LOWER RIO GRANDE
Public Water Works Authority

325 Holguin Road Vado, New Mexico 88072 (575) 233-5742

http://LRGauthority.org

Resolution #FY2021-18
Adopting Amended Governance Document

WHEREAS, the Lower Rio Grande Public Water Works Authority is a political subdivision of the State of New Mexico established under NMSA 1978 73-26-1; and

WHEREAS, the Lower Rio Grande Public Water Works Authority Board of Directors at its regular monthly meeting on Wednesday, April 21, 2021 authorized its General Manager and attorney to develop an amendment to its Governance Document for the purpose of clarifying its authority to place liens on public property by entering into mortgages and promissory notes and schedule a public hearing on the proposed amendment; and

WHEREAS, the required public hearing was held on Tuesday, May 6, 2021 at 6:00 p.m. via Zoom online/telephone platform; and

WHEREAS, the public comments received at the May 6, 2021 public hearing have been provided to the Lower Rio Grande Public Water Works Authority directors after the public hearing and have been reported and considered at the Board of Directors meeting on Wednesday, May 19, 2021;

NOW THEREFORE BE IT RESOLVED by the Lower Rio Grande Public Water Works Authority Board of Directors that the Governance Document is amended as required under NMSA 1978 NMSA 1978 73-26-1 is hereby adopted.

PASSED, APPROVED, AND ADOPTED THIS 19TH DAY OF MAY, 2021:

SEAL:

Esperanza Holguin, Board Chair

ATTEST:

Joe Evaro, Secretary

Governance Document

Of the

Lower Rio Grande Public Water Works Authority

Adopted October 10, 2010
Amended April 2, 2013
Amended October 16, 2019
Amended May 19, 2021

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ARTICLE I
DEFINITIONS AND CONSTRUCTION

SECTION 1.01. DEFINITIONS. As used in this Document, the following terms shall have these meanings unless the context clearly requires otherwise:

"Authority" shall mean the Lower Rio Grande Public Water Works Authority and, unless the context indicates otherwise, means the legal entity created through legislative action under NMSA 1978, § 73-26-1 (2009).

SECTION 1.02. FINDINGS. The founding entities of the Authority have determined that:

A. When they began to meet, work together, and assist each other, the founding entities found they had many common challenges, including aging infrastructure, increasing regulatory requirements, decreasing funding, limited water sources, increasing operating expenses, increasing demand on the systems as a result of population growth, shortage of volunteers to serve on boards, lack of coordination in infrastructure projects among various agencies, and limited comprehensive planning. They also found a high level of duplication of efforts, with each entity paying separately for the same professional services.

B. Each one of the founding entities brings its own unique history, talents, resources and challenges to this regional effort. By pooling their resources, the entities will be able to strengthen their financial, managerial, and technical capacity to create a more sustainable utility to provide better and more reliable service to its customers.

C. The community members of the Authority have determined that it is in the best interest of the founding entities, their members, and the public to merge and jointly manage and operate their utilities, creating economies of scale, eliminating duplicate functions and expenses, providing for more efficient use, conservation and protection of valuable local and regional resources, and advancing regional and comprehensive planning

ARTICLE II
THE AUTHORITY

SECTION 2.01. ESTABLISHMENT AND CREATION. There is hereby created and established the "Lower Rio Grande Public Water Works Authority ("Authority")." The Authority, a political subdivision of the State, is a member-owned community water system that has all of the privileges, benefits, powers, and duties provided in NMSA 1978, § 73-26-1 (2009 amended 2017 & 2019) and the general laws of the State regarding political subdivisions. The Authority will adopt and use a governmental seal.

A. A "Member" of the Authority is a person that:

1. Owns real property within the Authority's recorded designated service area; and
2. Receives services provided by the Authority to that property.

B. A property owner becomes a member of the Authority only upon compliance with the Policies and Procedures of the Authority.

C. Only a Member of the Authority may be connected to the Authority's water distribution and wastewater collection systems and manage the accounts associated with those connections.

