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POPULATION 14,000

CITY COUNCIL MEETING

November 12, 2013

4:00 P.M. CITY COUNCIL WORKSHOP

6:00 P.M. CITY COUNCIL MEETING

AGENDA

Call to Order

1. Consent Agenda

- A. Minutes - City Council Special Meeting 9/27/13
- B. Minutes – City Council Workshop and Regular Meeting 10/14/13
- C. Minutes - Planning and Zoning Commission Meeting 10/21/13
 - a. Recommendation to table item concerning an Ordinance Amendment: Title 12, Chapter 7- Additional Height, Area and Use Regulations, regarding fence heights.
 - b. Recommendation to table item concerning an Ordinance Amendment: Title 12, Chapter 16-“Fences and Walls”.
 - c. Recommendation to approve the request for a Summary Subdivision at 3081 E. Cedar St. *(To be presented as public hearing later this meeting)*
- D. Minutes - Tourism Development Committee 04/18/13
 - a. Recommendation to go forward with the \$10,000 for the regional advertisement co-op grant.
 - b. Recommendation to further develop option one of the Advertising and Web Maintenance itinerary by Wilson Binkley.
 - c. Recommendation to reduce the amount of money given to the non-profits from \$20,000 to \$15, 000.
 - d. Recommendation to appoint Stephanie Ward from alternate member to board member.
- E. Minutes – Airport Commission Meeting 10/08/13
 - a. Recommendation that the Airport Commission be consulted before any final decision is made as to the location of the Medevac facility.
- F. Minutes – Marshall Memorial Library Board Meeting 10/29/13
 - a. Recommendation to present a plaque to each family involved in the Trust Funds
 - b. Recommendation to conduct the December meeting on December 3rd.
- G. Minutes - Parks Commission Meeting *(no meeting scheduled)*
- H. Out-of-State Travel Request for Richard McInturff to Travel to Tempe, Arizona to attend the American Public Gas Association (APGA) 2014 Gas Supply Conference on January 28, 2014.

2. Public Forum

3. Approval of City of Deming 2014 Holiday Schedule
4. Public Hearing to Consider the Adoption of an Ordinance to grant a Gas Franchise Agreement
5. Quasi-Judicial Public Hearing to Consider the Request for a Summary Subdivision of Land Location at 3801 E. Cedar Street.
6. Quasi-Judicial Public Hearing to Consider the Request for a Special Use Permit for a Telecommunications Tower to be Located at 330 N. Gold
7. Bids:
 - a. RFP #14-07: Pine St./Spruce St. Intersection Realignment
 - b. RFP #14-08: Services for Automated Statement Processing
8. Closed Session: To discuss Law Enforcement Pending Litigation pursuant to NMSA 1978, Section 10-15-1(H)(7) of the Open Meetings Act
9. Adjourn Meeting

The next regular City Council Workshop and Meeting are scheduled for 4:00 & 6:00 p.m., December 9, 2013.

CITY COUNCIL WORKSHOP MINUTES November 12, 2013

Council Present: Linda Franklin, Mayor Pro Tem

Council Absent: Andres Z. Silva, Mayor
William Shattuck, Councilor

Joe "Butter Milo, Councilor
David Sanchez, Councilor

Staff Present: Richard F. McInturff, City Administrator
Wesley Hooper, Community Svcs. Dir.
Brandon Gigante, Police Chief
Lloyd Valentine, Financial Svcs. Mgr.

Edgar Davalos, Fire Chief
Gina Gentile, City Planner II
Vicki Engle, HR Specialist
Jim Massengill, Public Works Director

Recording Secretary: Lila Jasso, Administrative Secretary/Assistant Deputy Clerk

Mayor Pro Tem Franklin and staff members of the City of Deming, New Mexico held a workshop on November 12, 2013 at 4:00 p.m. to discuss items of the City Council Agenda in preparation for the regularly scheduled meeting, held at 6:00 p.m. the same day. The following items of the agenda were discussed:

Consent Agenda: Mr. McInturff suggested that item C. Minutes-Planning & Zoning Commission Meeting, items a. & b. should be tabled due to some confusion by the commission. Item c.-recommendation for a Summary Subdivision will be presented later in the meeting as a Quasi-Judicial Public Hearing.

Mr. McInturff stated that Item D. Minutes-Tourism Development Committee of 04/18/13 have taken too long to come before Council for approval. He would like minutes brought to Council by the next month after any TDC meeting. He questioned the recommendation to the TDC Board and recommended that item d. be pulled for discussion.

Mr. McInturff discussed item E. Minutes-Airport Commission Meeting 10/08/13, item a. He stated that the motion should have not been made because the agreement with the Medevac facility provider had already been executed. He recommended that the recommendation not be approved.

Mr. McInturff mentioned that in item F. Minutes-Marshall Memorial Library Board Meeting 10/29/13, only one of the two recommendations was noted on the Consent Agenda. The seconded recommendation, to present a plaque to each family involved in the Trust funds, should be added to the Consent Agenda.

Mr. McInturff stated that the Out-of State travel request for him to attend the American Public Gas Association (APGA) 2014 Gas Supply Conference in Tempe, Arizona on January 28, 2014, is to meet with the El Paso Natural Gas representative, John Gregg to discuss natural gas regulations. Mayor Pro Tem Franklin asked who would be handling the gas

agreements once he retires. He stated that Mr. Valentine would be replacing him and that once he retires Mr. Valentine would be going.

Public Forum: Mr. McInturff reminded Mayor Pro Tem Franklin that anything that is already on the agenda would not be allowed for discussion during the public forum. Mayor Pro Tem Franklin asked if that included closed session items. Mr. McInturff confirmed that it does not include closed session items.

Approval of City of Deming 2014 Holiday Schedule: Mr. McInturff stated that this schedule follows last year's format with eleven holidays being proposed for approval.

Public Hearing to Consider the Adoption of an Ordinance to Grant a Gas Franchise Agreement: Mr. Massengill will present this item to Mayor and Council. He stated that there is a change to the maps and he will hand it out at the meeting, later this evening. He stated that the agreement is a 10 year agreement that allows NM Gas Company to service approximately 200 customers within the City Limits. Mr. McInturff pointed out the areas that NM Gas Company will be servicing. Mr. Massengill stated that the City is working on taking the 2 customers on the east side of town, which he anticipates happening within the next 6 to 8 months.

