

**BUSINESS RETENTION, EXPANSION, AND ECONOMIC DEVELOPMENT
AGREEMENT**

This BUSINESS RETENTION, EXPANSION, AND ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) is hereby entered into on this Effective Date (the “Effective Date”), by and between the CITY OF ROSWELL, NEW MEXICO (“City”), a political subdivision of the State of New Mexico, located at 425 N. Richardson, Roswell, NM 88201, and ROSWELL-CHAVES COUNTY ECONOMIC DEVELOPMENT CORPORATION, a(n) New Mexico Nonprofit Corporation, whose principal address is PO Box 849, Roswell, NM 88202 (“RCCEDC”), collectively referred to herein as the Parties.

RECITALS

WHEREAS, RCCEDC is a non-profit organization dedicated to recruiting new, quality businesses to Chaves County and assisting with business retention & expansion, business attraction, government relations, and workforce development; and

WHEREAS, RCCEDC is willing to provide economic development services to the City; and

WHEREAS, RCCEDC is the only entity in the City that can provide these services, and as such, is considered a sole provider, and

WHEREAS, the City desires to utilize the services of the RCCEDC.

NOW THEREFORE, in consideration for the mutual covenants contained herein, RCCEDC and the City agree as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date and shall continue for a period of 2 years (the “Term”). This Agreement may thereafter be renewed for ~~1~~2 additional periods of 2 years (the “Renewal Term”), upon mutual written agreement of the Parties. The renewal period shall be governed by the same terms and conditions hereof, except as may be otherwise agreed in writing by the Parties.

2. SCOPE OF WORK

a. In consideration for the Compensation, as that term is elsewhere defined herein, and for the other warranties, covenants and obligations of the City provided for herein, RCCEDC hereby agrees to provide the goods and perform the services described in and according to the

terms set forth below in Exhibit A: Scope of Work, which Exhibit is attached hereto and incorporated by reference as if set forth fully herein. RCCEDC's requirements under this Section shall be referred to herein as the "Work."

b. The Work shall be performed in a proficient and skillful manner. Unless otherwise specifically provided in this Agreement, all equipment, materials and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

3. **COMPENSATION**

In consideration for the Work, as that term is elsewhere defined herein, and for the other warranties, covenants and obligations of RCCEDC set forth herein, the City hereby agrees to pay to RCCEDC the compensation described in and according to the terms set forth below in Exhibit C: Compensation, which Exhibit is attached hereto and incorporated by reference as if set forth fully herein. The City's requirements under this Section shall be referred to herein as the "Compensation."

4. **GOVERNANCE**

RCCEDC agrees that an individual as designated by the City Manager will serve as *ex-officio*, non-voting member of the RCCEDC Executive Committee of the Board of Directors. In the event that RCCEDC has a vacancy in the President position, the City shall have a representative on the search committee.

5. **COOPERATION WITH OTHER ENTITIES**

RCCEDC agrees that it will work closely, and cooperate with the local entities, including but not limited to Roswell Hispano Chamber of Commerce, the Roswell Chamber of Commerce, and MainStreet Roswell, and other state or federal entities that can assist in accomplishing the goals of this Agreement.

6. **REPORTING**

RCCEDC shall make the following reports:

- a. Quarterly and Annual Reporting. RCCEDC will provide quarterly and annual reporting to the Public Affairs ~~Supervisor~~ Director as outlined in Exhibit B: Metrics, which Exhibit is attached hereto and incorporated by reference as if set forth fully herein. RCCEDC's requirements under this Subsection shall be referred to in this Agreement as the "Metrics."

- b. Annual Presentation to City Council. RCCEDC shall make an annual presentation to the entire City Council during a City Council meeting (~~May-July~~ or ~~August-June~~). This report shall include a disclosure of RCCEDC financial status, RCCEDC Profit and Loss Actuals vs Budget, operations conducted during the preceding year, planned future operations, any other information agreed to by both the RCCEDC and the City.
- c. Annual Strategic Plan. Within three months of the execution date of this Agreement, the RCCEDC will prepare and present to the City Manager a one-year strategic plan establishing longer-term goals and objectives for the RCCEDC that are in alignment with the City's expectations as outlined in the Scope of Work.