1. Any entity other than individual persons that owns real property located within the Authority's recorded designated service area, such as a corporation, partnership, trust, limited liability company, or governmental entity or subdivision, shall designate in writing when it becomes a member of the Authority, who the individual person will be who is designated to manage the entity's account(s) with the Authority.
2. All actions taken by the designated member shall be binding on the property owners who so chose and designated said member.

D. Elections shall be conducted under New Mexico law according to the Local Election Act set forth in NMSA 1978, §§ 1-22-1 et seq. (2018) and under this Governance Document and the Authority's Policies and Procedures.

E. A membership in the Authority shall not be transferred to anyone else. If a real property has been sold and is now owned by someone else according to the public records of Dona Ana County, the Membership Certificate of the former owner shall be terminated and will become void for all future uses as of the date of sale or transfer to new ownership. It is the responsibility of the new owner to apply for a new membership in order to be able to obtain services.

F. The rights, privileges, duties, and obligations of all members of the Authority shall be equal.

SECTION 2.02. GOVERNING BODY.

A. The Authority shall be governed by a Board of Directors. The number directors of the initial board shall consist of five (5) directors representing each of the founding entities. By resolution, each of the founding entities shall appoint a representative to serve on the initial board. The number of directors of the initial board shall serve until their successors are elected. The directors of the subsequent board shall correspond to the number of districts composing the Authority. Subsequent Boards of Directors shall be elected by district.

B. Board Member Requirements: The number of members of the Board of Directors shall equal the number of voting districts within the Authority. The Board of Directors shall manage the business and financial affairs of the Authority. The functions of the board shall include, but are not limited to:

1. Selection of and oversight of the General Manager;

2. Governance and setting of policy and procedures;

3. Ensuring that information about the business and activities of the Authority is provided to members and the public;

4. Compliance with applicable laws and regulations, including but not limited to the Governmental Conduct Act, Inspection of Public Records Act, and Open Meetings Act.

5. Adoption of policies to set and enforce rates, fees, and other charges necessary to meet the Authority's financial obligations. Each member of the Board of Directors shall at all times be a member in good standing with the Authority and own property within the district from which they are elected. The terms of the members of the Board of Directors shall be staggered. The staggered system shall be set by the first elected board with two positions serving for two (2) years and three (3) positions serving for four years (4). The first elected Board will draw straws to determine length of their initial terms. All subsequently elected board members will serve a four (4) year term.

C. The initial district election shall be for five (5) Board positions, one from each district. Should a new district be added increasing the number of Board positions, a draw of straws shall be used to determine whether the board member from the new district will serve a two (2) or four (4) year term.

D. Any vacancy on the Board of Directors shall be filled by an appointment made by a majority vote of the Board of Directors. The appointee shall be a qualified elector in good standing of the respective vacant district. The appointed board member shall serve out the remainder of the vacant position's term. The appointee shall meet the requirements established in Section A above. In the case of a newly created district, the Board shall appoint a member to represent that district until the next regular election is held, at which time the position will be open to any member of that district to run for office.

E. The Board may remove and replace a Director for cause, including failure within a twelve-month period to attend three (3) meetings without cause and prior notification, for non-compliance or violation of any of the applicable laws listed under Subsection B above, or for ineligibility to serve due to a conflict of interest as identified in Section 2.04. Any member of the Board of Directors removed for cause shall not be eligible for reelection or reappointment for four (4) years.

F. The officers of the Board of Directors shall be a Chairperson, a Vice-Chairperson, and a Secretary. The Board may designate and authorize additional officers as needed. The officers of the Board shall be elected by a majority vote of the Board of Directors at the first regular meeting held after each election of board members, who shall serve until the next election.

G. Duties of the Officers:

1. Duties of the Chairperson. The Chairperson and will preside over all meetings of the Board of Directors, call special and emergency meetings of the Board of Directors, and perform all acts and duties usually performed by a presiding officer. The Chairperson shall take such actions, and have all such powers to execute documents on behalf of the Authority in furtherance of this Document. The Chairperson shall be an ex-officio member of standing committees and shall perform such other duties as may be properly required of him/ her by the Board of Directors.

2. Duties of the Vice-Chairperson. The Vice-Chairperson, in the absence or disability of the Chairperson, shall perform all the duties of the Chairperson. In case of the death, removal, or resignation of the Chairperson, the Vice-Chairperson shall assume the office of Chairperson and so serve until the next election.

