



County of Los Alamos

Los Alamos, NM 87544
www.losalamosnm.us

Agenda - Final County Council - Regular Session

*David Izraelevitz, Council Chair; Susan O'Leary, Council Vice
Chair; Christine Chandler, James Chrobocinski, Antonio
Maggiore, Rick Reiss, and Pete Sheehey, Councilors*

Tuesday, November 14, 2017

6:00 PM

Council Chambers - 1000 Central Avenue

TELEVISED

1. **OPENING/ROLL CALL**

2. **PLEDGE OF ALLEGIANCE**

- A. [9872-17](#) Cub Scout Pack 27 will be Leading the Pledge of Allegiance

Presenters: County Council - Regular Session

3. **STATEMENT REGARDING CLOSED SESSION**

November 14, 2017 Closed Session Motion

4. **PUBLIC COMMENT**

*This section of the agenda is reserved for comments from the public
on items that are not otherwise included in this agenda.*

5. **APPROVAL OF AGENDA**

6. **PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS**

- A. [10026-17](#) Proclamation declaring Saturday, Nov. 25, 2017 as "Small Business Saturday" in Los Alamos County (accepted by Patrick Sullivan, Executive Director of Los Alamos Commerce & Development Corporation, and Kristy Ortega, Director of United Way Northern New Mexico)

Presenters: County Council - Regular Session

- B. [10083-17](#) Proclamation declaring the month of November 2017 as the "35th Anniversary of the Los Alamos Youth Activity Center" (accepted by Jordan Redmond, director, and representatives of the YAC)

Presenters: County Council - Regular Session

7. **PUBLIC COMMENT FOR ITEMS ON CONSENT AGENDA**

8 CONSENT AGENDA

The following items are presented for Council approval under a single motion unless any item is withdrawn by a Councilor for further Council consideration in the agenda section entitled "Business."

November 14, 2017 Consent Motion:

Consent Motion -

I move that Council approve the items on the Consent Agenda as presented and that the motions in the staff reports be included for the record; or,

I move that Council approve the items on the Consent Agenda and that the motions contained in the staff reports, as amended be included for the record.

- A. [10009-17](#) Revision to Los Alamos County Indigent Health Care Policy
- Presenters:** Brian Brogan, Community Services Director and Kim Gabaldon, Social Services Division Manager
- Attachments:** [A - Proposed HCAP Policy](#)
[B - Current HCAP Policy Adopted 2016112](#)
- B. [10021-17](#) Approval of a Budget Revision No. 2018-08 and Establish a Project Budget in the Amount of \$320,000 Associated with a New Mexico Department of Transportation (NMDOT) Cooperative Project Agreement for Design of the Canyon Rim Trail Underpass Project.
- Presenters:** Philo Shelton, Public Works Director and Eric Martinez, County Engineer
- Attachments:** [A - Budget Revision 2018-08 Canyon Rim Trail Underpass](#)
- C. [10092-17](#) County Council Minutes for October 24, 2017
- Presenters:** Naomi Maestas
- Attachments:** [Draft County Council Minutes for October 24 2017](#)
- D. [MOU016-17](#) Memorandum of Understanding (MOU) Entered into by and Between the Incorporated County of Los Alamos and the North Central Regional Transit District (NCRTD) for FY2018, Providing the NCRTD with \$350,000.
- Presenters:** Philo Shelton, Public Works Director

Attachments: [A - Memorandum of Understanding](#)
[B - Letter Requesting Funding](#)
[C - NCRTD Resolution No. 2017-22](#)

9. PUBLIC HEARING(S)

- A. [CO0510-17b](#) Incorporated County of Los Alamos Code Ordinance No. 02-280; An Ordinance to Amend Section 40-64 of the Los Alamos County Code of Ordinances to Provide Authority to Council and Board of Public Utilities to Transfer Revenues or Funds of a System to Another System.

Presenters: Tim Glasco, Utilities Manager

Attachments: [A - Incorporated County of Los Alamos Code Ordinance No. 02-280](#)
[B - BPU Endorsement of Code Ordinance 02-280](#)
[C - Notice of Publication](#)

- B. [OR0784-17](#) Incorporated County Of Los Alamos Ordinance No.673, An Ordinance Authorizing The Sale Of Certain County-Owned Real Property within Site A-13-2 and A-12 To LAH Investors, LLC.

Presenters: Joanie Ahlers, Economic Development Administrator

Attachments: [A - Ordinance No. 673.pdf](#)
[B - Publication Notice of Ordinance No. 673](#)
[C - Project Concept](#)

10. BUSINESS

- A. [9631-17](#) Approval of Budget Revision 2018-03 in the Amount of \$50,000 for Support of the City of Santa Fe to Help Develop Regional Airline Service.

