

**EMPLOYMENT AGREEMENT
For COUNTY ATTORNEY**

This EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the **INCORPORATED COUNTY OF LOS ALAMOS** (“Employer” or “County”) and **JOSEPH “ALVIN” LEAPHART** (“Employee”); (Employee and Employer collectively being referred to as the “parties”) to be effective for all purposes January 1, 2017.

Section 1. Duties and Responsibilities

1.1 Employee shall serve and perform the duties of the County Attorney upon the terms and conditions of this Agreement. As such, he shall be responsible for all County legal matters placed in his charge by Council of the Incorporated County of Los Alamos (“Council”), state statute, the Charter of the Incorporated County of Los Alamos, the County Code, County Ordinance(s) and other duties and functions Council shall from time to time assign to him.

Section 2. Performance Goals

2.1 Council shall be the supervisor of Employee.

2.2 Council and Employee shall, within 90 days of the effective date of this Agreement, define Employee’s goals and performance objectives. Those goals and performance objectives shall be updated annually at the time of the Employee’s performance evaluation.

Section 3. Annual Performance and Compensation Review

3.1 Council shall review and evaluate the performance of Employee at or around the beginning of each fiscal year and at least once annually. Said review and evaluation shall reflect Employee’s attainment of the goals and performance objectives established under 2.2, above, or the attainment of goals and objectives set for the office in the preceding year if new goals and objectives were not developed. The evaluation shall take into consideration the relative priorities among those goals and objectives. At the time of the performance evaluation, the Council Chair shall provide Employee with a written summary of the evaluation findings of Council and provide an adequate opportunity for Employee to discuss his performance evaluation with Council.

3.2 Concurrent with the performance evaluation at or around the beginning of Fiscal Year 2018 and annually thereafter, if Council determines that Employee’s work performance is satisfactory, it shall review Employee’s compensation and increase the base salary in accordance with the then-current County pay plan without Amendment to this Employment Agreement. Any increase in the base salary or other benefits which exceeds the increase otherwise applicable to other similarly situated employees under the County’s pay plan then in effect shall be approved only by Amendment to this Employment Agreement. However, Employer is not required to increase Employee’s compensation at any time or for any reason. Employer shall not

reduce the base salary, compensation or other benefits of Employee under this Agreement except to the degree such a reduction is applied generally to the department heads of Employer.

Section 4. Compensation, Leave and Benefits

4.1 Employee shall be paid an annual base salary of One Hundred Fifty Thousand Dollars (\$150,000.00), payable in the same installments as other employees of Employer are paid. The salary payments shall be subject to federal and state income tax withholding, and all withholding authorized by Employee or required by law. Employee shall be an employee of Employer and entitled to all benefits, at his option, as are available to other employees of Employer, as well as the benefits specified herein, but this shall not entitle Employee to duplication of any benefit.

4.2 Employee shall accrue annual leave at the highest rate provided to any other non-public safety employee of Employer. Such leave shall be governed by the Employer's Personnel Rules and Regulations. However, during the first year of employment, Employee will be allowed to use un-accrued annual leave not to exceed the accrued leave he would obtain within the first year.

4.3 Employee shall accrue sick leave at the rate provided to any other non-public safety employee of Employer. Such leave shall be governed by the Employer's Personnel Rules and Regulations.

4.4 Employee's position is a professional position requiring time commitments beyond a regular forty-hour work week. To fulfill the needs of the position, Employee may work more than eight hours in a day and more than five days in a week. Employee acknowledges that the position may require such time commitments. Employer, in recognition of the time demands of the position, agrees that Employee may set his own working hours, so long as he is reasonably available to fulfill his job requirements. As Employee is responsible for setting his own working hours, he may be absent during regular working hours from time to time. Such absences shall not require Employee to use annual leave. Such absences shall not exceed eight hours in any week unless prior notice is given to the Council Chair. Employee shall not be required to give notice to the Chair of absence of less than eight hours per week. During such absences, Employee shall remain in pay status and entitled to all pay and benefits as well as accrual of annual leave and sick leave.

4.5 Employee shall not accrue compensatory time and shall not be entitled to compensation or benefits by reason thereof.

4.6 Employer shall provide for health, vision, dental and comprehensive medical insurance and other benefits for Employee and his dependents equal to and to the extent that such benefits are provided to all other employees of Employer. Employer and Employee shall share payment of all premiums for Employee and Employee's dependents in the same proportion premiums are shared between Employer and other employees.

4.7 Employee shall continue to be eligible for all other benefits not specifically stated in this Agreement but which are afforded to other full-time County employees. If applicable, Employer agrees that the payment of all benefits shall be made to Employee or his heirs according to the provisions of existing plan documents or benefit contracts in effect for all other full time County employees.