3. Duties of the Secretary: The duties of the Secretary include:

a. Ensuring that a complete record and minutes are prepared and kept of all meetings;

b. Attesting the Chairperson's signature on all documents pertaining to the Authority unless otherwise directed by the Board of Directors;

c. Providing a full report of any matters or business pertaining to his or her office as the Board of Directors may direct;

d. Attesting and affixing the Authority's seal to all documents requiring a seal;

e. Taking all actions necessary to ensure compliance with Open Meetings Act and Inspection of Public Records Act; and

In the absence of the Secretary, the Vice-Chairperson may fulfill the duties of Secretary.

The Board of Directors shall have governance duties as set forth in this Document and in the Authority's Policies and Procedures. Any certificate, resolution, or instrument signed by the Chairperson, or Vice-Chairperson in the absence of the Chairperson, or by any other person(s) as authorized by the Board of Directors in a duly noticed meeting shall be evidence of an action of the Authority and shall be conclusively presumed to be authentic.

H. Members of the Board of Directors shall receive neither stipend nor any other compensation for their services. Directors may be reimbursed for expenses incurred by activities or functions performed as part of their service as members of the Board of Directors, as pre-approved by the Board of Directors or as set forth in the Authority's Policies and Procedures. Travel to scheduled meetings of the Board of Directors is considered a reimbursable expense for mileage.

I. A majority of the Board of Directors shall constitute a quorum for the transaction of business of the Authority. The affirmative vote of the majority of the members of the Board of Directors present and voting (excluding any member having a conflict) shall be necessary to transact business.

SECTION 2.03. DISQUALIFICATION AND CONFLICTS OF INTEREST

A. Directors and officers are obligated to disclose any actual, potential, or perceived conflicts of interest and abstain from both discussion and voting on any issues that come before the Board where conflicts of interest may arise. The following are conflicts or disqualifications that prohibit a member from being eligible for election and/or from serving on the Board of Directors:

1. Conviction of a crime that is designated under federal and/or state law as a felony or of any crime involving dishonesty or false statement regardless of the punishment;

2. Relationship by marriage or by close kinship (i.e., child, parent, sibling) to a standing Director;

3. Serving as a current Director, officer, employee, contractor, or elected/appointed official of any public, governmental, or private utility that provides the same services as the Authority.

B. No individual member of the Board of Directors, officer, agent or employee of the Authority either for himself, or as agent for anyone else or as a stockholder or owner in any other legal entity, shall participate or benefit directly or indirectly in or from any sale, purchase, lease, contract, or other transaction entered into by the Authority. For the purposes of this Document, a direct or indirect benefit or participation shall mean a ""special private gain or loss." The Authority Board may rely upon an advisory opinion or determination of the potential conflict of interest by its attorney whether or not there would be a special private gain or loss, and such determination shall also be determinative of the ability of the

member of the Board of Directors, officer, agent or employee to vote under the provisions of this Document, or of the conduct of such member, officer, agent or employee under this Document.

C. When a conflict or the potential for a conflict exists, Directors shall abstain from participation in discussion and voting. If in doubt, the Director shall consult with counsel to determine if abstaining is required. A Director shall not abstain from voting without declaring on the record the reason for not voting.

SECTION 2.04. MEETINGS NOTICE. The Board of Directors will adopt by resolution a policy in accordance with the New Mexico Open Meetings Act setting forth requirements for notice, posting location of meetings, preparation of agendas and rules regarding attendance at scheduled Board meetings.

SECTION 2.05. FINANCIAL REPORTS, BUDGETS, AND AUDITS. The Authority shall prepare and submit financial reports, budgets, and audits as required by the New Mexico Department of Finance and Administration Finance and Budget Bureau and in accordance with New Mexico law.