Presenters: Harry Burgess, County Manager

Attachments: [A - Budget Revision 2018-03 City of Santa Fe Regional Airline Service](#)

11. COUNCIL BUSINESS

- A. *Appointments*
- B. *Board, Commission and Committee Liaison Reports*
- C. *County Manager's Report*

- D. Council Chair Report***
- E. General Council Business***
- F. Approval of Councilor Expenses***
- G. Preview of Upcoming Agenda Items***
- 12. COUNCILOR COMMENTS**
- 13. PUBLIC COMMENT**
- 14. ADJOURNMENT**

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the County Human Resources Division at 662-8040 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the personnel in the Office of the County Manager at 663-1750 if a summary or other type of accessible format is needed.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: A.

Index (Council Goals):

Presenters: County Council - Regular Session

Legislative File: 9872-17

Title

Cub Scout Pack 27 will be Leading the Pledge of Allegiance



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.:

Index (Council Goals):

Presenters:

Title

November 14, 2017 Closed Session Motion

Recommended Action

"I move that Council approve the following statement for inclusion in the minutes:

"The matters discussed in the closed session held on November 14, 2017 that began at 5:00 p.m. were limited only to those topics specified in the notice of the closed session, and no action was taken on any matter in that closed session."

This motion is fairly characterized as procedural, therefore only a hand vote is required rather than a full roll call vote.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: A.

Index (Council Goals):

Presenters: County Council - Regular Session

Legislative File: 10026-17

Title

Proclamation declaring Saturday, Nov. 25, 2017 as "Small Business Saturday" in Los Alamos County (accepted by Patrick Sullivan, Executive Director of Los Alamos Commerce & Development Corporation, and Kristy Ortega, Director of United Way Northern New Mexico)

Body

WHEREAS: Small, locally-owned businesses in Los Alamos are vital to our county's economic health; the U.S. Small Business Administration states that small businesses create 65% of net new local jobs; and

WHEREAS: Some economists state that with every \$100 spent at a small local retailer, \$68 will return to the community through taxes, payroll and donations to local schools and charities; and

WHEREAS: Public awareness of the contributions made by Los Alamos local businesses is key to sustaining a healthy business climate; and

WHEREAS: We are grateful to the small businesses of Los Alamos for their generous contributions to the quality of life that we all enjoy; and

WHEREAS: Businesses and non-profits can come together to make a difference in Los Alamos County; and

WHEREAS: We join American Express and the Los Alamos Chamber of Commerce in supporting America's locally-owned small businesses;

NOW, THEREFORE, on behalf of the Council of the Incorporated County of Los Alamos, I do hereby proclaim Saturday, November 25, 2017 as

"SMALL BUSINESS SATURDAY"

in Los Alamos County, and urge our citizens to support small businesses and merchants by shopping locally on this day, as well as throughout the year.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: B.

Index (Council Goals):

Presenters: County Council - Regular Session

Legislative File: 10083-17

Title

Proclamation declaring the month of November 2017 as the "35th Anniversary of the Los Alamos Youth Activity Center" (accepted by Jordan Redmond, director, and representatives of the YAC)

Body

WHEREAS: The Los Alamos Youth Activity Center is celebrating 35 years of service in Los Alamos County this month; and

WHEREAS: We wish to thank the Los Alamos Family Council for their partnership and skills in child development; both activity centers in Los Alamos and White Rock are staffed by helpful, energetic and compassionate staff who truly want to make a difference in the daily lives of the children who visit our facilities; and

WHEREAS: These free, supervised activities after school and throughout the summer offer a safe, drug-free and loving atmosphere for children from third grade through eighth grade; and

WHEREAS: Staff at the activity centers offer fun and creative ways for youth to develop character and self-discipline, while building up risk resiliency through a variety of programming options and events;

NOW, THEREFORE, on behalf of the Council of the Incorporated County of Los Alamos, I do recognize the month of November 2017 as the

"35th ANNIVERSARY OF THE LOS ALAMOS YOUTH ACTIVITY CENTER"

in Los Alamos County, and applaud the efforts of the staff and Los Alamos Family Council for assisting the County in providing these services to one of the youngest segments of our population. Through their hard work and dedication, we will continue making progress on our goals to help our youth thrive, as they become a part of the bright future that we envision for our community.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.:

Index (Council Goals):

Presenters:

Title

November 14, 2017 Consent Motion:

Recommended Action

I move that Council approve the items on the Consent Agenda as presented and that the motions in the staff reports be included for the record; or,

I move that Council approve the items on the Consent Agenda and that the motions contained in the staff reports, as amended be included for the record.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: A.

Index (Council Goals):

Presenters: Brian Brogan, Community Services Director and Kim Gabaldon, Social Services Division Manager

Legislative File: 10009-17

Title

Revision to Los Alamos County Indigent Health Care Policy

Recommended Action

I move that County Council, acting as the County Indigent Hospital and County Health Care Board, approve the revised Los Alamos County Indigent Health Care Policy as presented in Attachment A.

