



City of Rio Communities Council Regular Business Meeting
City Council Chambers - 360 Rio Communities Blvd
Rio Communities, NM 87002
Monday, July 12, 2021 6:00 PM
Agenda

Please silence all electronic devices.

Mayor - Mark Gwinn
Mayor Pro Tem - Peggy Gutjahr
Council - Bill Brown, Joshua Ramsell, Jim Winters

ATTENTION: We encourage you to participate in the City Council Regular Business Meeting from the comfort and safety of your own home by entering the following link:

@ <https://www.facebook.com/riocommunities>

Call to Order

Pledge of Allegiance

Roll Call

Approval of Agenda

Approval of Minutes

1. Workshop & City Council Minutes for June 28, 2021

Public Comment: The Council will take public comments on ***this meeting's specific agenda items.*** These should be in written form via email through 4:45 PM on Monday July 12, 2021 to admin@riocommunities.net. These comments will be distributed to all Councilors for review. ***If you wish to speak during the public comment session in person:*** The Council will allow each member of the public three (3) minutes to address the Council. Both the public and Council will follow rules of decorum. Give your name and where you live. The public will direct comments to the City Council. Comment(s) will not be disruptive or derogatory.

Manager Report

Commissioner and Board Reports

2. Economic Development Report

Planning and Zoning

Department Reports

3. Municipal Clerk Department

Finance Department

Code Enforcement Department

NOTE: THIS AGENDA IS SUBJECT TO REVISION UP TO 72 HOURS PRIOR TO THE SCHEDULED MEETING DATE AND TIME (NMSA 10-15-1 F). A COPY OF THE AGENDA MAY BE PICKED UP AT CITY HALL, 360 RIO COMMUNITIES BLVD, RIO COMMUNITIES, NM 87002. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AND OR SERVICE TO ATTEND OR PARTICIPATE IN THE MEETING, PLEASE CONTACT THE MUNICIPAL CLERK AT 505-861-6803 AT LEAST ONE WEEK PRIOR TO THE MEETING OR AS SOON AS POSSIBLE.

Public Works Department
Fire Department
Municipal Court Department

Action Items

- 4. Discussion, Consideration, and Decision – Approval of Accounts Payable**
- 5. Discussion, Consideration, and Decision - Contract for ITB #2021-0105**
- 6. Discussion, Consideration, and Decision - Resolution 2021-xx NMDOT Cooperative Agreement**
- 7. Discussion, Consideration, and Decision – Appointment of Library Board Members**
- 8. Swearing in of Library Board Members**

Council Discussion

Executive Session - For the purpose of Executive Session on the City Manager 6-month evaluation, review and the purpose of discussing the hiring of a Fire Chief & limited personnel matters. NM Section 10-15-1 (H)(2)

- **Motion and roll call vote to go into close session**
- **Motion and roll call to go back into regular business meeting session**
- **Welcome everyone back and statement by the Mayor:** The Governing Body of the City of Rio Communities, New Mexico, hereby states that on July 12, 2021 a Closed Executive Session was held and the matters discussed were limited only to the City Managers evaluation, review and the purpose of discussing the hiring of a Fire Chief limited personnel matters as posted on the agenda

Action Items - Consideration & Decision – Mayor Pro-tem recommendation regarding the City Manager 6-month evaluation, review and the purpose of discussing the hiring of a Fire Chief & limited personnel matters.

Adjourn

We will be streaming live on Facebook Live @ <https://www.facebook.com/riocommunities>

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City of Rio Communities Council Workshop
City Council Chambers - 360 Rio Communities Blvd
Rio Communities, NM 87002
Monday, June 28, 2021 3:00 PM
Minutes

Please silence all electronic devices.

Call to Order

- Mayor Pro tem Peggy Gutjahr called to order the Workshop at 3:01 pm.

Present:

- Mayor Pro tem Peggy Gutjahr, Councilor Bill Brown, Councilor Joshua Ramsell, Councilor Jim Winters.
- City Manager Dr. Marty Moore, Municipal Clerk Lisa Adair, and Finance Officer/Treasurer Stephanie Finch.

Presentation: Rio Communities City Complex Master Plan Including Phase I and/or II

- ❖ Manager Dr. Moore began a discussion on the City Complex master plan saying Phase I was good and began explaining the changes that would be made to Phase II. He then asked Council to consider approving Phase I while we are waiting for Phase II changes to be made.
- ❖ Councilor Winters said as long there is a clause that allows us to make changes.
- ❖ Manager Dr. Moore said yes that will be in there, continued with the discussion and added he is working on getting a new cost analysis. He explained they also talked about redesigning the kitchen and agreed not to change it and as staff we might be able to look at what it would take to finish the kitchen off. The discussion continued.

Accounts payable report

- Finance officer Stephine Finch explained that there may be some additional payments being cut in the next few days because it is the end of the fiscal year and then explained the accounts payable to the Council, reviewing invoices over \$500: Ralph T. Barnes for working in the library and other building improvements in the amount of \$675.00; Wells Fargo Leasing for the leasing of the server in the amount of \$2,497.73; Valencia County Fiscal Office for Animal Control in the amount of \$763.20; Village of Los Lunas for quarterly E911 dispatch in the amount of \$7,546.75 home depot in the amount of \$1,960.20 for library shelving that are going to be built.
- Mayor Pro tem Gutjahr asked if they knew how much wood costs.
- Finance officer Stephine Finch said she would have to look it up and continued to explained the accounts payable to the Council: Universal Constructors for the filling in of a hole in the amount of \$1,723 and that was a standalone project; WEX Bank for fuel for the Fire Department vehicles in the amount of \$834.46; Card Service Center in the amount of \$10,959 for Kustom Signals for three Speed signs and explained this was part of LEPPF money that needed to be spent. A discussion began.
- Manager Dr. Moore explained the purchase of the Kustom Signals from the law enforcement fund that would not be able to be carried over. He continued to explain the

speed signs and how they will be taken care of to prevent theft and damage and continued the discussion.

- Finance Officer Finch continued with the accounts payable: First American Title Insurance Company for earnest money in the property in the amount of \$5,000 and the second amount for \$96,222.38 is for the remainder and the closing cost and began a discussion.
- Councilor Winters asked why the animal control payment is lower than usual and began a discussion about fees.
- Councilor Ramsell stated we pay the E911 quarterly and this should be the last payment of this fiscal year.
- Finance Officer Finch said yes and explained this is technically for the 3rd quarter because it runs behind and continued the discussion.

Contract for ITB #2021-0104

- Finance Officer Stephanie Finch explained this was the invitation to bid and Universal Constructors, Inc was the lowest bid, this is the normal everyday contract, at the end the attachment shows the scope of work, the drawings from the engineering, specifications and an addendum showing we increased quantities, the contract includes \$86,638.90 that will be paid for with the NMDOT grant and we have to provide the 5% match and there is rip rap work that will not be covered under the NMDOT grant that the City will be paying for in the amount of \$12,728.66.
- Finance Officer Finch further explained that the grant is over the bid and is speaking with Peter Kubiak to see if there is any other project that we are allowed to use the money for and continued the discussion.
- City Manager Dr. Moore explained that this came to a surprise to all of us and continued the discussion.
- Councilor Winters suggested when ready to do the road possibly getting with the golf course to let them know what is going to happen and continued the discussion.

Library Board members

- City Manager Dr. Moore has requested that Council would move to formally approve to the July 12th meeting.

Streetlight Placement

- City Manager Dr. Moore explained we have identified 12 locations that have been previously discussed, right now with rough cost estimates, we are looking at being able to take care of those sites and some more and gave some examples of five or six more locations to replace or add additional and began a discussion.
- Councilor Winters asked if there is something we could send out to the public to see what they think and began a discussion.
- Mayor Pro tem Gutjahr said she feels once we put the list out of where they are going up, we can ask for feedback for future lighting,
- City Manager Dr. Moore explained that we would have alternate costs to be forwarded and continued the discussion.
- Councilor Winters said it would be nice to have a long-term plan for future lights and continued the discussion.

Manager Report

Capital Appropriation Project #E2799 \$10,000 Library Grant Capital Appropriation Project #E2798 \$325,000 City Hall Facility

- City Manager stated that these 2 grants had been previously approved through Council and then explained the capital appropriation project #E2799 \$10,000 (Library Grant) is the electronic services for the Library.
- City Manager stated that the capital appropriation project #E2798 \$325,000 (City Hall Facility) is for the roof that was frozen that is now unfrozen from the State and began a discussion.

NM Self Insurer's Fund & NM Municipal League Joint Powers Agreement

- City Manager Dr. Moore explained that this comes from the New Mexico Municipal League Self Insurers Fund, changes from the original agreement of how the joint powers were set up, what is required to be approved by the City, and explained the deadline.

Valencia County Fair August 1 - 8, 2021

- City Manager Dr. Moore explained the dates and they have requested if we want a booth at the fair.
- Councilor Winters explained the history of our involvement at the fair and began a discussion regarding what we could hand out at the booth.
- Mayor Pro tem Gutjahr asked that a draft of the magnets go out to the Council and Council make changes to the draft and continued the discussion

National Night Out - Valencia County August 3, 2021

- Council began a discussion regarding National Night Out during the week of the fair.
- City Manager Dr. Moore said other items for discussion is we may have couple of individuals regarding the off-road vehicles, we might have someone here tonight to explain what is going to happen, possibly having a blanket prohibition to automatically covered what we have not addressed, but there are issues with them crossing the road and getting on private property to get to the river. The discussion continued.
- Councilor Ramsell said that a lot of these individuals are not even from here (Rio Communities) and are parking here all day, staying late, and it is a safety issue and continued the discussion.
- City Manager Dr. Moore said another concern is recreational shooting and began a discussion.
- Councilor Ramsell stated that there is a big yellow sign that reads "Private Property, no trespassing" but it is a county road and continued the discussion.
- Mayor Pro tem Gutjahr said they have not had the chance to meet with the County Manger with the Sheriff and Sue Moran about the no man's land between the City and County and began a discussion.
- Councilor Winters asked who is responsible if someone gets hurt is they are riding on the City's right of way.
- City Manager Dr. Moore said that if they are on City property, the City is liable and continued the discussion.

