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CAMINO REAL REGIONAL UTILITY AUTHORITY

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| <p>STANDARD DEVELOPMENT AGREEMENT POLICY</p> |
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I. PURPOSE

This policy is established to guide the use of development agreements for construction or expansion of water or wastewater improvements to be incorporated into the Camino Real Regional Utility Authority (CRRUA) utility systems. CRRUA desires to enter into such agreements in a consistent manner with uniform and predictable provisions.

II. APPLICABILITY

CRRUA's standard development agreement will be used when a developer proposes to construct a development where the approach to improvements will include elements that CRRUA either wants to add, upgrade, or oversize. The standard development agreement is intended to provide one of many alternative development management tools.

This policy is not intended to be used for specific public/private partnerships, special assessment districts, public improvement districts, or other types of relationships outlined within New Mexico law.

III. AUTHORITY

CRRUA's Executive Director will present a proposed development agreement to the Board of Directors for consideration if any of the following apply:

1. If the proposed development is for a project that includes 10 or more individual lots.
2. If the proposed development is more than Five acres in size.
3. If CRRUA's contribution to the project exceeds \$50,000.
4. If a budget adjustment is required to fund CRRUA's contribution to the project.
5. If the Executive Director desires to present the development agreement to the Board for any other reason.

In the event the Executive Director denies a proposed development agreement, the developer may request an appeal of such decision to the CRRUA Board. The developer will work through the Executive Director to present the rationale and details relating to their appeal for placement on the Board agenda.

IV. PROCEDURE AND FORMAT

1. A due diligence review process will be completed by CRRUA and the developer prior to entering into a development agreement which will include the following at a minimum:
 - a. A concept plan will be developed and presented to CRRUA for review.
 - b. A preliminary review meeting between the parties will be completed to discuss a baseline level of information and the concept plan, including a preliminary quantity and cost estimate substantially in the form attached as Exhibit A.
 - c. A preliminary assessment of the viability of the project and CRRUA's ability to serve the proposed project will be completed.
2. After the due diligence review is completed, the parties will decide whether a development agreement is an appropriate tool to address the relationship between the parties.
3. If the parties decide to proceed, then the development agreement shall be substantially in the form attached.

CRRUA STANDARD DEVELOPMENT AGREEMENT

(Water and/or Sewer System Improvements)

THIS AGREEMENT ("Agreement or Development Agreement") executed on this ____ day of _____, 20__ between the Camino Real Regional Utility Authority (CRRUA), a quasi-governmental entity operating under a Joint Powers Agreement between the City of Sunland Park, NM and Dona Ana County, New Mexico, and _____, the Owner/Developer of the proposed project improvements, ("Owner" or "Developer").

RECITALS:

1. Owner has requested to expand or enhance water and/or sewer improvements within the CRRUA service area to serve a proposed new development, described as follows:
(Narrative Project Description)

2. The New Mexico Subdivision Act combined with subdivision regulations for the City of Sunland Park and Dona Ana County provide the authority for CRRUA to enter Development Agreements for system expansion and growth.
3. This Development Agreement is required to establish parameters for non-standard development approaches relating to subdivision and utility system expansion and modification. CRRUA requires a Development Agreement to delineate expectations and mutually agreed terms and conditions for improvements that are unique and require specific or specialized approaches.
4. CRRUA agrees that the Owner or his contractor may perform the work described in this agreement in accordance with approved CRRUA Development Standards and permit fee schedules.
5. All contractors working on the improvements will be hired, managed, and compensated by the developer.

TERMS AND CONDITIONS

1. SYSTEM DESIGN

- A. The Developer's engineer will prepare the water and wastewater plans ("Plan") meeting the applicable development standards including but not limited to CRRUA Development Standards. The Developer or agent shall meet with CRRUA for a pre-development review of the Plan. The engineer in responsible charge of the improvements must be licensed in the State of New Mexico.

- B. The Developer must make a written application for service or development to initiate the design review and approval process. A full preliminary set of subdivision improvement plans, as defined within the referenced development standards, to include the plat of survey, grading and drainage plans, street grades, utility improvements, proposed construction schedule, and a concept plan must be submitted to CRRUA's engineers. The Developer will submit to CRRUA and its engineers the Plan for review. At the time of submission of the Plan, the Developer will pay CRRUA its standard Plan review fee as outlined in its current fees and charges policy.

