\_\_\_," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted hereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above, less any partial draw(s).

**PERMITTED TRANSFEREES.** The right to draw under this Letter of Credit shall be nontransferable, except for:

- A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and
- B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

**TRANSFEREES REQUIRED DOCUMENTS.** When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

**COMPLIANCE BURDEN:** Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

**NON-SEVERABILITY.** If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

**GOVERNING LAW.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of New Mexico without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of New Mexico.

**EXPIRATION.** Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

IRREVOCABLE LETTER OF CREDIT  
(Continued)

Loan No: 1510000001

Page 2

Dated: May 15, 2017

LENDER:

WESTERN HERITAGE BANK

By:   
Kandy Jones, VP Commercial Lending

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount In Words	Amount In Figures
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SAMPLE



**NOTICE OF PUBLIC HEARING**

On May 23, 2017, the Board of County Commissioners of Doña Ana County directed that a public hearing be conducted at a regularly scheduled Commission meeting at 9:00 a.m., on June 13, 2017, on the question of whether to adopt the Ordinance Approving the Las Cruces Community Farms, LLLP, Proposal for an Economic Development Project, as summarized below. The public hearing will be held at the Doan Ana County Government Center located at 845 N. Motel Blvd., Las Cruces, New Mexico. Should you require special accommodations as a result of a disability, please contact County ADA Coordinator at 525-5884 (voice), 525-5951 (TTY), or write to ADA Coordinator, 845 N. Motel Blvd., Las Cruces, New Mexico 88007.

The official title of the proposed ordinance is: Las Cruces Community Farms, LLLP, “Economic Development Project Ordinance.”

General Summary: Approve publication of title and general summary and notice to hold a public hearing to adopt an ordinance approving the Las Cruces Community Farms, LLLP Local Development Act (“LEDA”) project proposal and approving the Project Participation Agreement, the Intergovernmental Agreement and the Guaranty Agreement and delegate signature authority to the Interim County Manager for the documents cited and other required documents.

A copy of the proposed ordinance is available for inspection at the Office of the County Clerk, Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, New Mexico during regular business hours.

Publish: Las Cruces Sun News on \_\_\_\_\_.



**LEDA- Capital Outlay**

**PROJECT APPLICATION**

**Fiscal Year 2017**

**Project Egg**  
**Las Cruces Community Farms, LLLP**  
**Dona Ana County**

### APPLICANT INFORMATION

Legal Name	Las Cruces Community Farms LLLP
Trade Name (dba)	Wholesome Valley Farms
Project Name if different from above	Project Egg
Address	PO Box 847
City, State, Zip	Mesilla Park, NM 88011
Phone	575-644-5570
Fax	None
Website	None
Primary Contact Person	James C Hill
Federal Tax ID #	47-5422053
Company DUNS #	080425121
NAICS Code(s)	111419
This business is organized as a:	<input type="checkbox"/> C-Corporation <input type="checkbox"/> S-Corporation <input type="checkbox"/> LLC <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship

Please attach copies of (where applicable):

- Incorporation Papers – Articles of Organization
- By-laws – Partnership Agreement
- Resumes of all principals (owners, partners, directors or officers)

## **A) Project Information:**

### **A1. Description of Proposed Development, its product and its timeline.**

Las Cruces Community Farms, LLLP is a multi-departmental agricultural operation, which will encompass vegetable and alfalfa farming (indoor and outdoor), produce shed packaging and storage/warehousing and a mill that will produce cotton feed for aquaculture.

The greenhouses will provide year round crops in climate controlled indoor buildings, that will allow us to diversify our crops and offer agricultural products year round, which extends the season for several vegetables.

The shed, packaging and warehousing will provide drying on carrot and onion seed, onion bulbs, pumpkins and any other products that need specialty drying storage. The seed will be processed and exported nationally to several states and internationally. We are currently under contract with Bayer Seed Company (who has recently purchased Monsanto Seed Company) and is now the largest seed company in the world. We are growing, processing and shipping carrot and onion seed to Bayer Seed Company in Idaho. Bayer Seed Company is looking into moving more of the onion seed production, out of California, and into Southern New Mexico. Our Company is the primary target at this point. We are diligently working to ascertain the entire onion seed production for Bayer Seed Company. We believe this will allow us the opportunity to assist other growers in New Mexico, to diversify their production, as well as provide added employment to a much needed colonia area (Berino, New Mexico).

The cold storage will allow us to store vegetables and produce grown and produced in the greenhouses and from other local growers to sell product to all of Southern New Mexico, El Paso and West Texas areas, focusing on school systems, restaurants and the general public. We can now compete with outside companies coming in and taking New Mexico dollars.

The mill, from cotton seed, will extract the oil and take the by-product and process it into a flour. The flour is currently being exported to McGregor fish food in Pennsylvania and to South Korea. We are working with Colton Inc. to improve the acreage of cotton grown in New Mexico, in order to provide the volume needed to produce the by-product for fish meal.

### **A2. Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.**

Request funding to convert egg houses associated with prior use into greenhouses for production of year round produce.

### **A3. Business Plan**

**Attached as Exhibit A3**

## **B) Financial Information**

B1. Detailed assumptions for business and proposed projects

**Attached as Exhibit B1** **CONFIDENTIAL**

B2. Financial statements with independent audits, if available, or Tax returns, for the past three years.

**Attached as Exhibit B2** **CONFIDENTIAL**  
(for Partners since LCCF does not have history)

B3. City business license number/proof or statement that registration will pursued or secured.

Project will apply for a County business license before beginning operations at the new facility. The license will be ready December 13, 2016.

B4. What is the collateral/security to be pledged to the funds awarded?

Certificates of Deposit

B5. What is the method of appraisal for stated security?

No appraisal - monies

<b>Funding Type</b>	<b>Source</b>	<b>Amount</b>
Equity Investment		
Bank Loans	AG NM FCS-mortgage loan	\$1,350,000.00
Other Loans		
State funding	LEDA grant	\$100,000.00 initial phase
Other Sources		
Cruces Equity Partners (Randy McMillan & Greg McPhie)	Partner funds – through 10/31/16	\$187,906.78
Hill Farms, LLC (James W Hill and James C Hill)	Partner funds – through 11/14/16	\$216,378.87
	TOTAL	\$1,854,285.58

B6. If a gap exists, please define/explain options being pursued or solution to fund that gap.

Currently applying for funding through NM Environment Department-Brownfields Cleanup Revolving Loan Fund – requested \$1,500,000

Currently working/applying with Capital Farm Credit Bank out of El Paso, TX on operating line for \$1,500,000

B7. Provide schedule of funding commitments and any term/commitment letters

None at this time

### **C) History and Background**

C1. Explain the commitment to build, operate, and/or manage the project?

See business plan in Exhibit A3. We have already begun to move the projects forward in the farm and dryer barn areas. We are operating the smaller mill and shipping out finished product and we have planted for our seed production. We are committed to bringing all areas of the business plan to fruition. The greenhouse buildings have been stripped and are waiting for further development.

C2. Any officers ever filed for bankruptcy?

**NO**

C3. List Current officers and directors

James W. Hill, James C. Hill, Randy McMillan, Greg McPhie

C4. Applicant or any of its officers ever defaulted on any loans or financial obligation?

**NO**

C5. Does the applicant have any loans or other financial obligations on which payments are not current?

**NO**

## **D) Community Aspects**

D1. At the community level, what are the infrastructure needs, not yet in place or in process that will affect this project's application?

None – Project site is development ready

D2. What specific incentives are being PROVIDED from the COMMUNITY (e.g. parcel of land, building lease, waiver of fees, utility access/extension)?

Dona Ana County is willing to serve as a fiscal agent for LEDA funds.

The project has significant support from the unincorporated community of Berino (a federally designated colonia) and has involved community members in the project planning.



## E) Job Creation/Performance

E1. Outline the number and types of jobs to be created.

Job Type	Estimated Pay Scale	Number of Jobs Created					Employment level in Year 5
		At Start-up	Beginning of Year 2	Beginning of Year 3	Beginning of Year 4	Beginning of Year 5	
Greenhouse grower		1	1	1	2	2	7
Greenhouse asst grower		1	1	1	2	2	7
Greenhouse labor		7	7	16	30	10	70
Dryer/Cold Storage labor		1					1
Mill labor		2					2
Farming		8					8
<b>Total No. of Jobs Created</b>							<b>95</b>
<b>Total Estimated Payroll</b>							
Seasonal labor		7	27	16	30	10	90

E2. Outline the proposed pay scale and payroll proposed by the entity

Labor needed per greenhouse was projected based on consulting with other greenhouse operators. Costs were based on grower salaries at \$70,000, assistant growers at \$35,000 and laborers for planting and harvest at \$9.00 per hour running full-time year round.

Mill - based on consultations with Cotton, Inc. and other mill operators, employees needed for operations are 2, paid from \$12.50 to \$14 over the next 5 years, full-time.

Office labor and payroll taxes are projected to rise as overall operations increase in the next 5 years from 1 to 4 office personnel, ranging from \$12.50 to \$14 per hour for accounts receivable, accounts payable and purchasing responsibilities.

**E3. Outline the benefits offered to the employees, including but not limited to health care and retirement**

The Company will fall under the new ACA health insurance regulations in year 3. Projected insurance is set at an average premium of \$330 per employee at 60% coverage, based on current rates. Management has not projected paying the penalties versus carrying insurance coverage in these projections. Health insurance will be evaluated when the Company reaches the 50 FTE limit for coverage and the existing regulations at the time.

**E4. Outline any efforts being made or proposed by the applicant to employment opportunities to people within the local employment pool**

- Started community outreach in Berino, Vado, Mesquite and Anthony communities
- Meeting once per month with local community organizers
- In process of taking applications from these areas

**F) Impacts (environmental, fiscal, economic, etc.)**

F1. Outline any impacts to the environment, positively or negatively

Clean up land by using up the nitrates in the ground with minimal waste.

Bring jobs to the local communities

Bring in revenues and taxes for the Berino area.

F2. Status of permitting/regulatory matters needed for project

Chemical licensing will be obtained by 1/31/2017

Food Safety Certifications will be obtained when greenhouse is up and operating.

*Any supplemental documents that are submitted to support the application are to be included with this application and noted as "exhibit 1, 2" etc.*

**ATTACHMENT 1 - INCORPORATION PAPERS**

**Change of Address or Responsible Party — Business**

Form **8822-B**  
 (Rev. October 2014)  
 Department of the Treasury  
 Internal Revenue Service

▶ Please type or print.  
 ▶ See instructions on back. ▶ Do not attach this form to your return.  
 ▶ Information about Form 8822-B is available at [www.irs.gov/form8822b](http://www.irs.gov/form8822b).

OMB No. 1545-1163

**Before you begin:** If you are also changing your home address, use Form 8822 to report that change.

If you are a tax-exempt organization (see instructions), check here

Check **all** boxes this change affects:

- 1  Employment, excise, income, and other business returns (Forms 720, 940, 941, 990, 1041, 1065, 1120, etc.)
- 2  Employee plan returns (Forms 5500, 5500-EZ, etc.)
- 3  Business location

<b>4a Business name</b> LAS CRUCES COMMUNITY FARMS LLLP	<b>4b Employer identification number</b> 47-5422053
--	--

**5 Old mailing address** (no., street, room or suite no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.  
 1155 S. TELSHOR BLVD. SUITE B, LAS CRUCES, NM 88011

Foreign country name	Foreign province/county	Foreign postal code
----------------------	-------------------------	---------------------

**6 New mailing address** (no., street, room or suite no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.  
 PO BOX 847 MESILLA PARK, NM 88047

Foreign country name	Foreign province/county	Foreign postal code
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**7 New business location** (no., street, room or suite no., city or town, state, and ZIP code). If a foreign address, also complete spaces below, see instructions.  
 415 San Benito Berino, nm 88024

Foreign country name	Foreign province/county	Foreign postal code
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**8 New responsible party's name**  
 JAMES C. HILL

**9 New responsible party's SSN, ITIN, or EIN**  
 585-63-8590

**10 Signature**  
 Daytime telephone number of person to contact (optional) ▶

	12-9-2016
Signature of owner, officer, or representative	Date
GENERAL PARTNER	
Title	

<b>Where To File</b>	
Send this form to the address shown here that applies to you.	
IF your old business address was in . . .	THEN use this address . . .
Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin	Internal Revenue Service Cincinnati, OH 45999-0023
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, any place outside the United States	Internal Revenue Service Ogden, UT 84201-0023

STATE OF NEW MEXICO



OFFICE OF THE  
SECRETARY OF STATE  
LLLD2015091102  
CERTIFICATE

I, DIANNA J. DURAN, SECRETARY OF STATE FOR NEW MEXICO, DO  
HEREBY CERTIFY

that

Las Cruces Community Farms, LLLP, a New Mexico Limited Liability Limited Partnership, registered in this office in accordance with the provision of section 54-2A-201 (4) NMSA, 1978. This entity was registered on September 11, 2015 and will remain in effect until the New Mexico Limited Liability Limited Partnership's registration is canceled or withdrawn.



GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO. IN  
THE CITY OF SANTA FE, THE CAPITAL, ON  
THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2015 A.D.

*Dianna J. Duran*

SECRETARY OF STATE

Office of the New Mexico Secretary of State  
Registration #: LLD2016091102  
Filed On: 09/11/2016  
Page Number of pages: 2

**CERTIFICATE OF LIMITED PARTNERSHIP**  
**of a New Mexico Limited Partnership**  
**to be known as**  
**LAS CRUCES COMMUNITY FARMS, LLLP**

The undersigned, acting as organizer of a Limited Partnership formed pursuant to the New Mexico Limited Partnership Act, adopt the following Certificate of Limited Partnership:

**Article I — Name**

The name of the Limited Partnership is: **Las Cruces Community Farms, LLLP**

**Article II — Duration**

The latest date upon which the Company is to dissolve is: **December 31, 2035.**

**Article III — Purpose**

The Company is organized for the purpose of **real property investment**, and for all other purposes permitted by law.

**Article IV — Agent and Address**

The street address of the Partnership's initial registered office and the name of its initial registered agent at that office is: **Randy K. McMillan at 1155 S. Telshor Suite B, Las Cruces, New Mexico 88011**, and the street address and city of the Partnership's principal place of business is: **1155 S. Telshor Suite B, Las Cruces, New Mexico 88011.**

**Article V — Management**

The Partnership is to be managed by its General Partner who is designated as: **Las Cruces Farms GP, LLC, a New Mexico Limited Liability Company** whose address is **1155 S. Telshor Suite B, Las Cruces, New Mexico 88011.**

**Article VI — Limited Liability**

The Limited Partnership is a limited liability limited partnership.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

In witness thereof, I have set my hand, this the 3<sup>rd</sup> day of September 2015.

**Las Cruces Farms GP, LLC**  
**a New Mexico Limited Liability Company**

By:

  
Randy K. MacMillan, Authorized Agent  
General Partner

AFFIDAVIT OF  
ACCEPTANCE OF APPOINTMENT  
by Designated Initial Registered Agent

To: State Public Regulation Commission  
State of New Mexico

State of New Mexico  
County of Dona Ana

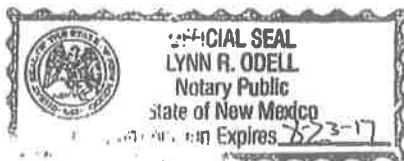
On this September 3<sup>rd</sup>, 2015 before me, a Notary Public in and for the State and County aforesaid, personally appeared Randy K. McMillan of 1155 S. Telshor Suite B, Las Cruces, New Mexico 88011, who is to me known to be the person and who, being by me duly sworn, acknowledged to me that he does hereby accept his appointment as the initial Registered Agent of Las Cruces Community Farms, LLLP the Limited Partnership which is named in the annexed Articles of Organization, and which is applying for a Certificate of Filing pursuant to the provisions of the Limited Partnership Act of the State of New Mexico.

Appointment accepted:

  
Randy K. McMillan

Subscribed and sworn to before me on the day, month, and year first above set forth herein.

  
Notary Public, State of New Mexico  
My commission expires: 8-23-17





**LAS CRUCES COMMUNITY FARMS, LLLP**  
**LIMITED PARTNERSHIP AGREEMENT**

This Limited Partnership Agreement is signed to be effective September 1, 2015, between Las Cruces Community Farms GP, LLC, a New Mexico Limited Liability Company (the "General Partner") and the Limited Partners identified in Exhibit "A" (the "Limited Partners.")

**Article I**  
**Formation**

**Section 1.1. Governing law.** The parties form a limited partnership (the "Partnership") to be governed by the provisions of NMSA 54-2A-201(4) of the New Mexico Statutes Annotated (the "Act") The general partner will sign and record a Certificate of Formation with the Office of the Secretary of State of the State of New Mexico conforming to the Act.

**Section 1.2. Name.** The Partnership will operate under the name:

**Las Cruces Community Farms, LLLP**

**Section 1.3. Place of business.** The principal place of business of the Partnership will be:  
**1155 S. Telshor Suite B, Las Cruces, New Mexico 88011**

The business of the partnership may also be conducted at other places designated by the General Partner.

**Article II**  
**Purposes of the Partnership**

The character of the business of the partnership will be to own and manage real personal and mixed property directly; or, indirectly through ownership of other partnerships, joint ventures and other entities; to own and manage other investments and businesses; and carry on any and all activities permitted by law.

**Article III**  
**Term of the Partnership**

The term of this partnership commences as of the effective date of this Agreement and continues until the expiration of twenty-five (25) years from the effective date, unless sooner terminated by law or as provided in this Agreement.

**Article IV**  
**Capital Contributions**

**Section 4.1. Required capital contributions.** The initial and, all required capital contributions to the partnership are listed on Exhibit "A." The General and Limited Partners agree to the value of property contributed in lieu of cash is equal to the capital contributions set forth in

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

**Exhibit "A"**. The amount of the initial capital contributions will be determined upon purchase of the Partnership Property. There will be no additional required contributions to the capital of the partnership unless agreed upon by all of the General and Limited Partners, in a written amendment to this Agreement. The General Partner has no personal liability for the re-payment of the capital contributions of any partner.

**Section 4.2. Limit on liability of Limited Partners.** No Limited Partner is liable for the debts, liabilities, contract duties or other obligations of the partnership beyond the amount of the required capital contributions. The Limited Partners acknowledge their obligation to repay amounts distributed in excess of the income of the partnership to partnership creditors; provided, the obligation does not exceed the amount of the required capital contributions.

**Section 4.3. Partner as creditor.** No partner will be required to lend money to the partnership. A General or Limited Partner may lend money to the partnership as a creditor of the partnership. A partner who lends money to the partnership will be entitled to interest from the date of payment at a reasonable rate, not to exceed the maximum non-usurious rate permitted according to New Mexico law. Interest paid on amounts borrowed from partners will be an expense of the partnership deducted prior to the division of profits or losses. A Limited Partner may be both a creditor and Limited Partner without adversely affecting their limited liability status.

**Section 4.4. Capital accounts.** An individual capital account will be maintained for each partner. The capital account of a partner will consist of the initial capital contribution increased by:

- a. any additional required or voluntary capital contributions when paid; and,
- b. the partner's share of partnership profits;

and decreased by:

- a. the amount of any distributions of cash or property; and,
- b. the partner's share of partnership losses.

No partner is entitled to withdraw or demand the distribution of any part of their capital account except following termination of the partnership and dissolution as provided in this Agreement.

**Section 4.5. Percentage partnership interests.** The term "*percentage partnership interests*" means the undivided interest of each partner in the net profits, net losses, and distributions of the partnership expressed as a percentage. The percentage partnership interests is allocated among the partners in proportion to their relative capital contributions.

**Section 4.6. Allocation of profits and losses.** The net profits or losses of the partnership will be determined in accordance with generally accepted accounting principles consistently applied.

## Limited Partnership Agreement - Las Cruces Community Farms, LLLP

The annual net profits and net losses of the partnership, if any, will be allocated to the capital accounts of each partner according to the percentage partnership interests set forth in Exhibit "A".

**Section 4.7. Ownership of partnership property.** Legal title to all assets of the partnership will be held in the partnership name. All partnership funds will be deposited in accounts in the name of the partnership. Withdrawals from the partnership accounts will require the signature of the General Partner. No partner will have the right to a partition of the partnership property during the term or following dissolution. No partner, or assignee of any partner, has the right to receive distributions of partnership property in kind.

### **Article V Distributions**

**Section 5.1. Distributions discretionary.** The General Partner will determine the amount and date of payment of any distribution of income or capital of the partnership. No partner will be entitled to receive or demand a distribution of income or capital until paid by the General Partner.

The General Partner may consider the present and future capital needs of the partnership, its investment and business objectives before fixing the amount of any distribution.

**Section 5.2. Limitation on distributions in kind.** No partner will be compelled to accept a distribution of property, in kind, if the percentage of the value of the asset distributed exceeds the partner's percentage partnership interest where other partners receive disproportionate amounts of cash in the same distribution.

### **Article VI Accounting**

**Section 6.1. Annual financial statements.** The General Partner will direct preparation of annual financial statements detailing the operations of the partnership and distribute a copy of the statements to each Limited Partner.

**Section 6.2. Access to accounting records.** All partners or their representatives will at all times have reasonable access to the accounting records and tax returns of the partnership during the regular business hours of the partnership.

**Section 6.3. Income tax matters.** The General Partner is designated as the "tax partner" of the partnership with full authority to make all elections and other decisions concerning the preparation of the partnership information returns. The General Partner will distribute to each Limited Partner a Schedule K-1 to the Partnership Return of Income (Form 1065) or its equivalent, setting forth each partner's distributive share of each item of income, gain, loss, deduction or credit for the year. This information will be furnished to the Limited Partners as soon as possible, but in no event later than the due date, including available extensions of the Partnership Return of Income.

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

**Article VII  
Management of the Partnership.**

**Section 7.1. Business affairs.** All of the business affairs and management of the partnership assets will be under the exclusive control of the General Partner. The Limited Partners will not participate in the management of the business of the partnership.

**Section 7.2. Authority of General Partner.** Without limitation the General Partner has the authority to act, without joinder of any other partner, in its sole and absolute discretion and at the expense of the partnership, in the following circumstances:

- a. To borrow in the partnership name, any sum of money;
- b. To mortgage, pledge or hypothecate the assets of the partnership as security for the payment of partnership debts;
- c. To determine when, and if any portion of the partnership property is to be sold or leased and to determine the terms of sale or lease;
- d. To execute all agreements, contracts, deeds, leases, certifications, and documents necessary or convenient in connection with the acquisition of partnership properties and the management, operation and sale of partnership properties or businesses operated by the partnership;
- e. To contract for and obtain insurance on the partnership properties;
- f. To expend any portion of the capital contributions or partnership income in furtherance of the partnership business.

**Section 7.3. Salary to General Partner.** The General Partner will be entitled to receive a reasonable monthly fee for services rendered. The amount of compensation will be adjusted periodically so the General Partner receives reasonable compensation for services rendered to the partnership. The amount of the monthly compensation will be deemed to be an operating expense of the partnership or "*guaranteed payment*" as that term is defined in the **Internal Revenue Code**.

**Section 7.4. Time devoted by General Partner.** The General Partner is involved in other business activities which require continuing attention. The General Partner may devote to the partnership business only as much time and attention as the General Partner determines is required. No other activities of the General Partner, however similar or in competition with the interests of this partnership will constitute a conflict of interest or breach of fiduciary duty imposed by applicable law.

**Section 7.5. Business opportunities.** No partner has the obligation to make other business opportunities available to the partnership or any other partner.

**Section 7.6. Indemnification of General Partner.** To the extent permitted by law, the partnership agrees to indemnify and hold the General Partner harmless from any claim, cost or

## Limited Partnership Agreement - Las Cruces Community Farms, LLLP

expense, including fees incurred by the General Partner, arising from the conduct of partnership affairs. The General Partner will be paid or reimbursed upon demand, any amount due immediately following receipt of an accounting for amounts due. The General Partner is *not* indemnified for any loss resulting from the General Partner's gross negligence, misconduct or breach of fiduciary duty.

**Section 7.7. Indemnification of Limited Partners.** To the extent permitted by law, the partnership agrees to indemnify and hold each Limited Partner harmless from any claim, cost or expense including reasonable attorney's fees incurred by legal counsel retained by the partnership for any claim arising from the Limited Partner's investment in the partnership or the conduct of its business affairs. The Limited Partner will be paid or reimbursed upon demand, any amount due immediately following receipt of an accounting for amounts due. A Limited Partner is *not* indemnified for any loss relating to claims against a Limited Partner unrelated to the partnership affairs or for any expense or liability incurred as result of Limited Partner's breach of this Agreement.

**Section 7.8. Ministerial amendment and special power of attorney.** Each Limited Partner makes, appoints and irrevocably constitutes the General Partner as their true and lawful attorney-in-fact for, and in their name and place, to make, sign and deliver amendments to this Agreement according to this paragraph. The power of attorney is coupled with an interest, is irrevocable and, will not be affected by subsequent disability or incapacity of the Limited Partner. This special power of attorney is granted to permit the General Power to make ministerial amendments to this Agreement to accomplish its purposes to include the following:

- a. To reflect substitution of assignees or purchasers of partnership percentage interests as Limited Partner, or to reflect the expulsion of a Limited Partner and forfeiture of their interest according to this Agreement;
- b. To make changes required to comply with regulations or statutes, including specific wording required to comply or avail the partnership of available benefits of the **Internal Revenue Code**, provided that the change does not have material adverse affect on the interests or rights of the Limited Partners, generally;
- c. To make other minor or grammatical changes necessary to more clearly reflect the purposes of this Agreement.

### **Article VIII**

#### **Events not causing Dissolution**

**Section 8.1. Partnership will continue.** The partnership will continue until:

- a. expiration of its term; or
- b. until all of its property is sold, disposed or abandoned; or
- c. until it is dissolved as provided for in this Agreement.

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

**Section 8.2. Events not resulting in termination.** The partnership will not be terminated or dissolved:

- a. by the death, insanity, bankruptcy, withdrawal or expulsion of any partner; or
- b. by the assignment of any percentage partnership interest; or
- c. by the admission of new partners.

**Section 8.3. Removal of Limited Partner.** The General Partner may terminate the interest of a Limited Partner and expel the Limited Partner from the partnership:

- a. for interfering in the management of the partnership affairs by engaging in conduct which could result in the partnership losing its tax status as a partnership; or,
- b. for willful breach of this Agreement.

Following termination under this section, the terminated Limited Partner will be entitled only to the return of the balance in the Limited Partner's capital account at the time of termination. The terminated Limited Partner will have no other claim to the value of partnership assets at the time of termination.

**Section 8.4. Removal and replacement of General Partner.** Upon affirmative vote of **eighty percent (80%)** in interest of the Limited Partners, the General Partner may be removed; provided, a successor General Partner is elected in the same vote. Removal and replacement requires affirmative vote of **majority vote** in interest of the total partnership interests. Upon removal, the general partnership interest of the removed general partner will be converted into a limited partnership interest in the manner provided by applicable state law.

**Section 8.5. Effect of replacement.** The partnership will not be terminated as a result of the death, disability, retirement, dissolution, liquidation or bankruptcy of the General Partner. If the General Partner is unable or unwilling to serve, a new General Partner will be elected by **majority vote**, in interest of the remaining partners. Unless elected, no executor, successor or assignee of the General Partner will serve as a General Partner. If removal, or a change in the identity of a General Partner results in a dissolution by operation of law, election of a successor General Partner is deemed a liquidation of this partnership, which is then immediately reformed as a new limited partnership doing business under the same name.

**Section 8.6. Conduct of voting.** Any partner may institute a written proposal for a vote to remove or replace the General Partner by sending the proposal certified mail return receipt requested to all partners. The vote will be conducted by mail. Each partner will vote the percentage interest owned by them at the time the vote is conducted. Partners will respond, if at all, in writing by certified mail to the principal office of the partnership. Responses received within **thirty (30)** days

Limited Partnership Agreement - Las Cruces Community Farms, LLLP

of the initial notice will be valid. The absence of written response will be deemed an affirmative vote *against* removal or replacement of the General Partner.

**Article IX**

**Transfer of Interest of a Limited Partner**

**Section 9.1. Sale of Partnership interests.** No partner will sell, transfer, assign or hypothecate their interest except, as permitted in the following. Any purported sale, transfer, assignment or hypothecation in violation of this Agreement will be void. Unless the transfer is permitted and conducted according to the procedures specified in this Article, no assignee or transferee of the whole or any portion of a partner's interest in this Partnership will become a substituted partner in place of the assignor unless the following conditions are satisfied:

- a. In its sole and absolute discretion, the Manager has consented in writing to admission of the assignee as a substituted Partner;
- b. The assignees execute and delivers a written agreement in the form required by the Manager, including written acceptance and adoption of the provisions of this Agreement by the assignee; and
- c. The assignee pays a transfer fee of \$10,000.00 to the Partnership.
- d. No consent of the Partners is required to the substitution of a Partner.

**As used in this Agreement:**

**9.101. Disposition.** The term "*disposition*" means a sale, assignment or any other transfer of an interest whatsoever, whether voluntary or involuntary.

**9.102. Effective date.** Except as otherwise provided, the "*effective date*" of an offer, or the effective date of the exercise of any option granted under this Agreement will be the date when "*notice*" of the offer or exercise of the option is deposited in the mail.

**9.103. Offer.** The term "*offer*" is the written notice given by one Partner to another invoking the enforcement of this Agreement. Whether or not stated in the offer, the notice includes the offering Partner's intent to buy the other's interest or to sell their interest, if required by this Agreement. The procedure for acting upon an offer varies in each section. To be effective, an offer must be given by notice.

**9.104. Option.** The term "*option*" means the exclusive right of a person to respond to an offer or to circumstances deemed to be an offer according to this Agreement. An option must be exercised by notice. Failure to exercise an option may result in the creation of an enforceable contract according to the default procedure specified in each section of this Agreement.

