**Disclaimer: This Certificate of Association template is an assistance tool for MDWCAs to meet one of requirements of the Sanitary Projects Act (§§ 3-29-1 to 21 NMSA 1978). While the New Mexico Environment Department strives to make the Certificate of Association template as useful as possible, the Department makes no claims, promises, or guarantees about the accuracy, completeness, or adequacy of the template, and expressly disclaims liability for errors and omissions in the contents of the template. No warranty of any kind, implied, expressed, or statutory, including but not limited to the warranties of non-infringement of third-party rights, title, merchantability, or fitness for a particular purpose, is given with respect to this template. The information in this template is for general informational purposes only and is not intended to provide legal advice to any individual or entity. We urge you to consult with your own legal advisor for help tailoring the template to your association’s needs.**

**TEMPLATE FOR CERTIFICATE OF ASSOCIATION for**

**MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATIONS**

We, the undersigned organizers of the **[Insert Name of Mutual Domestic Water Consumers Association]** have associated for the purpose of forming a political subdivision of the state in accordance with the provisions of the SANITARY PROJECTS ACT, §§ 3-29-1 to 21 NMSA 1978, and do hereby execute and acknowledge in duplicate this Certificate of Association setting forth:

**Article I**

**Name of Association**

**[Insert Name of Association]** [§3-29-16 NMSA 1978]

**Article II**

**Name of Individuals Organizing the Association**

**[** **Insert Name of Organizer 1]** who resides at **[Insert Property Address]** within [**Insert Name of County]** County, New Mexico

**[** **Insert Name of Organizer 2]** who resides at **[Insert Property Address]** within **[** **Insert Name of County]** County, New Mexico. [§3-29-16 (A)(7) NMSA 1978]

**Article III**

**Location of Principal Office**

The principal office of the association shall be located at: [**Insert Physical Address, City and New Mexico Zip Code.** [§3-29-17.1 NMSA 1978]

**Article IV**

**Objects and Purposes**

The objects and purposes for which the association is formed are as follows:

Section 1. The principle purpose is to associate its members to improve the public health of rural communities in New Mexico by establishing and maintaining a political subdivision of the state empowered to received public funds for the acquisition, construction, and improvement of **[Insert what applies -- examples include water supply, reuse, storm drainage and / or wastewater facilities]** and to operate and maintain such facilities for the public good. [§3-29-3 NMSA 1978]

Section 2. The association, acting through its board of directors, shall have the power to do all things necessary in the local administration of the **[Insert what applies examples include water supply, reuse, storm drainage and / or wastewater facilities]** subject to the provisions of the Sanitary Projects Act or other laws of this state. [§3-29-12 (D) and §3 -29-2(F) NMSA 1978]

Section 3. Upon the filing of each certificate and copy thereof as provided in Section 3-29-17 NMSA 1978, the persons so associating, their successors, and those who may thereafter become members of the association, constitute a public body corporate by the name set forth in the certificate, and by such name may sue and be sued, have capacity to make contracts, acquire, hold, enjoy, dispose of, and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of their organization. [§3-29-15 NMSA 1978]

**Article V**

**Address of the Initial Registered Office of the Association and the Name of the Initial Registered Agent**

**[Insert Registered Agents Name and Address]** in the attached statement **[Example statement included with this template]** executed by the registered agent acknowledges acceptance of the appointment by the **[Insert Name of Association]**. [§3-29-16 (A)(8) NMSA 1978]

**Article VI**

**Plan and Manner of Acquiring Membership and for Providing Funds or Means for the Acquisition, Construction, Improvement and Maintenance of its Work and for its Necessary Expenses**

Section 1. All persons within a community who participate or desire to participate in any **[Insert what applies examples include water supply, reuse, storm drainage and / or wastewater facility],**  owned, constructed, or operated by an association,may become members of an association upon complying with rules prescribed by the board of directors of the association and approved by the New Mexico Environment Department. Any person or persons who did not participate in an original project may be admitted to membership in an association upon payment to the association of a reasonable fee as determined by the board of directors and the New Mexico Environment Department. [§3-29-11 NMSA 1978]

Section 2. Funds sufficient to provide for proper operation and maintenance of the association shall be identified through a rate-setting analysis that will ensure:

1. enough revenue to cover yearly expenses and emergencies;
2. a reserve fund for non-major capital items; and
3. equitable pay for staff.

The rate-setting analysis may be reviewed and changed, if necessary, on a yearly basis, and the funds shall be obtained by the association by a monthly assessment paid by the users of the facilities. The assessment shall be determined by the board of directors. [§3-29-12(C) NMSA 1978]

 Section 3. By July 1 of each year, the association shall file with the New Mexico Environment Department a member accountability report. The member accountability report shall include:

1. a financial statement prepared in accordance with generally accepted accounting principles [§3-29-17.5 (H)(1) NMSA 1978]; and
2. a copy of the Open Meetings Act [Chapter 10, Article 15, NMSA 1978] resolution stating what notice for a public meeting is reasonable.

