



**City of Rio Communities Council Workshop**  
**City Council Chambers - 360 Rio Communities Blvd**  
**Rio Communities, NM 87002**  
**Monday, September 11, 2023 3:00 PM**  
**Agenda**

*Please silence all electronic devices.*

**Call to Order**

**Attendees**

**Discussion/Agenda Items**

- 1. Accounts payable report (Finance Department)**
- 2. Resolution 2023 - XX Authorizing the Assignment of Authorized Officer(s) and Agent(s) (Manager/Finance Officer)**
- 3. Grant Agreement for Rio Communities 23-H2509-GF (Manager/Finance Officer)**
- 4. City Hall Parking Lot upgrades (Manager/Finance Officer)**
- 5. Ordinance 2023 - XX - Chapter 10 Local Economic Development Act (LEDA) (Manager/Council)**
- 6. Ordinance 2023 - XX - Chapter 10 Industrial Revenue Bond Policy (IRB) and Local Economic Development Act (LEDA) (Manager/Council)**
- 7. Authorizing Fund for Demolition & Cleanup of Dangerous & Nuisance Properties (Manager/Council)**
- 8. Memorandum of Understanding (MOU), NM Law Enforcement Telecommunications system, National Crime Information Center, NM Department of Public Safety and The City of Rio Communities Police Department (Manager/Police Chief/Council)**
- 9. Ordinance 2023 - XX Comcast Franchise Agreement 14-day review (Manager/Council)**

**Public Comment:** The Council will take public comments in written format. These should be emailed to [admin@riocommunities.net](mailto:admin@riocommunities.net) through 2:00 PM on Monday, September 11, 2023. These comments will be distributed to all Councilors for review. ***If you wish to speak during the public comment session,*** the Council will allow each member of the public to three (3) minutes to address the Council. Both the public and Council will follow rules of decorum. Give your name and where you live. The public will direct comments to the City Council. Comment(s) will not be disruptive or derogatory.

**The Council will not take action or engage in discussion regarding the comments made or received, but when appropriate the matters raised may be referred to staff or others for further review. Both the public and Council will follow rules of decorum. Derogatory Comments or matters under litigation will not be allowed and any person or persons addressing the Council are liable for their own statements, not the Council. Statements are limited to a maximum of 3 minutes duration. Please give your name and where you live for the record.**

**Manager Report**

**Council General Discussion & Future Agenda Items**

**Adjourn**

***Thank you - Joshua Ramsell - Mayor of Rio Communities***

Please join us from the comfort and safety of your own home by entering the following link: @  
<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

# My Check Register

Item 1.

Packet: APPKT00943 - AP 9.11.23

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
<b>Bank Code: AP BANK CODE-AP BANK CODE</b>						
VEN04185	Amazon Business	09/07/2023	EFT	0.00	212.90	
VEN04527	Sharp Electronics Corporation	09/07/2023	EFT	0.00	2,994.74	
VEN04451	NM League of Zoning Officials	09/07/2023	Regular	0.00	35.00	
VEN04417	Napa Auto Parts	09/07/2023	Regular	0.00	79.27	
VEN04726	H&E Equipment	09/07/2023	EFT	0.00	2,980.39	
VEN04582	Valencia County Fiscal Office	09/07/2023	Regular	0.00	4,575.00	
VEN04792	NM Local Government Law	09/07/2023	EFT	0.00	2,355.35	
VEN04603	Woodlands Hardware	09/07/2023	Regular	0.00	78.88	
VEN04826	Roadrunner Public Health, Inc.	09/07/2023	EFT	0.00	15,605.63	
VEN04203	Artesia Fire Equipment Inc.	09/07/2023	Regular	0.00	2,446.00	
VEN04593	Wagner Equipment Co.	09/07/2023	EFT	0.00	1,756.23	
VEN04562	TLC Plumbing & Utility Commercial S	09/07/2023	Regular	0.00	591.77	
VEN04510	RoofCARE, LLC.	09/07/2023	EFT	0.00	649.80	
VEN04311	Garcia & Sons Security	09/07/2023	Regular	0.00	119.51	
VEN01000	BRADY COMPANIES LLC	09/07/2023	Regular	0.00	482.55	
VEN04702	Linde Gas & Equipment Inc.	09/07/2023	EFT	0.00	558.16	
VEN04485	Quest Diagnostics	09/07/2023	Regular	0.00	105.60	
VEN04454	NM Municipal League	09/07/2023	Regular	0.00	992.85	
VEN04249	Comcast Business	09/18/2023	Bank Draft	0.00	493.05	DFT0000915
VEN04448	NM Gas Co	09/15/2023	Bank Draft	0.00	77.05	DFT0000916
VEN04459	NM Water Service Company	09/12/2023	Bank Draft	0.00	577.44	DFT0000917
VEN04481	PNM	09/19/2023	Bank Draft	0.00	4,482.12	DFT0000918
VEN04587	Verizon Wireless	09/12/2023	Bank Draft	0.00	923.64	DFT0000919
VEN04599	WEX Bank	09/07/2023	Bank Draft	0.00	2,782.82	DFT0000920

## Bank Code AP BANK CODE Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	18	10	0.00	9,506.43
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	17	6	0.00	9,336.12
EFT's	12	8	0.00	27,113.20
	<b>47</b>	<b>24</b>	<b>0.00</b>	<b>45,955.75</b>

Fund Summary

Fund	Name	Period	Amount
99000	Pooled Cash Fund	9/2023	45,955.75
			45,955.75

Authorization Signatures

CHECK REGISTER

This check register has been reviewed and verified for accuracy.

\_\_\_\_\_  
First Signor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Second Signor

\_\_\_\_\_



Rio Communities, NM

# Accounts Payable Approval Report

By Fund

Item 1.

Vendor Name	Payable Number	Post Date	Description (Item)	Amount
<b>Fund: 11000 - General Operating Fund</b>				
<b>Department: 0001 - No Department</b>				
Verizon Wireless	9942478588	08/28/2023	Code Enforcement	87.04
<b>Department 0001 - No Department Total:</b>				<b>87.04</b>
<b>Department: 1009 - Municipal Court</b>				
Sharp Electronics Corporation	14142893	09/05/2023	Court Copies	0.55
<b>Department 1009 - Municipal Court Total:</b>				<b>0.55</b>
<b>Department: 2001 - Manager</b>				
Verizon Wireless	9942478588	08/28/2023	City Manager	127.07
NM Municipal League	3232	09/05/2023	City Management Assoc. M. ...	492.85
<b>Department 2001 - Manager Total:</b>				<b>619.92</b>
<b>Department: 2002 - General Administration</b>				
RoofCARE, LLC.	15780	08/29/2023	Canale Repair	649.80
Amazon Business	1QXJ-Q4LM-JXG6	08/29/2023	Janitorial Supplies	212.90
TLC Plumbing & Utility Comme..	CH541297-1	08/29/2023	City Hall - HVAC Repair	591.77
NM Local Government Law	1283	09/05/2023	Legal Services -FY 2023-2024	2,355.35
Roadrunner Public Health, Inc.	19204	09/05/2023	Mosquito Management Foggi...	15,605.63
Sharp Electronics Corporation	9004482677	09/05/2023	Contract# 800595693 - CH He...	171.00
Sharp Electronics Corporation	9004482677	09/05/2023	Contract# 800595693 - Aquos...	75.00
NM Gas Co	INV0004331	09/15/2023	GAS- Utilities	40.31
NM Water Service Company	INV0004345	09/15/2023	Water - Utilities	500.40
Comcast Business	INV0004357	09/18/2023	City Hall Telecommunications	493.05
PNM	INV0004336	09/20/2023	CH-Electricity - Utilities	1,391.09
<b>Department 2002 - General Administration Total:</b>				<b>22,086.30</b>
<b>Department: 2004 - Finance/Budget/Accounting</b>				
Verizon Wireless	9942478588	08/28/2023	Finance	80.12
Sharp Electronics Corporation	9004482679	09/05/2023	Finance Department Copies	225.19
<b>Department 2004 - Finance/Budget/Accounting Total:</b>				<b>305.31</b>
<b>Department: 2008 - Municipal Clerk</b>				
NM Municipal League	2390	09/05/2023	L.Aragon Annual Dues	100.00
<b>Department 2008 - Municipal Clerk Total:</b>				<b>100.00</b>
<b>Department: 2012 - Planning &amp; Zoning</b>				
NM League of Zoning Officials	INV0004332	08/29/2023	New Membership to NMLZO -...	35.00
<b>Department 2012 - Planning &amp; Zoning Total:</b>				<b>35.00</b>
<b>Department: 3001 - Law Enforcement</b>				
Sharp Electronics Corporation	9004482678	09/05/2023	Contract# 800608808 - PD Hel...	919.00
<b>Department 3001 - Law Enforcement Total:</b>				<b>919.00</b>
<b>Department: 3002 - Fire Protection</b>				
WEX Bank	91635477	09/05/2023	CE Fuel	150.93
<b>Department 3002 - Fire Protection Total:</b>				<b>150.93</b>
<b>Department: 4004 - Library</b>				
Sharp Electronics Corporation	9004482677	09/05/2023	Contract# 800595693 - Aquos...	37.50
Sharp Electronics Corporation	9004482677	09/05/2023	Contract# 800595693 - Library...	228.00
<b>Department 4004 - Library Total:</b>				<b>265.50</b>
<b>Department: 5101 - Public Works</b>				
H&E Equipment	97531823	08/28/2023	Street Sweeper 1 Week Rental...	2,980.39
Verizon Wireless	9942478588	08/28/2023	Public Works	289.13
Garcia & Sons Security	0496	08/29/2023	Rekey PW Locks	119.51
Woodlands Hardware	011377/1	09/05/2023	Various Supplies	39.49
Napa Auto Parts	498891	09/05/2023	Public Works auto supplies	12.48
WEX Bank	91635477	09/05/2023	PW Fuel	939.40

# Accounts Payable Approval Report

Item 1.

Vendor Name	Payable Number	Post Date	Description (Item)	Amount
Quest Diagnostics	9205881630	09/05/2023	Drug testing for - Ricardo Mart..	35.20
Quest Diagnostics	9205881630	09/05/2023	Drug testing for - Daisha Daffin	35.20
Quest Diagnostics	9205881630	09/05/2023	Drug testing for - Joseph Gonz...	35.20
Wagner Equipment Co.	S10W0913747	09/07/2023	Repairs on Backhoe-Fault Code	1,756.23
<b>Department 5101 - Public Works Total:</b>				<b>6,242.23</b>
<b>Department: 5104 - Highways and Streets</b>				
PNM	INV0004333	09/19/2023	Streetlights - Electricity - Utilit...	53.59
PNM	INV0004334	09/19/2023	Streetlights - Electricity - Utilit...	91.17
PNM	INV0004339	09/20/2023	Streetlights - Electricity - Utilit...	114.37
PNM	INV0004340	09/20/2023	Streetlights - Electricity - Utilit...	39.85
PNM	INV0004341	09/20/2023	Streetlights - Electricity - Utilit...	545.87
PNM	INV0004342	09/20/2023	Streetlights - Electricity - Utilit...	474.88
PNM	INV0004343	09/20/2023	Streetlights - Electricity - Utilit...	228.42
<b>Department 5104 - Highways and Streets Total:</b>				<b>1,548.15</b>
<b>Fund 11000 - General Operating Fund Total:</b>				<b>32,359.93</b>
<b>Fund: 20900 - Fire Protection</b>				
<b>Department: 3002 - Fire Protection</b>				
Verizon Wireless	9942478588	08/28/2023	Fire Department	126.04
Valencia County Fiscal Office	2023-08	08/29/2023	Medical Direction for FY 23-24	4,575.00
NM Municipal League	2614	08/29/2023	Annual Conference - Andrew ...	400.00
Linde Gas & Equipment Inc.	37907963	08/29/2023	Oxygen	558.16
Artesia Fire Equipment Inc.	80467	08/29/2023	Ladders and Booster Hose	2,446.00
Woodlands Hardware	011376/1	09/05/2023	Various Supplies	27.62
Woodlands Hardware	011396/1	09/05/2023	Various Supplies	10.62
Woodlands Hardware	011397/1	09/05/2023	Various Supplies	1.15
Napa Auto Parts	498792	09/05/2023	Auto Supplies	58.97
Napa Auto Parts	498869	09/05/2023	Auto Supplies	7.82
BRADY COMPANIES LLC	7943782	09/05/2023	Cleaning Supplies	220.00
BRADY COMPANIES LLC	8288470	09/05/2023	Cleaning Supplies	262.55
Sharp Electronics Corporation	9004482676	09/05/2023	Fire Dept Help Desk & Server...	1,301.00
Sharp Electronics Corporation	9004482677	09/05/2023	Contract# 800595693 - Aquos...	37.50
WEX Bank	91635477	09/05/2023	Fire Dept.	1,290.76
NM Gas Co	INV0004330	09/15/2023	GAS- Utilities	36.74
NM Water Service Company	INV0004344	09/15/2023	Water - Utilities	77.04
PNM	INV0004337	09/20/2023	FD-Electricity - Utilities	146.77
PNM	INV0004338	09/20/2023	FD-Electricity - Utilities	1,396.11
<b>Department 3002 - Fire Protection Total:</b>				<b>12,979.85</b>
<b>Fund 20900 - Fire Protection Total:</b>				<b>12,979.85</b>
<b>Fund: 29700 - County EMS GRT</b>				
<b>Department: 2002 - General Administration</b>				
Verizon Wireless	9942478588	08/28/2023	EMS	214.24
WEX Bank	91635477	09/05/2023	EMS Fuel	401.73
<b>Department 2002 - General Administration Total:</b>				<b>615.97</b>
<b>Fund 29700 - County EMS GRT Total:</b>				<b>615.97</b>
<b>Grand Total:</b>				<b>45,955.75</b>

## Report Summary

## Fund Summary

Fund	Expense Amount
11000 - General Operating Fund	32,359.93
20900 - Fire Protection	12,979.85
29700 - County EMS GRT	615.97
<b>Grand Total:</b>	<b>45,955.75</b>

