



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

*Please silence all electronic devices.*

**ATTENTION:** In an effort to curb the spread of COVID-19 by practicing social distancing and limiting public gatherings, we encourage you to participate in the Workshop from the comfort and safety of your own home by entering the following link: @ <https://www.facebook.com/riocommunities>

**Public Comment:** The Council will take public comments on *this meeting's specific agenda items*. These should be in written form via email 2:00 PM on June 28, 2021. Hard copies can be emailed to admin@riocommunities.net. These comments will be distributed to all Councilors for review.

**Call to Order**

**Present:**

1. **Presentation: Rio Communities City Complex Master Plan Including Phase I and/or II** (FBT Architect)
2. **Accounts payable report** (Finance Officer/Treasurer)
3. **Contract for ITB #2021-0104** (Procurement Officer or Finance Officer)
4. **Library Board members** (City Manager/Council)
5. **Streetlight Placement** (City Manager/Public Works Director)

**Manager Report**

6. **Capital Appropriation Project #E2799 \$10,000 Library Grant Capital Appropriation Project #E2798 \$325,000 City Hall Facility**
7. **NM Self Insurer's Fund & NM Municipal League Joint Powers Agreement**
8. **Valencia County Fair August 1 - 8, 2021**
9. **National Night Out - Valencia County August 3, 2021**

**Council General Discussion & Future Agenda Items**

**Adjourn**

***Thank you - Margaret "Peggy" Gutjahr - Mayor Pro-Tem of Rio Communities***

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

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.



Rio Communities, NM

# Accounts Payable Approval Report

By Fund

Item 2.

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
<b>Fund: 11000 - General Operating Fund</b>					
<b>Department: 2002 - General Administration</b>					
Ralph T. Barnes	105	06/22/2021	Not to exceed \$2500 Skilled la...	11000-2002-55999	675.00
Quill	17218195	06/22/2021	Quill renewal	11000-2002-55999	49.99
Wells Fargo Financial Leasing	5015371577	06/22/2021	Dell Server Lease-City Hall	11000-2002-57130	2,497.73
Wells Fargo Financial Leasing	5015537419	06/22/2021	Sharp Copier Lease	11000-2002-55999	138.42
Home Depot	621790633	06/22/2021	Blanket PO for City Hall Purchas...	11000-2002-54010	23.82
Card Service Center	INV0002601	06/23/2021	GoToMeeting Subscription	11000-2002-56010	10.77
Card Service Center	INV0002601	06/23/2021	Water	11000-2002-56999	26.44
Las Cruces Sun News	0003916271	06/24/2021	Invitation to Bid #2021-0102	11000-2002-57090	204.40
Kalamazoo Flag Company	21189	06/24/2021	American and state flag	11000-2002-54999	220.70
<b>Department 2002 - General Administration Total:</b>					<b>3,847.27</b>
<b>Department: 3004 - Animal Control</b>					
Valencia County Fiscal Office	AC2021-54	06/22/2021	Animal Control-May 2021	11000-3004-55999	763.20
<b>Department 3004 - Animal Control Total:</b>					<b>763.20</b>
<b>Department: 3005 - Dispatch/E911</b>					
Village of Los Lunas	304	06/22/2021	E-911 Dispatch	11000-3005-55999	7,546.75
<b>Department 3005 - Dispatch/E911 Total:</b>					<b>7,546.75</b>
<b>Department: 4004 - Library</b>					
Home Depot	H3511-92922	06/22/2021	Materials for Library book shelv...	11000-4004-54050	1,960.02
<b>Department 4004 - Library Total:</b>					<b>1,960.02</b>
<b>Department: 5101 - Public Works</b>					
ASAP Glass, LLC.	284067	06/22/2021	Windshield replacement-F250	11000-5101-54040	156.86
ASAP Glass, LLC.	284068	06/22/2021	Windshield replacement-Tahoe	11000-5101-54040	143.68
Dova Inc	3733	06/23/2021	Fleet Vehicle cleaning	11000-5101-55999	90.00
WEX Bank	72109005	06/23/2021	Fuel for City Vehicles	11000-5101-56120	98.74
Home Depot	622129880	06/24/2021	Blanketed PO # not to exceed \$...	11000-5101-56040	23.49
<b>Department 5101 - Public Works Total:</b>					<b>512.77</b>
<b>Department: 5104 - Highways and Streets</b>					
Universal Constructors, Inc.	9000	06/28/2021	Back fill hole	11000-5104-55999	1,723.00
<b>Department 5104 - Highways and Streets Total:</b>					<b>1,723.00</b>
<b>Fund 11000 - General Operating Fund Total:</b>					<b>16,353.01</b>
<b>Fund: 20900 - Fire Protection</b>					
<b>Department: 3002 - Fire Protection</b>					
Sharp Electronics Corporation	9003342292	06/22/2021	FD- Copies	20900-3002-55999	2.43
Century Link	INV0002600	06/22/2021	FD Substation	20900-3002-57160	70.45
WEX Bank	72109005	06/23/2021	Fuel for Fire Department Vehicl...	20900-3002-56120	834.46
<b>Department 3002 - Fire Protection Total:</b>					<b>907.34</b>
<b>Fund 20900 - Fire Protection Total:</b>					<b>907.34</b>
<b>Fund: 21100 - Law Enforcement Protection</b>					
<b>Department: 3001 - Law Enforcement</b>					
Card Service Center	INV0002601	06/23/2021	Kustom Signals	21100-3001-58020	10,959.00
<b>Department 3001 - Law Enforcement Total:</b>					<b>10,959.00</b>
<b>Fund 21100 - Law Enforcement Protection Total:</b>					<b>10,959.00</b>
<b>Fund: 29700 - County EMS GRT</b>					
<b>Department: 2002 - General Administration</b>					
WEX Bank	72109005	06/23/2021	Fuel for EMS Vehicles	29700-2002-56120	52.21
TLC Uniforms	237957	06/24/2021	shirts and uniforms	29700-2002-56110	362.75
<b>Department 2002 - General Administration Total:</b>					<b>414.96</b>
<b>Fund 29700 - County EMS GRT Total:</b>					<b>414.96</b>

Accounts Payable Approval Report

Item 2.

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
<b>Fund: 39900 - Other Capital Projects</b>					
<b>Department: 2002 - General Administration</b>					
First American Title Insurance C...	INV0002603	06/28/2021	Purchase of Property - Earnest ...	39900-2002-58050	5,000.00
First American Title Insurance C...	INV0002604	06/28/2021	Purchase of Property	39900-2002-58050	96,222.38
<b>Department 2002 - General Administration Total:</b>					<b>101,222.38</b>
<b>Fund 39900 - Other Capital Projects Total:</b>					<b>101,222.38</b>
<b>Grand Total:</b>					<b>129,856.69</b>

## Report Summary

### Fund Summary

Fund	Expense Amount
11000 - General Operating Fund	16,353.01
20900 - Fire Protection	907.34
21100 - Law Enforcement Protection	10,959.00
29700 - County EMS GRT	414.96
39900 - Other Capital Projects	101,222.38
<b>Grand Total:</b>	<b>129,856.69</b>

### Account Summary

Account Number	Account Name	Expense Amount
11000-2002-54010	Maintenance & Repairs - ...	23.82
11000-2002-54999	Other Maintenance	220.70
11000-2002-55999	Contract - Other Services	863.41
11000-2002-56010	Software	10.77
11000-2002-56999	Supplies - Other	26.44
11000-2002-57090	Printing/Publishing/Advert..	204.40
11000-2002-57130	Rent of Equipment/Machi...	2,497.73
11000-3004-55999	Contract - Other Services	763.20
11000-3005-55999	Contract - Other Services	7,546.75
11000-4004-54050	Maintenance & Repair - F...	1,960.02
11000-5101-54040	Maintenance & Repairs - ...	300.54
11000-5101-55999	Contract - Other Services	90.00
11000-5101-56040	Supplies-Furniture/Fixture...	23.49
11000-5101-56120	Supplies - Vehicle Fuel	98.74
11000-5104-55999	Contract - Other Services	1,723.00
20900-3002-55999	Contract - Other Services	2.43
20900-3002-56120	Supplies - Vehicle Fuel	834.46
20900-3002-57160	Telecommunications	70.45
21100-3001-58020	Equipment & Machinery	10,959.00
29700-2002-56110	Supplies - Uniforms/Linen	362.75
29700-2002-56120	Supplies - Vehicle Fuel	52.21
39900-2002-58050	Land Acquisition	101,222.38
<b>Grand Total:</b>	<b>129,856.69</b>	