**9.105. Notice.** The term "*notice*" means a written communication sent prepaid by United States Mail, certified, delivery restricted to the addressee. To be effective, notice must be properly

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

addressed to a Partner at the Partner's address according to **Exhibit "A."** A Partner may give notice of a change in address at any time. Proper notice may be evidenced by a signed return receipt or by evidence of attempted postal delivery. Notice may be given by physical delivery so long as the Partner who receives delivery gives a written acknowledgment of receipt.

*To be effective, notice must be given to the Partnership at its principal place of business and to all Partners, even if their percentage interests are not affected by the offer.*

**9.106. Interest.** The terms an "*interest*" or "*interests*" mean all issued and outstanding percentage interests of partners representing ownership of undivided portions of the net assets of the Partnership. All references to an interest or interests owned by a Partner include the community property interest, if any, owned by the spouse of a Partner.

**9.2 Restriction on Transfer**

**9.201. Transfer restricted.** A Partner may dispose of his or her percentage interests only by complying with the procedure mandated by this Agreement or by first obtaining the unanimous written consent of all other Partners to the transfer. Any attempted disposition in violation of the Agreement is *void*. The act of transfer constitutes an offer to sell under the procedure set forth in **Section 9.4**, according to the terms and conditions of the actual sales transaction. The effective date of the offer will be the date when the other Partners have actual knowledge of the attempted disposition. In the absence of unanimous written consent, interest *must* be sold according to this Buy-Sell Agreement.

**9.202. Transfer by consent.** By unanimous written consent, the Partners may waive the application of this Agreement to a specific transaction. Consent to a transaction will not be interpreted as consent to any future similar transactions or, as a waiver of any Partner's right to enforce this Agreement as to future transfers by the same or other Partners.

**9.203. Pledge of interest.** Unanimous written consent is required before any interest bound by this Agreement may be pledged or encumbered by the borrowings of a Partner. In all instances, consent to the pledge of a security interest in a Partner's interest will be conditioned upon the lender's agreement to be bound by this agreement.

**9.3 Offer to Purchase Interest of Another Partner.**

**9.301. Offer.** Any Partner who wants to purchase the percentage interests owned by another Partner will make an offer to the other.

**9.302. Option.** For **thirty (30) days** following the effective date of the offer, the other Partner *has the option to sell their percentage interests, or to reverse the offer and purchase all of the interest* owned by the offering Partner. If the option is exercised to purchase, the other Partner will purchase all of the percentage interests owned by the offering Partner for the price and



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according to the terms described in the original offer. The option to purchase must be exercised by notice.

**9.303. Binding contract.** Notice of exercise of the option to sell or to purchase, will create a binding contract. The offering Partner must then sell or purchase according to the manner the option was exercised. Closing will be not later than **thirty (30) days** after the option is exercised.

**9.304. No response.** If a Partner fails to respond, the original offer is deemed accepted, and a binding contract for the non-responding Partner to sell the percentage interests identified in the offer to the offering Partner is created. The non-responding Partner must then sell their percentage interests for the price and according to the terms of the offer. Closing will be not later than **sixty (60) days** after the effective date of the offer. If a Partner refuses to close, the provisions of **9.10** will apply.

**9.305. Price.** Unless otherwise stated in the offer, the price and method of payment will be determined by **Section 9.9**.

**9.306. Effect on other Partners.** The interest owned by Partners whose percentage interests are not identified in an offer will not be affected by the sale or purchase under this section. Partners whose percentage interests are not identified in an offer have no option to purchase or sell. Partners whose percentage interests are excluded from the original offer may initiate additional offers. However, the effective date of such successive offers will be delayed until the option period following the original offer expires.

**9.307. Purchase prorata.** In situations involving multiple Partners, each purchaser may purchase that portion of the total interest being sold, in the ratio which the percentage interests owned by each purchaser bear, to the percentage interests owned by all purchasing Partners before the offer.

**9.4. Offer in the Event of Bona Fide Purchase Agreement.**

**9.401. Sale to third party.** Any Partner who wants to sell any of his or her interest to another Partner or a third party purchaser must first make an offer to sell the interest to all of the other Partners.

**9.402. Notice required.** Notice of the offer to sell will be sent to all other Partners and must state the percentage interests involved; the names and addresses of the proposed purchasers; the price; and terms of the proposed sale. The existence of a binding agreement between the selling Partner and the purchaser is not required. The offer to sell under this section may be withdrawn at any time before the option to purchase is exercised.

**9.403. Option to purchase.** For **thirty (30) days** following the effective date of the offer to sell, the other Partners *have the option, but not the obligation*, to purchase all of the percentage

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interests offered at the price and according to the terms stated in the offer to sell. Closing will be **thirty (30) days** after the option to purchase is exercised.

**9.404. Sale permitted.** If the other Partners do not exercise their option to purchase *all* of the percentage interests offered, the selling Partner may, within **thirty (30) days** after the option expires, sell all of the interest described in the offer to the purchaser identified in the offer. No sale will be made at a price, or to a purchaser, not disclosed in the offer. The interest must then be sold, if at all, within **thirty (30) days** after the option period expires otherwise, the selling Partner must make a new offer to sell before selling the percentage interests.

**9.405. Purchase prorata.** In situations involving multiple purchasers, the provisions of **Section 9.307.** will apply.

**9.5 Transfer of Interest Following Death of a Partner. Not used**

**9.6. Disposition Upon Termination of Marital Relationship. Not used**

**9.7. Disability of Member. Not used**

**9.8. Involuntary Disposition.**

**9.801. Notice required.** A Partner who has knowledge of a pending involuntary disposition involving their interest has a responsibility to give notice of the circumstances which will result in a disposition. Before the occurrence, or immediately following any involuntary disposition of interest the affected Partner, or the Partner's representative will give the Partnership and other Partners notice of the pending involuntary disposition. The notice will disclose, in full, the nature and details of the involuntary disposition. Events of involuntary disposition include but, are not limited to: an assignment for the benefit of creditors; execution following judgment; foreclosure of **Uniform Commercial Code** liens; foreclosure of Federal or State tax liens; or, filing a petition in bankruptcy. Notice of an involuntary disposition, or the failure to give notice, will upon discovery by the remaining Partners be deemed to create a binding offer to sell at the price and according to the method of payment determined by **Section 9.9.**

**9.802. Option to purchase.** The remaining Partners or any one of them *has the option but not the obligation to purchase* the percentage interests of the affected Partner.

**9.803. Exercise of option.** The option to purchase may be exercised, if at all, by notice dated not later than **thirty (30) days** after the last of the following dates: (1) the effective date of notice according to **Section 6.801.**; (2) the date the involuntary conversion occurs or; (3) the date the involuntary conversion is discovered by the purchasing Partner. Notice of exercise will be effective if sent to the Partner, the legal representative of the Partner or the third party purchaser at any forced sale. Closing will be **thirty (30) days** following the exercise of the option to purchase. In situations involving multiple purchasers, the provisions of **Section 6.307.** will apply.

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

**9.804. Option not exercised.** The purchaser of percentage interests involuntarily conveyed by application of legal process will be an "assignee of the partnership interest," according to applicable law. No assignee will become a partner, nor will they be entitled to vote on matters presented to the Partners for vote unless and until they are admitted according to **Section 6.1**, of this Agreement. If the option described in this section is not exercised by the remaining Partners, the interest will continue to be bound by this agreement requiring an offer or notice prior to further sale or other transfer, according to this Agreement.

**9.9. Determination of Purchase Price and Method of Payment.**

**9.901. Valuation of interest.** Annually, if not more frequently, the Partners agree to sign a statement setting forth their agreed value of **one percent (1%)** of the outstanding interest of the Partnership. If, a valuation is agreed upon not more than one year prior to the date of an offer under this Agreement, the price will be equal to the agreed value. The initial agreed valuation is attached as **Exhibit "B"** to this Agreement. When signed by all Partners, subsequent valuations will be substituted for **Exhibit "B"** to this Agreement.

**9.902. Valuation out-of-date.** If the Partners have not agreed to valuation within one year prior to an offer, the total sales price in a transaction will be equal to the adjusted book value of one share of interest computed as of the determination date and modified as provided in the following, multiplied times the percentage interests owned by a selling Partner. The computation of the valuation is more fully described as follows:

a. The adjusted book value per **one percent (1%)** interest in the Partnership will be computed according to generally accepted accounting principles applied on a consistent basis. The adjusted book value will then be increased by the excess, or decreased by the deficit, of the fair market value of the personal and real property owned by the Partnership over remaining cost basis.

**Notice:** *Book value computed under this section does not consider the value of the business activities of the Partnership as a going concern nor does the valuation include a capitalization of the income producing potential of the business of the Partnership. The Partners should consider these factors in setting current valuations each year this Agreement is effective.*

b. The "determination date" of a valuation will be on the ending day of the last calendar month preceding the effective date of an offer or exercise of option as provided in this Agreement.

c. The valuation and any questions concerning accounting procedures will be resolved by independent accountants regularly employed by the Partnership. Fair market value of property of the Partnership will be determined by an appraiser agreed upon by the seller and purchaser. If the parties fail to agree on the appointment of an appraiser, the value will be determined by an appraiser appointed by any **State or Federal District Court Judge sitting in Dona Ana County, New Mexico.**

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**9.903. Terms of sale.** Closing under a transaction according to this Agreement will take place at the registered office of the Partnership on the day payment is due. If necessary, closing of any sale under any section of this Agreement will be delayed until **seven (7) days** after all required appraisals are received by the Partnership. At least **twenty-five percent (25%)** of the purchase price must be paid in cash or by certified check at Closing. The remaining unpaid balance without interest will be paid in cash or by certified check on or before **one-hundred twenty (120) days** from the date of closing.

**9.904. Expenses of purchase.** Unless otherwise stated in an offer, all expenses of sale including the cost of required appraisals will be paid by the purchaser. Each Partner will pay the legal or professional fees incurred by them for representation. Legal fees incurred to enforce a default in this Buy-Sell Agreement will be paid by the defaulting party.

**9.10. Power of Attorney**

**9.1001. Power granted.** Each Partner by signing this Agreement grants to the Managers of the Partnership an irrevocable power of attorney to act as his or her attorney-in-fact to convey percentage interests according to this Agreement. The attorney-in-fact is given the power to assign and convey percentage interests on behalf of a Partner or the Partner's spouse. The power of attorney granted under this section is coupled with an interest and is given for the benefit of all parties as further security for the enforcement of this Buy-Sell Agreement between the Partners.

**9.1002. Proceeds tendered to Partnership.** Sales proceeds not claimed by a selling Partner will be tendered to the Partnership and will be held in a segregated account, at interest, by the Partnership until claimed by the seller or the seller's successor in interest. In such circumstances the exercise of voting and other privileges of ownership of percentage interests conveyed according to this section will be exercisable by the record owner of the percentage interests.

**9.1003. Affidavit and indemnity.** A purchaser who seeks enforcement of a sale under this section will be required to submit an affidavit to the Partnership signed under penalties of perjury as to the circumstances requiring transfer by the attorney-in-fact. The attorney-in-fact may rely on the affidavit of the purchaser. The purchaser indemnifies and holds the attorney-in-fact and the Partnership harmless from any expense, claim or cause of action, including reasonable attorneys' fees incurred by them a result of acting on the affidavit of the purchaser.

**9.11 Miscellaneous Provisions.**

**9.1101. Context.** Whenever the context requires, the gender of all words used includes the masculine, feminine and neuter, and the number of all words includes the singular and plural.

Limited Partnership Agreement - Las Cruces Community Farms, LLLP

**9.1102. Agreement binding.** This Section 9 is binding on the Partnership, the Partners, their spouses and each party's heirs, executors, administrators, successors or assigns. The obligation of this agreement is appurtenant to the right of ownership of percentage interests issued. Any person who acquires interest in violation of this Agreement will be required to sell as though they were the Partner whose percentage interests were unlawfully acquired as provided in Section 9.13.

**9.1103. Interest sold.** Any Partner who sells their interest will cease to be a party and will have no further rights to enforce this Agreement.

**9.1104. Specific performance.** Each interest holder acknowledges the remedy at law for any breach is inadequate and, agrees the other Partners are entitled to specific performance of the sale or purchase according to this Agreement.

**9.1105. New issues bound.** The Partnership agrees not to issue or sell percentage interests to any person unless the purchaser and the purchaser's spouse agree to become parties to this Agreement.

**Section 9.12. Permitted assignment.** A partner may assign all or any portion of their percentage partnership interest to other partners or to partners or their immediate family without consent of the other partners.

**Section 9.13. Substituted Limited Partner.** No assignee or transferee of the whole or any portion of a partner's interest in this partnership will become a substituted partner in place of the assignor unless the following conditions are satisfied:

- a. In its sole and absolute discretion, the General Partner has consented in writing to admission of the assignee as a substituted Limited Partner;
- b. The assignees execute and delivers a written agreement in the form required by the General Partner, including written acceptance and adoption of the provisions of this Agreement by the assignee; and
- c. The assignee pays a transfer fee of \$10,000.00 to the partnership.

No consent of the Limited Partners is required to the substitution of a Limited Partner.

**Section 9.14. Death or disability.** Upon the death or legal incompetency of an individual Limited Partner, the Limited Partner's personal representative will have all of the rights of a Limited Partner for the purpose of settling or managing his estate.

**Section 9.15. Bankruptcy and claims of creditors.** No person who becomes the holder of any interest in this partnership by operation of law, or following the bankruptcy, insolvency or involuntary assignment of the interest will become a substituted Limited Partner until admitted according to this Agreement.

## Limited Partnership Agreement - Las Cruces Community Farms, LLLP

No partner may transfer, assign or encumber all or any portion of their interests in the partnership during any fiscal year if the transfer would result in the termination of the partnership under the then applicable provisions of the **Internal Revenue Code**.

**Section 9.16. No redemption until termination.** No transferee of a partnership interest is entitled to a redemption of their interest until the partnership terminates according to this Agreement. No transferee will be entitled the accumulation of interest on the amount which would have otherwise been redeemed if redemption were allowed at a time prior to termination of the of the Partnership. The transferred interest will continue to share in the prorata income and loss of the partnership, attributable to the interest, subject to the other restrictions of this Article.

### **Article X Dissolution**

**Section 10.1. Events causing dissolution.** The partnership will be dissolved if any of the following events occurs:

- a. If partners owning more than **eighty (80%)** of the then outstanding percentage partnership interests cast an affirmative vote, in writing to dissolve the partnership; or,
- b. The term of the partnership expires and, a majority of the percentage partnership interests of the partners does not vote to extend the term of the partnership; or,
- c. A dissolution decree or judicial order to dissolve is entered a court of competent jurisdiction.

**Section 10.2. Winding up the partnership.** Following dissolution, the partnership will commence to wind up its affairs. The partners will share profits and losses during the period of liquidation in the same proportions as before dissolution. The proceeds from liquidation of partnership assets will be applied as follows:

- a. Payment to creditors of the partnership, other than partners, in the order of priority provided by law.
- b. Payment to partners of the balance, if any of amounts advanced as a creditor of the partnership
- c. Payment to partners for unpaid salaries and for the credit balances in their drawing accounts.
- d. Payment to the partners of credit balances in their capital accounts.
- e. Payment of profits not previously distributed to partners.

**Section 10.3. Process of Winding up.** The General Partner will wind up the affairs of this partnership, sell all assets, pay all liabilities, and the costs of dissolution and will then distribute the

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

remainder to the General and Limited partners according to this Agreement. The General partner may set up a cash reserve, to meet contingent or unmatured obligations of the partnership and may withhold the amount of the reserve from the amount of distributions to the partners.

**Section 10.4. Gains or Losses in Process of Liquidation.** Any gain or loss on disposition of partnership assets will be credited or charged in the proportions of the partnership interests at the time of distribution. Any property distributed in kind in liquidation will be valued and treated as though the property were sold and the cash proceeds were distributed. The difference between the value of property distributed in kind and its book value will be treated as a gain or loss on sale of the property.

**Article XI  
Amendments**

Except as previously provided, this Agreement may be amended only by a written agreement executed by the General Partner and the Limited Partners.

**(SIGNATURES APPEAR ON THE FOLLOWING PAGE)**

**Limited Partnership Agreement - Las Cruces Community Farms, LLLP**

Executed this September \_\_, 2015.

**Las Cruces Community Farms GP, LLC**

By:   
Randy K. McMillan, Manager


By:   
Greg McPhie, Manager

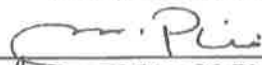
By: \_\_\_\_\_  
James W. Hill, Manager

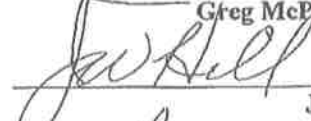
By: \_\_\_\_\_  
James C. Hill, Manager  
General Partner

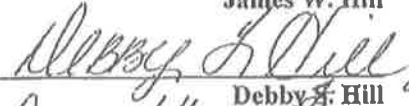
**Cruces Equity Partners, LLLP**


By its General Partner,  
Cruces Equity GP, LLC

By:   
Randy K. McMillan, Manager

By:   
Greg McPhie, Manager

  
James W. Hill

  
Debby A. Hill

  
James C. Hill

Katie Ann Hill  
Limited Partners

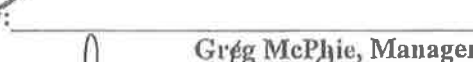


Limited Partnership Agreement - Las Cruces Community Farms, LLLP

Executed this September \_\_, 2015.

Las Cruces Community Farms GP, LLC

By:   
Randy K. McMillan, Manager


By:   
Greg McPhie, Manager

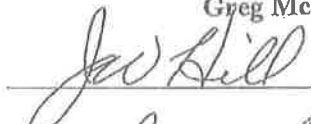
By:   
James W. Hill, Manager

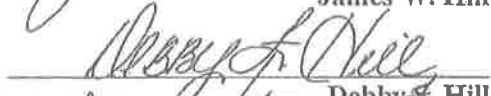
By:   
James C. Hill, Manager  
General Partner

Cruces Equity Partners, LLLP  
By its General Partner,  
Cruces Equity GP, LLC


By:   
Randy K. McMillan, Manager

By:   
Greg McPhie, Manager

  
James W. Hill

  
Debby Hill *dk*

  
James C. Hill

  
Katie Ann Hill  
Limited Partners

## EXHIBIT "A"

### Partnership Interests

<u>Partner's Name and Address</u>	<u>Tax Identifying Number</u>	<u>Initial Capital Contribution</u>	<u>Percentage Ownership</u>
<b>General Partner</b>			
Las Cruces Community Farms GP, LLC 1155 S. Telshor Suite B Las Cruces, New Mexico 88011	_____	\$ <u>400.00</u>	4.00%
<b>Limited Partners</b>			
Cruces Equity Partners, LLLP 1155 S. Telshor Suite B Las Cruces, New Mexico 88011	<u>45-409-4808</u>	\$ <u>4,800.00</u>	48.00%
James W. Hill and Wife, Debby S. Hill Post Office Box 847 Mesilla Park, New Mexico 88043	411-64-4418	\$ <u>2,400.00</u>	24.00%
James C. Hill and wife Katie Ann Hill Post Office Box 911 Mesilla Park, New Mexico 88043	585-63-8590	\$ <u>2,400.00</u>	24.00%
		\$ <u>10,000</u>	100.00%

**EXHIBIT A3 BUSINESS PLAN**

**BUSINESS PLAN**  
**of**  
**Las Cruces Community Farms LLLP**

**August 19, 2016**

*Revised & updated (I-V)*  
*September 30, 2016*

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## I. EXECUTIVE SUMMARY

### Product

Las Cruces Community Farms, LLLP is a multi-departmental agricultural operation, which will encompass vegetable and alfalfa farming (indoor and outdoor), produce shed packaging and storage/warehousing and a mill that will produce cotton feed for aquaculture.

The greenhouses will provide year round crops in climate controlled indoor buildings, that will allow us to diversify our crops and offer agricultural products year round, which extends the season for several vegetables.

The shed, packaging and warehousing will provide drying on carrot and onion seed, onion bulbs, pumpkins and any other products that need specialty drying storage. The seed will be processed and exported nationally to several states and internationally. We are currently under contract with Bayer Seed Company (who has recently purchased Monsanto Seed Company) and is now the largest seed company in the world. We are growing, processing and shipping carrot and onion seed to Bayer Seed Company in Idaho. Bayer Seed Company is looking into moving more of the onion seed production, out of California, and into Southern New Mexico. Our Company is the primary target at this point. We are diligently working to ascertain the entire onion seed production for Bayer Seed Company. We believe this will allow us the opportunity to assist other growers in New Mexico, to diversify their production, as well as provide added employment to a much needed colonia area (Berino, New Mexico).

The cold storage will allow us to store vegetables and produce grown and produced in the greenhouses and from other local growers to sell product to all of Southern New Mexico, El Paso and West Texas areas, focusing on school systems, restaurants and the general public. We can now compete with outside companies coming in and taking New Mexico dollars.

The mill, from cotton seed, will extract the oil and take the by-product and process it into a flour. The flour is currently being exported to McGregor fish food in Pennsylvania and to South Korea. We are working with Cotton Inc. to improve the acreage of cotton grown in New Mexico, in order to provide the volume needed to produce the by-product for fish meal.

### Customers

We have a large target market as we can provide our agricultural products and feed regionally nationwide and overseas to food chains, grocery stores, school systems, restaurants, agricultural

brokers, specialty food processors, farmers, aquaculture farmers, etc. We are currently working with a South Korea fish company and McGregor Inc. through Cotton, Inc. Our largest seed buyer is currently Bayer Seed Company out of Idaho (under contract).

### **What Drives Us/Goals**

Our goals are:

1. To take contaminated (high nitrate) real estate and dilapidated buildings into a modern production facility by
  - a. Implementing a cleanup plan approved by the State of New Mexico and EPA using today's technology to utilize the contaminant (high nitrate) in a blended mixture of water to fertilize non-food crops, thereby not creating any waste,
  - b. to refurbish the buildings from egg and chicken production facilities to an all-natural greenhouse facility, and construct additional facilities for food safety regulations.
2. To develop our greenhouses to provide a greater variety of vegetables and produce in a controlled climate environment in order to increase volume of products to compete and reduce the local import of food and feed as well as export New Mexico products. Increase employment via the greenhouse operations and recruit workers within Berino, New Mexico and other small surrounding communities.
3. To assist in the development of Housing & Urban Development projects by providing job opportunities and selling a portion of the land to Tierra Del Sol for HUD housing in Berino, New Mexico.
4. To refurbish the feed mill to produce high quality feed and volume.
5. To refurbish and modernize the shed, drying, warehouse and cold storage areas to code.
6. To expand over the next 5 years crop production via greenhouse, acquisition or leasing of farmland.

## **II. COMPANY DESCRIPTION**

### **Mission Statement**

To contribute to the success of our customers through investment in a solid workforce, technology and knowledge in crop and feed development in order to offer the best quality and volume of agricultural and feed products on a year-round basis to enhance the return of investment for our customers and partners.

### **Principal Partners**

Randy McMillan – real estate development and finance

Greg McPhie – real estate development and finance

James W. Hill – farming production and marketing

James C. Hill – general manager, mill production, greenhouse and shed development

### **Legal Structure**

Las Cruces Community Farms is a Limited Liability Limited Partnership organized in the State of New Mexico.

## **III. MARKET RESEARCH**

### **Industry**

Las Cruces Community Farms LLLP is in the agricultural industry. Farmers run the risk each year of losing their crops to changes in weather and infestations and the market fluctuations caused by these incidents. Greenhouse farming will allow for year-round climate controlled farming that can target certain crops that are in high demand in large volumes. The feed mill products can be sold locally, nationwide and internationally. We can develop the technology in the new uses for cotton seed for human and animal consumption. We are currently working with Cotton, Inc. to finalize the development of non-toxic cotton seed. We have the ability to grow, process, dry and chill our greenhouse products to compete against outside produce companies taking our schools and restaurant business from New Mexico. We can, along with other growers in the area become one of the nation's largest producers of seed products.

### **Competitors**

Outside produce companies. Feed mills (although the closest one is over 200 miles away). We can work together with other local greenhouses in offering a variety of products, so we can compete against larger out of state companies.

### **Competitive Advantage**

We can provide volume and diversified vegetables year round. No other greenhouse farming in vegetables in the area. We have the only mill within a 250-mile radius.

## **Regulations**

The company will meet all Federal and State regulations, especially in the Food Safety area. Staff will be trained to keep the company in compliance. The company will be licensed in fertilizers and chemicals.

## **IV. PRODUCT/SERVICE LINE**

### **Product or Service**

The company will provide a variety of wholesale and retail vegetables year round, along with seed, and feed products. Our initial vegetables will be tomatoes, lettuce, mushrooms, jalapenos and bell peppers. We will expand to squash, artichokes, eggplant, carrots, radishes, kale and cabbage.

### **Pricing Structure**

Our pricing is set by market values and conditions at harvest.

### **Product/Service Life Cycle**

60 to 120 days - vegetables

Cotton seed mill processing - cotton oil to a refinery in Tennessee in connection with Cotton, Inc. and flour to Asia and Pennsylvania. Cotton seed comes in late fall and will take 5 to 6 months for processing.

### **Intellectual Property Rights**

Not applicable.

### **Research & Development**

Planning to work with NMSU and University of Missouri on researching capsium for equine feed.

Dairies - cotton hulls to dairies and flake or steam corn for dairy use on feeding

Cotton Inc. - complete process to remove oils and husk from cotton seed for human and animal consumption products.



## V. MARKETING & SALES

### Growth Strategy

- Refurbish 20 greenhouses into commercial greenhouses over the next 2 to 5 years
- Modernize the mill and bring to current technology and test technology developed by Cotton, Inc.
- Develop a Chile processing line, cold storage, pumpkin and watermelon line and dryer barn for seed and bulb onions
- Increase seed production acreage by 1,000 - 1,500 acres for vegetable and seed production over the next 2 years.
- Develop and solicit outside growers for seed production

### Communication

- Onsite visits
- Phone and social conferences
- Website for selling products

### Prospects

- Currently under contract with Bayer Seed Company for carrots and onion seed.
- Working through Cotton Inc with McGregor Inc and South Korea Fish Company and Tennessee Refining Company
- Obtain regional, El Paso and West Texas and local public school systems contracts for vegetables
- Ongoing relationships with Southern New Mexico restaurants for fresh produce on daily basis
- Develop El Paso and West Texas restaurant markets
- Contacted several brokers to sell excess produce

**Las Cruces Community Farms, LLLP**

**Financial Statements**

**Years Ending December 31, 2016, 2017, 2018, 2019, 2020 - Projections**

**CONFIDENTIAL**

# EXECUTIVE SUMMARY

## A REPORT OF THE ECONOMIC IMPACT OF PROJECT EGG BERINO DONA ANA COUNTY, NM

February 6, 2017

Prepared by:  
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New Mexico Economic Development Department  
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Prepared using Total Impact



## PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the New Mexico Economic Development Department. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in New Mexico Economic Development Department's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. New Mexico Economic Development Department made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by New Mexico Economic Development Department or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.



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Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in Dona Ana County may have on the state and local economy and estimates the costs and benefits for the state and local taxing districts over a 10-year period.

Description of the Project

Las Cruces Community Farms will produce vegetables and alfalfa via the utilization of greenhouses and traditional farming, along with value added activity including packaging and storage/warehousing; seed drying and storage; and finally milling to provide animal feed products locally, nationally and internationally.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the state. The 95.0 workers directly employed by the Project will earn approximately \$22,000 per year initially. This direct activity will support 84.9 indirect and induced workers in the state earning \$17,000 on average. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$33.5 million over the next 10 years.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the state, the Project is estimated to support approximately \$19.8 million in taxable sales over the next 10 years.

Table 1. Economic Impact Over the Next 10 Years Statewide

	Direct	Indirect & Induced	Total
Economic output generated by direct, indirect, and induced activity	\$108,651,272	\$88,941,931	\$197,593,204
Number of permanent direct, indirect, and induced jobs to be created	95.0	84.9	179.9
Salaries to be paid to direct, indirect, and induced workers	\$19,983,517	\$13,486,876	\$33,470,393
Taxable sales and purchases	\$16,171,265	\$3,645,781	\$19,817,045

The project is not expected to result in a consequential increase in the state's population. A majority of newly hired employees would likely be current New Mexico residents. However, it is estimated that approximately 20.0% of the new direct workers may be new residents to Dona Ana County. The local population impacts may result in new residential properties constructed in the county and increase the enrollment of local public schools.

Table 2. Population Impacts Over the Next 10 Years for the County

	Direct	Indirect & Induced	Total
Number of direct, indirect, and induced workers who will move to the County	19.0	9.4	28.4
Number of new residents in the County	49.4	24.4	73.8
Number of new residential properties to be built in the County	1.9	0.9	2.8
Number of new students expected to attend local school district	9.6	4.7	14.3

The Project is estimated to support an average of approximately \$3.4 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 3. Value of Taxable Property Supported by the Project Over the Next 10 Years

Year	New Residential Property	The Project's Property				Subtotal Nonresidential Property	Total Residential & Nonresidential Property
		Land	Buildings & Other Real Prop. Improvements	Furniture, Fixtures, & Equipment			
1	\$18,307	\$450,000	\$331,133	\$654,817	\$1,435,949	\$1,454,256	
2	\$28,009	\$459,000	\$622,755	\$712,668	\$1,794,424	\$1,822,433	
3	\$47,616	\$468,180	\$996,544	\$858,187	\$2,322,910	\$2,370,526	
4	\$82,566	\$477,544	\$1,614,141	\$935,372	\$3,027,057	\$3,109,622	
5	\$99,079	\$487,094	\$2,767,757	\$1,156,490	\$4,411,342	\$4,510,421	
6	\$101,060	\$496,836	\$2,823,113	\$1,004,708	\$4,324,657	\$4,425,718	
7	\$103,081	\$506,773	\$2,879,575	\$852,927	\$4,239,275	\$4,342,356	
8	\$105,143	\$516,909	\$2,937,166	\$701,145	\$4,155,220	\$4,260,363	
9	\$107,246	\$527,247	\$2,995,910	\$549,363	\$4,072,520	\$4,179,766	
10	\$109,391	\$537,792	\$3,055,828	\$463,063	\$4,056,683	\$4,166,074	

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Temporary Construction Impact

The Project will include an initial period of construction lasting 5 year(s) where \$8.1 million will be spent to construct new buildings and other real property improvements. It is assumed that 60.0% of the construction expenditure will be spent on materials and 40.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 3. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

	Amount	
Total construction expenditure		\$8,089,398
	<i>Materials</i>	\$4,853,639
	<i>Labor</i>	\$3,235,759
Temporary Construction Workers Supported (Average Earnings = \$44,250)		73.1

The following table presents the temporary economic impacts resulting from the construction.