## Account Summary

Account Number	Account Name	Expense Amount
11000-0001-10104	Required Reserves	87.04
11000-1009-57090	Printing/Publishing/Adve...	0.55
11000-2001-57150	Subscriptions & Dues	492.85
11000-2001-57160	Telecommunications	127.07
11000-2002-54010	Maintenance & Repairs -...	649.80
11000-2002-54050	Maintenance & Repair - ...	591.77
11000-2002-55020	Contract - Attorney Fees	2,355.33
11000-2002-55030	Contract - Professional S...	246.00
11000-2002-55999	Contract - Other Services	15,605.63
11000-2002-56050	Supplies - Janitorial/Mai...	212.90
11000-2002-57160	Telecommunications	493.05
11000-2002-57170	Utilities - Electricity	1,391.09
11000-2002-57171	Utilities - Natural Gas	40.31
11000-2002-57173	Utilities - Water	500.40
11000-2004-57090	Printing/Publishing/Adve...	225.19
11000-2004-57160	Telecommunications	80.12
11000-2008-57150	Subscriptions & Dues	100.00
11000-2012-57150	Subscriptions & Dues	35.00
11000-3001-55030	Contract - Professional S...	919.00
11000-3002-56120	Supplies - Vehicle Fuel	150.93
11000-4004-55030	Contract - Professional S...	265.50
11000-5101-54040	Maintenance & Repairs -...	1,768.71
11000-5101-55999	Contract - Other Services	225.11
11000-5101-56030	Supplies - Field Supplies	39.49
11000-5101-56120	Supplies - Vehicle Fuel	939.40
11000-5101-57130	Rent of Equipment/Mach..	2,980.39
11000-5101-57160	Telecommunications	289.13
11000-5104-57170	Utilities - Electricity	1,548.15
20900-3002-54040	Maintenance & Repairs -...	66.79
20900-3002-55030	Contract - Professional S...	5,913.50
20900-3002-56030	Supplies - Field Supplies	3,043.55
20900-3002-56050	Supplies - Janitorial/Mai...	482.55
20900-3002-56120	Supplies - Vehicle Fuel	1,290.76
20900-3002-57050	Employee Training	400.00
20900-3002-57160	Telecommunications	126.04
20900-3002-57170	Utilities - Electricity	1,542.88
20900-3002-57171	Utilities - Natural Gas	36.74
20900-3002-57173	Utilities - Water	77.04
29700-2002-56120	Supplies - Vehicle Fuel	401.73
29700-2002-57160	Telecommunications	214.24
Grand Total:		45,955.75

## Project Account Summary

Project Account Key	Expense Amount
**None**	45,955.75
<b>Grand Total:</b>	<b>45,955.75</b>

## Authorization Signatures

### MAYOR & COUNCILORS

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JOSHUA RAMSELL, MAYOR

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MARGARET "PEGGY" GUTJAHR, MAYOR PRO-TEM

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LAWRENCE GORDON, COUNCILOR

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ARTHUR APODACA, COUNCILOR

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JIM WINTERS, COUNCILOR

ATTEST:

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**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
FUND 93100 CAPITAL APPROPRIATION PROJECT  
RIO COMMUNITIES STORM WATER/DRAINAGE INFRA PH 1 DES  
SAP 23-H2509-GF**

**THIS AGREEMENT** between the New Mexico Environment Department hereinafter called the “Department” or NMED, and Rio Communities, hereinafter called the “Grantee” becomes effective on the date signed by the NMED.

**RECITALS**

**WHEREAS**, in the Laws of 2023, Chapter 199, Section 19, Subsection 133, 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**, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

**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:

SAP 23-H2509-GF     \$350,000.00     APPROPRIATION REVERSION DATE: June 30, 2027

Laws of 2023, Chapter 199, Section 19, Subsection 133, Three Hundred Fifty Thousand Dollars, (\$350,000.00), for:

to plan, design and construct an upstream portion of phase 1 of a storm water and drainage infrastructure system for Rio Communities in Valencia county;

The Grantee’s total reimbursements shall not exceed Three Hundred Fifty Thousand Dollars, \$350,000.00 (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, No Dollars, \$0.00, which equals Three Hundred Fifty Thousand Dollars, \$350,000.00 (the “Adjusted Appropriation Amount”).

<sup>1</sup> 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.



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 Special Conditions Attachment may set forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If the Special Conditions Attachment imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of the Attachment shall prevail, in the event of irreconcilable conflict. 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 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 State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

<sup>2</sup> “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.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(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.

For all matters related to this Agreement, the Grantee designates their official representative(s) or successor, in their Signatory Resolution, as required in Article X. B. (v). The official representative will be the contact and signatory for all disbursements and Notices of Obligation.

If applicable, the Grantee designates an Alternative Fiscal Agent in the Signatory Resolution as required in Article X. B. (v), and in the Alternative

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

**NMED Program Administrator**

Name: Bertha Aragon

Email: [bertha.aragon@env.nm.gov](mailto:bertha.aragon@env.nm.gov)

Telephone: 505-670-3615

**NMED Project Manager**

Name: Eric Gartner

Email: [eric.gartner@env.nm.gov](mailto:eric.gartner@env.nm.gov)

Telephone: 505-670-3643

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, 2027 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 quarterly 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 (Budget & Formulation Management System). 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 Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

### **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 are 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 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 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) Twenty (20) days from date of Early Termination; or
- (iii) **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 Wage 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, the “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, repaired, 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 a 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 six (6) 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 Rio Communities may immediately terminate this Agreement by giving Contractor written notice of such termination. The 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 Rio Communities or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the 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 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 a New Mexico Environment Department Grant Agreement. Should the NMED early terminate the grant agreement, the Rio Communities may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Rio Communities 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. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND 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 the 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.

Authorization Page  
RIO COMMUNITIES STORM WATER/DRAINAGE INFRA PH 1 DES SAP 23-H2509-GF

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

**GRANTEE**

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

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

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

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

\_\_\_\_\_  
Date

**New Mexico Environment Department**

\_\_\_\_\_  
Judith L. Kahl, P.E., Bureau Chief, NMED Construction Programs Bureau  
Signed pursuant to the March 24, 2023 Secretary of Environment Delegation Order

SAMPLE

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

<b>I. Grantee Information</b>				<b>II. Payment Computation</b>			
(Make sure information is complete & accurate)							
A.	Grantee:			A.	Payment Request No.		
B.	Address:			B.	Grant Amount:		
(Complete Mailing, including Suite, if applicable)				C.	AIPP Amount (If Applicable):		
				D.	Funds Requested to Date:		
				E.	Amount Requested this Payment:		
				F.	Reversion Amount (If Applicable):		
	City	State	Zip	G.	Grant Balance:		
C.	Phone No:			H.	<input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if first draw)		
D.	Grant No:			I.	<input type="checkbox"/> Final Request for Payment (if Applicable)		
E.	Project Title:						
F.	Grant Expiration Date:						
<b>III. Fiscal Year :</b>							
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)							
<b>IV.</b>	<b>Reporting Certification:</b> 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.						
<input type="checkbox"/>							
<b>V.</b>	<b>Compliance Certification:</b> 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.						
<input type="checkbox"/>							
<b>Grantee Fiscal Officer</b>				<b>Grantee Representative</b>			
or Fiscal Agent (if applicable)							
Printed Name				Printed Name			
Date:				Date:			
<b>(State Agency Use Only)</b>							
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				Division Project Manager			
Date				Date			

## NOTICE OF OBLIGATION TO REIMBURSE GRANTEE SAMPLE EXHIBIT 2

### Notice of Obligation to Reimburse Grantee [# 1]

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

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

FROM: Grantee: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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

<sup>1</sup> 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.

New Mexico Environment Department (NMED)  
Capital Appropriations Certification Document  
Article IX. A. (ii) and (iii)

Project RIO COMMUNITIES STORM WATER/DRAINAGE INFRA PH 1 DES SAP 23-H2509-GF  
Grantee Rio Communities  
Payment Request No \_\_\_\_\_

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

---

Official Representative, Signed Name, Printed Name, Date

**TECHNICAL REQUIREMENTS  
NEW MEXICO ENVIRONMENT DEPARTMENT  
CAPITAL OUTLAY**

**ARTICLE 1      REVIEW**

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

- A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project, for review and, if appropriate, approval. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.
- B. If these grant funds are to be used for engineering and/or other professional services, the hiring process for engineering services and/or other professional services must be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If engineering fees exceed \$60,000, excluding gross receipt taxes, the Grantee is required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the Request for Proposals (RFP) package. (PTAB: phone (505) 888-6161 and e-mail [ptab@acecnm.org](mailto:ptab@acecnm.org).)
- C. If these grant funds are used for engineering and/or other professional services, the Grantee must submit a copy of any executed engineering agreement and/or other professional services contract so a notice of obligation can be prepared and issued. If the Grantee's staff will be used to prepare the design, a letter certifying that must be submitted to NMED for the project record. The grantee has the option of using the NMED engineering agreement. In any case all engineering agreements must include the non-appropriation and termination clauses required by DFA in all agreements funded by capital outlay.
- D. A preliminary engineering report (PER), technical memorandum, or study by a registered New Mexico Professional Engineer may be required.
- E. If the grant funds are to be used for engineering design or for construction, the Grantee must submit all plans, specifications, bid documents, and engineer's construction cost estimate, for the project (prepared and sealed by a licensed and registered New Mexico Professional Engineer) to NMED **before** the project is advertised for construction bids, along with a letter **from the Grantee** stating that they have reviewed and accepted the plans and specifications. If required, the Grantee must also submit the plans and specifications to the appropriate regulatory agency for review and approval and provide a copy of the approval letter from the regulatory agency. Upon receipt of these documents the NMED will issue a letter confirming receipt of the required documents and informing the Grantee to proceed with advertising the project for construction bids.
- F. A site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.

- G. If grant funds are to be used for the purchase or acquisition of real property as a part of this project and within the project period, the Grantee will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser selected through applicable procurement procedures.
- H. The Grantee will submit the proof of advertisement, recommendation of award, bid tabulation, complete bid submittal of the selected contractor, any addenda issued, and funding analysis listing all funds that will pay for construction to NMED prior to award of the construction contract, along with a letter from the Grantee stating they concur with the recommendation of award to the selected contractor and price and confirming that the Grantee has sufficient funds for construction.
- I. The Grantee will submit the notice of the award, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to proceed to NMED. NMED will prepare and issue the notice of obligation for the construction cost making the grant funds available for reimbursement of construction costs. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.
- J. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.
- K. All daily construction inspection reports shall be made available to the NMED upon request.
- L. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.
- M. If applicable, the Grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.
- N. NMED will reimburse the grantee its actual costs when NMED determines, in its sole discretion, that expenditures were appropriate under the terms of the Agreement and that the expenditures were properly documented.

## **ARTICLE 2**      **NMED OVERSIGHT**

NMED inspection, review and oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the



owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

### **ARTICLE 3**      **CLOSEOUT**

- A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.
- B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.
- C. If the grant funds are used for construction, final payment will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
  - i. A certificate of substantial completion including punch list items.
  - ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.
  - iii. A written consent of the surety, if any, to final payment.
  - iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.
  - v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.
  - vi. Certification letter of project acceptance by the Grantee and the Grantee's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.
  - vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

Rev. May 2023	NEW MEXICO ENVIRONMENT DEPARTMENT CONSTRUCTION PROGRAMS BUREAU							
<b>NMED DISBURSEMENT REQUEST</b>								
<b>SPECIAL APPROPRIATIONS PROGRAM (SAP)</b>								
A. NAME OF ENTITY					C. DISBURSEMENT REQUEST NUMBER			
B. PROJECT NUMBER					D. GRANT AMOUNT			
	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees								
<i>Other Professional</i>								
Service Fees								
Inspection Fees								
Property Acquisition								
Construction Cost								
Planning Cost								
Equipment								
Other Costs (specify)								
Contingencies								
<b>TOTAL</b>								
<p>Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.</p> <p><b>Certification:</b> Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; 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.</p>								
	Signature of Official Representative:		Typed or Printed Name:		Phone:		Date:	
	X							
	Signature of Fiscal Agent if applicable:		Typed or Printed Name:		Phone:		Date:	
	X							

# A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)

## Resolution 2023 - 21

Whereas, the **Governing Body City Council** of **The City of Rio Communities** of **Valencia County** County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as **Project Number SAP**

**NOW THEREFORE, BE IT RESOLVED by the named applicant that:**

**Dr. Martin Moore, City Manager**, or successor is authorized to sign the Grant Agreement for this project, and

**Stephanie Finch, Finance Officer**, and **Angela Valadez, Accounting Specialist/Chief Procurement Officer**, (may have more than one) or successor is the OFFICAL REPRESENTATIVE(S) who is authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Disbursements and Notice of Obligations (NOO) and to act as the project contact, and

**(Designated Agent or Employee Name), (Title)**, or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly per Article VIII. A. of the Intergovernmental Grant Agreement.

If a Fiscal Agent is required:

**(N/A)** or successor, is the FISCAL AGENT and is authorized to sign Disbursement.

**PASSED, APPROVED AND ADOPTED THIS 11th DAY OF September 2023 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

\_\_\_\_\_  
**Joshua Ramsell, Mayor**

\_\_\_\_\_  
**Margaret R. Gutjahr, Mayor Pro-tem/Councilor**

\_\_\_\_\_  
**Arthur Apodaca, Councilor**

\_\_\_\_\_  
**Lawrence R. Gordon, Councilor**

\_\_\_\_\_  
**Jimmie Winters, Councilor**

**ATTEST:**

\_\_\_\_\_  
**Elizabeth F. Adair, Municipal Clerk**

Name of Grantee: \_\_\_\_\_ Project Number: \_\_\_\_\_

Authorized to Sign the Agreement	
Name	
Title	
Signature	
Address	
Email	
Phone	
Official Representatives authorized to sign Disbursement Requests and All Other Documents	
Name	
Title	
Signature	
Address	
Email	
Phone	
Alternate Official Representative; To sign Disbursement Requests and All Other Documents, Requirement and Act as the Project Contact	
Name	
Title	
Signature	
Address	
Email	
Phone	
Designated Agent or Employee that will update DFA Database Quarterly	
Name	
Title	
Signature	
Address	
Email	
Phone	
If required, Fiscal Agent approved to sign Disbursement Requests	
Name	
Title	
Signature	
Address	
Email	
Phone	



**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
FUND 93100 CAPITAL APPROPRIATION PROJECT  
RIO COMMUNITIES STORM WATER/DRAINAGE INFRA PH 1 DES  
SAP 23-H2509-GF**

**THIS AGREEMENT** between the New Mexico Environment Department hereinafter called the “Department” or NMED, and Rio Communities, hereinafter called the “Grantee” becomes effective on the date signed by the NMED.

**RECITALS**

**WHEREAS**, in the Laws of 2023, Chapter 199, Section 19, Subsection 133, 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**, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

**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:

SAP 23-H2509-GF     \$350,000.00     APPROPRIATION REVERSION DATE: June 30, 2027

Laws of 2023, Chapter 199, Section 19, Subsection 133, Three Hundred Fifty Thousand Dollars, (\$350,000.00), for:

to plan, design and construct an upstream portion of phase 1 of a storm water and drainage infrastructure system for Rio Communities in Valencia county;

The Grantee’s total reimbursements shall not exceed Three Hundred Fifty Thousand Dollars, \$350,000.00 (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)<sup>1</sup>, if applicable, No Dollars, \$0.00, which equals Three Hundred Fifty Thousand Dollars, \$350,000.00 (the “Adjusted Appropriation Amount”).

<sup>1</sup> 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.

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 Special Conditions Attachment may set forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If the Special Conditions Attachment imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of the Attachment shall prevail, in the event of irreconcilable conflict. 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 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 State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

<sup>2</sup> “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.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(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.