7. **ANNUAL REVIEW**

a. The City Manager, or designee, will evaluate the performance of RCCEDC annually, on the basis of the Metrics. The City Manager or designee will make a finding as to whether RCCEDC is in compliance with the terms of the Agreement based upon a thorough review of the Metrics, any Special Projects Performance Reports, and interviews with stakeholders and other interested parties. If the City Manager determines RCCEDC is not in compliance, then RCCEDC will receive no further payments until such time as the City Manager deems RCCEDC is in compliance with the full terms of this Agreement.

b. At the end of the first year and each successive year, and following a satisfactory performance evaluation and determination of compliance with the terms of this Agreement, the Parties agree that they will meet to review the most recent Scope of Work and consider such amendments to the Scope of Work and a funding level mutually agreeable to the parties that is and representative of the value of services provided.

8. **COMPLIANCE WITH LAW**

a. RCCEDC shall keep fully informed of all state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in connection with the Work, or the materials or equipment used in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work.

b. RCCEDC hereby warrants that it currently observes and complies with all such applicable laws, ordinances, regulations, orders and decrees, and that it shall remain in full such compliance, and shall cause all of its employees, agents, and subcontractors to so remain, throughout the Term, and all Renewal Terms.

c. RCCEDC shall further protect, defend and indemnify the City and its councilors, officials, officers and agents against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by RCCEDC or RCCEDC's employees.

9. LICENSES AND PERMITS

RCCEDC shall pay for and obtain, and maintain in full force during the Term, and any Renewal Term, any and every permit or license necessary and appropriate for performance of the Work. RCCEDC shall provide copies of any permit or license required under this Section upon demand of the City.

10. RECORD KEEPING AND INSPECTION

a. shall keep and maintain its books, records, documents and other evidence in connection with the Work (and require its subcontractors to keep the same) and adopt accounting procedures and practices sufficient to reflect properly all charges and payments of whatever nature relating to the Work or otherwise chargeable or owing to the City in connection with the performance of the Work. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout. RCCEDC's recordkeeping and accounting system must properly reflect all such fees, charges and payments as they are incurred or made, and must demonstrate support that all amounts charged or paid to the City are properly chargeable or paid in full in accordance with the terms of the Agreement.

b. RCCEDC shall maintain all records required under this Section for a period that is the longer of 3 years after termination or expiration of this Agreement, or the period required under applicable law. RCCEDC must not dispose of such documents prior to the expiration of this period without prior written approval from the City. At the City's request, RCCEDC and its subcontractors must furnish the City with all such records that may be requested.

11. INDEPENDENT CONTRACTOR

a. The relationship of RCCEDC to the City shall be that of an independent contractor. RCCEDC is not and shall not be considered an employee of the City. RCCEDC and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the City. RCCEDC's employees, servants, agents, or representatives are not and shall not be deemed employees of the City.

b. This Agreement shall further not constitute the formation of a partnership or joint venture. RCCEDC is without authority to act as the agent or representative of the City and shall not purport to agree to or approve on behalf of the City any contract or obligation of the City or obligate or pledge the credit or funds of the City without written approval from the City.

12. TERMINATION

Either Party may terminate this Agreement at any time during the Term or any Renewal Term hereof by giving 60 days written notice in advance. Termination under this Section shall not terminate, prejudice or otherwise effect any right or obligation accruing hereunder prior to the termination.

13. INSURANCE

a. RCCEDC agrees to have and maintain the policies of insurance set forth in Exhibit D: Insurance, which Exhibit is attached hereto and incorporated by reference as if set forth fully herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

b. RCCEDC's insurance obligations under this Agreement shall be:

- i. all insurance coverage and/or limits by or available to RCCEDC; or
- ii. the ~~minimum coverage~~minimum coverage requirements and/or limits set forth in Exhibit D, whichever is greater.

c. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits set forth in Exhibit D, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements set forth in Exhibit C are sufficient to cover the obligations of RCCEDC pursuant to

this Agreement. RCCEDC's requirements under this Section shall be referred to herein as the "Insurance."

d. Maintenance of insurance coverage set forth in this Section during the entire Term, and any Renewal Term, is a material element on of this Agreement and failure to maintain or renew coverage or to provide evidence of the existence or renewal of required insurance may be treated by the City as a material breach of this Agreement.