- C. CRRUA may desire additions to the proposed improvements and will provide a list of any required changes to the Plan. Additions to the required development may be due to master plan goals, service obligations for adjacent properties, or for other reasons determined by the utility authority. These system upgrades to the Developer's Plan are subject to recapture of marginal costs in accordance with the reimbursement policies of CRRUA and more specifically delineated in Exhibit "A", Cost Estimate. CRRUA contributions will be paid directly to the owner. Potentially reimbursed expenses allocable to others will be reimbursed to the owner and facilitated by CRRUA only if connection and use of said improvements occurs within a Five (5) year period or by alternative arrangements between the private (non-CRRUA) parties under separate agreement(s).

- D. CRRUA will issue a "Ready, Willing and Able" to serve letter for the subdivision upon completion of its Engineer's confirmation of capacity to provide water and wastewater services to the project described within this agreement.

- E. Before the final design is released for construction, the Owner must submit one set of final Subdivision Improvement Plans (SIP) which have incorporated the system upgrade. The final SIP must include phasing, if any, as approved by CRRUA and its engineers. Once CRRUA reviews and approves the final SIP water and wastewater utility plans, and the design and other fees have been paid, CRRUA will execute and approve the Development Agreement provisions.

- F. Plans for the proposed improvements must include the requirements published by CRRUA for submittals and shall include the following:

- a. The water distribution system shall comply with details within CRRUA's Development Standards and must show mains, service lines, sizes, and depth. Plans must show locations of valves, fire hydrants, and placement within the R-O-W and easements.
- b. The sewer collection system shall comply with details within CRRUA's Development Standards and must show mains, service lines, sizes and depth. Plans must show location in street, manholes, and profiles which show elevations of invert and ground/grades.
- c. Improvements required to meet subdivision specifications will not be funded by CRRUA. Improvements that CRRUA requests to add, upgrade, or oversize shall be funded by CRRUA.

G. System Upgrade and Reimbursement: There are multiple reasons for upgrading, enlarging, expanding, or integrating water or wastewater improvements as a part of the proposed development as defined below.

- a. Upgrades: System upgrades may be desired by CRRUA to meet elements of its master plan, to meet obligations or requests for adjacent landowners, or for enhancement of system efficiencies and effectiveness.
- b. Reimbursement: CRRUA agrees to reimburse the owner for costs associated with elements of work specifically delineated in Exhibit "A", Cost Estimate, as "CRRUA participation". CRRUA agrees to collect and provide payment (or facilitate payment) to Owner for items identified in Exhibit "A" as "potentially reimbursable" if connections to the specified system occur within Five (5) years from the date of final acceptance of the subdivision. The Owner agrees that CRRUA shall have no further obligations for reimbursement to the Owner.
- c. The Owner agrees to accept reimbursement payment(s) in accordance with this agreement for the proportionate cost for improvements under the final Plan.

H. Easements will be required for any proposed improvements outside the public rights-of-way. Easements required for the proposed improvements include the following: (enter brief description/location) _____.

Easements will be conveyed to CRRUA via approved plat or by separate approved "metes and bounds surveys" approved by affected property owners and attached to this Agreement. This requirement applies to easements within governmental and public utilities not a party to this Agreement (NMDOT, BNSF RR, and Others).