Table 4. Temporary Economic Impact of Project-Related Construction Activity

	Direct	Indirect & Induced	Total
Number of temporary direct, indirect, and induced job years to be supported*	73.1	44.7	117.8
Salaries to be paid to direct, indirect, and induced workers	\$3,235,759	\$1,506,246	\$4,742,005
Revenues or sales for businesses related to construction	\$8,089,398	\$6,086,463	\$14,175,861

\* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Gross receipt tax calculations related to construction activity are presented in the following table. The gross receipts tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts.

Table 5. Construction-Related Taxable Spending

	Estimate
Expenditure for Materials	\$4,853,639
Percent of Materials subject to local gross receipts tax	35.0%
<u>Subtotal Taxable Materials</u>	<u>\$1,698,774</u>
Expenditure for Labor / Paid to construction workers	\$3,235,759
Percent of gross earnings spent on taxable goods and services	26.0%
Percent of taxable spending done locally	25.0%
<u>Subtotal Taxable Construction Worker Spending</u>	<u>\$210,324</u>
Expenditure for Furniture, Fixtures, & Equipment (FF&E)	\$4,553,450
Percent of FF&E subject to local gross receipts tax	25.0%
<u>Subtotal Taxable FF&amp;E Purchases</u>	<u>\$1,138,363</u>
<u>Total Construction-Related Taxable Spending</u>	<u>\$3,047,460</u>

The above construction analysis focuses on the impact resulting from the Project's initial construction investments over the first 5 year(s).



Fiscal Impact Overview

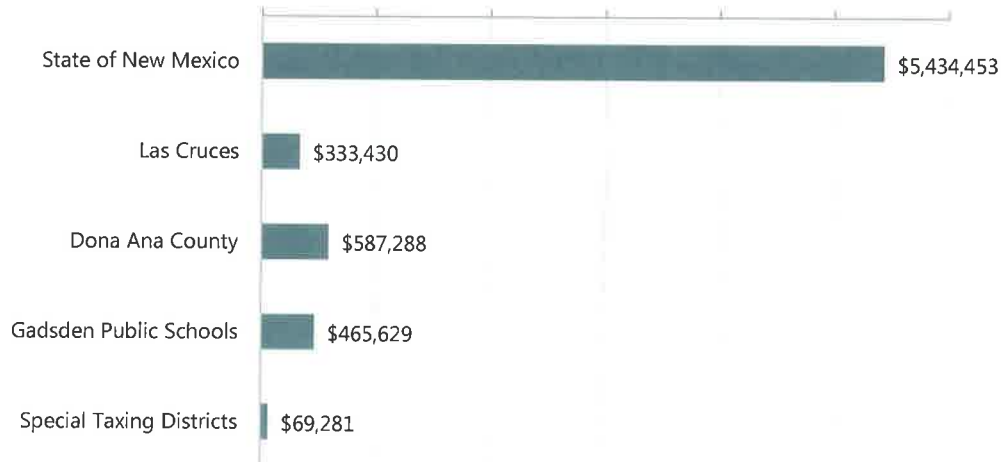
The Project will generate additional benefits and costs for local taxing districts, a summary of which is provided below. The source of specific benefits and costs are provided in greater detail for each taxing district on subsequent pages. Overall, the County will receive approximately \$587,288 in net benefits over the 10-year period and the Project will generate \$6,890,100 in total for all local taxing districts.

Table 6. Fiscal Net Benefits Over the Next 10 Years for the State and Local Taxing Districts

	Benefits	Costs	Net Benefits	Present Value of Net Benefits*
State of New Mexico	\$7,941,409	(\$2,506,955)	\$5,434,453	\$3,907,496
Las Cruces	\$777,656	(\$444,225)	\$333,430	\$259,949
Dona Ana County	\$743,466	(\$156,178)	\$587,288	\$447,649
Gadsden Public Schools	\$785,709	(\$320,080)	\$465,629	\$342,019
Special Taxing Districts	\$69,281	\$0	\$69,281	\$51,403
Total	\$10,317,521	(\$3,427,439)	\$6,890,082	\$5,008,515

\* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

Figure 1. Net Benefits Over the Next 10 Years for the State and Local Taxing Districts



State of New Mexico

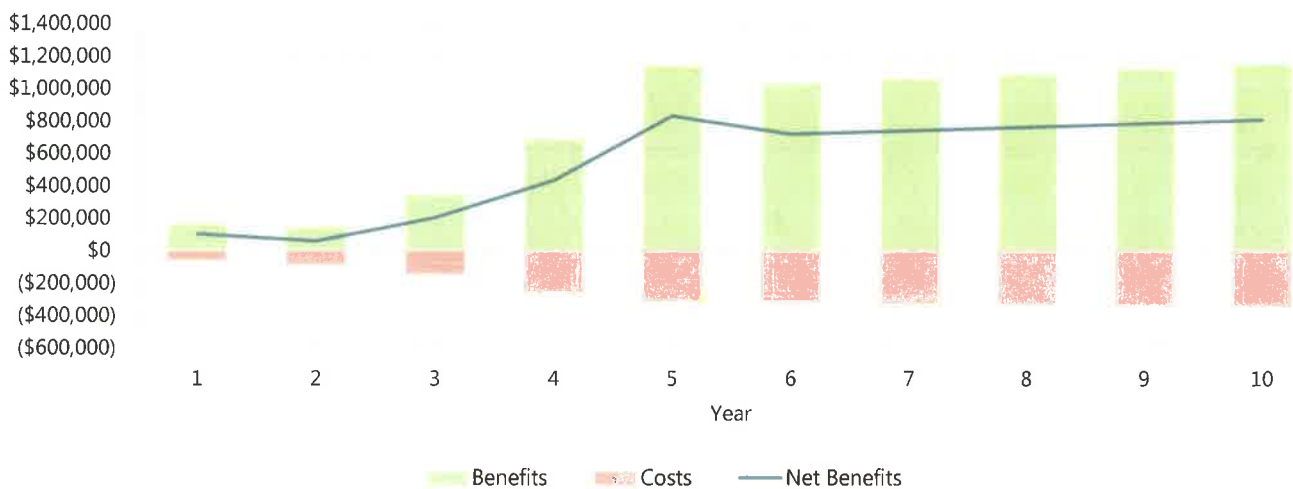
The table below displays the estimated additional benefits to be received by the State of New Mexico over the first 10 years. The project is expected to have a small effect on the statewide population and therefore some additional statewide costs to provide additional services were estimated for the state. Appendix C contains the year-by-year calculations.

Table 7. State of New Mexico: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes	\$772,865
Real Property Taxes - Project	\$35,294
FF&E Property Taxes - Project	\$10,729
Property Taxes - New Residential	\$1,090
Personal Income Taxes	\$4,515,611
Corporate Income Taxes	\$126,902
Miscellaneous Taxes & User Fees	\$2,478,919
<b>Subtotal Benefits</b>	<b>\$7,941,409</b>
Cost of Providing State Services	(\$2,506,955)
<b>Subtotal Costs</b>	<b>(\$2,506,955)</b>
Net Benefits	\$5,434,453
<i>Present Value (5% discount rate)</i>	<i>\$3,907,496</i>

Gross receipts taxes are estimated on new taxable gross receipts resulting from the project. Property taxes are estimated on the firm's property and new residential property constructed. Personal income taxes are estimated based on an effective income tax rate and the earnings of new direct and indirect workers. Corporate income taxes on the direct activity is based on the net taxable income projected by the company. Corporate income taxes on the indirect activity is estimated on a per indirect worker basis and the observed statewide corporate income tax collections per worker. To the extent that the project will result in an increase in new households in the state, additional miscellaneous taxes and user fees have been estimated for the state. Additionally, the costs to provide state services to these new households were also estimated based on recent state expenditure data as detailed in the Appendix.

Figure 2. Annual Fiscal Net Benefits for the State of New Mexico



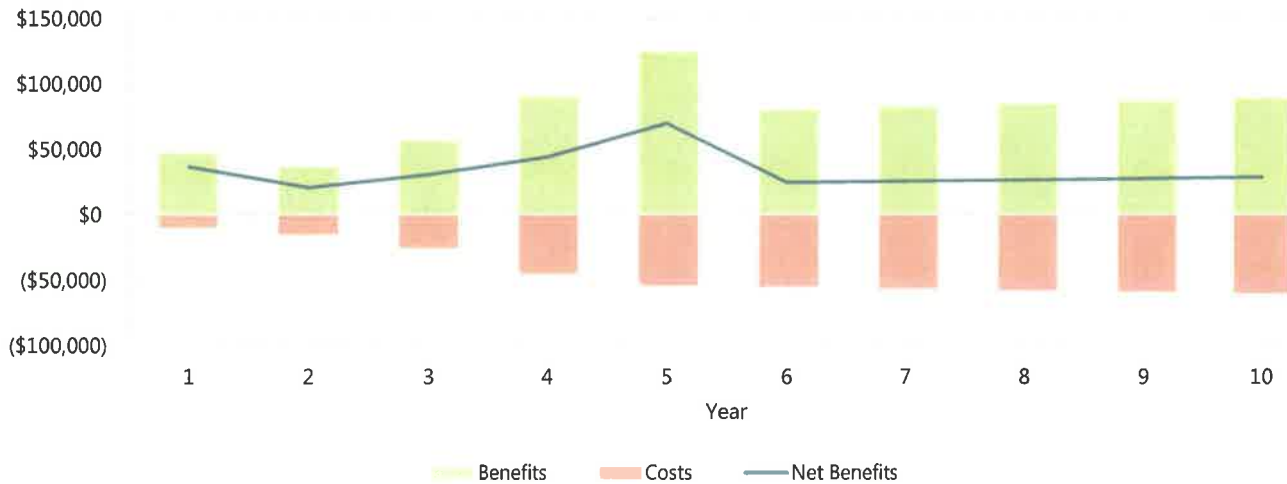
Las Cruces

The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 8. Las Cruces: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes	\$410,530
Real Property Taxes - Project	\$0
FF&E Property Taxes - Project	\$0
Property Taxes - New Residential	\$5,455
Utility Revenue	\$170,146
Utility Franchise Fees	\$19,593
Building Permits and Fees	\$0
Lodgers Taxes	\$2,178
Miscellaneous Taxes & User Fees	\$169,753
<b>Subtotal Benefits</b>	<b>\$777,656</b>
Cost of Providing Municipal Services	(\$268,974)
Cost of Providing Utility Services	(\$175,251)
<b>Subtotal Costs</b>	<b>(\$444,225)</b>
<b>Net Benefits</b>	<b>\$333,430</b>
<i>Present Value (5% discount rate)</i>	<i>\$259,949</i>

Figure 3. Annual Fiscal Net Benefits for the Las Cruces



## Dona Ana County

The table below displays the estimated additional benefits, costs, and net benefits to be received by the County over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 9. Dona Ana County: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes	\$151,187
Real Property Taxes - Project	\$310,481
FF&E Property Taxes - Project	\$94,381
Property Taxes - New Residential	\$10,450
Building Permits and Fees	\$55,000
Miscellaneous Taxes & User Fees	\$121,966
<u>Subtotal Benefits</u>	<u>\$743,466</u>
Cost of Providing County Services	(\$156,178)
<u>Subtotal Costs</u>	<u>(\$156,178)</u>
Net Benefits	\$587,288
<i>Present Value (5% discount rate)</i>	<i>\$447,649</i>

## Gadsden Public Schools

The table below displays the estimated additional benefits, costs, and net benefits to be received by the school district over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 10. Gadsden Public Schools: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Real Property Taxes - Project	\$436,267
FF&E Property Taxes - Project	\$132,618
Property Taxes - New Residential	\$13,309
State Equalization Guarantee	\$203,516
<u>Subtotal Benefits</u>	<u>\$785,709</u>
Cost of Educating New Students	(\$320,080)
<u>Subtotal Costs</u>	<u>(\$320,080)</u>
Net Benefits	\$465,629
<i>Present Value (5% discount rate)</i>	<i>\$342,019</i>

Benefits for Other Taxing Districts

The table below displays the estimated additional property taxes to be received by other property taxing districts over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 11. Other Taxing Districts: Benefits Over the Next 10 Years

	Amount
Real Property Taxes - Project	\$51,903
FF&E Property Taxes - Project	\$15,777
Property Taxes - New Residential	\$1,601
Benefits	\$69,281
<i>Present Value (5% discount rate)</i>	<i>\$51,403</i>

## Overview of Methodology

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

Multiplier		City	County	State
Employment Multiplier	(Type II Direct Effect )	1.3692	1.4923	1.8931
Earnings Multiplier	(Type II Direct Effect )	1.2790	1,3720	1.6749

### Calculation of Fiscal Impact

#### *Calculation of Revenues for the State*

The state's revenues from gross receipts taxes, property taxes, personal and corporate income taxes were estimated directly using data entered about the project and state tax rates and assumptions about workers moving to the area and possibly building new property.

Impact DataSource estimated the miscellaneous taxes and user fees as a function of statewide personal income. The data used to estimate these factors were obtained from the US Census of Governments and the Bureau of Economic Analysis. Next, these percentages were applied to the total increase in workers' earnings from the economic impact calculations to determine the annual miscellaneous taxes and user fees to be collected by the state related to the permanent increase in economic activity supported by the project.

The fiscal costs associated with the project result from the portion of new worker households that relocate to New Mexico to take a job and the resulting costs to provide state services to these new residents. Impact DataSource estimated the cost of providing state services to new worker households moving to the state by applying the average per household cost of state expenditures to the estimated number of new workers new to the state.

Impact DataSource determined the marginal cost to provide state government services on per household in the state by using approximately 40% of the average cost. The data used to estimate these costs were obtained from the US Census of Governments and US Census. On average, the state incurs \$5,000 in costs to provide these services to households.

#### *Calculation of Revenues for the City*

The city's revenues from gross receipts taxes, property taxes, city-owned utilities, utility franchise fees, lodging taxes, and building permits and fees were estimated directly using data entered about the project and local tax rates and assumptions about workers moving to the area and possibly building new property.

The new firm was not asked for nor could reasonably provide some data for calculating some other revenues for the city. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers at the firm, the firm may not reasonably know the propensity of its workers to speed. Therefore, some other city revenues were calculated using an average revenue approach. This approach uses two assumptions:

- 1 - The city has two general revenue sources -- revenues from residents and revenues from businesses.
- 2 - The city will collect (a) about the same amount of other revenues from each household of new workers that may move to the city as it currently collects from an average household of existing residents, and (b) about the same amount of other revenues from the new firm (on a per worker basis) will be collected as the city collects from other businesses in the city.

Using this average revenue approach, revenues likely to be received by the city were calculated from the households of new workers who may move to the city and from the new firm using average city revenues per household and per worker calculations. These revenues are labeled as miscellaneous taxes and user fees.

The total annual city revenues used to make average revenue calculations in this analysis were obtained from the city's latest annual budget and the per household and per worker and calculations are detailed in Appendix A.

#### *Calculation of Costs for the City*

This analysis sought to answer the question, what additional monies will the city have to spend to provide services to households of new workers who may move to the city and to the firm. A marginal cost approach was used to calculate additional city costs from the new firm and its workers.

This approach uses two assumptions:

- 1 - The city spends money on services for two general groups -- residents and businesses.
- 2 - The city will spend (a) about the same amount for variable or marginal cost for each household of new workers that may move to the city as it currently spends for an average household of existing residents, and (b) about the same amount for variable or marginal costs for the new firm (on a per worker basis) as it spends for other businesses in the city.

#### *Calculation of Net Benefits for the City*

Net benefits calculated in this analysis are the difference between additional city revenues over a ten-year period and additional city costs to provide services to the new firm and its workers and indirect workers who may move to the city.

#### *Calculation of Revenues, Costs and Net Benefits for the County*

The model estimates additional revenues, costs and net benefits for the county using the same methodology described for the city relying on county budget data.

#### *Calculation of Revenues for Public Schools*

The school district's revenues from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

However, school district revenues from state and federal funds and other local funding were calculated using an average revenue approach. This approach used the assumption that the school district will collect about the same amount of these revenues for each new student in the household of a new worker who may move to the county as it currently collects for each existing student.

#### *Calculation of Costs for Public Schools*

A marginal cost approach was used to calculate additional school district costs from the new firm and its workers. This approach uses the assumption that the school district will spend about the same amount for variable or marginal cost for each new student as it spends for each existing student.

#### *Calculation of Net Benefits for Public Schools*

Net benefits calculated in this analysis are the difference between additional school district revenues over a ten-year period and marginal costs for the school district to provide services to students in the households of new workers who may move to the county.

The school district's total annual revenues and expenses to make average revenue and marginal costs calculations in this analysis were obtained from the school district's latest annual budget.

#### *Calculation of Property Taxes to be Collected by Countywide Special Taxing Districts*

Revenues for countywide special taxing districts from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

While each of these special taxing districts may incur additional costs from new residents and from the new firm, these additional costs were not calculated in this analysis.

### About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in New Mexico and more than 30 other states.

In addition, Impact DataSource has prepared and customized more than 50 economic impact models for its clients to perform their own analyses of economic development projects. These clients include the Frisco EDC in Texas and the Metro Orlando (Florida) Economic Development Commission.





Las Cruces Community Farms  
aka "Wholesome Valley Farms"

greenhouses

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Commissioner John Vasquez  
Initiating Department

May 23, 2017  
Meeting Date

Commissioner John Vasquez  
Contact Person

23  
Agenda Item Number

TITLE OF AGENDA ITEM TO BE CONSIDERED

**APPROVE RESOLUTION ESTABLISHING A UTILITIES ADVISORY COMMITTEE**

SUMMARY OF ITEM TO BE CONSIDERED

The BOCC is responsible for setting utility rates and setting other policy related to the regulation and operation of various utilities. The setting of utility rates and policies and determining when it is in the best interest of Doña Ana County to intervene in matters before the PRC in a complicated and technical process. The BOCC would benefit from receiving advice from professionals in setting utility rates and policies and determining when it is in the best interest of Doña Ana County to intervene in PRC matter;

DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED

Proposed resolution

SUMMARY OF FINANCIAL IMPACT

ADMINISTRATIVE REVIEW AND APPROVAL

\_\_\_ Finance

 Legal

  
\_\_\_ County Manager/  
Agenda Review

\_\_\_ Purchasing

\_\_\_ Human Resources

\_\_\_ Assistant County Manager

\_\_\_ Planning

\_\_\_ Other

DOCUMENT CONTROL

Original/s for signature?:  Yes  No      For Recording?:  Yes  No

Return original/s to: Name: \_\_\_\_\_ Dept.: Legal

Send copy of recorded original/s (resolution and ordinances only) to: Name: N/A Dept.: N/A

Deadline for return of document/s?:  Yes, return by: \_\_\_\_\_  No

**DOÑA ANA COUNTY  
RESOLUTION NO. 2017-\_\_\_\_\_**

**A RESOLUTION ESTABLISHING A UTILITY ADVISORY COMMITTEE**

**WHEREAS**, the Doña Ana County Board of County Commissioners (“BOCC”) is tasked with setting policy regarding the operations Doña Ana County; and

**WHEREAS**, the BOCC is responsible for setting utility rates and setting other policy related to the regulation and operation of various utilities; and

**WHEREAS**, the BOCC has previously authorized the intervention in various utility rate cases involving El Paso Electric Company (“EPE”) before the New Mexico Public Regulation Commission (“PRC”); and

**WHEREAS**, the BOCC adopted Resolution Number 2017-33 which increased the role of the BOCC in determining whether Doña Ana County would intervene in future EPE rate cases; and

**WHEREAS**, the setting of utility rates and policies and determining when it is in the best interest of Doña Ana County to intervene in matters before the PRC in a complicated and technical process; and

**WHEREAS**, the BOCC would benefit from receiving advice from professionals in setting utility rates and policies and determining when it is in the best interest of Doña Ana County to intervene in PRC matter;

**NOW, THEREFORE BE IT RESOLVED**, that there is hereby created the Doña Ana Utility Advisory Committee; and

**BE IT FURTHER RESOLVED**, that the Doña Ana County Utility Advisory Committee will be composed of three (3) volunteer members to be selected by majority vote of the Board of County Commissioners. The membership shall have one member with experience in the business/financial area, one member who has experience as an economist and one member from the business community. The initial term of the committee member shall be through December 31, 2018 after which the terms of the members shall be two (2) years; and

**BE IT FURTHER RESOLVED**, that the Doña Ana County Utility Advisory Committee shall report to the Board of County Commissioners on a quarterly basis

**RESOLVED** this 23rd day of May, 2017.

**BOARD OF COUNTY COMMISSIONERS OF  
DOÑA ANA COUNTY, NEW MEXICO**

**Isabella A. Solis, Chair, District 4 For/Against**

John L. Vasquez, Vice Chair, District 5 For/Against

Billy G. Garrett, District 1 For/Against

Ramon S. Gonzalez, District 2 For/Against

Benjamin L. Rawson, District 3 For/Against

**ATTEST:**

Scott Krahling  
County Clerk



**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Assessor's Office  
Initiating Department

Paul Ponce/ Andy Segovia  
Contact Person

May 23, 2017  
Meeting Date

24  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**  
**APPROVE PAYMENT TO INFOSEND FOR PRINTING & MAILING SERVICES FOR  
THE BUDGETED ASSESSOR'S 2017 NOTICE OF VALUE**

**SUMMARY OF ITEM TO BE CONSIDERED**  
**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

Approve Payment for the Printing and Mailing Services for the Assessor's 2017 Notice of Value. InfoSend was awarded a four year contract for Printing and Mailing Services on 09/6/2012 through an Invitation to Bid process. The Service Contract had expired on 09/6/2016 and an Invitation to Bid process wasn't in place at time of service. An unintended error in the renewal process occurred and the services were rendered by the contractor to meet the statutory requirement (NMSA 7-38-20 County assessor and department to mail notices of valuation). Services were budgeted from the Assessor's 1% fund for the 2016/ 2017 Fiscal year. Does not affect General Fund.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

Contract Bid Documentation

**SUMMARY OF FINANCIAL IMPACT**

No financial impact to the Dona Ana County General Fund.

**ADMINISTRATIVE REVIEW AND APPROVAL**

\_\_\_\_ Finance

ASG Legal

\_\_\_\_ County Manager/  
Agenda Review

DS Purchasing

\_\_\_\_ Human Resources

WJF Assistant County Manager

\_\_\_\_ Planning

\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature?  Yes  No      For Recording?  Yes  No

Return original/s to:      Name      Dept.

Send copy of recorded original/s (resolution and ordinances only) to:      Name      Dept.

Deadline for return of document/s? Yes, return by:      or  No

CONTRACT # **13-055** - -  
 Effective Date: 4/5/12

**DOÑA ANA COUNTY CONTRACT FOR GOODS AND SERVICES**

This Contract is entered into between Doña Ana County, hereinafter referred to as the "County," and "Contractor" described below, collectively the "Parties", to provide services on behalf of Doña Ana County.

**Contractor Legal Name:** InfoSend, Inc.

**Services Summary Description:** Printing and Mailing Services

**Initial Period of Performance shall be through:** 6/30/2013

**Pre-GRT, Total Annual Charges to this contract may not exceed:** Indefinite Quantity

This Contract complies with New Mexico and County procurement requirements as follows:

RFP # \_\_\_\_\_,  Under \$50,000/yr **or**  BOCC approval date \_\_\_\_\_

Bid # 12-0037,  Under \$50,000/yr **or**  BOCC approval date \_\_\_\_\_

"Qualified" Professional Service, Under \$50,000 annually. Qualifications attached.

Three Written Quotes under \$20,000 annually.  Quotes under \$3,000 annually.

Other: Revenue; non-financial MOA; or \_\_\_\_\_

**No services shall be rendered nor shall any goods be provided until this contract has been executed by all parties, regardless of the indicated effective date.**

**NOTICES:** All correspondence regarding this contract shall be sent to:

Doña Ana County Government	Contractor: InfoSend, Inc.
Department: Assessor	ATTN: Russ Alberti, COO
ATTN: Andy Segovia	Title: District Sales Manager
Street: 845 N. Motel Blvd.	Street: 4240 E. La Palm Avenue
City, State, Zip: Las Cruces, NM 88007	City, State, Zip: Anaheim, CA 82807
Phone: (575) 647-7400	Phone: (800) 955-9330
Fax: (575) 525-5538	Fax: (714) 993-1306
Cell: (575) 650-0744	Cell: (602) 750-3830
Email: bobc@donaanacounty.org	Email: russ.a@infosend.com

**ARTICLE 1 - SERVICES AND/OR GOODS TO BE PROVIDED:** For RFP or Professional Services contracts, the Contractor shall provide services to the County on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments. Negotiated fees are fixed for the first year. Price adjustments thereafter are subject to review and written determination on an individual contract basis.

For Sealed Bid / Indefinite Quantity contracts, the Contractor shall have the item(s) or service(s) available, as defined in this contract, on an "as ordered" basis. No funds are obligated under

Sealed Bid / Indefinite Quantity contracts. Funds for Sealed Bid / Indefinite Quantity contracts are obligated by purchase orders on an "as needed" basis. Prices are fixed for the first year of a Sealed Bid / Indefinite Quantity contract. Thereafter, in the event of a product cost increase an escalation request will be reviewed by the County on an individual basis. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin.

All Contractors shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

**ARTICLE 2 - CONTRACT DOCUMENTS:** The Contract shall be comprised of this contract document, its Attachments and all documents referenced herein. As applicable, the Contract shall also include all Proposal or Bid documents, including the Contractor's responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the County's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

**ARTICLE 3 - PERIOD OF PERFORMANCE:** The period of performance of this Contract shall commence N/A or date of last signature, whichever is later, and continue through the Initial Period of Performance date detailed above. If stipulated in a formal Proposal or Bid solicitation by the County, this Contract may be renewed for up to three (3) additional years, not to exceed a total of four (4) years.

**ARTICLE 4 - PLACE OF PERFORMANCE:** The Contractor shall provide the required services or goods for Doña Ana County when and where appropriate or as required by the County.

**ARTICLE 5 - COST AND PAYMENT:** The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments, including Attachments A and B. All payments will be in arrears. Payment shall be made per request upon receipt of a detailed invoice that shall include description of work completed or goods delivered pursuant to the deliverable(s) agreements and measures of attainment of this contract for the period covered by the invoice. The invoice submitted shall note the purchase order number and this Contract number and may be delivered to the Department contact specified in "Notices" above. The County shall pay to the Contractor the New Mexico Gross Receipts Tax on labor and services only as levied on the amounts invoiced and payable under this contract. The Contractor will pay the New Mexico Gross Receipts Tax levied on the amounts payable under this contract and remitted to them by Doña Ana County to the appropriate state agency.

**ARTICLE 6 - AMENDMENTS:** This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

**ARTICLE 7 - ASSIGNMENT:** The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the County.

**ARTICLE 8 - BINDING EFFECT OF CONTRACT:** Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the

administrators, assigns, successors, and transferees of the contracting parties.

**ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW:** This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

**ARTICLE 10 - CONFIDENTIAL INFORMATION:** Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the County.

**ARTICLE 11 - CONFLICT OF INTEREST:** The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Contractor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the County.

**ARTICLE 12 - CONFLICTS OF LAW:** If any provision of this contract conflicts with governing federal or state law or County ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

**ARTICLE 13 - HIPAA COMPLIANCE:** As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended ("HIPAA") in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

**ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:**  
**Non-Governmental Entity** The Contractor shall hold harmless, indemnify and defend the County and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorneys fees, costs or actions of any kind resulting from or related to the Contractor's intentional acts, errors or omissions in the Contractor's performance under this contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the



term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

**Governmental Entity:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

**ARTICLE 15 - INDEPENDENT CONTRACTOR:** Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the County for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Contractor is an independent contractor of the County. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect.

**ARTICLE 16 - INSURANCE:** For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required below and comply with all limits, terms and conditions stipulated therein. The County shall be named as an additional insured as stipulated. Contractor's who are required to provide Certificate(s) of Insurance, must provide a new current Certificate(s) no less than annually. As applicable, work under this contract shall not commence until evidence of all required insurance is provided to the respective County Department for inclusion with this Contract. All insurance shall be written to conform to the requirements stipulated. Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the County attesting that all required insurance is in effect. If for any reason any material change occurs in the coverage during the course of the contract such change will not become effective until 30 days after the County has received written notice of such change.

**Required Insurance:** As specified in the RFP, BID documents or Attachment A.

**ARTICLE 17 - KEY PERSONNEL:** The Contractor shall identify all key personnel assigned to the performance of this Contract in Section II, Attachment H of this Contract. Key personnel may not be changed without prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department.

**ARTICLE 18 - MEDIATION:** In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for their respective mediation costs.

**ARTICLE 19 - MERGER OF PRIOR CONTRACTS:** This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged into this written Contract. No prior condition, contract, agreement, or understanding, verbal or

otherwise, shall be valid or enforceable unless embodied in this Contract, either explicitly or by reference.

**ARTICLE 20 - NON-APPROPRIATION:** The County's obligation to make payment under the terms of this Contract is contingent upon its appropriation of sufficient funds to make those payments and the NM Department of Finance's (DFA) final approval of the County's budget. If the County does not appropriate sufficient funds or DFA does not approve the County's final budget, this Contract will terminate upon written notice of that effect to the Contractor. The County Board's determination that sufficient funds have not been appropriated, through Board of County Commissioners or DFA action, is firm, binding, and not subject to review.