For all matters related to this Agreement, the Grantee designates their official representative(s) or successor, in their Signatory Resolution, as required in Article X. B. (v). The official representative will be the contact and signatory for all disbursements and Notices of Obligation.

If applicable, the Grantee designates an Alternative Fiscal Agent in the Signatory Resolution as required in Article X. B. (v), and in the Alternative



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

**NMED Program Administrator**

Name: Bertha Aragon

Email: [bertha.aragon@env.nm.gov](mailto:bertha.aragon@env.nm.gov)

Telephone: 505-670-3615

**NMED Project Manager**

Name: Eric Gartner

Email: [eric.gartner@env.nm.gov](mailto:eric.gartner@env.nm.gov)

Telephone: 505-670-3643

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, 2027 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 quarterly 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 (Budget & Formulation Management System). 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 Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

### **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 are 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 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 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) Twenty (20) days from date of Early Termination; or
- (iii) **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 Wage 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, the “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, repaired, 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 a 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 six (6) 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 Rio Communities may immediately terminate this Agreement by giving Contractor written notice of such termination. The 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 Rio Communities or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the 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 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 a New Mexico Environment Department Grant Agreement. Should the NMED early terminate the grant agreement, the Rio Communities may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Rio Communities 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. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND 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 the 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.



Authorization Page  
RIO COMMUNITIES STORM WATER/DRAINAGE INFRA PH 1 DES SAP 23-H2509-GF

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

**GRANTEE**

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

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

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

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

\_\_\_\_\_  
Date

**New Mexico Environment Department**

\_\_\_\_\_  
Judith L. Kahl, P.E., Bureau Chief, NMED Construction Programs Bureau  
Signed pursuant to the March 24, 2023 Secretary of Environment Delegation Order

SAMPLE

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

<b>I. Grantee Information</b>				<b>II. Payment Computation</b>			
(Make sure information is complete & accurate)							
A.	Grantee:			A.	Payment Request No.		
B.	Address:			B.	Grant Amount:		
(Complete Mailing, including Suite, if applicable)				C.	AIPP Amount (If Applicable):		
				D.	Funds Requested to Date:		
				E.	Amount Requested this Payment:		
				F.	Reversion Amount (If Applicable):		
	City	State	Zip	G.	Grant Balance:		
C.	Phone No:			H.	<input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if first draw)		
D.	Grant No:			I.	<input type="checkbox"/> Final Request for Payment (if Applicable)		
E.	Project Title:						
F.	Grant Expiration Date:						
<b>III. Fiscal Year :</b>							
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)							
<b>IV.</b>	<b>Reporting Certification:</b> 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.						
<input type="checkbox"/>							
<b>V.</b>	<b>Compliance Certification:</b> 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.						
<input type="checkbox"/>							
<b>Grantee Fiscal Officer</b>				<b>Grantee Representative</b>			
or Fiscal Agent (if applicable)							
Printed Name				Printed Name			
Date:				Date:			
<b>(State Agency Use Only)</b>							
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				Division Project Manager			
Date				Date			

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

**Notice of Obligation to Reimburse Grantee [# 1]**

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

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

FROM: Grantee: \_\_\_\_\_

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: \_\_\_\_\_

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: \_\_\_\_\_

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

<sup>1</sup> 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.

New Mexico Environment Department (NMED)  
Capital Appropriations Certification Document

Article IX. A. (ii) and (iii)

Project RIO COMMUNITIES STORM WATER/DRAINAGE INFRA PH 1 DES SAP 23-H2509-GF

Grantee Rio Communities

Payment Request No \_\_\_\_\_

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

---

Official Representative, Signed Name, Printed Name, Date

**TECHNICAL REQUIREMENTS  
NEW MEXICO ENVIRONMENT DEPARTMENT  
CAPITAL OUTLAY**

**ARTICLE 1      REVIEW**

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

- A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project, for review and, if appropriate, approval. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.
- B. If these grant funds are to be used for engineering and/or other professional services, the hiring process for engineering services and/or other professional services must be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If engineering fees exceed \$60,000, excluding gross receipt taxes, the Grantee is required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the Request for Proposals (RFP) package. (PTAB: phone (505) 888-6161 and e-mail [ptab@acecnm.org](mailto:ptab@acecnm.org).)
- C. If these grant funds are used for engineering and/or other professional services, the Grantee must submit a copy of any executed engineering agreement and/or other professional services contract so a notice of obligation can be prepared and issued. If the Grantee's staff will be used to prepare the design, a letter certifying that must be submitted to NMED for the project record. The grantee has the option of using the NMED engineering agreement. In any case all engineering agreements must include the non-appropriation and termination clauses required by DFA in all agreements funded by capital outlay.
- D. A preliminary engineering report (PER), technical memorandum, or study by a registered New Mexico Professional Engineer may be required.
- E. If the grant funds are to be used for engineering design or for construction, the Grantee must submit all plans, specifications, bid documents, and engineer's construction cost estimate, for the project (prepared and sealed by a licensed and registered New Mexico Professional Engineer) to NMED **before** the project is advertised for construction bids, along with a letter **from the Grantee** stating that they have reviewed and accepted the plans and specifications. If required, the Grantee must also submit the plans and specifications to the appropriate regulatory agency for review and approval and provide a copy of the approval letter from the regulatory agency. Upon receipt of these documents the NMED will issue a letter confirming receipt of the required documents and informing the Grantee to proceed with advertising the project for construction bids.
- F. A site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.

- G. If grant funds are to be used for the purchase or acquisition of real property as a part of this project and within the project period, the Grantee will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser selected through applicable procurement procedures.
- H. The Grantee will submit the proof of advertisement, recommendation of award, bid tabulation, complete bid submittal of the selected contractor, any addenda issued, and funding analysis listing all funds that will pay for construction to NMED prior to award of the construction contract, along with a letter from the Grantee stating they concur with the recommendation of award to the selected contractor and price and confirming that the Grantee has sufficient funds for construction.
- I. The Grantee will submit the notice of the award, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to proceed to NMED. NMED will prepare and issue the notice of obligation for the construction cost making the grant funds available for reimbursement of construction costs. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.
- J. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.
- K. All daily construction inspection reports shall be made available to the NMED upon request.
- L. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.
- M. If applicable, the Grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.
- N. NMED will reimburse the grantee its actual costs when NMED determines, in its sole discretion, that expenditures were appropriate under the terms of the Agreement and that the expenditures were properly documented.

## **ARTICLE 2**      **NMED OVERSIGHT**

NMED inspection, review and oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the

owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

### **ARTICLE 3**      **CLOSEOUT**

- A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.
- B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.
- C. If the grant funds are used for construction, final payment will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
  - i. A certificate of substantial completion including punch list items.
  - ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.
  - iii. A written consent of the surety, if any, to final payment.
  - iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.
  - v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.
  - vi. Certification letter of project acceptance by the Grantee and the Grantee's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.
  - vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

[illegible]



# A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)

## Resolution 2023 - 21

Whereas, the **Governing Body City Council** of **The City of Rio Communities** of **Valencia County** County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as **Project Number SAP**

**NOW THEREFORE, BE IT RESOLVED by the named applicant that:**

**Dr. Martin Moore, City Manager**, or successor is authorized to sign the Grant Agreement for this project, and

**Stephanie Finch, Finance Officer**, and **Angela Valadez, Accounting Specialist/Chief Procurement Officer**, (may have more than one) or successor is the OFFICAL REPRESENTATIVE(S) who is authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Disbursements and Notice of Obligations (NOO) and to act as the project contact, and

**(Designated Agent or Employee Name), (Title)**, or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly per Article VIII. A. of the Intergovernmental Grant Agreement.

If a Fiscal Agent is required:

**(N/A)** or successor, is the FISCAL AGENT and is authorized to sign Disbursement.

**PASSED, APPROVED AND ADOPTED THIS 11th DAY OF September 2023 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

\_\_\_\_\_  
**Joshua Ramsell, Mayor**

\_\_\_\_\_  
**Margaret R. Gutjahr, Mayor Pro-tem/Councilor**

\_\_\_\_\_  
**Arthur Apodaca, Councilor**

\_\_\_\_\_  
**Lawrence R. Gordon, Councilor**

\_\_\_\_\_  
**Jimmie Winters, Councilor**

**ATTEST:**

\_\_\_\_\_  
**Elizabeth F. Adair, Municipal Clerk**

Name of Grantee: \_\_\_\_\_ Project Number: \_\_\_\_\_

Authorized to Sign the Agreement	
Name	
Title	
Signature	
Address	
Email	
Phone	
Official Representatives authorized to sign Disbursement Requests and All Other Documents	
Name	
Title	
Signature	
Address	
Email	
Phone	
Alternate Official Representative; To sign Disbursement Requests and All Other Documents, Requirement and Act as the Project Contact	
Name	
Title	
Signature	
Address	
Email	
Phone	
Designated Agent or Employee that will update DFA Database Quarterly	
Name	
Title	
Signature	
Address	
Email	
Phone	
If required, Fiscal Agent approved to sign Disbursement Requests	
Name	
Title	
Signature	
Address	
Email	
Phone	



**Desert Fox Paving**  
**P.O. Box 1499**  
**Peralta, NM 87042**  
**PHONE: 505-892-5400 FAX: 505-869-1937**

**Quote No. 82923**

[desertfoxpaving@yahoo.com](mailto:desertfoxpaving@yahoo.com)

Lic. #367698

## QUOTATION

### Customer

**Attn: Stephanie Finch**  
**Rio Communities**  
 Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State NM Zip \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Fax \_\_\_\_\_ Email: [sfinch@riocommunities.net](mailto:sfinch@riocommunities.net)

### Misc

Date 8/29/2023  
 Order No. pend.  
 Rep Cody  
 Cell 236-9989

Qty	Description	Unit Price	TOTAL
	<b>City Hall</b>		
	<b>Option 1</b>		
87,107	SF Sealcoat	\$ 0.52	\$ 45,295.64
	<b>Option 2</b>		
87,107	SF 1/2" Asphalt Overlay with Tack Coat	\$ 1.22	\$ 106,270.54
	<b>Option 3</b>		
1	LS Restripe as per existing layout	\$ 4,100.00	\$ 4,100.00
<b>NOTE: Gross Receipts Tax will need to be added to price</b>			
Price Excludes Bond, Testing, Permit Fees And Construction Staking		SubTotal	
		Shipping	
		Tax Rate(s)	
		<b>TOTAL</b>	<b>\$ -</b>

### Acceptance

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Signature \_\_\_\_\_

Office Use Only

*This Quotation Will Expire 30 days from Issuance*  
*Payment Terms are COD unless other arrangements have been made.*

**CITY OF RIO COMMUNITIES, NEW MEXICO****Ordinance No: 2023 – (89)****CHAPTER 10 ECONOMIC DEVELOPMENT****LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) PLAN ORDINANCE**

**WHEREAS,** the development of the local economy is vital to the wellbeing of the City of Rio Communities (the “City”) and its residents; and

**WHEREAS,** local communities may need to provide land buildings infrastructure and other financial incentives to compete with other states and locales in efforts to attract and retain businesses; and

**WHEREAS,** the New Mexico State Legislature enacted Chapter 5, Article 10 NMSA 1978, entitled the Local Economic Development Act (as amended, the “Act”), which gives local governments the authority to use public resources for economic development purposes; and

**WHEREAS,** this Local Economic Development Act Plan Ordinance is enacted pursuant to that statutory authority.

**NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIOCOMMUNITIES, NEW MEXICO**

**Article 1. LOCAL ECONOMY DEVELOPMENT**

This Ordinance may be cited as the "Local Economic Development Act Plan Ordinance."

**Article 2. PURPOSE**

This Ordinance is adopted as part of the City's economic development plan. In accordance with the Act, the purpose of the Local Economic Development Act Plan Ordinance is to allow public support of economic development projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. The Local Economic Development Act Plan Ordinance will also allow the City to enter into joint powers agreements or memoranda of understanding with other local governments to support regional economic development projects.

**Article 3. DEFINITIONS**

The City hereby adopts all of the definitions contained in Section 5-10-3, NMSA 1978, as it currently exists or is amended from time to time, by reference and as though fully restated herein.

**Article 4. ECONOMIC DEVELOPMENT PLAN**

- 4.1 The City hereby adopts an economic development plan as described in this Local Economic Development Act Plan Ordinance. The City may provide public support

for economic development projects to qualifying entities in any legally permissible manner, including, but not limited to, the provision of land, buildings and infrastructure it already owns.

- 4.2 The City may also provide public support for economic development to qualifying entities by building, purchasing or leasing the facilities needed for the economic development project. The City may bear the full cost or contribute to a portion of the costs and may waive applicable fees. The City may also contribute to the payments of the costs for professional service contracts, including industry feasibility studies and planning and design services with respect to a project.
- 4.3 The City may consider offering all forms of assistance under this article and any other form of assistance allowed under the Act, as amended from time to time; however, the City has no obligation to offer any specific type of assistance.
- 4.4 Without limiting the generality of the foregoing provisions of this article, but subject to the limitations in Section 5-10-4(B), NMSA 1978, as amended, the City may provide for a local contribution of payments reimbursing expenditures for land, building or infrastructure that is measured based on an increment of gross receipts taxes received by the City as a result of the construction of the economic development project

#### **Article 5. APPLICATION FOR ASSISTANCE**

Any qualifying entity, as such term is defined in the Act from time to time, may propose an economic development project to the City and apply for assistance from the City. The applicant's proposal shall describe the proposed project, including the names and addresses of persons with an interest in the project, the number and types of jobs to be created, wages and benefits associated with the jobs to be created, the type and amount of assistance sought from the City, proposed construction schedule, and all other information requested by the City. The City intends to evaluate the applications, the form and extent of assistance proposed to be provided, the security to be provided to the City, and other details of each proposed project on a case-by-case basis. The City may accept or reject proposals at its sole discretion.

#### **Article 6. PUBLIC INSPECTION OF APPLICATIONS**

Applications for assistance and all supporting documentation shall be available for public inspection

#### **Article 7. SUBSTANTIVE CONTRIBUTION—PROJECT PARTICIPATION AGREEMENT**

- 7.1 If the City approves a request for assistance, it will do so by ordinance. In addition, the City will enter into a project participation agreement in accordance with the Act. This agreement is the formal document which states the contributions and obligations of all parties in the local economic development act plan project. The project participation agreement, at a minimum must clearly state the following:

- (1) The economic development goals of the project;
- (2) The contributions of the City and the qualifying entity;
- (3) The specific measurable objectives upon which the performance review will be based;
- (4) A schedule for project development and goal attainment;
- (5) The security offered for the City's investment;
- (6) The procedures by which the project may be terminated. Each project shall have a "sunset" clause after which the City shall relinquish interest in and oversight of the project; and
- (7) A cost/benefit analysis that reflects net benefits to both parties, including gross receipts taxes, tax abatements, average wages, construction jobs, environmental and community impacts, and the number of jobs filled locally and through transfers

7.2 The City may require that all recipients of assistance pursuant to the Act provide the City with periodic reports with respect to the project for which assistance was received.