14. INDEMNIFICATION AND HOLD HARMLESS

a. RCCEDC agrees to accept responsibility for loss or damage to any person or property, and to release, defend at its own expense, indemnify, and hold harmless the City, its council members, officials, officers, employees, agents, and volunteers, against any and all liability, actions, claims, losses, damages, disabilities, and expenses, including costs of litigation and reasonable attorneys' fees, that are asserted by any person or entity, to the extent arising out of any and all acts or omissions of RCCEDC, or its officers, employees or agents, in the performance of this Agreement, excluding, however, such liability, claims, losses, damages, or expenses arising from the City's sole negligence or willful acts.

b. RCCEDC agrees to be responsible for all loss or damage from any cause whatsoever to any of its property or equipment. RCCEDC is responsible for providing its own liability and loss insurance coverage for any of its property or equipment and RCCEDC expressly acknowledges that no part of said property or equipment shall be covered under the City's insurance policies.

c. These indemnifications are independent of and shall not in any way be limited by the insurance requirements of this Agreement. Approval by the City of the insurance requirement by this Agreement shall not in any way relieve RCCEDC from liability under this Section. The City's right to indemnification hereunder shall survive termination, whether for cause or not, or expiration of this Agreement.

15. FORCE MAJEURE

RCCEDC shall not be held liable for failure of or delay in performing its obligations under this Agreement if such failure or delay is the result of an act of God, such as earthquake, hurricane, tornado, flooding, or other natural disaster, or in the case of war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, or failure of electrical

service, nor for any failure or delay caused by the negligence or omission of the City. RCCEDC must make every reasonable attempt to minimize delay of performance. In the event of a force majeure, RCCEDC shall notify the City thereof within 10 days of its occurrence. If such force majeure continues longer than 120 days, either Party may terminate the Agreement, as otherwise provided for herein.

16. NONDISCRIMINATION

RCCEDC shall not discriminate against any otherwise qualified employee, applicant for employment, subcontractor, or other person, in connection with the performance of the Work, unless based on a bona fide occupational qualification or other statutory prohibition, because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or spousal affiliation. In the event of RCCEDC's noncompliance with the provisions of this Section, this Agreement may be canceled, terminated or suspended, in whole or in part, and RCCEDC may be declared ineligible for further contracts with the City.

17. CHOICE OF LAW AND FORUM SELECTION

This Agreement shall be governed by the laws of the State of New Mexico, exclusive of choice of law provisions, and venue for any judicial proceeding resulting here from shall lie in the Fifth Judicial District, Chaves County, New Mexico.

18. NOTICES

Notices and other communications under this Agreement must be in writing and are effective upon the sooner to occur of (i) the business day actually received (or if such date is not a business day, on the next business day thereafter), (ii) on the next business day after placing such written notice or communication with a reputable overnight delivery service for overnight (next morning) delivery, or (iii) on the third (3rd) business day following the date on which such written notice or communication was deposited with the United States Postal Service with postage prepaid and marked as certified or registered mail, return receipt requested, so long as, in each case, such written notice or communication was addressed to the Party to whom it was intended at such Party's address set forth herein or to such other address as that Party may from time to time provide in a writing pursuant to this Subsection to the other Party:

CITY OF ROSWELL

Attn: Hessel Yntema
City Manager
P.O. 1838, Roswell, NM 88202-1838

ROSWELL-CHAVES
ECONOMIC
CORPORATION

Attn: Mike Espirtu
President
PO Box 849, Roswell, NM 88202

COUNTY
DEVELOPMENT

19. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

20. ENTIRE AGREEMENT, MODIFICATION

This Agreement constitutes the entire agreement of the Parties and supersedes any prior agreements, understandings or negotiations, written or oral. This Agreement may only be modified or amended in writing, signed by the Parties hereto, and any such duly-executed written modification or amendment shall be automatically incorporated into this Agreement as if set forth fully herein.

21. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. NON-WAIVER.

The Parties agree that no failure to exercise and no delay in exercising any right, power or privilege under this Agreement on the part of either Party shall operate as a waiver of any right, power, or privilege under this Agreement.

23. RIGHTS CUMULATIVE

All rights, options, and remedies of the City contained in this Agreement shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

24. BINDING EFFECT

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This Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

25. NO ASSIGNMENT

RCCEDC shall not assign, sublet or subcontract any obligation, duty, right or covenant hereunder without the express written consent of the City, which the City may withhold in its total discretion.