**ARTICLE 21 - NOTICE TO PROCEED OR COMMENCEMENT OF WORK:** It is expressly understood that this Contract is not binding upon the County until approved and signed by the County and, further, that the Contractor shall not proceed with its obligations until the Contract has been signed by all Parties.

**ARTICLE 22 - PARAGRAPH HEADINGS:** Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

**ARTICLE 23 - PERSONAL LIABILITY:** No elected or appointed official, employee, servant, agent, or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

**ARTICLE 24 - PROCUREMENT CODE:** The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

**ARTICLE 25 - PROPRIETARY INFORMATION:** All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County whether the activity for which they are developed is implemented or not. The Contractor shall provide the County with a complete set of all such proprietary information as requested by the County, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the County.

**ARTICLE 26 - RECORD KEEPING AND AUDITS:** The Contractor shall compile, maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the County or designated auditor. The County shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the County to be reimbursed any excessive or illegal payment amounts made to the Contractor during the term of this Contract. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

**ARTICLE 27 - RELEASE:** The Contractor, upon final payment of amounts due under this

Contract for work completed and accepted by the County, releases the County, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to bind the County to any obligation not assumed in this Contract by the County, unless the Contractor has express written authority from the County Manager to do so, and then only within the limits of the expressed written authority.

**ARTICLE 28 - SEVERABILITY:** If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract may be voided and no damages shall accrue to either party.

**ARTICLE 29 - SOVEREIGN IMMUNITY:**

**Non-Governmental Entity:** By entering into this Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

**Governmental Entity:** By entering into this Contract, the County and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

**ARTICLE 30 - SUBCONTRACTING:** This Contract is based on the personal skills and reliability of the Contractor as known by the County at the time of execution of this Contract. The Contractor shall not subcontract out or hire any new employee to perform any portion of the services to be performed under this Contract without the prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department. The written approval shall minimally include disclosure of the name of the individual(s) to be hired or contracted, a statement of the individual(s) qualifications and a justification of the request to hire or subcontract.

**ARTICLE 31 - TERMINATION:** The County may terminate this contract for convenience, in whole or in part, by providing written notice to the Contractor thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination. In no event shall the dollar amount to be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

- a. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.
- b. The County and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that can not be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

**ARTICLE 32 - THIRD PARTY BENEFICIARY:** It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not

a party to the agreement to maintain a suit based upon this Contract.

**ARTICLE 33 - WAIVER:** Any waiver by the County of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**ARTICLE 34 - DUPLICATE ORIGINALS:** This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

**SIGNATURES:**

**IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their duly authorized representatives.**

**DOÑA ANA COUNTY:**

*Brian D. Haines*  
 Brian D. Haines  
 County Manager

**InfoSend, Inc.**

*Russ Perez*  
 Russ Perez  
 Print Name and Title

Date: 9/5/12

Date: 8/29/12

\*\*\*\*\*

Contractor's NM Taxation and Revenue Department ID Number: \_\_\_\_\_

The following Attachments and Addenda have been reviewed and approved by the County Contract Officer or approved designee:

Document Name	Approved	Comments	Notes
Attachment A - Scope of Work	<i>[Signature]</i>		Required all Contracts
Attachment B - Cost per Unit Service			Required all Contracts
Attachment C - Contribution Disclosure			Required all Contracts
Attachment D - Related Party Disclosure			Required all Contracts
Attachment E - Debarment Certification			Required all Contracts
Attachment F - Non Collusion Affidavit			Required all Contracts
Attachment G - Insurance Certificates			By Attachment A Specifications
Attachment H - 1. Business License(s) 2. Professional Licenses 3. Staff Resumes	<i>[Signature]</i>		1. Required All Contracts 2. Required Licensed Professionals 3. Required all contracts
Attachment I - Procurement Method			Purchasing Dept. Determines
Attachment J - Other			Purchasing Dept. Determines

**ATTACHMENT A**  
**InfoSend, Inc.**

**INSURANCE, SCOPE OF SERVICES, ADDITIONAL AGREEMENTS**

**I. INSURANCE: None**

**II. SCOPE OF SERVICES:**

**A. In one sentence, summarize WHAT is being procured in this contract:**  
**Printing and Mailing Services for the Assessor's Office**

**WHAT (detailed) is being procured?**

**1. Design and printing of mail pieces**

- 1.1. Successful contractor will use attached design as the basis for the final design of the printed piece. Forms will include a type 39 barcode representing an id tag. Proof must have written approval by the County Assessor or his designee.
- 1.2. Successful contractor will be responsible for printing and on-time delivery of the printed matter so the county's approximate mail date of January 4, 2013 can be met. Approximate count (10,000) Personal Property, Approximate count (500) Livestock
- 1.3. Delivery of proof of FORM DESIGN to be no later than November 1, 2012. Delivery of 100 test mailers to be no later than December 1, 2012.
- 1.4. Fonts and lines per inch on the form need to be such that the County can do our own reprints for duplicate forms in house.
- 1.5. Component Parts are as follows:
  - 1.5.1. Official Request /Personal Property Official Request / Livestock (2 separate forms)an 8 1/2"x11" laser statement, printed on two (2) colors (black & red) on front and back. The form will be printed on 20# white paper.
  - 1.5.2. #10 WINDOW ENVELOPE-Standard #10 window envelope, return address and mailing permit in the standard position meeting postal guidelines as set forth by the most current USPS.

**2. Variable Imaging**

- 2.1. The County will provide the variable information that is to be printed on the notices by electronic file to the contractor. The contractor will then process the data and print the piece using the format that has been decided on by the County. The variable imaging can be applied by laser print, ink jet or high-speed impact directly on the face of the notice.
- 2.2. The successful contractor will program the data to handle multiple properties in an efficient and economical fashion within the framework of the laws. The County is not adverse from recommendations by awarded contractor for economic and efficient suggestions.

**3. Mail Services**

- 3.1. The selected vendor must perform all required CASS services, mail sorting, and preparation to guarantee to the County that this mailing be dropped at the least amount of postage which will be sorted to automated carrier routing. Outgoing mailing pieces with Notice of Values enclosed,

First Class permit and any other required postal indicia properly applied must be delivered fully sealed, addressed and presorted. Mailing can be done from point of production but should bear generic postal indicia.

- 3.2. Mail Integrity: All work is to be done in-house by successful vendor. The successful vendor must present a statement of confidentiality letter that will protect the information that is provided to the mailer by the county. The selected vendor must provide written documentation by reports off their intelligent printer and inserter that will guarantee to the county that every notice was properly printed, inserted and mailed. These reports will include:
  - 3.2.1. TIMES AND TOTALS AUDIT REPORT-This report will show the number of mail pieces that were sent through the inserter, the time and date that a particular address was inserted and provide an accurate audit trail for the proof that each piece was printed and mailed.
  - 3.2.2. FAULT SUMMARY-This report will analyze the quality of printing, folding, and inserting and metering of the process. Should the machine jam, fail to insert or have any other difficulty with any notice in the run this report will highlight the problem, tell when and what occurred, which notice was affected and prove the situation was corrected and provide documentation that the notice was sent.
  - 3.2.3. FEE COUNT SUMMARY-This report will verify by station (folder, inserter and meter machine) that every notice was printed, folded, inserted and metered. When coupled with the fault summary and USPS form 3553 every notice will be accounted for from the tape provided by the county to the notice being placed in the mail.
  - 3.2.4. These computer-generated reports are essential to the accuracy of the mailing and are the minimum standards that the county will accept. All reports due within fifteen (15) days of mailing. Reports to be sent to the Assessor.

#### 4. Additional Forms

- 4.1. Any unused blank forms will be returned to the County Assessor's Office along with the corresponding number of envelopes.

### **B. Specifications for Notices of Value of Real Property and Mobile Homes:**

Dona Ana County is seeking a one source supplier to design, print, variable image, CASS certify and prepare for mailing the 2013 Notice of Values. The successful bidder must comply with the specifications exactly as required in the sealed bid. The specifications for printing, inserting and mailing the Notice of Values of Real Property and Mobile Homes have been phased into four (4) separate areas of performance and are as follows:

#### 1. Design and printing of mail pieces

- 1.1. Successful contractor will use attached design as the basis for the final design of the printed piece. Notices will include a type 39 barcode representing an id tag. Final approval of the printed matter will rest with the County. Proof must have written approval by the County Assessor or designee.
- 1.2. Successful contractor will be responsible for printing and on-time delivery of the printed matter so the county's approximate mail date of March 31, 2013 can be met. Approximate count (110,000)
- 1.3. Delivery of proof of FORM DESIGN to be no later than December 1, 2012 Delivery of 100 test mailers to be no later than January 1, 2013.
- 1.4. Fonts and lines per inch on the form need to be such that the County can do our own reprints for duplicate notices in house.



1.5. Component parts are as follows:

- 1.5.1. NOTICE OF VALUE Real Property/Mobile Homes- An 8 ½" x 14" laser statement, printed on two (2) colors (black & red) on front and back. The form will be printed on 20# white paper.
- 1.5.2. #10 WINDOW ENVELOPE- Standard #10 window envelope, return address and mailing permit in the standard position meeting postal guidelines as set forth by the most current USPS.

## 2. Variable Imaging

- 2.1. The County will provide the variable information that is to be printed on the notices by electronic file to the contractor. The contractor will then process the data and print the piece using the format that has been decided on by the County. The variable imaging can be applied by laser print, ink jet or high speed impact directly on the face of the notice.
- 2.2. The successful contractor will program the data to handle multiple properties in an efficient and economical fashion within the framework of the laws. The County is not adverse from recommendations by awarded contractor for economic and efficient suggestions.

## 3. Mail Services

- 3.1. The selected vendor must perform all required CASS services, mail sorting, and preparation to guarantee to the County that this mailing be dropped at the least amount of postage which will be sorted to automated carrier routing. Outgoing mailing pieces with Notice of Values enclosed, First Class permit and any other required postal indicia properly applied must be delivered fully sealed, addressed and presorted. Mailing can be done from point of production but should bear generic postal indicia.
- 3.2. Mail Integrity: All work is to be done in-house by successful vendor. The successful vendor must present a statement of confidentiality letter that will protect the information that is provided to the mailer by the county. The selected vendor must provide written documentation by reports off their intelligent printer and inserter that will guarantee to the county that every notice was properly printed inserted and mailed. These reports will include:
  - 3.2.1. TIMES AND TOTALS AUDIT REPORT-This report will show the number of mail pieces that were sent through the inserter, the time and date that a particular address was inserted and provide an accurate audit trail for the proof that each piece was printed and mailed.
  - 3.2.2. FAULT SUMMARY-This report will analyze the quality of printing, folding, and inserting and metering of the process. Should the machine jam, fail to insert or have any other difficulty with any notice in the run this report will highlight the problem, tell when and what occurred, which notice was affected and prove the situation was corrected and provide documentation that the notice was sent.
  - 3.2.3. FEE COUNT SUMMARY-This report will verify by station (folder, inserter and meter machine) that every notice was printed, folded, inserted and metered. When coupled with the fault summary and USPS form 3553 every notice will be accounted for from the tape provided by the county to the notice being placed in the mail.
  - 3.2.4. These computer-generated reports are essential to the accuracy of the mailing and are the minimum standards that the county will accept. All reports due within fifteen (15) days of mailing. Reports to be sent to the Assessor.

## 4. Additional Forms

- 4.2. Any unused blank forms will be returned to the County Assessor's Office along with the corresponding number of envelopes.

## **C. Specifications for Notices of Value of Personal Property:**

Dona Ana County is seeking a one source supplier to design, print, variable image, CASS certify and prepare for mailing the 2013 Notice of Values. The successful bidder must comply with the specifications exactly as required in the sealed bid. The specifications for printing, inserting and mailing the Notice of Values of Personal Property have been phased into four(4) separate areas of performance and are as follows:

### **1. Design and printing of mail pieces**

- 1.1. Successful contractor will use attached design as the basis for the final design of the printed piece. Notices will include a type 39 barcode representing an id tag. Final approval of the printed matter will rest with the County. Proof must have written approval by the County Assessor or designee.
- 1.2. Successful contractor will be responsible for printing and on-time delivery of the printed matter so the County's approximate mail date of April 1, 2013 can be met. Approximate count (10,000).
- 1.3. Delivery of proof of FORM DESIGN to be no later than February 1, 2013. Delivery of 100 test mailers to be no later than March 1, 2013.
- 1.4. Fonts and lines per inch on the form need to be such that the County can do our own reprints for duplicate notices in house.
- 1.5. Component Parts are as follows:
  - 1.5.1. NOTICE OF VALUE Personal Property/Notice of Value Livestock- An 8 ½" x 11" laser statement, printed on two (2) colors (black & red) on front and back. The form will be printed on 20# white paper. (Sample attached)
  - 1.5.2. #10 WINDOW ENVELOPE- Standard #10 window envelope, return address and mailing permit in the standard position meeting postal guidelines as set forth by the most current USPS. (Sample attached)

### **2. Variable Imaging**

- 2.1. The County will provide the variable information that is to be printed on the notices by electronic file to the contractor. The contractor will then process the data and print the piece using the format that has been decided on by the County. The variable imaging can be applied by laser print, ink jet or high speed impact directly on the face of the notice.
- 2.2. The successful contractor will program the data to handle multiple properties in an efficient and economical fashion within the framework of the laws. The County is not adverse to recommendations by awarded contractor for economic and efficient suggestions.

### **3. Mail Services**

- 3.1. The selected vendor must perform all required CASS services, mail sorting, and preparation to guarantee to the County that this mailing be dropped at the least amount of postage which will be sorted to automated carrier routing. Outgoing mailing pieces with Notice of Values enclosed, First Class permit and any other required postal indicia properly applied must be delivered fully sealed, addressed and presorted. Mailing can be done from point of production but should bear generic postal indicia.
- 3.2. Mail Integrity: All work is to be done in-house by successful vendor. The successful vendor must present a statement of confidentiality letter that will protect the information that is provided to the mailer by the county. The selected vendor must provide written documentation by reports off their intelligent printer and inserter that will guarantee to the county that every notice was



properly printed inserted and mailed. These reports will include:

- 3.2.1. TIMES AND TOTALS AUDIT REPORT-This report will show the number of mail pieces that were sent through the inserter, the time and date that a particular address was inserted and provide an accurate audit trail for the proof that each piece was printed and mailed.
- 3.2.2. FAULT SUMMARY-This report will analyze the quality of printing, folding, and inserting and metering of the process. Should the machine jam, fail to insert or have any other difficulty with any notice in the run this report will highlight the problem, tell when and what occurred, which notice was affected and prove the situation was corrected and provide documentation that the notice was sent.
- 3.2.3. FEE COUNT SUMMARY-This report will verify by station (folder, inserter and meter machine) that every notice was printed, folded, inserted and metered. When coupled with the fault summary and USPS form 3553 every notice will be accounted for from the tape provided by the county to the notice being placed in the mail.
- 3.2.4. These computer-generated reports are essential to the accuracy of the mailing and are the minimum standards that the county will accept. All reports due within fifteen (15) days of mailing. Reports to be sent to the Assessor.

#### 4. Additional Forms

- 4.3. Any unused blank forms will be returned to the County Assessor's Office along with the corresponding number of envelopes.

**.B. WHY is this service or item is being purchased?** Services are required to meet mailing specifications as required by the law and standard practices. County staff do not have the requisite skills to provide these services.

**C/D. WHEN and HOW will the services or items be delivered and documented?** Services will be delivered pursuant to the Bid specification and all subsequent negotiations. Documentation of delivery of the services will be pursuant to receipt and approval of documents as specified in the Bid packet and subsequent negotiations.

**E. Describe how the contract will be EVALUATED to determine if objectives in "B - WHY", above were attained?**

1. Name the staff positions and qualifications to conduct the evaluation of this contract? *Designated members of the Assessor's office will conduct general and specific evaluation of the services provided.*
2. Describe in measurable detail the evaluation criteria to be used to demonstrate that the need identified in Section B (WHY) was satisfactorily addressed by the Contractor's services. *Evaluation criteria will include satisfactory and timely delivery of the required mailing components.*
3. When and how will the contract evaluation and recommendations be compiled and distributed? *The contract evaluation will be conducted at least once annually during the annual contract renewal process and more frequently as determined necessary by the designated Assessor's office staff.*

### **III. ADDITIONAL AGREEMENTS** *(This section is used to specify Purchasing approved modifications to clauses in Section I or other items approved for the contract).*

A. Contractor agrees to accept ACH (Automated Clearing House) payments for invoices submitted and approved by the County and will complete and submit any required documents to implement the ACH process.

B. "PIGGY BACK" In accordance with NMSA 13-1-129 of Procurement Code, Offerors are hereby notified that other government entities within the State of New Mexico, or as otherwise allowed by their respective governing directives, may contract for the goods or services included in this procurement document with the awarded contractor. Contractual engagements accomplished under this provision shall be solely between the awarded vendor and the contracting government entity with no obligation by Dona Ana County.

C. Non-Waiver of Rights: No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

D. Any additional agreements, not included in this document, will be agreed to by written amendment executed by all parties.

## ATTACHMENT B

### INFOSEND, INC.

#### TOTAL COST, PAYMENTS, UNIT VALUE OF SERVICE OR GOODS

**I. TOTAL CONTRACT NOT TO EXCEED \$ 50,000 Annually** during the term of this Contract. NOTE: This is an indefinite quantity contract payable only upon delivery of each defined unit per the below.

**II. PAYMENT SCHEDULE**

Payments will be made in accordance with Article 5 – Section I of this Agreement. (Purchasing Department must approve any other financial agreements in advance)

**III. COST PER UNIT OF SERVICE OR GOOD(S) PROCURED:**

COMPLETE THE INFORMATION FOR EACH SERVICE / ITEM TO BE PROVIDED BY THE CONTRACTOR:

Service Description (List each Service)	Unit Value of Service per Defined Unit	Units of Service to Be Provided	Estimated Total Annual Value
1. Printing and distribution of Official Requests/ Personal Property	\$ .12 each piece	Estimated at 10,000	\$ 1,200
2. Printing and distribution of Official Requests / Livestock	\$ .12 each piece	Estimated at 500	\$ 60
3. Printing and distribution of Notice of Value Real Property / Mobile Homes	\$ .087 each piece	Estimated at 110,000	\$ 9,570
4. Printing and distribution of Notice of Value of Personal Property / Livestock	\$ .085 each piece	Estimated at 10,000	\$ 850
5. Postage	Postage will be billed separately but will be reimbursed per contract or purchase order as per CASS Certification Report.		
<b>TOTAL VALUE</b>	<b>Estimated Totals</b>		<b>\$ 11,680</b>

**B. JUSTIFICATION FOR UNIT VALUE OF SERVICE CALCULATIONS.**  
Pursuant to Bid Document 12-0037.

**ATTACHMENT C**  
**CAMPAIGN CONTRIBUTION DISCLOSURE**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**"Applicable public official"** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**"Campaign Contribution"** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**"Family member"** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**"Pendency of the procurement process"** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**"Prospective contractor"** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**"Representative of a prospective contractor"** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: \_\_\_\_\_  
Relation to Prospective Contractor: \_\_\_\_\_  
Date Contribution(s) Made: \_\_\_\_\_  
Amount(s) of Contribution(s): \_\_\_\_\_  
Nature of Contribution(s): \_\_\_\_\_  
Purpose of Contribution(s): \_\_\_\_\_  
(Attach extra pages if necessary)

\_\_\_\_\_  
Signature Date  
\_\_\_\_\_  
Title (position)

--OR--

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.**

  
Signature \_\_\_\_\_ Date 4/2/2012  
\_\_\_\_\_  
Russ Reza, C.O.O.  
Title (Position)

**ATTACHMENT D  
RELATED PARTY DISCLOSURE**

Related Party Disclosure Form

1. Are you indebted to or have a receivable from any member of the Board of County Commissioners; elected county officials, administration officials, department heads, and key management supervisors with the County of Doña Ana?

Yes \_\_\_\_\_ No X

\_\_\_\_\_  
\_\_\_\_\_

2. Are you, or any officer of your company related to any member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors of the County of Doña Ana and have you had any of the following transactions since January 1, 2008, to which Doña Ana County was, is to be, a party?

	Yes	No
Sales, Purchase or leasing of property ?	_____	<u>X</u>
Receiving, furnishing of goods, services or facilities?	_____	<u>X</u>
Commissions or royally payments	_____	<u>X</u>

\_\_\_\_\_  
\_\_\_\_\_

3. Does any member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors with the County of Doña Ana, have any financial interest in your company whether a sole proprietorship, partnership, or corporation of any kind that currently conducts business with the County of Doña Ana?

Yes \_\_\_\_\_ No X

\_\_\_\_\_

4. At any time during 2008, did you, your company, or any officer of your company have an interest in or signature authority over a bank account for the benefit of a member of the Board of County Commissioners; elected county officials, administration officials, department heads, key management supervisors with the County of Doña Ana?

Yes \_\_\_\_\_ No X

\_\_\_\_\_  
\_\_\_\_\_

5. Are you negotiating to employ or do you currently employ any employee, officer or family member of an employee or officer of County of Doña Ana?

Yes \_\_\_\_\_ No X

\_\_\_\_\_

The answers to the foregoing questions are correctly stated to the best of my knowledge and belief.

Signature of Owner or Company President:



Date 4/2/2012

(Print Name and Title): Russ Reza, Chief Operating Officer

## ATTACHMENT E DEBARMENT CERTIFICATION

Offeror certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of, had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State Antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any offenses; and
4. Have not within a three-year period preceding this application/proposal had one or more public transaction (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. Under 18USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Russ Reza, Chief Operating Officer

Typed Name & Title of Authorized Representative



Signature of Authorized Representative

4/3/12

Date

**ATTACHMENT F  
NON-COLLUSION AFFIDAVIT**

**NON-COLLUSION AFFIDAVIT**

STATE OF California )

County OF Orange )

Russ Reza (name) being first duly sworn, deposes and says

that he/she is (title) Chief Operating Officer

of (organization) InfoSend, Incorporated

who submits herewith to the County of Dona Ana, a proposal:

That all statements of fact in such proposal are true:

That said proposal was not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation;

That said bidder has not, directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interest of the County of Dona Ana, or of any bidder of anyone else interested in the proposed contract; and further,

That prior to the public opening and reading of proposal, said bidder:

1. Did not directly or indirectly, induce or solicit anyone else to submit a false or sham proposal
2. Did not directly or indirectly collude, conspire, connive or agree with anyone else that said bidder or anyone else would submit a false or sham proposal, or that anyone should refrain from bidding or withdraw his proposals;
3. Did not in any manner, directly or indirectly, seek by agreement, communication or conference with anyone to raise or fix the proposal price of said bidder or of anyone else, or to raise or fix any overhead, profit or cost element of their proposal price, or of that of anyone else;
4. Did not directly or indirectly, submit his proposed price or any breakdown thereof, or the contest thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association organization, bid depository or to any member or agent thereof, or to any individual of group of individuals, except that County of Dona Ana, or to any person or persons who have a partnership or other financial interests with said bidder in his business.

By: [Signature]

Title COO

SUBSCRIBED and sworn to before me this 3rd day of April, 2012.

Notary Public: See next page

My Commission Expires:



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

STATE OF CALIFORNIA

County of Orange }

On 4/3/12 before me, Lori N. Hing, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Russ Rezaei  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Handwritten Signature]  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Non-Collusion Affidavit

Document Date: 4/3/12 Number of Pages: 1

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Russ Rezaei

- Individual
- Corporate Officer — Title(s): COO
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_



Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_



**ATTACHMENT G**  
**INSURANCE CERTIFICATES**  
**(Attach certificates, as required behind this page)**

**See Attachment A. I. for requirements---None Required, cw**

## ATTACHMENT H

**Attach Copies of the following items, as applicable pursuant to the Contractor's Profession and Scope of Work, behind this page:**

- 1. Current Business License -- Required**
- 2. Key Staff Curricula Vitae / Resumes**
- 3. Professional Registrations**
- 4. Professional Licenses**

CALIFORNIA STATE BOARD OF EQUALIZATION

**SELLER'S PERMIT**



ACCOUNT NUMBER

8/6/2005 SR EA 100-617641

INFOSEND INC  
4240 E LA PALMA AVE  
ANAHEIM, CA 92807-1816

**NOTICE TO PERMITTEE:**  
You are required to obey all Federal and State laws that regulate or control your business. This permit does not allow you to do otherwise.

IS HEREBY AUTHORIZED PURSUANT TO SALES AND USE TAX LAW TO ENGAGE IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT THE ABOVE LOCATION. THIS PERMIT IS VALID ONLY AT THE ABOVE ADDRESS.

THIS PERMIT IS VALID UNTIL REVOKED OR CANCELED AND IS NOT TRANSFERABLE. IF YOU SELL YOUR BUSINESS OR DROP OUT OF A PARTNERSHIP, NOTIFY US OR YOU COULD BE RESPONSIBLE FOR SALES AND USE TAXES OWED BY THE NEW OPERATOR OF THE BUSINESS.

*Not valid at any other address*

**For general tax questions, please call our Information Center at 800-400-7115.  
For information on your rights, contact the Taxpayers' Rights Advocate Office at 888-324-2798 or 916-324-2798.**

BOE-442-R REV. 15 (2-06)

**A MESSAGE TO OUR NEW PERMIT HOLDER**

**As a seller, you have rights and responsibilities under the Sales and Use Tax Law. In order to assist you in your endeavor and to better understand the law, we offer the following sources of help:**

- Visiting our website at [www.boe.ca.gov](http://www.boe.ca.gov)
- Visiting a district office
- Attending a Basic Sales and Use Tax Law class offered at one of our district offices
- Sending your questions in writing to any one of our offices
- Calling our toll-free Information Center at 800-400-7115

**As a seller, you have the right to issue resale certificates for merchandise that you intend to resell. Conversely, you have the responsibility of not misusing resale certificates. While the sales tax is imposed upon the retailer,**

- You have the right to seek reimbursement of the tax from your customer

**BUSINESS TAX CERTIFICATE**



POST CERTIFICATE IN A CONSPICUOUS PLACE

Business INFOSEND INC  
Address 4240 E LA PALMA AVE  
Owner / Officer MAHMOOD REZAI, OFFICER  
Corporation / Partnership INFOSEND INC

This certificate is not transferable or assignable

Classification 3122

This certificate is issued without verification that the holder is subject to or exempted from licensing by the state, county, federal government, or any other governmental agency

Expiration Date 10/01/12

Business License Number BUS2011-00180

Date Issued 01/25/11

Type of Business BILL PRINTING, MAILING AND E-BILLING COMPANY SERVICES (55 EMPLOYEES)

To: INFOSEND INC  
4240 E LA PALMA AVE  
ANAHEIM, CA 92807 0000

THIS CERTIFICATE EVIDENCES THAT THE PERSON(S), FIRM, OR CORPORATION NAMED HEREIN HAS PAID THE APPLICABLE TAX REQUIRED BY TITLE 3 OF THE ANAHEIM MUNICIPAL CODE FOR THE PERIOD INDICATED ABOVE AND IS NOT A REGULATORY PERMIT OR ENTITLEMENT TO DO BUSINESS. THERE MAY BE ADDITIONAL REQUIREMENTS BEFORE THE BUSINESS MAY BE LEGALLY CONDUCTED. THIS CERTIFICATE DOES NOT AUTHORIZE THE CONDUCT OR CONTINUANCE OF ANY ILLEGAL OR UNLAWFUL OPERATION IN VIOLATION OF ANY LAW OR ORDINANCE.

24.23

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<b>NAME</b>	<b>Russ Rezai</b>
<b>EXPERIENCE</b>	<p><b>InfoSend, Inc.</b> Anaheim, CA (2001 – present)  Chief Operating Officer</p> <ul style="list-style-type: none"> <li>▪ Manages research and development</li> <li>▪ Creation of eBusiness Services department</li> <li>▪ New product and service development and deployment – including eBusiness Services</li> <li>▪ Creation of variable data digital color printing department</li> </ul> <p><b>InfoSend, Inc.</b> Fullerton, CA (1996-1997)  Company Co-Founder</p> <ul style="list-style-type: none"> <li>▪ Supported in development of new company in 1996</li> <li>▪ Laid groundwork for future IT development between 1996 and 1997</li> <li>▪ Began research into Electronic Bill Presentment and Payment Services</li> <li>▪ Stayed active part-time with company while studying at UC Santa Barbara</li> </ul>
<b>Education</b>	<p>BA Business Economics, University of California, Santa Barbara: June 2001</p> <p>Proficient in Website/Forms Design using Following Applications/Languages:  HTML, Crystal Reports, Adobe Illustrator</p>

<b>NAME</b>	<b>Russ Alberti</b>
<b>EXPERIENCE</b>	<p><b>InfoSend, Inc.</b> Phoenix, AZ (2009 – Present) District Sales Manager - Southern</p> <ul style="list-style-type: none"> <li>▪ Manage Sales and Business Development for Print &amp; Mail and eBusiness Services</li> <li>▪ Provided consultative solutions for prospect and clients</li> <li>▪ Prospect Project Evaluation and Response</li> <li>▪ Manage VAR and Partner Relations in District</li> </ul> <p><b>Dataprose, Inc.</b> Oxnard, CA (2005 – 2009) Account Executive</p> <p><b>Docucorp International</b> Dallas, TX (2002 – 2005) Account Executive</p> <p><b>WEBMD/Expressbill</b> Scottsdale, AZ (1995 – 2001) Regional Sales Manager</p>
<b>Education</b>	BA, University of Phoenix: June 2000

<b>NAME</b>	<b>Matt Schmidt</b>
<b>EXPERIENCE</b>	<p><b>InfoSend, Inc.</b> Anaheim, CA (2007 – present)  Director, Client Services</p> <ul style="list-style-type: none"> <li>▪ Oversee new client implementations for BillPrint and eBusiness clients</li> <li>▪ Manage support staff and ongoing client support functions</li> <li>▪ Work with programming and client services team to streamline processes and improve procedures</li> <li>▪ Managed more than 50 implementation and conversion projects</li> </ul> <p><b>Modern Safety Supply</b> Fullerton, CA (2003-2007)  Account Manager</p> <ul style="list-style-type: none"> <li>▪ Developed and managed accounts to ensure continued growth and profitability for both parties</li> </ul>
<b>Education</b>	<p>BA Business Administration, California State University, Chico: December 2002  Inductee- Beta Gamma Sigma, 2001  MBA University of California, Irvine</p> <p>Proficient in Website/Forms Design using Following Applications/Languages:  HTML, Crystal Reports, Adobe Illustrator</p>

<b>NAME</b>	<b>Vedat Aral</b>
<b>EXPERIENCE</b>	<p><b>InfoSend, Inc.</b> Anaheim, CA (2004 – present)  Director, I.T.</p> <ul style="list-style-type: none"> <li>▪ Manages research and development</li> <li>▪ New product and service development and deployment – including Print &amp; Main and eBusiness Services</li> </ul> <p><b>Gourmet Shuttle</b> Huntington Beach, CA (2002 – 2003)  Software Engineer</p> <p><b>Denge Bilisim</b> Istanbul, Turkey (1994 – 2001)  Owner, Software Engineer</p> <p><b>Halici Bilgi Islem</b> Ankara, Turkey (1991 – 1994)  Software Engineer</p>
<b>Education</b>	<p>MFA, Cinema &amp; TV 1997, Marmara University – Istanbul Turkey</p> <p>BS, Computer Science &amp; Engineering 1991, Hacettepe University – Ankara Turkey</p> <p>Proficient in Website/Forms Design using Following Applications/Languages:  Mainframe, IBM S/36-AS/400, K-Series  COBOL, RPG, Visual Basic, Visual FoxPro, Delphi, C#, ASP.NET  SABRE, HDLC, X.25, Mercator, EDIHTML, Crystal Reports, Adobe Illustrator</p>



**ATTACHMENT I  
ATTACH PROCUREMENT DOCUMENTATION**

**Check One**

- Professional Service Determination** (Purchasing Issues)
- Sole Source Determination** (Purchasing Issues)
- Written Quotes** (Department Provides)
- RFP #** (See Page 1 Section I)
- 12-0037** **Bid #** (See Page 1, Section I)
- Other** (Specify and attach documentation such as GSA Contract, CES, WSCA, etc.)

## ATTACHMENT J - OTHER

Excerpts from Contractor's response to Bid 12-0037 follow for ease of reference only and not to replace the response in its entirety.

\*\*\*\*\*  
**INVITATION TO BID FORM**  
\*\*\*\*\*

BIDDER NAME: InfoSend, Inc.

ADDRESS: 4240 E. La Palma Ave  
Anaheim, CA 92807

PHONE: 800-955-9330/660-840-3344

FAX: 714-993-3306

CELL: 602-750-3830

EMAIL: wssa@infosend.com

NM IN STATE RESIDENT

PREFERENCE NO: n/a

NOTE: To be valid, bid must be signed.

Signature: 

Russ Rezai, C O O

Name & Title:

Type or Print

Return Sealed Bids to:

DOÑA ANA COUNTY  
Attn: Purchasing Department  
845 N. Motel Blvd  
Las Cruces, NM 88007

Printing and Mailing Services

BID NUMBER: DAC 12-0037

BUYER: Donald E. Bullard, Purchasing Manager

BID OPENING DATE: April 4, 2012  
TIME: 2:00PM (local time)

PAYMENT TERMS:

Payment Discounts will not be considered in  
computing lowest/best bid.

FOB POINT: Destination, Las Cruces, New Mexico

- By signing above the Bidder acknowledges and agrees to the Terms and Conditions shown on the following pages and in any/all instructions to Bidders.
- Bid must be received in the Purchasing Department Office by the Bid Opening Date and Local Time as indicated above.
- If applicable, Bidder acknowledges receipt of the following Amendments(s):

Amendment No: 1 Dated: 3/22/12 Amendment No: \_\_\_\_\_ Dated: \_\_\_\_\_

Amendment No: \_\_\_\_\_ Dated: \_\_\_\_\_ Amendment No: \_\_\_\_\_ Dated: \_\_\_\_\_

Failure of bidders to complete bidding documents in accordance with all instructions provided is cause for this office to reject bids.

Brand names and numbers are for reference only, equivalents will be considered. If bidding equivalent, bidders must be prepared to furnish complete data to prove product meets or exceeds specifications of the bid item.

THE PROCUREMENT CODE SECTIONS 13-1-28 THROUGH 13-1-199 NMSA 1978, IMPOSES CIVIL AND CRIMINAL PENALTIES FOR ITS VIOLATION. IN ADDITION, THE NEW MEXICO CRIMINAL STATUTES IMPOSE FELONY PENALTIES FOR BRIBES, GRATUITIES AND KICKBACKS.

## Get to Know InfoSend

InfoSend has provided business process outsourcing services since 1996. Since that time InfoSend has provided the processing and handling of critical documents for industries throughout the United States. Utilizing the most current technology, InfoSend offers an innovative approach with flexible and secure solutions for organizations seeking outsourced data processing, printing, mailing, and electronic presentment and or payment services. Choosing InfoSend as your outsourcing partner will significantly reduce total overhead costs. Together, we can reach your customers more effectively.

InfoSend is a privately held California corporation that delivers more than 72 million print/electronic documents per year. InfoSend's core competencies are information technology, document formatting, electronic payments, and document production. Your unique data is transferred into our database where it can then be output to multiple destination channels – print, web, or telephone. Electronic payments can be initiated over the web or telephone. The Software as a Service (SaaS) approach allows InfoSend to continually refine its services and equipment without requiring software installation and maintenance at your site.

You can use the eBusiness Services and payment related services or the Print & Mail related services as stand-alone offerings or together as integrated customer communications solutions. When multiple services are outsourced to InfoSend you receive the benefit of having one data processing platform generate all of your outbound communications. Easily customize business rules for processes like paperless billing and automatic payments. Perfect your bill design and electronic bill presentment workflow. Leverage the experience InfoSend has built up from years of working with organizations similar to your own.

## A Reliable Partner

Integrity is at the core of everything we do. Our goal is to retain each client. From our internal operations to how we serve our valuable clients, we create solutions with an innovative approach that keeps your business's best interests at mind.

We do not have exclusive partnerships with billing software providers or electronic payment processors. This neutral standing allows us to provide you the best possible service at competitive rates. InfoSend is your resource that you can look to for bill production and electronic payment advice.

## Facilities

The Company currently owns and operates its 77,000 SF headquarters and main production facility. The facility sits on a 4.3-acre lot and is one of the premier bill processing centers in California. The property contains room for future construction, if needed, should the company need additional office or warehouse space.

InfoSend Headquarters – Orange County, California	4240 E. La Palma Ave • Anaheim CA 92807
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InfoSend's 25,000 SF Midwest production and disaster recovery facility is located just west of Chicago, Illinois. This facility is used to process mail for clients located in the Midwest or East Coast. The Midwest facility also serves as an out of state disaster recovery facility.

Midwest Production & Disaster Recovery Facility	1406 Centre Circle • Downers Grove IL 60515
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## Overview of InfoSend Services

### Data Processing, BillPrint & Mail Service

- Cloud-based data processing of raw data and print files.
- Print statements, invoices, letters, postcards, notices, or other various documents.
- Laser printing of data in grayscale, spot color, or full color.
- Inserts and special flyers can be used to target specific customers. Submit your printed materials or artwork to be printed by InfoSend in grayscale or color.
- Quick turn-around of document folding, inserting, presorting, and delivery to the USPS.
- Free yourself from the responsibility of adapting to new USPS rules and technologies.

### eBusiness Services

- Electronic billing and payment related services hosted in the cloud.
- All Payment-Related eBusiness Services are Level 1 PCI Compliant
- Online BillPay (EBPP)
- QuickPay (No Enrollment)
- Email eBilling
- CSRPay

### Shared Platform Benefits

- One data processing platform manages the import and handling of your data files. This core system can then output the information to all delivery channels.
- Upload data via our secure website, FTP with optional PGP encryption, or SFTP.
- Web-based system to track and view samples of print or eBills before they are sent.
- A variety of standard reports can be accessed via web portal or emailed to you.
- Create and schedule document messages by customer type or account number.
- Bill design, mailing options, and EBPP business rules are tailored to suit your organization's needs.
- Simplify your process by partnering with a provider to consult and manage your entire bill formatting and delivery needs.

### Partnered Solutions

- InfoSend has partnered with PayNearMe to build a unique cash payment solution. Your bills can be redesigned to contain a barcode that is scanned by the POS system at participating retailers.
- Integrated Voice Response (IVR) – utilize the telephone channel for incoming payments.

## InfoSend Solutions

We recognize our clients' unique needs by personalizing the way we build solutions for each account. InfoSend configures each service to work together to build custom solutions for your organization. Every time a client asks for a new configuration option it is added to our standard portfolio of implementation options.

InfoSend does not simply mail out bills and present them online to enable payments. We tailor both services to suit client needs in a way that makes us an extension of both your finance and customer service departments. Our clients often rely on us to build solutions that their own systems may not support. By using our platform you can create a unified look and feel for both your print and electronic bills. By using InfoSend's platform you can manage all data using online account management tools and use our bill design expertise to accomplish a unified look and feel for all your billing documents.

## Data Processing Service

### Overview:

- InfoSend can process both data-only text files (e.g. flat files, XML) and print-output PDF files.
- Data processing produces final output that is printed and mailed and/or used in one or more of the eBusiness offerings (depending on which services you have contracted for).
- You transmit data electronically to InfoSend and can receive free PDF samples of the final output (if needed) before it is printed or delivered online.

### Data Processing Input File Options:

#### Option 1 - Express PDF Implementation



This innovative solution gives billers the ability to use InfoSend's BillPrint & Mail platform at the lowest possible price point. It's also useful if you are mostly satisfied with your existing bill format or it is not cost effective for InfoSend to create a hosted software application to process your data and format the documents for you (e.g. if you already have hundreds or thousands of unique document templates setup in your system). InfoSend has a unique solution that can modify the addresses in your PDF print files to use CASS certified address validation and presorting. Postal barcodes are added to your documents and the files are printed in presort order. With this option you control the formatting of your documents and do not pay maintenance fees.

InfoSend's Express PDF Implementation is unique in that it's a hybrid solution that combines client-provided print files with InfoSend's data import and processing capabilities. We will not simply print image files, we will merge processed data from our system with your output to create a great finished product.

#### Option 2 - Data-Only Files (e.g. flat files, XML)



InfoSend creates a custom program that reads the raw billing data from your CIS/billing system and inputs it to InfoSend's database for processing. Common export formats are XML, CSV, tab or pipe delimited, or SDF. Our programmers will adapt to your export file format instead of asking you to conform to a predefined template (a true export file format must be used, your data file will be analyzed before programming begins and you will be informed if it is unusable). InfoSend has successfully accepted data originating from more than 50 different billing systems – including licensed and homegrown platforms. If you change platforms we can adapt to the new file structure while keeping your bill design the same.

When this option is selected InfoSend hosts and maintains an application to generate your bills. We will assist you in redesigning the bills if needed and be responsible for later changing the format if needed. Please note that data manipulations are not part of the standard offering. If there are issues with your data export format that you would like InfoSend to create hard-coded workarounds for your requirements can be analyzed; additional fees apply in this scenario.

## Data Processing Service: Standard Features

These free data processing tools are useful for both the BillPrint & Mail and eBusiness services. They are especially helpful if you use both services as you can set document messages, review proofs, and track job progress using one web portal.

### Message Manager



This free account management tool is a custom built web-based application that allows you to control the messages that print on your documents. You can schedule the messages months or even years in advance! You can assign unique messages to different types of customers, or even to individual account. A PDF preview displays the message in the actual font that will be used.

A sample screenshot of the Message Manager main list is provided below:

File Type	Message Name	Message Type	Message Area	Start Date	End Date	Status	Test?	Message
STATEMENT	Budget True Up	Message	Board	2010-06-24	2015-12-31	Active	No	Your Budge...
STATEMENT	Past Due 2010	Message	Board	2010-08-13	2015-06-14	Active	No	***PAST DU...
STATEMENT	Regular Bills	Message	Board	2010-06-13	2015-07-14	Active	No	The City o...
STATEMENT	Final Pas: Due 2010	Message	Board	2010-01-01	2015-06-30	Active	No	***THIS IS...
STATEMENT	Corrected Bill 2010	Message	Board	2010-01-01	2015-06-30	Active	No	***Correct...
STATEMENT	Final Bill 2010	Message	Board	2010-01-01	2015-06-30	Active	No	***THIS IS...

### Job Tracking

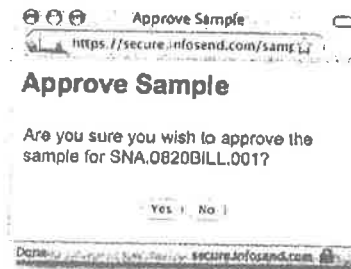
Allows your staff to log onto [www.infosend.com](http://www.infosend.com) to view the progress and completion of your print or electronic bill files. Confirmation reports are accessible from the job tracker for easy access. Check off the "Viewed" checkbox after auditing the completion time of a finished batch.

A sample screenshot of the Job Tracking tool is provided below:

Job Type	Job Code	Received	Processing	Sample File	Sample Status	Printing	QC	Mail Prep.	Confirmation	Viewed
BILLS	RO81113B	2008-11-13 10:58:01	Done	2008-11-13 11:09:35	Approve Reject	Pending	Pending	Pending	Pending	<input type="checkbox"/>
BILLS	RO81113A	2008-11-13 10:53:02	Done	2008-11-13 11:04:43	Approve Reject	Pending	Pending	Pending	Pending	<input type="checkbox"/>
BILLS	RO81112A	2008-11-12 15:03:03	Done	2008-11-12 15:33:31	2008-11-12 15:38:57	Done	Done	Done	2008-11-13 15:51:18	<input type="checkbox"/>

### Sample Approval

InfoSend can provide PDF samples of your documents before they are printed or loaded to the eBusiness system. A screenshot of the sample approval window is shown below:



## Print & Mail Service

### Overview:

- Your data is processed, address validated, presorted, printed, put through Quality Control prior to being released to the mailing department.
- Documents are folded, inserted, and mailed per the turnaround time listed in the pricing section.
- Print & Mail – printing and mailing of statements, invoices, and other bills and notices.
- AdPrint & Mail – printing and mailing of marketing letters, postcards, and Inline Inserts.
- Direct Communications – one-time print only or print and mail projects.
- Online job tracking and detailed reports make it easy to monitor and audit the process.

### Standard Features:

#### Paper Stock Options



A variety of cut-sheet paper stock options are available. Any bill that requires a tear-off remittance stub will include a micro perforation for a clean and smooth edge (lockbox compatible). Bill stock options include plain white, in-stock color preprinted with a standard change of address form on the back, or custom color preprinted with custom logos and backers (minimum order quantities apply). Recycled 30% post-consumer paper stock is available.



#### Envelopes



You will receive the lowest possible envelope price by using InfoSend's standard double window #10 and single window #9 envelopes. We order millions of these each month and pass the savings on to you. Envelopes contain security film and tint. They are compatible with the bulk letter opening machines used by your remittance processing department or lockbox vendor. Your name and logo will appear through the #10 outgoing envelope. Sustainably sourced and recycled 30% post-consumer paper stocks are available.

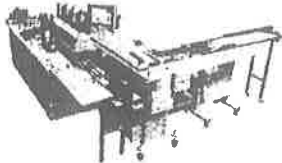


#### Laser Printing



Documents are printed using high-speed production laser printers. Bills are either printed in grayscale onto color preprinted forms or using a 2-color laser process that supports black plus a standard shade of blue, red, or green. Postcards and inserts can be printed using grayscale, 2-color, or 4-color CMYK laser printing technology.

#### High Speed Mail Inserting



Printed documents are inserted using high-speed production inserters. Mailing equipment is extremely expensive and challenging for most organizations to operate. Leverage InfoSend's economies of scale by outsourcing your mailing. You will no longer have to pay for equipment financing and service.

Many organizations do not have dedicated staff to operate mailing equipment, or rely on just one or two dedicated staff members and struggle when one is out sick or on vacation. By outsourcing your mailing you can reallocate your staff to work on your core business.



## Print & Mail Service: Standard Features Continued

### Quality Control



InfoSend's Quality Control (QC) is one of the company's most unique internal programs. Printed documents are always put through a QC process before being released to the mailing department. Each QC operator checks for print quality and follows on-screen prompts that are specific to the client. Each individual mailing application can have its own set of items to check for.

### Address Validation and Presorting



All addresses are put through CASS certified address validation. This adds the 4-digit extension to the Zip Code, creates the USPS OneCode Intelligent Mail Barcode, and digitally presorts the addresses. Batches containing at least 500 bar-coded mail pieces are digitally presorted and delivered to the USPS at the lowest possible rate.



During processing 2D barcode is added to your documents and used with intelligent mail inserting equipment. This equipment folds and inserts documents using "mail piece integrity" software to prevent inserting errors such as double stuffing. The barcodes are read before and after the documents are inserted into the envelopes to ensure proper sequencing and handling.

## Print & Mail Service: Optional Services

### Exception Processing

Exception Processing, or EP, is an optional service that allows you to approve, cancel, or hold individual bills based on predetermined criteria. You may choose to flag exception bills within the data, or InfoSend can build the custom exception rules on your behalf. Example: All bills with dollar amounts over \$500,000, or less than \$5.00, could be posted to the InfoSend website for individual approval.

*Please inform us if you would like a price for this service. Service is not available with Express PDF Implementation.*

### Move Updates



InfoSend will ensure that you comply with the USPS Move Update requirements. Customers often fill out a change of address form without informing billers of the change. The USPS does not forward first class mail to the new address at no cost as it once did. You can elect to have it returned to you at no cost or use an USPS approved method to keep your customer address database up to date.

If clients wish to have their Mailpieces forwarded, InfoSend offers two electronic reporting options that are compliant with the USPS. There is no setup or monthly fee, just a per-item reporting fee that is available in the pricing section of this proposal.

### Print & Mail Service: Optional Services Continued

The first Move Update option is the Address Change Service (ACS). When this option is selected the USPS forwards your mail to the new address and records the action in their database. InfoSend retrieves this information weekly and sends you an electronic report of the forwards.

The second Move Update option is the NCOALink service. With this option InfoSend uses the NCOALink database to find the new addresses during data processing. The new addresses can be printed on your bills before they are mailed, or printed as-is and forwarded to the new address by the USPS. In either scenario you receive electronic reports of the new addresses after each batch is mailed. If you elect to have the USPS forward the mail you must use the report to update your database within 90 days.

### Print Image Archive

The Print Image Archive is an optional service. This is a document archiving tool used by your customer service representatives to download electronic copies of any document that InfoSend mails. This web application allows authorized users to query the database by customer name, account number, or up to **three other custom fields**. Documents are archived as individual PDF files, which lends to a quick download time. Your support representatives can use this service to research customer inquiries by viewing an exact copy of the printed bill. Pricing is based on how long the documents are retained.

This service can be used to reproduce exact copies of your printed bills. If you can produce accurate copies from your own billing system then this service is not needed. This service is unrelated to the Email eBilling and Online BillPay services.

A screenshot of the application's search form is included below. You can pick up to 5 custom fields to index. For example the "Bill Date", "Due Date", and "Service Address" fields in the image below were added to the search form and mapped to the custom data file format for a utility client of ours.

415493 Total Record(s)  
PLEASE ENTER SEARCH CRITERIA BELOW TO DISPLAY RECORDS

Name:

Account Number:

Job Code: All Jobs

Bill Date:

Due Date:

Service Address:

Received Date (MM-DD-YY):  To

SPCL Status:

Submit Search

## **Print & Mail Service: Optional Services Continued**

### **AdPrint & Mail: Inserts**

Selective Inserting is available, which allows you to selectively target insert, flyers, or newsletters to specific mail pieces. Selective Inserting will also allow you to exclude a #9 return envelope for all customers participating in an automatic payment program (ACH). Individual documents can be grouped together ("householding"), if desired.

InfoSend gives you multiple insert handling and production options, along with fully featured tools to manage the process:

Insert Requests & Management - InfoSend's online Insert Request Form is an innovative account management tool that streamlines insert management. Request a quote for printing and schedule all of your inserts online. Submit the form through our website and a summary of the request will be returned to the user via email.

Insert Handling – Client Provided - Any special inserts/flyers/stuffers prepared by the client can be inserted with the bills. You can drop your inserts off or have them shipped to InfoSend where they will be kept in inventory until the end of the run date.

Insert Printing - InfoSend offers a complete range of insert printing services, from black to full color printing.

- **Inline Inserts** - if your organization often includes static inserts with its bills, InfoSend can convert them to Inline Inserts. An automated process is set up to selectively print the inserts immediately after each bill is printed. This increases your ability to target specific customer types and provide one-to-one messaging. Inline Insert printing is usually grayscale or 2-color.
- **Offline Inserts** – traditional inserts are printed offline and then inserted with designated billing statements. Up to 5 offline inserts can be included with a bill run. Offline inserts can be digitally printed in grayscale or full color, or offset printed in full color.

### **Direct Communications**

Direct Communications are non-recurring document types that directly communicate information to your customers.

- One-time print runs such as offline inserts, newsletters or flyers. Documents are printed black or full color.
  - Offline Inserts – traditional inserts are printed offline and then inserted with your bills. Up to 5 offline inserts can be included with your bills. Offline inserts can be digitally printed in grayscale or full color, or offset printed in full color.
- One-time print and mail projects. Document tabbing available.
  - Examples are customer rate change notices or any other important notices that must be sent separately from your bills or other regular mailings.
  - Expedited projects are possible if you have an emergency and must send out a notification on short notice.

## eBusiness Services

### Advanced Security Features Common to all Services



All of the following services use an advanced platform architecture that maximizes security. InfoSend's electronic services use a three-tier architecture and all data passed to and from the system is encrypted using SSL. All credit card, debit card, and ACH account numbers are encrypted, and most importantly these services are all PCI compliant. **Minimize or eliminate your PCI liability by outsourcing your electronic payment applications to InfoSend.** If your organization stores, transmits, or processes credit card numbers you must follow PCI rules. If you have not already reviewed these rules please see <http://www.pcisecuritystandards.org> for the latest rules and regulations.

#### Online BillPay (EBPP)

- Full featured biller-direct EBPP service (Electronic Bill Presentment and Payment)
- InfoSend's flagship eBusiness service that gives your customers the ultimate flexibility over how to view and pay their bills.
- Customers self-enroll for the service and create a username and password to securely access their eBills and make payments.
- Multiple payment options include checking/savings account (ACH), and credit/debit cards.
- Payment accounts are stored as a Payment Profile for easy repetitive use (tokenization available).
- Go Green! Eliminate paper bills and reduce the fuel used to deliver them with paperless billing.
- Customers can view their eBills and view the account balance before making a payment.
- Customer-activated AutoPay and other features. *Request a demo of Online BillPay today!*

#### QuickPay (No Enrollment)

- This service can be used in addition to Online BillPay or as a stand-alone offering.
- Online payment portal that customers can use to make credit/debit card or ACH payments, depending on preferences.
- It is not necessary for customers to enroll to use this service. Customers validate their account number by entering it in addition to another identifier that is present on their bill.
- All payments are initiated immediately. There are no saved Payment Profiles or scheduled payments. Customers view their account balance before making a payment.

#### CSRPAY

- This service can be purchased as an optional addition to each of the above services.
- This service gives your CSRs the ability to take live payments over the phone or in person.

#### Email eBilling

- Email only service that sends eBills to customers via email (no portal to view prior eBills).
- This is a partial solution that is normally utilized by clients who already have an online payment system but do not have the ability to email bills to customers.
- Emails can be sent to addresses that you provide. Additionally, a portal can be provided for the management of enrollment and email preferences.
- Service includes a styled HTML email template featuring your chosen banner image. Bill particulars such as Account Number, Due Date, and Amount due are contained in the email body.
- Includes a replica of your printed bill design attached as an eBill PDF. If InfoSend is your BillPrint & Mail provider then paperless billing can be provided to your customers.



## Doña Ana County

### Purchasing Department Addendum # 1

March 22, 2012

#### Re: **Doña Ana County Request for Proposals # 12-0037 Printing and Mailing Services**

Please note the following changes, clarifications, modifications to this RFP/ bid and/or responses to questions specification:

1. We use digital meters to apply exact postage. Postage is funded in advance like with a permit, and held in a postage escrow account that is used to fund the postage meters for your mail. Will this be acceptable or is the use of a permit required?  
**Answer: The awarded vendor will be reimbursed for the cost of postage; it will not be paid in advance.**
2. Please verify that the Business Personal Property Official Request mailing will contain 2 duplex pages printed black and red.  
**Answer: Yes**
3. Other than the mailing address, is there other variable data that is pre-filled on the front or back of the forms? If so, please specify.  
**Answer: Yes see new attached sample.**
4. Please verify that the Livestock Official Request mailing will also contain 2 duplex pages printed black and red.  
**Answer: Yes**
5. Other than the mailing address, is there other variable data that is pre-filled on the front or back of the forms. If so, please specify.  
**Answer: Yes**
6. Is the mailing address for both forms above print on the left in the upper 1/3 of the first page. It appears from the samples that the Change of Address box in the upper left would be partially visible in the envelope window, which would violate USPS automation compatible mail requirements for postage discounts. Can the form be slightly modified to move it outside of the window area?  
**Answer: This hasn't been an issue in the past but if it ever becomes an issue the County would entertain solutions to fix any problems.**
7. There is no sample of the 14" notice form in the bid documents. Please provide a sample.  
**Answer: Attached**

8. Do the Real Property and Mobile Home notices share the same form layout?  
**Answer: Yes**
9. There is no sample of the mailing envelope for these notices. Is it the same as the envelope used for the Notice of Value Personal Property envelope with different verbiage printed in red?  
**Answer: See attachment.**
10. Is the verbiage different for Real Property and Mobile home envelopes?  
**Answer: Yes**
11. Please provide an estimated breakdown of Real Property and Mobile Home notice volumes.  
**Answer: Estimated quantities are included in the bid documents.**
12. Are the Personal Property and Livestock notices printed on the same form?  
**Answer: Yes**
13. The "OFFICIAL REQUEST" form appears to be a two page form. Will there be data from your database printing on the second page?  
**Answer: Yes see attached sample**
14. The bid package has example forms for all of the envelopes and the forms that the data will be printed on. However the bid also has a deadline for form design. Is there data that must be placed on the forms that the current forms will not allow for? If the art work for the form needs to be recreated because of a different vendor then we see no reason to change the look and feel of the form.  
**Answer: The form is the way it should be. Data will be sent to the vendor to populate the form**
15. This question is related to question 3. The bid package refers to "returning" any unused forms to Dona Ana County. Returning infers that Dona Ana is providing the forms to the winning contractor; however, the bid also seems to infer that the winning contractor will provide the forms. Would you please clear this up?  
**Answer: The awarded firm will print the form. A data file will be sent to populate the form. We can only estimate the quantities and if there are any blank forms left we would like them returned to us.**
16. Is Dona Ana County still using the county government software that utilizes Rocket Software U2 products?  
**Answer: The County is using Unidata but we are not familiar with the Rocket Software U2 product.**
17. Is all variable data information printed in black ink only?  
**Answer: Yes**
18. Will each form have its own #10 window envelope artwork for mailing?  
**Answer: Yes**
19. What kind of file format will the transferred data be provided in? (text file, ASCII, XML, etc...?)  
**Answer: csv - includes a header line and then detail lines.**

20. Who is the current vendor and what is their location?  
**Answer: Peregrine – Las Cruces**

21. What is the current contracted price for each of the items noted on the "TV: Price" page?  
**Answer: Bid Tabulation attached.**

No other changes apply to this proposal/bid at this time. I would like to take this time to thank you and your staff for the effort you have put into the bidding process. For any questions or comments, please contact Stacey Madson at 575/525-5866.

Please sign and return this page with your bid. Your bid/proposal may be deemed unresponsive if this form is not signed and returned with your bid/proposal.

  
Signature of Authorized Representative/Date

**DOÑA ANA COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

Community Development  
Initiating Department

May 23, 2017  
Meeting Date

Albert Casillas, Planner  
Contact Person

25  
Agenda Item Number

**TITLE OF AGENDA ITEM TO BE CONSIDERED**

**APPROVE A SPECIAL USE PERMIT FOR A WINERY AND WINE TASTING ROOM**

**SUMMARY OF ITEM TO BE CONSIDERED**

**INCLUDING PRESENTATION OF OPTIONS FOR ACTION and ACTION REQUESTED**

The Appellant, Quent W. Pirtle, is appealing a February 9, 2017, Planning and Zoning Commission (P&Z) decision approving a Special Use Permit, Case # SU17-001, within the T3 Neighborhood Edge Zone, submitted by Dawn Oakley, owner. The Appellant is one of a number of property owners in the area and is requesting that the Board of County Commissioners (BOCC) reverse the decision of the P&Z based on the mistakes, omissions, and assumptions of the P&Z, County staff and the applicant, Dawn Oakley. The Special Use Permit is for a 1,500 sq. ft. building for a winery and wine tasting room on 4.14 acres located at 307 W. Provencio Rd. The applicant's intention is to harvest grapes from the existing vineyard on the property and process them into wine for retail sale. Pursuant to §2.16.1.c of the UDC the hearing before the BOCC shall be *de novo* and may include review and consideration of the record and of any new evidence submitted prior to or during the hearing. Pursuant to §2.16.1.g of the UDC, the BOCC may approve or reverse the decision of the P&Z, or make such modification on the appeal as it deems necessary, in order to protect the public interest. The decision of the BOCC shall be based on findings of fact. This case was postponed from the May 9<sup>th</sup> meeting to May 23<sup>rd</sup>.