## **Article 8. LOCAL INCENTIVES**

In accordance with the Act, the City may offer the following local economic development incentives for economic development projects as recommended by the review committee. These incentives may be in addition to other incentives as permitted by the Act.

- (1) The City may defer or delay impact fees in whole or in part upon start up until the business generates income. To qualify for the incentive the entity receiving this incentive must create a number of jobs to be determined by the review committee.
- (2) The City may provide water and sewer tap meter materials, labor and equipment to install water and sewer lines to the property line. The review committee will determine if an entity qualifies for this incentive which may include only a partial provision of the materials, labor and equipment necessary for the entire project.
- (3) The City may waive or reduce certain fees to induce economic development if an entity meets the definition of economic development projects established in the Act. The review committee will consider requests for fee reductions and make a recommendation to the City Council and City Manager who must give their approval.
- (4) The City may install and pay for part or all of the landscaping for an entity provided the entity will dedicate a permanent/temporary landscape easement to the City for the improvements and consent to maintain the landscape improvements. The entity must agree to maintain said installed landscape on both the private and public right-of-way areas. The review committee will consider companies that provide a positive economic impact based on the number of jobs created and the pay scale.
- (5) The City may provide right-of-way, construction, paving and/or other improvements necessary for the provision of roads/streets to the site.
- (6) The City may waive or reduce water rights requirements if an entity meets

the definition of economic development projects established in the Act. The review committee will consider requests for water rights waiver or reduction and make a recommendation to the City Council and City Manager who must give their approval

**Article 9. JOINT POWERS AGREEMENTS**

The City may enter into joint powers agreements with other local governments to develop a regional economic development plan in accordance with the Act, as in effect from time to time.

**Article 10. SEVERABILITY**

If any article, paragraph, sentence, clause or word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of the Ordinance.

**Article 11. REPEALER**

City Ordinance 2022-83 is hereby repealed in its entirety. Additionally, all other ordinances (not including City Ordinance 2022-83), bylaws, orders and resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency.

*(Signature Page to Follow)*



**PASSED, APPROVED AND ADOPTED THIS 11<sup>th</sup> DAY OF SEPTEMBER 2023 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

---

Joshua Ramsell,  
Mayor

---

Margaret R. Gutjahr,  
Councilor Mayor Pro tem

---

Arthur Apodaca,  
Councilor

---

Lawrence R. Gordon,  
Councilor

---

Jimmie Winters,  
Councilor

ATTEST:

---

Elizabeth F. Adair,  
Municipal Clerk

**CITY OF RIO COMMUNITIES, NEW MEXICO****ORDINANCE NO: 2023 – (90)****ORDINANCE ADOPTING THE CITY OF RIO COMMUNITIES INDUSTRIAL REVENUE BOND POLICY AND LOCAL ECONOMIC DEVELOPMENT ACT POLICY**

**WHEREAS,** the City encourages the issuance of industrial revenue bonds (“IRBs”) for qualifying entities that meet the requirements for projects that are allowed under the New Mexico Industrial Revenue Bond Act, Chapter 3, Article 32 NMSA 1978, as amended (the “IRB Act”) and may provide certain benefits to projects under the New Mexico Local Economic Development Act, Chapter 5, Article 10, NMSA 1978, as amended (the “LEDA Act”); and

**WHEREAS,** it is the intent of the City to allow public support of economic development projects through the issuance of IRBs from time to time for appropriate projects as provided in the IRB Act and to provide assistance for projects qualifying under the LEDA Act, to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources; and

**WHEREAS,** the City desires to adopt a policy to establish its expectations and requirements relating to the issuance of IRBs and assistance under the LEDA Act, consistent with the IRB Act, the LEDA Act and applicable state and federal laws, rules and guidelines.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIO COMMUNITIES** that the “City of Rio Communities Industrial Revenue Bond Policy and Local Economic Development Act Policy”, attached as Exhibit A, is adopted.

**PASSED, APPROVED AND ADOPTED THIS 11<sup>TH</sup> DAY OF SEPTEMBER 2023 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

\_\_\_\_\_  
Joshua Ramsell, Mayor

\_\_\_\_\_  
Margaret R. Gutjahr, Councilor Mayor Pro-tem

\_\_\_\_\_  
Arthur Apodaca, Councilor

\_\_\_\_\_  
Lawrence R. Gordon, Councilor

\_\_\_\_\_  
Jimmie Winters, Councilor

ATTEST:

\_\_\_\_\_  
Elizabeth F. Adair, Municipal Clerk

**EXHIBIT A**

**City of Rio Communities  
Industrial Revenue Bond Policy  
and  
Local Economic Development Act Policy**

\_\_\_\_\_, 2023

## Industrial Revenue Bonds (IRBs)

### Section 1.0 Policy Statement and Overview of IRB Process

1.1 The City of Rio Communities (“City”) encourages the issuance of industrial revenue bonds (“IRBs”) for Qualifying Projects (defined below) meeting the requirements of the New Mexico Industrial Revenue Bond Act, Chapter 3, Article 32 NMSA 1978, as amended (“IRB Act”). Generally, Qualifying Projects are expected to involve a minimum of \$3 million of capital investment unless otherwise approved by Staff and the City Council.

1.2 All persons requesting the issuance of IRBs are required to submit a Pre-Application (defined below), an Application (defined below) and a Project Plan (defined below) and proceed through the City’s Economic Development Staff (“Staff”) and City Council review process as provided in the IRB Act and in this Policy.

### Section 2.0 Summary of Typical Benefits of IRBs and Subsidies/Tax Exemptions for Qualifying Projects Located on Land Subject to Property Tax

2.1 An IRB is a bond issued by the City under the IRB Act to finance a Qualifying Project. The Qualifying Project is to be transferred to/owned by the City and the proceeds of the IRB received from the purchaser of the IRB (“Bond Purchaser”) are in turn loaned to the company developing and operating the Qualifying Project (“Qualifying Entity”). The term of an IRB may be for up to 30 years. Typically, the Qualifying Entity enters into a lease agreement with the City to lease the Qualifying Project from the City in exchange for rental payments sufficient to pay obligations on the associated IRB. At the end of the lease term, the lease generally permits the Qualifying Entity to purchase the facility from the City for a nominal amount. Lease payments are pledged to the repayment of the IRB.

2.2 There are three potential benefits of taxable IRBs: a property tax exemption (for Qualifying Projects located on land subject to property tax), a gross receipts tax (“GRT”) deduction and a compensating tax deduction. Tax-exempt IRBs receive reduced borrowing costs through tax-exempt interest rates.

2.2.1 **Property Tax Exemption; PILOT.** One potential benefit to a Qualifying Entity is a full or partial abatement of property taxes. The property tax exemption results from legal title to the project property being held, while the bonds are outstanding, by the City as issuer. The City may abate property tax for up to 100% of the applicable mill rate at the sole discretion of the City. The City may also negotiate a payment in lieu of taxes (“PILOT”) as it deems necessary or appropriate. The PILOT obligation is based on an agreement between the City and the Qualifying Entity under which the Qualifying Entity agrees to make payments to offset all or a portion of the property taxes that the City deems necessary to be paid, such as property taxes for the school district or other relevant political subdivisions.

2.2.2 **Gross Receipts Tax and Compensating Tax Deductions.** Another potential benefit to Qualifying Entities is a GRT deduction permitted under New Mexico

law. For example, when the Qualifying Entity purchases furniture, computer equipment, manufacturing equipment (but not personal property that becomes part of the project real estate) for the project, these purchases are not subject to the GRT. Equipment purchased from out of state is not subject to the compensating tax. The City may also limit the GRT and compensating tax deductions by limiting the definition of project property.

- 2.2.3 **Tax-Exempt Bond Interest.** Interest on tax-exempt IRBs may, under appropriate circumstances, be excludable from federal and (for New Mexico residents, also New Mexico) gross income of the Bond Purchaser, reducing interest expense attributable to the Qualifying Project. Tax-exempt IRBs offer the same local tax advantages as Taxable IRBs (i.e., property tax and GRT and compensating tax relief), but also may facilitate lower borrowing costs due to the tax-exempt nature of interest on the IRB. Tax-exempt IRBs are limited in scope (principally available for manufacturing facilities), require an allocation of “volume cap” from the New Mexico State Board of Finance, and are subject to various restrictions imposed by Internal Revenue Service (“IRS”) regulations.

2.3 Taxable IRBs are often self-funded (or funded by an affiliate of the applicant) and are principally utilized to abate personal and property taxes on land, building and infrastructure and to provide an exemption on compensating and GRT for the purchase of equipment for a Qualifying Project. Taxable IRBs are not limited by the size of the capital investment. Tax-Exempt IRBs must be funded by an independent lender or funding source (not related to the Qualifying Entity) in order to qualify for federal tax-exemption on interest. Tax-Exempt IRBs are limited by the size of the capital investment.

### **Section 3.0 Definitions**

3.1 **Qualifying Project:** “Qualifying Project” means a “project” as defined by the IRB Act.

3.2 **Clawbacks and Springing PILOTS (Payments in Lieu of Taxes):** Clawbacks (such as provisions that require the company to repay a percent of the taxes avoided by use of an IRB in the event of an early facility closure) and/or Springing PILOTS (such as provisions that require PILOT payments to be made in future years if job creation estimates or other promises are not met or maintained by the company) may be required by the City to protect against early closure of facilities or for the failure to achieve projected job growth goals or other performance goals.

3.3 **Project Plan:** The project plan (“Project Plan”) is the format for an applicant to submit an Application to the City to ensure that all plans present the same sequence of information and contains information and responses to all applicable questions as set forth in Section 5.1 through 5.21 herein.

### **Section 4.0 IRB Procedures**

4.1 **Pre-Application Discussion:** The applicant shall submit to Staff a completed City of Rio Communities IRB Pre-Application in the form attached hereto as Appendix A, including the one-page description of the Qualifying Project referenced therein (“Pre-Application”). The applicant is required to meet with Staff within a reasonable period of time following submission of the Pre-

Application to discuss the Qualifying Project and review the process and criteria for the submission of the complete Application and inducement of an IRB.

4.2 **Staff Review:** Staff reviews the Pre-Application and may provide technical assistance to the company in completing the information requested as needed.

#### 4.3 **Application Submission, Review Process and Fees**

4.3.1 **Submittal of Application and Project Plan.** The applicant submits a formal application for the issuance of the IRB (“Application”) to the City’s Staff in the form attached hereto as Appendix B. The Application shall include a Project Plan and all supporting documents, including an impact (cost/benefit) analysis.

4.3.2 **Staff:** Staff reviews the Application and all supporting documentation. Staff reviews and may determine one of the following: approval, rejection or conditional approval. An Application may move forward to the City Council with no recommendation. Staff review of the Application may include specific review and comment from the City’s bond counsel and (to the extent applicable) the State Department of Transportation, and it may include review by other departments and/or officials on a case-by-case basis.

4.3.3 **City Council – Inducement Resolution.** With input from Staff, the City Council will approve or disapprove the Inducement Resolution based upon the Application and supporting documentation. The City Council may approve an inducement resolution reflecting its intention to proceed with the Qualifying Project, which absent further action by the City Council, will expire 180 days following its passage.

4.3.4 **City Council – Authorizing Ordinance.** If the inducement resolution is approved, the City Council may consider a bond ordinance authorizing the issuance of the IRB and execution of related documents. Notice of intent to approve the bond ordinance will be published as provided by law, the bond ordinance will be considered by the City Council (following any necessary public hearings, which may occur at the same meeting), and if approved, notice of approval of the bond ordinance will be published as provided by law. Closing of the IRB will not occur less than 30 days following the publication of notice of approval of the bond ordinance.

4.3.5 **Fees.** No application fee or ongoing fee is currently payable in connection with an Application, but the City Council, on recommendation of the Staff, reserves the right to charge an application fee and/or ongoing fee in the case of unusually complex projects or other special circumstances.

4.4 **Fees of Professionals:** In addition to the fees set forth in this section, the applicant shall pay the City’s and its own attorneys’ fees and the expenses of attorneys reviewing the bond documents, including any refunding bond documents whether or not the bonds are issued. The applicant will sign fee letters in which the applicant will agree to pay any third-party costs incurred by the City (including legal fees). The applicant shall also reimburse the City for fees for

professional services procured by the City, including but not limited to the services of financial advisors, consultants and economists, incurred by the City in connection with bond financing. The fees of all professionals shall be paid regardless of whether the bond issue closes.

## **Section 5.0 Project Plan Requirements**

Each Project Plan must state that the Qualifying Project complies with all applicable ordinances and codes of the City and laws and codes of the State, including, without limitation, zoning, subdivision, environmental and water use, etc. (“Applicable Requirements”). The primary criterion for all IRB Qualifying Projects is the benefit to the City. The applicant shall provide as much information as is available and shall indicate whether or not further information is available upon request. If the applicant cannot respond to a criteria or it is not applicable to the Qualifying Project or the applicant wishes to supplement a response at some time in the future, the applicant should respond by indicating the reasons it is presently unable to provide the information. In addition to the required statement concerning compliance with Applicable Requirements, each Project Plan shall include, or address, the following:

### **5.1 General Description:** A brief description of the Qualifying Project, including:

- 5.1.1 Type of facility (e.g., manufacturing, distribution, etc.)
- 5.1.2 Nature of Qualifying Project (e.g., new construction, expansion, relocation, etc.)
- 5.1.3 General location (street address, location map, and legal description)
- 5.1.4 Existing and proposed use(s)
- 5.1.5 Whether real property is or is expected to be exempt from property taxation
- 5.1.6 Total cost of Qualifying Project
- 5.1.7 Amount of IRB requested
- 5.1.8 Whether interest on IRB is expected to be tax-exempt
- 5.1.9 Identity of expected Bond Purchaser
- 5.1.10 Statement of the benefit to be gained by City due to Qualifying Project

### **5.2 Planning and Zoning:** Evidence that Qualifying Project conforms (or will conform) to all adopted City plans, policies and the provisions of the City Code, including:

- 5.2.1 Present zoning of property being used for Qualifying Project
- 5.2.2 Required zoning change(s) (if any)
- 5.2.3 Discussion of applicable special zoning requirements (if any)

### **5.3 Land Use:** Description of any disruption of local areas or adverse conditions as a result of the Qualifying Project, such as air, noise, odor, or waste pollution or traffic congestion.

### **5.4 Water Use:** Description of anticipated annual water usage as well as source(s) of water (e.g., City system, county, private well, etc.), and any water conservation strategies (if applicable).

### **5.5 Environmental Compliance:** Evidence that the Qualifying Project is in compliance with all local, state and federal environmental regulations at all times, together with a description of the environmental impact of the Qualifying Project on the local area and the region, whether any environmental studies have been or will be undertaken in connection with the proposed Qualifying

Project, whether the Qualifying Project is located in a wellhead protection zone, and whether the Qualifying Project is subject to environmental licensing and inspection by authorities.