Mr. McInturff referenced an edit in Section III to delete the last sentence which is already included in Section I.

Public Hearing to Consider the Request for a Summary Subdivision of Land Located at 3801 E. Cedar Street: Mr. McInturff stated that this case should be conducted as a Quasi-Judicial Public Hearing and that the agenda should reference that.

Public Hearing to Consider Granting a Special Use Permit for a Telecommunications Tower to be Located at 330 N. Gold: Mr. McInturff stated that this case should be presented as a Quasi-Judicial Public Hearing and the agenda should reference that, as well.

Bids:

- a. **Bid #14-07-Pine St./Spruce St. Intersection Realignment:** Mr. Massengill will present this item to Mayor and Council. Mr. Massengill stated that this realignment is at the intersection of Pine and Spruce Streets near the Visitor's Center. He stated that the base bid will get the actual realignment done and then the project will be suspended to conduct a traffic study to see if the intersection warrants a traffic signal. Mr. McInturff stated that the project bid is about \$100,000 out of budget. Mr. Massengill added that it would be if the traffic signal is warranted. Mr. Massengill stated that he would like to award both, the base bid and additive alternative #1 in order to lock the contractor in at the proposed amount.

Mr. Massengill stated that the base bid would fall within the time frame of this year's budget. However, if warranted, the additive alternative #1 would fall within next year's budget.

- b. **Bid #14-08- Services for Automated Statement Processing:** Mr. Valentine will present this item to Mayor and Council.

Mayor Pro Tem Franklin asked Mr. Valentine who currently provides this service for the City. Mr. Valentine replied that the City does it. He stated that there were four responses to the RFP and that SPC-Information Outsource is the most cost effective.

Mayor Pro Tem Franklin stated thanked Chiefs Gigante and Davalos for monthly reports and all they do in the community.

Mayor Pro Tem Franklin also thanked Ms. Gentile, City Planner for her more detailed monthly report.

Adjourn Meeting: With no further business to discuss, the workshop was adjourned at 4:30 p.m.



CITY OF DEMING, NEW MEXICO

A handwritten signature in blue ink, reading "Linda E. Franklin", is written over a horizontal line.

Linda E. Franklin, Mayor Pro Tem

ATTEST:

A handwritten signature in blue ink, reading "Richard F. McInturff", is written over a horizontal line.

Richard F. McInturff, Clerk

CITY COUNCIL MEETING MINUTES

November 12, 2013

Council Present: Linda Franklin, Mayor Pro Tem Joe "Butter" Milo, Councilor
David Sanchez, Councilor

Council Absent: Andres Z. Silva, Mayor Bill Shattuck, Councilor

Staff Present: Richard F. McInturff, City Administrator Aaron Sera, Asst. City Administrator
Wesley Hooper, Community Svcs. Dir. Gina Gentile, City Planner
Jim Massengill, Public Works Director Edgar Davalos, Fire Chief
Lloyd Valentine, Financial Svc. Mgr. Vicki Engle, HR Specialist
Jim Foy, Assoc. City Attorney

Recording Secretary: Lila Jasso, Administrative Secretary/Asst. Deputy Clerk

Mayor Pro Tem Franklin called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited.

1. Consent Agenda

Mr. McInturff recommended that Item C. Minutes-Planning and Zoning Commission Meeting 10/21/13, sub-items a. and b.; be tabled. Item c. will be presented later in the meeting as a public hearing and will be decided upon by Council at that time.

Item D. Minutes-Tourism Development Committee 04/18/13-sub item d., recommendation to appoint Stephanie Ward from alternate member to board member. Mr. McInturff stated that after this meeting, it was discovered that this appointment would be in violation of the State Statute. The composition of the TDC Committee is two lodgers tax paying members, two tourism related industry members, and one member at-large. The nomination of Ms. Ward would put the committee at four lodger's tax paying members. Since this meeting, one of the committee members has resigned; putting the committee back in compliance, but now the committee is seeking two at-large members. Mr. McInturff stated that Item D. (d)-should not be approved to stay in compliance.

Mr. McInturff referred to Item E. Minutes-Airport Commission Meeting 10/08/13-sub item a. recommendation that the Airport Commission be consulted before any final decision is made as to the location of the Medevac facility. Mr. McInturff referenced the same minutes where it is stated that the agreement has been executed. Therefore, he recommends not approving the recommendation in item a.

Mr. McInturff next referred to Item F. Minutes-Marshall Memorial Library Board Meeting 10/29/13 in which a second recommendation to present a plaque to each family involved in the bequest to the Library Trust Funds should be added.

Mayor Pro Tem Franklin entertained a motion to approve items A., B., G. and H. of the Consent agenda.

Councilor Milo motioned to approve the items of the Consent Agenda previously mentioned by Mayor Pro Tem Franklin. Councilor Sanchez seconded the motion, motion carried unanimously.

Mayor Pro Tem Franklin entertained a motion for Item C. (a) and (b).

Councilor Milo motioned to table Items C. (a) and (b) of the Consent Agenda. Councilor Sanchez seconded the motion, motion carried unanimously.

Mayor Pro Tem Franklin entertained a motion for Item D. (d).

Councilor Sanchez motioned not to approve the recommendation to appoint Stephanie Ward as a board member to the TDC. Councilor Milo seconded the motion, motion carried unanimously.

Mayor Pro Tem Franklin entertained a motion for Item E. (a).

Councilor Sanchez motioned not to approve the recommendation for the Airport Commission to consult on the Medevac facility location. Councilor Milo seconded the motion, motion carried unanimously.

Mayor Pro Tem Franklin entertained a motion for Item F. (a) and (b).

Councilor Sanchez motioned to approve both recommendations (a) and (b) of the Marshall Memorial Library Board Meeting of 10/29/13. Councilor Milo seconded the motion, motion carried unanimously.

2. **Public Forum:** A public comment session was entertained.
3. **Approval of City of Deming 2014 Holiday Schedule:** Mr. McInturff presented this item to Council. He stated that it follows the state and federal guidelines and that the schedule proposes eleven holidays; same as last year.

Councilor Milo motioned that Council approve the City of Deming 2014 Holiday Schedule, as presented. Councilor Sanchez seconded the motion, motion carried unanimously.