County Manager's Recommendation

The County Administrator recommends approval of the revised Los Alamos County Indigent Health Care Policy as presented in Attachment A.

Body

The purpose of this item is to request the County Indigent Hospital and County Health Care Board approve the revised Indigent Health Care Policy. The proposed changes are to provide clarification and to align with the language of the State law that allow the Indigent Care Fund to be used for cremation and burial, State required payment for Medicaid and the Safety Net Care Pool, and administrative expenses.

The proposed changes are summarized as follows:

Section VIII - Other Authorized Uses of Funds - this is a new section that incorporates and references State law that allows the Health Care Assistance fund to be used for cremation and burial, State required payment for Medicaid and the Safety Net Care Pool, and administrative expenses. The policy is more clear and complete with these items explicitly referenced.

In addition, throughout the entire document, numerous changes have been proposed to include the appropriate references to decedents, burial services, and other necessary related language.

Alternatives

If not approved, provisions for indigent cremation and burial will remain outside of Los Alamos County Indigent Health Care Policy.

Attachments

A - Proposed Revised County Indigent Hospital and County Indigent Health Care Board Policy
B - Current HCAP Policy



INCORPORATED COUNTY OF LOS ALAMOS

County Manager's Office
1000 Central Avenue, Suite 350
Los Alamos, NM 87544
Phone: 505-663-1750
Fax: 505-662-8079

HEALTH CARE ASSISTANCE PROGRAM (HCAP) POLICY

SECTION I. PURPOSE AND ADMINISTRATION.

A. PURPOSE.

1. This Health Care Assistance Program Policy (this "HCAP Policy") is established pursuant to the Indigent Hospital and County Health Care Act, Section 27-5-1 through 27-5-18, N.M.S.A. 1978, and pursuant to the Burial of Indigents Act, Sections 24-13-1 through 24-13-8, N.M.S.A. 1978 (the "Acts"). The general purpose of this HCAP Policy is to establish rules and regulations for the administration of the Los Alamos County Health Care Assistance Fund ("HCA Fund"). The HCA Fund consists of gross receipts tax revenues and was established by County ordinance for the purpose of disbursing financial payment to eligible HCAP Providers for health care and treatment of indigent County Patients and Indigent or Unclaimed County Decedents as determined eligible by the regulations and provisions of this HCAP Policy.
2. The HCA Fund exists to assist eligible indigent County Patients and Indigent or Unclaimed County Decedents who meet HCAP Policy criteria with payment of their health care expenses and/or cremation and burial expenses. The Fund is not intended to serve as health care insurance or a substitution for health care insurance, or a substitution for cremation, burial, or funeral arrangements, but is intended to be a payer of last resort.

B. ADMINISTRATION OF HCA FUND. The HCA Fund shall be administered by the County Health Care Assistance Board (the "Board"), formerly the County Indigent Hospital and Health Care Board, which shall be composed of the members of the County Council of the Incorporated County of Los Alamos and the Chair and Vice-Chair of the County Council shall be the Chair and Vice-Chair, respectively, of the Board. The Board shall have and exercise all powers and duties enumerated in the Acts at Section 27-5-6, N.M.S.A. 1978, and Sections 24-13-1 through 24-13-8, N.M.S.A. 1978.

C. HCA ADMINISTRATOR. The County Manager shall supervise an HCA Administrator to manage and administer the provisions and procedures of the HCAP Policy. The Board hereby delegates its power and authority under the Acts, as and to the extent authorized by the Acts, to the HCA Administrator. The HCA Administrator may utilize the facilities and the resources of all County Departments and seek the assistance of the New Mexico Human Services Department, as provided in Section 27-5-16, N.M.S.A. 1978. The HCA Administrator may further delegate specific tasks to other County staff, or to a contractor.

D. INTERPRETATION. This Policy shall be interpreted and construed to conform to the Acts. It shall be HCAP Policy that all persons who possess or are eligible for alternative means to cover their own health care and cremation or burial expenses shall do so. Indigent County Patients and Indigent or Unclaimed County Decedents must demonstrate an inability to provide for their own health care expenses or cremation or burial expenses as determined by the HCA Administrator in conformity with this Policy. The provisions of this HCAP Policy are intended to accomplish this objective and, therefore, the provisions shall be interpreted strictly.

The HCA Administrator shall assure that every reasonable effort has been made to demonstrate that the Indigent County Patient or Indigent or Unclaimed County Decedent is eligible for HCA Fund assistance. Interpretations of the provisions of this HCAP Policy shall be made by the HCA Administrator, subject to review by the County Manager and County Attorney.