Council General Discussion & Future Agenda Items

- Councilor Brown said he did a drive up Hillandale and thinks it looks good but need double stripping. A discussion began regarding striping and sealing the road.

- City Manager Dr. Moore said the scope of work is already set and that is not included but we can try to find the money in the budget and continued the discussion.
- Councilor Brown said that on June 15 we were supposed to receive a response from the Postal service for a zip code.
- Manager Dr. Moore said it is time to check with Washington to see what they can do, but at the moment, we can remain positive and began a discussion.
- Councilor Winters said maybe we can ask the person who sent us the letter what is going on and began a discussion.
- Mayor Pro tem Gutjahr said there needs to have been several attempts before it is time to have a joint meeting with everybody regarding the zip code.
- Councilor Winters had no comments.
- Councilor Ramsell said can we get core samples of some the roads to see what the roads need.
- City Manager Dr. Moore said we could go through legislature or DOT funding for a comprehensive road and began a discussion.
- Councilor Ramsell said some of our main roads look like the roads are starting to section out (fill the cracks) that would be an easy and inexpensive way to make them last a little longer. He then said we should really try to work with the water company to see what lines they are replacing and work in tandem with them and continued the discussion.
- Councilor Ramsell said we have patched several areas and it is beginning to alligator and continued the discussion.
- Mayor Pro tem Gutjahr explained that she and Dr. Moore has been on a meeting with Magellan and PNM putting overhead wires in the perimeter of our city and conversation back in forth with VIA and the others because we want to have unobstructed views, and explained there is going to be an area that has to be redone and they are wanting to do overhead and began a discussion.
- Mayor Pro tem Gutjahr said by October a PNM needs the City to make a decision and they will send us a cost estimate. She then said we will have to find out what predates what we currently have and continued with the discussion.
- Councilor Ramsell said he was able to get on the call regarding the Cannabis regulations, one of the things they are recommending to communities is to work quickly, make everything legally before September 1st, which is when people can start growing it. He explained that if we don't have an Ordinance in place, we can't force a business to move if they were there first and continued the discussion.
- City Manager Dr. Moore said he has put out a call for model ordinances, the closest the municipal League provided us were from Colorado, and the next step will be to discuss it with the Planning and Zoning Commission and speaking with our legal counsel, and continued the discussion.
- Councilor Winters said he also the only protection is Schools and daycares (protecting our children), he then asked if group homes would that qualify as daycare. He then said the easiest thing to do would be to change what zones they would be able to be in and continued the discussion.
- Mayor Pro tem Gutjahr said Dr. Moore will be sending out an email to everyone regarding contributing to the plan.
- City Manager Dr. Moore said he is looking at the applications for the Code enforcer/part-time and believes if we cannot get a decent pool of applicants, he may come back next

meeting to increase the hours to make it more attractive to a qualified applicant. He explained this position is very important to our residents and to staff to have things in the City taken care of.

Adjourn

The City Council workshop was adjourned at 4:44 pm.

Respectfully submitted,

Elizabeth (Lisa) Adair, Municipal Clerk
(Taken and Transcribed by Amy L. Lopez, Deputy Clerk)

Date: _____

Approved:

Mark Gwinn,
Mayor

Margaret (Peggy) Gutjahr,
Mayor Pro-tem/Councilor

Bill Brown,
Councilor

Joshua Ramsell,
Councilor

Jim Winters,
Councilor



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Monday, June 28, 2021 6:00 PM
Minutes

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Call to Order

- Mayor Pro tem Gutjahr called to order the regular business meeting at 6:00 pm.

Pledge of Allegiance

- Councilor Ramsell led the Pledge of Allegiance.

Roll Call

- PRESENT: Mayor Pro Tem Peggy Gutjahr, Councilor Bill Brown, Councilor Joshua Ramsell and Councilor Jim Winters.
 City Manager Dr. Martin Moore, Municipal Clerk Lisa Adair, Finance Officer Stephanie Finch, City Attorney Chris DeFillippo, and Valencia County News-bulletin Editor Clara Garcia.

Approval of Agenda

- Mayor pro tem Gutjahr tasked to amend the agenda to add executive session the discussion of the purchase, acquisition or disposal of real property or water rights by the public body pursuant to NMSA 10-15-1(H)(8).
- Councilor Ramsell moved to approve the agenda with the amendment. The motion was second by Councilor Winters. Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote the agenda for the regular business meeting of June 28, 2021 was approved as amended.

Approval of Minutes for Special Workshop of 5/27/2021 Workshop Minutes 06/14/2021 & City Council Minutes 6/14/2021

- Councilor Winters moved to approve minutes for the special workshop of 5/27/2021, the workshop of 6/14/2021 and the city council minutes of 6/14/2021. The motion was second by Councilor Brown. Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote the minutes for the special workshop of May 27, the workshop and city council regular business meeting of June 14, 2021 were approved as written.

Public Comment

- Mr. Robert Ramsdell from 203 Hillandale Ave in Rio Communities said his concerns were regarding traffic problems, with a large volume of traffic and illegal vehicles running up and down the streets without plates, ATVs racing up and down the street and the north mesa and are out of control and the noise they create is terrible. He then said he has a problem regarding the area off Hwy 47 across the street from White Elephant Storage where the bosque and river access is; the whole area is packed with vehicles and ATVs, and the traffic is

going across the street to the businesses and are doing wheelies and donuts and causing alarms to go off.

- Phillip Sublet from Paul's Son's Signs and Graphics said he came tonight as a local business leader and feels there are many situations in Rio Communities that need to be addressed but his biggest concern is safety. He explained the main safety issue is the outdoor recreation vehicles and other vehicles that come to our area from all over the State, some of the visitors are bringing danger and chaos, and he has spoken to all forms of police, the City, and the County, and is asking the City to have this City's police take care of this problem to prevent crime, safety and prevent another fatality.

Manager Report

- City Manager Dr. Moore explained that he has gotten into the rules and regulations particularly related to the off-highway vehicles on pavement and have been working on a solution, has called the undersheriff and they agreed to come into the meeting, and have been speaking with the DOT that what we can do to keep them off the highway and their land. He then said there are laws prohibiting them from driving on the pavement, we are looking into trespassing laws as well. He explained there is a time and place of use through the City is get together and what the plan will be, we have a joining jurisdiction because they don't care where they ride. He further explained what the city can or cannot do and what the County and other jurisdiction what they can do, and we are doing our part to help the community to help residents and businesses. He then said we are trying to create a plan that places appropriate restrictions because we don't want to take away the rider's rights, but we want to respect the residents as well.
- Undersheriff Noah stated they are aware of this situation throughout the County, they have applied for a grant that has been approved to target off road vehicles hopefully there will be some patrols in Rio Communities, and explained the patrols should begin in July. He then said he would like to hear from the community to know when the most appropriate time of day would be to go on patrol, so they are not wasting resources.
- Mayor Pro tem Gutjahr said no law enforcement agents can chase ATVs.
- Undersheriff Noah said no we cannot chase or pursue ATV because of liability.
- Mayor Pro tem Gutjahr continued with the discussion.
- Councilor Winters said the signs need to be places and liability for the property owners need to be made known and said Los Lunas was able to designate an area for the ATVs to ride and it seems to be better and continued the discussion.
- Undersheriff Noah asked if Rio Communities received funding from the American Rescue plan and if so, and ATV park would fall under that plan and continued the discussion.
- City Manager Dr. Moore said one of the things he said when he started working here is "we start something we will finish" and he is looking forward to finding a start to a solution and is very appreciative of the Sherriff Department for working with us. The discussion continued.
- City Manager Dr. Moore continued with his report explaining there several grants are being closed out and funding on 8 of the 13 projects by end of the year. The grants that are being finished are some roadwork grants and the Master Drainage Plan.
- City Manager Dr. Moore said he is very pleased about the parks and looking at the Americans Rescue Act because they tie some of the health and wellness issues into that and we

appreciate the finance office who has been working diligently on the budget which includes the Americans Rescue Act money.

- City Manager Dr. Moore explained that the cannabis laws go into effect tomorrow and further explained what area the City will be going to the P&Z to look at where in the City those types of places can go. He then said will get the final of our building material for the library to finish out the shelving and finish the wiring for internet, we also have other issues coming up including the flooding/storm water situation.

Discussion, Consideration, and Decision – Approval of Accounts Payable

- Finance Officer/Treasurer Stephanie Finch asked if there were any questions or concerns to be touched on.
- Councilor Ramsell explained the charge for E911 for \$7,546.75 for a quarterly payment for the 911 calls that happen in the City and the second charge is for 3 speed signs in the amount of \$10,959.00 using the LEPF funds that we must use or lose.
- Councilor Winters explained most things look normal and wanted to note the animal control dropped down to almost half. He then said the other thing said animal control, will pay back to the City before they get released so that we may recover some of the money charged to the City for animal control.
- Councilor Brown said line item for purchase of property is not accurate and we will be discussing in executive session. He then said this will be a good asset for both.
- Mayor Pro tem Gutjahr explained the animal control expenses, saying the City pays for the picking up and sheltering of animals by the County and it costs us \$50 and continued the discussion.
- Councilor Ramsell moved to approve Accounts Payable. The motion was second by Councilor Winters. Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote accounts payable was approved to be paid.