SECTION 2.06. AUTHORITY POWERS, FUNCTIONS, AND DUTIES

A. The Authority shall have all powers established in NMSA 1978 73-26-1, including the authority:

1. to acquire, construct, own, lease, operate, operate and maintain infrastructure for domestic, commercial, or industrial uses, road improvements for the protection of the Authority's infrastructure, and renewable energy projects, including but not limited to: water conservation and reclamation, source water protection, drainage, flood control, solid waste planning and zoning and any expansion of the Authority Facilities; and shall have the exclusive control and jurisdiction thereof;

2. to enter into and execute agreements and contracts with other entities for the provision of services, and to adopt all proceedings and perform all acts determined by the Board of Directors as necessary or advisable to carry out the purposes of this Document. The President shall execute contracts and other documents on behalf of the Board of Directors, or they may be executed by another officer or employee of the Authority as authorized by the Board of Directors at a duly noticed meeting;

3. to establish and collect rates, fees, assessments, and charges for the use of the Authority's facilities or services;

4. to assess a standby charge for the privilege of connection into the Authority's service at some future date if a proposed new member's property line is within three hundred feet (300 ft.) of the Authority's service lines and the property is located within the boundaries of the Authority.

5. if and when authorized, the Authority may fix, levy, and collect rates, fees and other charges (including Project development charges or impact fees) from persons or other entities who own properties located within the Authority's geographic boundaries or jurisdiction, for the use of the services, facilities and product of the Authority, or to pay the operating or financing costs of the Authority's facilities available to potential users. In such circumstance the Authority may fix and collect charges for making connections to the Authority's facilities and for the shutting off, after notice, of unauthorized connections, illegal connections, or connections for which charges are delinquent in payment. The Authority may place a lien on property for unpaid assessments, charges, and fees and may enforce the lien to the extent provided by law;

6. to contract, hire, and retain the services of consultants, agents and employees and other experts as the Board of Directors may require or

deem necessary to fulfill the functions and responsibilities of the Authority;

7. to acquire lands, easements, permits, water rights, real and personal property, as the Authority may deem necessary and appropriate in connection with the acquisition, construction, ownership, expansion, improvement, operation, and maintenance of the Authority's facilities; and hold and dispose of all real and personal property under its control, exercise the power of eminent domain as provided by law;

8. to grant or lease easements, and personal and/or real property interests to and from other utility providers;

9. to adopt by resolution standards, Policies and Procedures, design, specifications, and procedures for project construction, connections, and line expansions.

10. to adopt policies and procedures which govern all new connections to the Authority Facilities, which shall provide for the following from any new customer/member:

    a. an easement dedicated to the Authority for lands needed to serve the new connection; and
    b. surety bonds or other guarantees from any user to assure completion of construction in compliance with any standards and Policies and Procedures adopted by the Authority.

11. to exercise exclusive jurisdiction, control, and supervision over the Authority's facilities, and to make and enforce such Policies and Procedures for the maintenance, management, and operation of the Authority as may be, in the judgment of the Board of Directors, necessary or desirable for the efficient operation of the Authority's facilities in accomplishing the purposes of this Document;

12. subject to such provisions and restrictions as may be set forth in any financing documents, to enter into contracts with the State, a municipality, county, or other political subdivision, private corporation, partnership, limited liability company, association, or individual person providing for, or relating to the services and any other matters relevant to or necessary to effect the purposes of this Document;

13. to receive and accept from any federal or state agency, grants or loans for, or in aid of the planning, design, construction, reconstruction, improvements, or financing of the Authority's facilities, and any additions or extensions thereto, and to receive and accept aid or contributions or loans from any other source of either money, labor, or other things of value, to be held, used, and applied for the purpose for which such grants, contributions, or loans were intended;

14. to purchase, assume the ownership, lease, operate, manage and/or control any publicly or privately owned facility of similar or comparable nature to that of the Authority and which might be located in close proximity to the geographic boundary or jurisdiction of the Authority to include the assumption or payment of the financial liabilities associated with such related facilities;

15. the ability to enter into contracts with other entities and impose special assessments, rates, fees or charges for services provided;

16. to appoint members to community advisory committees to assist the Board of Directors in the exercise and performance of its powers and duties provided in this Charter Document;

17. to promote community participation and leadership development within the scope of this Document;

18. to sue and be sued in the name of the Authority, and participate as a party in any civil, administrative, or other legal action;

19. subject to such provisions and restrictions as may be set forth in any financing document, to sell or otherwise dispose of the Authority's facilities, or any portion thereof, upon such terms as the Board of Directors deems appropriate, and to enter into acquisition or other agreements to effect such dispositions;

20. to acquire by purchase, gift, or otherwise, and to dispose of real or personal property;

21. to make and execute contracts or other instruments necessary or convenient to the exercise of its powers;

22. to engage and or employ persons or legal entities and provide such deferred compensation, retirement benefits, or other benefits or programs, as the Board of Directors deems appropriate;

23. to maintain an office or offices at such place or places as needed to serve the needs of the communities comprising the Authority.