4. **Public Hearing to Consider the Adoption of an Ordinance to Grant a Gas Franchise Agreement:** Mr. Massengill presented this item to Council. He referred to the updated gas franchise agreement and discussed some of the points for New Mexico Gas Company to operate in the City of Deming. He stated that the Franchise Agreement Ordinance has been in place for many years in which this ordinance would take effect May 12, 2013, when the previous ordinance expired. Mr. Massengill went on to explain that this new ordinance would be for a period of 10 years with an option of 5 years to negotiate the franchise fee. This ordinance would take place of Ordinance #972, which was in effect for 15 years and at 3% instead of 2%.

Councilor Milo asked if this would be an amendment to the existing ordinance. Mr. Massengill stated that this is a new ordinance, based on the previous ordinance. One of the main changes is that the new ordinance would be for a 10 year term instead of 15 years.

Mr. McInturff proposed an amendment to the ordinance in Sections III. In Section III, he suggested to strike the last sentence, "Whenever the word "Company" appears herein, it shall be construed as including its successors, assigns and lessees", because similar language already exists in Section I.

Mr. Massengill explained the areas within the City limits in which New Mexico Gas Company currently services. Mr. Massengill also stated that the new ordinance states that New Mexico Gas Company will pay the City each year an aggregate sum of three percent (3%) of the gross receipts collected due to the gas used by customers they serve within the incorporated City limits, as well.6

Mr. Massengill stated that in Section VI (a), it is stated that the Company shall, within thirty (30) days of acceptance of this ordinance, file in the office of the County Clerk of the County of Luna and the Municipal Clerk of the Municipality, a written statement of acceptance duly signed and acknowledged by the proper officer of the Company authorized to execute such acceptance.

Mr. Massengill stated that the appendices in the back include three maps of the areas that are serviced by New Mexico Gas Company. Mr. Massengill reiterated that the effective date of this ordinance will be May 12, 2013.

Mayor Pro Tem Franklin opened the floor for public comment.

Larry Caldwell, 711 N. Zinc, stated that he opposes the ordinance because the City collects so little from the franchise.

Councilor Sanchez motioned to approve the Ordinance to Grant a Gas Franchise Agreement with the amendments as presented; and to remove the last sentence in Section III, as presented. Councilor Milo seconded the motion, motion carried unanimously.

- 5. Quasi-Judicial Public Hearing to Consider the Request for an Alternate Summary Subdivision of Land Located at 3801 E. Cedar Street:** Mayor Pro Tem Franklin conducted a Quasi-Judicial Public Hearing to consider the request for a summary subdivision of land located at 3801 E. Cedar Street. Mayor Pro Tem Franklin confirmed that Council had no conflicts of interest; that the public notices were properly posted; and swore in all parties who would be giving testimony.

Ms. Gina Gentile, City Planner, presented this case to Mayor Pro Tem Franklin and Council. Ms. Gentile stated that the applicant, Dhawal Kholwadwala, (Holiday Inn Express at 3801 E. Cedar) is requesting a lot split, one acre from the 3 acre tract of land. The owner plans to sell the lot to a developer for a new restaurant. She stated that the proposed lot split will provide access to the hotel with two 24 foot access easements, with adequate parking being maintained for the hotel and ample area for future development of the restaurant. Ms. Gentile stated that the planning commission recommended approval of this case.

Mayor Pro Tem Franklin asked if the applicant or agent would like to make a statement. No one representing the applicant or agent was present.

Mayor Pro Tem Franklin asked if any affected parties would like to make a statement.

Ruth Ann Johnson, 3101 Laguna St., Deming, NM, stated that the map is a little confusing and should have been better labeled. Ms. Johnson stated that at the meeting in which the plat was submitted to build the Holiday Inn Express, the Council agreed that on the lot to the north of the Holiday Inn Express lot, there would have to allow for access to that lot. Ms. Johnson referenced the drawing provided and asked if that was a plat of the Holiday Inn Express. Mr. McInturff stated that it was probably a site plan. Councilor Sanchez also stated that the drawing was a little confusing and that he needed clarification, as well. Ms. Johnson's problem with this site map is that they own the lot to the north of the Holiday Inn Express and stated that Council recommended that they would have to allow for access to this lot, as per the decision by Council and the sales agreement. Mayor Pro Tem Franklin asked Ms. Johnson if, at this time, there is access to this lot. Ms. Johnson stated that she was not sure, she hadn't driven out there. Ms. Johnson wanted to make sure that the applicant recognizes that in the original contract, when they sold Holiday Inn Express the initial three acres that they had to leave access to the back. Mr. Foy asked if that was stated in the contract. Ms. Johnson said that it was. Mr. Foy then stated that if they don't comply, then she would have to address that matter with them. Ms. Johnson asked that she be informed when the Holiday Inn Express brings in their final plat. Mr. Foy confirmed that Ms. Johnson's main concern is that the 24 foot access way be allowed to the north lot she owns. She confirmed that was correct.

Mr. Foy advised Council to table this item and allow the applicant to present their case and get some assurances for Ms. Johnson.

Mayor Pro Tem Franklin then asked if there were any other persons who would like to speak.

Larry Caldwell, 711 N. Zinc, stated that Holiday Inn Express doesn't have a firm commitment and that they are asking for a lot split just for speculative purposes.

With no other comments, Mayor Pro Tem Franklin brought the case back up to Council and entertained a motion.

Councilor Sanchez motioned that Council table this summary subdivision of land request for the land located at 3801 E. Cedar Street. Councilor Milo seconded the motion, motion carried unanimously by a roll call vote.

ROLL CALL VOTE

Councilor Milo	Aye
Councilor Sanchez	Aye
Mayor Pro Tem Franklin	Aye

6. Quasi-Judicial Public Hearing to Consider the Request and Variance Request for a Special Use Permit for a Telecommunications Tower to be Located at 330 N. Gold: Mayor Pro Tem

Franklin conducted a Quasi-Judicial Public Hearing to consider a special use request and a variance request for Telecommunications Tower to be located at 330 N. Gold. Mayor Pro Tem Franklin confirmed that Council had no conflicts of interest; that the public notices were properly posted; and swore in all parties who would be giving testimony.