**DESCRIPTION OF SUPPORTING DOCUMENTATION ATTACHED**

1) Case Summary & Recommendation; 2) Petition & Appeal Application; 3) Basis for Appeal & Staff responses; 4) Case #SU17-001 Analysis; 5) Power Point presented to the P&Z; 6) Minutes of February 9, 2017 P&Z meeting; 7) Recorded P&Z Order.

**SUMMARY OF FINANCIAL IMPACT**

None

**ADMINISTRATIVE REVIEW AND APPROVAL**

\_\_\_\_ Finance

JPK Legal

\_\_\_\_ County Manager/  
Agenda Review

\_\_\_\_ Purchasing

\_\_\_\_ Human Resources

WSP Assistant County Manager

AS Planning

\_\_\_\_ Other

**DOCUMENT CONTROL**

Original/s for signature? \_\_\_ Yes \_\_\_ No      For Recording? \_\_\_ Yes \_\_\_ No

Return original/s to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Send copy of recorded original/s (resolution and ordinances only) to: \_\_\_\_\_ Name \_\_\_\_\_ Dept.

Deadline for return of document/s? Yes, return by: \_\_\_\_\_ or \_\_\_ No





**DOÑA ANA COUNTY  
BOARD OF APPEALS**  
Doña Ana County Government Center  
845 North Motel Boulevard  
Las Cruces, New Mexico 88007  
Telephone: (575) 647-7200  
Toll-Free: (877) 827-7200

**MEETING DATE:** May 9, 2017

**CASE NO:** Case # AP17-001

**REQUEST:** Appeal of a P&Z Decision Approving a Special Use Permit (SUP) for a Winery/Tasting room.

**APPLICANT:** Dawn Oakley

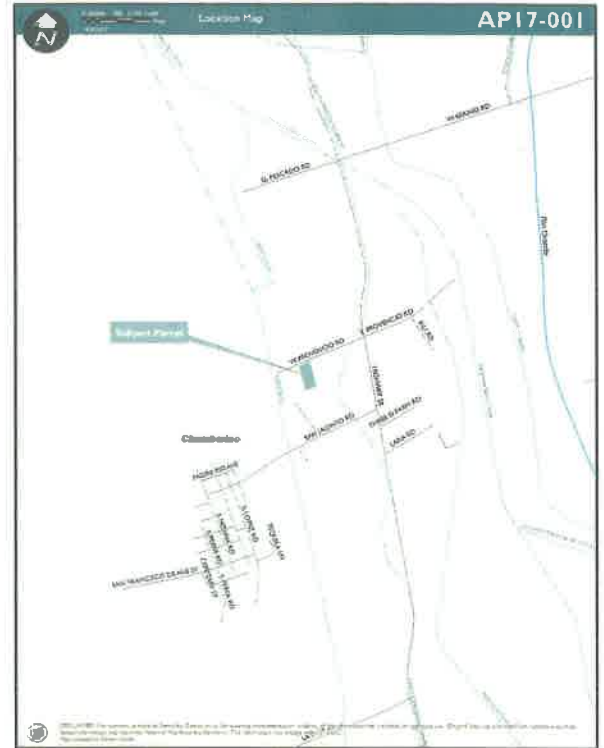
**APPELLANT:** Quent W. Pirtle

**LOCATION:** 307 W. Provencio Rd. ½ mile NE from La Union, NM.

**ZONING:** T3 Neighborhood Edge zone

**PROPERTY SIZE:** 4.14 acres

**STAFF CONTACT:** Luis Marmolejo,  
Senior Planner



**SYNOPSIS:** The Appellant, Quent W. Pirtle, is appealing a February 9, 2017, Planning and Zoning Commission (P&Z) decision approving a Special Use Permit, Case # SU17-001, within the T3 Neighborhood Edge Zone, submitted by Dawn Oakley, owner. The Appellant is one of a number of property owners in the area and is requesting that the Board of County Commissioners (BOCC) reverse the decision of the P&Z based on the mistakes, omissions, and assumptions of the P&Z, County staff and the applicant, Dawn Oakley. The Special Use Permit is for a 1,500 sq. ft. building for a winery and wine tasting room on 4.14 acres located at 307 W. Provencio Rd. The applicant's intention is to harvest grapes from the existing vineyard on the property and process them into wine for retail sale. Pursuant to §2.16.1.c of the UDC the hearing before the BOCC shall be *de novo* and may include review and consideration of the record and of any new evidence submitted prior to or during the hearing. Pursuant to §2.16.1.g of the UDC, the BOCC may approve or reverse the decision of the P&Z, or make such modification on the appeal as it deems necessary, in order to protect the public interest. The decision of the BOCC shall be based on findings of fact.

**ATTACHMENTS:** 1) Case Summary & Recommendation; 2) Petition & Appeal Application; 3) Basis for Appeal & Staff responses; 4) Case #SU17-001 Analysis; 5) Power Point presented to the P&Z; 6) Minutes of February 9, 2017 P&Z meeting; 7) Recorded P&Z Order.

## CASE SUMMARY AND RECOMMENDATION

This Appeal followed the procedures required by §2.16.1 (Procedure) of the UDC. Seventeen (17) letters of notification were sent out. Legal notification was published in the Las Cruces Sun News on Sunday, April 9, 2017. Signs were posted on the property, and the agenda was posted on the county web site.

The proposed SUP is for a 1,500 sq. ft. winery, wine tasting room and vineyard on 4.14 acres where a residence is the primary use of the property, and the proposed activity is small in scale when compared to the other surrounding agriculture activities in the area. The proposed winery and wine tasting room is an accessory structure similar in size to other accessory structures in the area. The access to the proposed winery, wine tasting room and vineyard, will be at 307 W. Provencio Rd., a County-maintained road that serves the agriculture community and the local residents. The additional traffic that will be generated by the winery, wine tasting room and vineyard will not diminish the roadway level of service. Case # SU17-001 meets the requirements of the UDC, is in line with the applicable Goals and Actions of Plan 2040, and compliments the El Camino Real Corridor Enhancement Plan.

### **Background and Chronology of Events**

- On April 14, 2016, by a vote 6-0-0, the P&Z approved Case # PDNR (L) 15-009, a Low Intensity Non-Residential Application by Dawn Oakley, applicant, to construct a 1,500 sq. ft., Winery/Tasting Room on 4.14 acres,
- On May 13, 2016, Quent Pirtle filed an appeal, Case # AP16-001 of the decision by the P&Z approving Case # PDNR (L) 15-009.
- On July 5, 2016, after an internal review of Case # AP16-001 that identified a technical procedural error, Dawn Oakley submitted a letter requesting the withdrawal of Case # PDNR (L) 15-009.
- On July 28, 2016, the applicant, Dawn Oakley, filed a new Non-Residential application to construct the Winery/Tasting Room, Case # PDNR (L) 16-007.
- On October 26, 2016, Case # PDNR (L) 16-007 received Administrative Approval from the Community Development Director.
- On November 22, 2016, Quent Pirtle filed an appeal, Case # AP16-003, of the Administrative Approval of Case # PDNR (L) 16-007.
- Due to the Unified Development Code (UDC) taking effect on February 2, 2017, the applicant refiled her application for processing under the UDC, and Case # AP16-003, filed by Quent Pirtle, was withdrawn.
- Quent Pirtle now appeals the P&Z's approval of Ms. Oakley's latest application, and that appeal is now before the BOCC as Case # AP17-001.

## APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL

### **Ordinance No. 287-2016, Unified Development Code:**

§ 2.1.4.1.a Decision Making Authority, Planning and Zoning Commission

§ 2.4.4 Decisional Criteria for Special Use Permits

- § 2.16 Appeals
- § 2.16.1 Procedure
- § 2.16.2 Quasi-judicial Nature of Appeals

## RECOMMENDATION

Staff recommends the BOCC approve the application for the proposed winery, wine tasting room and vineyard, thereby affirming the decision of the P&Z to Approve Case #SU17-001, and conversely, denying Appeal Case #AP17-001 based on the following findings of fact:

## FINDINGS:

1. The request of Case # SU17-001 is consistent with the requirements of the §2.4.1 General Provisions and Procedures of the UDC.
2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County.
3. The Doña Ana Board of County Commissioners has jurisdiction to hear this appeal pursuant to §1.4.3.
4. The notice requirements have been met as prescribed in §2.4.3 Notice Procedure for Special Use Permits of the UDC.
5. The Site Plan meets the requirements of §2.8.2 Detailed Site Plan Requirements of the UDC.
6. The proposed Special Use Permit meets the §2.4.4 Decisional Criteria for Special Use Permits of the UDC and is consistent with the health, safety, and general welfare of the residents of the County.
7. The SUP compliments the El Camino Real Corridor Enhancement Plan, Resolution No. 2015-40, as it promotes Culinary Tourism and Agritourism by leveraging the abundant agriculture along the corridor to increase the consumption of locally produced food and wine.
8. The SUP conforms to the following elements of the Plan 2040:
  - a. Livability Principle 2: Preserve Our Heritage  
Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets.
  - b. Livability Principle 5: Enhance Economic Opportunity  
Promote tourism assets, including the Camino Real and other regional attractions.
  - c. Livability Principal 5: Enhance Economic Opportunity  
Look for opportunities to support innovative agricultural opportunities, particularly local, commercial agriculture.
  - d. Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small-Scale Businesses Including Agriculture.
  - e. The SUP aligns itself with the Continuum of Intensity T3, Neighborhood Edge Zone, consisting of low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

## **BOARD OF APPEALS ACTIONS:**

§2.16.1.g: The BOA may approve, reverse, affirm or modify the decision of the P&Z in order to protect the public interest. The decision shall be based on findings of fact.

## **APPEAL APPLICATION ATTACHMENTS**

The Appellant filed the Appeal in a timely manner, on March 28, 2017, after the recording of the P&Z Order on February 27, 2017, as required by §2.16 Appeals of the UDC. The Appeal application documents are comprised of the following:

- Attachment 1: Petition and Appeal Application opposing Case # SU17-001.
- Attachment 2: The mistakes, omissions, assumptions posed by the Appellant (Basis for Appeal) and Staff's responses.
- Attachment 3: Case # SU17-001 staff report presented to the P&Z on February 9, 2017.
- Attachment 4: PowerPoint presentation to P&Z on February 9, 2017.
- Attachment 5: Minutes of the February 9, 2017 P&Z meeting.
- Attachment 6: Planning & Zoning Commission recorded Order

# AERIAL OF PROPERTY







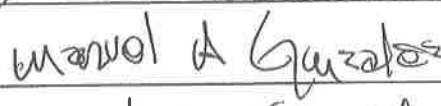



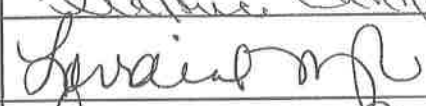
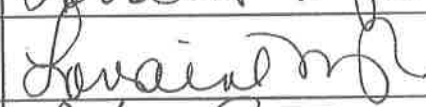
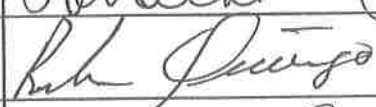

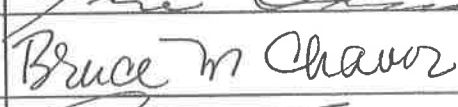

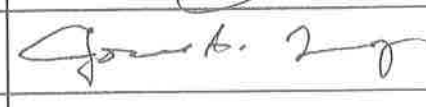
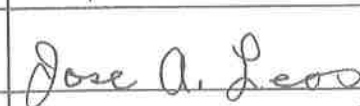
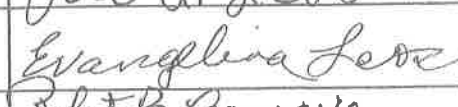
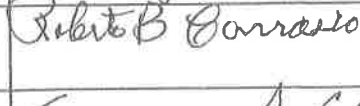
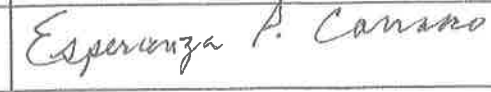


## NOTIFICATION LIST

CODI	MAP_CODE	OWNERNAME	MAILADDR1	CITY	ST.	ZIP
1	4-013-153-130-230	OAKLEY BRYAN K & DAWN M	PO BOX 383	CHAMBERINO	NM	88027
2	4-013-153-198-195	GONZALEZ MANUEL A	PO BOX 581	CHAMBERINO	NM	88027
3	4-013-153-183-183	GONZALEZ MANUEL A & LETICIA P	PO BOX 581	CHAMBERINO	NM	88027
4	4-013-153-170-205	CARRASCO BEATRICE P	PO BOX 526	CHAMBERINO	NM	88027
5	4-013-153-157-225	MCCULLOUGH LORRAINE L	PO BOX 56	CHAMBERINO	NM	88027-0056
6	4-013-153-143-225	MCCULLOUGH LORRAINE LIMON	PO BOX 56	CHAMBERINO	NM	88027
7	4-013-153-100-140	QUIROGA RUBEN & IRENE	PO BOX 217	CHAMBERINO	NM	88027-0217
8	4-013-153-229-282	QUIROGA RUBEN & IRENE	PO BOX 217	CHAMBERINO	NM	88027-0217
9	4-013-153-098-241	CHAVEZ BRUCE M & KARRIE	PO BOX 649	CHAMBERINO	NM	88027
10	4-013-153-091-221	BANEGAS MARIA IRMA	PO BOX 494	CHAMBERINO	NM	88027-0494
11	4-013-153-070-250	LEOS JOSE A	PO BOX 453	CHAMBERINO	NM	88027-0453
12	4-013-153-172-285	CARRASCO ARMANDO B	PO BOX 11	CHAMBERINO	NM	88027-0011
13	4-013-153-150-310	ANTHONY DEBRA	PO BOX 463	CHAMBERINO	NM	88027
14	4-013-153-068-272	LEOS JOSE A & EVANGELINA M	PO BOX 24	CHAMBERINO	NM	88027-0024
15	4-013-153-106-342	CARRASCO ROBERT B & ESPERANZA P	PO BOX 1	CHAMBERINO	NM	88027-0001
16		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001
17		EMD	530 S. MELENDRES	LAS CRUCES	NM	88001

# Attachment 1

I, the undersigned property owner of record as identified by County Staff within the notification area of SUP17-001, hereby notify the Doña Ana County Board of County Commissioners that I oppose the decision of the Planning and Zoning Commission rendered on 09 February 2017, regarding approval of the Special Use Permit. I further authorize Quent W. Pirtle to present on my behalf during the appeal process pursuant to 2.16.2 of the UDC.

Map	Owner Name	Signature	Date
2	Quiroga, Ruben - PO Box 217, Chamberino, NM 88027		3-16-2017
2	Quiroga, Irene - PO Box 217, Chamberino, NM 88027		3/16/17
3	Gonzalez, Manuel A - PO Box 581, Chamberino, NM 88027		03.16.2017
4	Gonzalez, Manuel - PO Box 581, Chamberino, NM 88027		03.16.2017
4	Gonzalez, Leticia - PO Box 581, Chamberino, NM 88027		3.20.17
5	Carrasco, Beatrice - PO Box 526, Chamberino, NM 88027		03/17/17
6	McCullough, Lorraine - PO Box 56, Chamberino, NM 88027		3-16-2017
7	McCullough, Lorraine - PO Box 56, Chamberino, NM 88027		3-16-2017
9	Quiroga, Ruben - PO Box 217, Chamberino, NM 88027		3-16-2017
9	Quiroga, Irene - PO Box 217, Chamberino, NM 88027		3/16/17
10	Chavez, Bruce - PO Box 649, Chamberino, NM 88027		3-16-17
10	Chavez, Karrie - PO Box 649, Chamberino, NM 88027		3-16-17
12	Leos, Jose A - PO Box 453, Chamberino, NM 88027		3.16.17
15	Leos, Jose A - PO Box 24, Chamberino, NM 88027		3/16/17
15	Leos, Evangelina - PO Box 24, Chamberino, NM 88027		3/19/17
16	Carrasco, Roberto & Esperanza - PO Box 1, Chamberino, NM 88027		3-16-17
16	Carrasco, Esperanza - PO Box 1, Chamberino, NM 88027		3-16-17

Note: Map 5 property owner incorrectly identified in documents submitted by DAC CDD.





# DOÑA ANA COUNTY

OFFICE OF THE COUNTY CLERK  
845 North Motel Boulevard - Las Cruces, New Mexico 88007  
(575) 647-7421 - Fax: (575) 525-6159 Toll Free: 1 (877) 827-7200 - TTY: (575) 525-5951  
[www.donaanacounty.org](http://www.donaanacounty.org)



## Doña Ana County Appeal Application

Instructions: Please type or print clearly. Use Additional Sheets if necessary. The completed application and any attachments must be submitted to the Community Development Department by the applicant or agent. A \$200.00 non-refundable fee must accompany this application.

Previous Case#: SUP17-001	Appeal of Decision from: DAC P&Z	Appeal Case#: AP17-001
---------------------------	----------------------------------	------------------------

Name of Applicant/Agent(s): Quent W. Pirtle	
Mailing Address: PO Box 56 Chamberino, NM 88027	
Work Phone Number: 575.202.9031	Home Phone Number: 575.882.3565
Property Owner of Record: See attachment 1	Owner's Address: See attachment 1
Physical Address of the Property (if it pertains to the Appeal): 307 West Provencio Rd., Chamberino, NM	
Legal Description of Property. Include Section, Township, Range, Map Code #, and Property Identification # (if applicable): Township 26S, Range 3E, Section 18, recorded with the DAC Clerk under #1022157, Parcel #17-02611	
Size of Property (if it pertains to the Appeal): 4.14 Acres	
Please state the specific error or abuse of discretion claimed to have been committed by the Zoning Administrator or the Planning and Zoning Commission:  SEE ATTACHMENT 2	
Statement of Appearance, Pursuant to Section 2.16.2 of the Unified Development Code Ordinance No. 287-2016:  I, Quent W. Pirtle certify that the information provided in this application is correct to the best of my knowledge and hereby make this Statement of Appearance, constituting an appearance of record, on behalf of Attachment 1 for an appeal to the Board of Appeals.	
Signature of Applicant(s) or Agent: _____	Date: 28 March 2017
<b>For Planning Department Use Only</b>	
Date Received: 3/28/17	Hearing Date: _____
Owner of Record Document: _____	Fee Receipt #: _____
This application is complete and accepted as submitted: Staff Signature: _____	Date: _____

-----Signatory Responsibilities-----

1. Doña Ana County recognizes English as the official language for public meetings. By signing this agreement, I agree to provide translation services to any and all public or private meetings they are required to attend in the event that he/she does not speak English. Doña Ana County will not assume any liability either explicit or implied for the quality of the translation.
2. I certify that the information provided in this application is correct to the best of my knowledge.
3. I, the property owner of record of the herein described property, certify that I have seen and read the plans and statements presented with the application, and consent and agree to the filing of the application.
4. I, the property owner's authorized representative hereby certify that I have obtained the owner's permission to perform stated work.
5. If this application process requires a public hearing it is the responsibility of the applicant to attend such hearing. In the event that the applicant or representative cannot attend, a request for a continuance must be made prior to the day of the Hearing. Failure to appear or request a continuance will result in denial of this application.

[Handwritten Signature]

28 March 2017

Signature of Applicant(s)/Agent

Date

See Attachment 1 \_\_\_\_\_

Signature of Property Owner(s)

Date

STATE OF NEW MEXICO }

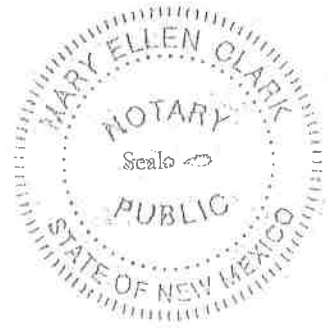
COUNTY OF DOÑA ANA }

The foregoing instrument was acknowledged before me this 28th day of March, 2017, by

Quint W Pirtle \_\_\_\_\_

Notary Public [Handwritten Signature]

My Commission expires: 03/10/2021



## ATTACHMENT 2

As per 2.16.1 b of the Unified Development Code (UDC), this document is to concisely and specifically set forth in writing the points on which we base our appeal and urge the DAC Board of County Commissioners to reverse the decision rendered by the DAC Planning and Zoning Commission regarding case SUP 17-001 on 09 February 2017.

The following mistakes, omissions, and assumptions on the part of the Planning and Zoning Commission, County Staff and/or the Applicant failed to meet or contradicted the UDC, the DAC Plan 2040, One Valley-One Vision 2040, and the El Camino Real Corridor Enhancement Plan.

1 **Application/COD Packet** (the following references the packet presented to the P&Z Commission)

1.1 2.4.2 Application Procedure - the applicant failed to meet the requirements of "a" in the application. The Applicant requested a Zone Change rather than a Special Use Permit. This possibly invalidates the legality of the document. **Staff response:** Applicant checked the wrong box on the application.

1.2 Noted purpose is to construct & operate a winery and tasting room. In reviewing UDC Table 3.5 Land Use Classification Matrix under "Agriculture" (page 61) we note that Agricultural Packaging and Warehousing and Agricultural Processing Facilities, and Livestock Pens are not permitted under "R" (Rural). A wine tasting room is permitted however, Light Manufacturing is not. **Staff response:** Table 3.5 Land Use Classification Matrix is for the purpose of designating land uses of different intensities within Community Type Developments and does not apply to this application.

1.3 Current Zoning District: T3 (Neighborhood Edge) - with the understanding that the Applicant intends to manufacture wine, allow tasting of wine, have retail and wholesale wine sales, and offer arts and crafts at retail sales, Table 5.1 Land Use Classification Matrix: Zoning Districts only allows for a Small Retail Facility and Wine Tasting Room.

1.3.A This indicates that the manufacture of wine, any type of Agricultural Processing, Packaging or Warehousing, and Wholesale Sales and Storage is prohibited. **Staff response:** The scale of the processing of grapes into wine is subordinate to the wine tasting room and not the primary use of the property. The residence is the primary use of the property.

1.3.B To define the Primary Use of Property we refer to Title 15 Gambling and Liquor Control, Chapter 10 Alcoholic Beverages General Provisions, Part 2 of NMAC. Specifically 15.10.2.7.W states how "Primary activity", "Primarily" or "Primarily engaged in" is determined.

1.3.C Clearly the manufacture of Ethyl Alcohol is prohibited in T3 Zone. **Staff response:** The production of ethanol is not specifically prohibited in the UDC.

1.3.D 5.3.9b of the UDC restricts retail use to buildings at corner locations. The Applicant is not located on a corner lot. The interpretation of this means the Applicant can have a wine tasting room but not make wine or have retail sales. **Staff response:** 5.3.9b restricts retail buildings at corner lots to 2,000 sq.ft. and makes no reference to the processing of wines.

1.4 Building size is not consistent between the Site Plan, and diagram presented by Applicant. Therefore it is not accurate to state that the size of the building is 1,500 sq. ft. **Staff response:** The building size of 30' X 50' is indicated on the site plan. Issuance of a building permit will be for a 1,500 sq. ft. building.

1.5 The current state of West Provencio Road does not have a 30' County maintained right- of-way. The ROW mentioned by staff may exist in theory however certain properties border the improved roadway for example the property at the corner of West Provencio Road and NM Highway 28. During the installation of water and gas lines on West Provencio Road the contractors placed these utilities under the improved or paved portion of the road then laid new asphalt. The paved road width of eighteen to twenty feet remains one of our biggest concerns in terms of our health, safety, general welfare, damage to crops, and property damage. **Staff response:** West Provencio Road is inventoried as a 30 ft. County owned and maintained right of way. It provides access to the residential properties as well as those properties that are in agriculture use which require travel of farming equipment and truck transportation for harvested crops, such as alfalfa on W. Provencio Road.

#### 1.6 Decisional Criteria

1.6.A The P&Z by their approval of SUP1 7-001 is stating that a liquor manufacturer, retailer, and wine tasting room is consistent with the health, safety, and general welfare of the residents of West Provencio road which is a dead-end road not meeting current UDC requirements. The impact of any increase in vehicular traffic is undesirable to us. Drivers not accustomed to this narrow road will not realize that when approached by another vehicle one of them must come to a stop at the edge of the road to allow safe passage. **Staff response:** A Site Threshold Assessment to determine the impact of additional traffic was submitted and reviewed by the Engineering Department which determined the traffic impact would be minimal and no additional analysis is required.

1.6.B Evidence of existing infrastructure presented by CDD Staff includes a letter from the Chamberino MDWC &SA dated 25 January, 2017. This letter identifies a property that does not exist and a person's name not connected to the Applicant. **Staff response:** Chamberino MDWC &SA has corrected the error on the letter.

1.6.C The impact on the surrounding properties is of great concern to us. These issues range from personal safety, traffic, parking bad behavior of customers, impaired/driving, property damage (personal and agricultural), and endangerment of pets and livestock to name a few. **Staff response:** The Planning and Zoning Commission determined that the proposed use has minimal impact to the surrounding properties.

1.6.D The P&Z failed to implement any Best Management Practices restricting hours of operation, number of persons allowed in tasting room, hours of operation, parking restrictions, or prohibition of outside activities. They further failed to impose any other conditions to mitigate any of the potentially detrimental effects this SUP will have on our surrounding properties and lives. **Staff response:** Best Management Practices are techniques used during construction and the site development phase and does not relate to the services provided by the proposed use.

#### 1.7 Plan 2040

1.7.A Livability Principal 2: Value and protect natural resources and agricultural lands. Support of local farmers markets and craft markets. CDD Staff failed to quote the entirety of the script. The quote actually reads "Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets *with training, communications and marketing help. Incorporate more urban agricultural approaches*". The text in italics was omitted. With the complete statement this is no longer an element the SUP conforms to regarding Plan 2040. **Staff response:** Livability Principal 2 was adopted into Plan 2040 because the County recognizes, encourages and supports the scale of the proposed land use which is similar to the new trending urban agricultural approaches. It markets the local small farming community and craft markets.

1.7.B Livability Principal 5 discusses six points that support the statement "*The need for jobs and more educational opportunities, especially/or young people was another recurring theme. This goal will accomplish the following*". The text in italics was omitted by CDD Staff. Again, the statement alone sounds like it is supportive of the other plans in existence however when taken in totality it does not support nor conform to anything in Plan 2040. Furthermore the making of wine is not considered innovative. **Staff response:** The goal of Livability Principal 5 is to Enhance Economic Opportunity. Accomplishing the goal will involve promoting private and public efforts, such as agritourism, support of innovative agricultural opportunities for local, commercial agriculture.

1.7.C Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small- Scale Businesses Including Agriculture is a goal and not an action. The basis of Plan 2040 is to complete the listed actions which will meet the stated goal. None of the actions of this goal were listed by Staff however none of them are relevant to showing how the SUP conforms to Plan 2040. **Staff response:** Actions identified in



A.6.7 of the Economic Opportunity, Strategy 2 of Plan 2040 include numerous actions that support Goal 6.7. The proposed winery/tasting room is in line with actions and goal of Economic Opportunity, Strategy 2 of Plan 2040.

**1.8 El Camino Real Corridor Enhancement Plan - This document proposes four catalytic projects with the ultimate goal of providing more economic opportunities for the region along the 92 mile corridor in Doña Ana County. Of these projects none have been completed and most project completion dates are in future suspense. Funding has also not been secured for the projects. The funding estimation for the Culinary Tourism and Agritourism component alone is \$325,000.00 and has not been secured. Staff response: El Camino Real Corridor Enhancement Plan is not an ordinance that regulates the SUP.**

### 1.8

**1.8.A Staff states that 'the SUP compliments the El Camino Real Corridor Enhancement Plan as it promotes Culinary Tourism and Agritourism as it proposes to leverage the abundant agriculture along the corridor to increase the consumption of locally produced food and wine.' On page 61 of the plan under Culinary Tourism and Agritourism the statement reads "Coordinate and promote a comprehensive strategy leveraging the culinary and agricultural assets of the Corridor to attract tourists and to increase the production and consumption of locally grown food." Staff chose here to misrepresent the wording. Staff response: On page 61 under Project Purpose, it specifically states to: Support local farmers and wineries, and increase consumption of locally-grown food and wine.**

**1.8.B The Applicant has not indicated any activity describing Agritourism. Staff response: The UDC does not require an applicant to indicate any activity describing Agritourism. What the applicant has submitted is defined as agritourism. Agritourism is widespread in the United States. Agritourist can choose from a wide range of activities that include picking of fruits and vegetables, riding horses, tasting honey, learning about wine and cheese making, or shopping in farm gift shops and farm stands for local and regional produce or hand-crafted gifts.**

**1.8.C Definitions of Culinary Tourism vary. Most definitions do not include wine but rather refer to food. Staff response: Culinary or food tourism is the pursuit of unique and memorable eating and drinking experiences, both near and far. Culinary tourism differs from agritourism in that culinary tourism is considered a subset of cultural tourism (cuisine is a manifestation of culture). Although agritourism is considered a subset of rural tourism, culinary tourism and agritourism are inextricably linked, as the seeds of cuisine can be found in agriculture. Culinary food tourism is not limited to gourmet food.**

**1.8.D The Applicant previously stated that their target consumer was neighborhood commercial. This is not consistent with what is now being presented. The Applicant and CDD Staff have now stated it is destination commercial. Staff response: The UDC does not restrict the**

sale of wine to retail companies. The production capacity of a 750 sq. ft. boutique winery will not produce large quantities of wine. The applicant states that deliveries of the wine will be from their own personal vehicle.

**1.9 Notice/Notification-** CDD Staff used the work completed on the previous cases to notify affected property owners. Because Staff failed to check the current records of the County Assessor a new property owner was not notified by first-class mail of the pending SUP public hearing. **Staff response:** The property information is derived from the records of the Assessor's Office. Staff is dependent on those records but has no control when the Assessor's Office updates them. Further notification practices are in place, such as posting signs on the property and publishing the notice of the public hearing in the Sun News.