**5.6 Utility Extensions:** A description of whether the Qualifying Project is adequately served by existing infrastructure and utilities; and if not, whether the Qualifying Entity will require substantial infrastructure extension, replacement or upgrading; and if so, a description of the same, including type (gas, water, sewer, electrical, communications, etc.), distance & size (e.g., 650 ft. of 6" water line), estimated cost and utility provider.

**5.7 Design, Development and Conservation:** A description of other development and conservation considerations, such as whether the Qualifying Project design is appropriate to the area, whether existing and/or historic buildings are to be conserved, and whether existing buildings and site amenities are to be improved to meet current City development standards.

**5.8 Demolition:** If the Qualifying Project involves demolition, a discussion of any alternatives to demolition of viable buildings and whether those alternatives should be pursued.

**5.9 Relocation:** A description of any required relocation of individuals or businesses, and whether alternatives to relocation of individuals or business are being pursued.

**5.10 Renewable Energy Usage:** A description of the extent to which renewable energy technology is incorporated into buildings, infrastructure or equipment (such as Qualifying Projects whose buildings are LEED certified).

**5.11 Economic Impact and Job Creation:** A concise summary of the following economic impact and job creation criteria:

- 5.11.1 Number, category and average wages of jobs created by the Qualifying Project. New Mexico Department of Workforce Solutions job categories should be used.
- 5.11.2 Temporary jobs in construction and permanent full and part time jobs (broken down by the number of direct, indirect and induced jobs).
- 5.11.3 Positions which will be filled locally and those which will be filled by transfers from other facilities or by out of state recruitment. The number and type of positions expected to be filled by area residents shall be clearly stated.
- 5.11.4 Local recruitment, hiring and training programs, stating what if any opportunities for advancement will be available.
- 5.11.5 Employee benefit package or programs, including health care coverage.
- 5.11.6 The anticipated length of time that the applicant expects the Qualifying Project applicant to be located in the facility (and if less than term of bonds, explain).
- 5.11.7 Whether the Qualifying Project applicant will operate the facility (if not, explain and provide name, address and phone number of the facility operator).



## 5.12 Tax abatement

- 5.12.1 The types and levels of tax abatement being requested.
- 5.12.2 The anticipated net impact on tax revenues for the City and other affected political subdivisions (if any) (attach analysis to support answer.)

**5.13 Facility and Performance Clawbacks Criterion for Qualifying Projects located on taxable properties only.** The City shall require performance agreements (Clawbacks) to be included in all bond documents for all Qualifying Projects. The bond agreements shall have facility closure Clawbacks to provide for a pro-rata repayment of the abated property, GRT and compensating tax, depending upon the amount of time elapsed from date of issuance to date of closure of the Qualifying Project. The bond agreements may have performance Clawbacks to provide for employment, average wages or other economic benefits projected in the IRB agreement and are not achieved.

**5.14 Reporting.** Annually, on a date to be determined, the Applicant shall provide reporting to the City with respect to (a) status of construction of the Qualifying Project, (b) job creation and related information; (c) any other performance criteria set out in the Application or any related agreement; (d) any proposed changes in use or ownership of the Qualifying Project, (e) amount outstanding of the bonds as of June 30 of each year until their maturity or early redemption, and (f) such other information as may be requested by the City in connection with any Qualifying Project.

**5.15 Qualifying Project Feasibility:** Qualifying Projects must show the ability to maintain a solvent business, to retire the bonds in a timely manner, or evidence that financing has been guaranteed. The Application should also reflect:

- 5.15.1 That the Qualifying Project will generate sufficient cash flow to service its project debt and any other debts;
- 5.15.2 That the Qualifying Project applicant has firm financing commitment(s);
- 5.15.3 Total anticipated costs of the Qualifying Project, including land, buildings, equipment and other costs (including pre-development and development costs and costs of financing)
- 5.15.4 A proposed timeline for the Qualifying Project, including projected start and completion dates for Qualifying Project construction; projected start-up date and projected date of full capacity operations.
- 5.15.5 Whether the applicant has an application for bonds to construct this or a substantially similar Qualifying Project in another community (if yes, describe, including anticipated dates for inducement resolutions, etc.)

**5.16 Cost:** Bond amounts shall be no more than required to complete the Qualifying Project. The Qualifying Project will not be induced for an authorized maximum bond amount larger than the expected bond issue. The Application should include all sources of capital to be contributed

by the Qualifying Entity that will be used to finance the Qualifying Project, including the proposed IRB, equity investments, other debt financing and other financing sources.

**5.17 Applicant Record:** The applicant should have a good record with projects of this type, or present convincing evidence that the Qualifying Project will be completed. Reference from local financial institutions and local firms may be required. The Application should demonstrate the applicant's strong financial backing and experience relevant to the Qualifying Project.

**5.18 Management:** Long range commitment to the management of a Qualifying Project is desirable. The Application should identify the proposed manager of the Qualifying Project (including a statement of such manager's relevant experience) and the terms under which such management is to be provided.

**5.19 Evidence of Organizational Capacity:** A brief history of the applicant and any relevant affiliates, together with an organizational chart and resumes of key staff involved with the Qualifying Project.

**5.20 Disclosure Restrictions/NDAs.** If the Qualifying Project or the Application is (or is expected to be) the subject of any non-disclosure agreement or similar agreement restricting disclosure of information ("NDA"), the City must be provided with appropriate permission to obtain and share relevant information concerning the Qualifying Project from and with other governmental entities as necessary for the City and such other governmental entities to carry out their respective duties and for the City to properly evaluate the Application.

**5.21 Evidence of Financial Solvency:** The applicant shall provide the following financial information. (Audited Financials may be required and will be at the discretion of Staff):

- a. Balance sheets for past three years.
- b. Income statements for past three years.
- c. Cash flow projections for next three years.
- d. Federal tax ID number.
- e. New Mexico State Taxation and Revenue number.
- f. Business license number.

**5.22 Required Disclosures:** Applicant shall disclose the following information. If the answer to any question is yes, attach written explanation.

5.22.1 Has the company or any of its officers been involved in a bankruptcy?

5.22.2 Has the company or any of its officers ever defaulted on any loans or financial obligations?

**5.23 Qualifying Project Plan Form:**

5.23.1 All Project Plans must include the information required in Sections 5.1 to 5.22 above, with reference to the specific section or sections to which such information is responsive. To the extent possible, the information should be provided in the order set out in this Section 5.0.

- 5.23.2 All Project Plans must be signed under oath or affirmation by all applicants and must certify that the information contained in the Project Plan is true and correct, and that any information subsequently obtained by the applicant(s) which may indicate that statements contained in the Application are or were untrue or have become misleading or untrue will be promptly disclosed to the City.
- 5.23.3 All Project Plans must contain a representation that the applicant will agree to provide such other information as the City may request to evaluate the Application.
- 5.23.4 All Project Plans must contain a representation that the applicant agrees to allow the City to inspect the Qualifying Project at any time to insure compliance with the Project Plan, the requirements of this policy, and the representations contained in the Application.

### **Local Economic Development Act (LEDA) Assistance**

- 1.1 As provided in Ordinance 2022-83 of the City adopted on August 22, 2022 (as the same may be modified, amended or replaced from time to time, the “LEDA Ordinance”) and the New Mexico Local Economic Development Act, Chapter 5, Article 10 NMSA 1978, as amended (“LEDA Act”), a “qualifying entity” (as defined in the LEDA Act; referred to as a “LEDA Qualifying Entity”) may propose an economic development project to the City and apply for assistance from the City. Applications for assistance under the LEDA Act shall be submitted to Staff in the form attached hereto as Appendix C and in accordance with the requirements of the LEDA Ordinance and the LEDA Act. If approved, the LEDA Qualifying Entity will enter into a project participation agreement under the LEDA Act, which shall at a minimum set forth the terms required by the LEDA Ordinance. All applications for assistance under the LEDA Act, and related project participation agreements, shall be subject to the requirements of the LEDA Act and the LEDA Ordinance.
- 1.2 Priority in awarding financial assistance for applications under the LEDA Act will be given to a LEDA Qualifying Entity that is located or is willing to locate in the underserved area of the City and increases economic development impact in the following manner:
  - 1.2.1 Creates wealth and capital investment,
  - 1.2.2. Increases wages and creates jobs,
  - 1.2.3. Positively influences and supports the community,
  - 1.2.4. Produces environmentally sustainable outcomes,
  - 1.2.5. Increases health and/or safety of the community, and
  - 1.2.6. Increases the diversity of the local economy.

- 1.3 The City and a LEDA Qualifying Entity shall enter into a project participation agreement. The project participation agreement shall set out, at a minimum:
  - 1.3.1. The contributions to be made by the City, including,
    - 1.3.1.1. LEDA grants provided by the State of New Mexico; and
    - 1.3.1.2. LEDA grants provided by the City; and/or
    - 1.3.1.3. LEDA funds contributed by the City from an increment of gross receipts taxes received by the City as a result of construction and other activities related to an economic development project.
  - 1.3.2. The substantive contribution to be made by the LEDA Qualifying Entity which contribution must be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other things or services of value for the expansion of the economy.
    - 1.3.2.1. If a LEDA Qualifying Entity fails to make its substantive contribution, the City will enforce the project participation agreement to recover that portion of the contribution that the LEDA Qualifying Entity failed to make.
    - 1.3.2.2. The recovery shall be proportional to the failed performance of the substantive contribution and will take into account all previous substantive contributions for the economic development project performed by the LEDA Qualifying Entity.
  - 1.3.3. The security provided to the City that provides public support for an economic development project by the LEDA Qualifying Entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying business's financial or material participation and cooperation to guarantee the LEDA Qualifying Entity's performance pursuant to the project participation agreement,
  - 1.3.4. A schedule for project development and completion, including measurable goals and time limits for those goals, and
  - 1.3.5. Provisions for performance review and actions to be taken upon a determination that project performance are unsatisfactory.
  - 1.3.6. Such other information and statements as may be required under the terms of the LEDA Ordinance and the LEDA Act.
- 1.4. All LEDA grants must be approved by the City Council and are funded strictly on a reimbursable basis.
- 1.5. LEDA Qualifying Entities meeting the requirements in Section 1.1 through 1.5 inclusive may receive the following incentives:

- a. LEDA grants and/or contributions from a gross receipt tax increment received by the City.
- b. The City may defer or delay impact fees in whole or in part upon start up until the business generates income. To qualify for the incentive the entity receiving this incentive must create a number of jobs to be determined by the review committee.
- c. The City may provide water and sewer tap meter materials, labor and equipment to install water and sewer lines to the property line. The review committee will determine if an entity qualifies for this incentive which may include only a partial provision of the materials, labor and equipment necessary for the entire project.
- d. The City may waive or reduce certain fees to induce economic development if an entity meets the definition of economic development projects established in this section. The review committee will consider requests for fee reductions and make a recommendation to the City Council and City Manager who must give their approval.
- e. The City will install and pay for part or all of the landscaping for an entity provided the entity will dedicate a permanent/temporary landscape easement to the City for the improvements and consent to maintain the landscape improvements. The entity must agree to maintain said installed landscape on both the private and public right-of-way areas. The review committee will consider companies that provide a positive economic impact based on the number of jobs created and the pay scale.
- f. The City may provide right-of-way, construction, paving and/or other improvements necessary for the provision of roads/streets to the site.
- g. The City may waive or reduce water rights requirements if an entity meets the definition of economic development projects established in this section. The review committee will consider requests for water rights waiver or reduction and make a recommendation to the City Council and City Manager who must give their approval.

2.1 As provided in the LEDA Act as amended in 2021, a LEDA Qualifying Entity that meets the additional qualifications listed in Section 2.2 may receive financial assistance for a maximum period of ten years in the form of a percentage of the revenue from gross tax receipts and compensating tax on the expenses related to the construction of an economic development project as detailed in Section 2.3 (Sections 5-10-14 & -17 NMSA 1978).

2.2 To receive the financial assistance described in Section 2.1 a LEDA Qualifying Entity must:

- a. Sign a project participation agreement with the governing body of each local government that has jurisdiction of the area in which the LEDA Qualifying Entity's economic development project is located and the local government has passed an ordinance dedicating local government gross receipts tax revenue
- b. Develop an economic development project that has a reasonable expectation to incur, within ten years of the date of execution of the project participation agreement described in 2.2(a), at least \$350,000,000 in expenses related to the construction and infrastructure of the project outlined the agreement
- c. The LEDA Qualifying Entity meets all other requirements to generally receive public support pursuant to LEDA
- d. Prior to the end of each month, the qualifying entity must submit documents including tax documents of the qualifying entity and its contractors to the taxation and revenue department, to the department and to the local governments with which the qualifying entity signed a project participation agreement, on forms and in a manner determined by the department, of the taxable expenses related to the construction of the economic development project for the previous month

2.3 LEDA Qualified Entities meeting the requirements in Section 2.2 may be provided with the following financial assistance from funds in the "Local Economic Development Act fund" (as defined in the LEDA Act):

- a. Fifty percent of the tax revenue attributable to the state gross receipts tax and the state compensating tax imposed on the expenses related to the construction of the Qualifying Entities' project
- b. After dedication by ordinance of the City, the portion of the tax revenue attributable to the local option gross receipts tax and municipal compensating tax imposed by the City on the expenses related to the construction of the Qualifying Entities' project

## Appendix A

### Form of Pre-Application

#### City of Rio Communities – IRB Pre-Application Form

Name of Qualifying Project: \_\_\_\_\_

Location of Qualifying Project: \_\_\_\_\_

Short Description: Provide a one-page description/summary of the proposed Qualifying Project. Include all relevant information related to the Qualifying Project including, but not limited to: zoning, square footage of facility, neighborhood and environmental impacts and infrastructure needs.

Applicant: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Agent: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Bond Counsel: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Bond Amount Requested: \_\_\_\_\_

For Staff Use

Date: \_\_\_\_\_ IRB Number: \_\_\_\_\_

Staff Pre-Application Meeting: \_\_\_\_\_

City Council Review Dates:

Inducement Resolution: \_\_\_\_\_

Council Hearing: \_\_\_\_\_

Ordinance Approval: \_\_\_\_\_

**Appendix B**  
**Form of IRB Application**  
**City of Rio Communities Industrial Revenue Bond Application and Project Plan**  
[City of Rio Communities Logo]

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Name of Project:

Bond Amount Requested:

Applicant:

Address:

Telephone:

Email Address:

Applicant Website:

NAICS Code:

Bond Counsel for the City | Sherman & Howard LLC  
500 Marquette Avenue Suite 1203 | Albuquerque, NM 87102 | 505-814-6958

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**Fees:**

The Applicant shall be responsible for the following fees:

1. Application fee, if any
  2. City and Applicant legal fees
  3. Third party review fees
- 

**Submit Completed Application and applicable Fees to:**

[APPLICATION RECIPIENT ADDRESS]



**Section 1.0 General Description of Project:** Please provide a description of the proposed Project. Include all relevant information related to the Project, including but not limited to zoning, subdivision, environmental and water use, etc. (“Applicable Requirements”). In addition to a statement concerning compliance with Applicable Requirements, include, or address, the following:

- 1.1. Type of facility (e.g., manufacturing, distribution, etc.)
- 1.2. Nature of Project (e.g., new construction, expansion, relocation, etc.)
- 1.3. General location (street address, location map, and legal description)
- 1.4. Existing and proposed use(s)
- 1.5. Whether real property is or is expected to be exempt from property taxation
- 1.6. Total cost of Project
- 1.7. Amount of IRB requested
- 1.8. Whether interest on IRB is expected to be tax-exempt
- 1.9. Identity of expected Bond Purchaser
- 1.10. Statement of the benefit to be gained by City due to Project

**Section 2.0 Planning and Zoning:** Provide evidence that the Project conforms, or will conform, to all adopted City plans, policies and the provisions of the City Code, including:

- 2.1. Present zoning of property being used for the Project
- 2.2. Required zoning change(s), if any
- 2.3. Discussion of applicable special zoning requirements, if any

**Section 3.0 Land Use:** Describe any disruption of local areas or adverse conditions as a result of the Project, such as air, noise, odor, or waste pollution or traffic congestion, and how the Project will address them.