4.8 Employee shall be entitled to use of an Employer-furnished vehicle in accordance with Employer's policies or if Employee's personal vehicle is used for business use, Employee shall be entitled to mileage reimbursement in accordance with Employer's Travel Rules and Regulations.

Section 5. Retirement

5.1 Employee is eligible to participate in Employer's retirement and pension plans, including the Public Employee Retirement Association ("PERA") plan. Employer shall pay contributions into such plans on Employee's behalf, in accordance with the provisions of the plans and the policies of Employer.

5.2 In addition to Employer's contributions to PERA described above, Employer agrees to contribute an additional amount equal to five percent (5%) of Employee's annual base salary on Employee's behalf to PERA, for a total Employer contribution of 14.15% of Employee's annual base salary. Employee's required contribution to PERA shall be reduced by an amount equal to five percent (5%) for a total Employee contribution of 8.15% of Employee's annual base salary. The provisions of this paragraph are subject to the rules governing PERA and are subject to change to assure conformance with PERA rules or in the event the contributions required by PERA change.

5.3 The ownership of all contributions made by the Employee to any of the Employer's retirement or pension plans, such additional amounts made by Employer to PERA on Employee's behalf under paragraph 5.2 shall immediately vest in Employee subject to the rules and regulations of that plan.

Section 6. Termination of Employment

6.1 The parties may mutually terminate this Agreement in writing at any time and on any terms as they shall agree. In the event that the employee terminates his employment prior to twelve months after the effective date, he shall reimburse the County for the additional 5% PERA contribution referenced in paragraph 5.2.

6.2 Employee may terminate this Agreement at any time by providing at least sixty (60) calendar days notice, in writing to the Council Chair. Should Employee terminate this Agreement in this manner, he shall not be entitled to any compensation or payment other than the base salary (subject to all federal and state income tax withholding and all withholding required by law or authorized by Employee), retirement or pension plan contributions, and all other benefits accrued through date of termination. The date of termination shall be sixty (60) calendar days from the date notice is received, or such other date as the parties agree.

6.3 Council may terminate this Agreement unilaterally, without cause, at any time and for any reason. Such termination must be approved by a majority of Council. The date of termination shall be the date of the vote of Council or such date set by Council, whichever is later. If Council terminates this Agreement under this paragraph 6.3, Employee shall be entitled to the base salary, retirement and pension plan contributions and benefits earned through the date of termination and severance pay of an amount equal to four (4) months of base salary then in effect, which shall be subject to all federal and state income tax withholding and all withholding required by law or authorized by Employee. In addition, at any time Council terminates this agreement pursuant to this paragraph, Employee shall be paid an amount equal to the premiums required to maintain the Employer provided insurances under COBRA for a period of three (3) months. Employer shall not be required to make any retirement contributions or payments on any severance paid under this paragraph 6.3. Acceptance of this payment by Employee shall be deemed acceptance of liquidated damages and a release, indemnification and a promise to hold harmless the Employer, Council and its employees from any claim by Employee arising under this Agreement or arising from or during his employment with Employer.

6.4 Council may terminate this Agreement for cause. The date of termination shall be the date of delivery of the written termination notice. For purposes of this Agreement, "cause" shall include but not be limited to (a) embezzlement, theft, larceny, material fraud, or other acts of dishonesty; (b) material violation by Employee of any of his obligations under this Agreement, after notice and opportunity to cure given at least once in any 12-month period; (c) conviction of or entrance of a plea of guilty or nolo contendere to a felony or other crime which has or may have a material adverse affect on Employee's ability to carry out his duties under this Agreement or upon the reputation of the Employer; (d) conduct involving moral turpitude; (e) gross insubordination or repeated insubordination after written warning by Council through its Chair; or (f) material and continuing failure by Employee to perform the duties described in 1.1 above, in a quality and professional manner for at least sixty (60) calendar days after receipt of written warning from Council. Upon termination for cause, Employer's sole and exclusive obligation shall be to pay to or on behalf of Employee his base salary (subject to all federal and state income tax withholding and all withholding required by law or authorized by Employee), retirement and pension plan contributions and benefits earned through the date of termination and Employee shall not be entitled to any further compensation after the date of termination.

6.5 Death of Employee shall terminate this Agreement. The date of termination is the date of Employee's death. Upon the death of Employee, his estate and/or beneficiaries shall be entitled to all benefits accrued and payments due to an employee of Employer as well as Employee's base salary (subject to all federal and state income tax withholding and all withholding required by law or authorized by Employee), retirement and pension plan contributions and benefits earned through date of death, but this Agreement shall not require Employer to pay any additional sums and no other obligation to Employee, his heirs, representatives or assigns is created by this Agreement. This paragraph is not intended, and shall not be construed, to limit Employer's liability, if any, under the New Mexico Workers' Compensation Act.