- E. SUPPLEMENTS.** Supplements to this HCAP Policy that are consistent with the provisions of the Acts may be written by the HCA Administrator and included as a part of the HCAP Policy upon review and approval of the County Manager and County Attorney. Written supplements are not a revision or amendment to the HCAP Policy, but are written to provide interpretation or clarification of provisions, to provide illustration, examples, forms, other additional information or detail procedures deemed appropriate or necessary to administer the HCAP Policy.
- F. REVISIONS.** Amendments or revisions to the HCAP Policy will be effective only if adopted by the Board.
- G. EFFECTIVE DATE.** This HCAP Policy is adopted this 14th day of November, 2017, and is effective for all purposes December 1, 2017. This HCAP Policy supersedes and replaces in its entirety the Los Alamos Indigent Health Care Policy approved by the Board on November 29, 2016 and effective December 1, 2016.
- H. SEVERABILITY.** If any section, subsection, clause, phrase or portion of this HCAP Policy is, for any reason, held invalid or unconstitutional by any government agency or court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION II. INDIGENT COUNTY PATIENT, INDIGENT OR UNCLAIMED COUNTY DECEDENT ELIGIBILITY.

A. A Indigent County Patient or Indigent or Unclaimed County Decedent shall be eligible to receive benefits under this HCAP Policy **only** if:

- 1. RESIDENCY.** The Indigent County Patient has been a resident of Los Alamos County continuously and without interruption for a period of ninety (90) days prior to the date of service. The Indigent or Unclaimed County Decedent is a resident of Los Alamos County, or found and unclaimed in Los Alamos County at the time of death.
- 2. INCOME.** The Patient's household annual gross income, less any adjustments permitted under this HCAP Policy, equals or is less than 225% of federal poverty guidelines. An eligible income level as established by this HCAP Policy, including asset limitations, conclusively establishes that a Patient after consideration of that income and those assets, is not able to pay the cost of medical care, as well as other necessities of life for himself and his dependents; and
- 3. ASSETS.** The Patient's family shall have no more than Ten Thousand Dollars (\$10,000.00) in assets or no more than Five Thousand Dollars (\$5,000.00) in assets if Patient is a single person. The Indigent or Unclaimed County Decedent's estate will be reviewed to be determine if it is insufficient to cover the cost of cremation and/or burial. Any known assets or property of sufficient value will be applied to defray the expenses of cremation and/or burial through invoices sent by the Indigent or Unclaimed County Decedent's recognized estate administrator, if any.

4. **JAIL DETAINEE.** For purposes of eligibility under this HCAP Policy, any person detained in the Los Alamos County jail is deemed to otherwise meet the eligibility requirements while incarcerated.
5. **DECEDENT.** An Unclaimed County Decedent is one whose body has not been claimed by a friend, relative or other interested person assuming the responsibility for and expense of disposition. An Indigent Decedent is a deceased person that shall be considered to be an indigent if his/her estate is insufficient to cover the cost of burial or cremation.

B. PAYMENT LIMITATIONS.

1. Payment for all Indigent County Patient services are limited to fifty thousand dollars (\$50,000) lifetime per person. This amount shall be calculated and include all claims for services rendered and paid out of the HCA Funds. A Patient whose benefits have reached the specified amount is no longer an eligible Indigent County Patient.
2. Payment for all Indigent County Patient claims eligible for payment shall not exceed Fifteen Thousand Dollars (\$15,000.00) per person, per County fiscal year.
3. Payment for Indigent or Unclaimed County Decedent expenses shall not exceed Twelve Hundred Dollars (\$1,200) per deceased (No more than Six Hundred Dollars (\$600) or the burial or cremation of any Indigent or Unclaimed County adult or minor, and no more than Six Hundred Dollars (\$600) for the County's cost of opening and closing a grave).

- C. REQUIRED NOTIFICATION.** An Indigent County Patient is required to immediately notify the HCA Administrator in writing if there has been any change in the Indigent County Patients' circumstances that has caused or may cause the Indigent County Patient to be ineligible to receive benefits under this HCAP Policy. At the earliest opportunity, an Indigent County Decedent's recognized estate administrator or next of kin is required to inform the HCA Administrator of any known assets or property of sufficient value, which will be applied to defray the expenses of cremation and/or burial. Should any funeral director or other person allowed by law to conduct the business of a funeral director accept money from the relatives or friend of a deceased person whom the Board has determined to be an Indigent or Unclaimed County Decedent, the funeral director shall immediately notify the Board of the payment or offer for payment, and the Board shall not thereafter pay for the burial or cremation involved, or, if the Board has already paid for the burial or cremation, the funeral director shall immediately refund the money paid to him/her by the Board for the burial or cremation.

SECTION III. APPLICATIONS GENERALLY.

- A. COMPLIANCE.** The HCA Administrator shall accept and consider for HCA Fund assistance only those applications for which the Indigent County Patient has complied with the provisions of this HCAP Policy.
- B. PATIENT COOPERATION.** Failure of an Indigent County Patient to cooperate in the investigation of information, or in providing the HCA Administrator with authorization to obtain information, is grounds for rejecting the application.
- C. SUBMITTAL.** An application for HCAP assistance may be submitted at any time to the Provider. The Indigent County Patient, the Indigent County Patient's spouse, the Indigent County Patient's parents or guardian if the Indigent County Patient is a minor, or the guarantor of the Indigent County Patient's expenses, or an Indigent County Decedent's recognized estate administrator or next of kin may submit the application. A minor may initiate an

application on his or her own behalf if emancipated. An application made on behalf of a Indigent County Patient posthumously for coverage of health care expenses will not be accepted.