### Project Account Summary

Project Account Key	Expense Amount
**None**	129,856.69
<b>Grand Total:</b>	<b>129,856.69</b>



**Authorization Signatures**

**MAYOR & COUNCILORS**

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MARK GWINN, MAYOR

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

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BILL BROWN, COUNCILOR

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JOSHUA RAMSELL, COUNCILOR

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JIM WINTERS, COUNCILOR

ATTEST:

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ELIZABETH "LISA" ADAIR, MUNICIPAL CLERK



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<b>Department 5101 - Public Works Total:</b>					<b>512.77</b>
<b>Fund 11000 - General Operating Fund Total:</b>					<b>14,630.01</b>
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Sharp Electronics Corporation	9003342292	06/22/2021	FD- Copies	20900-3002-55999	2.43
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<b>Department 2002 - General Administration Total:</b>					<b>414.96</b>
<b>Fund 29700 - County EMS GRT Total:</b>					<b>414.96</b>
<b>Grand Total:</b>					<b>26,911.31</b>

## Report Summary

### Fund Summary

Fund	Expense Amount
11000 - General Operating Fund	14,630.01
20900 - Fire Protection	907.34
21100 - Law Enforcement Protection	10,959.00
29700 - County EMS GRT	414.96
<b>Grand Total:</b>	<b>26,911.31</b>

### Account Summary

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21100-3001-58020	Equipment & Machinery	10,959.00
29700-2002-56110	Supplies - Uniforms/Linen	362.75
29700-2002-56120	Supplies - Vehicle Fuel	52.21
<b>Grand Total:</b>		<b>26,911.31</b>

### Project Account Summary

Project Account Key	Expense Amount
**None**	26,911.31
<b>Grand Total:</b>	<b>26,911.31</b>

Authorization Signatures

MAYOR & COUNCILORS

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MARK GWINN, MAYOR

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

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BILL BROWN, COUNCILOR

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JOSHUA RAMSELL, COUNCILOR

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JIM WINTERS, COUNCILOR

ATTEST:

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ELIZABETH "LISA" ADAIR, MUNICIPAL CLERK

## **PURCHASE AGREEMENT CONTRACT**

### **CITY OF RIO COMMUNITIES**

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 Universal Constructors, Inc., 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 claim 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 \$20,000.00 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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: \_\_\_\_\_

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**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: \_\_\_\_\_ Date: \_\_\_\_\_  
City of Rio Communities Procurement Officer

## **Attachment 1**

### **Scope of Work**

The CONTRACTOR shall deliver products and services to a Procuring Agency which issues a valid Purchase Order at prices not to exceed those shown in the Contractor's Bid Form (ITB 2021-0104 Appendix A). Procuring Agencies reserve the right to negotiate lower pricing upon mutual agreement of the parties.

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## APPENDIX A

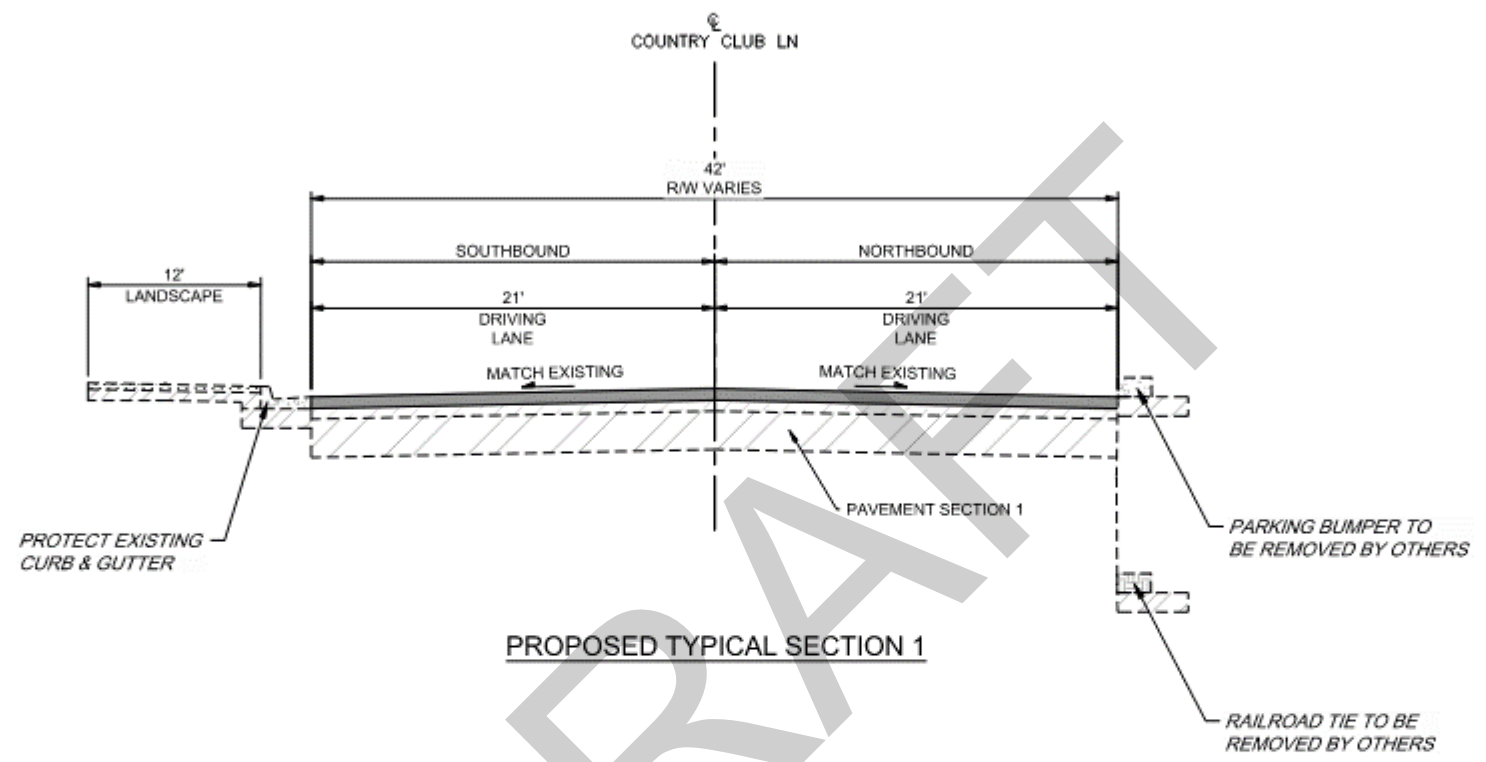
### A. Scope of Work

#### DESCRIPTION

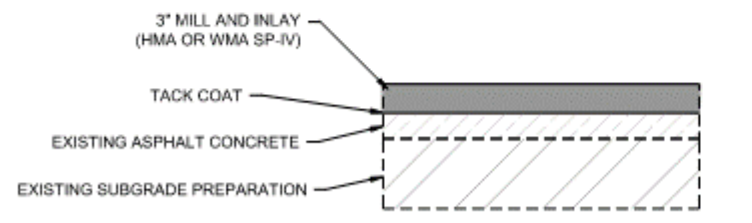
#### PARTICIPATING

The project consists of milling 3 inches on Country Club Ln and placing 3 inches of HMA OR WMA SP-IV for top mat. The proposed top mat shall match the existing profile. The project limits will be defined by The Beginning of Project (BOP) and End of Project (EOP). The BOP is the intersection of Country Club Ln with Golf Course Rd and the EOP is 1-ft offset from Tierra del Sol Golf Course parking lot gate.