Discussion, Consideration, and Decision – Approval of Rio Communities City Complex Master Plan Including Phase I and/or II

- Mayor Pro tem Gutjahr gave a brief history on improvements to the City complex and the plan to move staff to the other side of the building.
- Councilor Ramsell said phase I makes sense, we have been trying to get staff to the south side of the building for quite some time, it will be a good thing to have people enter the double doors because they naturally think that is the entrance and thinks phase II needs work before approval.
- Councilor Winters said phase I allows us to make those changes and make the move for staff, and we need to do it quickly to make the rest of the building ready for recreation.
- Councilor Ramsell moved to approve Rio Communities City Complex Master Plan Phase I. The motion was second by Councilor Winters Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote Phase I of Rio Communities City Complex Master Plan was approved.
- City Manager Dr. Moore explained funds have a timeline if we do not use the funding, we lose it.

Discussion, Consideration, and Decision – Contract for ITB #2021-0104

- Finance Officer Stephanie Finch explained the ITB #2021-0104 is for the roadwork on Country Club Lane and the lowest bid was with Universal Constructors and explained the project. She then explained the bid estimate in the amount of \$80,454 without taxes and is under the NMDOT grant and the rip rap at the intersecting streets for drainage to prevent future damage in the amount of \$11,820 the City will be picking up. She then said tonight she is asking approval of the contract and further explained the Universal Constructors bid.
- Councilor Winters reminded everyone this was a grant from the State, helps a lot getting these grants to do the work.
- Councilor Ramsell said the rip rap was recommended by the drainage study and it is valuable information to prevent future damage. He then said there is still grant money remaining that we might be able to use in other places.
- Councilor Brown said well needed work and it is a pleasure to be able to do it.
- Finance Officer Finch explained if the agreement is awarded there will be a kickoff meeting to get with the Golf Course to let them and the residents in the area to let them know when and where the construction will be taking place.
- Mayor Pro tem Gutjahr explained that we have been looking at the roads and where and how we have applied for the grants and have been looking at updating that plan.
- Councilor Ramsell moved to approve Contract for ITB #2021-0104. The motion was second by Councilor Winters. Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote the Contract for ITB #2021-0104 was approved.

Discussion, Consideration, and Decision – Appointment of Library Board Members

- City Manager Dr. Moore explained we will be coming back by next meeting to appoint library board members and if there are any more volunteers out there this is their chance to join the five that have volunteered. He then said we are close to the end of construction and now is the perfect time to get that board going.
- Mayor Pro tem Gutjahr explained that Belen wrote a community grant to PNM has received some surface pro computers and has given us two to have for our library.

Discussion, Consideration, and Decision – Approval of Streetlight Placement

- City Manager Dr. Moore explained we have been talking about streetlight placement in residential areas and we did receive the amended agreement for the lights and based on the preliminary costs, costs are coming in lower than what we anticipated and then will come back to Council with alternate 1 and alternate 2 so that we may get many more lights than anticipated after completing the promised lights. He then said we might need to have a meeting on where to place streetlights in the City and not violate our dark skies ordinance and began a discussion.
- Councilor Ramsell said he is excited to get some more streetlights, especially after we did not know if we would be getting the funding and now it looks like we will be able to do more than expected.
- City Manager Dr. Moore explained the two goals are to let you know where the streetlight repairs will be and make sure residents know where we are heading.

- Councilor Brown said good news at 2 different levels, one is that we are ready to do it and two is that we are going to be able to do more.

Council Discussion

- Councilor Brown had no report.
- Councilor Winters said something coming is the message board, bidding should be getting close.
- Councilor Ramsell said be safe during the fourth of July holiday, be safe with fireworks.
- Mayor Pro tem Gutjahr reminded about fireworks and what is permitted and not permitted in our website and reminded everyone the use of firearms is prohibited in the City limits. She explained there will be signs being mounted.

Executive Session - Executive Session regarding Workforce Solution Complaint possible threatening or pending litigation pursuant to NMSA 10-15-1(H)(7) and regarding the discussion of the purchase, acquisition or disposal of real property or water rights by the public body pursuant to NMSA 10-15-1(H)(8)

Motion and roll call vote to go into close session

- Councilor Ramsell moved with a roll call vote to go into executive session regarding workforce solution complaint possible threatening or pending litigation pursuant to NMSA 10-15-1(H)(7) and the discussion of real property or water rights by the public body pursuant to NMSA 10-15-1(H)(8). The motion was second by Councilor Winters. Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote Council went into executive session at 7:06 pm.

Motion and roll call vote to go back into the regular business meeting session

- Councilor Ramsell moved 2nd Councilor Winters. Voting Yea: Mayor Pro Tem Gutjahr, Councilor Brown, Councilor Ramsell, Councilor Winters. With a 4-0 vote Council was back from executive session @ 7:38 pm.

Welcome everyone back and statement by the Mayor Pro-tem

- Mayor Pro tem Gutjahr stated that on June 28, 2021, the City of Rio Communities held an executive session and all that was discussed was Workforce Solution Complaint possible threatening or pending litigation pursuant to NMSA 10-15-1(H)(7) and regarding the discussion of the purchase, acquisition or disposal of real property or water rights by the public body pursuant to NMSA 10-15-1(H)(8).

Adjourn

- Councilor Winters moved to adjourn. The motion was second by Councilor Ramsell. With a 4-0 vote the City Council regular business meeting was adjourned at 7:39 pm.

Respectfully submitted,

Elizabeth (Lisa) Adair, Municipal Clerk
(Transcribed by Amy L. Lopez, Deputy Clerk)

Date: _____

Approved:

Mark Gwinn,
Mayor

Margaret (Peggy) Gutjahr,
Mayor Pro-tem/Councilor

Bill Brown,
Councilor

Joshua Ramsell,
Councilor

Jim Winters,
Councilor

CC DRAFT Minutes 06/28/2021



CITY OF RIO COMMUNITIES

Office of Planning and Zoning Commission

360 Rio Communities Blvd.
PO Box 565
Rio Communities, NM 87002
505-861-6803
www.riocommunities.net

MONTHLY REPORT TO CITY COUNCIL

June 10, 2021

1. As the City's Comprehensive (Master) Plan was written and published over 6-years ago, the Commission has committed to reviewing the Plan every five-years, beginning this year (2021).
2. Commission reviewed and finalized (hopefully for the last time), the infamous Animal Welfare Questionnaire. Final version has been forwarded to City Clerk for her action (making 2,500 copies)! Commission members Lawrence Gordon and John Thomson have volunteered to stuff envelopes when copies are ready.
3. Topic of RV storage on residential lots was discussed, specially:
 - Parking RVs on side yards, and
 - Using RVs as secondary residence.Commission will research RV parking/storage regulations for Valencia County and State for further guidance.
4. Discussion continues on sectioning City into distinct neighborhoods with applicable names. Commissioner Thompson is POC for this project.

Municipal Clerk Department Report July 12, 2021

For the month of June

- Amy and I have been refining the meetings management program with Municode.
- I attended both P&Z and EDC meetings to explain the meetings program to them and we went live this month with both of them. Further explained that Amy will be keeping an agenda book for both the commission as I do with Council.
- I have manually edited more addresses and streets in Google Maps.
- We have scheduled meetings this month with Incode on the Licenses and Permits.
- Helped the procurement department in making sure all ITB were in the newspapers.
- Several job announcements have been put in the newspaper. (code enforcement officer, public works/janitor, public works and firefighter/EMT)
- Met with the library board member candidates along with the City Manager
- Attended the hiring committee interview for the fire chief
- Setup the open house at the fire house for the prospective candidates and the second interview meeting.
- Amy and I have started designing a layout of our temporary home (sharing the same space) on the other side of the building
- Amy and myself printed 2246, both the P&Z animal surveys & envelopes, with the volunteering of Lawrence Gordon and John Thompson stuffing the envelopes, (Amy and I stuffed 246 of them). In 2 bundles we delivered them to the post office for mailing.

Finance Department
June 2021 Department Report

- Accounts Payable
- Reconciliation of bank accounts
- Biweekly Payroll / Payroll Reporting & Taxes
- Grant management and monthly reporting
- Worked on NMFA loan for Fire Truck
- Attended NMFA Meeting for loan for Fire Truck
- Held Pre-Bid Conference for Invitation to Bid #2021-0105
- Worked on end of year adjustments
- Preparing for end of year and FY 2021 audit
- Working on finishing touches for Final Budget

Code Enforcement Dept.
Gordon Reeves / Officer

Public Works Dept.
Gordon Reeves / Director

Pavement Rehabilitation
Gordon Reeves / Project Manager

Reports; June 2021

Code Enforcement

1. Weed and Vehicle violations.
2. Storing of RV's & boats violations
3. Accessory buildings violations.

Public Works

1. Public Works worker position back out for advertising for Hire.
2. Potholes: list given to Contractor to Bid.
3. Some work on Golf Course Lane to be completed by P.W. before the Contractor moves in.
4. Large Dead tree along Golf Course Rd, removed, Branches falling onto the road.
5. Ordered new flags for fire Dept and City Hall.

Recovered.

- Stocked pile 250 tires, that will fill three 20 yd dumpsters, set to be sent to recycle in July
- Stocked pile of Mattress, furniture, and appliance's

Project Managing

Street Paving

New road paving project gearing up. Startup meeting next week.

Library

1. Carpet installed. Building bookshelves.
2. Prepping large room for Amin. Office to move in temp.

This is my report.
Gordon Reeves

Municipal Court

- For the month of June
- 2 traffic violation(s) were filed
- Amounts collected are:
- Correction fees \$180;
- Court Automation fees \$54;
- Judicial Education fees \$27;
- Court Fines of \$215
- giving a total of \$476.00 collected in the courts



Rio Communities, NM

Accounts Payable Approval Report By Fund

Item 4.