- D. APPLICATION VERIFICATION.** The Indigent County Patient or Decedent's recognized estate administrator or next of kin may then provide a completed HCAP Application for Assistance to the Social Services Division of Los Alamos County, who will process the Application on behalf of the HCA Administrator. Social Services Division, on behalf of the HCA Administrator, shall review the application and take additional reasonable steps to verify that the information submitted is true and correct within a reasonable time after submittal of the application. Social Services Division may, on behalf of the HCA Administrator, require the Indigent County Patient or Decedent's recognized estate administrator or next of kin provide information including, but not limited to, verification from the Human Services Department or New Mexico Health Insurance Exchange indicating ineligibility for assistance and/or affordable health insurance, adult household members' financial contribution affidavits, information from local law enforcement, Office of Medical Investigation, or other information. Social Services Division may, on behalf of the HCA Administrator, require the Indigent County Patient or Decedent's recognized estate administrator or next of kin to participate in an oral interview to determine eligibility.
- E. INCOMPLETE APPLICATIONS.** Social Services Division, on behalf of the HCA Administrator, will notify the Indigent County Patient or Decedent's recognized estate administrator or next of kin within a reasonable time if the application is incomplete. The Indigent County Patient or Decedent's recognized estate administrator or next of kin will have thirty (30) days after the notification date to provide further supporting documentation. If requested information is not received within the allotted time, the application file will be closed.

SECTION IV. APPLICATION CONTENTS.

Applications shall include the following:

- A. PATIENT IDENTIFICATION.** The HCAP Application for Assistance shall include, but not be limited to, the following: Name, address, or other personal identification of the Indigent County Patient or Decedent deemed appropriate by Social Services Division, on behalf of the HCA Administrator. If the Application is submitted on behalf of the Indigent County Patient or Decedent, it shall additionally include: Name of agency, provider, Indigent County Patient's representative or Decedent's recognized estate administrator or next of kin submitting the application. Indigent County Patients will also submit specific authorization in writing, signed by the Indigent County Patient or the Indigent County Patient's agent if the Indigent County Patient is unable to sign, that the Indigent County Patient's representative is authorized to submit the application on the Patient's behalf.
- B. RESIDENCY.** For purposes of determining residency, the HCA Administrator may consider any evidence of residing in a permanent or principal living quarters or residence within the County, such as utility bills, lease agreements, voter registration or other documentation, as Social Services Division may find necessary and sufficient, on behalf of the HCA Administrator. If only one parent of a minor child of separated or divorced parents resides in Los Alamos County, the Indigent County Patient, on behalf of the minor child, must provide any Separation or Divorce Decree pertaining to the custody of the minor child. HCA Funds may only be used to pay the cost of eligible costs for a minor child whose custodial parent resides in Los Alamos County and only if the child and the custodial parent qualify to receive the benefit of HCA Funds.

- C. JAIL DETAINEE.** For purposes of eligibility under this HCAP Policy, any person in Los Alamos County police custody is deemed to meet the Indigent County Patient eligibility requirements. An HCAP Application is not required; however, verification of custody shall be provided by the law enforcement agency to Social Services Division, on behalf of the HCA Administrator, in a timely manner.
- D. INCOME AND ASSETS.** The Indigent County Patient must provide proof of income and assets as required by this HCAP Policy and as may be deemed necessary and sufficient by the Social Services Division, on behalf of the HCA Administrator, to verify eligibility. An Indigent County Decedent's recognized estate administrator or next of kin must provide proof of available assets as required by this HCAP Policy and as may be deemed necessary and sufficient to verify eligibility. Except for allowed assets described in Section IV. D.4. below, an applicant must also demonstrate that any other available sources of payment assistance have been exhausted or are otherwise unavailable or insufficient.

1. HOUSEHOLD ANNUAL GROSS INCOME DETERMINATION.

- (a)** The Indigent County Patient is required to provide current pay stubs or documentation of other earned and non-earned income, including most recent state and federal income tax returns, and any other documentation necessary to determine the Indigent County Patient's household annual gross income. Household annual gross income shall include all income earned or received, including without limitation amounts that are untaxed or with respect to which taxes are deferred. Child support received by the Indigent County Patient shall not be included in calculating the Indigent County Patient's annual gross income. Payments made by the Indigent County Patient of child support shall not be deducted from the Indigent County Patient's household annual gross income.
- (b)** Household annual gross income for Indigent County Patients who own their own business shall be demonstrated by the Indigent County Patient's most recent federal income tax returns, including all schedules that support adjusted gross income per the tax return. Depreciation and amortization of goodwill claimed for Patient's business will be added to the household annual gross income for the purpose of computing income eligibility.
- (c)** The Indigent County Patient may provide alternate forms of verification of annual gross income for the previous twelve months in lieu of or in addition to the most recent federal income tax return, at the discretion of Social Services Division, on behalf of the HCA Administrator.