<b>Estimated Quantities for Contractor Information Only</b>		
Item Description	UNIT	QUANTITY
COLD MILLING (ASPHALT) (3")	SY	245
HMA OR WMA SP-IV (3")	SY	245
ASPHALT MATERIAL FOR TACK COAT	SY	245
RETROREFLECTORIZED PAINTED MARKINGS 4"	LF	800
RETROREFLECTORIZED PAINTED MARKINGS 12"	LF	25



**PROPOSED TYPICAL SECTION 1**



**PAVEMENT SECTION 1 - MILL AND INLAY**  
 NOT TO SCALE

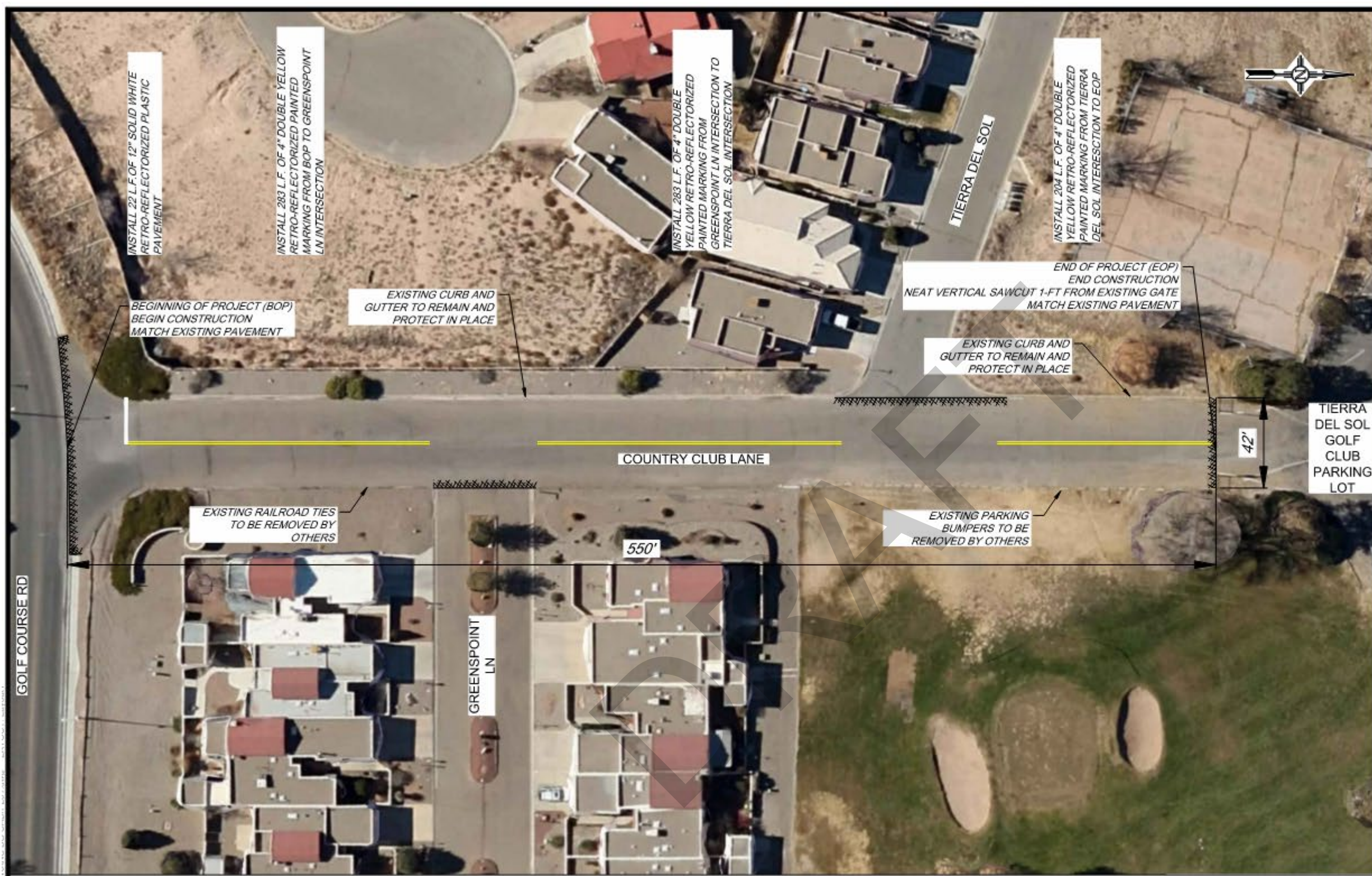


REVISIONS			
NO	DESCRIPTION	DATE	BY
1			
2			
3			
4			

**RIO COMMUNITIES**

**COUNTRY CLUB LANE IMPROVEMENTS**  
 EXISTING TYPICAL SECTION





**LEGEND**  
 NEAT VERTICAL SAWCUT EXISTING PAVEMENT.

REVISIONS			
NO.	DESCRIPTION	DATE	BY
1			
2			
3			
4			

**ANTONIO NUNEZ-TOVAR**  
 NEW MEXICO  
 25774  
 PROFESSIONAL ENGINEER  
  
 MAY 28, 2021

RIO COMMUNITIES  
 COUNTRY CLUB LANE IMPROVEMENTS  
 PLAN VIEW

**NON-PARTICIPATING**

The project consists of installing riprap protection at the outlet location of the existing culvert located to the west of the Country Club Lane and Golf Course Road intersection. A typical trapezoidal ditch cross-section will need to be restored prior to the installation of riprap. This typical trapezoidal channel will have a 5' bottom and 2:1 side slope until daylighting into existing ground elevation. In addition, a riprap swale will be installed beginning from the edge of the Golf Course Road roadway surface and ending at the bottom of the restored drainage ditch.

<b>Estimated Drainage Quantities</b>			
NMDOT Item No.	Item Description	UNIT	QUANTITY
602000	Riprap Class A	C.Y.	30

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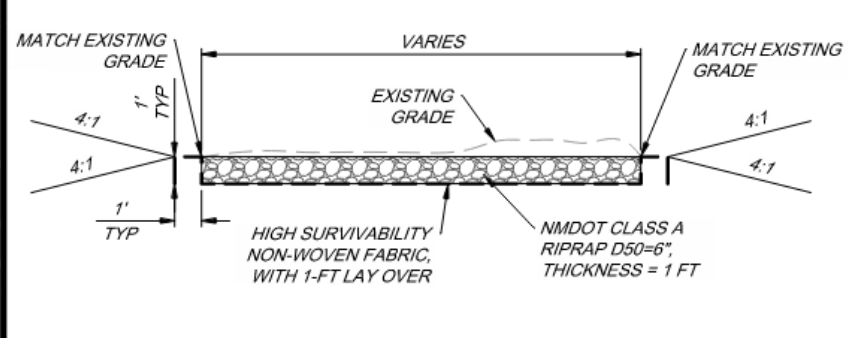
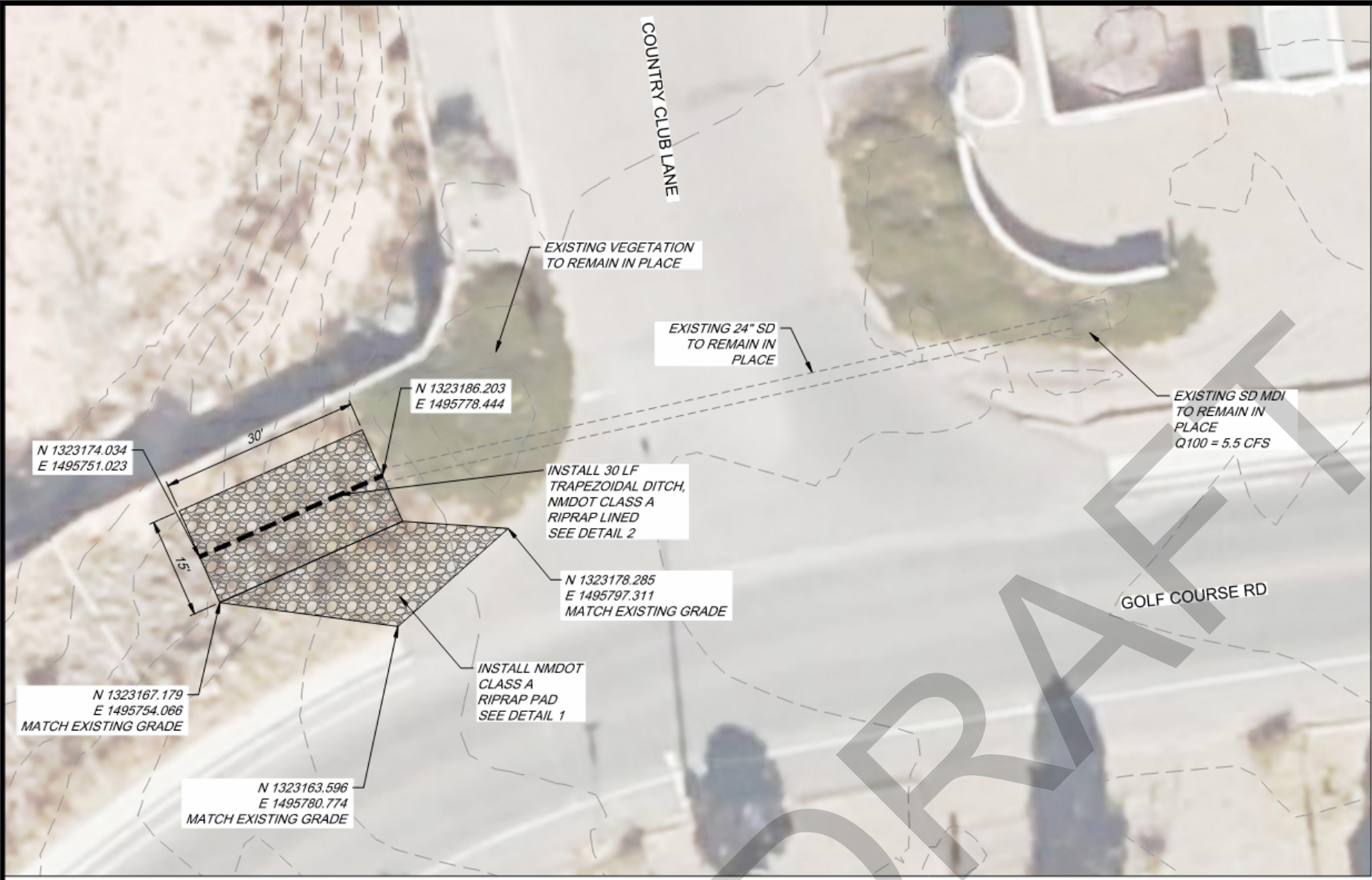
**HR** 2155 LOUISIANA BLVD NE,  
SUITE 9500  
ALBUQUERQUE, NM 87110  
(505) 830-5400

