

**CITY OF RIO COMMUNITES  
RESOLUTION 2024-12**

PARTICIPATION IN TRANSPORTATION PROJECT FUND PROGRAM ADMINISTERED BY NEW  
MEXICO DEPARTMENT OF TRANSPORTATION

WHEREAS, the City of Rio Communities and the New Mexico Department of Transportation have entered into a grant agreement under the Transportation Fund Program for a local road project.

WHEREAS, the total cost of the project will be \$4,392,363 to be funded in proportional share by the parties hereto as follows:

- a. New Mexico Department of Transportation's share shall be 95% or \$4,172,744.83

and

- b. City of Rio Communities' proportional matching share shall be 5% or

\$219,618.15 TOTAL PROJECT COST IS \$4,392,362.98

The City of Rio Communities shall pay all costs, which exceed the total amount of \$4,392,362.98.

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

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on June 30, 2027, and the City of Rio Communities incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

Now therefore, be it resolved by the City of Rio Communities desires to enter into Cooperative Agreement for Project Control Number JLP30054 with the New Mexico Department of Transportation for the TPF Program for year 2025 for Don Diego Road Reconstruction-Reconstruct a two-lane road with ADA sidewalk, curb ramps and drive pads. Intersection safety improvements for road users and pedestrians. -within the control of the City of Rio Communities in New Mexico

Contract No. \_\_\_\_\_  
 Vendor No. 00000110108  
 Control No. HW2LP30054

**TRANSPORTATION PROJECT FUND  
 GRANT AGREEMENT**

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

Pursuant to NMSA 1978, Sections 67-3-28 and 67-3-78 and 18.27.6 NMAC, the parties agree as follows:

**1. Purpose.**

The purpose of this Agreement is to provide Transportation Project Funds (TPF) to the Public Entity for the following project scope **Don Diego Road Reconstruction-Reconstruct a two-lane road with ADA sidewalk, curb ramps and drive pads. intersection safety improvements for road users and pedestrians** (Project or CN LP30054). This Agreement specifies and delineates the rights and duties of the parties.

**2. Project Funding.**

- a. The estimated total cost for the Project is Four Million Three Hundred Ninety-Two Thousand Three Hundred Sixty-Two Dollars and Ninety-Eight Cents (**\$4,392,362.98**) to be funded in proportional share by the parties as follows:

<b>Project Funding</b>	<b>Department Share</b>	<b>Public Entity Share</b>	<b>Total Cost</b>
<b>Funding Source 1</b>	<b>95%</b>	<b>5%</b>	
<b><u>FY 2025 Transportation Project Fund</u></b> <b>For the purpose stated above in Section 1.</b>	<b>\$4,172,744.83</b>	<b>\$219,618.15</b>	<b>\$4,392,362.98</b>
<b>Total Transportation Project Funds</b>			<b>\$4,392,362.98</b>

- b. The Public Entity is responsible for all costs that exceed Project funding.
- c. All allocated funds must be spent by **June 30, 2027**.
- d. The Public Entity represents that no federal funds will be used to finance the Project.
- e. The Public Entity must repay Project funding to the Department if:
  - 1. The Project is cancelled or partially performed.
  - 2. A final audit conducted by the Department at Project completion determines the following: an overpayment, unexpended monies or ineligible expenses.

**3. The Department:**

- a. Shall distribute the funds, identified in Section 2a1, in a lump sum to the Public Entity after:
  - 1. The Department has received this Agreement fully executed with a Resolution of Sponsorship attached as Exhibit B.
  - 2. Receipt of a letter requesting funds, which includes the following Project documents: Notice of Award/Work Order and Notice to Proceed for the Project.
  - 3. If a Department's or another entity's right-of-way is involved, a permit or letter of approval/authorization, from the entity with jurisdiction over the Project right-of-way.
- b. Will not:
  - 1. Perform any detailed technical reviews of Project scope, cost, budget, schedule, design or other related documents;
  - 2. Have any involvement in the construction phase;
  - 3. Be involved in permit preparation or the review or coordination with regulatory agencies.
  - 4. Conduct periodic assurance inspections or comparison material testing.
  - 5. Participate in resolving bidding and contract disputes between the Public Entity and contractors.
- c. May perform Project monitoring that might consist of the following:
  - 1. Review of Project status to ensure that project goals, objectives, performance requirements, timelines, milestone completion budgets and other guidelines are being met.
  - 2. Request written Project status reports.
  - 3. Conduct a review of the Local Entity's performance and administration of the Project funds identified in Section 2a.
- d. Reserves the right, upon receipt of the Public Entity's Certification of Completion, Exhibit A, to request additional documents that demonstrate Project completion.
- e. If required, the District Engineer or designee, will conduct a Project review to determine if permit is required from the Department. If there is a determination that a permit is not required, a letter of approval and authorization will be forwarded to the Public Entity.