**Section 4.0 Water Use:** Describe anticipated annual water usage as well as source(s) of water (e.g., City system, county, private well, etc.) and any water conservation strategies, if applicable.

**Section 5.0 Environmental Compliance:** Provide evidence that the Project complies, and will comply, with all local, state and federal environmental regulations at all times and describe the environmental impact of the Project on the local area and the region.

Have or will environmental studies be undertaken in connection with the proposed Project? Indicate whether the Project is located in a wellhead protection zone, and whether the Project is subject to environmental licensing and inspection by authorities.

- Section 6.0**    **Utility Extensions:** Describe whether the Project is adequately served by existing infrastructure and utilities; and if not, whether the Applicant will require substantial infrastructure extension, replacement or upgrading. If so, describe the same, including type (gas, water, sewer, electrical, communications, etc.), distance & size (e.g., 650 ft. of 6" water line), estimated cost and utility provider.
- Section 7.0**    **Design:** Describe other development and conservation considerations, such as whether the Project design is appropriate to the area, whether existing and/or historic buildings are to be conserved, and whether existing buildings and site amenities are to be improved to meet current City development standards.
- Section 8.0**    **Demolition:** If the Project involves demolition, discuss any alternatives to demolition of viable buildings and whether those alternatives should be pursued.
- Section 9.0**    **Relocation:** Describe any required relocation of individuals or businesses, and whether alternatives to relocation of individuals or business are being pursued.
- Section 10.0**    **Renewable Energy Usage:** Describe the extent to which renewable energy technology is incorporated into buildings, infrastructure or equipment (such as Projects whose buildings are LEED certified).
- Section 11.0**    **Economic Impact and Job Creation:** Summarize the following economic impact and job creation criteria:
- 11.1. Number, category and average wages of jobs created by the Project. New Mexico Department of Workforce Solutions job categories should be used.
  - 11.2. Temporary jobs in construction and permanent full and part time jobs (broken down by the number of direct, indirect and induced jobs).
  - 11.3. Positions which will be filled locally and those which will be filled by transfers from other facilities or by out of state recruitment. Clearly state the number and type of positions expected to be filled by area residents.
  - 11.4. Local recruitment, hiring and training programs, stating what if any opportunities for advancement will be available.
  - 11.5. Employee benefit package or programs, including health care coverage.
  - 11.6. The anticipated length of time that the Applicant expects the Project to be located in the facility (and if less than term of bonds, explain).

- 11.7. Whether the Project Applicant will operate the facility (if not, explain and provide name, address and phone number of the facility operator).

**Section 12.0 Tax Abatement:**

- 12.1. What types and levels of tax abatement are being requested (real property tax, personal property tax, gross receipts and compensating taxes)?
- 12.2. What is the anticipated net impact on tax revenues for the City and other affected political subdivisions, if any (attach analysis to support answer.)

**Section 13.0 Facility and Performance Clawbacks Criterion for Projects Located on Taxable Properties Only:** Acknowledge that performance agreements and clawbacks will be included in the bond documents.

**Section 14.0 Reporting:** Confirm willingness to provide reporting to the City with respect to (a) status of construction of the Project, (b) job creation and related information; (c) any other performance criteria set out in the Application or any related agreement; (d) any proposed changes in use or ownership of the Project, and (e) such other information as may be requested by the City in connection with any Project.

**Section 15.0 Project Feasibility:** Demonstrate the ability of the Project to maintain a solvent business and to retire the bonds in a timely manner, or provide evidence that financing has been guaranteed. Specifically, demonstrate:

- 15.1. That the Project will generate sufficient cash flow to service its project debt and any other debts;
- 15.2. That the Project Applicant has firm financing commitment(s);
- 15.3. Total anticipated costs of the Project, including land, buildings, equipment and other costs (including pre-development and development costs and costs of financing);
- 15.4. A proposed timeline for the Project, including projected start and completion dates for Project construction; projected start-up date and projected date of full capacity operations;
- 15.5. Whether the Applicant has an application for bonds to construct this or a substantially similar Project in another community (if yes, describe, including anticipated dates for inducement resolutions, etc.).

**Section 16.0 Cost:** Show all sources of capital that will be used to finance the Project, including the proposed IRB, equity investments, other debt financing and other financing sources, including state and local incentives.

**Section 17.0 Applicant Record:** Describe projects of this type undertaken by the Applicant, or present convincing evidence that the Project will be completed. Reference from local financial institutions and local firms may be required. Demonstrate the Applicant's strong financial backing and experience relevant to the Project. Provide Applicant's Corporate Citizenship Policy/Plan, if any.

**Section 18.0 Management:** Identify the proposed manager of the Project (including a statement of such manager's relevant experience) and the terms under which such management is to be provided.

**Section 19.0 Evidence of Organizational Capacity:** Provide a brief history of the Applicant and any relevant affiliates, together with an organizational chart and resumes of key staff involved with the Project.

**Section 20.0 Disclosure Restrictions/NDAs:** Is the Project or the Application subject to, or expected to be subject to, any non-disclosure agreement or similar agreement restricting disclosure of information ("NDA")?

**Section 21.0 Evidence of Financial Solvency:** Provide the following financial information. (Audited Financials may be required and will be at the discretion of Staff):

- 21.1. Balance sheets for past three years.
- 21.2. Income statements for past three years.
- 21.3. Cash flow projections for next three years.
- 21.4. Federal tax ID number.
- 21.5. New Mexico State Taxation and Revenue number.
- 21.6. Business license number.

**Section 22.0 Required Disclosures:** Respond to the questions below. If the answer to any question is yes, attach written explanation.

- 22.1. Has the Applicant or any of its officers been involved in a bankruptcy?
- 22.2. Has the Applicant or any of its officers ever defaulted on any loans or financial obligations?

**Section 23.0 Councilor Sponsorship**

- 23.1 Name of Councilor sponsoring project
- 23.2 Date and nature (e.g., written, via meeting, etc.) of notice given to Councilor

**Section 24.0 Project Plan Form Certification:** Applicant certifies that the information contained in the Project Plan is true and correct, and that any information

subsequently obtained by the Applicant which may indicate that statements contained in the Application are or were untrue or have become misleading or untrue will be promptly disclosed to the City. Applicant agrees to provide such other information as the City may request to evaluate the Application. Applicant agrees to allow the City to inspect the Project at any time to ensure compliance with the Project Plan, the requirements of the Policy and the representations contained in the Application.

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Signature

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Printed Name

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

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

## Appendix C

### Form of LEDA Application

#### City of Rio Communities Local Economic Developer Act Assistance Application and Project Plan

[City of Rio Communities Logo]

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#### RIO COMMUNITIES APPLICATION For LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) Project Approval

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Name of Project:

LEDA Assistance Amount Requested:

Applicant:

Address:

Telephone:

Email Address:

Applicant Website:

NAICS Code:

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**Fees:**

The Applicant shall be responsible for the following fees:

1. Application fee, if any
  2. City and Applicant legal fees
  3. Third party review fees
- 

**Submit Completed Application and applicable Fees to:**

[APPLICATION RECIPIENT ADDRESS]

The purpose of this LEDA Application and Project Plan is to identify the project, the project area and to present the plan and the uses to which the proceeds of the LEDA funds will be put if issued. This Application is presented to demonstrate to the City of Rio Communities the public benefits of this project and to help the City evaluate its merit in comparison to other projects submitted. The Applicant and its agent will endeavor to provide the City any additional information reasonably requested.

**Section 1.0 General Description of Project:** Please provide a description of the proposed Project.

**Section 2.0 Site and Existing Conditions:** Please provide the following information relating to the Project Site and its existing condition:

- 2.1 A legal description of the property on which the Project would sit, including:
  - Parcel numbers;
  - The physical address of the property; and
  - The condition of the Project site
- 2.2 What is the present assessed value of the property?
- 2.3 Provide evidence that the Project conforms, or will conform, to all adopted City plans, policies and the provisions of the City Code, including:
  - Present zoning of property being used for the Project;
  - Required zoning change(s), if any; and
  - Discussion of applicable special zoning requirements, if any
- 2.4 Describe the extent to which renewable energy technology is incorporated into buildings, infrastructure or equipment (such as Projects whose buildings are LEED certified).

**Section 3.0 Project Plan:** Please provide the following information regarding the proposed Project.

- 3.1 Information relating to the Applicant:
  - Provide a brief history of the Applicant and any relevant affiliates, together with an organizational chart and resumes of key staff involved with the Project; and
  - Describe projects of this type undertaken by the Applicant, or present convincing evidence that the Project will be completed.
- 3.2 What is the anticipated net impact on tax revenues for the City and other affected political subdivisions, if any (attach an analysis to support your answer).

- 3.3 Please provide information regarding the product to be manufactured or the business process to be engaged in.
- 3.4 Describe the number and type of competitors in the marketplace.
- 3.5 What is the anticipated effect of the Project on existing industry and commerce both during and after construction.
- 3.6 Is land acquisition expected to be part of the Project?
- 3.7 Describe the proposed development to take place.
- 3.8 Is infrastructure development expected to be part of the Project?
- 3.9 How will the Project enhance the local area?
- 3.10 To the extent practicable, will the Applicant purchase and procure labor and supplies locally?
- 3.11 Describe anticipated annual water usage as well as source(s) of water and any water conservation strategies, if applicable.
- 3.12 Describe any required relocation of individuals or businesses and whether alternatives to relocation of individuals or business are being pursued.
- 3.13 Summarize the following economic impact and job creation criteria:
- Public infrastructure that will be built as part of the Project;
  - Other general enhancements to the area as a result of the Project;
  - Effect on existing industry and commerce in the area during and after construction;
  - Effect on local, in state, and out of state industry competition as a result of the Project (e.g., increased competition, consolidation of dominant position, etc.);
  - Number, category and average wages of jobs created by the Project. New Mexico Department of Workforce Solutions job categories should be used;
  - Temporary jobs in construction and permanent full and part time jobs (broken down by the number of direct, indirect and induced jobs);
  - Positions which will be filled locally and those which will be filled by transfers from other facilities or by out of state recruitment. Clearly state the number and type of positions expected to be filled by area residents;
  - Local recruitment, hiring and training programs, stating what if any opportunities for advancement will be available;



- Employee benefit package or programs, including health care coverage;
- The anticipated length of time that the Applicant expects the Project to be located in the facility;
- Whether the Applicant will operate the facility (if not, explain and provide name, address and phone number of the facility operator);
- Identify the proposed manager of the Project (including a statement of the manager's relevant experience) and the terms under which such management is to be provided; and
- Provide the Applicant's corporate citizenship plan, if any.

**Section 4.0 Project Financing and Feasibility:**

- 4.1 What is the cost of the improvements included in the Project?
- 4.2 Show all sources of capital that will be used to finance the Project, including the proposed LEDA assistance, equity investments, other debt financing and other financing sources, including state and local incentives.
- 4.3 What is the estimated value of the Project after completion?
- 4.4 Please describe the type and amount of LEDA assistance sought from the City.
- 4.5 Demonstrate the ability of the Project to maintain a solvent business and provide evidence that financing has been guaranteed. Specifically, demonstrate:
  - That the Project will generate sufficient cash flow to service its project debt and any other debts;
  - That the Project Applicant has firm financing commitment(s);
  - Total anticipated costs of the Project, including land, buildings, equipment and other costs (including pre-development and development costs and costs of financing);
  - Estimated value of the Project and associated public infrastructure and general area improvements, if applicable, after completion;
  - A proposed timeline for the Project, including projected start and completion dates for Project construction; projected start-up date and projected date of full capacity operations; and
  - Whether the Applicant also has a pending application for industrial revenue bonds to construct this or a substantially similar Project in another community (if yes, describe, including anticipated dates for inducement resolutions, LEDA ordinances, etc.).

4.6 Provide the following financial information. (Audited Financials may be required and will be at the discretion of Staff):

- Balance sheets for past three years. Provide the following financial information. (Audited Financials may be required and will be at the discretion of Staff);
- Income statements for past three years;
- Cash flow projections for next three years;
- Federal tax ID number;
- New Mexico State Taxation and Revenue number; and
- Business license number.

**Section 5.0 Councilor Sponsorship**

5.1 Which Councilor will be sponsoring the Project?

5.2 When and how was notice given to the Councilor of the pending Application (e.g., written, via meeting, etc.)?

**Section 6.0 Project Plan Form Certification:** Applicant certifies that the information contained in the Project Plan is true and correct, and that any information subsequently obtained by the Applicant which may indicate that statements contained in the Application are or were untrue or have become misleading or untrue will be promptly disclosed to the City. Applicant agrees to provide such other information as the City may request to evaluate the Application. Applicant agrees to allow the City to inspect the Project at any time to ensure compliance with the Project Plan, the requirements of the Policy and the representations contained in the Application.

\_\_\_\_\_  
Signature

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

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

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



New Mexico  
Department of Public Safety  
MICHELLE LUJAN GRISHAM  
GOVERNOR

JASON R. BOWIE  
CABINET SECRETARY

W. TROY WEISLER  
CHIEF / DEPUTY SECRETARY

BENJAMIN A. BAKER  
DEPUTY SECRETARY

Item 8.

September 5, 2023

Mr. Martin D. Moore Ph.D.  
City Manager  
City of Rio Communities Police Department  
360 Rio Communities Blvd  
Rio Communities, NM 87002

Via email: [mmoore@riocommunities.net](mailto:mmoore@riocommunities.net)

Dear Mr. Moore:

Congratulations. The City of Rio Communities Police Department has been granted an (Originating Agency Identifier) ORI: **NM0321100**, as authorized by the Federal Bureau of Investigation (FBI), and in accordance with NM Statute Annotated 1978, 29-1-1 through 29-1-18).