**GENERAL NOTES**

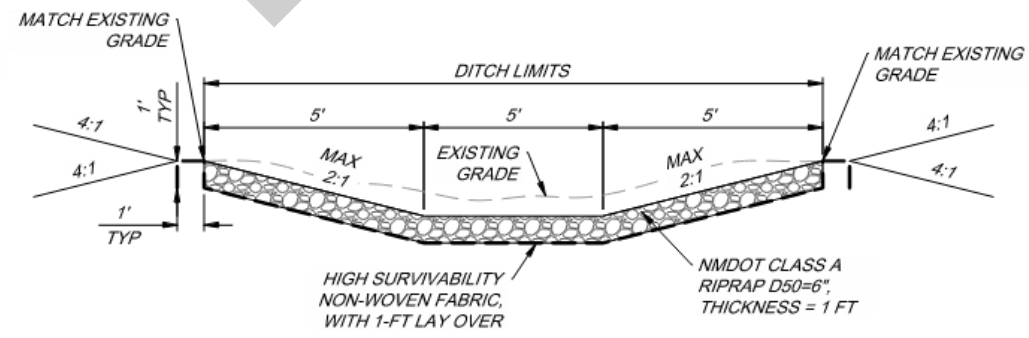
- BEGIN TRAPEZOIDAL DITCH AT FIELD VERIFIED ELEVATION OF EXISTING PIPE CULVERT. LONGITUDINAL SLOPE TO MATCH EXISTING CONDITIONS AS DETERMINED IN THE FIELD AND APPROVED BY THE CITY OF RIO COMMUNITIES.

**LEGEND**

 NMDOT CLASS A RIPRAP



**1** V-NOTCH SWALE SECTION DETAIL  
NOT TO SCALE



**2** TRAPEZOIDAL DITCH SECTION DETAIL  
NOT TO SCALE



REVISIONS			
NO.	DESCRIPTION	DATE	BY
1			
2			
3			
4			

RIO COMMUNITIES

COUNTRY CLUB LANE IMPROVEMENTS

DRAINAGE PLAN VIEW

DATE: 1 Jun 2021 - 11:25am USER: JCHAYVEZ DRAWING FILE: I:\02\385\1616\_0 CAD: BIM\62\WATER\BG\CADD\01.dwg LAYOUT: Layout1

#####

SHEET NO.

## **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 costs are 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.

**STANDARD SPECIFICATIONS  
FOR  
COUNTRY CLUB LANE IMPROVEMENTS**

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	PAVEMENT SURFACE RESTORATION
2	RIPRAP CLASS A
3	TRAFFIC CONTROL

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## SECTION 1

### PAVEMENT SURFACE RESTORATION

Refer to the “New Mexico Department of Transportation 2019 Standard Specifications for Highway and Bridge Construction” Section 415: Pavement Surface Restoration **Option B**.

All milled surfaces shall have the new lift of HMA placed the next calendar day.

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## **SECTION 2**

### **RIPRAP CLASS A**

Refer to the “New Mexico Department of Transportation 2019 Standard Specifications for Highway and Bridge Construction” Section 602: Slope and Erosion Protection Structures.

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## 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

DRAFT

<b>Estimated Quantities for Contractor Information Only</b>		
Item Description	UNIT	QUANTITY
COLD MILLING (ASPHALT) (3")	SY	2680
HMA OR WMA SP-IV (3")	SY	2680
ASPHALT MATERIAL FOR TACK COAT	TON	2
RETROREFLECTORIZED PAINTED MARKINGS 4"	LF	800
RETROREFLECTORIZED PAINTED MARKINGS 12"	LF	25

DRAFT



**COUNTRY CLUB LANE IMPROVEMENTS  
 BID PROPOSAL  
 BASE BID**

BID ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	AMOUNT
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**BASE BID LOT**

1	Pavement Surface Restoration (Option B)	S.Y.	2680	25.80	69,144.00
2	Retro-reflectorized Painted Markings 4"	L.F.	800	1.70	1,360.00
3	Retro-reflectorized Painted Markings 12"	L.F.	25	28.00	700.00
4	Mobilization	L.S.	L.S.		5,500.00
5	Traffic Control	L.S.	L.S.		3,750.00

Write out Base Bid Amount:

Eighty Thousand, Four Hundred Fifty Four and No/100 Dollars

a) Base Bid – Subtotal of Bid Items No. 1 through 5	\$ <u>80,454.00</u>
b) Allowances:	\$ <u>0.00</u>
<b>Total Allowances:</b>	\$ <u>0.00</u>
c) Subtotal –Base Bid subtotal plus Allowances:	\$ <u>80,454.00</u>
d) New Mexico Gross Receipts Tax (NMGR) on amount online c) Subtotal at 7.6875%:	\$ <u>6,184.90</u>
e) <b>BASE BID TOTAL</b> – Line c) Subtotal plus Line d) NMGR:	\$ <u>86,638.90</u>

Eighty Six Thousand, Six Hundred Thirty Eight and 90/100 Dollars

\_\_\_\_\_ Dollars  
 (Total amount written in words)

COUNTRY CLUB LANE IMPROVEMENTS  
BID PROPOSAL  
NON-PARTICIPATING BID

BID ITEM	ITEM DESCRIPTION	UNIT	ESTIMATED QTY	UNIT PRICE	AMOUNT
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NON-PARTICIPATING BID LOT

1	Riprap Class A	C.Y.	30	394.00	11,820.00
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Write out Non-participating Bid Amount:

Eleven Thousand, Eight Hundred Twenty and No/100 Dollars

- a) Non-participating Bid – Subtotal of Bid Items No. 1 \$ 11,820.00
- b) Allowances: \$ 0.00
- Total Allowances: \$ 0.00
- c) Subtotal –Non-participating Bid subtotal plus Allowances: \$ 11,820.00
- d) New Mexico Gross Receipts Tax (NMGRT)  
on amount online c) Subtotal at 7.6875%: \$ 908.66
- e) NON-PARTICIPATING BID TOTAL – Line c) Subtotal plus Line d) NMGRT:  
\$ 12,728.66

Twelve Thousand, Seven Hundred Twenty Eight and 66/100 Dollars

\_\_\_\_\_ Dollars  
(Total amount written in words)

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 15 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:

Five Percent (5%) Bid Bond  
\_\_\_\_\_  
\_\_\_\_\_

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

Addendum No. 1 Date 6-17-21

Addendum No. 2 Date 6-17-21

Addendum No. \_\_\_\_\_ Date \_\_\_\_\_

Dated: June 22, 20 21

(SEAL) if Bid is by a Corporation

SIGNATURE OF BIDDER

*Gilbert A. Luna*

By: Gilbert A. Luna

(Print Name)

Title: President

Company: Universal Constructors, Inc.