2. SYSTEM CONSTRUCTION AND COORDINATION

- A. The Owner will construct the facilities and all improvements under the supervision of CRRUA.
- B. CRRUA may agree to undertake a part of the improvements described in Exhibit B, whether such improvements include offsite improvements, oversizing of system components, or other related work. If any component part of the planned improvements will be the responsibility of CRRUA, then a delineation of those improvements and associated costs will be clarified as a part of Exhibit B, attached hereto.
- C. All improvements must be constructed strictly in accordance with the approved plans and in compliance with CRRUA's most current development standard specifications.
- D. The Owner is responsible for coordinating the construction with CRRUA. CRRUA is entitled to always inspect and observe the on-going work; It is understood and agreed that the responsibility for ensuring conformance of the improvements to the approved plans is the sole responsibility of the Owner and his contractor.
- E. The fact that CRRUA or its agents has inspected the work at any stage shall not be deemed to be acceptance or approval by CRRUA of the work performed. Approval and acceptance of the work shall be effective only when done so in writing, as provided in Section 4. Nothing herein shall make CRRUA responsible for the Owner or his contractor's failure to perform the work in accordance with the approved Plans and referenced documents.
- F. In the performance of the work, the Owner agrees to indemnify and hold harmless CRRUA, its officers, agents, employees, and contractors from all liability of whatever nature, claim, or kind resulting from the Owner's or his contractor's or subcontractor's prosecution of the work.
- G. If any paved city streets are to be cut during the conduct of the proposed work under this Agreement, the Owner shall provide reasonable advance notice to CRRUA and the government jurisdiction in responsible charge of the affected roadway of the location and nature of any proposed cut, when it is to be done, and the name of the contractor that will perform the paving.
- H. The Owner's contractor shall continuously, and not less frequently than once daily, maintain backfilled cuts in streets or alleys to assure a smooth riding surface for vehicular traffic. Alternatively, the Owner may use steel plates sufficient to cover the cut area with asphaltic edge. He shall also wet down the surface of unpaved cuts regularly to minimize dust and make every effort to have the street surface repaved as soon as possible.

In no case shall a cut be left unpaved for more than seven days after the initial backfilling. On arterial streets, a temporary paving patch of HMAC or cold mixed asphaltic concrete shall be placed immediately after backfilling, to be removed when the permanent patch is placed.

- I. If any pavement cut in a street is not so maintained or repaired within the required time, CRRUA is entitled to authorize others to perform the repairs, or to perform the repairs with its own forces, at the expense of the Owner, including a charge for reasonable overhead. The Owner shall pay this expense within ten (10) days of receipt of an invoice for such repairs.

3. INSURANCE AND CHANGES IN THE WORK

- A. The Owner warrants that he will enter into a construction contract for this work with a utility contractor who is experienced and licensed to perform water and sewer construction. The Contractor will be an independent Contractor who works only for the Owner. The Owner agrees to hold CRRUA and its owner agencies (the City of Sunland Park and Dona Ana County) harmless from any damages or claims which may arise from the construction of this development. All work will remain the property of the Owner until such a time the improvements have been accepted by CRRUA.
- B. The Owner shall provide proof of general liability insurance coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. CRRUA shall be provided with a copy of the Insurance Certificate evidencing coverage for the full term of the project and shall be named as an additional insured on the Owner's General Liability policy.
- C. Owner shall notify CRRUA of all Contractors and Subcontractors engaged for work under this agreement. This information is required to enable inspection coordination and communications.

4. AFFIDAVIT OF COMPLETION

- A. It is understood and agreed by the parties that the purpose of this Agreement is to ultimately assure that the public utilities and related improvements will be constructed in accordance with the approved plans, in a workmanlike manner, utilizing normal industry standards, and dedicated to CRRUA as fit for their intended use, free and clear of any liens or encumbrances.
- B. Final completion of the subdivision will be when all planned improvements are complete, manholes and valve boxes are set to final grade, meter boxes are in a condition acceptable to CRRUA, and certify that the streets are acceptable to the governing agency for dedication. Final completion could be by phase or total subdivision.

- C. The Owner will then execute and deliver to CRRUA an affidavit stating:
- a. The Facilities or Work have been completed in accordance with the Plans and in accordance with the terms of this Development Agreement, the specifications, and all applicable laws;
 - b. All final adjustments have been made as requested;
 - c. The Owner has paid for all labor and materials;
 - d. There are no outstanding claims relating to the work and that all debts relating to the plan improvements have been paid.