26. AUTHORITY

The individual signing below warrants and represents that he or she is duly authorized to execute this Agreement on behalf of RCCEDC.

27. HEADINGS.

The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Agreement.

28. NO ADDITIONAL REPRESENTATIONS

a. RCCEDC expressly acknowledges that in entering into this Agreement, it does not rely on any statement, representation, or warranty other than those expressly set out in this Agreement.

b. RCCEDC expressly acknowledges that it has been advised to seek its own separate legal counsel for advice with respect to this Agreement, and has had sufficient opportunity to do so. The Parties further agree that interpretation of this Agreement shall be made without regard to authorship or negotiation.

[SIGNATURES FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, RCCEDC and the City of Roswell have caused this Agreement to be executed by their duly authorized officers on this Effective Date, the Effective Date hereof.

“City”

CITY OF ROSWELL

“RCCEDC”

ROSWELL-CHAVES COUNTY
ECONOMIC DEVELOPMENT
CORPORATION

By: Hessel Yntema Date
City Manager

By: Mike Espirtu Date
President

CITY SEAL

Amalia Martinez, City Clerk Date

Approved as to form:

Christopher J. Nairn-Mahan, City Attorney

EXHIBIT A: SCOPE OF WORK

Working in cooperation with and pursuant to the City's direction, and in alignment with adopted City policies, resolutions, and ordinances, RCCEDC shall be responsible for providing the following activities and services for the promotion of economic development in the City of Roswell and Chaves County.

1. **Business Retention, Expansion, and Recruitment:** RCCEDC shall:
 - a. Actively recruit new businesses and industries to Roswell, New Mexico; RCCEDC shall show growth of business and job creation as outlined in the Metrics.
 - b. Work to retain existing businesses by conducting one-on-one meetings to educate Roswell businesses by linking companies to services through determining needs regarding such things as financial needs, training opportunities, establish early warning signs of at-risk businesses, and by linking companies to programs available to assist them in economic growth. RCCEDC shall show growth of business participation and retention through its reporting of the Metrics.
 - i. Provide services to private sector and nonprofit developers including consultation on available assistance programs and recommendation on pursuance of certain programs; and assistance in obtaining financing, state or federal tax credits, tax abatements, tax increment financing, grants and other non-City sources of revenue or assistance.
 - ii. Provide services to existing and potential businesses including: technical assistance consultation; access to local, state and federal incentive programs; small business financing and referral to other service providers; and the provision of demographic, economic and real estate information.
 - c. Promote of workforce development by connecting with available local and state resources.
 - d. Furnish technical services pertaining to all economic and industrial development matters as well as stimulation of entrepreneurship and small business growth recruitment of new business and investments including business attractions efforts for targeted business sectors.

- e. Collaborate with City Public Affairs to market Roswell, New Mexico regionally, nationally and internationally, while maintaining committed leadership that facilitates and encourages actions to simulate the local economy.
- f. Develop and promote of pro-business policies important to the greater Roswell area.
- g. Recruit of highly qualified and credentialed business leaders and staff to provide leadership in areas of commercial and community development.
- h. Provide technical support where needed and work cooperatively with the economic development agencies and, as appropriate, other jurisdictions and agencies such as the New Mexico Economic Development Department, to further the City's economic development mission, strategy and policies, and to ensure alignment and synergy between the City and these agencies.
- i. Serve as the lead agency to coordinate, evaluate, and recommend incentive actions, as appropriate, for all development and redevelopment activities by serving as the key intake agency for all such development and redevelopment projects on behalf of the City, as well as the economic development agencies, whether staffed by the RCCEDC or otherwise. These activities will be conducted in accordance with any economic development and incentive policies that may be adopted from time-to-time by the City.
- j. Actively participate with the City on the City's comprehensive economic development strategy by providing technical assistance and communicating support for proposed and enacted state economic development and business legislation.
- k. Provide special assistance in the marketing and development of economic development opportunities within the Opportunity Zones located within the City of Roswell and Chaves County.
- l. Provide special assistance in the marketing and development of economic development opportunities at the Roswell Air Center ("RAC") as follows:
 - i. Market listings of RAC property.
 - ii. Act as advocates for the business located at RAC, except in contract negotiations between the City and any of its tenants.
 - iii. Act as a resource to connect businesses located at RAC with various funding opportunities identified by, and facilitated by EDC, as appropriate.