Gina Gentile, City Planner, stated that the subject property is located at 330 North Gold Ave. The subject property is zoned "C" Commercial; and Verizon is requesting a Special Use Permit to erect a 70 foot high telecommunications tower on a 30 ft. by 40 ft. portion of the above stated land for better coverage. Since the tower is 70' in height, a variance on the height would be required.

She also stated that a special use permit is required for a telecommunication tower in the "C" Commercial is 35 feet in height. In addition, 12-7-1C, details that radio towers may be erected to a height in accordance with existing or thereafter adopted provisions of this code. She went on to say that within chapter 7 of Title 12, there are no other height requirements for towers; therefore, the applicant is seeking a height variance on "C" Commercial of 70 feet.

Ms. Gentile stated that staff has no technical objection to this request.

Mr. McInturff noticed that this request has come from Verizon and yet there is a different person who owns the property. Mr. McInturff asked if that issue had been resolved with the property owner. Ms. Gentile stated she had received a copy of the lease agreement from the representative for Verizon Wireless, who is present this evening, in which the property owner had approved the location of this facility on their property. Mr. McInturff asked if the property owner was aware that the lessee is requesting this variance and special use permit on their property. Ms. Gentile stated that is her understanding. Mr. McInturff asked that Ms. Gentile obtain written confirmation from the property owner prior to filing any decision order.

Councilor Milo asked for clarification on the location of the tower and the proximity to the railroad tracks. Ms. Gentile briefly described the subject location and pointed it out on the map.

Mayor Pro Tem Franklin asked if the applicant would like to make a statement.

Ben Feldman, 1426 N. Marvin St. #101, Gilbert, Arizona 85233, stated that he was present to answer any questions Council may have.

Councilor Milo asked if the 70 feet height was typical of a telecommunications tower in our area. Mr. Feldman stated that they started at 100 feet, but due to problems with SHPO regulations they lowered the tower height. Councilor Milo asked if the tower would interfere with the business or anything going in there. Mr. Feldman stated that the tower would be located to the south of the building near an existing concrete pad on the premises. Councilor Milo asked for more clarification of the location of the tower. Mr. Feldman clarified the location. Councilor Sanchez stated that there is a tower east of the proposed location, and asked Mr. Feldman the approximate height of that tower. Mr. Feldman approximated that tower was 150 feet. Councilor Sanchez stated that would give Council a good reference of the height of the proposed tower. Mr. Feldman stated that this new tower should help with communication problems that were reported to him from the Sheriff's Department.

Mayor Pro Tem asked if any other persons would like to speak.

Larry Caldwell, 711 N. Zinc, Mr. Caldwell does not object to the tower but objects to the size of the lot where it will be located.

Councilor Sanchez asked if there are any regulatory mandates as to the size of the lot for the size of tower. Mr. Feldman stated that the towers are built based on structural engineer's computations. Mr. Feldman stated that the tower has passed FAA and FCC regulations. The tower would be more than 70 feet away from the railroad track.

Mayor Pro Tem Franklin asked for clarification of the tower height. Mr. Feldman stated the height will be 70 feet.

Councilor Milo motioned to grant a variance and special use permit for the telecommunications tower to be located at 330 N. Gold Ave. Mayor Pro Tem Franklin made a friendly amendment to include the tower height of 70 feet to the motion. Councilor Milo acknowledged the friendly amendment. Mayor Pro Tem Franklin seconded the motion, motion carried unanimously by a roll call vote.

ROLL CALL VOTE

Mayor Pro Tem Franklin	Aye
Councilor Sanchez	Aye
Councilor Milo	Aye

7. Bids:

- a. **RFP #14-07: Pine St./Spruce St. Intersection Realignment:** Mr. Massengill presented this item to Council. He referenced the low bid recommendation memo and stated that five bids were received for the above mentioned bid and opened on October 30, 2013. Deming Excavating, Inc. submitted the lowest combined construction bid package for the Base Bid and Additive Alternate #1 at \$1,018,724.22 excluding NMGRT. The bid packages were review and the bid from Deming Excavating, Inc. is in compliance with the bid requirements and is qualified to perm the required work. Mr. Massengill briefly described the alignment of the streets to Council. He stated that the project is broken into two parts, the Base Bid and Additive Alternate #1. The Base Bid will proceed with the changes to the roadway and will include the framework for a traffic signal. That would be the extent of the Base Bid. He went on to say that after the Base Bid was complete the project would be suspended in order for a traffic study to be conducted to see if the intersection would warrant a traffic signal. If the project warrants a traffic signal, we will proceed with Additive Alternate #1. If the intersection does not warrant a traffic signal, the project will terminate at that point, Additive Alternate #1 will not go into effect. Mr. Massengill stated that this was all noted in the RFP and that all bidders knew that the Additive Alternate was based on a suspension. He stated that staff recommends awarding the construction bid to Deming Excavating, Inc. and would like authorization for the management to enter into an agreement with Deming Excavating, Inc. and execute any documents related to this project.

Mr. McInturff asked Mr. Massengill if both the Base Bid and Additive Alternate #1 were awarded, the Base Bid would be within this year's budget, but the Additive Alternate #1 would fall in next year's budget. Mr. Massengill said that was correct.

Councilor Sanchez asked how long after the project completed will the traffic study be conducted. Mr. Massengill stated that more than likely the traffic study would be conducted in August, 2014 and then the City would work with the NMDOT to receive the warrant for the traffic signal. Councilor Sanchez asked if there would be a 2 or 4-way stop at the intersection. Mr. Massengill stated that there would be a 4-way stop at the intersection. Councilor Sanchez asked if there would be any street improvements to Mesa Street. Mr. Massengill stated that there will be a reconfiguration on Mesa Street and traffic will not be able to access Pine or Spruce Street from Mesa..