**1.10 Staff Analysis-**The impact of the SUP to the surrounding land uses is minimal. Staff has taken the approach that since the operation is portrayed as small it is not going to have a negative impact. Note that the impact referred to is to the surrounding land and not the people. Matters that may seem minor to other people who do not live where we do are very big issues to us. **Staff response:** The primary use of the property is residential, it is complemented with an agriculture use (vineyard). The proposed building is similar in appearance and size to other structures in the area. There is adequate parking for the proposed use, and there is adequate landscaping and buffering that meet the UDC requirements.

**1.10.A** It is our belief that the Applicant and CDD Staff decided to apply for a Special Use Permit due to the board applicability and vague specific uses. This is further proven by the checkmark on the application for a Zone Change and the previous applications for this case.

Article 7 of the UDC Glossary of Terms defines a Special Use Permit as "Authorization for a specific land use that is potentially appropriate in, and compatible with other uses in its zoning district, but due to the scale and nature of the use, has the potential to make a major negative impact on other uses in the district." With this in mind Staff writes, "The proposed 1,500 sq. ft. accessory building is keeping with the character of surrounding residential accessory buildings and the existing vineyard (1,200 vines) is a farming activity surrounded by other farming activities." Later in the same paragraph Staff states "The impact of the SUP to the surrounding land uses is minimal." **Staff response:** And the SUP is small in scale.

**1.10.B** We hold that the SUP is not the appropriate classification and Staff fails to make a case that it will not have a major negative impact as per the definition. The proposed activities are in no way similar to any other farming that occurs on West Provencio Road. Staff is forecasting an opinion with no basis in fact that we will be forced to live with. **Staff response:** The existing vineyard located on the property is extremely small in scale compared to the other immediate surrounding agriculture properties which require a much more mechanized operation and more tilling of the land, thus at times producing noticeable dust. The proposed winery/tasting room likewise is small in scale and will

not produce large quantities of wine, thus generating minimal traffic. Mr. Dave Fischer and Mr. Gordon Steele, who own Wineries/Tasting rooms in Doña Ana County, testified at the P&Z meeting that the proposed SUP is small in scale.

### 1.11 Findings

1.11. A Staff states the Applicant optioned to proceed directly to the P&Z for a public hearing. UDC 2.4.1 states if written objections to the SUP were received within 21 days, it will be submitted to the P&Z for a public hearing. The Applicant did not have the option. **Staff response:** Per § 2.4.1 “An applicant has the option of either applying for an administrative SUP or proceeding directly to the P&Z to consider the SUP at a public hearing”. The applicant opted to go directly to the P&Z.

1.11. B Staff failed to make the required notifications by not checking the most current records of the County Assessor. **Staff response:** The property information is derived from the records of the Assessor’s Office which are updated periodically.

1.11.C. The SUP is not consistent with our health, safety, and general welfare.

1.11.D. The SUP does not currently compliment or conform to either the El Camino Real Corridor Enhancement Plan or Plan 2040.

## 2 Planning & Zoning Public Meeting 09 February 2017 (this references the hearing with the indicated time stamp from the video of the meeting)

09:00:55 CDD Staff states nothing has changed in regard to the Site Plan. A copy of the site plan provided indicates a revision date of 17 January 2017. **Staff response:** The revised site plan was required in order to meet the requirement of § 2.8.2.c (lot coverage data) of the UDC.

09:03:13 CDD Staff reads the Decisional Criteria from 2.4.4 of the UDC but does not explain how they met the criteria.

09:08:40 CDD Staff states there are two wells on the property. One for domestic use and one for irrigation. According to the records of the State Engineer the Applicant is only authorized for one well. A single building on the site plan identifies the existing well building. The placement of a windmill on the property leaves no explanation for the source of water it pumps since it is not on record. **Staff response:** The proposed winery/tasting room will get its water supply from the Chamberino MDWC &SA. The windmill does not draw ground water; it is for the purpose of decoration.

09:11:10 CDD Staff states the SUP would not significantly impact adjacent properties and is not out of line for the area. This is opinion with no factual basis.



09:11:30 Commissioner Daviet discusses Sight Threshold Assessment and Traffic Impact Analysis. Neither documents were included in packet or disclosed to us as required by the UDC.

09:17:15 Commissioner Czerniak discusses his relationship with the Applicant in that they are both members of the "Wine and Vine Society" and states "I don't think that prohibits an objective decision." The Commissioner should have recused himself from the proceedings or at a minimum stated he could make an impartial decision. There is a big difference in being objective versus impartial.

09:20:15 The Applicant states they purchased the land in 2010 after looking at some 60 properties. Although not mentioned, the Applicant attempted to hold a meeting in November 2015 about "the tasting room at Mesa Vista Winery." The meeting was re-scheduled when no one was able to attend. This is when the surrounding property owners were told of the Applicants retirement plans of a winery. It was a short time later that the process with DAC CDD began. We hold that the Applicants should have conferred to nearby property owners their intentions prior to purchasing their property in 2010.

Note: Upon further investigation we find that the Applicant commissioned the New Mexico Office of the State Engineer to conduct a Hydrographic Survey (on the property they eventually purchased) on December 12, 2000. This is recorded under Transaction Number 570495 with the State Engineer. This proves the Applicants had 10 years' time to meet and poll the neighborhood about their plans prior to purchasing the property. If the Applicants had informed those in the area of their intentions in 2000 that they would have known we would oppose their venture and not have to endure this self-imposed hardship and the accompanying dissention that has followed.

09:21:15 The Applicant produced a diagram during her power-point presentation that depicts a different layout of the proposed building. This does not match what was submitted on the site plan and increases square footage. An electronic copy of the presentation was requested however, CDD Staff failed to disclose it for our appeal. **Staff response:** The IT Department reports that appellant paid for and received an electronic copy of the February 9, 2017 hearing.

09:34:07 The Applicant cites two additional businesses on West Provencio Road in an attempt to draw a comparison to the proposed winery. Both of these businesses are in compliance with the previous DAC Code but also the UDC. Furthermore neither business generates traffic nor manufacture or sell alcoholic beverages.

09:35:11 The Applicant shows a slide depicting the surrounding property owners that support them which is not an

accurate listing. This visual implies that a majority of the people surrounding them support them when in fact their support has always been in the minority.

### 3 Points/Issues/Concerns

3.1 UDC 1.2.2 Prohibits approval of any application that will violate any other provision of law. We submit that based upon Title 15 Gambling and Liquor Control of NMAC, if the Applicant is allowed to proceed as currently proposed they will violate multiple provisions of Title 15. This will ultimately force the Applicant to make major revisions to what has been currently submitted. Based upon the history of the Applicants we believe these changes will fail to follow the requirements of the UDC.

3.2 UDC 1.8 Enforcement of provisions of the UDC are not practical. CDD Staff has stated that they encourage voluntary compliance with the code. Due to proposed operational hours and days we foresee being strapped with reporting violations we believe certain to occur. The current sole person responsible for enforcement works 8-5, Monday through Friday in the Community Development Department. When we attempt to report issues on the weekend there will be no one to respond. We have previously discussed this very issue with DAC Codes Enforcement. **Staff response:** DAC Codes reports that in the event of a code violation on the weekend, DASO can be called upon for a report and would then follow up with DAC Codes the following Monday.

3.3 The Applicant fails to meet all of the specific requirements of 2.8.2 Detailed Site Plan Requirements. Through the course of this application numerous site plans and grading and drainage plans have been submitted. The most current revision to the disclosed site plan is dated 17 January 2017.

3.4 The site plan submitted has missing required elements, conflicting information, and errors. For example the buffer depicted on the plan does not reflect what the Applicant has already done. The trees shown on the east border do not meet the minimum size requirements of the current UDC or the previous Code 250 when they were planted. The bare sticks planted will never provide any type of buffer in our lifetime due to their immaturity. The buffer description in the site plan refers to a buffer type that does not exist in the UDC. **Staff response:** The site plan depicts appropriate landscaping.

3.5 A separate and distinct Landscape Plan is required to be submitted as per UDC 5.7.2. No plan was disclosed to us or the P&Z. **Staff response:** The landscaping plan is depicted on the site plan.

3.6 A grading and drainage plan is possibly required under UDC 2.4.2. Neither plan was disclosed to us. **Staff response:** The grading and drainage plan is depicted on the site plan and approved by the Engineering Department. The Appellant

requested and received copies of the entire SUP application, including the site plan depicting grading and drainage.

3.7 UDC 2.4.4 lists the decisional criteria for a SUP. No documentation of any of these criteria has been proven. The only thing supporting this is the opinion of the Applicant, CDD Staff and the P&Z. The neighborhood majority will ultimately suffer from their misguided beliefs for which there will be no return.

3.8 UDC Table 3.12 requires the proposed parking lot to be paved. Based upon the site plan submitted the Applicant is showing a gravel parking lot. **Staff response:** Table 3.12 depictions are for the Community Type Developments specifically.

3.9 UDC 3.4.11 requires a streetscreen which is not depicted on the site plan. **Staff response:** UDC 3.4.11 applies to Community Type Development specifically.

3.10 The west parking access on the site plan fails to meet the requirement of UDC 6.2.3 Clear Sight Triangle for vehicles travelling east on West Provencio Road. **Staff response:** The site plan does not depict any obstructions on the west entrance for vehicles exiting east.

3.11 Plan 2040 applies to our interests as well so we will refer to it in the same fashion Staff has, with the exception of presenting it in totality rather than cutting and pasting fragments.

3.1 LA Livability Principle 6: Coordinate Policies and Investment lists 7 accomplishments to achieve on page 9. We focus on the lack of Staff to: 1. Build Accountability into the process. 2. Involve community members and business leaders in refining alignment strategies and in monitoring the process. 3. Streamline processes and rules so everyone understands the goals and expectations. 4. Build fairness and predictability into rule making and enforcement. 5. Use the enhanced alignment of policies and processes to identify opportunities for coordinated promotion of the County, the local municipalities, and community assets. 6. Make continuous, open communication between elected officials, staff, residents and business people a priority. 7. Empower staff to take more ownership of planning and outcomes.

3.11.B The desire for continuing, meaningful participation emerged in each conversation under each component of the Livability Principles. Achieving the "meaningful" part of that mandate requires going beyond merely providing opportunities for comment in public hearings. Residents, businesses and community organizations have to be partners in the planning process. It's more than a feel-good exercise. It's a pragmatic strategy that is effective in two ways: First, people who live and work in a region are the true experts on what's working and not working.

Their knowledge strengthens the information base of planning and helps refine the assumptions planners make about long-range goals. Second, and just as important, is the need to build broad-based support for the process that shapes the Plan and, ultimately, for the policies required to implement

it. It's far easier to achieve buy-in for a Plan that's co-produced by the people most affected by it than to have to sell them on something produced without their involvement.

3.12 The El Camino Real Corridor Enhancement Plan is also referenced by Staff. The following are in conflict or do not otherwise align themselves with the SUP.

3.12.A Page 61 of the plan discusses culinary tourism and agritourism. The overview and purpose on this page do not describe the activities the Applicants originally proposed to accomplish.

3.12.B Project Scope of Effort on page 63 further explains one of the catalytic projects. Again, based upon the Applicants proposal this does not apply.

3.12.C Page 66 Benefits/Return to the Community. These also do not entirely align with the SUP. "If successfully implemented, the project will enhance economic diversity and competitiveness, which, in turn, can increase economic opportunity and quality of life for local residents. Support and enhance the viability of local agriculture; Celebrate an important aspect of corridor identity; Increase tourism visitation and revenue; Increase activity and expansion of local businesses job creation in agricultural and culinary sectors as well as in culinary hospitality and support sectors; Local residents have better access to healthy, affordable and locally grown food."

3.13 One Valley, One Vision 2040

3.13.A 4.3 Guiding Principles extracted from page 36 that are applicable to our opposition include: For this plan, carrying out sustainability and the principles of smart growth doesn't mean "no growth." It means a planned growth strategy that will:

"Create safe, clean, and affordable places to live that offer economic and other opportunities.

"Keep intact values for individual liberty, democracy, and private-property rights.

& Recognize natural market forces exist that are best left alone; however, opportunities to use, respond to, or guide these forces should be pursued to better manage the region's resources.

- Welcome growth in a way that is mindful of its impact to important historic, cultural and natural resources.

- Use renewable and finite resources wisely in a way that minimizes or reuses waste.

- Address the inter-relationship of the resource topics identified in this plan.

- Encourage communities to move toward sustainable practices over time

Use an open process that affords everyone opportunities to participate in public decisions.

3.13.B Chapter Five, Regional Snapshot on page 97, discusses Agriculture and lists the specific examples of Agriculture found in Doña Ana County. Grapes and/or wine are not even mentioned here.

3.13.C Chapter Six, Regional Goals and Strategies on page 118. Goal 6-1-5: Guide development in a manner that will both protect the rights of private landowners and the interests of the public.

#### Strategies

- Work with property owners to determine the most appropriate means to balance public purposes with individual property rights that may include such means as providing design flexibility, easements, and purchase or transfer of development rights.
- Use incentives or public acquisition of property rights, as appropriate, instead of regulations.
- Foster a sense of community that best matches the region, municipalities and neighborhoods.
- Try to anticipate changes or events that may threaten the usual way of doing things so the region is more resilient.

The application of these principles will vary with the current condition and future plans of the particular geographic location in the region. By keeping these principles in mind when developing plans, this should help achieve a better balance of social needs, a strong economy, and protection of valued natural resources.

3.13.D Chapter Six, Regional Goals and Strategies, an excerpt from page 132 that does not align with or compliment the SUP. Goal 6-10-1: Sustain and attract economic activities that play a vital role to the region in providing jobs, services, and adding to quality of life.

#### Strategies

Support economic development that does not adversely affect quality of life.

3.13.E Chapter Six, Regional Goals and Strategies, an excerpt from page 133 that does not align with or compliment the SUP. Goal 6-10-2: Diversify business communities to enhance economic vitality and workforce opportunities.

#### Strategies

"Support existing economic strengths such as White Sands Missile Range, NASA, Spaceport, Santa Teresa Port of Entry, agriculture, and NMSU.

Support businesses that offer long-term growth potential and mid to upper level pay such as manufacturing, aerospace, alternative energy utility, health care, and professional- technical services.



#### 4 Closing

This appeal to the County Commission is our current effort opposing an on-going battle which we perceive has been unfair toward us. Since the beginning of this process in 2015 we have stood united as a majority group of property owners to fight what we believe could have a negative impact on our lives. We the opposition live closest to the proposed location and stand to lose the most.

We have previously brought to the attention of CDD Staff and the P&Z where the UDC (and the previous code) were ignored or applied inconsistently to ensure approval. We are disgusted how the P&Z takes the word of CDD Staff during hearings even when presented with contradictory information. As this case has progressed we have been lied to by the CDD Department Director and misled by Staff. The Applicant and CDD staff have changed positions throughout this process in terms of what the true activities will be if the SUP is approved.

Staff has twice presented this case to the P&Z giving the appearance to represent the Applicant and in no way our opposition. Per the UDC and the prior code we were not allowed an opportunity to question or cross-examine statements from the Applicant, Staff, or proponents during the hearings. **Staff response:** At the February 9, 2017 P&Z meeting for the SUP, the public was asked for input, and a representative for those in opposition stated that they would not comment due to the forthcoming Appeal.

We as citizens of this county believe in our democracy and plead that our voices are finally heard. Our intention is to fight this fight until we have been heard at the highest level. Our fear however is that once this genie is let out of the bottle there will be no way to put it back and we will be the ones to suffer no matter how good the intentions of the Applicant or Staff may have been.

# ATTACHMENT 3



DOÑA ANA COUNTY PLANNING AND ZONING COMMISSION  
Doña Ana County Government Complex • 845 N. Motel Blvd.  
Las Cruces, New Mexico 88007 • Office: (575) 647-7350

**MEETING DATE:** February 9, 2017

**REQUEST:** Special Use Permit

**CASE #:** SU17-001

**PURPOSE:** Construct & operate a winery and tasting room.

**PROPERTY OWNER/  
APPLICANT:** Dawn M. Oakley  
Dawn M. Oakley

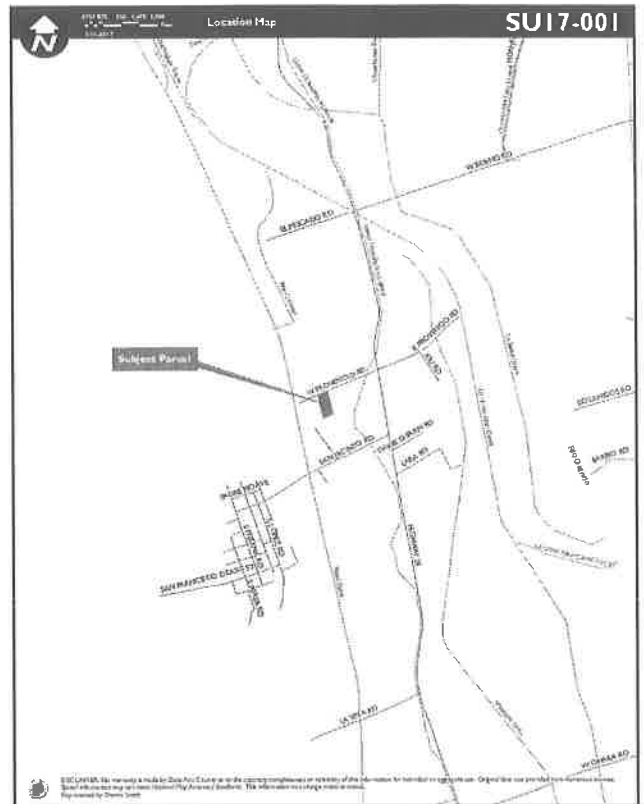
**LOCATION:** 307 W. Provencio Rd,  
Chamberino, NM 88027

**PROPERTY SIZE:** 4.14-acres

**PARCEL ID NO.:** 17-02611

**RECOMMENDATION:** Approval

**CASE MANAGER:** Luis Marmolejo  
Senior Planner



The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Special Use Permit. The decision of the Planning and Zoning Commission can be appealed by an aggrieved person or party to the Board of County Commissioners.

The property owner intends to construct a 1,500 sq. ft. building for a winery/tasting room and vineyard. The 1,500 sq. ft. building will be divided by a 750 sq. ft. tasting room and 750 sq. ft. winery room. The vineyard will have 1,200 grape vines grown on approximately 3 acres. The tasting room will be open Friday, Saturday and Sunday from 12:00pm-5:30 pm and will be limited to five (5) seats as specified in the approved New Mexico Environment Department Septic Tank Permit.

**REPORT CONTENTS:** (1) Case Analysis and Staff Recommendation (2) GIS Information & Maps (3) Site Plan (4) Application and Supporting Documents (5) Opposition Petition.

**SURROUNDING ZONING AND LAND USE**

SITE	ZONING	LAND USE
North	T2	Agricultural
South	T2,T3	Agricultural
East	T3	Agricultural/residential
West	T3	Residential

**Existing Conditions and Zoning:**

Current Zoning District: T3 (Neighborhood Edge) Zone, consists of low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

**The Request:**

The applicant is requesting a Special Use Permit to construct a 1,500 sq. ft. building for a winery/tasting room on 4.4 acres.

**BACKGROUND**

On April 14, 2016 the Planning and Zoning Commission (P&Z) approved Case # PDNR(L) 15-009, Dawn Oakley, owner, which allowed for the construction and operation of 1,500 sq. ft. building for a winery/tasting room as prescribed in the previous DAC Code 250. Approval of Case # PDNR(L) 15-009 was appealed, Case #AP16-001, by Quent Pirtle and was scheduled to go before the Board of County Commissioners on July 12, 2016. During the internal review process of the appeal, it was discovered that a procedural error had occurred prior to the April 14, 2016 P&Z meeting. Dawn Oakley agreed to withdraw the application and resubmit at a later date, which led to the nullification of the appeal. On August 8, 2016 Dawn Oakley submitted a new application, Case # PDNR(L) 16-007 and received approval from the Zoning Administrator on October 26, 2016. On November 22, 2016 Quent Pirtle appealed the decision of the Zoning Administrator (Case# AP16-003) and the appeal was scheduled to go before the P&Z on January 12, 2017. Anticipating an appeal of a January 12, 2017 P&Z decision and pending the effective date of February 2, 2017 of the Unified Development Code taking effect, Case # AP16-003, submitted by Quent Pirtle was withdrawn, therefore the winery / tasting room application would be administered under the Special Use Permit as prescribed within the UDC.

The Doña Ana County Legal Department provided the following basis of withdrawing on going cases under the existing Code to the UDC after February 2, 2017: Preliminary research indicates that “the vested rights doctrine applies to an ongoing development or project that has been approved and upon which substantial investment has been made.” *Miller vs. BOCC of Santa Fe Co.*, 144 N.M. 841, 846 (Ct.App. 2008). Any land use application that has not yet achieved a final order for which all opportunities for appeal have been exhausted is not yet a final “approval” for the purpose of conferring any vested rights upon the applicant. *See Germania Sav. Bank vs. Village of Suspension Bridge*, 159 N.Y.362 (1899).



The 4.4 acre property is located within the T3 Transect Zone, a Neighborhood Edge Zone, that consists of low density single family residential dwelling areas, with some mix of uses, home occupations and out buildings. Transect zones reflect the historic development patterns and are predominantly mixed uses and compact development. These zoning districts are located and map zoned to the existing historic communities and townsites that includes natural and rural conditions. The property is located at 307 W. Provencio Rd. approximately ½ mile northeast of the community of Chamberino. West Provencio Rd. is a 30 ft. County maintained right-of-way. Per the Assessor's records, a 32'x64' residence and a 30'x40' equipment shed and other structures that support a vineyard and the residential home that is located on the property. One (1) acre is assessed as residential and the remaining 3.14 acres are assessed as tillable land.

## **APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL**

### **Ordinance No.287-2016, Unified Development Code**

§ 1.4.3 Duties of the Planning and Zoning Commission: b. Receive, hear and make final determinations on applications for Variances and Special Use Permits.

§ 2.4.1 General Provisions and Procedures

§ 2.4.2 Application Procedure

§2.4.3 Notice Procedure for Special Use Permits

§ 2.4.4 Decisional Criteria: A proposed SUP must be consistent with the health, safety, and general welfare of the residents of the County per the intent of this Chapter. The Zoning Administrator, P&Z, and BOCC shall use the following general criteria when reviewing special use permits but are not limited to:

- a. Potential traffic flows and impacts;
- b. Need for new commercial or residential activity;
- c. Potential water and sewer needs;
- d. Existing infrastructure capacities and the ability of existing systems to accommodate new development;
- e. Environmentally sensitive areas in the vicinity, areas of historical significance, or areas that contain endangered or rare species of animal and plant life;
- f. The impact of a proposed SUP on surroundings properties; and
- g. Implementation of Best Management Practices for the development.

§ 2.4.5 Approval Procedures and Conditions: The Zoning Administrator, P&Z or the BOCC may approve, conditionally approve or deny the SUP with right of appeal in accordance with the provisions of Section 2.16 Appeals. Approval may be granted with conditions that are deemed necessary to ensure that the purpose and intent of this Chapter are met and to mitigate potentially detrimental effects of the SUP to the surrounding properties.

## **PLAN 2040**

The SUP conforms to the following elements of the Plan 2040:

- Livability Principle 2: Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets.
- Livability Principle 5: Promotes tourism assets, including the Camino Real and other regional attractions.
- Look for opportunities to support innovative agricultural opportunities, particularly local, commercial agriculture.
- Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small-Scale Businesses Including Agriculture.
- The SUP is located within the O2 Sector Plan, defined as; Working lands and small communities. It aligns itself with the Continuum of Intensity T3 (Neighborhood Edge) Zone, with low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

## **EL CAMINO REAL CORRIDOR ENHANCEMENT PLAN**

- The SUP compliments the El Camino Real Corridor Enhancement Plan as it promotes Culinary Tourism and Agritourism as it proposes to leverage the abundant agriculture along the corridor to increase the consumption of locally produced food and wine.

## **NOTICE / NOTIFICATION**

- 19 letters of notification were mailed to the property owners within the area of notice on January 11, 2017.
- Legal Ads were placed in the Las Cruces Sun-News on January 15, 2017.
- Signs placed on the property in a timely manner.
- Agenda placed on the DAC Web site.

## **PUBLIC COMMENTS**

A petition and letters of opposition were received (enclosed attachment "A").

## **AGENCY COMMENTS**

DAC Engineering: All storm water runoff from all imperious areas must be retained within the lot and included within the calculations.

DAC Flood Commission: A Drainage Maintenance Agreement shall be adopted by operators of private drainage systems to establish maintenance procedures for those systems pursuant to Section 6.5.16, Doña Ana County UDC No. 287-2016.

DAC Fire Marshal: Special Use Permit only, any future structures will be required to meet all fire codes.

DAC Building Services: Applicant should be aware that a Building Permit will be required prior to construction.

DAC Rural Addressing Coordinator: No comments.

DAC Zoning Codes: No Zoning Violations found, no open case.

NMED: Permit # DA130213 issued for Winery Tasting Room conditioned to 5 seats.

NMDOT: No significant impact to the State highway system.

Office of the State Engineer: Water for the winery/tasting room is assumed to be from Chamberino Water System. Well LRG-14886-POD, located on the Oakley property is permitted for domestic purposes and irrigation of 3.83 acres only. No water right related issues as long as well LRG-14886-POD1 is not used for drinking and sanitary purposes related to the Winery (unless a permit from our office is obtained).

New Mexico Historic Preservation District: No effect on Historic Properties.

## STAFF ANALYSIS

The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Special Use Permit. The decision of the Planning and Zoning Commission can be appealed by an aggrieved party or person to the Board of County Commissioners.

The property owner intends to construct a 1,500 sq. ft. building for a winery/tasting room and vineyard. The 1,500 sq. ft. building will be divided by a 750 sq. ft., tasting room and 750 sq. ft., winery room. The vineyard will have 1,200 grape vines grown on approximately 3 acres. The tasting room will be open Friday, Saturday and Sunday from 12:00pm-5:30pm and will be limited to five (5) seats per the approved septic tank permit.

The proposed winery/tasting room will access on to W. Provencio Road, a 30' a county maintained paved ROW with approximately 18'-20' of improved roadway. A Site Threshold Assessment was performed and reviewed by the DAC Engineering Department and concluded the traffic generation does warrant further traffic assessment as the trip generation is minimal. In addition, the New Mexico Department of Transportation reports that the proposal does not significantly impact the State Highway System.

The proposed 1,500 sq. ft. accessory building is keeping with the character of surrounding residential accessory buildings and the existing vineyard (1,200 vines) is a farming activity surrounded by other farming activities. The proposed water and sewer needs are being met as the applicant provided water and sewer services from the appropriate agencies. The property and its existing/proposed improvements including the vineyard are not in an environmentally sensitive area or in the vicinity or areas of historical significance, or areas that contain endangered or rare species of animal and plant life. The surrounding area is rural farm land mixed with residential development. The impact of the SUP to the surrounding land uses is minimal.

The applicant states the following in his narrative (see attached pg. 15):

- The request is to build and establish a winery/tasting room. We are applying for a Special Use Application.
- The total footprint of the building is 1500 sq. ft. 750 sq. ft. will be dedicated to the winery and 750 sq. ft. to the tasting room.
- The operation is considered boutique, because it is extremely small, with the vineyard only having 1200 vines.
- The intent is to have the tasting room to promote our wines that will also be sold at retail. We also want to promote arts and crafts from local artists and from those within the state of New Mexico.

The petition and letters objecting to the request summarizes the following concerns (see attachment A):

- Having the area remain peaceful and quite.
- Not an appropriate location for a business that sells alcohol.
- W. Provencio dead ends and the road is very narrow. The business will increase traffic.
- Customers will park in front of neighbors' homes.
- Concerns that customers will approach horses and other animals from neighbors.
- Opposition to this request was voiced at a meeting that the applicant had with the neighbors.
- The location of the proposed building leaves very little room for parking and can potentially force people to park on W. Provencio Road.
- The increase in volume of traffic could significantly impact the safety of residents/commuters in the area and can interfere with farming operations as tractors and other farming vehicles use W. Provencio Road on the weekends.
- The potential for an increase of drinking and driving and the safety for the residents.

### **STAFF RECOMMENDATION:**

Staff recommends Approval of Case # SU17-001 as it meets the applicable sections of the Doña Ana County Ordinance No. 287-2016 of the Unified Development Code, conforms to elements of Plan 2040 and compliments the El Camino Real Corridor Enhancement Plan, based on the following findings:

### **FINDINGS:**

1. The request of this application is consistent with the requirements of the § 2.4.1 General Provisions and Procedures of the UDC, as the applicant optioned to proceed directly to the P&Z for a public hearing.
2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County.
3. The Doña Ana County Planning & Zoning Commission has jurisdiction to review this application Pursuant to § 1.4.3 Planning and Zoning Commission: Receive, hear and make final determinations on applications for Variances and Special Use Permits as prescribed by, and subject to, the procedures established in the UDC.
4. The notice requirements have been met as prescribed in §2.4.3 Notice Procedure for Special Use Permits the UDC.
5. The Site Plan meets the requirements of § 2.8.2 Detailed Site Plan Requirements of the UDC.