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- iv. Collaborate with school system and ENMU-R for employee development at RAC and related businesses located at RAC.
 - v. Collaborate with City Staff at RAC to develop business opportunities on City-owned real estate at RAC.
 - vi. Assist City Staff in reviewing under-utilized real estate through evaluations, walk-throughs, and provide assistance in marketing and recommendations for development.
 - vii. Assist the City in implementing and pursuing its marketing plan for RAC.
 - viii. Assist the City as a bridge to any applicable federal and state programs or incentives that would further economic development at RAC.
2. **Technical Services:** RCCEDC shall develop a website designed to enhance the profile of Roswell as a competitive business opportunity and to communicate that profile regionally, nationally and internationally in conjunction with partners such as New Mexico Partnership, and the New Mexico Economic Development Department and other available partners. Additionally, coordinate with City Community Development Department in a website designed to highlight real estate development opportunities within the City.
3. **Other:** RCCEDC shall performing such other related services as may be appropriate.

EXHIBIT B: METRICS

1. **Quarterly Reporting:** RCCEDC shall provide to the City on a quarterly basis, no later than the ~~thirtieth~~ ~~tenth~~ day of the month following the end of each quarter, the following:
 - a. Brief description of recruitment efforts and growth of participation in EDC activities to be provided including proof of performance for advertisement for industry trade clusters, site selection and consulting events, potential recruitment opportunity proposals, in a format and forum mutually agreed upon by the Parties.
 - b. Profit and Loss Actuals vs Budget Financial Report
 - c. Educational opportunities provided to members and non-members
 - d. Job Creation Report, including a cost/benefit analysis of jobs created versus money expended on development of such jobs
 - e. Business Retention Report, including
 - i. A general report of businesses assisted
 - ii. A list of business expansion opportunities or plans
 - iii. Metrics and proof of performance for plan of action to include contact with (20) county-wide businesses weekly, ~~award at least (3) faced grants annually~~, support & testify at every JTIP request with the NM State Board, provide support for company expansion and new job growth.
 - f. Industry Business Solicitation Report, including
 - i. executive project summaries (subject to appropriate confidentiality measures).
 - ii. lost opportunities and recommendations for addressing perceived areas in need of improvement
 - iii. Metrics to include the following: (2) potential projects monthly, (4) project site visits annually, locate a total of (3) projects annually, Assist companies to create at least (250) jobs annually.
 - g. Housing & Retail Property Report
 - h. New and changed programing
 - i. Promotional campaigns
 - j. Cooperative efforts with area organizations

2. **Annual Report:** RCCEDC shall provide to the City on an annual basis, no later than 14 days before RCCEDC's annual presentation to the City Council, the following:

- a. End of year financial report, 4th quarter report included ~~(audited, if done)~~
- b. Proposed Annual Budget
- c. List of new industrial/economic-based businesses projected and/or acquired for the City of Roswell and Chaves County.
- d. List of trends in possible job losses for the community
- e. Overview of Operations & Strategic Plan for Proceeding year and planned future operations to solicit new business to Roswell, New Mexico
- f. Proof of liability insurance

EXHIBIT C: COMPENSATION this could change

1. The City will allocate funds each fiscal year to be used solely for business retention, expansion, and economic development purposes. RCCEDC shall submit a funding request to the City by April 15th of each year and shall invoice the City quarterly. The request will include a detailed plan, including performance metrics and criteria for evaluation, for economic development services to be provided for the upcoming fiscal year. The RCCEDC shall also comply with the reporting requirements in Paragraph 6 and Exhibit B. The City shall notify RCCEDC by July 15th of each year, the amount allocated. The amount funded may change and is subject to City Council absolute discretion in appropriating sufficient funds.