Date: June 22, 2021

Address: P.O. Box 6008

Albuquerque, NM 87197

New Mexico Contractor's Classification and License No. 17512 GA98, GB98, GF98

Resident Bidder Preference Certification No. L1840679344  
(if applicable)

DR

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and the **City of Rio Communities**, hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2020, Chapter 81, Section 35, Para. 455, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**20-E2799      \$10,000.00      Appropriation Reversion Date: 30-JUN-24**  
**Laws of 2020, Chapter 81, Section 35, Para. 455, Ten Thousand Dollars (\$10,000.00) to plan, design, purchase and equip information technology and infrastructure improvements for a library in Rio Communities in Valencia county.**

The Grantee's total reimbursements shall not exceed Ten Thousand Dollars (**\$10,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount") <sup>[1]</sup>, if applicable, Zero Dollars (**\$0.00**), which equals Ten Thousand Dollars (**\$10,000.00**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I (A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse <sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor as their official representative(s) concerning all matters related to this Agreement.

Grantee City of Rio Communities  
 Name Peggy Gutjahr  
 Title Mayor  
 Address 360 Rio Communities Blvd., Rio Communities, NM 87002  
 Email [pgutjahr@riocommunities.net](mailto:pgutjahr@riocommunities.net)  
 Telephone 505-869-6908

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement.

Grantee City of Rio Communities  
 Name Peggy Gutjahr  
 Title Mayor  
 Address 360 Rio Communities Blvd., Rio Communities, NM 87002  
 Email [pgutjahr@riocommunities.net](mailto:pgutjahr@riocommunities.net)  
 Telephone 505-869-6908



The Department designates the persons listed below, or their successors, as Points of Contact for matters related to this Agreement.

Department    DFA/Local Government Division  
 Name            Maria Urban  
 Title            Project Manager  
 Address        Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501  
 Email           [maria.urban@state.nm.us](mailto:maria.urban@state.nm.us)  
 Telephone      505-827-8061

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I (A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2024**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.



Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (A).

**B. Early Termination Before Reversion Date Due to Non-Appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI (A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee with a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or the liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of the acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

### C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum of thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed incurred during the previous fiscal year; or
- (iii) Twenty (20) days from the date of Early Termination; or
- (iv) Twenty (20) days from the reversion date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years, from the date of this agreement convert any property acquired, built, renovated, required, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance written approval, which may include requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of five (5) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

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 immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Rio Communities** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Rio Communities's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Rio Communities**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Rio Communities** or the Department."

#### **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under DFA/LGD Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Rio Communities** may early terminate this

contract by providing Contractor written notice of such termination. In the event of termination pursuant to paragraph, the **City of Rio Communities's** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

#### **ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V (A) of this Agreement.

#### **ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this agreement is subject to the SBOF's Bond Project Disbursements

rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.]

[THIS SPACE LEFT BLANK INTENTIONALLY]

DRAFT

IN WITNESS WHEREOF, the parties have duly executed Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

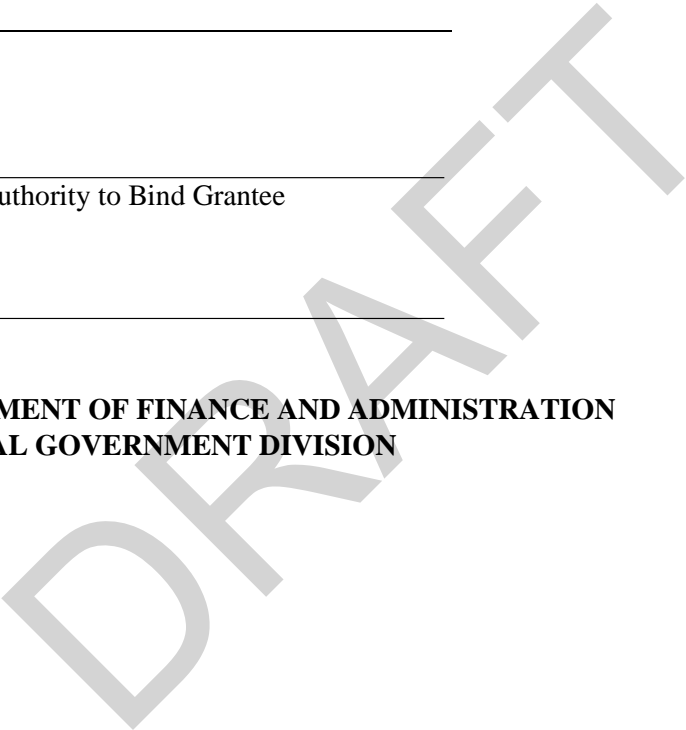
\_\_\_\_\_  
Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

Its: Division Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date





STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_
- B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip
- C. Phone No: \_\_\_\_\_
- D. Grant No: \_\_\_\_\_
- E. Project Title: \_\_\_\_\_
- F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Payment Request No. \_\_\_\_\_
- B. Grant Amount: \_\_\_\_\_
- C. AIPP Amount (If Applicable): \_\_\_\_\_
- D. Funds Requested to Date: \_\_\_\_\_
- E. Amount Requested this Payment: \_\_\_\_\_
- F. Reversion Amount (If Applicable): \_\_\_\_\_
- G. Grant Balance: \_\_\_\_\_
- H.  GF       GOB       STB (attach wire if first draw)
- I.  Final Request for Payment (if Applicable)

**III. Fiscal Year :** \_\_\_\_\_  
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. Reporting Certification:**  I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. Compliance Certification:**  Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
or **Fiscal Agent** (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer      Date

\_\_\_\_\_  
Division Project Manager      Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee # \_\_\_\_\_**

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_  
Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee  
Grant Number: \_\_\_\_\_  
Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ \$ 0.00

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "DFA/LGD", and the **City of Rio Communities**, hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2020, Chapter 81, Section 35, Para. 454, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**20-E2798      \$325,000.00      Appropriation Reversion Date: 30-JUN-24**  
**Laws of 2020, Chapter 81, Section 35, Para. 454, Three Hundred Twenty Five Thousand Dollars (\$325,000.00) to plan, design, construct, replace, renovate, furnish and equip the city hall multipurpose complex in Rio Communities in Valencia county.**

The Grantee's total reimbursements shall not exceed Three Hundred Twenty Five Thousand Dollars (**\$325,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>[1]</sup>, if applicable, Three Thousand Two Hundred Fifty Dollars (**\$3,250.00**), which equals Three Hundred Twenty One Thousand Seven Hundred Fifty Dollars (**\$321,750.00**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I (A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I (A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.
- B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.
- C. Project funds shall not be used for purposes other than those specified in the Project Description.
- D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor as their official representative(s) concerning all matters related to this Agreement.

Grantee City of Rio Communities  
 Name Peggy Gutjahr  
 Title Mayor  
 Address 360 Rio Communities Blvd., Rio Communities, NM 87002  
 Email [pgutjahr@riocommunities.net](mailto:pgutjahr@riocommunities.net)  
 Telephone 505-869-6908

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement.

Grantee City of Rio Communities  
 Name Peggy Gutjahr  
 Title Mayor  
 Address 360 Rio Communities Blvd., Rio Communities, NM 87002  
 Email [pgutjahr@riocommunities.net](mailto:pgutjahr@riocommunities.net)  
 Telephone 505-869-6908

The Department designates the persons listed below, or their successors, as Points of Contact for matters related to this Agreement.

Department    DFA/Local Government Division  
 Name            Maria Urban  
 Title            Project Manager  
 Address        Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501  
 Email           [maria.urban@state.nm.us](mailto:maria.urban@state.nm.us)  
 Telephone      505-827-8061

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I (A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2024**, the Reversion Date, unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (A).

**B. Early Termination Before Reversion Date Due to Non-Appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V (B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI (D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI (A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee with a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

### **B. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or the liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of the acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.