6.6 If Employee is incapacitated for more than thirty (30) calendar days so that he cannot fulfill his responsibilities hereunder, Employer may terminate this Agreement with written notice to Employee. Employee shall be entitled to all benefits available to an employee of Employer under current law or Employer's then current policies or rules and regulations concerning disability. Upon such termination Employer shall pay to Employee all accrued base salary (subject to all federal and state income tax withholding and all withholding required by law or authorized by Employee), retirement and pension plan contributions and benefits earned through date of termination. This paragraph is not intended, and shall not be construed, to limit Employer's responsibility and liability, if any, under the New Mexico Workers' Compensation Act or American with Disabilities Act.

For purposes of Section 6.6, Employee shall be incapacitated so that he cannot fulfill his responsibilities hereunder if he (1) has been declared legally incompetent by a Final Court Decree (the date of such decree being deemed to be that date on which the disability occurred), (2) has received disability insurance benefits from any disability income insurance policy maintained by the Employer for a period of three consecutive months (the date of disability being deemed to be that date on which the third consecutive payment is received), or (3) has been found by a licensed New Mexico physician to be disabled pursuant to a Disability Determination. A "Disability Determination" means a finding that Employee, because of a medically determinable disease, injury, or other mental or physical disability, is unable to perform substantially all of his regular duties for the Employer and that such disability is determined or reasonably expected to last at least ninety (90) calendar days. The date of any physician's written opinion conclusively finding Employee to be disabled is the date on which Employee shall be deemed to be incapacitated.

6.7 Employee may treat this Agreement as terminated under paragraph 6.3, above, if (1) Employer reduces Employee's base salary or other benefits in a greater percentage than is generally reduced for Employer's department heads at that time or (2) Employer is in violation of any term of this Agreement. Provided, however, that Employee must first give written notice to Employer of his intention to treat his employment as terminated, state with specificity the basis on which he deems his employment terminated and gives the Employer thirty (30) calendar days in which to cure the action or inaction upon which he bases his termination. If the action or inaction is not cured within thirty (30) calendar days of receipt of the notice then Employee's termination shall be deemed made 30 days after the receipt of notice by Employer and Employee shall be entitled to all payments specified under paragraph 6.3 above. If the action or inaction is one which cannot be reasonably cured within thirty (30) calendar days of receipt of the notice and Employer provides such notice to Employee, then this Agreement shall be terminated and the Employee shall be entitled to all payments specified under paragraph 6.3 above. The effective date of such termination (when a reasonable cure cannot be made within the time limit) shall be the date of Employee's receipt of such notice of Employer. If the action or inaction is cured, Employee shall not be entitled to treat his employment as terminated.

6.8 Before Employer terminates this Agreement for any reason other than death or disability of Employee, the Council Chair shall request Employee's resignation. If Employee does not provide a signed, written resignation to the Chair within five (5) days of the request (not counting the day of the request) then Employer may proceed to terminate Employee's

employment hereunder. If the Employee presents his signed, written resignation statement to the Chair within five (5) days of the request (not counting the day of the request) then the employment of Employee shall be deemed terminated under paragraph 6.3 above and Employee shall be entitled to all payments specified therein as well as bound by the restrictions contained therein. The effective date of termination shall be the date the written resignation statement is delivered to the Chair.

Section 7. Suspension from Employment

7.1 Employer may suspend Employee with full pay and benefits for cause, as cause is defined by New Mexico law, and for such length of time as Council deems appropriate if a majority of all of the members of Council approves the suspension and length of suspension after a Council meeting at which the suspension is considered; provided that Employee is given written notice at least ten (10) calendar days prior to the meeting which notice must set forth the basis for the suspension as well as the length of suspension. Additionally, prior to the vote of Council, Employee shall be afforded an opportunity to present to Council all information he deems relevant to its decision. The presentation by Employee, if any, shall be made at a closed meeting of Council to protect Employee's liberty and property interests arising from his employment hereunder.

Section 8. Business Expenses and Professional Development

8.1 Employee shall be reimbursed for travel and out-of-pocket business expenses in accordance with the Employer's policies on such reimbursement.