2. NUMBER OF FAMILY MEMBERS.

- (a)** Dependent family members under eighteen (18) years of age will be counted in determining the number of family members in the household. Their earned income, if any, will be exempt in determining the household annual gross income of the Indigent County Patient. Their unearned income, including but not limited to social security, SSI or welfare benefits, shall be included in determining their parents' annual gross income.
- (b)** Dependent family members eighteen (18) years of age or older will be counted in determining the number of family members in the household and such dependent family member's annual gross income shall be included in the Indigent County Patient's household annual gross income unless the dependent is a student, in which case the dependents income will not be countable. If such a dependent family member is the Indigent County Patient, only his/her annual

gross income shall be counted in determining the Patient's household annual gross income and the number of family members will be determined as one (1).

- (c) A non-dependent child under 18 years of age who is the Indigent County Patient and who is self-supporting and living with a family unit will be considered as an autonomous adult with the child's income considered separately toward the determination of the child's annual gross income.

3. **FINANCIAL OR IN-KIND SUPPORT.** Non-dependent, adult household or non-household member(s) who provide financial or in-kind support for the living expenses of the Indigent County Patient shall sign and submit to Social Services Division, on behalf of the HCA Administrator, a sworn statement indicating the amount of the support to the Patient. The value of such support shall be included in the determination of the Patient's gross annual income.
4. **ASSETS.** Indigent County Patients are required to complete the financial section, listing their liabilities and liquid assets, on the Application to determine financial eligibility for HCA Fund assistance. Indigent County Patients must use any liquid assets in excess of Ten Thousand Dollars (\$10,000.00) per household, or Five Thousand Dollars (\$5,000.00) in the case where an Indigent County Patient is the only member of his/her household, as payment against any bills eligible under HCAP before Social Services Division will consider payment of these bills, on behalf of the HCA Administrator. A Decedent's recognized estate administrator or next of kin is required to complete the financial section, listing a Decedent's assets or property on the application to determine financial eligibility for HCA Fund assistance. Decedents must apply any known assets or property of sufficient value to defray the expenses of cremation and/or burial.

- E. **EXTENSION OF INDIGENT COUNTY PATIENT BENEFITS.** The HCA Administrator, with the approval of the County Manager and 3-day advance notice to the Board, may extend benefits in exceptional cases where eligibility requirements are otherwise met, but maximum payments are exceeded upon a finding that a strict, mechanical application of any provision would, to a reasonable degree of medical probability based on medical opinions provided to the HCA Administrator, result in an immediate and substantial limitation of the individual's ability to perform major life activities such as caring for oneself, working, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning. The fiscal condition of the HCA Fund will be a consideration in determining whether to extend benefits pursuant to this section. The burden of persuasion for such finding shall be upon the Indigent County Patient requesting the extension of benefits and must be supported by written certification from the Indigent County Patient's treating physician that such circumstances exist and the basis for such conclusion. The HCA Administrator shall, in all cases, specifically state the reasons for granting an extension of benefits.

SECTION V. CONFIDENTIALITY; AND APPEALS.

- A. **CONFIDENTIALITY.** Confidentiality of an Indigent County Patient's or Decedent's personal health information shall be maintained at all times in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

B. CLAIM DENIAL AND APPEAL PROCESS.

1. Social Services Division, on behalf of the HCA Administrator, shall inform the Patient in writing within thirty (30) days after his/her Application has been denied or his/her claim

payment has been denied. The Division, on behalf of the HCA Administrator, shall state the reasons for the denial and shall inform the Patient of the appeal rights afforded by this HCAP Policy. The Patient may appeal to the Board an adverse decision by either the Division or the HCA Administrator not later than thirty (30) days after the date of the written notification of denial. Such requests must be in writing and cite specific reasons for appeal including citation to specific provisions of this HCAP Policy in support of the appeal. The appeal may not seek a waiver of any provision of this HCAP Policy. The appellant or his or her representative may appear at the hearing on the appeal, which may be held in closed session in accordance with the law. The Board will review the basis for the appeal including any new information and may deliberate privately. The Board will render a decision on the appeal in open session of the Board meeting. If the appellant or his or her representative does not appear for the hearing on the appeal, the Board will proceed to a determination on the appeal and the HCA Administrator will notify the appellant of the Board's decision in writing. Appeal hearings shall be held within forty-five (45) days after receipt of a written appeal of a denied claim.

2. Any eligible HCAP Provider aggrieved by a decision of the Board or its designee may appeal to the district court as provided in Section 27-5-12.1, N.M.S.A. 1978.