### C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum of thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) July 15 of each year for all unreimbursed incurred during the previous fiscal year; or
- (iii) Twenty (20) days from the date of Early Termination; or
- (iv) Twenty (20) days from the reversion date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years, from the date of this agreement convert any property acquired, built, renovated, required, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance written approval, which may include requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of five (5) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

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 immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Rio Communities** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Rio Communities's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Rio Communities**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Rio Communities** or the Department."

#### **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under DFA/LGD Grant Agreement. Should DFA/LGD early terminate the grant agreement, the **City of Rio Communities** may early terminate this

contract by providing Contractor written notice of such termination. In the event of termination pursuant to paragraph, the **City of Rio Communities's** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V (A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND PROJECT AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this agreement is subject to the SBOF's Bond Project Disbursements

rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.]

[THIS SPACE LEFT BLANK INTENTIONALLY]

DRAFT

**IN WITNESS WHEREOF**, the parties have duly executed Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

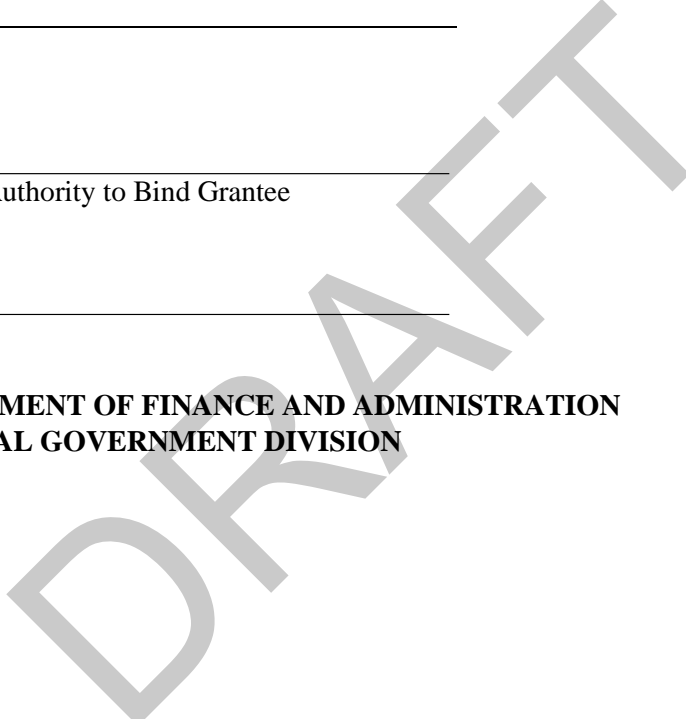
\_\_\_\_\_  
Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

Its: Division Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_
- B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip
- C. Phone No: \_\_\_\_\_
- D. Grant No: \_\_\_\_\_
- E. Project Title: \_\_\_\_\_
- F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Payment Request No. \_\_\_\_\_
- B. Grant Amount: \_\_\_\_\_
- C. AIPP Amount (If Applicable): \_\_\_\_\_
- D. Funds Requested to Date: \_\_\_\_\_
- E. Amount Requested this Payment: \_\_\_\_\_
- F. Reversion Amount (If Applicable): \_\_\_\_\_
- G. Grant Balance: \_\_\_\_\_
- H.  GF  GOB  STB (attach wire if first draw)
- I.  Final Request for Payment (if Applicable)

**III. Fiscal Year :** \_\_\_\_\_  
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. Reporting Certification:**  I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. Compliance Certification:**  Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

**Grantee Fiscal Officer**  
or **Fiscal Agent** (if applicable)

**Grantee Representative**

\_\_\_\_\_  
Printed Name  
  
Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name  
  
Date: \_\_\_\_\_

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer Date

\_\_\_\_\_  
Division Project Manager Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

**Notice of Obligation to Reimburse Grantee #** \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_  
Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee  
Grant Number: \_\_\_\_\_  
Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ \$ 0.00

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.



DRAFT

**JOINT POWERS AGREEMENT  
NEW MEXICO MUNICIPAL LEAGUE  
NEW MEXICO SELF INSURERS' FUND**

This New Mexico Municipal League Joint Powers Agreement (hereinafter "Agreement") is executed by and among its Members in consideration of the representations contained herein and for the purposes set forth more fully below.

**RECITALS**

**WHEREAS**, the Joint Powers Agreement Act (NMSA 1978 §§ 11-1-1 to 11-1-6 (as amended), hereinafter "the Act") allows for two or more public agencies, as defined in the Act, to jointly exercise any power common to the public agencies desiring such an arrangement; and

**WHEREAS**, the parties (hereinafter "Members") currently part of the New Mexico Municipal League (hereinafter "the League") that participate in the New Mexico Self Insurers' Fund (hereinafter "the Fund") each meet the criteria of the term "public agency" as defined in NMSA 1978 § 11-1-2; and

**WHEREAS**, the Members are each empowered with statutory authority per NMSA 1978 §§ 3-62-1 and 3-62-2 to obtain insurance coverage through a self-insurance schema funded through the pooling of municipal, local public body, or political subdivision resources; and

**WHEREAS**, the Members are desirous of relying upon statutory pooling language to obtain such coverage through the joint exercise of this common power;

**THEREFORE**, the Members now enter this Agreement outlining the procedural and substantive posture of the Fund, in mutual agreement with what follows:

**I. DEFINITIONS**

For the purpose of this Agreement:

- A. "Administrator" shall mean the Executive Director of the League, or the Executive Director's designee;
- B. "Board of Trustees" or "Board" shall mean the board of trustees of the Fund;
- C. "Employee" shall mean an employee of a Member and as may be further defined by applicable contract between the Fund and a Member, by applicable law, or by the board of trustees;
- D. "Fund" shall mean the New Mexico Self Insurer's Fund;
- E. "Insurance" shall mean indemnification against loss, damage, or liability arising from unknown or determinable contingencies, or payment of a specified amount upon determinable contingencies;
- F. "League" shall mean the New Mexico Municipal League;
- G. "Member" shall mean any incorporated municipality, local public body, or political subdivision, including a county, housing authority, or joint powers agency whose membership consists in whole or in part of a municipality, an instrumentality of a

- municipality as determined by the Internal Revenue Service, or a special district lying in whole or in part in a municipality, in the State of New Mexico which has joined the Fund;
- H. "Plan" shall mean any program for insurance or self-insurance for members or their employees, including benefits, services, protection, or indemnification for life, accident and health, worker's compensation, casualty, surety, or other lines of coverage;
- I. "Premium" shall mean the consideration for insurance or self-insurance as further defined by applicable contract between the Fund and a Member.
- J. "Risk" shall mean any chance of loss from contingencies or perils.

## II. PURPOSE

The purpose of this Agreement is as follows:

- A. Permit the Members joining herein to make a more efficient use of their powers and resources by cooperating on a basis that will be of mutual advantage; and
- B. Provide a procedure for securing benefits, services, indemnification, or protection for Members and their employees relating to insurance or self-insurance, as authorized by law.

## III. EFFECTIVE DATE

The effective date of this agreement and bylaws shall be July 1, 2021, or upon approval by the Secretary of Finance and Administration as provided by the Act, whichever is later. The Fund shall continue from year to year, without the necessity of a formal renewal by any Member, unless sooner dissolved by mutual agreement. The Fund shall establish a subcommittee to formally review this agreement every four (4) years.

## IV. CREATION OF FUND

To carry out the purposes of this Agreement, the Fund is created, which Fund is formed, financed, organized, shall operate, and may be dissolved in accordance with the provisions of this Agreement and bylaws and any contract between the Fund and a Member. The principal office and situs of the Fund is located at 1231 Paseo de Peralta, Santa Fe, New Mexico 87501.

## V. MEMBERSHIP

Membership in the Fund shall consist of those Members which are or become parties to this Agreement and contract for insurance for the Fund. Each Fund Board Member shall be entitled to one vote on elections of members of the Fund Board, approval to be conferred by such Board on nominees brought forward by the Executive Director, New Mexico Municipal League President, and Fund Chair.

## VI. BOARD OF TRUSTEES

- A. There shall be a Board of Trustees consisting of at least eleven (11) trustees responsible for the Fund who are elected from among the Members of the Fund, with at least one trustee-representing Member from each of the districts established by the League. The trustees shall be elected for three-year terms commencing on the first day of October after their election. The Board may from time to time increase or decrease the number of board members by

majority vote of the Board, provided that the number of trustees shall not be less than eleven (11), shall always be an odd number, and that no more than two (2) trustees shall be from the same district. The terms of office for board members shall be staggered so that approximately the same number of seats are up for election in any given year.