24. to hold, control, and acquire by donation, purchase or eminent domain, or dispose of, any public easements, dedications to public use, platted land for public purposes, or any reservations for those purposes authorized by law or this Document and to make use of such easements, dedications, and land for any of the purposes authorized by law;

25. to lease to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature to carry out any of the purposes authorized by law or this Document;

26. to borrow money and issue bonds, certificates, warrants, notes, obligations, or other evidence of indebtedness;

27. to apply for, accept, and receive grants, loans, and subsidies from any governmental, non-governmental or private entity for the acquisition, construction, operation, and maintenance of the Authority's facilities;

28. to pledge real property, land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interests and the execution of Promissory Notes and Mortgages to secure any and all indebtedness of the Authority;

29. to the extent allowed by law and to the extent required to effectuate the purposes of this Document, to exercise all privileges, immunities, and exemptions accorded under the provisions of the constitution and laws of the New Mexico;

30. to invest its moneys in such investments as directed by the Board of Directors in accordance with the law, consistent in all instances with the applicable provisions of any financing documents;

31. to purchase such insurance as it deems appropriate; and

32. to do all acts and to exercise all powers necessary, convenient, incidental, implied, or proper, both within and outside of the service area limitations of the Authority, in connection with any of the powers, duties, obligations or purposes authorized by this Document or by law; and exercising all rights and powers necessary, incidental, or implied from the specific powers granted in this section.

B. The Board of Directors shall hire a person to act as the General Manager of the Authority having such official title, functions, duties, and the powers as the

Board of Directors deem necessary. The General Manager is the only employee of the Authority that shall be supervised by and shall answer to the Board of Directors. The General Manager's responsibility is to take all actions to carry out the operation and management of all functions of the Authority.

C. In exercising the powers conferred by this Document, the Board of Directors shall act by resolution or motion made and adopted at duly noted and publicly held meetings in conformance with applicable law.

D. Nothing herein shall be construed to grant the Authority the jurisdiction to regulate the services or rates of any investor-owned utility or any governmental utility established or operating within the established boundaries of the Authority.

SECTION 2.07. ADOPTION OF RATES, FEES, ASSESSMENT AND CHARGES.

A. The Board of Directors shall authorize and adopt, by resolution, policies setting forth schedules of rates, fees, assessments, or other charges for the use of the services, facilities, and products of the Authority required to be paid by each user connected to or provided service by the Authority.

B. Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of operating, managing, expanding, improving and maintaining the Authority Facilities, including renewal and replacement reserves for such Authority Facilities, to pay costs and expenses provided for by law, financing documents, and to pay the principal and interest on the indebtedness as the same shall become due and reserves therefore and to provide a reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in this Document, such rates, fees and charges shall always be sufficient to comply fully with any operating expenses and reserve set asides contained in the financing documents.

C. The assessments, rates, fees or charges adopted shall be extended to cover any additional users thereafter served which shall fall within the same category, without the necessity of any further meeting or notice.

D. The Board of Directors may appoint the General Manager, a member of the Board of Directors, committee member(s), or special appointee(s) to conduct a rate study as needed and to conduct public meetings on its behalf relating to rates, fees, charges and assessments. It is, however, always the Board of Director's duty to set, adopt, and revise rates, fees, charges, and assessments.

SECTION 2.08. UNPAID FEES AND OTHER CHARGES SHALL CONSTITUTE A LIEN ON PROPERTY OWNER'S PROPERTY.

A. In the event that the fees, rates, assessments, and other charges, including impact fees, for the use of the services, facilities, and products of the Authority shall not be paid when due, any unpaid balance and all accrued interest shall be a lien on any parcel or property to which the services were provided, as provided by law.