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
Fund: 11000 - General Operating Fund					
Department: 2001 - Manager					
Verizon Wireless	9882346066	07/07/2021	Telecommunications-Phones	11000-2001-57160	42.11
Department 2001 - Manager Total:					42.11
Department: 2002 - General Administration					
NM Water Service Company	INV0002630	07/07/2021	Water	11000-2002-57173	253.24
NM Gas Co	INV0002633	07/07/2021	Natural Gas	11000-2002-57171	41.31
PNM	INV0002634	07/07/2021	Electricity	11000-2002-57170	497.12
Comcast Business	INV0002635	07/07/2021	Telecommunications	11000-2002-57160	408.48
Department 2002 - General Administration Total:					1,200.15
Department: 2004 - Finance/Budget/Accounting					
Verizon Wireless	9882346066	07/07/2021	Telecommunications - Phones	11000-2004-57160	283.85
Department 2004 - Finance/Budget/Accounting Total:					283.85
Department: 2008 - Municipal Clerk					
Verizon Wireless	9882346066	07/07/2021	Telecommunications - Phones	11000-2008-57160	104.22
Department 2008 - Municipal Clerk Total:					104.22
Department: 3001 - Law Enforcement					
Verizon Wireless	9882346066	07/07/2021	Telecommunications - Phones	11000-3001-57160	52.11
WEX Bank	72620927	07/08/2021	Fuel - Code Enforcement	11000-3001-56120	157.74
Department 3001 - Law Enforcement Total:					209.85
Department: 5101 - Public Works					
Verizon Wireless	9882346066	07/07/2021	Telecommunications - Phones	11000-5101-57160	80.21
WEX Bank	72620927	07/08/2021	Fuel - Public Works	11000-5101-56120	65.59
Department 5101 - Public Works Total:					145.80
Department: 5104 - Highways and Streets					
PNM	INV0002634	07/07/2021	Electricity	11000-5104-57170	935.77
Department 5104 - Highways and Streets Total:					935.77
Fund 11000 - General Operating Fund Total:					2,921.75
Fund: 20200 - Environmental					
Department: 5009 - Environmental					
Universal Waste Systems, Inc.	0001114508	07/07/2021	20 Ft. Roll off for tire disposal	20200-5009-55999	362.17
Department 5009 - Environmental Total:					362.17
Fund 20200 - Environmental Total:					362.17
Fund: 20900 - Fire Protection					
Department: 3002 - Fire Protection					
Verizon Wireless	9882346066	07/07/2021	Telecommunications - Phone	20900-3002-57160	139.12
NM Water Service Company	INV0002631	07/07/2021	Water	20900-3002-57173	68.31
NM Gas Co	INV0002632	07/07/2021	Natural Gas	20900-3002-57171	39.55
PNM	INV0002634	07/07/2021	Electricity	20900-3002-57170	1,714.40
WEX Bank	72620927	07/08/2021	Fuel - Fire Department	20900-3002-56120	994.51
Department 3002 - Fire Protection Total:					2,955.89
Fund 20900 - Fire Protection Total:					2,955.89
Fund: 29700 - County EMS GRT					
Department: 2002 - General Administration					
Verizon Wireless	9882346066	07/07/2021	Telecommunications - Phone	29700-2002-57160	168.78
WEX Bank	72620927	07/08/2021	Fuel - EMS	29700-2002-56120	92.64
Department 2002 - General Administration Total:					261.42
Fund 29700 - County EMS GRT Total:					261.42
Grand Total:					6,501.23

Report Summary

Fund Summary

Fund	Expense Amount
11000 - General Operating Fund	2,921.75
20200 - Environmental	362.17
20900 - Fire Protection	2,955.89
29700 - County EMS GRT	261.42
Grand Total:	6,501.23

Account Summary

Account Number	Account Name	Expense Amount
11000-2001-57160	Telecommunications	42.11
11000-2002-57160	Telecommunications	408.48
11000-2002-57170	Utilities - Electricity	497.12
11000-2002-57171	Utilities - Natural Gas	41.31
11000-2002-57173	Utilities - Water	253.24
11000-2004-57160	Telecommunications	283.85
11000-2008-57160	Telecommunications	104.22
11000-3001-56120	Supplies - Vehicle Fuel	157.74
11000-3001-57160	Telecommunications	52.11
11000-5101-56120	Supplies - Vehicle Fuel	65.59
11000-5101-57160	Telecommunications	80.21
11000-5104-57170	Utilities - Electricity	935.77
20200-5009-55999	Contract - Other Services	362.17
20900-3002-56120	Supplies - Vehicle Fuel	994.51
20900-3002-57160	Telecommunications	139.12
20900-3002-57170	Utilities - Electricity	1,714.40
20900-3002-57171	Utilities - Natural Gas	39.55
20900-3002-57173	Utilities - Water	68.31
29700-2002-56120	Supplies - Vehicle Fuel	92.64
29700-2002-57160	Telecommunications	168.78
Grand Total:		6,501.23

Project Account Summary

Project Account Key	Expense Amount
None	6,501.23
Grand Total:	6,501.23

Authorization Signatures

MAYOR & COUNCILORS

MARK GWINN, MAYOR

MARGARET "PEGGY" GUTJAHR, MAYOR PRO-TEM/COUNCILOR

BILL BROWN, COUNCILOR

JOSHUA RAMSELL, COUNCILOR

JIM WINTERS, COUNCILOR

ATTEST:

ELIZABETH "LISA" ADAIR, MUNICIPAL CLERK

CITY OF RIO COMMUNITIES PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into by and between the Governing Body of the City of Rio Communities, State of New Mexico, hereinafter referred to as the "City" and GM Emulsion, LLC, hereinafter referred to as the "Contractor", and is effective as of the date set forth below upon which it is executed by the Purchasing Agent and the Governing Body.

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Contractor shall deliver products or perform the work outlined on the Scope of Work attached hereto as **Attachment 1** and incorporated herein by reference. Product(s) shall be delivered or work performed only upon receipt of a valid Purchase Order issued by the City that specifically identifies the products or services to be provided by the Contractor.

2. Compensation.

A. The City shall pay to the Contractor in full payment for product(s) accepted or services satisfactorily performed based on the price(s) found in the Bid Form at **Attachment 1**.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below. All invoices MUST BE received by the City no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. The Contractor shall submit an accurate invoice for each purchase. Any reimbursement of taxes due to the Contractor shall be shown as a separate item. Invoices shall refer to the Purchase Order Number and shall be itemized unless otherwise specified by the City. Invoices are to be mailed to: City of Rio Communities Accounts Payable, 360 Rio Communities Blvd. Rio Communities, NM 87002

D. The payment of taxes due for any money received under this Agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's Federal and State tax identification number(s).

3. Term.

This Agreement shall terminate upon acceptance by the City and payment for the specified product(s) or services.

4. Termination.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for product(s) delivered and accepted or work

performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; 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 product(s) delivered or such work performed within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with Contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Governing Body, this Agreement shall terminate immediately upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Insurance.

The Contractor agrees to obtain and maintain, at the Contractor's expense, such insurance as will protect the Contractor from claims under the Workman's Compensation Act and such comprehensive general liability and automobile insurance as will protect the City and the Contractor from all claims for bodily injury, death, or property damage which may arise from the performance by the Contractor, or by the Contractor employees, for the Contractor's functions and services required under this Agreement. Such insurance shall be in an amount not less than **\$1,000,000.00** for injury to any one person and **\$1,000,000.00** on account of any one accident and in the amount of not less than **\$1,000,000.00** for property damage. The comprehensive liability insurance shall name the City an additional insured with specific endorsements so naming the City for any claims against the City arising from the work performed by the Contractor under this Agreement. The Contractor further agrees to procure and maintain

professional liability (errors and omissions, or “E&O”) insurance in an amount not less than \$2,000,000.00 per claim and in the aggregate. Prior to commencement of any work, the Contractor shall furnish to the City a certificate that complies with this paragraph. The certificate shall provide that the policy shall not be canceled until at least thirty (30) calendar days prior written notice shall have been given to the City. Contractor shall provide annual updates of the certificate to demonstrate the policy remains in effect for the duration of this Agreement. The failure to have valid policies of insurance in full force and effect at any time during the term of this agreements shall constitute a material breach of this agreement.

Employer's liability coverage will be required of the Contractor and any subcontractor for any class of employee engaged in work under this agreement that is not protected under the Workmen's Compensation Statute. All insurance will be by insurers acceptable to the City and authorized to do business in the state of New Mexico, and who are rated A,A- (A.M. Best Ratings) or AA+/- (S&P). Except as provided below, coverage shall be on an occurrence basis. All insurance policies shall contain a waiver of subrogation against the City. All insurance policies shall be primary. Coverage shall be on ISO coverage forms. Deductibles in excess of \$10,000 per claim may only be approved by the City. Coverage shall be as broad as that provided in ISO CG 20 01 04 13. Self-insured retentions must be declared and approved by the City. Automobile coverage shall be ISO Form CA 001 covering Code 1 (any auto) with the limits of **\$2,000,000** per accident for bodily injury a property damage. If an E&O policy is on a claims made basis, then the date of the policy must be shown and must be before the date of the Contract or the beginning of the scope of work under the Contract, be maintained and evidence for such coverage to be provided for at least five (5) years after completion of the work under the Contract. If such coverage is cancelled or not renewed, and not replaced with another claims made policy form with a retroactive date prior to the effective date of the Contract, then Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of work under the Contract.

7. Status of Contractor.

The Contractor and its agents and employees are independent contractors providing product(s) or performing services for the City and are not employees of the City of Rio Communities. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Rio Communities as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the City of Rio Communities unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City. No such assignment or transfer shall relieve the Contractor from the obligations and liabilities under this Agreement.

9. Subcontracting.

Not applicable.

10. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the procuring agency of the City, its officers and employees, and the City of Rio Communities from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. Confidentiality.

Any confidential information provided to or developed by the Contractor 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 City.

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City of Rio Communities and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

13. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City's contracting process;

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Contractor is not a public officer or employee of the City; (ii) the Contractor is not a member of the family of a public officer or employee of the City; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the City, a member of the family of a public officer or employee of the City, or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the City within the preceding year and whose official act directly resulted in this Agreement and (ii)

the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the City.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the City if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

14. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

15. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. Penalties for violation of law.

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.

17. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal, state and City laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or 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.