- B. Each trustee shall be an elected or appointed officer or employee of a Member of the Fund. If a trustee ceases to be an elected or appointed officer or employee of a Member of the Fund, the trustee's position shall be deemed vacant.
- C. Any vacancy for any unexpired term on the Board shall be filled for the duration of the term by the Chairperson's appointment with the advice and consent of the remaining trustees.
- D. Trustees may be reimbursed for their time and expenses incurred to perform their respective duties as authorized by applicable law and subject to Board approval. No trustee nor the administrator appointed in Article VII shall incur any liability for any action, or failure to act, in such capacity except for gross negligence or willful misconduct.
- E. A trustee shall be removed from office when the trustee misses three (3) consecutive Board meetings, and may be removed from office by a two-thirds (2/3) vote of the other members of the Board for convenience.
- F. The Board establishes and manages plans, policies, and other services contemplated in this agreement and bylaws and the contract or agreement between the Fund and a Member, to include:
  1. Prepare specifications, request bids, and enter into any contract for the purpose of underwriting, administering or providing any part or all of the Plans, policies, or services on behalf of and with a Member;
  2. Determine the rates, risks, benefits, and terms of any Plans, policies, or services contemplated in this agreement; adjust the rates and benefits based on claim experience after notice to affected Members;
  3. Provide for individual or collective underwriting or other agreements for Members in any Plan, policy, or service, serve as the policyholder of any group policies or Plans; determine the methods of claim administration and payment, and provide for claim experience for Members collectively or separately;
  4. Determine the amount of contributions or appropriations required from Members for the purpose of participating in any part or all of the Plans, policies, or services established pursuant to this Agreement and bylaws;
  5. Establish standards for eligibility of Members or Employees in any Plan, policy, or service, and procedures for enrollment and withdrawal in any Plan, policy, or service; and establish effective dates of coverage;
  6. Provide for the administration of the fund or funds established herein, for the manner of payments to such fund and for payment of all expenses in connection with the Plans, policies, or services which may be established; and establish procedures for safekeeping, handling, and investing such fund or funds and any monies received or paid;
  7. Establish the duties and responsibilities of the Administrator to enable the correct billing of Premiums and fees, enrollment of Members and their Employees, and payment of claims;
  8. Study the operation of Plans, policies, or services, gross and net costs, administrative costs, benefits, utilization of benefits and claims administration;
  9. Incur expenses, acquire and hold property, and enter into agreements necessary to accomplish the purposes of this Agreement and bylaws; exercise the full power and authority of any Member of the Fund when requested to do so by the Member

governing body; or otherwise provide for necessary activities to accomplish the purposes of this Agreement;

10. The Board shall have the authority, by a majority vote, to delegate power of the Board to the Administrator.

- G. Subject to Board approval, the Administrator shall ensure the Fund maintains cash reserves and supplemental reserves computed in accordance with standard actuarial principles, taking into account historical and other data, designed to measure claims development and claims incurred but not yet reported, so that funds will be available to meet these claims as they become due.

## **VII. OFFICERS, MEETINGS, PROCEDURES**

The trustees shall elect from among their membership a Chair, Vice-Chair, and Treasurer. The Board shall fix the date, time, and place of regular meetings. The Board shall hold a regular meeting, which shall be the annual meeting, at which officers shall be elected following a nomination and voting of Members in accordance with a procedure adopted by the Board. Special meetings may be called by the Chair, and in the Chair's absence the Vice-Chair, or any three (3) individual members of the Board.

A quorum for the transaction of business shall consist of a majority of the trustees, but any action of the Board regarding rates, membership in the Fund, settlement of claims requiring Board approval and offering or termination of lines of coverage must have a favorable vote by a majority of the trustees of the Board as constituted. The Board shall adopt such procedures as are deemed necessary and desirable for the conduct of business.

## **VIII. ADMINISTRATOR AND STAFF**

The Executive Director of the League shall serve as Administrator of the Fund. The Administrator may appoint other employees, deputy treasurers, or employ or contract for legal counsel, actuaries or other consultants, as the Executive Director deems necessary to administer Plans, policies, or services established pursuant to this Agreement and the League's bylaws.

## **IX. FINANCING**

The Board shall establish a fund or funds as it deems necessary for the purpose of, but not limited to, the following:

- A. Payment of premiums or fees for any part of the Plans, policies, or services established pursuant to this Agreement and bylaws;
- B. Payment of necessary expenses approved by the Board;
- C. Payment of claims;
- D. Payment of administration expenses;
- E. Payment of other expenses incurred in accomplishing the purposes of this Agreement and bylaws.

All monies paid to such fund or funds shall be held in the name of the Fund. After payment of any expenses authorized and compensation of the administrator or other employees and other incidental expense, any remaining money shall be held for the benefit of the Fund.

The Board shall provide for the manner and dates for preparation by the Administrator of reports on the financial condition of any fund or funds.

Each member shall pay for all costs, Premiums, or other fees attributable to its respective participation in any Plan, policy, or service established under this Agreement, and shall be responsible for its obligations under any contract entered into with the Fund.

Subject to review and approval of the Board, the Administrator shall establish written financial policies relating to the handling of the Fund. The Fund shall provide for an annual audit of its financial records, and Members shall have access to all records relating thereto, excepting those items that contain confidential or protected information.

The Board shall provide for strict accountability of all receipts and disbursements.

#### **X. ADDITIONAL MEMBERS, PARTICIPATION, TERMINATING MEMBERSHIP**

- A. Any eligible Member, as defined above, may join the Fund by adoption of the Agreement by its governing body or board in accordance with the procedures of the Joint Powers Agreement Act. Any Member may withdraw from the Fund by a resolution of its governing body after one hundred and eighty (180) days' notice is given in writing to the Chair of the Board. The withdrawing Member may retract their withdrawal at any time of the one-hundred-and-eighty-day period provided for above. Following the conclusion of the one hundred and eighty days above, the withdrawing Member is prohibited from rejoining the Fund for a period of two (2) years. Any withdrawing Member shall relinquish all voting rights and privileges. Any and all claim of title or interest to any asset of the Fund after its withdrawal from the Fund shall be as determined by the Board, in accordance with this Agreement and bylaws and a contract.
- B. The Fund may be terminated by a unanimous vote of the Board as constituted.
- C. Participation by a Member in any contract of insurance offered by the Fund becomes effective at the date and time shown on the certificate or declarations and may be terminated by sixty (60) days' written notice of termination by either party unless otherwise specified under the terms herein or by Board resolution. Termination of any contract of insurance by a member which occurs without proper notice or on a date other than the renewal date of the contract for insurance shall cause the Member to be subject to short rating and penalties as determined by the Board. In the event that the Member fails or refuses to make the payments of Premiums as herein provided, the Fund reserves the right to terminate such Member by giving ten (10) days' written notice and to collect any and all Premiums that are earned pro-rata for the period preceding contract termination. Interest, collection expenses or penalties may also be levied for non-payment of Premium as the Board may decide. No liability shall accrue to the Fund or its Members for any injury or accident occurring to an Employee of a Member after the effective date of the termination notice.
- D. The safety engineering and loss control services of the Fund are designed to assist Members in following a plan of loss control that may result in reduced losses. The Member agrees

that it will cooperate in instituting loss control resolutions and policies that may be recommended by the Board for the purpose of eliminating or minimizing losses.

- E. The Member agrees that it will appoint a coordinator and that the Fund shall not be required to contact any other individual except this one person. Any notice to or any agreements with the coordinator shall be binding upon the Member. The Member reserves the right to change the coordinator from time to time by giving written notice to the Fund.
- F. The Fund agrees to handle any and all covered claims after notice of injury or claim has been given, and provide a defense. The Member hereby appoints the Fund as its agent and attorney in fact to act in all matters pertaining to processing and handling of claims and shall cooperate fully in supplying any information needed or helpful in such defense. The Fund shall carry on all negotiations and negotiate within authority granted it. If a personal appearance by the Member or an Employee is necessary, the expense of this appearance will be paid by the Member unless otherwise agreed. The Fund will retain and supervise legal counsel on behalf of and at the expense of the Fund necessary for the prosecution of any litigation. All decisions on individual cases shall be made by the Fund, which includes the decision to appeal or not to appeal a final ruling and decision. Any suit brought or defended by the Fund shall be in the name of the Member. Notwithstanding any provisions of this paragraph, all reports and filings required by the Worker's Compensation Act and the state of any employer will be the responsibility of the Member.
- G. The Member agrees to abide by this Agreement, bylaws, and resolutions of the Board, and any amendments thereto.
- H. The Fund and its agents are authorized to inspect, subject to appointment during business hours established by a Member, all work places, machinery, appliances, and equipment of the Member, and books, contracts, and records related to payroll, employment job class, Premium, expenditures, or any financial and employment data during the Members' enrollment in the Fund and within two (2) years after final termination of membership in the Fund.

