

COMMERCIAL WATER USE AND WASTEWATER AGREEMENT

① _____

This Commercial Water Use Agreement (Agreement) is entered into this ____ day of ②_____, _____, by Doña Ana Mutual Domestic Water Consumers Association (Association), whose address is 5535 Ledesma Drive, Las Cruces, New Mexico 88007 (P.O. Box 866, Doña Ana, New Mexico 88032), and ③_____, (“Business Member”), whose business address is ④_____, and whose mailing address is ⑤_____, collectively referred to as the Parties.

RECITALS

The following recitals constitute matters that are accepted by both Parties and are incorporated herein.

A. The Association is a political subdivision of the State of New Mexico which provides potable water service to the Community of Doña Ana and nearby areas.

B. The Association has adequate water rights in order to provide commercial water service to Business Member within the Association’s service area.

C. Business Member needs an adequate, reliable water supply for its business.

D. The commercial water use by Business Member is located within the Association’s service area.

AGREEMENT

NOW, THEREFORE, in exchange for the mutual covenants, agreements, and considerations described herein, the Parties agree as follows:

1. The Association agrees to sell water to Business Member for commercial purposes from the Association’s existing pipeline and distribution system within the Association’s service area.
2. The Association agrees to provide commercial wastewater service for Business Member from the Association’s existing wastewater collection system within the Association’s service area.
3. Business Member will pay for water at rates set forth in the Association’s current water rate chart, attached hereto as Exhibit A. Business Member understands that the Association utilizes a progressive rate structure that encourages conservation of water.

4. Business Member will pay for wastewater service at the rates set by current Board of Directors Policy or Resolution.
5. Business Member understands that the rates for water and/or wastewater service may change during the course of this Agreement, but only if new rates are adopted by the Association Board of Directors and made applicable to all Association customers.
6. The Association has both sufficient water rights and system capability to deliver and supply commercial amounts of water to Business Member. The Association is able to connect Business Member to the existing wastewater collection system.
7. The Association will install, operate and read a meter or meters to accurately measure the amount of water delivered to the facilities of Business Member. Business Member will pay the cost of acquiring and installing this meter or meters, under the standard policies and procedures of the Association. Measurements at this meter/these meters will be used as the basis for monthly billings to Business Member. The Association will also install, at Business Member's expense, a cutoff valve near the meter and a back flow prevention assembly. The Association shall have the exclusive right to use the meter, cutoff valve, and back flow assembly. Once a year, the back flow assembly will be inspected and certified at Business Member's expense and the results furnished by Business Member to the Association. Should the assembly not pass certification and inspection, the Association may terminate this Agreement immediately and shut off water to Business Member in order to prevent any damage to the Association system. Wastewater service may also be terminated by the Association. Business Member shall install a shutoff valve on the water line within Business Member's property.
8. Business Member will also install, at its expense, the following facilities for wastewater service. (Add list here) Additional facilities may be required by the Association under the circumstances of the service requested.
9. Business Member agrees to grant to the Association, its successors and assigns, a perpetual easement in, over, under, and upon the above described land, with the right to erect, construct, install, and lay, and thereafter use, operate, inspect, repair, maintain, replace, and remove water and wastewater pipelines, together with the right to utilize adjoining land belonging to Business Member for the purpose of ingress to and egress from Business Member's service location.

10. Business Member shall install and maintain at its own expense a water service line which shall begin at the meter and extend to the place of use. The service line shall connect with the distribution system of the Association at the nearest place of desired use by the water user, provided the Association has determined in advance that the system is of sufficient capacity to permit delivery of water at that point.
11. The Association will provide water and wastewater service to Business Member's property located at ④ _____ . The Association shall have final authority in any question of location of any water service line connection to its distribution system and the location of any wastewater line connection to its collection system, shall determine the allocation of water to Business Member in the event of a water shortage, may shut off water to a water user who allows a connection or extension to be made to his service line for the purpose of supplying water to another user and may terminate wastewater service if unauthorized connections are made to any wastewater line.
12. The water user agrees to comply with and be bound by the Articles, Bylaws, Policies and Rules and/or Regulations of the Association, now in force, or as hereafter duly and legally supplemented, amended or changed.
13. The Association will mail bills monthly to Business Member's mailing address. Business Member will pay bills delivered or mailed to Business Member by the Association in accordance with the billing, collection and penalty policies of the Association.
14. Business Member shall pay the membership, connection, impact and water right fees that apply to all other Association members or to new connections. The water right fee initially charged to Business Member will be \$1,750.00, which is the standard charge for a residential or small commercial user with an anticipated annual water use of half an acre foot (163,000 gallons) or less. This is based upon Business Member's estimate of ⑥ _____ gallons per month expected use. The Association will monitor Business Member's actual water use and if it exceeds one acre foot (325,851 gallons) in any given year, Business Member will be billed \$1,750.00 for each half acre increment in maximum water use over the initial one acre foot allowance. Each incremental (half acre foot) charge will be a one-time billing which allows the Association to acquire permanent water rights with which to serve Business Member a continuous water supply. For example, if in a future year Business Member uses two acre feet of water in a given calendar year (651,702 gallons), Business Member will be required to pay an additional \$3,500.00 water rights