Councilor Sanchez motioned to approve RFP #14-07 Pine St./Spruce St. Intersection Realignment to Deming Excavating, Inc. who submitted a Base Bid and the Additive Alternate #1 in the amount of \$1,018,724.22 excluding NMGRT. The Base Bid will be in this year's budget, but the Additive Alternate #1 will be budgeted in the FY15 budget, if necessary. Councilor Milo seconded the motion, motion carried unanimously.

b. RFP #14-08: Services for Automated Statement Processing: Mr. Valentine presented this RFP to Mayor Pro Tem and Council. He stated that RFP #14-08 was posted on October 1, 2013, published on October 2, 2013, and staff received four proposals of which each were responsive and met the requirements of the RFP instructions. He stated that the proposals were review, evaluated and ranked by three (3) members of staff and ranking is as follows:

1. SPC-Information Outsource
2. Postal Pros, Inc. dba Documents Southwest
3. Peregrine Corporation
4. Triadic Enterprises, Inc.

Mr. Valentine stated that the RFP was advertised to solicit interested companies able to print, fold, insert, and mail utility billings. He stated that staff is requesting awards from City Council for RFP #14-08 and allow staff to negotiate and execute any documents related to Automated Statement Processing Service with SPC-Information Outsource. He also stated that if negotiations fail, to allow staff to negotiate with the other three companies, in order for their ranking, until a contract is successfully negotiated.

Councilor Milo asked if this service would replace the current billing of utilities. Mr. Valentine stated that Triadic Enterprises, Inc. will still handle the billing; the RFP will be for printing, folding, stuffing and mailing the bills, only. Mr. Valentine outlined the cost for the service from the submitted proposals. Council members asked who currently performs this task. Mr. Valentine stated that the City currently utilizes a utility clerk to perform this task, twice a month. The outsourcing of this service would free up the clerk and allow for them to be better utilized in the Utility Department.

Councilor Sanchez motioned that Council award this RFP to SPC-Information Outsource, and to allow staff to negotiate and execute any documents related to Automated State Processing Services; and if negotiations cannot be met with SPC-Information Outsource, Council would approve staff to negotiate and execute with the other three companies, in order for their ranking, until a contract is successfully negotiated. Councilor Milo seconded the motion, motion carried unanimously.

8. Closed Session: To discuss Law Enforcement Pending Litigation pursuant to NMSA 1978, Section 10-15-1(H)(7) of the Open Meetings Act:

Councilor Sanchez motioned to go into close session. The motion was seconded by Councilor Milo, motion carried by roll call vote.

ROLL CALL VOTE

Councilor Sanchez	Aye
Councilor Milo	Aye
Mayor Pro Tem Franklin	Aye

Mayor Pro Tem Franklin stated for the record that there were no motions made during closed session and that only those items that were stated upon in the motion to close were discussed.

Councilor Sanchez motioned to go back into open session. The motion was seconded by Councilor Milo, motion carried by roll call vote.

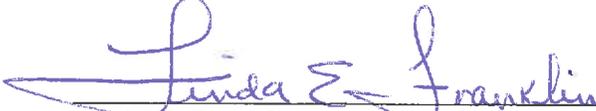
ROLL CALL VOTE

Councilor Sanchez	Aye
Councilor Milo	Aye
Mayor Pro Tem Franklin	Aye

9. Adjourn Meeting: With no further business to discuss, Councilor Milo motioned to adjourn the meeting. Councilor Sanchez seconded the motion, motion carried unanimously. Meeting was adjourned at 8:36 p.m.



CITY OF DEMING, NEW MEXICO


Linda E. Franklin, Mayor Pro Tem

ATTEST:


Richard F. McInturff, Clerk

State of New Mexico)
County of Luna)
I certify the within to be a true copy of the
above titled instrument on file and of record
in my office.
WITNESS my hand and seal this
12th day of February, 2014
by Andrea Rodriguez
COUNTY CLERK, LUNA COUNTY
DEMING, NEW MEXICO

LUNA COUNTY-NM
ANDREA RODRIGUEZ, CLERK
201400458
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02/12/2014 03:46:49 PM
BY HDUARTE



**ORDINANCE NO. 1243
GAS FRANCHISE**

**AN ORDINANCE GRANTING TO NEW MEXICO GAS COMPANY, INC., A
DELAWARE CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS,
LESSEES AND ASSIGNS, GRANTED HEREIN, CERTAIN POWERS, LICENSES,
RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE,
AND MAINTAIN IN THE TOWN OF DEMING, NEW MEXICO, AS NOW OR
HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND PLANTS FOR THE
HANDLING, TRANSPORTING, STORING, SALE AND DISTRIBUTION OF
NATURAL GAS INTO, OUT OF AND THROUGH SAID MUNICIPALITY TO ITS
INHABITANTS, AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND AND
OUTSIDE THE LIMITS OF SAID MUNICIPALITY; AND TO USE THE STREETS,
AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS,
PATHS, BRIDGES AND OTHER STRUCTURES AND PUBLIC PLACES AND
GROUNDS IN SAID MUNICIPALITY FOR A PERIOD OF TEN (10) YEARS AND
PRESCRIBING CERTAIN RIGHTS, LIABILITIES, TERMS AND CONDITIONS HEREIN
MENTIONED, AND PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF
A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE FROM ITS OPERATIONS
HEREIN.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DEMING, LUNA
COUNTY, NEW MEXICO:**

SECTION I.

(a) That the City of Deming, New Mexico (hereinafter called "Municipality"), hereby grants to and vests in New Mexico Gas Company, Inc. a corporation organized and existing under the laws of the State of Delaware, and duly qualified to do business in the State of New Mexico, a franchise and the authority, license, right, power and privilege to maintain, construct, equip, extend, alter, install, remove, change, improve and otherwise establish and operate in the Municipality, works, systems, plants, pipes and all related facilities (including those in service at the time of the execution of this franchise agreement) as may be necessary or reasonably convenient, to sell, store, distribute, convey or otherwise conduct, serve, supply and furnish the inhabitants in certain designated areas of the Municipality (see Section I(b) for the "Franchise Area") and others, whenever such inhabitants or others in such designated areas may desire to contract therefore, gas for light, fuel, power, heat and any and all other useful purposes, and the said Company is hereby granted passage and rights-of-way under, in, upon, along and across, and the non-exclusive right to occupy and use in any lawful way during the life of this franchise any and all streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places of the Municipality, both above and beneath the surface of the same, as said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places of the Municipality now or may hereafter exist, for every and any such service, use, effect and lawful purpose as herein mentioned, provided the Company complies with all federal, state and local laws, ordinances and regulations, as otherwise may be applicable to the conduct of business within the Municipality pertaining to the conditions and terms of this franchise.