6. The Special Use Permit meets the § 2.4.4 Decisional Criteria for Special Use Permits of the UDC and is consistent with the health, safety, and general welfare of the residents of the County.
7. The SUP compliments the El Camino Real Corridor Enhancement Plan as it promotes Culinary Tourism and Agritourism as it proposes to leverage the abundant agriculture along the corridor to increase the consumption of locally produces food and wine.
8. The SUP conforms to the following elements of the Plan 2040:
  - a. Livability Principle 2: Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets.
  - b. Livability Principle 5: Promotes tourism assets, including the Camino Real and other regional attractions.
  - c. Look for opportunities to support innovative agricultural opportunities, particularly local, commercial agriculture.
  - d. Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small-Scale Businesses Including Agriculture.
  - e. The SUP is located within the O2 Sector Plan, defined as; Working lands and small communities. It aligns its self with the Continuum of Intensity T3 (Neighborhood Edge) Zone, consisting of low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

# PROPERTY NOTIFICATION MAP



# NOTIFICATION TABLE

CODE	MAP_CODE	NAME	ADDRESS1	CITY	STATE	ZIP
1	4-013-153-130-230	DAKLEY BRYAN K & DAWN M	PO BOX 383	CHAMBERINO	NM	88027
2	4-013-153-100-140	QUIROGA RUBEN & IRENE	PO BOX 217	CHAMBERINO	NM	88027-0217
3	4-013-153-198-195	GONZALEZ MANUEL A	PO BOX 581	CHAMBERINO	NM	88027
4	4-013-153-183-183	GONZALEZ MANUEL A & LETICIA P	PO BOX 581	CHAMBERINO	NM	88027
5	4-013-153-170-205	CARRASCO ROBERTO B & ESPERANZA P	PO BOX 1	CHAMBERINO	NM	88027
6	4-013-153-157-225	MCCULLOUGH LORRAINE L	PO BOX 56	CHAMBERINO	NM	88027-0056
7	4-013-153-143-225	MCCULLOUGH LORRAINE LIMON	PO BOX 56	CHAMBERINO	NM	88027
8	4-012-153-425-360	WHITAKER ANTONIA F & BENJAMIN L	PO BOX 621	CHAMBERINO	NM	88027
9	4-013-153-229-282	QUIROGA RUBEN & IRENE	PO BOX 217	CHAMBERINO	NM	88027-0217
10	4-013-153-098-241	CHAVEZ BRUCE M & KARRIE	PO BOX 649	CHAMBERINO	NM	88027
11	4-013-153-091-221	BANEGAS MARIA IRMA	PO BOX 494	CHAMBERINO	NM	88027-0494
12	4-013-153-070-250	LEOS JOSE A	PO BOX 453	CHAMBERINO	NM	88027-0453
13	4-013-153-172-285	CARRASCO ARMANDO B	PO BOX 11	CHAMBERINO	NM	88027-0011
14	4-013-153-150-310	ANTHONY DEBRA	PO BOX 463	CHAMBERINO	NM	88027
15	4-013-153-068-272	LEOS JOSE A & EVANGELINA M	PO BOX 24	CHAMBERINO	NM	88027-0024
16	4-013-153-106-342	CARRASCO ROBERT B & ESPERANZA P	PO BOX 1	CHAMBERINO	NM	88027-0001
17	4-013-153-194-320	CARRASCO NOEL A	4226 SOMMERSET ARC	LAS CRUCES	NM	88011
18		EBID	530 S. MELENDRES	LAS CRUCES	NM	88001
19		DAC ROAD DEPT.	2025 E. GRIGGS	LAS CRUCES	NM	88001





# SUBJECT PROPERTY







## DOÑA ANA COUNTY

COMMUNITY DEVELOPMENT DEPARTMENT  
Building - Planning - GIS

845 North Motel Boulevard - Las Cruces, New Mexico 88007  
(575) 647-7350 - Fax: (575) 525-6131 Toll Free: 1 (877) 827-7200 - TTY: (575) 525-5951  
[www.donadanacounty.org](http://www.donadanacounty.org)

GENERAL APPLICATIONS		
ZONE CHANGE	<input checked="" type="checkbox"/>	SPECIAL USE PERMIT
VARIANCE	<input type="checkbox"/>	SIGN PERMIT
APPEAL	<input type="checkbox"/>	AFFORDABLE HOUSING OPTION
LEGAL-NON CONFORMING USE	<input type="checkbox"/>	CLAIM OF EXEMPTION
SUBDIVISIONS <i>(Preliminary/Final/Summary/Vacation or Amendment)</i>	<input type="checkbox"/>	MASTER PLAN/COMMUNITY TYPE <i>(Small Village /Village/Town/Neighborhood/Urban Center)</i>

SUBJECT PROPERTY	
Address: <u>307 W. Provencio Rd. Chamberino<sup>NM</sup></u>	Parcel(s) ID: <u>17-02611</u>
Subdivision: <u>N/A</u>	Book/Page: <u>1022157</u>
Reception #: <u>1022157</u>	Lot Number(s): _____
Legal Description: <u>See Attached Section 18 Deed</u>	
Section/Township/Range: <u>Township 26S, Range 3E</u>	Area of Property: <u>4.14 acres</u>
Existing Land Use/Zoning: <u>PD</u>	Proposed Land Use/Zoning: <u>SUP/winery<sup>Room</sup> fastim</u>
Supplemental Information/Notes: <u>See Attached</u>	
Pre-Application Meeting Date: _____	

APPLICANT/AGENT	
<b>Applicant/Agent:</b>	<b>Property Owner(s):</b>
Name: _____	Name(1): <u>Dawn M. Oakley</u>
Firm: _____	Name(2): _____
Address: _____	Address: <u>307 W. Provencio Rd.</u>
City: _____ State: _____ Zip: _____	City: <u>Chamberino</u> State: <u>NM</u> Zip: <u>88027</u>

DEPARTMENT USE ONLY		
Date of Application: <u>1/12/17</u>	Case Number: <u>SUP17-001</u>	
Related Case (s): _____	Proposed Use: _____	
Application Fee: \$ <u>350</u>	Receipt #: <u>2089</u>	<input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED
Date:    /    /		

*New file location will be listed.*



Dawn Oakley

307 W. Provencio Rd.

Chamberino, NM 88027-0383

915-494-7248

Dona Ana County

845 North Motel Blvd.

Las Cruces, NM 88007

To Whom It May Concern:

January 12, 2017

This request is to establish a winery/tasting room. We are applying for a "Special Use Permit".

The total foot print of the building is 1,500 square feet. 750 square feet will be dedicated to the winery and 750 square feet for the tasting room. The operation is considered boutique, because it is extremely small, with the vineyard only having 1,200 plants.

The intent is to have the tasting room to promote our wines that will be sold retail and wholesale. We also want to promote arts and crafts from local artists and from those within the state of New Mexico.

Thank you for your consideration in this matter:



Dawn Oakley

**ATTACHMENT 4**

# Planning And Zoning Commission

Thursday, February 9, 2017 9:00 am County Commission  
Chambers

Agenda Item #5a  
SUP17-001

# Synopsis

- **Owner/Applicant:** Dawn Oakley
- **Location:** 307 W. Provencio Road, Chamberino, NM
- **Zoning:** T3, Neighborhood Edge Zone
- **Property Size:** 4.14-acres
- **Purpose:** Construct & operate a 1,500 sq. ft. winery and tasting room.

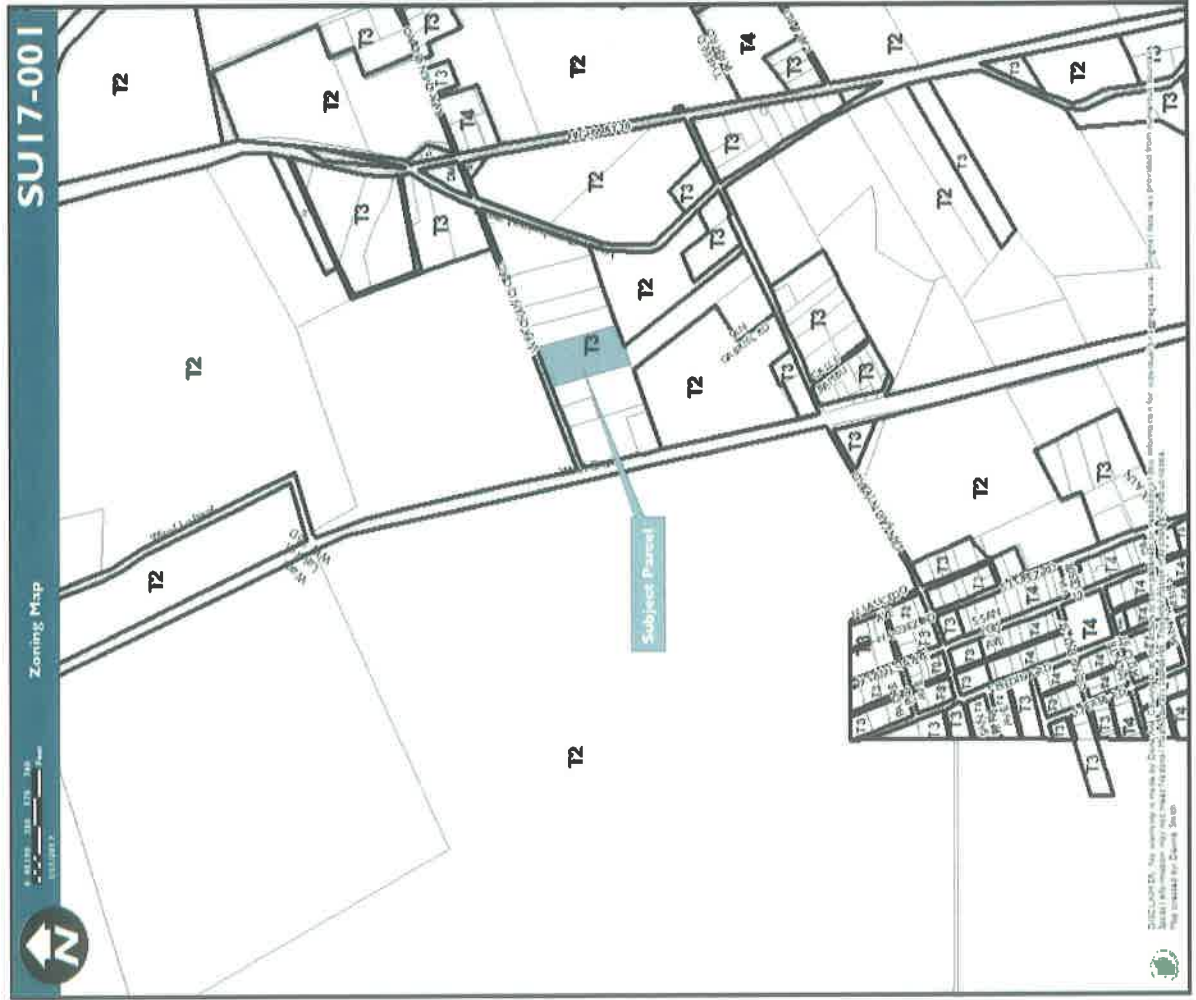





# Aerial Map



# Zoning Map





- 
- The proposed winery will be 1,500 sq. ft. 750 sq. ft. will be dedicated to the winery and 750 sq. ft. to the tasting room..
  - Water is provided by Chamberino MDWC&SA and also Water Well # LRG-14886.
  - Septic Permit # DA130213 is for the Wine Tasting Room with 5 seats. Permit # DA130182 is for a three bedroom home.



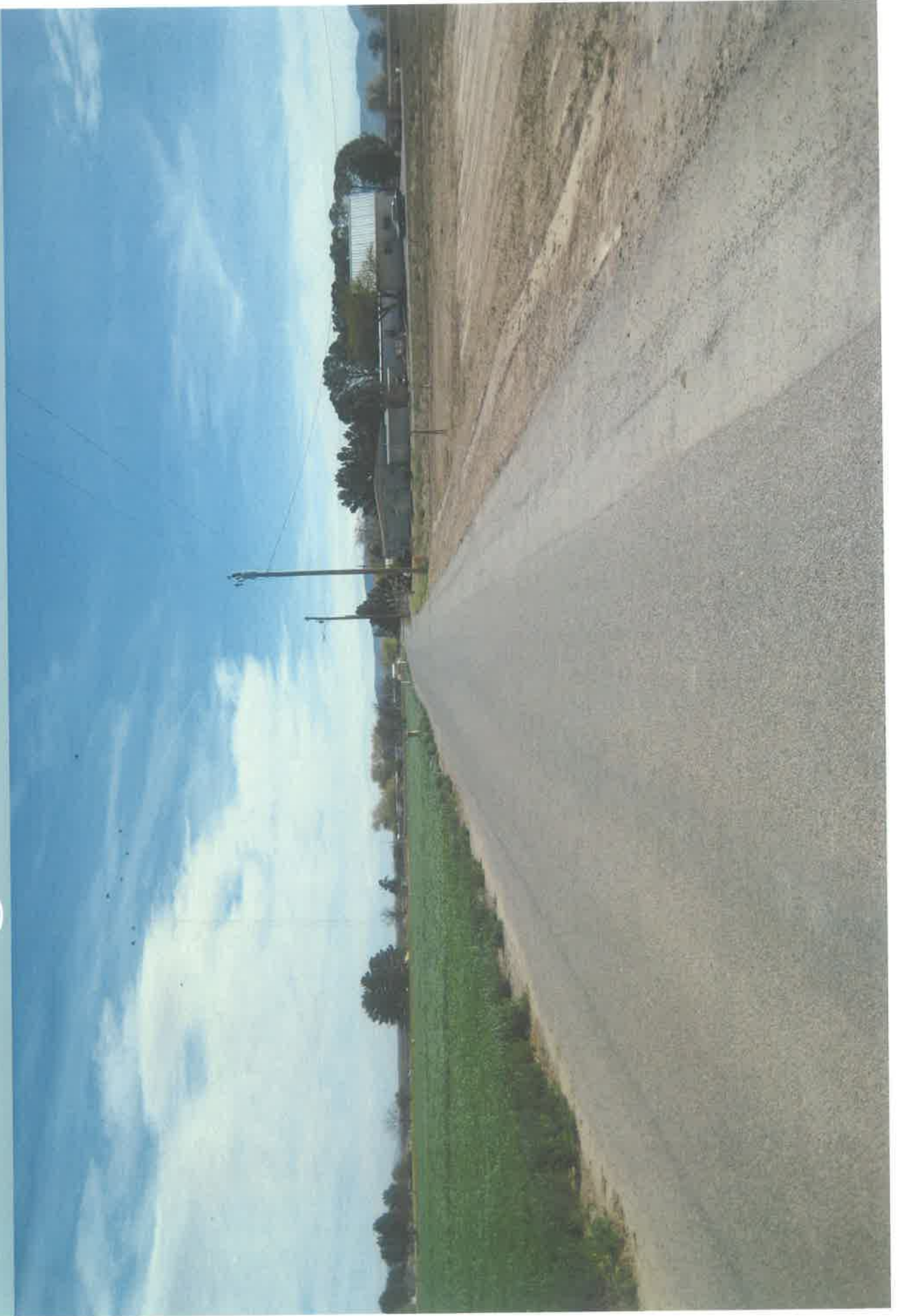


# Proposed Location





# Looking East on W. Provencio



# Looking West on W. Provençio





# Staff Analysis

- The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Special Use Permit.
- The decision of the Planning and Zoning Commission can be appealed by an aggrieved person or party to the Board of County Commissioners.

**APPLICABLE PLANS, POLICIES, AND CRITERIA FOR APPROVAL**

**Ordinance No.287-2016, Unified Development Code**

§ 1.4.3 Duties of the Planning and Zoning Commission: b. Receive, hear and make final determinations on applications for Special Use Permits.

§ 2.4.1 General Provisions and Procedures

§ 2.4.2 Application Procedure

§2.4.3 Notice Procedure for Special Use Permits

§ 2.4.5 Approval Procedures and Conditions

## § 2.4.4 Decisional Criteria

- a) Potential traffic flows and impacts.
- b) Need for new commercial or residential activity.
- c) Potential water and sewer needs.
- d) Existing infrastructure capacities and the ability of existing systems to accommodate new development.
- e) Environmentally sensitive areas in the vicinity, areas of historical significance, or areas that contain endangered or rare species of animal and plant life;
- d) Existing infrastructure capacities and the ability of existing systems to accommodate new development;
- e) Environmentally sensitive areas in the vicinity, areas of historical significance, or areas that contain endangered or rare species of animal and plant life;
- f) The impact of a proposed SUP on surroundings properties

## **PLAN 2040**

The SUP conforms to the following elements of the Plan 2040:

- Livability Principle 2: Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets.
- Livability Principle 5: Promotes tourism assets, including the Camino Real and other regional attractions.
- Look for opportunities to support innovative agricultural opportunities, particularly local, commercial agriculture.
- Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small-Scale Businesses Including Agriculture.
- The SUP is located within the O2 Sector Plan, defined as; Working lands and small communities. It aligns itself with the Continuum of Intensity T3 (Neighborhood Edge) Zone, with low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

## **EL CAMINO REAL CORRIDOR ENHANCEMENT PLAN**

- The SUP compliments the El Camino Real Corridor Enhancement Plan as it promotes Culinary Tourism and Agritourism as it proposes to leverage the abundant agriculture along the corridor to increase the consumption of locally produced food and wine.

The Planning and Zoning Commission being duly appointed shall receive, hear and make final determination on this Special Use Permit.

The P&Z can approve the SUP.

The P&Z can approve the SUP with conditions.

The P&Z can deny the SUP.

The decision of the Planning and Zoning Commission can be appealed by an aggrieved person or party to the Board of County Commissioners.

## STAFF RECOMMENDATION:

Staff recommends Approval of Case # SU17-001 as it meets the applicable sections of the Doña Ana County Ordinance No. 287-2016 of the Unified Development Code, conforms to elements of Plan 2040 and compliments the El Camino Real Corridor Enhancement Plan, based on the following findings:

## FINDINGS:

1. The request of this application is consistent with the requirements of the § 2.4.1 General Provisions and Procedures of the UDC, as the applicant optioned to proceed directly to the P&Z for a public hearing.
2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County.
3. The Doña Ana County Planning & Zoning Commission has jurisdiction to review this application Pursuant to § 1.4.3 Planning and Zoning Commission: Receive, hear and make final determinations on applications for Variances and Special Use Permits as prescribed by, and subject to, the procedures established in the UDC.
4. The notice requirements have been met as prescribed in §2.4.3 Notice Procedure for Special Use Permits the UDC.
5. The Site Plan meets the requirements of § 2.8.2 Detailed Site Plan Requirements of the UDC.

6. The Special Use Permit meets the § 2.4.4 Decisional Criteria for Special Use Permits of the UDC and is consistent with the health, safety, and general welfare of the residents of the County.
7. The SUP compliments the El Camino Real Corridor Enhancement Plan as it promotes Culinary Tourism and Agritourism as it proposes to leverage the abundant agriculture along the corridor to increase the consumption of locally produces food and wine.
8. The SUP conforms to the following elements of the Plan 2040:
  - a. Livability Principle 2: Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets.
  - b. Livability Principle 5: Promotes tourism assets, including the Camino Real and other regional attractions.
  - c. Look for opportunities to support innovative agricultural opportunities, particularly local, commercial agriculture.
  - d. Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small-Scale Businesses Including Agriculture.
  - e. The SUP is located within the O2 Sector Plan, defined as; Working lands and small communities. It aligns its self with the Continuum of Intensity T3 (Neighborhood Edge) Zone, consisting of low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

# ATTACHMENT 5

## MINUTES OF THE DOÑA ANA COUNTY PLANNING AND ZONING COMMISSION

February 09, 2017

### CALL TO ORDER

08:58:08

Chairman Westmoreland called the Regular Meeting of the Planning and Zoning Commission to order at 8:58 a.m., Thursday, February 09, 2017 in the County Commissioners Chambers, Doña Ana County Government Center, 845 N. Motel Blvd., Las Cruces, New Mexico.

### 1. ROLL CALL

08:58:29

Led by: Jannette Kresser, Recording Secretary

Mel Acosta	Absent
Bob Czerniak	Here
Maryann Galindo	Here
Bill Zarges	Here
Greg Daviet	Here
John Townsend	Here
Brent Westmoreland	Here

### 2. APPROVAL OR CHANGES TO THE AGENDA

08:58:57

Move to approve the agenda as presented.

Motion: Bill Zarges

Second: Greg Daviet

The motion was passed by a vote of "ayes" from all Commissioners present.

### 3. APPROVAL OF MINUTES

08:59:13

None

### 4. Old Business

08:59:13

None

### 5. New Business

08:59:16

- a. **Case # SUP17-001:** Submitted by Dawn Oakley, a non-residential application to construct and operate a 1,500 sq. ft. building for a winery/tasting room. The 4.14 acre parcel is located on



307 W. Provencio Road, in Chamberino, NM. It is within Township 26S, Range 3E, Section 18, recorded in the Office of the Doña Ana County Clerk under Instrument #1022157 and can be further identified by Parcel No. 17-02611.

Luis Marmolejo presented the case and mentioned receiving a letter and email in opposition of the project.

Commissioner Czerniak stated that he was a member of the NM Wine and Vine Society along with the Oakley's but would be objective with his decision.

Dawn and Brian Oakley, applicants, presented their case.

**Proponents:**

Dave Fischer, Sombra Antiqua Winery  
Felipe Gonzales, Treasurer for NM Vine and Wine Society  
Dale Ellis, President for NM Vine and Wine Society  
Jerry Grandel, Owner of Spotted Dog Brewery  
Theresa Fischer, Sombra Antiqua Winery

09:55:23

Chair Westmoreland recessed the meeting at 09:55 a.m. for five (5) minute break. The Meeting reconvened at 10:01.

**Opponents:**

Lorraine McCloughan, read a letter of opposition on behalf of the neighbors.

10:05:07

Move to approve Special Use Permit SUP17-001 for the construction and operation of a winery and tasting room.

Motion: Greg Daviet

Second: John Townsend

Greg Daviet: When reviewing the case I had similar considerations as I had previously when I reviewed this case. The first consideration I have is whether or not the application is legal. Is this a permitted use of property in this location and in this zone? Under article 5 of the Unified Development Code (UDC), I find that it is legal, it is a permitted use per Table 5.1, The Land Use & Classification Matrix, although it does require a Special Use Permit and therefore a hearing to consider potential impacts. With regards to our decisional criteria for Special Use Permits: In consideration of potential traffic flows and impacts, I find that it does not create a detrimental increase to the traffic flow and impacts. We have written testimony from surrounding land users that this road is already highly trafficked by other uses in this area. Therefore, I do not see it being an unused road that we are suddenly adding considerable amounts of traffic to. We have testimony from Doña Ana County Engineering that the Traffic Impact Analysis does not indicate or warrant additional

improvements to the road. That leaves us with the consideration of the very broad health, safety, and welfare. We have received a significant amount of written testimony, petitions, that the application is not desired by many of the residents in the area. However, the desire of a community not to allow a specific use on a property is insufficient to deny the property rights of the individual who owns that property. Does this impact the safety, health and general welfare of the residents of this community in a way that is unique to this location that is somehow different than if this business was in any other location of similar circumstances? Based on testimony provided today, I do not find that there are safety, health, or general welfare impacts that are unique to this location that would warrant depriving the owners of their rights of the use of this property.

Bob Czerniak	Yes
Maryann Galindo	Yes
Bill Zarges	Yes
Greg Daviet	Yes
John Townsend	Yes
Brent Westmoreland	Yes

By unanimous vote of those present, Case Number SUP17-001 has passed.

**6. Committee Reports**

**10:09:39**

None.

**7. Administrative Approvals**

**10:09:45**

January

Albert Casillas: We have had six (6) new home applications, one (1) pump station for Doña Ana Mutual which is the one commercial permit. Total permits including single family dwellings, additions, mobile homes, mechanical & electrical – two hundred seventy one (271) for the month of January with \$33,815 in permit fees.

**8. Staff Input**

Albert Casillas: Announcements – There will be the first round of County initiated zone changes that will be coming up before the P&Z. We are planning on having them on March 23<sup>rd</sup>. We will be giving out the notifications and the legal summary must be in the Sun News no later than February 26<sup>th</sup>. March 23<sup>rd</sup> will be the first round of zone changes.

Brent Westmoreland: How many do we have?

Albert Casillas: So far we have seven (7).

Brent Westmoreland: Are all of these corrective type zone issues as a result of the UDC?

Albert Casillas: That is correct.

Brent Westmoreland: For the benefit of the body, this is our first round of zone mishaps if you will, from transitioning from the old code to the UDC. They should be fairly self-explanatory and rather simple to get through.

Albert Casillas: The Operations Manual, we are on the final edits of that document. Hopefully we should have it finalized by tomorrow. It will be posted on the County website and we will need to touch base with the consultant to figure out a date for a training session. March 9<sup>th</sup> IT will be upgrading the visual and audio in this room, if we can't get that changed then we might need to meet in one of the multi-purpose rooms. Mr. Steve Meadows will be presenting a case on that date.

Luis Marmolejo: We also have a Preliminary Plat Approval on March 9<sup>th</sup> for the zone change that occurred for Tierra Del Sol.

Bob Czerniak: On that training session that you mentioned, is that for County staff or are you going to invite developers?

Albert Casillas: It will be open to the public.

Albert Casillas: Introduced Jannette Kresser, as the new Secretary for Community Development.

Luis Marmolejo: As you are aware, the ETZ is no longer with us. We did receive approximately twenty (20) subdivisions that were active before the ETZ was eliminated. Some of those will be coming before this Commission. We will literally need to start those cases over again. Some will shift over to what we call a Claim of Exemption, others are Administrative Approvals, there is a fairly large one that will be coming in front of the Commission that is over 200 lots.

## **9. Commission Input**

**10:15:24**

Greg Daviet: Questions about the CD. IS this actually an electronic copy of our entire handbook?

Jannette Kresser: I was not the one who prepared the books, however I can find out and let you know.

Greg Daviet: If it is, thank you. It would be nice not to have to carry this entire, monstrous book around. Also, I will not be present at the next regular scheduled meeting on February 23<sup>rd</sup>, 2017. I can attend telephonically if necessary.

10. **ADJOURNMENT**

**10:16:59**

Brent Westmoreland: We are in adjournment till the 9<sup>th</sup> of March.

**CORRECTION: THERE WILL BE A MEETING HELD ON FEBRUARY 23<sup>rd</sup>, 2017.**

Chairman Westmoreland adjourned the meeting at 10:16 a.m.

---

Officer: Planning and Zoning Commission

# ATTACHMENT 6

## FROM THE DOÑA ANA COUNTY PLANNING AND ZONING COMMISSION

### AN ORDER APPROVING A SPECIAL USE PERMIT FOR A WINERY AND TASTING ROOM

This matter, Case # **SUP17-001** submitted by Dawn Oakley, was heard before the Planning and Zoning Commission ("P&Z") on February 9, 2017. The applicant is proposing a Special Use Permit to construct a 1,500 sq.ft. building for a winery and tasting room on a 4.14 acre parcel located at 307 W. Provencio Road, in Chamberino, NM. It is within Township 26S, Range 3E, Section 18, recorded in the Office of the Doña Ana County Clerk on August 03, 2010, under Instrument # 1022157, and can be further identified by Parcel # 17-02611.

On a motion to Approve Case # **SUP17-001**, the P&Z voted (6-0-0), six (6) in favor and zero against, thereby **Approving** Case # **SUP17-001** with no conditions. The Commission hereby finds that:

1. The request of this application is consistent with the requirements of the § 2.4.1 General Provisions and Procedures of the Unified Development Code, as the applicant optioned to proceed directly to the P&Z for a public hearing.
2. The property is outside of any incorporated municipal zoning authority and is within Doña Ana County.
3. The Doña Ana County Planning & Zoning Commission has jurisdiction to review this application Pursuant to § 1.4.3 Planning and Zoning Commission: Receive, hear and make final determinations on applications for Variances and Special Use Permits as prescribed by, and subject to, the procedures established in the UDC.
4. The notice requirements have been met as prescribed in §2.4.3 Notice Procedure for Special Use Permits.
5. The Site Plan meets the requirements of §2.8.2 Detailed Site Plan Requirements.
6. The Special Use Permit meets §2.4.4 Decisional Criteria for Special Use Permits and is consistent with the health, safety, and general welfare of the residents of the County.
7. The SUP compliments the El Camino Real Corridor Enhancement Plan as it promotes Culinary Tourism and Agritourism as it proposes to leverage the abundant agriculture along the corridor to increase the consumption of locally produces food and wine.
8. The SUP conforms to the following elements of the Plan 2040, the Comprehensive Plan of Dona Ana County:
  - a. Livability Principle 2: Value and protect natural resources and agricultural lands. Support local farmers markets and craft markets.
  - b. Livability Principle 5: Promotes tourism assets, including the Camino Real and other regional attractions.
  - c. Look for opportunities to support innovative agricultural opportunities, particularly local, commercial agriculture.
  - d. Strategy 2: Broaden Economic Opportunity, Goal 6.7 Support Regional Small-Scale Businesses Including Agriculture.

- e. The SUP is located within the O2 Sector Plan, defined as working lands and small communities. It aligns itself with the Continuum of Intensity T3 (Neighborhood Edge) Zone, consisting of low density single-family residential dwelling areas, with some mix of uses, home occupations and outbuildings.

NOW, THEREFORE BE IT ORDERED, on February 9, 2017, by a vote of 6-0-0, that Case # SUP17-001 is hereby **Approved**.

**THE DOÑA ANA COUNTY  
PLANNING AND ZONING COMMISSION**

*[Signature]*  
Brent Westmoreland, Chairman Yes

**Absent**  
Mel Acosta, Vice Chairman Absent

*[Signature]*  
Robert J. Czermak, Secretary Yes

*[Signature]*  
Gregory T. Daviet, Member Yes

**Unavailable**  
Maryann Galindo, Member Yes

*[Signature]*  
Bill Zargas, Member Yes

*[Signature]*  
John S. Townsend, Member Yes

ATTEST: 2/27/17  
A True Copy of this Original  
Instrument Filed in Compliance with  
the Laws of the State of New Mexico.  
Scott Krahlng  
Doña Ana County Clerk and Ex-Officio  
Clerk of the Probate Court.  
By: *[Signature]* Deputy



COUNTY OF DONA ANA ) ORDER/DAC  
STATE OF NEW MEXICO ) ss PAGES: 2

I Hereby Certify That This Instrument Was Filed for  
Record On FEB 27, 2017 04:24:52 PM  
And Was Duly Recorded as Instrument # 1704344  
Of The Records Of Dona Ana County



Witness My Hand And Seal Of Office,  
Scott Krahlng, County Clerk, Dona Ana, NM

Deputy Laiza Rodriguez

25.62