18. Applicable Law.

In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern and that venue will lie in the Seventh Judicial District Court in City of Rio Communities. 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 lawsuits arising under or out of any term of this Agreement.

19. 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 City.

20. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of product(s) delivered or services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City, the Department of Finance and Administration and the State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

21. Disclaimer and Hold Harmless.

City of Rio Communities shall not be liable to the Contractor, or the Contractor's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Contractor's person or property, occurring in connection with Contractor's performance of Contractor's duties according to this Agreement. Contractor shall hold City of Rio Communities harmless from all loss, damage, and injury, including court costs and attorney fees, incurred by City of Rio Communities in connection with the performance by Contractor of Contractor's duties according to this Agreement.

22. Indemnification.

The Contractor shall defend, indemnify and hold harmless the City of Rio Communities from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the

services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the City of Rio Communities and the New Mexico Association of Counties by certified mail.

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

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 express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

26. Lobbying.

No federal appropriated funds can be paid or will be paid, by or on behalf of the CONTRACTOR, or any person for influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

27. Non-Collusion.

In signing this bid the Bidder certifies he/she has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the City.

28. Survival.

The Agreement paragraphs titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this Agreement. Software licenses, leases, maintenance and any other unexpired Agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

29. Succession.

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

30. Force Majeure.

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

31. Mediation.

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

32. Notice to Proceed.

It is expressly understood that this Agreement is not binding upon the City until it is executed by the Governing Body after voting on the Contract at a public meeting or unless it is executed by the City of Rio Communities City Manager, if the amount of the Contract is \$10,000.00 or less. Further, the Contractor is not to proceed with its obligations under the Agreement until the Contractor has received a fully executed copy of the Agreement and one or more valid Purchase Orders issued by the City.

33. Attorney's Fees.

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

34. Cooperation.

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

35. Incorporation and Order of Precedence.

This Invitation for Bids and the Contractor's Bid Form are incorporated by reference into this Agreement and are made a part of this Agreement. In the event of any conflict among these documents, the following order of precedence shall apply:

1. Any Contract amendment(s), in reverse chronological order; then
2. this Contract itself; then

3. the Invitation for Bids; then
4. the Contractor's Bid Form; then
5. the Contractor's standard agreement terms and conditions (which may or may not have been submitted as part of the Contractor's bid).

36. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. The Contractor shall defend, at its own expense, the City of Rio Communities against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City of Rio Communities based upon the Contractor's trade secret infringement relating to any product or service provided under this Agreement, the Contractor agrees to reimburse the City of Rio Communities for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City of Rio Communities shall:

- i. give the Contractor prompt written notice of any claim;
 - ii. allow the Contractor to control the defense or settlement of the claim; and
 - iii. cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. 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 option and expense:
- i. provide a procuring agency of the City the right to continue using the product or service;
 - ii. replace or modify the product or service so that it becomes non-infringing; or
 - iii. accept the return of the product or service and refund an amount equal to the depreciated 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 of the City to the extent such modification is the cause of the claim.

37. Escalation Clause.

Price escalation due to increased cost to the Contractor is not allowed.

38. Warranties.

Contractor warrants the materials, supplies or services furnished to be exactly as specified, free from defects in Contractor's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples

furnished by Contractor. Materials furnished by Contractor shall be accompanied by the manufacturer's written warranty against defects in quality, craftsmanship, and materials.

39. Commercial Warranty.

The Contractor agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Contractor gives for such to any customer for such supplies or services. The rights and remedies provided herein shall extend to the City and are in addition to and do not limit any rights afforded to the City by any other clause of this Agreement. Contractor agrees not to disclaim warranties of fitness for a particular purpose of merchantability. Warranties shall become effective at the time of acceptance.

40. Inspection.

Final inspection and acceptance will be made at the destination. Supplies rejected at the destination for nonconformance with specifications shall be removed at the Contractor's risk and expense, promptly after notice of rejection.

41. Inspection of Plant.

The City may inspect, at any reasonable time, the part of the Contractor's, or any subcontractor's plant or place of business, which is related to the performance of this Contract.

42. Late Payment Charges.

Except as otherwise agreed to: late payment charges may be assessed against the user agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

43. Overcharge Resulting from Antitrust Violations.

Contractor agrees that any and all claims for overcharge resulting from antitrust violations which are borne by the City as to goods, services, and materials purchased in connection with this bid are hereby assigned to the City.

44. Succession.

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

45. Notices.

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:

To the City: Angela R. Valadez, City of Rio Communities Procurement Officer
 360 Rio Communities Blvd.
 Rio Communities, NM 87002

To the Contractor: GM Emulsion, LLC
5935 Agua Fria Street
Santa Fe, NM 87507

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature of all parties.

CONTRACTOR

By: _____ Date: _____
Contractor

Printed Name: _____

Address: _____

draft

CITY OF RIO COMMUNITIES

APPROVED, ADOPTED, AND PASSED on this ___ day of _____, 2021.

GOVERNING BODY OF THE CITY OF RIO COMMUNITIES

MARK GWINN, MAYOR

MARGARET "PEGGY" GUTJAHR
MAYOR PRO-TEM

BILL BROWN
COUNCILOR

JOSHUA RAMSELL
COUNCILOR

JIM WINTERS
COUNCILOR

ATTEST BY:

ELIZABETH "LISA" ADAIR, CITY CLERK

By: _____
City of Rio Communities Procurement Officer

Date: _____

**RIO COMMUNITIES PAVEMENT REHABILITATION/IMPROVEMENTS OF
CITY ROADS
BID PROPOSAL
BASE BID**

BID ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED		UNIT PRICE	AMOUNT
			QTY			

BASE BID LOT

1	Single Chip Seal	S.Y.	18667	\$5.50	\$102,668.50
2	Fog Seal Coat	S.Y.	18667	\$0.75	\$1,400.25
3	Mobilization	L.S.	L.S.	\$7,500	\$7,500.00
4	Traffic Control	L.S.	L.S.	\$7,500	\$7,500.00

BID OPTION NO. 1

5	Single Chip Seal	S.Y.	3017	\$5.50	\$16,593.50
6	Fog Seal Coat	S.Y.	3017	\$0.75	\$2,262.75
7	Mobilization	L.S.	L.S.	\$7,500	\$5,500.00
8	Traffic Control	L.S.	L.S.	\$7,500	\$2,500.00

Write out Base Bid Amount:

one hundred forty five thousand nine hundred twenty five and 00/100		Dollars
a) Base Bid – Subtotal of Bid Items No. 1 through 4		\$119,068.75
b) Bid Option No. 1 – Subtotal of Bid Items No. 5 through 8		\$ 26,856.25
c) Allowances:	\$ _____	0.00
Total Allowances:		
d) Subtotal –Base Bid subtotal plus Allowances:		\$145,925.00
e) New Mexico Gross Receipts Tax (NMGRT) on amount online d) Subtotal at 7.9375%:		\$ 11,582.80

f) BASE BID TOTAL – Line d) Subtotal plus Line e) NMGRT: \$157,507.80

one hundred fifty seven thousand five hundred seven and 80/100 Dollars
(Total amount written in words)

NOTE: The City reserves the right to award bid based upon the lowest base bid only or if alternates are included, the lowest based bid for any combination of base bid and alternates(s).

draft

The undersigned, as Bidder, hereby declares that the only persons or firms interested in the proposal as principals are named herein; that no other persons or firms have any interest in this proposal or in the contract to be entered into; that this proposal is made without collusion with any other person, company, or parties making a bid; and that it is in all respects fair and in good faith, without collusion or fraud.

The Contractor agrees that should he fail to complete the project in 30 calendar days, he agrees to pay as liquidated damages the amount of three hundred dollars (\$300.00) per calendar day for each day exceeding the contract substantial completion date, representing monetary damage and risk to property or life. The Contractor further agrees that any extensions in the contract time shall apply only to the date of completion for the entire contract.

Attached hereto is the required proposal guarantee described as follows:

Bid Surety in the amount of 5% of the bid

The proposal guarantee shall be 5% of the total amount bid. The receipt of Addenda is acknowledged below:

Addendum No. 1 Date 6/24/2021

Addendum No. _____ Date _____

Addendum No. _____ Date _____

Dated: June 26, 20 21.

SIGNATURE OF BIDDER

(SEAL) if Bid is by a Corporation



By: Michelle Martinez

(Print Name)

Title: President

Company: GM Emulsion, LLC

Date: 6/27/2021

Address: 5935 Agua Fria Street

Santa Fe, NM 87507

New Mexico Contractor's Classification and License No. 370602 (GA01, GA98, GB98, GF01, GF02, GF03, GF04, GF05, GF07, GF08, GF09, GS08)

Resident Bidder Preference Certification No. L1391423280
(if applicable)

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A. Scope of Work

DESCRIPTION

The project consists of chip-seal at six locations throughout the City of Rio Communities.

Chip-seal: Consists of adding a single layer of chip-seal and a fog seal overlay.