8.2 Employee shall obtain a Public Employee Limited License to Practice Law from the Supreme Court of New Mexico pursuant to Rule 15-301 of the Rules Governing Admission to the Bar within 90 days of the effective date of this agreement, and shall obtain and thereafter maintain full membership in the State Bar of New Mexico prior to the expiration of the Public Employee Limited License to Practice Law. Employer agrees to reimburse Employee for costs reasonably related to obtaining a Public Employee Limited License to Practice Law from the Supreme Court of New Mexico pursuant to Rule 15-301, all costs reasonably related to obtaining full membership in the State Bar of New Mexico, and all costs reasonably related to obtaining admission to practice in the state and federal courts in New Mexico. In the event that the employee terminates his employment prior to thirty-six months after the effective date, employee shall reimburse the County for the above referenced reimbursed costs.

8.3 Employee, as part of his duties as County Attorney, shall annually present a budget for the County Attorney's Office, consistent with budget policy and guidelines developed for other departments of the County. Employer understands that the proposed budget shall include funds to pay for the New Mexico State Bar fees and travel and business expenses of Employee for professional and official travel, meetings and social occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions. These shall include but not be limited to national, regional, state and local groups and committees on which Employee serves as a member.

8.4 Employee shall also include in the County Attorney's Office budget proposal an amount to pay for travel and attendance and related business expenses for Employee's attendance at short courses, institutes and seminars that are necessary or desirable for his professional development.

8.5 Although Employer recognizes that the submitted budget of the County Attorney's Office shall include funds sufficient to pay for such professional development, business travel and related expenses, Employer is not obligated to approve the budget as submitted or to approve any such travel or expense except as set forth in the policy of the Employer.

Section 9. Reimbursement of Relocation Expenses

9.1 Employee shall be reimbursed for moving expenses incurred in relocating to the County in accordance with the Los Alamos County Administrative Procedures Guideline "Reimbursement of Relocation Expenses for Designated County Employees."

Section 10. Outside Employment

10.1 This position of County Attorney is a full-time position. Employee shall provide his best efforts and dedicate himself full time to the completion of job responsibilities. To this end, Employee shall not accept any other contemporaneous employment involving more than ten (10) hours per week without the prior consent of Council. Occasional teaching, writing, consulting performed on Employee's time off shall not violate the terms of this paragraph, and shall not require the prior consent of Council. Employee shall promptly disclose to Employer any outside employment for which he is paid.

10.2 Employee shall not spend more than ten (10) hours per week in teaching, writing, consulting, or other non-employer connected business without the prior approval of Council, which consent shall not be unreasonably withheld.

Section 11. Residency Requirement

11.1 Employee shall establish residence within the Incorporated County of Los Alamos within ninety (90) days after the effective date of this Agreement and shall maintain residence in County so long as this Agreement remains in force and effect.

Section 12. Insurance Coverage

12.1 Employee shall be entitled to all rights of coverage and defense as Employer's employee under the New Mexico Tort Claims Act 41-4-1 *et. seq.* NMSA 1978 and by liability insurance or self-insurance maintained by the Employer for the benefit of its employees.

Section 13. Bonding

13.1 Employer shall bear the full cost of any fidelity or other bond(s) required of Employee under any law or ordinance. Employee knows of no reason why he might not qualify for any such bond.

Section 14. Notices

14.1 Notice under this Agreement shall be deemed given on the day personally delivered or three (3) days after deposit in the United States Mail, first class postage pre-paid, to a party at the address set forth below:

EMPLOYER: Chairman, Los Alamos County Council
1000 Central Avenue, Suite 350
Los Alamos, New Mexico 87544

EMPLOYEE: Joseph "Alvin" Leaphart, County Attorney
P.O. Box 446
Statesboro, GA 30459

An address may be changed by notification to the other party in writing delivered as specified for notices hereunder. Unless such notice is made, a party is entitled to rely on the address stated above.

Section 15. General Provisions

15.1 Integration. This agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement.

15.2 Severability. The invalidity or partial invalidity of any provision, paragraph, sentence or clause in this Agreement shall not affect the validity of the remainder of the Agreement. In the event that any part of this Agreement is held to be invalid, the remaining provisions shall continue in full force and effect.

15.3 To the extent that the terms and conditions of this Agreement conflict with the personnel policies and procedures of Employer, the terms and conditions of this Agreement shall control.

15.4 Each party hereto has been advised of its right to representation by counsel of its own choosing.

15.5 All references to "days" herein shall be business days unless otherwise specified.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and executed in its behalf by its Council Chair, and duly attested to by its County Clerk, and Employee has signed and executed this Agreement to be effective the day and year first above written.

**INCORPORATED COUNTY OF LOS ALAMOS,
NEW MEXICO**

Attest:

**Sharon Stover
Los Alamos County Clerk**

By: _____
**Rick Reiss
Council Chair**

Date: _____

EMPLOYEE



Joseph "Alvin" Leaphart

Date: 10/19/16