## **XI. DISSOLUTION AND DISPOSITION OF PROPERTY**

The title to all property, real and personal, acquired by the Fund shall be vested in the Fund. In the event of termination of the Fund, such property, including any surplus money on hand, shall belong to the Members of the Fund according to their participation in the Fund and in accordance with any further applicable criteria developed by the Board.

Upon partial or complete termination of the Fund, the vote of at least two-thirds (2/3) of the Board of the Fund is binding in all respects as to the disposition of property and dissolution of the Fund. The Board shall serve as trustees for the disposition of property or funds, including retention of an actuarial consultant, payment of obligations, dissolution and winding up of the affairs of the Fund.

## **XII. AMENDMENT**

This Agreement may be amended from time to time upon:

- A. Recommendation of any member of Board and approval by at least two-thirds (2/3) of the Board as constituted; or

B. Petition proposed by at least fifty percent (50%) of the Members of the Fund and approval by at least two-thirds (2/3) of the members of the Board as constituted.

Any proposed amendment shall be circulated to the Board at least thirty (30) days prior to the date that approval is set for a vote.

**XIII. COUNTERPARTS**

This Agreement may be executed in counterparts, which together with this document shall be considered one Agreement. The Executive Director shall be responsible for maintaining a copy of this Agreement and all signed counterparts on file.

**XIV. SIGNATURES**

Approved by:

\_\_\_\_\_  
Chair of the Board (printed)

\_\_\_\_\_  
Member (printed)

\_\_\_\_\_  
Chair of the Board (signature)

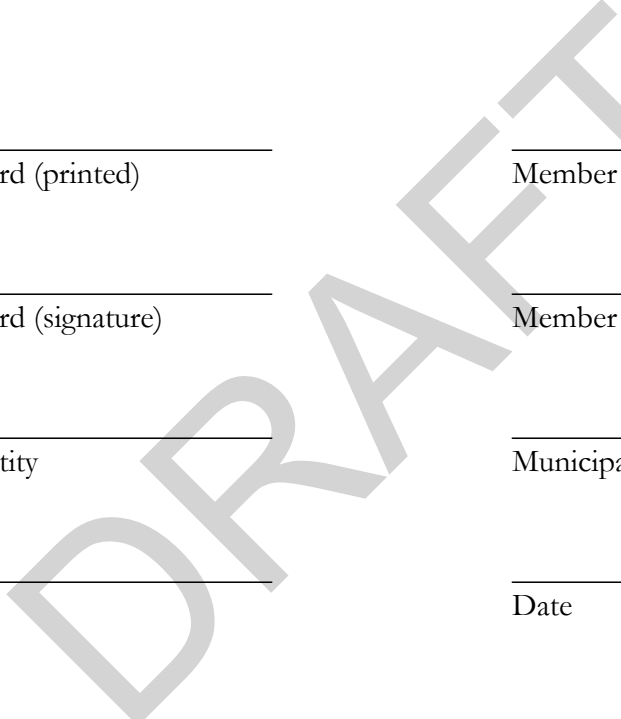
\_\_\_\_\_  
Member (signature)

\_\_\_\_\_  
Municipality/Entity

\_\_\_\_\_  
Municipality/Entity

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date





# VALENCIA COUNTY SHERIFF'S OFFICE



P.O. Box 1585/543 LUNA AVE.  
 LOS LUNAS, NM 87031  
 (505) 866-2400  
 (505) 866-2027 FAX

DENISE VIGIL  
 SHERIFF

JEFF NOAH  
 UNDERSHERIFF



June 1, 2021

GREETINGS!

Valencia County Sheriff's Office is busy planning the upcoming National Night Out event on Tuesday August 3, 2021. We are planning to host an outstanding evening of food, fun, and door prizes for the community, and we need your help. The Sheriff's office is encouraging community involvement and attendance. Our goal is to keep the community safe and will be encouraging social distancing in addition to safe exchange practices. (Facemasks may be required.)

National Night Out is an annual event designed to strengthen our communities by encouraging neighborhoods to engage in stronger relationships with each other and with their local law enforcement partners. The goal this year is to, build support and participation in local anti-crime programs, and most importantly, send a message that our neighborhoods are organized and fighting back.

This year's focus is returning to normal with Covid safe practices and continuing to build Community Partnerships, in addition to Promoting Neighborhood spirits. This event raises community and police awareness. Your generous donation will allow us to entertain and educate residents of Valencia County in these two focus areas.

The Valencia County Sheriff's Office is seeking monetary and in-kind donations. If you would like to support National Night Out, please send your monetary donations (in the form of gift cards) to Valencia County Sheriff's Office, PO Box 1585, Los Lunas, NM 87031. For further information please contact Paula Romero @ 505-866-2045, paula.romero@co.valencia.nm.us and we will arrange to collect your donation.

Thank you for your support of Valencia County. We look forward to seeing both you and your neighbors on August 3rd!

Sincerely,  
 Denise Vigil  
 Sheriff



**POLICE-COMMUNITY PARTNERSHIPS**

Hosted by:

Valencia County Sheriff's Office 505-866-2045

Tuesday August 3, 2021

5:30 – 8:30

Immaculate Conception Church

7 Church Lp

Tome NM 87060

Free Food

Live Music

Door Prizes

**America's Night Against Crime**

**NEIGHBORHOOD CRIME PREVENTION**

**PROMOTE NEIGHBORHOOD SPIRITS**

**DRUG PREVENTION**

**POLICE-COMMUNITY PARTNERSHIPS**



**TO BUILD BETTER NEIGHBORHOODS**





2021 National Night Out
Tuesday August 3, 2021
Immaculate Concepcion Church
7 Church Loop
Tome, NM 87060

EXHIBITOR REGISTRATION FORM

The Valencia County Sheriff's Office invites you to exhibit at the National Night Event.
We are seeking exhibitors for community outreach programs.

EXHIBITOR INFORMATION

Exhibit time will be 5:30 pm to 8:00 pm.
Set up begins at 4:30 pm and must be complete by 5:30 pm.
Exhibitors are responsible for their own tables, chairs and covers.
Electricity is available at this location (indicate below). There is no fee for exhibitors.
Selling of items is prohibited. All handouts must be free to recipients
PLEASE RETURN REGISTRATION FORM ON OR BEFORE JULY 9, 2021

E-mail \_\_\_\_\_

Exhibitor Name: \_\_\_\_\_

Organization Name: \_\_\_\_\_

Address: \_\_\_\_\_

Title of Exhibit: \_\_\_\_\_

Description of Exhibit (brief): \_\_\_\_\_

\_\_\_\_\_

Area/Space Required for Exhibit: \_\_\_\_\_

Electricity required \_\_\_\_\_ Yes \_\_\_\_\_ NO PHONE # \_\_\_\_\_

Please send completed form via mail, email, fax, or hand delivery to:

Valencia County Sheriff's Department

(Mailing) PO Box 1585, Los Lunas, NM 87031 (Physical) 543 Luna Ave., Los Lunas, NM 87031

Paula Romero 505-866-2045 (fax) 505-866-2027 (email) paula.romero@co.valencia.nm.us



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E-mail \_\_\_\_\_

Exhibitor Name: \_\_\_\_\_

Organization Name: \_\_\_\_\_

Address: \_\_\_\_\_

Title of Exhibit: \_\_\_\_\_

Description of Exhibit (brief): \_\_\_\_\_

\_\_\_\_\_

Area/Space Required for Exhibit: \_\_\_\_\_

Electricity required \_\_\_\_ Yes \_\_\_\_ NO PHONE # \_\_\_\_\_

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