**4. The Public Entity Shall:**

- a. Act in the capacity of lead agency for the purpose as described in Section 1.
- b. Procure and award any contract in accordance with applicable procurement law, rules, regulations and ordinances.
- c. Be responsible for all design activities necessary to advance the Project to construction and coordinate construction.
- d. Unless otherwise specified in a letter of authorization or permit, design and construct the Project in accordance with the Public Entity's established design standards.
- e. Have sole responsibility and control of all project phases and resulting quality of the completed work.
- f. If the Project is in full or on a portion of a state highway, on a Department right of way or a National Highway System route:
  - 1. Obtain from the Department a permit in accordance with 18.31.6.14 NMAC, State Highway Access Management Requirements or a letter of authorization; and

2. Design and construct the Project in accordance with standards established by the Department.
- g. Adopt a written resolution of Project support that includes a commitment to funding, ownership, liability and maintenance. The resolution is attached to this Agreement as Exhibit B.
- h. Consider placing pedestrian, bicycle and equestrian facilities in the Project design in accordance with NMSA 1978, Section 67-3-62.
- i. Comply with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources.
- j. Be responsible for all permit preparation, review and coordination with regulatory agencies.
- k. Cause all designs, plans, specifications and estimates to be performed under the direct supervision of a Registered New Mexico Professional Engineer, in accordance with NMSA 1978 Section 61-23-26.
- l. Allow the Department to perform a final inspection of the Project and all related documentation to determine if the Project was constructed in accordance with the provisions of this Agreement. At the Department's request, provide additional documentation to demonstrate completion of the required terms and conditions.
- m. Meet with the Department, as needed, or provide Project status reports within thirty (30) days of request.
- n. Within 60 days after Project completion, provide the Certification of Completion, which is attached as Exhibit A, that it has complied with the requirements of 18.27.6 NMAC and this Agreement.
- o. Upon completion, maintain all the Public Entity's facilities constructed or reconstructed under this Agreement.

**5. Both Parties Agree:**

- a. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department will be accounted for and disposed of by the Public Entity as directed by the Department.
- b. Unless otherwise indicated in a letter of authorization, the Project will not be incorporated into the State Highway System and the Department is not assuming maintenance responsibility or liability.
- c. Pursuant to NMSA 1978, Section 67-3-78, Transportation Project Funds granted under this provision cannot be used by the Public Entity to meet a required match under any other program.
- d. The requirements of 18.27.6 NMAC are incorporated by reference.
- e. The inability to properly complete and administer the Project may result in the Public Entity being denied future grant funding.

**6. Term.**

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below. This Agreement terminates on the earliest of the following dates: (a) Department receipt of the Certification of

Completion or (b) **June 30, 2027**. In the event an extension to the term is needed, the Public Entity shall provide written notice along with detailed justification to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment. Neither party shall have any obligation after said date except as stated in Sections 2e, 4l, 4n and 7.

#### **7. Termination.**

If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement by providing thirty (30) days written notice. This Agreement may also be terminated pursuant to Section 15. Neither party has any obligation after termination, except as stated in Sections 2e, 4l, 4n and 7.

#### **8. Third Party Beneficiary.**

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

#### **9. New Mexico Tort Claims Act.**

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

#### **10. Contractors Insurance Requirements.**

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

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

#### **11. Scope of Agreement.**

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

**12. Terms of this Agreement.**

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

**13. Legal Compliance.**

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

**14. Equal Opportunity Compliance.**

The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States will, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

**15. Appropriations and Authorizations.**

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

**16. Accountability of Receipts and Disbursements.**

There shall be strict accountability for all receipts and disbursements relating to this Agreement. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five (5) years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation must be reimbursed to the Department within thirty (30) days.

**17. Severability.**

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

**18. Applicable Law.**

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

**19. Amendment.**

This Agreement may be amended by an instrument in writing executed by the parties.