BASE BID

Repair #	Location	Type of Repair	Repair Description	Specification needed
1	Suncrest Blvd	Chip-seal	Chip-seal entire length	Refer to Sections 1, and 2 in the Special Provisions
2	Sombrero Lp (Entire Length)	Chip-seal	Chip-seal entire loop	Refer to Sections 1, and 2 in the Special Provisions
3	349 Gorman Ave to End of Pageant Dr	Chip-seal	Chip-seal entire length starting from previous repair	Refer to Sections 1, and 2 in the Special Provisions

BID OPTION NO. 1

Repair #	Location	Type of Repair	Repair Description	Specification needed
4	Plunket Ct (Cul de Sac)	Chip-seal	Chip-seal entire length	Refer to Sections 1, and 2 in the Special Provisions
5	Unitas Ct (Cul de Sac)	Chip-seal	Chip-seal entire length	Refer to Sections 1, and 2 in the Special Provisions
6	Guapo Dr	Chip-seal	Chip-seal to Aviso	Refer to Sections 1, and 2 in the Special Provisions

BASE BID

Surfacing Schedule			
Repair #	Areas per Exhibits	Chip Seal	Fog Seal
	S.F.	S.Y.	S.Y.
1	60,000	6,666.67	6,666.67
2	48,000	5,333.33	5,333.33
3	60,000	6,666.67	6,666.67
	Subtotal	18666.67	18666.67
	Total	18,667	18,667

BID OPTION NO. 1

Surfacing Schedule			
Repair #	Areas per Exhibits	Chip Seal	Fog Seal
	S.F.	S.Y.	S.Y.
4	11,237	1,248.56	1,248.56
5	10,157	1,128.56	1,128.56
6	5,750	638.89	638.89
	Subtotal	3016.01	3016.01
	Total	3017	3017

Project Locations: GPS Coordinates

BASE BID

Repair #	Location	GPS Coordinates
1	Suncrest Blvd	34°38'30.4"N 106°43'16.7"W
2	Sombrero Lp (Entire Length)	34°39'02.2"N 106°43'30.3"W
3	349 Gorman Ave to End of Pageant Dr	34°39'25.9"N 106°43'01.6"W

BID OPTION NO. 1

Repair #	Location	GPS Coordinates
4	Plunket Ct (Cul de Sac)	34°38'08.2"N 106°43'41.6"W
5	Unitas Ct (Cul de Sac)	34°38'05.0"N 106°43'40.0"W
6	Guapo Dr	34°38'11.0"N 106°43'12.1"W

Repair #1:
Suncrest Dr



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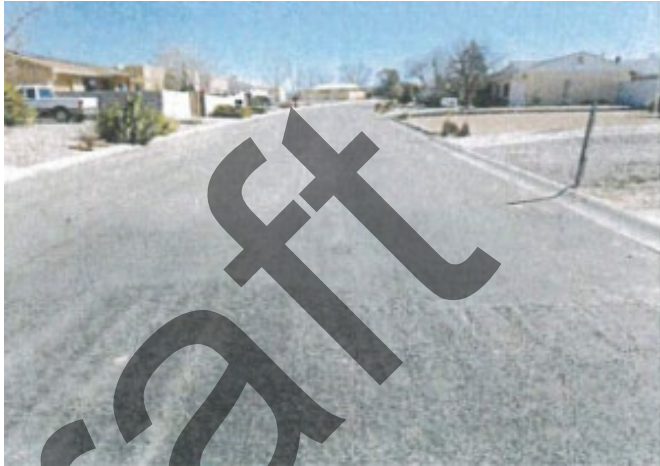
Repair: Chip-seal
Area: 60,000 SF (W30' X L2,000')

Repair #2:
Sombrero Lp (Entire Length)



Repair: Chip-seal
Area: 48,000 SF (W24' X L2,000')

Repair #3:
349 Gorman Ave to end of Pageant Dr



Repair: Chip-seal
Area: 60,000 SF (W30' X L2,000')

Repair #4:
Plunket Ct (Cul de Sac)



Repair: Chip-seal

Area: 11,237 SF (W27' X L230' X 40'R)

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Repair #5:
Unitas Ct (Cul de Sac)



Repair: Chip-seal
Area: 10,157 SF (W27' X L190' X 40'R)

Repair #6:
Guapo Dr to Aviso St



Repair: Chip-seal
Area: 5,750 SF (W23' X L250')

INTENT OF CONTRACT

The intent of the contract is to provide for the construction and completion in every detail of the work described herein. The Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

SIGNIFICANT CHANGES IN THE CHARACTER OF WORK

The City reserves the right to make, in writing, at any time during the work, such modifications in quantities and such alterations to the work as are necessary to satisfactorily complete the project. Such modifications in quantities and alterations to the work shall not invalidate the contract nor release the surety, and the Contractor shall agree to perform the work as altered.

If the alterations to the work or modifications in quantities significantly change the character of the work under the contract whether such alterations or modifications are in themselves significant changes to the character of the work or because by affecting other work, they cause such other work to become significantly different in character an adjustment, excluding anticipated profit, shall be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment shall be made either for or against the Contractor in such amount as the City may determine to be fair and equitable.

If the alterations to the work or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. The term "significant change" shall be construed to apply only to the following circumstances:

- A. When the character of the work as changed differs materially in kind or nature from that involved or included in the original proposed construction; or
- B. When a major item of work as defined elsewhere in the contract is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in the case of a decrease below 75%, to the actual amount of work performed.
- C. When the change affects work performed under a subcontract agreement approved by the City, adjustments will be made if prior to doing the work the prime Contractor can show the City that the initiated change adversely affected the subcontractor or the subcontractor's work or payment. No consideration will be given to customary increases/decreases in quantities necessary to complete the work that were changed by the Contractor's schedule of operations, by his or her planning of the work, or for unscheduled mobilizations. No consideration will be made after subcontractor work is completed and claims for additional compensation are received.

DIFFERING SITE CONDITIONS

During the progress of work, if subsurface or latent physical conditions differing materially from those indicated in the contract are encountered at the site or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site the party discovering such conditions shall promptly notify the other party in the contract in writing of the specific differing conditions before they are disturbed, or as soon as practicable thereafter, and before the affected work continues.

- A. Upon written notification, the City shall, within a reasonable time, investigate the conditions. If the City determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment that excludes anticipated profits but includes cost of delays will be made, and the contract will be modified in writing accordingly.

B. In the event the Contractor fails to provide the written notification in a timely fashion and the City's cost increased as a result, the damage that could have been mitigated by timely notice will be calculated and the contract adjustment will be reduced accordingly.

MAINTENANCE OF TRAFFIC

The Contractor shall furnish, erect, and maintain barricades, warning signs, flaggers, and pilot cars in accordance with the MUTCD, the Traffic Control Plan, and the requirements of Division 700, Traffic Control Devices. Flaggers shall be provided with equipment and training pursuant to requirements of the MUTCD. The equipment used by the flaggers shall be kept clean and in good repair by the Contractor at the Contractor's expense. The Contractor shall take all steps necessary to either keep the existing roadway open with a minimum of inconvenience to the traveling public or provide an approved alternate route.

The Contractor's equipment shall enter and leave the traveled way only in the direction of public traffic. All movements on or across the traveled way shall be performed in a manner that will not endanger the traveling public.

The City will be responsible for snow removal on all sections of roadway open to the traveling public. The Contractor shall be responsible for snow removal as required for the protection of the work on all sections of the project not open to the traveling public.

The Contractor shall be liable and agrees to pay the City for additional costs and expenses incurred by the City in correcting the defect(s).

The Contractor shall provide ingress and egress to local businesses and residences for the duration of the contract. The Contractor shall advise and schedule access modifications with local business owners, residences, and the Engineer at least twenty-four (24) hours in advance.

FINAL CLEANUP

Before final acceptance, the roadway, all pit sites used by the Contractor, and all ground occupied or used by the Contractor in connection with the work shall be cleaned of all rubbish including but not limited to concrete and asphalt chunks, loose rock, excess materials, and temporary structures. All parts of the work shall be left in an acceptable condition. If appropriate arrangements have been made with private property owners, removal of equipment from private property shall not be required prior to final acceptance.

Borrow pits, surfacing pits, haul roads, and all ground occupied by the Contractor in connection with the work shall be revegetated in accordance with the requirements of NMDOT Standard Specifications for Highway and Bridge Construction Section 632. Haul roads or other areas may be excepted from these requirements when a letter of intent from the landowner for future use has been accepted by the City.

APPENDIX A

STANDARD SPECIFICATIONS FOR

RIO COMMUNITIES ROAD PAVING IMPROVEMENTS OF CITY ROADS

The "New Mexico Department of Transportation 2019 Standard Specifications for Highway and Bridge Construction, and the New Mexico Standard Specifications for Public Works Construction are incorporated by reference, the same as if fully rewritten herein, in the contract, proposal, bond, and other contract documents for work to be performed under this contract for the CITY OF RIO COMMUNITIES. Said "New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction," Current Edition, are for the purpose of the contract, proposal, bond, and other contract documents, supplemented, modified, and amended as follows, and as may be hereinbefore and hereinafter provided.

Whenever, in the Supplemental General Provisions, Special Conditions and Technical Specifications the word "Section" is followed by a number and a caption (such as "Section 102.4 - Rejection of Proposals") reference is made to that specific section of the "New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction," Current Edition and the New Mexico Standard Specifications for Public Works Construction. The Supplemental General Provisions, Special Conditions, Supplemental Technical Specifications, Special Provisions and Supplemental Specifications shall govern over the Standard Specifications and are hereby made a part of the Contract Documents.

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SPECIAL PROVISIONS TO BE USED

TABLE OF CONTENTS

<i>Section</i>	<i>Description</i>
1	CHIP SEAL
2	FOG SEAL
3	TRAFFIC CONTROL

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SECTION 1

CHIP AND SEAL

1. DESCRIPTION

The work consists of furnishing all labor, material, equipment, traffic control, quality control and warranties to apply asphalt emulsion and aggregate material on an existing surface, in accordance with these

specifications and in conformity with the lines shown on the plans or established.

a. ASPHALT EMULSION

Polymer-Modified High-Float Emulsion conforming to the requirements of Table 1.

Table 1	Polymer-Modified High Float Emulsions Requirements	
Test	HFE-100P	
Viscosity, Saybolt Furol at 122°F, Seconds	50+	
Sieve Test, Retained on No. 20 Sieve, %	0.10-	
Storage Stability Rest, 1 Day, %	1-	
Demulsibility, 1.2 fl. oz. 0.10 N, CaCl, %	30+	
Residue from Distillation Test to 400°F	65+	
Oil Distillate by Volume of Emulsion, %	3-	
Tests on Residue from Distillation Test		
Penetration at 77°F, 3.5 oz., 5 s, 0.1 mm	90-150	
Ductility 77°F, 2 inch/min	40+	
Elastic Recovery, %	58 ^a	
Float Test @ 140°F, Seconds	1,200+	
^a Test in accordance with AASHTO T301 at a test temperature of 50°F.		

b. AGGREGATE

Aggregate shall be free from clay or adherent films of clay or other matter that would prevent it from adhering to the emulsified asphalt. Aggregate must conform to gradations requirement as specified herein shall be determined by ASTM C136.

i. 3/8" AGGREGATE (CHIP)

Sieve Size	Maximum % Passing
1/2"	
3/8"	100
No. 4	0-10
No. 10	0-2
No. 200	1.0 max.