(b) The "Franchise Area" shall be the area shown on the plat attached hereto and incorporated by reference as Appendices A-1, A-2, and A-3, unless and until changed in accordance with the provisions of Sections I (c) and I (d). The Franchise Area is limited to the existing area shown on the plat attached hereto and incorporated by reference because the City of Deming owns and operates its own residential and commercial gas company. The City of Deming's residential and commercial gas distribution area is generally within the Deming City Limits; and some of the Extra Territorial Zone adjacent to the City of Deming and is generally adjacent to the defined "Franchise Area". The Company currently provides and may continue to provide natural gas service within the Franchise Area, using works, systems, plants, pipes and other related facilities located within the Municipality. The Company agrees that it will not extend its natural gas distribution facilities located within the Municipality beyond those that exist at the time of the adoption of this franchise, other than in accordance with the provisions herein.

(c) If at any time during the term of this franchise the Municipality proposes to annex any territory, the Municipality shall within sixty (60) days of the effective date of the annexation, notify the Company thereof. The Company may request by written notice to the Municipality that the Franchise Area be expanded to include any or all areas within such newly annexed territory. Provided however, that such a request must be made no later than the sixtieth (60th) day following the date on which the Company receives notice from the Municipality by certified mail describing the boundaries of the newly annexed areas. Within sixty (60) days of receipt of such request, the Municipality shall convene a meeting with the Company and negotiate in good faith as to whether the Company may serve all or part of the annexed territory. The Municipality and the Company shall confirm such agreement in a plat that delineates the boundaries of the new Franchise Area and the Municipality shall thereafter amend this ordinance to reflect the new Franchise Area.

(d) If at any time during the term of this franchise the New Mexico Public Regulation Commission or other lawful authority having jurisdiction (the "NMPRC") authorizes the Company to abandon natural gas service to any area within the then existing Franchise Area, the Municipality may request by written notice to the Company that the Franchise Area be modified to exclude the abandoned area. Within sixty (60) days of the receipt of such request, the parties shall meet and agree in good faith on the boundaries of the new Franchise Area less the abandoned area. The Municipality and the Company shall confirm such agreement in a plat that delineates the boundaries of the new Franchise Area and the Municipality shall thereafter amend this ordinance to reflect the new Franchise Area.

(e) Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

SECTION II.

The Company is hereby authorized, licensed and empowered to do any and all things as may be necessary or reasonably convenient to be done and performed in executing the powers and utilizing the rights, powers and privileges herein mentioned and granted by this franchise, provided the same do not unreasonably interfere with pre-existing water, sewer, natural gas distribution and other authorized installations, and provided that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and

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other public places of the Municipality by the Company shall be done diligently and in accordance with good engineering practices and will meet or exceed all federal and state safety standards as they apply to the distribution of natural gas, and the Company shall, within a reasonable time, restore as nearly as practicable all places excavated by it to the condition existing immediately prior to excavation. Provided further that the Company shall upon reasonable notice relocate at no cost to the Municipality any and all works, systems, plants, pipes and related facilities as may be reasonably required by the Municipality to accommodate the construction and/or reconstruction of streets, avenues, alleys, rights-of-way, highways, bridges, sidewalks, paths, water lines, sewer lines, storm sewer lines, structures and other public places and facilities of and by the Municipality.

It is specifically agreed and understood, however, that before the Municipality shall authorize any such change requiring the relocation or removal of the Company's facilities, the Municipality shall provide the Company with written notice at least forty-five (45) days in advance of the commencement of the contemplated changes so that the Company may have sufficient time to make recommendations intended to minimize the cost of relocating or removing its facilities. The Municipality agrees that it will act in good faith and use its best efforts to cooperate with the Company in attempting to implement any recommendations offered by the Company.

SECTION III.

Subject to obtaining the Municipality's written consent, which shall not be unreasonably withheld, the Company shall have the right and privilege of transferring this franchise and all rights and privileges granted herein, so long as any successor, assign or lessee continues to serve the Municipality as a public utility and is properly licensed by the State of New Mexico.

SECTION IV.

The Company, for and in consideration of the granting of this franchise and as rental for the occupation and use or easement over, upon and beneath the streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, paths, bridges, structures and other public places in the Municipality, and, except as set forth herein, in lieu of any and all "other Municipal taxes" as hereinafter defined, shall for the term of this franchise, pay to the Municipality each year a total aggregate sum of three percent (3%) of the Company's gross receipts (exclusive of sales or gross receipts taxes) collected during each year from end users and consumers on account of gas sold and consumed within the corporate limits of the Municipality under the Company's approved rate schedules as in effect from time to time, excepting therefrom, the gross receipts for gas sold to industrial consumers under special contract, and gas sold for the generation of electricity. The Company shall make such payments quarterly on or before the last day of the month following the end of each calendar quarter of each year while this provision shall remain in force and effect.

For the purpose of determining said gross receipts, the books of the Company shall at reasonable times be subject to inspection by duly authorized officials of the Municipality, upon written request, giving reasonable notice. Notwithstanding anything herein to the contrary, the payments by the Company, provided for above, shall continue only so long as the Company is not prohibited from making the same by any lawful authority having jurisdiction. As used in this

Section, the term, "other Municipal taxes" means and includes any and all other franchise, license, privilege, instrument, occupation, excise or revenue taxes and any and all other fees, charges or exactions (except excise taxes imposed by the Municipality and actually collected by the Company from its consumers, municipal occupation taxes lawfully assessed and collected on a non-utility business of the Company, general ad valorem taxes and special assessments for local improvements imposed by ordinance of the Municipality and uniformly imposed and collected from other persons engaging in the same or similar activities and except for such other compensatory service fees which may be agreed to by the parties, separately, and in writing) upon all or any portion of the business, revenue, property or activities of the Company located or conducted within the Municipality during the term of this franchise.

SECTION V.

The Company shall indemnify and save harmless the Municipality, its governing body officers, agents and employees from and against the pro-rata share of all claims, obligations, judgments, costs and expenses attributable to the negligence of the Company, its officers, agents or employees, contractors or subcontractors in connection with the installation, repair, operation or maintenance of any of the Company's facilities located within the corporate boundaries of the Municipality or in any work done as authorized for this franchise. The Municipality shall give prompt notice to the Company of any claim or suit arising under this indemnity agreement and the Company or its insurer shall have the option to compromise and defend the same to the extent of their own interests. Nothing in this indemnity agreement shall be construed to depart from the present or future law of New Mexico concerning contribution among or between joint tortfeasors.