Access to FBI Criminal History Record Information (CHRI) is subject to numerous restrictive laws and regulations. The use of FBI CHRI is audited. It is incumbent upon the City of Rio Communities Police Department to ensure your employees are trained, oriented, and reoriented about the authorized reason for receiving, reviewing, and disseminating CHRI. As an authorized user you are bound to uphold the integrity of the Criminal Justice Information Services (CJIS) and New Mexico Department of Public Safety's (NMDPS) regulations and procedures governing access to Criminal Justice Information (CJI).

Unauthorized dissemination of CHRI information outside the receiving governmental department or related governmental agency to private entities or unauthorized recipients is prohibited. The exchange of FBI CHRI is subject to cancellation if such unauthorized dissemination is made. Failure to abide to set regulations and agreements may results in sanctions for your agency / users. The DPS reserves the right to terminate your agencies ORI privileges at any time.

If we can be of further assistance, please feel free to contact the NMDPS NCIC Unit at (505) 827-3355.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Rodarte".

Jessica Rodarte  
New Mexico Deputy CJIS Systems Officer  
Technical Support Staff Manager  
Law Enforcement Records Bureau

**NEW MEXICO  
LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM  
AND  
THE NATIONAL CRIME INFORMATION CENTER  
USER AGREEMENT  
BETWEEN THE  
NEW MEXICO DEPARTMENT OF PUBLIC SAFETY  
AND**

---

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_ 20\_\_ by and between the Department of Public Safety (hereinafter referred to as *DPS*), and the \_\_\_\_\_ a criminal justice and/or law enforcement agency (hereinafter referred to as *USER AGENCY*). The *DPS* serves as the FBI's CJIS Systems Agency (CSA) in New Mexico for the National Crime Information Center (NCIC), the parent agency for the New Mexico Law Enforcement Telecommunications System (NMLETS) and the New Mexico Criminal Justice Information System (NMCJIS).

Whereas, *DPS* serves as the state agency responsible for the management and operation of the NMLETS, NCIC, and NMCJIS, the purpose of this agreement is to govern the exchange of information between the *DPS* Systems and the *USER AGENCY*. The *DPS* will facilitate local law enforcement and other criminal justice agencies' requests to participate in the information services provided on the *DPS* network, provided the *USER AGENCY* abides by applicable federal and state laws, regulations, policies, and procedures related to these systems.

The *DPS* reserves the right to immediately suspend any *USER AGENCY* furnishing information covered by the terms of this agreement if any terms of this agreement or documents incorporated herein are violated. The *DPS* shall resume furnishing such information upon receipt of satisfactory proof that such violations have been fully corrected or eliminated upon completion of an audit by the designated *DPS* staff.

*USER AGENCY* will ensure that all personnel having access to all information available through NMLETS and/or NMCJIS will be screened according to the personnel background screening policy prescribed in the FBI CJIS Security Policy. In addition, NCIC Criminal History (III), NCIC and NMCIC wants and warrants checks will be conducted prior to employment. State and National fingerprint-based record checks must be conducted within thirty (30) days upon initial employment or assignment for all personnel, including appropriate IT personnel, having access to the FBI CJIS, NMLETS or NMCJIS systems. *USER AGENCY* will also screen employees having access to record storage areas containing FBI Criminal History (III) data, which includes but is not limited to custodial, support, and/or contractor personnel. If a record of any kind is found, access will not be granted until the CJIS Systems Officer (CSO), or his/her designee can review the matter to decide if access/employment is appropriate. If a felony conviction of any kind is found, access will not be granted.

## **SECTION 1: NMLETS**

**THIS SECTION APPLIES TO ONLY NMLETS TERMINAL AGENCIES. IF YOUR AGENCY IS NOT A NMLETS PARTICIPANT PROCEED TO SECTION 2.**

**1.1 DUTIES OF THE *DPS*:** Upon receipt of inquiries from *USER AGENCY* which contain all the data elements required by the NMLETS and NCIC Systems, the *DPS* agrees to furnish the *USER AGENCY* such criminal justice information as is available through the NMLETS and further agrees to furnish record information as is available and authorized from the FBI/NCIC System. The *DPS* agrees to incorporate the necessary rules and regulations of the State of New Mexico, the Federal Government, NCIC, NLETS and NMLETS Operating Manuals into training and to provide specialized training on such rules and regulations to the *USER AGENCY* Terminal Agency Coordinator as well as provide training on at least an annual basis. The *DPS* further agrees to provide NMLETS operational and Hit Confirmation support to the *USER AGENCY*. The *DPS* will maintain an automated log of all hot file and III transactions as prescribed in the FBI CJIS Security Policy.

**1.2 DUTIES OF THE *USER AGENCY*:** *USER AGENCY* will collect, receive, store, use and disseminate all information covered by the terms of this agreement in strict compliance with all present and future Federal and State laws and regulations, and with all rules, procedures, and policies adopted by the *DPS* as described in the NCIC, NLETS, NMLETS Operating Manuals and the FBI CJIS Security Policy.

**1.3 EXECUTORY CLAUSE:** It is understood by and between the parties hereto, that the *DPS* is obligated to provide services described in Section 1.1 above to *USER AGENCY* only to the extent that public funds are made available to the *DPS* for that purpose.

**1.4 TERMINAL AGENCY COORDINATOR:** *USER AGENCY* will designate an individual to serve as the Terminal Agency Coordinator (TAC) who shall be responsible for ensuring compliance with NMLETS and NCIC policy and regulations, including all duties outlined in the NCIC TAC Handbook. The TAC will work directly with the New Mexico CJIS Systems Officer (CSO) or designee on all matters dealing with NMLETS.

**1.5 TRAINING OF PERSONNEL:** *USER AGENCY* personnel operating NMLETS terminals, including Mobile Data Terminals (MDTs/MDCs), are required to satisfactorily complete the prescribed training as provided by or approved by the *DPS*. The *USER AGENCY* Terminal Agency Coordinator is responsible for ensuring initial training, functional testing, and affirming the proficiency of terminal operators within six (6) months of employment or assignment; biennially, provide in-service retraining, functional retesting, and reaffirmation of the proficiency of terminal operators in order to ensure compliance with NCIC and NMLETS policies and regulations; provide or present entry level training on the use of NMLETS, focusing on the Interstate Identification Index (III) requirements and record quality for criminal justice agency records personnel.

**1.6 AUDITS:** *USER AGENCY* will allow terminal access to State and Federal Auditors to conduct audits of the agency as prescribed in the NCIC and NMLETS Operating Manuals and the FBI CJIS Security Policy.

**1.7 HOURS OF OPERATION:** All *USER AGENCIES* with file entry capabilities on NMLETS are required to maintain 24-hour, 7-day-a-week operation. Non 24- hour *USER AGENCIES* are required to enter into an agreement with a twenty-four by seven *USER AGENCY* to act as its alternate terminal as prescribed in the NMLETS Operating Manual.

**1.8 HIT CONFIRMATION:** *USER AGENCY* shall ensure that the Hit Confirmation procedures as prescribed in the NCIC, NLETS, and NMLETS Operating Manuals will be adhered to.

**1.9 QUALITY CONTROL:** The Agency Administrator (Agency Designated Administrator) and/or the appointed Terminal Agency Coordinator (TAC) accept responsibility for the timely entry and the validity of all records entered by the *USER AGENCY*. The individual selected as the Terminal Agency Coordinator for your Agency must be identified on the final page of this document (refer to page 12), further noting that any changes to this designation must be communicated within five (5) working days to the NCIC Coordinator for the DPS, at 4491 Cerrillos Road, Santa Fe, New Mexico 87507 or by calling 505.827.9181 or 505.827.3413. Procedures for timely entry and the validation process are outlined in the NCIC and NMLETS Operating Manuals. Measures for purging or canceling entries will be adhered to in order to maintain system integrity. The *USER AGENCY* must fully comply with quality control and Hit Confirmation procedures or risk removal of records from NCIC/NMCIC and possible loss of connectivity to NMLETS.

**1.10 DATA DISSEMINATION:** The *USER AGENCY* shall record all disseminations of Criminal History Record Information received via NMLETS on the prescribed log. The log shall be maintained and retained for at least one year from the date of transaction. Criminal history requests through the Interstate Identification Index (III) must be in accordance with current III policies and procedures. The *USER AGENCY* must ensure that criminal history information received will only be used for those purposes for which it was provided. In addition all data retrieved from NMLETS will adhere to dissemination regulation outlined in the NMLETS Operating Manual.

**1.11 SECURITY:** *USER AGENCY* agrees to limit access to information furnished by NMLETS to its own employees and other criminal justice/law enforcement agencies who have entered into this agreement with the *DPS* and/or the *USER AGENCY* to protect the security and privacy of this information.

## **SECTION 2: NMCJIS**

**THIS SECTION APPLIES TO ONLY NMCJIS AGENCIES. IF YOUR AGENCY IS NOT A NMCJIS PARTICIPANT PROCEED TO SECTION 3.**

**2.1 DUTIES OF THE *DPS*:** Upon receipt of inquiries from *USER AGENCY* which contain all the data elements required by the NMCJIS, the *DPS* agrees to furnish the *USER AGENCY* such criminal justice information as is available through the NMCJIS and further agrees to furnish record information as is available and authorized from the NMCJIS. The *DPS* further agrees to incorporate the necessary rules and regulations of the State of New Mexico and Criminal Information Sharing Alliance (CISA) to provide specialized training on such rules and regulations to the *USER AGENCY* NMCJIS Agency Coordinator as well as provide training on at least an annual basis.

**2.2 DUTIES OF THE *USER AGENCY*:** *USER AGENCY* will collect, receive, store, use and disseminate all information covered by the terms of this agreement in strict compliance with all present and future Federal and State laws and regulations, and with all rules, procedures, and policies adopted by the *DPS*. The NMCJIS Agency Coordinator will ensure that a NMCJIS Access Authorization form is submitted to the *DPS* for all personnel utilizing the NMCJIS application. Personnel requiring INTEL level access will submit a completed NMCJIS INTEL Access Request Form to the *DPS* for approval.

**2.3 EXECUTORY CLAUSE:** It is understood by and between the parties hereto, that the *DPS* is obligated to provide services described in Section 2.1 above to the *USER AGENCY* only to the extent that public and/or CISA funds are made available to the *DPS* for that purpose.



**2.4 TRAINING OF PERSONNEL:** *USER AGENCY* personnel operating New Mexico Criminal Justice Information System (NMCJIS) workstations are expected to satisfactorily complete the initial training as provided by or approved by the *DPS*. The *USER AGENCY* NMCJIS Agency Coordinator is responsible for ensuring initial training. Personnel requesting INTEL level access must complete 28 CFR Part 23 Training prior to INTEL access being granted.

**2.5 NMCJIS AGENCY COORDINATOR:** *USER AGENCY* will designate an individual to serve as the NMCJIS Agency Coordinator who shall be responsible for ensuring compliance with NMCJIS and CISA policy and regulations.

**2.6 QUALITY CONTROL:** The agency administrator and/or the appointed NMCJIS Agency Coordinator accept responsibility for the validity of all records entered by the *USER AGENCY*. Measures for entering and updating NMCJIS data will be adhered to in order to maintain system integrity. The individual selected as the NMCJIS Agency Coordinator for the *USER AGENCY* must be identified on the final page of this document (refer to page 12), further noting that any changes to this designation shall be communicated within five (5) working days to the NCIC Coordinator for the *DPS*, P O Box 1618, 4491 Cerrillos Road, Santa Fe, New Mexico 87507 or by calling 505.827.9181 or 505.827.3413. The *USER AGENCY* shall fully comply with quality control procedures or risk possible loss of workstation connection to NMCJIS.

**2.7 DATA DISSEMINATION:** The *USER AGENCY* shall ensure that retrieval and dissemination of NMCJIS data is in accordance with the disclaimer clauses presented in the NMCJIS application.

**2.8 SECURITY:** *USER AGENCY* agrees to limit access to information furnished by NMCJIS to its own employees and other criminal justice/law enforcement agencies who have entered into this agreement with the *DPS* and/or the *USER AGENCY* to protect the security and privacy of this information.

## SECTION 3: TECHNICAL AND SECURITY

### THIS SECTION APPLIES TO ALL AGENCIES THAT UTILIZE THE *DPS* NETWORK.

**3.1 DUTIES OF THE *DPS*:** The *DPS* will provide 7 day-a-week, Technical Support specialists via the *DPS* Help Desk. The *DPS* will provide after hours technical support via on-call personnel. Through these mechanisms the *DPS* will provide support to:

1. Verify that the connectivity to the *DPS* network is operational.
2. The *DPS* will be responsible for providing application software to the *USER AGENCY* that supports the intent of this agreement and connectivity to the *DPS*.
3. Answer and troubleshoot questions and problems directly associated with the applications the *DPS* provides. These applications include, but may not be limited to, NMLETS and CJIS.
4. Work with the *USER AGENCY* to design and implement internetworking solutions that are both secure and mutually beneficial to each agency's processes. Work with the *USER AGENCY* to provide knowledge transfer for the implemented technologies.
5. Storing and creating audit logs with information about events that occurred on the firewall, host system, or network.
6. Notifying *USER AGENCY* of update schedules, system requirements, recommended standards, etc.

The *DPS* will not be responsible for:

1. Non-*DPS* supported software and/or applications.
2. Hardware components such as, PC's, printers, switches, routers, wiring, etc.
3. PC Operating Systems.
4. Initial and on-going maintenance (patches, updates, etc) on any and all of the above.

**3.2 DUTIES OF THE *USER AGENCY*:** *USER AGENCY*, by affixing the appropriate signature to this document, hereby agrees that the *USER AGENCY* is responsible for all initial, recurring and replacement costs and support associated with connectivity to the *DPS* network; this includes but is not limited to PCs, routers, circuits, printers, etc. Further, the *USER AGENCY*, by affixing the appropriate signature to

this document, hereby agrees that the *USER AGENCY* is responsible for all initial, recurring and replacement costs and support associated with additional security measures recommended by the *DPS* which are required in the FBI CJIS Security Policy.

The *USER AGENCY* understands, agrees and accepts that the *USER AGENCY* is responsible for all PC support which includes loading and set up of the *DPS* application software as provided. The *USER AGENCY* will notify the *DPS* at least five (5) business days prior to adding and/or replacing any existing workstations with access to NMLETS and/or NMCJIS. The *USER AGENCY* is responsible for implementing and maintaining virus protection software on local network devices. The *USER AGENCY* hardware and software must meet the minimum specifications published by the *DPS* by **February 28, 2005** or the *USER AGENCY* shall be removed from the network. The *USER AGENCY* devices that are connected to the *DPS* network shall be named according to the *DPS* authorized/approved naming convention.

The *USER AGENCY* shall request in writing to the *DPS* ITP personnel and receive written approval for any new, as well as any modifications to existing, connections or circuits prior to the *USER AGENCY* entering into any contracts or ordering such circuits from a vendor. Any *USER AGENCY* with connectivity to another organization's network and/or the Internet shall implement the security technologies outlined in the NMLETS Operating Manual. Along with the implementation of the aforementioned security technologies, the *USER AGENCY* must provide the *DPS* with or cooperate with *DPS* personnel to create documentation of these external links. All internetworking solutions to be implemented on networks with connectivity to the *DPS* must also be submitted in writing and receive written approval prior to the *USER AGENCY* entering into any contracts or supplying funds for such solutions. All submissions referenced in this paragraph are subject to approval by the *DPS* ITP personnel to ensure compliance with security regulations.