Percent Wear: Percent of LA wear of 40 or less shall be determined by ASTM C131.

Soundness: A loss of 12 or less shall be determined by AASHTO T104.

Fractured Faces: The amount of crushing shall be regulated so that at least 92 percent, by weight, of all the plus No.4 sieve material shall have a minimum of 2 fractured faces.

Aggregate that becomes contaminated or otherwise unusable shall be corrected by screening or washing at the contractor's expense.

2. EQUIPMENT

a. EMULSIFIED ASPHALT DISTRIBUTOR

The distributor and equipment shall be capable of uniformly distributing asphalt emulsion at even temperature and uniform pressure on variable widths of surface up to 20 feet at readily determined and controlled rates from 0.05 to 2.0 gallons per square yard. The allowable variation any specified rate shall not exceed plus or minus 0.02 gallon per square yard. The distributor's spreading capabilities shall be computer controlled or it shall be calibrated to conform to the distributor manufacturer's procedure prior to applying the emulsified asphalt. Distributor equipment shall include a tachometer, pressure gauges, accurate volume measuring devices or a calibrated tank, and a thermometer for measuring temperatures of tank contents. Distributors shall be equipped with a power unit for the pump, and full circulation spray bars adjustable laterally and vertically. Distributors shall be equipped with an automatic heater capable of maintaining the asphalt emulsion at the manufacture's recommended application temperature or at 140°F, whichever is higher.

b. MECHANICAL SPREADER

Self-propelled aggregate spreader of approved design supported by at least four wheels equipped with pneumatic tires on two axles. The aggregate spreader shall be capable of applying the larger chip material and shall have positive controls, so the required quantity of materials is deposited uniformly over the full width of the asphalt emulsion. Other types of aggregate spreaders may be used provided they accomplish equivalent results and are approved.

c. **ROLLERS**

A minimum of two self-propelled pneumatic tire rollers weighting no less than 5 tons or more than 10 tons and consist of 2 axles on which are mounted not less than 9 pneumatic-tired wheels in such manner that the rear group of tires will not follow in the tracks of the forward group. The axles shall be mounted in a rigid frame provided with a loading platform or body suitable for ballast loading. The tires shall be uniformly inflated.

If required, one 5-8 ton static steel wheel roller shall be provided.

d. **POWER BROOM**

A rotary power broom with a positive means of controlling vertical pressure and capable of cleaning and removing loose aggregate.

3. **CONSTRUCTION**

a. **WEATHER LIMITATIONS**

Chip seal materials shall be applied only when the surface is dry and when there is no rain or threat of rain. The ambient temperature at the time of application of chip seal materials shall be at least 70°F and rising. The chip seal shall not be placed if the ambient temperature during the curing period is expected to be below 50°F in a twenty-four-hour period.

b. **SURFACE PREPARATION**

The entire surface shall be cleaned of loose sand, dust, rock, mud and all other debris that could prevent proper adhesion of the asphalt emulsion. The cleaning shall be accomplished by power broom, scaping, blading or other approved measures. The operation shall not be started until the surface is approved.

c. **APPLICATION**

i. **RATE OF APPLICATION**

SINGLE CHIP SEAL

Single coat 3/8" chips at 22 to 35 pounds per square yard with 0.33 to 0.45 gallon per square yard of asphalt emulsion.

ii. **ASPHALT EMULSION**

Asphalt emulsion shall be applied by a pressure distributor in a uniform, continuous spread and within the temperature range specified. The

distributor's spreading capability shall be computer controlled or calibrated to conform to the distributor manufacturer's procedure prior to applying the emulsified asphalt. If streaking occurs, the distributor operation shall be stopped immediately until the cause is determined and corrected. Streaking is alternating, narrow, longitudinal areas of excessive and then insufficient quantities of asphalt emulsion. The quantity of asphalt emulsion per square yard may vary from the rate shown in the contract, as directed. A strip of building paper at least 3 feet in width and with a length equal to that of the spray bar of the distributor plus 1 foot shall be used at the beginning of each spread. If the distributor does not have a positive cut-off, the paper shall be used at the end of each spread. The paper shall be removed and disposed of in a satisfactory manner. The distributor shall be moving forward at proper application speed at the time the spray bar is opened. Skipped areas and deficiencies shall be corrected. Junctions of spreads shall be carefully made to assure a smooth riding surface.

The length of spread of asphalt emulsion shall not be in excess of the area that trucks loaded with aggregate can immediately cover.

The spread of asphalt emulsion shall not be more than 6 inches wider than the width covered by the chop material from the spreading device. Under no circumstances shall operations proceed so asphalt emulsion will be allowed to chill, set up, dry or otherwise impair retention of the aggregate.

The distributor shall be parked so that asphalt emulsion will not drip on the surface of the traveled way.

iii. AGGREGATE

The aggregate shall be applied after the emulsion has broken or as directed by the Project Manager. The aggregate shall be spread in quantities as designated. The spreading rate may vary from the rate shown in the contract when approved. Spreading shall be accomplished so the tires of the trucks or aggregate spreader do no contact the uncovered and newly applies asphalt emulsion.

The aggregate shall be moistened with a sufficient amount of water to reduce the dust coating of the aggregate prior to spreading. The cover coat material shall not contain free moisture as evidenced by drain down in the delivery truck bed.

Immediately after the aggregate material is spread, deficient areas shall be covered with additional material. Rolling shall begin immediately behind

the spreader and shall continue until three complete coverages are obtained. Rolling shall be completed the same day the asphalt emulsion and aggregate are applied.

d. CLEANING, PROTECTING, AND SWEEPING

The completed roadway surface shall be lightly broomed the following morning to remove any excess material, without removing any imbedded material. The contractor shall conduct additional brooming if so directed.

The contractor shall protect manholes, valve boxes and other surfaces. Care shall be taken to prevent the spraying of asphalt upon adjacent pavements and that portion of the street being used for traffic or structures, guard rails, guideposts, markers, trees, shrubs, adjacent property, improvements, and facilities of all kinds.

e. TRAFFIC CONTROL

A traffic control plan approved by the Project Manager will be required before any work commences. The cost of signage, marker, flaggers and traffic control necessary to complete this project shall be included in the unit price of the chip seal.

f. QUALITY CONTROL

i. QUALITY CONTROL TESTING

The contractor is responsible for quality control (QC) sampling and testing.

Chip seal aggregate:

Provide material gradation and quality test results taken during production. The testing rate for gradation is one per 250 tons per source.

Asphalt emulsion:

Only emulsion from certified sources is allowed for use. The contractor shall provide material certification and quality control test results for each batch of asphalt emulsion used on the project. Include the supplier's name, plant location, emulsion grade and batch number on all reports.

4. METHOD OF MEASUREMENT AND PAYMENT

The chip seal shall be measured and paid for by the square yard sealed and accepted by the City. Payment will be full compensation for the chip seal work completed in accordance with the above specifications.

5. WORK INCLUDED IN PAYMENT
All labor, material, equipment, traffic control, quality control and warranties.

6. METHOD OF PAYMENT

PAY ITEM

Single Chip Seal

UNIT

Square Yard

draft

SECTION 2

FOG SEAL

Refer to the NEW MEXICO STANDARD SPECIFICATIONS FOR PUBLIC WORKS
CONSTRUCTION 2006 EDITION Section 333 and 113. Copies are attached for reference.

draft

SECTION 3

TRAFFIC CONTROL

1. SCOPE

The work shall consist of establishing traffic control and maintaining safe, convenient use of public roads and rights-of-way. A traffic control plan approved by the Project Manager will be required before any work commences.

2. TRAFFIC AND ACCESS

The contractor's operations shall cause no unnecessary inconvenience to the public. The public rights-of-way shall be maintained.

at all times unless interruption is authorized by proper local authority. Contractor's authorized closing or detour plans shall be provided to the engineer for approval.

Safe and adequate access shall be provided and maintained to all public protection devices and to all critical utility control locations. Facility access shall be continuous and unobstructed unless otherwise approved.

3. STORAGE OF EQUIPMENT AND MATERIAL IN PUBLIC STREETS

Construction materials and equipment shall not be stored or parked on public streets, roads, or highways. During any material or equipment loading or unloading activities that may temporarily interfere with traffic, an acceptable detour shall be provided for the duration of the activity. Any associated expense for this activity is the responsibility of the contractor.

Excavated material, including suitable material that is intended for adjacent trench backfill or other earth backfill as specified in section 5 of this specification, shall not be stored on public streets, roads, or highways that remain in service for the public. Any waiver of this requirement must be obtained from the proper local authority and approved by the engineer. All excess and unsuitable material shall be removed from the site as soon as possible. Any spillage shall be removed from roadways before they are used by the public.

4. STREET CLOSURES, DETOURS, AND BARRICADES

The contractor shall comply with the requirements of all applicable responsible units of government for closure of any street, road, or highway. The contractor shall provide the required barriers, guards, lights, signs, temporary bridges, and flaggers together with informing the public of any detours and construction hazards by the most suitable means available, such as local newspapers or radio stations. The contractor is also responsible for compliance with additional public safety requirements that may arise during construction. The contractor shall furnish, install, and, upon completion of the work, promptly remove all signs, warning devices, and other materials used in the performance of this work.

Unless otherwise specified, the contractor shall notify, in writing, the fire chief, police chief, county sheriff, state patrol, schools that operate school buses, or any other government official as may be appropriate no less than 7 days before closing, partly closing, or reopening any street, road, or highway.