5. WARRANTY

- A. Owner represents and warrants that all work was performed in a good and workmanlike manner, in accordance with the approved plans, or as otherwise provided in this Agreement. This warranty shall remain in full force and effect for a period of one year from and after the date of Final Acceptance by CRRUA of all the facilities or work shown on the plans under this Development Agreement.
- B. The Owner will not allow any mechanics liens to be threatened or filed against the subdivision or property which is the subject of this Agreement. It is understood and agreed that, notwithstanding the acceptance of the facilities or work by CRRUA, Owner shall remain responsible for a period of one year from the date of the issuance of the Letter of Final Acceptance by CRRUA.
- C. The Owner further agrees to be fully responsible for the repair and maintenance of the improvements for a period of one year from the date of issuance of the Letter of Final Acceptance.
- D. Thirty (30) days prior to the expiration of the one-year warranty period, Owner agrees to an inspection of the facilities or improvements by CRRUA.
- E. In the event Owner determines to sell lots within the subdivision prior to acceptance of the improvements by CRRUA, the Owner agrees to include a provision in the sales contract stating that the utility improvements have not yet been accepted by CRRUA and that services will not be activated until such acceptance has been obtained.
- F. Construction Meters may be made available for the project at the discretion of the Executive Director.

6. PERFORMANCE BOND

- A. In the event CRRUA's contribution to the development exceeds \$500,000, The Owner shall post an acceptable Performance Bond ("Bond") with CRRUA in accordance with the State of New Mexico's Little Miller Act (13-4-18 to 13-4-20 NMSA 1978) to ensure completion of the utility improvements as well as labor and material payments. The bond must be executed by a corporate surety licensed to do business in New Mexico.
- B. This bond may be posted in the form of a Surety Bond, Certificate of Deposit or Irrevocable Letter of Credit from an approved financial institution.
- C. The Owner and Surety's obligation to correct any defective workmanship and materials under the bond shall remain in effect for the full one-year warranty period set forth herein.
- D. The Owner agrees to promptly execute his rights and remedies under this bond and, at the option of CRRUA, to assign to CRRUA all rights and remedies under this bond upon the issuance of the Letter of Final Acceptance or to include CRRUA as a beneficiary on the Bond.

7. DEFAULT

In the event Owner or his contractor(s) fail to comply with the provisions of this Agreement, CRRUA may take such actions to which it may be entitled by law or equity, including, but not limited to stopping the work, seeking specific performance of this Agreement, or suing for damages.

8. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- A. The Owner, and his contractor, shall operate as independent contractors, not subject to the direct or continuous supervision and control of CRRUA. The parties agree that in no event shall the Owner or his contractor(s) be deemed to be an agent, officer, or employee of CRRUA. This Agreement shall never be interpreted to mean a partnership or joint venture exists between the Owner, contractor, or CRRUA.
- B. The Owner, his contractor, subcontractors, officers, agents, employees and representatives, hereby indemnifies and holds harmless CRRUA, its officers, agents and employees from and against all claims, damages, losses and expenses (including attorney's fees, expert fees and overhead) in any way arising out of or resulting from their performance under this Agreement, including the construction of the improvements by the contractor, any subcontractor, anyone directly or indirectly employed by the contractor, or anyone for whose acts the contractor or subcontractor may be liable, including any claims, damages, losses or expenses resulting in injury or death.

9. TITLE

The Owner represents that it currently holds title to the property in the same way it signs this Agreement. The terms and provisions thereof shall be binding upon, and to vest (inure) to the benefit of, the parties hereto and their successors, assigns, heirs and personal representatives.

10. ASSIGNABILITY

The Owner shall not assign any interest in this Agreement (whether by assignment or novation) without the prior written consent of CRRUA.

11. COMPLIANCE WITH LAWS

The Owner shall comply with all applicable laws, ordinances, rules and regulations and codes of the federal, state, and local governments, as they may now read or hereinafter be amended.

12. VENUE

Venue and jurisdiction of any suit or right or cause of action arising under or in connection with this Agreement shall be exclusively in a court of competent jurisdiction sitting in Dona Ana County, New Mexico; and this Agreement shall be interpreted in accordance with the laws of the State of New Mexico.

13. SEVERABILITY

The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and if any phrase, clause, sentence, paragraph or section of this Agreement should be declared invalid by a final decision of a court of competent jurisdiction, such invalidity will not affect any of the remaining provisions of the Agreement.

14. CAPTIONS

The captions of this Agreement are for informational purposes only and shall not in any way affect the substantial terms and conditions of this Agreement.

15. COUNTERPARTS

This Agreement may be executed in Two or more identical counterparts (one for each party), and all counterparts so executed shall constitute one agreement, which shall be binding on all the parties.

16. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties notwithstanding any prior agreements or understandings regarding the same.

17. NOTICE

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail, postage prepaid, to the parties at the location specified under Section 18 below. Notice shall be deemed to be received on the fifth day following posting.

18. SIGNATURES

This Agreement is done and approved by the parties on the date first written above.

OWNER/DEVELOPER

UTILITY AUTHORITY

Company Name (Print or Type)

Camino Real Regional Utility Authority
Company Name (Print or Type)

Authorized Agent Name and Title

Authorized Agent Name and Title

Authorized Signature

Authorized Signature

Mailing Address

Mailing Address

Email Address

Email Address

Phone Number

Phone Number

EXHIBIT A
PRELIMINARY QUANTITIES
AND PROJECT COST ESTIMATE

PROJECT NAME AND LOCATION: _____

Include preliminary quantities of the following utility improvements: Water Lines (Mains, Services, Hydrants, Valves), Sewer Lines (Mains, Services, Manholes), Other Items (Storage, Lift Stations, WW Treatment, Safety, Traffic Control, Pavement Patching), and Project Development Items (Engineering, Surveying, GIS/Mapping, Permit Fees)

| Item | Material Description (Type/Size) | Est Quantity | Unit | Quantity Potentially Reimbursed | Est Cost of CRRUA Participation |
|------|-------------------------------------|-----------------|------|---------------------------------------|---------------------------------------|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| 9 | | | | | |
| 10 | | | | | |
| | | | | | |
| | | | | | |

| Preliminary Estimated Total Development Cost | Amount Potentially Reimbursed | Amount of CRRUA Participation |
|--|-------------------------------------|-------------------------------------|
| \$ | \$ | \$ |

EXHIBIT B

FINAL PROJECT QUANTITIES AND COST ESTIMATE

PROJECT NAME AND LOCATION: _____

WATER LINES (Mains, Services, Hydrants, Valves)

| Item | Material Description (Type/Size) | Est Quantity | Unit | Est Unit Price | Est Total Cost | Amount Potentially Reimbursed | Amount of CRRUA Participation |
|------|-------------------------------------|-----------------|------|----------------------|----------------------|-------------------------------------|-------------------------------------|
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |

SEWER LINES (Mains, Services, Manholes)

| Item | Material Description (Type/Size) | Est Quantity | Unit | Est Unit Price | Est Total Cost | Amount Potentially Reimbursed | Amount of CRRUA Participation |
|------|-------------------------------------|-----------------|------|----------------------|----------------------|-------------------------------------|-------------------------------------|
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |

OTHER ITEMS (Storage, Lift Stations, WW Treatment, Safety, Traffic Control, Pavement Patching)

| Item | Material Description (Type/Size) | Est Quantity | Unit | Est Unit Price | Est Total Cost | Amount Potentially Reimbursed | Amount of CRRUA Participation |
|------|-------------------------------------|-----------------|------|----------------------|----------------------|-------------------------------------|-------------------------------------|
| 1 | | | | | | | |
| 2 | | | | | | | |
| 3 | | | | | | | |

PROJECT DEVELOPMENT ITEMS (Engineering, Surveying, GIS/Mapping, Permit Fees)

| Item | Description | Est Quantity | Unit | Est Unit Price | Est Total Cost | Amount Potentially Reimbursed | Amount of CRRUA Participation |
|------|-------------|-----------------|------|----------------------|----------------------|-------------------------------------|-------------------------------------|
| 1 | Engineering | | | | | | |
| 2 | Surveying | | | | | | |
| 3 | GIS/Mapping | | | | | | |
| 4 | Permit(s) | | | | | | |

| Estimated Total Development Cost | | | | | Amount Potentially Reimbursed | Amount of CRRUA Participation |
|----------------------------------|--|--|--|--|-------------------------------------|-------------------------------------|
| \$ | | | | | \$ | \$ |

All project cost estimates shall be substantially in the form listed. This document is to be used to establish CRRUA's contribution responsibilities. CRRUA will accept a spreadsheet or other similar program so long as all of the elements of this form are included.

The Amount Potentially Reimbursed is for work done on behalf of others who may reimburse if they connect within a Five(5) year period. CRRUA participation is for work added for CRRUA's needs.