**The remainder of this page is intentionally left blank.**

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

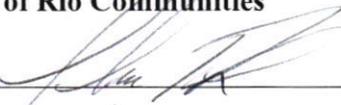
Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Assistant General Counsel

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

**City of Rio Communities**

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

Date: 11-13-24

Title: Mayor

Attest:  \_\_\_\_\_

Title: Acting Municipal Clerk

**EXHIBIT A**

**CERTIFICATION OF PROJECT COMPLETION**

**Public Entity:**

**Control No. LP30054**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of \_\_\_\_\_ certify in regard to Control No. **LP30054**:

1. That the Public Entity has complied with the terms and conditions of the requirements under this Agreement and 18.27.6 NMAC.
2. That all work in was performed in accordance with the Agreement.
3. That the total Project cost of \_\_\_\_\_, with New Mexico Department of Transportation 95% share of \_\_\_\_\_ and the Public Entity share of \_\_\_\_\_ is accurate, legitimate, and appropriate for the Project.
4. That the Project was completed on \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_

**In Witness Whereof**, \_\_\_\_\_ in his/her capacity as \_\_\_\_\_ of \_\_\_\_\_ certify that the matters stated above are true to his/her knowledge and belief.

**City of Rio Communities**

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

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

**ATTEST:**

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

**Public Entity Clerk**

When completed, send Certification of Project Completion to the District Coordinator, New Mexico Department of Transportation.

## Rachael Howe

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**From:** Martin Moore  
**Sent:** Wednesday, October 30, 2024 9:31 AM  
**To:** Kubiak, Peter, DOT; Rachael Howe  
**Subject:** RE: [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request

Perfect. We expect this to be on our November 12, 2024 City Council agenda.

Dr Moore  
City Manager

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**From:** Kubiak, Peter, DOT <peter.kubiak@dot.nm.gov>  
**Sent:** Wednesday, October 30, 2024 9:28 AM  
**To:** Martin Moore <mmoore@riocommunities.net>; Rachael Howe <rhowe@riocommunities.net>  
**Subject:** RE: [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request  
**Importance:** High

Thank you for the clarity. The resolution as provided is not acceptable. Please provide a new resolution with correct amounts. Please use the resolution provided with the agreement as it has the correct language. I still need the following:

- 1) Resolution
- 2) Agency signed agreement
- 3) When I receive both item 1 & 2 above, I will be able to route for NMDOT signatures.

Regards

Peter J. Kubiak  
LGRF Coordinator  
7500 Pan American Freeway NE  
P.O Box 91750  
Albuquerque NM 87109  
(505)249-5718 C  
[Peter.kubiak@dot.nm.gov](mailto:Peter.kubiak@dot.nm.gov)

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**From:** Martin Moore <mmoore@riocommunities.net>  
**Sent:** Tuesday, October 29, 2024 4:50 PM  
**To:** Kubiak, Peter, DOT <peter.kubiak@dot.nm.gov>; Rachael Howe <rhowe@riocommunities.net>  
**Subject:** RE: [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request

I understand that. My concern is that our resolution was adopted on September 16<sup>th</sup> for a match waiver request. Is that resolution also sufficient to allow us to sign the grant agreement?

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**From:** Kubiak, Peter, DOT <[peter.kubiak@dot.nm.gov](mailto:peter.kubiak@dot.nm.gov)>  
**Sent:** Tuesday, October 29, 2024 4:45 PM  
**To:** Martin Moore <[mmoore@riocommunities.net](mailto:mmoore@riocommunities.net)>; Rachael Howe <[rhowe@riocommunities.net](mailto:rhowe@riocommunities.net)>  
**Subject:** RE: [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request

All,

Match waiver request for all agencies expired on 9/30/2024. LP30054 is not eligible for a match waiver.

Regards

Peter J. Kubiak  
LGRF Coordinator  
7500 Pan American Freeway NE  
P.O Box 91750  
Albuquerque NM 87109  
(505)249-5718 C  
[Peter.kubiak@dot.nm.gov](mailto:Peter.kubiak@dot.nm.gov)

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**From:** Martin Moore <[mmoore@riocommunities.net](mailto:mmoore@riocommunities.net)>  
**Sent:** Tuesday, October 29, 2024 4:21 PM  
**To:** Kubiak, Peter, DOT <[peter.kubiak@dot.nm.gov](mailto:peter.kubiak@dot.nm.gov)>; Rachael Howe <[rhowe@riocommunities.net](mailto:rhowe@riocommunities.net)>  
**Subject:** RE: [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request  
**Importance:** High

Peter:

Is our understanding correct that you need a resolution accepting the grant to go along with the resolution requesting a match waiver??

Dr Moore  
City Manager  
City of Rio Communities  
505-274-0577 (cell)

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**From:** Kubiak, Peter, DOT <[peter.kubiak@dot.nm.gov](mailto:peter.kubiak@dot.nm.gov)>  
**Sent:** Tuesday, October 29, 2024 9:32 AM  
**To:** Rachael Howe <[rhowe@riocommunities.net](mailto:rhowe@riocommunities.net)>  
**Cc:** Martin Moore <[mmoore@riocommunities.net](mailto:mmoore@riocommunities.net)>  
**Subject:** RE: [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request  
**Importance:** High

Morning Rachael,

I did not receive the signed agreement back from Rio Communities for LP30054. Can you please send that over. Once received I will submit the resolution and agreement to POD for NMDOT signature routing as to get agreement executed.

Regards

Peter J. Kubiak  
LGRF Coordinator  
7500 Pan American Freeway NE  
P.O Box 91750  
Albuquerque NM 87109  
(505)249-5718 C  
[Peter.kubiak@dot.nm.gov](mailto:Peter.kubiak@dot.nm.gov)

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**From:** Rachael Howe <[rhowe@riocommunities.net](mailto:rhowe@riocommunities.net)>  
**Sent:** Thursday, October 24, 2024 5:01 PM  
**To:** Kubiak, Peter, DOT <[peter.kubiak@dot.nm.gov](mailto:peter.kubiak@dot.nm.gov)>  
**Cc:** Martin Moore <[mmoore@riocommunities.net](mailto:mmoore@riocommunities.net)>  
**Subject:** [EXTERNAL] Resolution 2024-10 NM Dept. of Trans. Local Gov. Road Fund Approval of LGRF -TPF Match Wavier Request

You don't often get email from [rhowe@riocommunities.net](mailto:rhowe@riocommunities.net). [Learn why this is important](#)

**CAUTION:** This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Hello Mr. Kubiak,

Dr. Moore wanted me to get this Resolution 2024-10 New Mexico Department of Transportation Local Government Road Fund Approval of (LGRF) – (TPF) Match Wavier Request. If you have any questions, please let Dr. Moore.

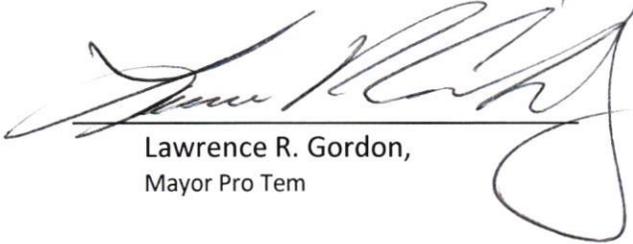
Thank You.  
Rachael M. Howe  
Deputy Clerk  
City of Rio Communities  
505-861-6803 ext. 102

**City of Rio Communities  
Governing Body**



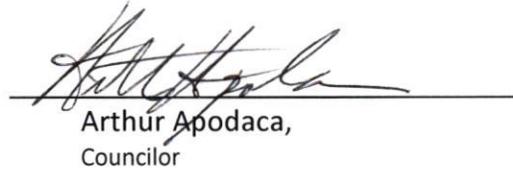
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Joshua Ramsell,  
Mayor



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Lawrence R. Gordon,  
Mayor Pro Tem

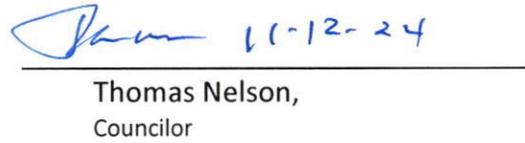


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Arthur Apodaca,  
Councilor

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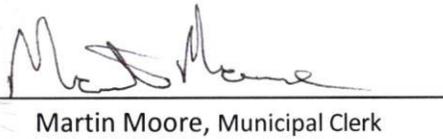
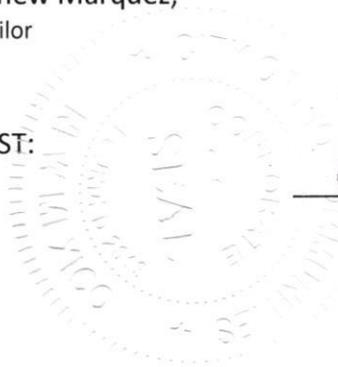
Matthew Marquez,  
Councilor



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Thomas Nelson,  
Councilor

ATTEST:



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Martin Moore, Municipal Clerk

RESOLUTION 2024-12