B In the event that any such fees, rates, assessments or charges, including impact fees, shall not be paid when due and shall be in default for more than sixty (60) days, the unpaid balance and any accrued interest accrued, together with attorney's fees and costs, may be recovered by the Authority in a civil action.

SECTION 2.09. REGIONAL WATER SUPPLY PLANNING

A. The Authority and each community served by the Authority shall aspire and expect to cooperate with each other over time and advance to a regional water supply plan and to avoid competition for water supplies. This Document provides a means and ability to achieve such objectives.

B. The Authority shall develop and periodically update a regional water supply plan encompassing the jurisdictions of the Authority, which plan may include, but is not limited to, consolidated water demands, water supply resources and facilities, individual water supply projects, regional ground and surface water and distribution system modeling, and other information to facilitate Authority regional planning for water supplies. The Authority's Forty Year Water Plan should be reviewed and/or updated at a minimum once every five years.

C. At least annually during the development of its Infrastructure Capital Improvement Plan, the Authority shall seek proposals and recommendations for new infrastructure Projects, and or modifications, additions or deletions to existing Projects. The Authority encourages its members throughout the year to submit a proposal or recommendation for a new Project to the Authority for its consideration.

SECTION 2.10. MERGER.

A. By a resolution passed by a majority of the Board of Directors, the Authority may allow other utilities, including mutual domestics, private and public utilities and special districts that are interested in becoming part of the Authority to merge into the Authority.

B. A merger process may be initiated by a petition to the Authority Board of Directors from the merging entity expressing the desire to become part of the Authority. As part of the merger plan, the merging entity must present a dissolution plan which shall include a dissolution time frame. The Authority will use the time frame to determine if redistricting may be needed in order to allow the merger of the petitioning entity.

SECTION 2.11. DISTRICTING. The Authority shall consist initially of five voting districts. The initial and any subsequent redistricting shall be conducted in accordance with the Local Election Act in such manner that all districts shall have equal member representation. A redistricting process shall be initiated as required under the Local

Elections Act set forth in NMSA 1978, §§ 1-22-1 et seq. (2018) or when a change in the number of voting members within any of the existing districts due to natural growth or the addition of new members due to a merger, results in unequal representation between any of the districts by more than 20%. At no point in time shall the Authority have more than seven (7) voting districts.

SECTION 2.12. GOVERNANCE DOCUMENT AMENDMENTS. Amendments to this document may be drafted by the General Manager or designee if directed by the Board, or may be proposed by a Review Committee created by a majority vote of the Board of Directors. The Committee will be established to examine the provisions of the Document and recommend amendments they propose are needed. The Committee shall submit recommendations to the Board in an official format as determined by the Board. The Authority shall hold a public hearing concerning amendment of the Governance Document; however, no public hearing shall be held if the amendment is solely for the purpose of complying with the applicable statutes. Proposed amendments may be adopted by the Board of Directors by Resolution. If the provisions of this document are superseded by statute, the Board of Directors may, by resolution, amend this Governance Document for the purpose of compliance with the applicable statute.

SECTION 2.13. SEVERABILITY. If any section, subsection, clause, phrase, or portion of this Governance Document is determined by a court of law to be illegal or invalid, such holding shall not affect the validity of the remaining provisions of this Document.

This Governance Document was duly adopted by the Board of Directors on Wednesday, October 20, 2010, 6:30 p.m. and amended by member vote during the Lower Rio Grande Public Water Works Authority regular elections conducted by the Doña Ana County Clerk's Office on Tuesday, April 2, 2013, by Resolution Number FY2020-12 adopted by the Board of Directors at a regular monthly meeting at 9:30 a.m. on Wednesday, October 16, 2019 at the LRGPWWA East Mesa Office, and by Resolution Number FY2021-18 adopted by the Board of Directors at a regular monthly meeting at 9:30 a.m. on Wednesday, May 19, 2021 via Zoom online meeting platform following a Public Hearing at 6:00 p.m. on Tuesday, May 4, 2021 via Zoom.

Esperanza Holguin, Chairperson

Seal:

Joe Evaro, Secretary