2. The City directs funds to the following items within the RCCEDC Agreement in the following amounts:

- i. Business Retention, Expansion, and Economic Development Services at 80%
- ii. Technical Services (as defined in Exhibit A) 20%

3. The City has allocated \$200,000 for the initial term of this Agreement for services as outlined in Exhibit A, Scope of Work. RCCEDC shall invoice the City quarterly. Invoices shall include detailed Quarterly Performance Report, including descriptions of work performed during the previous reporting period, status of ongoing projects, and analysis of ability to meet agreed-upon performance and development goals and objectives. The City agrees to pay Invoice within fifteen (15) days of receipt of the invoice and approval of Quarterly Performance Report. All invoices should be sent to the attention of the City of Roswell Public Affairs Department; PO Box 1838, Roswell, NM 88202.

4. The City may agree to reimburse RCCEDC a sum not to exceed \$25,000 for special projects provided such special projects are specified and pre-approved by the City Manager. RCCEDC shall submit separate invoices for each special project. Invoices for special projects shall include a detailed Performance Report, including descriptions of work performed during, status report, and analysis of ability to meet agreed-upon performance and development goals and objectives. The City agrees to pay Invoices for special projects within fifteen (15) days of receipt of the invoice and approval of special project Performance Report. Invoices for reimbursement of special projects shall be submitted to City of Roswell Public Affairs Department: PO Box 1838,

Roswell, NM 88202. Reimbursement for additional special projects beyond the initial allocation of \$25,000 shall be established by separate agreement.

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EXHIBIT D: INSURANCE

1. MINIMUM SCOPE OF INSURANCE

a. RCCEDC shall procure and maintain for the duration of the contract the following minimum insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work herein and the results of the Work by RCCEDC, its agents, representatives, employees or subcontractors (check all that apply):

☒ I. **Commercial General Liability** (“CGL”): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000.00** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.

☒ II. **Automobile Liability**: ISO Form Number CA 00 01 covering any auto (Code 1), or if RCCEDC has no owned autos, covering hired (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000.00** per accident for bodily injury and property damage.

☐ III. **Worker’s Compensation**: as required by the State of New Mexico, with Statutory Limits and Employer’s Liability Insurance with limit of no less than **\$1,000,000.00** per accident for bodily injury or disease.

☐ IV. **Professional Liability (Errors and Omissions)**: Insurance appropriate to RCCEDC’s profession, with limit no less than **\$1,000,000.00** per occurrence or claim, **\$2,000,000.00** aggregate.

☐ V. **Property Insurance**: against all risks of loss to any and all improvements, betterments, and fixtures on or to real property made the subject of this Agreement, at full replacement cost with no coinsurance penalty provisions.

b. If RCCEDC maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by RCCEDC.

2. ADDITIONAL INSURED STATUS

The City, its council members, officials, officers, employees, agents, and volunteers are to be covered as additional insured on the CGL policy with respect to liability arising out of the Work performed by or on behalf of RCCEDC, including materials, parts or equipment furnished in connection with the Work. General Liability coverage can be provided in the form of an endorsement to RCCEDC's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38, or CG 20 38; and CG 20 37 form is later revisions used).

3. PRIMARY COVERAGE

For any claims related to this Agreement, RCCEDC's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its council members, officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its council members, officials, officers, employees, agents, and volunteers shall be excess of RCCEDC's insurance and shall not contribute to it.

4. NOTICE OF CANCELLATION

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

5. WAIVER OF SUBROGATION

RCCEDC hereby grants to the City a waiver of any right to subrogation which any of RCCEDC's insurers may acquire against the City by virtue of the payment of any loss under such insurance. RCCEDC agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

6. SELF INSURED RETENTIONS

Self-insured retentions must be declared to and approved by the City. The City may require RCCEDC to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administrations, and defense expenses within the retention.

7. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers authorized to conduct business in the State of New Mexico with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

8. CLAIMS MADE POLICIES

If any of the required policies provide claims-made coverage:

- i. The Retroactive Date must be shown, and must be before the Effective Date of this Agreement or the beginning of Work hereunder.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Work.
- iii. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Effective Date, RCCEDC must purchase “extended reporting” coverage for a minimum of five years after completion of the Work.

9. VERIFICATION OF COVERAGE

RCCEDC shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language affecting coverage required by this Section. All certificates and endorsements are to be received and approved by the City before the Work commences. Failure to obtain the required documents prior to commencement of the Work, however, shall not waive RCCEDC’s obligations to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications at any time.

10. SPECIAL RISKS OR CIRCUMSTANCES

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.