**3.3 TECHNICAL AUDITS:** *USER AGENCY* will allow terminal access to State and Federal Auditors to conduct technical security audits of the agency as prescribed in the NCIC and NMLETS Operating

Manuals and the FBI CJIS Security Policy. These audits may occur at any time and/or for any or no reason, at the discretion of the DPS or any other appropriate entity.

**3.4 ADVANCED AUTHENTICATION:** The use of advanced authentication (example: smart cards or certificates and username/password) is required for certain methods of transmission (including but not limited to Wireless and Internet), and must comply with all rules, regulations, procedures and standards established in the FBI CJIS Security Policy for Criminal Information Networks.

**3.5 ENCRYPTION:** The use of encryption is required for all methods of transmission (including but not limited to Wireless, Internet, ATM and Frame Relay Circuits, etc.), and must comply with all rules, regulations, procedures and standards established in the FBI CJIS Security Policy for Criminal Information Networks.

**3.6 EXECUTORY CLAUSE:** It is understood by and between the parties hereto, that the *DPS* is obligated to provide services described in Section 3.1 above to *USER AGENCY* only to the extent that public and CISA funds are made available to the *DPS* for that purpose.

**3.7 LOCAL AGENCY SECURITY OFFICER:** *USER AGENCY* will designate an individual to serve as the Local Agency Security Officer (LASO) who shall be responsible for ensuring compliance with NMCJIS, CISA, and FBI CJIS Security policy and regulations. The individual selected as the Local Agency Security Officer for the *USER AGENCY* shall be identified on the final page of this document (refer to page 12), further noting that any changes to this designation must be communicated within five (5) working days to the NCIC Coordinator for the DPS, P O Box 1618, 4491 Cerrillos Road, Santa Fe, New Mexico 87507 or by calling 505.827.9181 or 505.827.3413.

### **3.8 TERM OF THE AGREEMENT**

Either the *DPS* or *USER AGENCY* may terminate this agreement upon written notice to the other party,

at least thirty (30) days before the intended date of termination. The *DPS* reserves the right to terminate service, without notice, upon presentation of credible evidence that the *USER AGENCY* Item 8. as violated this agreement or any of the NCIC, NMLETS, NLETS Operating Manuals, and/or FBI CJIS Security policies.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed by the proper officers and officials.

**DEPARTMENT OF PUBLIC SAFETY**

***USER AGENCY***

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
**Jason R. Bowie**  
(printed name)

\_\_\_\_\_  
**Cabinet Secretary**  
(title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

**DEPARTMENT OF PUBLIC SAFETY**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
**Jessica Rodarte for H.L. Lovato**  
(printed name)

\_\_\_\_\_  
**State CJIS Systems Officer (CSO)**  
(title)

## AGENCY DESIGNATIONS

### TERMINAL AGENCY COORDINATOR

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Printed Name

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Office Phone Number

---

E-mail Address

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Mailing Address

### NM CJIS AGENCY COORDINATOR

---

Printed Name

---

E-mail Address

---

Office Phone Number

### LOCAL AGENCY SECURITY OFFICER

---

Printed Name

---

E-mail Address

---

Office Phone Number

**THE AGENCY MAY SELECT THREE INDIVIDUALS TO PERFORM THESE FUNCTIONS OR UTILIZE THE SAME INDIVIDUAL(S) TO PERFORM MULTIPLE FUNCTIONS.**

## FRANCHISE AGREEMENT

### ORDINANCE No. 2023-XX

#### **AN ORDINANCE GRANTING CERTAIN RIGHTS AND PRIVILEGES TO COMCAST OF NEW MEXICO, LLC, ITS SUCCESSORS AND ASSIGNS**

#### **BE IT ORDAINED by the Governing Body of the City of Rio Communities, State of New Mexico**

~~This Franchise Agreement (hereinafter, the "Agreement" or "Franchise Agreement") is made between the City of Rio Communities, New Mexico (hereinafter, "Franchising Authority or City") and Comcast of New Mexico LLC. (hereinafter, "Grantee").~~

The City of Rio Communities, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this non-exclusive Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

#### **SECTION 1 - Definition of Terms**

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1.1 "Affiliate" when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.1. "Cable Service" shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.2. "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the televisions signals of one or more television broadcast stations, (B) a facility that serves subscribers without using any public right of way; (C) a facility of a common carrier which is subject, in whole or in part, to the

provisions of Title II of the federal Communications Act (47 U.S.C. § 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.3. “Customer” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee’s express permission.

1.4. “Effective Date” means the date on which all persons necessary to sign this Agreement in order for it to be binding on both parties have executed this Agreement as indicated on the signature page(s), unless a specific date is otherwise provided in the “Term” section herein.

1.5. “FCC” means the Federal Communications Commission, or successor governmental entity thereto.

1.6. “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System.

1.7. “Franchise Agreement” or “Agreement” shall mean this Agreement and any amendments or modifications hereto.

1.8. “Franchise Area” means the present legal boundaries of the City of Rio Communities as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

1.9. “Franchising Authority” means the City of Rio Communities, New Mexico or the lawful successor, transferee, designee, or assignee thereof.

1.10. “Grantee” shall mean Comcast of New Mexico, LLC.

1.11. “Gross Revenue” means and shall be construed broadly to include any and all cash, credits or other consideration of any kind or nature in any way derived from the operation of the Grantee’s Cable System to provide Cable Services in the Franchising Authority, received directly or indirectly by a Grantee, calculated in accordance with generally accepted accounting principles.

A. Gross Revenues shall include, but is not limited to:

1. monthly fees charged subscribers, regardless of whether such Cable Services are provided to residential or commercial customers, for any basic, optional, premium or pay-per-view service;



2. installation, disconnection, reconnection, and change-in-service fees associated with changes in subscriber Cable Service levels;
3. fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the City;
4. revenues from converter rentals or sales;
5. advertising revenues which shall include revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City of Rio Communities and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast effectv or their successors associated with sales of advertising on the Cable System within the City of Rio Communities allocated according to this paragraph using total Cable Service subscribers reached by the advertising;
6. barter;
7. revenues from program guides; and revenues from home shopping services.
8. Franchise Fees;
9. FCC Regulatory Fees;

Gross Revenues shall be the basis for computing the Grantee's Franchise Fee under this Agreement.

**B. Gross Revenues shall not include**

1. actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
2. any taxes and/or fees on services furnished by Grantee imposed by any municipality, state, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
3. fees imposed by any municipality, state, or other governmental unit on Grantee including but not limited to Public, Educational, and Governmental (PEG) Fees;
4. launch fees and marketing co-op fees; and,
5. unaffiliated, third-party, advertising sales agency fees that are reflected as a deduction from revenues.

1.12. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

1.13. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible

uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Franchise Area, which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Franchise Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating, and maintaining the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

## **SECTION 2 - Grant of Authority**

2.1. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System, and to provide such services over the Cable System as may be lawfully allowed.

2.1.1 Subject to federal and state preemption, the provisions of this Franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this Franchise may not be unilaterally altered by the Franchising Authority through subsequent amendment to any ordinance, rule, regulation, or other enactment of the Franchising Authority, except in the lawful exercise of the Franchising Authority's police power.

2.1.2 Notwithstanding any other provision of this Franchise, Grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the Franchising Authority that conflicts with its contractual rights under this Franchise, either now or in the future.

2.1.3 This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way only as permitted by Applicable Law should Grantee provide service other than Cable Service.

2.14 Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

2.15 No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

(2) Any permit, agreement, or authorization required by the City for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

2.16 This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

2.2. Term of Franchise. The term of the Franchise granted hereunder shall be ten (10) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Cable Act, or is extended by mutual agreement of the Franchising Authority and Grantee.

2.3. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement and Grantee and Franchising Authority are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Franchising Authority shall continue to comply with all obligations and duties under the Franchise.

2.4. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways.

### **SECTION 3 – Construction and Maintenance of the Cable System**

3.1. Permits and General Obligations. The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Grantee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2. Conditions of Street Occupancy.

3.2.1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify Grantee of such funding and make available such funds to the Grantee.

3.2.2. Relocation at request of Third Party. The Grantee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Grantee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3. Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Grantee disturbs, alters, or damages any Public Way, the Grantee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

3.2.4. Safety Requirements. The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The Cable System shall not

unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any damage caused by such trimming.

3.2.6. Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way.

3.2.8 The Grantee in the construction and operation of the system shall perform its work in such manner as to create the least inconvenience to the inhabitants of the City and the public generally, and shall repair, at Grantee's expense, all damage to public or private property resulting from its use.

### 3.3 Use of Rights-of-Way.

- (A) Subject to the City's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the City such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the City's Rights-of-Way in compliance with all

applicable City construction codes and procedures. As trustee for the public, the City is entitled to fair compensation as provided for in Section 7 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

- (B) Grantee must follow City established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the City's role in protecting public health, safety, and welfare, the City may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

#### **SECTION 4 - Service Obligations**

4.1. General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing Cable System. Subject to the density requirement, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Grantee's distribution cable.

The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

4.2. Programming. The Grantee shall offer to all Customers a diversity of video programming services.

4.3. No Discrimination. The Grantee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so

long as such Person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

4.4. New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.

## **SECTION 5 - Fees and Charges to Customers**

5.1. All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

## **SECTION 6 - Customer Service Standards; Customer Bills; and Privacy Protection**

6.1. Customer Service Standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

6.2. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 6.1, above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

6.3. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

## **SECTION 7 - Oversight and Regulation by Franchising Authority**

7.1. Franchise Fees. The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area;

provided, however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Franchise Area. The payment of franchise fees shall be made on a quarterly basis and shall be due thirty (30) days after the close of each calendar quarter. A report prepared by a representative of the Grantee showing the basis for the computation of the Franchise Fees paid during that period shall either accompany the franchise fee payment or be provided under separate cover.

7.2. Franchise Fees Subject to Audit.

7.2.1. Upon reasonable prior written notice and no more than once annually, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within three (3) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

7.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

7.2.3. Any "Finally Settled Amount(s)" due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the "Finally Settled Amount." Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records.

7.3. Oversight of Franchise. In accordance with applicable law, the Franchising Authority shall have the right to, on reasonable prior written notice and in the presence of Grantee's employee, periodically inspect the construction and maintenance of the Cable System in the Franchise Area as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.



7.4. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

7.5. Maintenance of Books, Records, and Files.

7.5.1. Books and Records. Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the Franchise Area to monitor Grantee's compliance with the provisions of this Franchise Agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours, and without unreasonably interfering with Grantee's business operations. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of three (3) years.

7.5.2. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any proprietary information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchising Authority's representative. The State of New Mexico has adopted a Public Records Act which applies to all municipalities, including the City of Rio Communities. Pursuant to the New Mexico Inspection of Public Records Act (IPRA), upon receipt of request for information and documentation, the City of Rio Communities will be required to disclose such documents as may be required under the legislation and/or Court Orders within 15 days after Franchise Authority receives the initial IPRA request. Grantee agrees to work with Franchise Authority in order to comply with the statutory time limits.

**SECTION 8 – Transfer of Cable System or Franchise or Control of Grantee**

8.1. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the Grantee,

defined as an acquisition of 51% or greater ownership interest in Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

## **SECTION 9 - Insurance and Indemnity**

9.1. **Insurance.** Throughout the term of this Franchise Agreement, the Grantee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers compensation claims to which the Grantee may become subject during the term of this Franchise Agreement

9.2. **Indemnification.** The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the Grantee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within twenty-five (25) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

## **SECTION 10 - System Description and Service**

10.1. System Capacity. During the term of this Agreement the Grantee's Cable System shall be capable of providing a minimum of 85 channels of video programming with satisfactory reception available to its customers in the Franchise Area.

## **SECTION 11 - Enforcement and Termination of Franchise**

11.1. Notice of Violation or Default. In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the Franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default.

11.2. Grantee's Right to Cure or Respond. The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed.

~~11.3. Public Hearings. In the event the Grantee fails to respond to the Franchising Authority's notice or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.~~

11.4. Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the Franchise, the Franchising Authority may:

11.4.1. seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages, or seek other equitable relief; or

11.4.2. in the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including two or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice

to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be terminated. ~~The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days.~~ The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. ~~The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require.~~

**11.5. Technical Violation.** The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

11.5.1. in instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

11.5.2. where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

## **SECTION 12 – Competitive Equity**

(A) The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Franchising Authority; provided, the Franchising Authority agrees that, within ninety (90) days of the Grantee's request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: franchise fees; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long

as the regulatory and financial burdens on each entity are materially equivalent. Video Programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) Notwithstanding any provision to the contrary, at any time that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the Franchising Authority, then Grantee may seek modification as per (A) above, or the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of Grantee's notice.

(C) Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the Franchising Authority, then Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable" and invoke the modification procedures set forth in Section 625 of the Cable Act.

### **SECTION 13 - Miscellaneous Provisions**

13.1. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

13.2 Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeiture or revocation of the Agreement for violations of the Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Grantor and/or Subscribers.

13.3. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:      Attn: City Manager's Office  
 City of Rio Communities  
 360 Rio Communities Blvd.  
 Rio Communities, NM 87002

To the Grantee:                              Attn: Government Affairs  
 Comcast of New Mexico, LLC  
 8440 Washington Street NE  
 Albuquerque, NM 87113

with a copy to:                              Attn: Government Affairs  
 Comcast Cable  
 8000 E. Iliff Avenue  
 Denver, CO 80231

13.4. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

13.5. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

13.6. Governing Law. This Franchise Agreement shall be deemed to be executed in the State of New Mexico, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of New Mexico, as applicable to contracts entered into and performed entirely within the State. Venue for all disputes and subsequent litigation among the parties shall be in the Thirteenth Judicial District Court, State of New Mexico.

13.7. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

13.8. No Third-Party Beneficiaries. Nothing in this Franchise Agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

13.9. No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Grantee may have under federal or state law unless such waiver is expressly stated herein.

**PASSED, APPROVED AND ADOPTED THIS \_\_\_\_th DAY OF SEPTEMBER, 2023 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.**

**City of Rio Communities Governing Body**

\_\_\_\_\_  
Joshua Ramsell, Mayor

\_\_\_\_\_  
Margaret (Peggy) Gutjahr,  
Mayor Pro-tem

\_\_\_\_\_  
Jim Winters,  
Councilor

\_\_\_\_\_  
Arthur (Art) Apodaca  
Councilor

\_\_\_\_\_  
Lawrence R. Gordon  
Councilor

~~IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:~~

**~~For the City of Rio Communities, New Mexico:~~**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Name: Martin Moore

Title: City Manager, Rio Communities

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

**~~For Comcast of New Mexico, LLC.~~**

By: \_\_\_\_\_

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

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

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

DRAFT