fee; should water use by Business Member in any future year not exceed 814,627 gallons (just under 2 ½ acre feet), it will not be charged additional water rights fees.

15. Business Member will have one membership in the Association, regardless of the number of water and wastewater service connections. Membership responsibilities and benefits are set forth in the Association's Bylaws and Articles of Association.

16. Business Member shall pay the wastewater connection and impact fees that apply to all other Association members or to new wastewater connections:

City of Las Cruces impact fee	\$ _____
Association fee	\$ _____
Total:	\$ _____

17. If Business Member is a new water and wastewater customer, Business Member will also place a \$⑦_____ deposit with the Association. In the event of an unpaid balance on Business Member's account, the deposit will be applied. Should the account be fully paid after the termination of both water and wastewater services, the deposit, or any balance, will be refunded by the Association within a reasonable time after reconciliation of all accounts is completed.

18. In the event the total water supply shall be insufficient to meet all of the needs of the Members and water users, or in the event there is a shortage of water, the Association may prorate the water available among the various Members and water users on such basis as deemed equitable by the Board of Directors, and may also prescribe a schedule of conservation measures and require adherence thereto; provided that, if at any time the total water supply shall be insufficient to meet all the needs of all the Members and water users, the Association must first satisfy all the needs of all water users for domestic purposes before supplying any water for commercial purposes.

19. Business Member agrees that no other present or future source of water will be connected to any water lines served by the Association's water lines and Business Member will disconnect from his present water supply prior to connecting to and switching to the Association's system.

20. The Association encourages wise use of and conservation of water. Business

Member agrees not to waste water and to install and utilize water saving devices.

21. This Agreement shall be for an indefinite term. Either party may terminate this Agreement upon ten days' written notice to the other party. Termination does not affect any obligations by either party incurred prior to the time of termination.
22. Business Member shall hold harmless and indemnify the Association against any and all injury, loss, or damage, including cost of defense (including but not limited to court costs and attorney fees), arising out of the negligent acts, errors, or omissions of Business Member under this contract. The Association is immune from almost all negligence and related damage claims, under the provisions of the New Mexico Tort Claims Act.
23. Any notice under this Agreement shall be in writing and sent by facsimile and by certified mail to the following locations:

Association: Doña Ana Mutual Domestic
Water Consumers Association
P.O. Box 866
Doña Ana, New Mexico 88032
Fax: (575) 526-9306

Business Member: ③ _____
⑤ _____

24. All parties represent and warrant they are authorized to execute the Agreement on behalf of the respective parties hereto and enter into this Agreement freely and voluntarily.
25. This Agreement may be assigned with the prior written consent of all Parties.
26. Should legal action be required to enforce the terms of this Agreement or to collect any amount due as a result of service provided, Business member agrees to pay to the Association its reasonable attorney fees and costs incurred in such enforcement or collection.

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement on the day and year noted above.

Doña Ana Mutual Domestic
Water Consumers Association

By: _____
President, Board of Directors

Date: _____

Attest:

By: _____
Secretary, Board of Directors

By: _____

Its: _____ Date: _____

Index for DAMDWCA
Commercial Water Use and Wastewater Agreement

- ① Name of other party to contract
 - Use short form (Last name or short business/corporate name)
- ② Month and year agreement is entered into
- ③ Name of person or business entering into Agreement with DAMDWCA
 - If individual, full name
 - If business, need name of business owner
 - If business is owned by corporation, need full name of corporation
 - Many businesses use a trade name that is not the name of the actual owner, so we must use the name of the owner
- ④ Address where the business is located (within DAMDWCA service area)
- ⑤ Mailing address of business (frequently different from the business location)
- ⑥ Gallons of water business expects to use per month, on average
- ⑦ Amount of deposit required of new customer