The report shall be signed and sworn to as to accuracy and completeness by all members of the board of directors of the association. A statement shall be included in the consumer confidence report required for water systems that the member accountability report is available to the public upon request. [§3-29-17.5 (H)(2) NMSA 1978]

### Article VII

**Duration of Existence**

The association shall have **[Insert perpetual existence or state termination date]**. [§3-29-16 (A)(7) NMSA 1978]

**Article VIII**

**Election of Board of Directors and Length of Terms**

The local administration of the association and the operation and maintenance of the [**Insert what applies: water supply or reuse, storm drainage and/or wastewater facility owned**], constructed or operated by an association] shall be carried out in each community by a board of directors comprised of an odd number of at least three members. Members of the board of directors shall:

1. be elected annually or as specified in the bylaws of the association;
2. be members in good standing of the association; and
3. serve staggered terms of up to four years to ensure that terms will end in different election years.

The board of directors shall choose among its members a president, a vice president and a secretary-treasurer or a secretary and a treasurer. [3-29-12 (A)(B) NMSA 1978]

**Article IX**

**Definition of a Member and Voting Rights Associated with Membership**

A member or membership means a person who has paid mandatory fees and has been issued a certificate as required by association bylaws. [§3-29-2 (D) NMSA 1978]

Each Member shall be entitled to one vote and only one vote, regardless of how many connections and/or memberships he or she owns*.* If there are multiple members listed on a Membership Certificate, only one Member shall vote on behalf of the Membership. [Wilson v. Denver, NM Supreme Court No. 23667]

**[Insert membership types and voting rights of each membership type which are unique to each association. Examples include Residential, Commercial, and Institutional memberships and voting eligibility criteria.]**

There shall accompany each certificate of association or any amendment thereof a list **[Example included with this template]**to show the total number of members of the association and the total number of dwelling units served by the association at the time of filing. [§3-29-16 C NMSA 1978]

**Article X**

**Manner of Dissolution of the Association as a Public Body**

An association may, at any regular or special meeting called compliant with the Open Meetings Act Resolution, be directed to dissolve by a vote of **[Insert percentage]** of the entire membership. By a vote of a majority of the members voting three of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets, pay its debts and expenses; and distribute any surplus as a gift to any political subdivision of the state.[ §53-4-36 NMSA 1978]

**Article XI**

**Amendments**

Every association may make changes to its certificate of association or bylaws as long as the changes do not conflict with any laws or state regulations, by a resolution adopted by a vote of a majority of the members present at any regular or special meeting duly held upon such notice as the bylaws provide. The president and secretary shall write affidavits saying that the resolution was duly adopted by a majority vote of the members at a meeting held in accordance with the provisions of this section, and the association shall file and have recorded a certified copy of the resolution, with these affidavits, in the same manner as the original certificate of association and bylaws were filed. [§ 3-29-19 NMSA 1978]

The certificate or any amendment thereof made as provided in Section [3-29-19](https://nmonesource.com/nmos/nmsa/en/item/4362/index.do%23%21b/3-29-19) NMSA 1978 may also contain provisions not inconsistent with the Sanitary Projects Act or other law of this state that the organizers may choose to insert for the regulation and conduct of the business and affairs of the association.[§ 3-29-16(C) NMSA 1978]

IN WITNESS WHEREOF, we, the organizers of the **[Insert Name of Association]**, do execute this Certificate of Association on this **[Insert Day – Month- Year]**

Organizer 1 - Signature & Notary Seal

Organizer 2 - Signature & Notary Seal

**Attachment A- Current Membership List Template**

|  |  |  |
| --- | --- | --- |
| **Name of Property Owner** | **Physical Address of Property** | **Number of Connections** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

The total number of members of this Association is: \_\_\_\_\_.

The total number of connections to this Association are: \_\_\_\_\_.

**Attachment B**

**Registered Agent Statement of Acknowledgement [§3-29-16 (B) NMSA 1978]**

On **[ Insert Date of Appointment] [ Insert Name of Registered Agent]** whose physical address is **[insert physical address]** and mailing address is **[insert mailing address]** acknowledges acceptance of appointment by the **[Insert name of Association]** as registered agent**.**

The registered agent appointed by the association shall be an agent of the association upon whom any process, notice or demand required or permitted by law to be served upon the association may be served.

IN WITNESS WHEREOF, **[Insert Name of Registered Agent]**, does execute this Statement of Acknowledgement on this **[Insert Day – Month- Year]**

Signature & Notary Seal