SECTION VI. PROVIDERS.

A. ELIGIBLE PROVIDERS. The following providers of health care services who have entered into valid provider agreements with the Board, on terms and conditions acceptable to the HCA Administrator and consistent with this HCAP Policy and the Acts, and who agree to comply with all applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are eligible to receive payment from the HCA Fund, within the payment limitations stated in Section II.B of this HCAP Policy:

1. Ambulance service providers that are licensed, certified or registered by the appropriate New Mexico state agency. Reimbursements of claims will be paid in an amount not to exceed a predetermined allocation, determined by the County, based on fund availability.
2. Other medical, dental, pharmaceutical, and behavioral health care provider(s) with whom the County has contracted and selected to provide agreed upon services to detainees of Los Alamos County. Reimbursements of claims will be paid in an amount not to exceed a predetermined allocation, determined by the County, based on fund availability.
3. Other medical, dental, and behavioral health care provider(s) with whom the County has contracted and selected to provide agreed upon services to residents of Los Alamos County. Reimbursements of claims will be paid in an amount not to exceed a predetermined allocation, determined by the County, based on fund availability.

As of July 1, 2014, Hospitals formerly designated as Sole Community Provider (SCP) Hospitals receive payment for services directly through New Mexico State's Human Services Department and no longer have any contract with the Board as an eligible HCAP Provider. As such, the Board no longer accepts claims submitted by these Hospitals.

B. CLAIMS PREPARATION AND VERIFICATION. An eligible HCAP Provider shall submit claims to the Social Services Division, on behalf of the HCA Administrator, and shall ensure claims submitted on behalf of eligible HCAP Patients are as payment of last resort.

C. DISCLOSURE. Eligible HCAP Providers may be required to provide to Social Services Division, on behalf of the HCA Administrator, reports, financial statements, billing, or other information deemed necessary to processing a claim for eligibility under the HCAP Policy.

D. LIMITATIONS ON COLLECTIONS. Once a Patient's claim has been deemed eligible for payment from the HCA Fund, an eligible HCAP Provider shall not pursue any further collection of any portion of the Patient's claim from any person or party. Such payment from the HCA Fund shall be deemed by the eligible HCAP Provider as payment in full.

E. PROVIDER'S RESPONSIBILITY.

1. It is the responsibility of the eligible HCAP Provider to verify with the Social Services Division, on behalf of the HCA Administrator, that an Indigent County Patient meets the eligibility requirements of HCAP, as stated in Section II.A, prior to submitting a claim or expenses to the HCA Fund for payment. Once eligibility has been verified, Social Services Division, on behalf of the HCA Administrator, shall then process payment of submitted claims or expenses.
2. It is the responsibility of the eligible HCAP Provider to submit claims or expenses to Social Services Division, on behalf of the HCA Administrator, no later than 120 days past the date of service.
3. At the request of the Social Services Division, on behalf of the HCA Administrator, an eligible HCAP Provider must provide evidence of licensure under the laws of the State of New Mexico, or any state or other governmental entity in which the Provider operates; and also provide any other information or data that may be deemed necessary by the Board to indicate that medically necessary services have been rendered.
4. As part of any audit of HCAP, eligible HCAP Providers may also be audited to ensure their compliance with the HCAP Policy.

SECTION VII. PAYMENT OF CLAIMS.

A. PAYMENT RATES.

1. Payment of HCA Funds shall be made only to eligible HCAP Providers, only in payment for eligible services under this HCAP Policy, and subject to the limitations imposed herein. Claims shall be submitted on itemized bills or on standardized medical claim forms acceptable to Social Services Division, on behalf of the HCA Administrator. Total charges to eligible Patients, prior to any adjustment to a final payment rate, shall not exceed the normal charges to non-indigent patients.
2. Payment of HCA Funds to eligible HCAP Providers shall be reimbursed at a rate not to exceed the Medicaid rate, where a Medicaid rate has been established. Where a Medicaid rate has not been established, HCAP Providers shall be reimbursed at the rates established by the State of New Mexico and posted on the New Mexico Human Services Department's website.
3. The HCA Administrator may initiate an independent medical review to determine if any claim for an Indigent County Patient's treatment is appropriate. The HCA Administrator may contract for this service, as long as the reviewers are independent of the parties to the claim.
4. The HCA Board authorizes the HCA Administrator to approve payment to eligible HCAP Providers only after determining that: 1) the Indigent County Patient for whom the claim is made is an eligible Indigent County Patient; 2) the costs claimed are allowable; and 3) there is compliance by the eligible HCAP Provider and the eligible Indigent County Patient with this HCAP Policy and with the Acts.