Unless otherwise specified, the contractor shall furnish to the engineer a written plan showing the proposed method of signing, barricading for traffic control, and safety for street detours and closures.

All temporary detours will be maintained to ensure use of public rights-of-way is provided in a safe manner. This may include dust control, grading, and graveling as required in section 7 of this

specification.

5. GENERAL AND SPECIFIC REFERENCES

All signs, signals, barricades, use of flaggers, and other traffic control and public safety devices shall conform to the general requirements set forth in the Manual of Uniform Traffic Control Devices (MUTCD) and the latest edition of The New Mexico Department of Transportation Standard Drawings and Specifications unless otherwise specified in the contract.

6. MEASUREMENT AND PAYMENT

Payment will constitute full compensation for all flaggers, labor, materials, equipment, and all other items necessary and incidental to completion of the work. Progress payments will be made based upon the percentage of estimated total time that traffic control will be required.

7. PAY ITEM
Traffic Control

PAY UNIT
Lump Sum

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State of New Mexico
City of Rio Communities
Resolution 2021 - XX

**PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION**

WHEREAS, the City of Rio Communities and the New Mexico Department of Transportation enter into a Cooperative Agreement.

WHEREAS, the total cost of the project will be \$186,472.00 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 75% or \$139,854.00.
- b. The City of Rio Communities' proportional matching share shall be 25% or \$46,618.00.

TOTAL PROJECT COST IS \$186,472.00.

The City of Rio Communities shall pay all costs, which exceed the total amount of \$186,472.00.

Now therefore, be it resolved in official session that the City of Rio Communities determines, resolves, and orders as follows:

- 1. That the project for this Cooperative agreement is adopted and has a priority standing.
- 2. The agreement terminates on December 31, 2022 and the City of Rio Communities incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the City or Rio Communities to enter into Cooperative Control Number HW2-L300288 with the New Mexico Department of Transportation for LGRF Project for fiscal year 2021 – 2022 for the Pavement Rehabilitation/Improvements, Reconstruction, Full Construction, Drainage Improvements, Blading & Shaping Miscellaneous, Design, Construction Management as within the control of the Governing Body in the City of Rio Communities, Valencia County, New Mexico.

PASSED, APPROVED AND ADOPTED THIS 12 DAY OF JULY 2021 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.

Mark Gwinn, Mayor

Margaret "Peggy" Rae Gutjahr, Mayor Pro-tem

Bill Brown, Councilor

Joshua Ramsell, Councilor

Jimmie Winters, Councilor

ATTEST:

Elizabeth (Lisa) Adair, Municipal Clerk

Contract No. _____
Vendor No. 00000110108
Control No. HW2-L300288

**LOCAL GOVERNMENT ROAD FUND
COOPERATIVE AGREEMENT**

This Agreement is between the **New Mexico Department of Transportation** (Department) and **City of Rio Communities** (Public Entity), collectively referred as the “parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-28.2, and State Transportation Commission Policy No. 44, the parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide Local Government Road Funds to the Public Entity for the **Pavement Rehabilitation/Improvements, Reconstruction, Full Construction, Drainage Improvements, Blading & Shaping Miscellaneous, Design, Construction Management** as described in Control No. **HW2-L300288**, and the Public Entity’s resolution attached as **Exhibit C** (Project). The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement specifies and delineates the rights and duties of the parties.

2. Project Funding.

a. For purpose stated above, the estimated total cost for the Project is **One-Hundred-Eighty-Six-Thousand-Four-Hundred-Seventy-Two-dollars (186,472)** to be funded in proportional share by the parties as follows:

1. Department’s share shall be 75%: **139,854**

Pavement Rehabilitation/Improvements, Reconstruction, Full Construction, Drainage Improvements, Blading & Shaping Miscellaneous, Design, Construction Management

2. Public Entity’s required proportional matching share shall be 25%: **46,618**

3. Total Project Cost: **186,472**

b. The Public Entity shall pay all Project costs, which exceed the total amount of is **One-Hundred-Eighty-Six-Thousand-Four-Hundred-Seventy-Two-dollars (186,472)**.

- c. Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and are not included in the amount listed in this Section 2.

3. The Department Shall:

Pay project funds as identified in Section 2, Paragraph a1, to the Public Entity in a single lump sum payment after:

- a. Receipt of a cover letter requesting funds;
- b. Receipt of a Notice of Award and Notice to Proceed;
- c. Verification of available Local Government Road Funds and Public Entity's local matching funds identified in Section 2, Paragraph a2; and
- d. All required documents must include Department Project and Control Number.

4. The Public Entity Shall:

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) calendar days of execution of this Agreement, or as otherwise agreed to in writing by the parties.
- c. Be solely responsible for all local matching funds identified in Section 2. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
- d. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section 1 and the Project estimate approved by the District Engineer.
- e. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- f. In accordance with project parameters, assume the lead planning and implementation role and sole responsibility for providing local matching funds; environmental, archaeological, utility clearances; railroad and Intelligent Transportation System (ITS) clearances; right-of-way acquisition; project development and design; and project construction and management.
- g. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
- h. Obtain all required written agreements or permits, when applicable, from all public and private entities.
- i. Allow the Department to inspect the Project to determine that the Project is being constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, will result in termination, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
- j. Complete the project within eighteen (18) months of approval of funding by the State Transportation Commission.
- k. Within thirty (30) calendar days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **Project Certification of Design, Construction, and Cost form**,

which is attached as Exhibit A.

- l. Within thirty (30) calendar days of completion, furnish the Department an **AS BUILT Summary of Costs and Quantities** form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in **Project Certification of Design, Construction, and Cost** form.
- m. Failure to provide the **Project Certification of Design, Construction, and Cost** form and an **AS BUILT Summary of Costs and Quantities** report within thirty (30) calendar days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this Agreement.
- n. Upon completion, maintain all Public Entity facilities that were constructed or reconstructed under this Agreement.

5. Both Parties Agree:

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this Project reverts to the Department. These balances, if any, must be reimbursed to the Department within thirty (30) calendar days of project completion or expiration of this Agreement, whichever occurs first.
- c. This Project is not being incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- d. Pursuant to NMSA 1978, Section 67-3-28.2, Local Government Road Funds granted under this provision can not be used by the Public Entity to meet a required match under any other program.
- e. The provisions of the Local Government Road Fund Project Handbook (Current Edition), are incorporated by reference and control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments.

6. Term.

This Agreement becomes effective upon signature of all Parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on December 31, 2022. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) calendar days prior to the expiration date to ensure timely processing of an Amendment.

7. Termination.

- a. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing thirty (30) calendar days written notice.
- b. The Department may terminate this Agreement if the funds identified in Section 2 have not been contractually committed within one year from the effective date of this agreement.
- c. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
- d. Neither party has any obligation after termination, except as stated in Sections 4n and 5.

8. Third Party Beneficiary.

It is not intended by any of the provisions of any part of this Agreement to create in the public or any member of the public a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

9. Liability.

As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1, *et seq.*, and any other applicable law.

10. Contractors Insurance Requirements.

The Public Entity shall require contractors and subcontractors hired for the Project to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractors and subcontractor's policy and a certificate of insurance and endorsements listing the Department as an additional insured must be provided to the Department and it must state that coverage provided under the policy is primary over any other valid insurance.

To the fullest extent permitted by law, the Public Entity shall require the contractor and subcontractors to defend, indemnify and hold harmless the Department from and against any liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) arising out of or resulting from the negligence, act, error, or omission of the contractor and subcontractor in the performance of the Project, or anyone directly or indirectly employed by the contractor or anyone for whose acts they are liable in the performance of the Project.

11. Scope of Agreement.

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter. All such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents will be valid or enforceable unless included in this Agreement.

12. Terms of this Agreement.

The terms of this Agreement are lawful; performance of all duties and obligations must conform with and not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

13. Legal Compliance.

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operations of the workplace. The Public Entity shall include the requirements of this Section 13 in in each contract and subcontract at all

tiers.

14. Equal Opportunity Compliance.

The parties agree 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 and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age, disability, or other protected class, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the Public Entity is found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies, subject to Section 7 above.

15. Appropriations and Authorizations.

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature or the Congress of the United States if federal funds are involved, this Agreement will terminate upon written notice being given by one party to the other. The Department and Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

16. Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) calendar days. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) calendar days of written notification.

17. Severability.

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement will remain in full force and effect.

18. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue is to be proper in a New Mexico Court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

19. Amendment.

This Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

<<Add below sentence if page is quarter or more blank>>
The remainder of this page in intentionally left blank.

draft

In witness whereof, each party is signing this Agreement on the date stated opposite that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Cabinet Secretary or Designee

Date: _____

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: _____
Assistant General Counsel

Date: _____

City of Rio Communities

By: _____

Date: _____

Title: _____

Attest: _____
<<Insert Name and Title >>

**EXHIBIT A
PROJECT CERTIFICATION OF
DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation
District _____ LGRF Coordinator

Cooperative Agreement No. _____ Control No. _____
Joint Powers Agreement No. _____ Control No. _____

Entity: _____

Scope of Work (Including Routes and Termini):

I, the undersigned, in my capacity as _____ of _____ state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this Agreement and in the Local Government Road Fund Project Handbook (Current Edition);
2. Construction of the project was performed in accordance with standards and specifications set forth in:

and completed on _____, 20____; and
3. That the total project cost of _____, with New Mexico Department of Transportation 75% share of _____ and the Public Entity share of _____ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

Name Date

Print Name

Title

**EXHIBIT B
AS BUILT SUMMARY
OF COSTS AND QUANTITIES
CONTRACT**

ENTITY: _____ No.: _____ CN: _____

PROJECT No.: _____

TERMINI: _____

SCOPE OF WORK: _____

ITEM NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	FINAL QUANTITY	UNIT COST	FINAL COST