SECTION VI.

(a) The Company shall, within thirty (30) days after the passage and approval of this ordinance, file in the office of the County Clerk of the County of Luna and the Municipal Clerk of the Municipality, a written statement of acceptance duly signed and acknowledged by the proper officer of the Company authorized to execute such acceptance.

(b) In the event such acceptance is not filed within said period, this ordinance and the rights, privileges, powers and obligations contained herein shall be terminated and void; PROVIDED, HOWEVER, the Municipality may by resolution extend the time herein for the filing of such acceptance for an additional period.

(c) This ordinance, if accepted by the Company as hereinbefore provided, as adopted pursuant to N.M.S.A. § 3-42-1 (1978), shall supersede, cancel and be in lieu of any and all other existing or prior grants of rights, permission and authority to the Company or any predecessor companies or assignors of the Company to construct, operate and maintain any system for the sale, storage, distribution, conveyance and supply of pipeline gas for light, fuel, power, heat or other purpose within the Municipality, including Ordinance No. 972, adopted and passed on May 11, 1998.

SECTION VII.

Except as otherwise provided in paragraph (b) of Section VI, all grants and privileges herein granted and conferred upon the Company, its legal representatives, successors and assigns, shall

continue in full force and effect for a period of ten (10) years from the effective date of this Ordinance. On the fifth anniversary date of acceptance of this franchise by the Company (hereinafter, a "Review Date"), each party shall have the option, exercisable by delivery of written notice to the other party within sixty (60) days prior to the corresponding Review Date, to require a review of the franchise fee. During such review, the Company and the Municipality each shall have the right to elect to decrease or increase the franchise fee rate applicable under this franchise from and after the Review Date to the franchise fee rate generally applicable to other franchises of the Company. In the event either party makes such an election, the Company and the Municipality shall, prior to the corresponding Review Date, negotiate in good faith the franchise fee rate generally applicable to the other franchises of the Company based on a review of franchise fee rates contained in gas utility franchises granted to the Company by municipalities of comparable size to the Municipality during the five-year period immediately preceding such Review Date; provided however, that in no event shall the franchise fee rate applicable under this franchise at any time exceed four percent (4%); provided also that no other part of this agreement be changed, and provided also that the franchise fee resulting from such franchise fee rate increase may lawfully be passed on, selectively and preferentially, to the Company's customers located within the boundaries of the Municipality. The Company shall make payments of the franchise fee provided for herein quarterly during the term of this franchise.

SECTION VIII.

If any section, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part of the provisions hereof, other than the part so determined to be invalid or unconstitutional.

SECTION IX.

The Municipality, in granting this franchise, surrenders no privileges or rights that it may have of owning or installing any system of light, heat, power, or communication and furnishing the same to the Municipality and its inhabitants.

SECTION X.

Only after the parties have attempted to mediate any dispute regarding the breach of any of the terms of this Ordinance in good faith with a professional mediator and said mediation is unsuccessful, then in said event of breach of this agreement by either party hereto, the prevailing party shall enjoy all rights and remedies allowed in law or equity and shall recover reasonable attorneys' fees in any suit arising from the breach or enforcement of this agreement.

PASSED, ADOPTED AND APPROVED by vote of the Council of the City of Deming, Luna County, New Mexico, this 13th day of January, 2014.

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CITY OF DEMING, NEW MEXICO

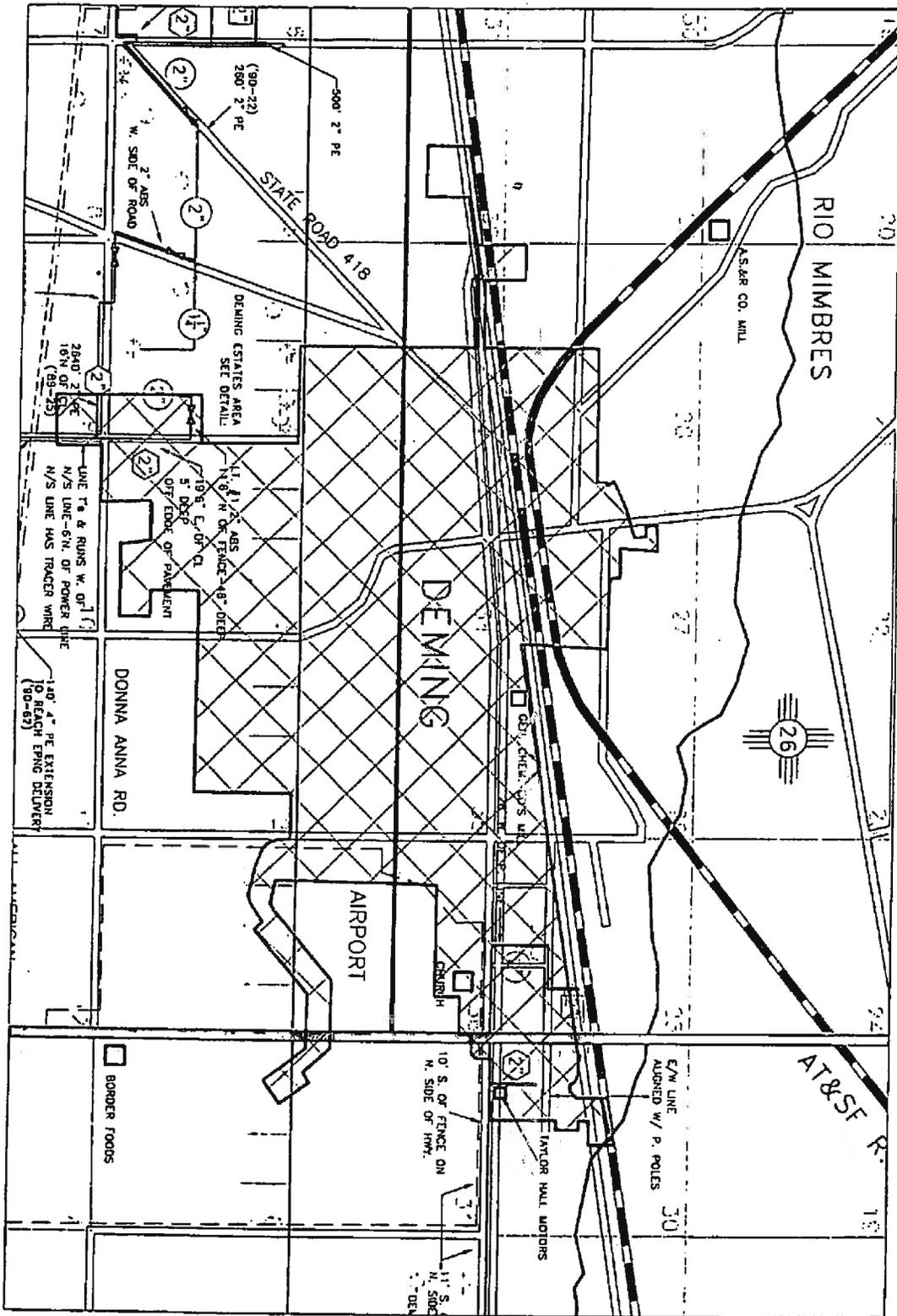
Linda E. Franklin
Linda E. Franklin, Mayor Pro Tem

ATTEST:

Richard F. McInturff
Richard F. McInturff, Clerk

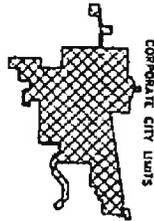
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NEW MEXICO GAS COMPANY, INC.
 DISTRIBUTION LINES CURRENTLY WITHIN DEMING CITY LIMITS
 (KEY MAP)

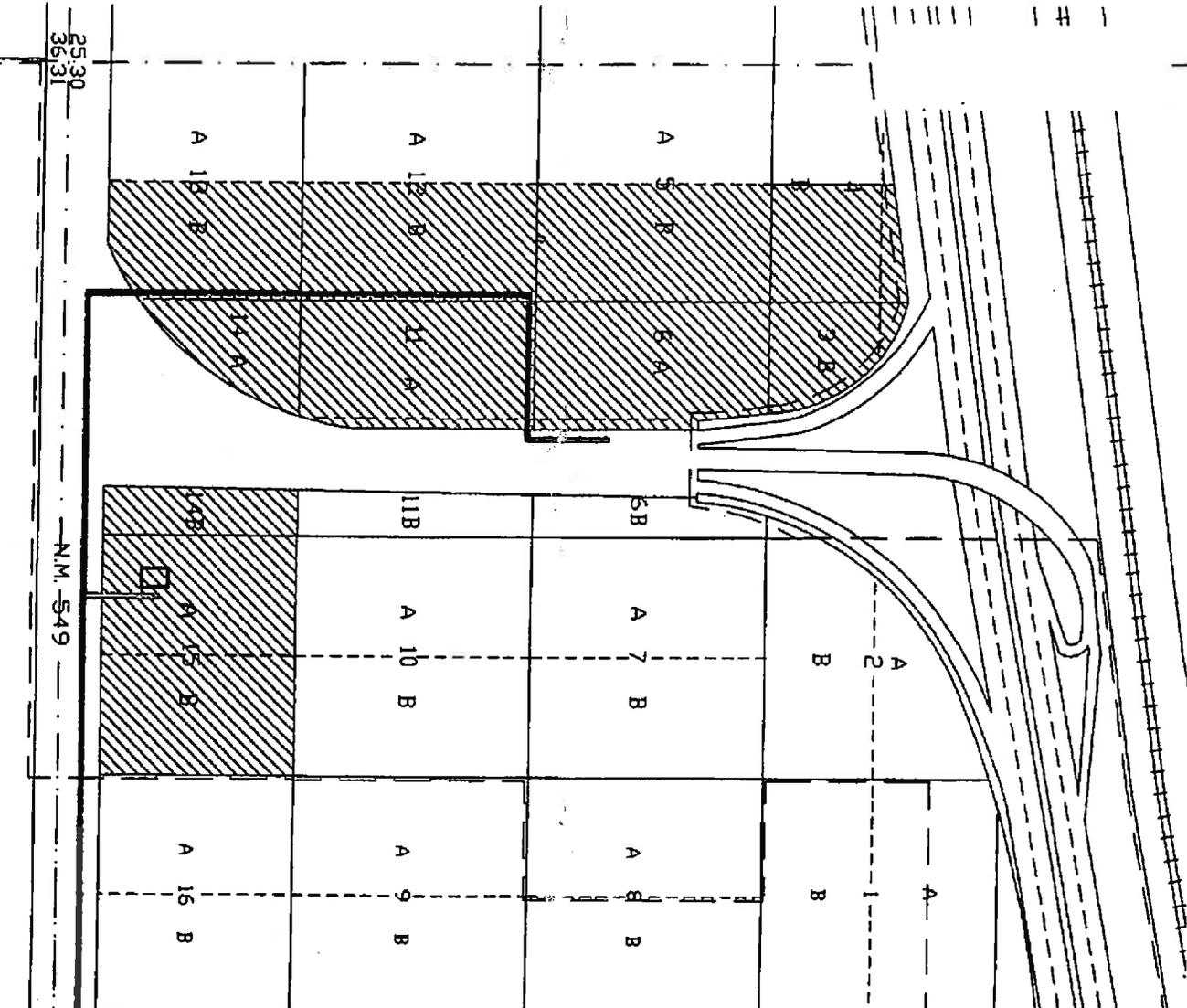


LEGEND:

	DISTRIBUTION WELL
	EPIC LINE
	ALL AMERICAN PIPELINE
	CGM DISTRIBUTION (STEEL)
	CGM DISTRIBUTION (ABS)
	CGM DISTRIBUTION (PE)
	CGM DISTRIBUTION (PVC)



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NEW MEXICO GAS COMPANY, INC.
 DEMING, NM KEY MAP
 FRANCHISE AREA

DEMING, NM

LEGEND

-  PNM DISTRIBUTION (STEEL)
-  PNM DISTRIBUTION (ABS)
-  PNM DISTRIBUTION (PE)
-  PNM DISTRIBUTION (PVC)

FRANCHISE AREA 

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Appendix A-2