5. Except as otherwise authorized by this HCAP Policy, all claims approved pursuant to this HCAP Policy shall be paid to the eligible HCAP Provider within thirty (30) days after approval based upon availability of funds.
- B. HCA FUNDS EVIDENCE OF PAYER OF LAST RESORT.** Eligible HCAP Providers shall provide evidence that all other possible sources of payment are unavailable for payment of their claims, such as but not limited to veteran's benefits, health insurance, workers compensation, Medicaid and/or Medicare. HCA Funds may then be approved for payment as a payer of last resort, consistent with the provisions of this HCAP Policy.
- C. CLAIMS ELIGIBLE FOR PAYMENT.** Subject to the payment limitations described in Section II.B of this HCAP Policy, claims eligible for payment to eligible HCAP Providers on behalf of eligible Patients include:
 1. Care and treatment that is medically necessary. Medically necessary includes primary, wellness, and preventive visits, as well as acute care related to the diagnosis and/or treatment of illness or injury or emergency medical services.
 2. Ambulance transportation, limited to the distance to the "nearest" acute care hospital where the needed medical care can be provided regardless of where the Patient requests to be sent or is actually transported. Subsequent transports for treatment may be eligible for payment if medically necessary and requested by the attending physician.
 3. Behavioral health and alcohol or substance abuse treatment services for eligible Patients.
- D. CLAIMS NOT ELIGIBLE FOR PAYMENT.** Claims including, but not limited to, the following are not eligible for payment on behalf of an Indigent County Patient; 1) surgery or treatment not medically necessary; 2) physician care by a physician not employed or contracted by an eligible HCAP Provider, or otherwise billed by the hospital; 3) services not rendered by an eligible HCAP Provider; 4) prescribed medication and over the counter medication unless for a detainee Patient; 5) elective surgery or treatment; 6) any claim for less than Twenty-five Dollars (\$25.00); 7) claims for reimbursement of payments made by the Patient directly to the HCAP Provider; 8) funerary services beyond cremation and/or burial for Indigent County Decedents; and 9) services rendered through a hospital qualified to receive Safety Net Care Pool funds administered by the State Human Services Department, and to which the Board directs payment of HCA Funds in conformity with applicable law.
- E. OVERCHARGES.** Any eligible HCAP Provider found billing for services not rendered or not eligible for payment, overcharging, billing for "no-shows," billing greater than the normal insurance company or government agency for the same services, or engaging in other similar activities is in violation of the provisions of the HCAP Policy and is in breach of contract with the Board and shall not receive further payment of HCA Funds. The provider shall be given the opportunity to provide its justification and documentation to the HCA Administrator and the Board prior to any action being implemented. The Board, or the HCA Administrator on behalf of the Board, may, at its discretion, carry out an investigation to determine overcharges or improper billing. An eligible HCAP Provider shall provide to the Social Services Division, on behalf of the HCA Administrator, information requested to verify charges. The HCA Administrator may decline to approve claims made by an eligible HCAP Provider suspected of violating of this HCAP Policy until such time as an investigation is complete.
- F. PAYMENT LIMITED TO AVAILABLE FUNDS.** The Board will pay claims that have been approved pursuant to this HCAP Policy to eligible HCAP Providers provided there are available monies in the HCA Fund. The HCA Administrator will make payment based upon the order in which claims are approved. If the HCA Fund is exhausted, excluding the allotment for administrative and planning costs as specified in the Acts under Section 27-5-6(B), N.M.S.A. 1978 and Section 24-13-3 and 24-13-4 N.M.S.A. 1978, any outstanding claims will

also be paid based upon the order in which they have been approved, as soon as monies become available in the HCA Fund.

- G. SUBROGATION.** Payment to an HCAP Provider, on behalf of an eligible Patient shall operate as an assignment to the Board of any cause of action such an eligible Patient may have against third parties to the extent of the payment from the Fund to the HCAP Provider.

SECTION VIII. OTHER AUTHORIZED USE OF FUNDS.

A. EXPENSES FOR CREMATION OR BURIAL.

Payment of HCA Funds for funerary services for Indigent or Unclaimed County Decedents will be made only for cremation or burial services in an amount not to exceed Six Hundred Dollars (\$600.00) and for of opening and closing a grave in an amount not to exceed Six Hundred Dollars (\$600.00). Claims for cremation and/or burial service expense shall be submitted on itemized invoices acceptable to Social Services Division, on behalf of the HCA Administrator. At the earliest opportunity, an Indigent County Decedent's recognized estate administrator or next of kin is required to inform the HCA Administrator of any known assets and property of sufficient value, which will be applied to defray the expenses of cremation and/or burial. After a determination has been made that a body has not been claimed by next of kin, and meets eligibility as an Unclaimed Decedent of the County, the HCA Administrator or designee will ensure that the Unclaimed County Decedent is cremated. Cremation will occur no later than thirty (30) days from this determination, but no less than two (2) weeks from time of death. An Unclaimed County Decedents' remains will be retained and stored for no less than two (2) years in a manner that allows for their identification. After two (2) years' retention, