

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.

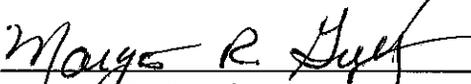
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIO COMMUNITIES that the “City of Rio Communities Industrial Revenue Bond Policy and Local Economic Development Act Policy”, attached as Exhibit A, is adopted.

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

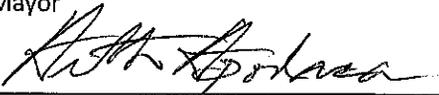
City of Rio Communities Governing Body



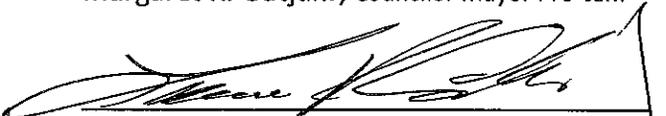
Joshua Ramsell, Mayor



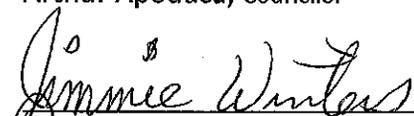
Margaret R. Gutjahr, Councilor Mayor Pro-tem



Arthur Apodaca, Councilor

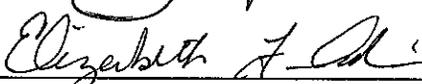


Lawrence R. Gordon, Councilor



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**

September 11, 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: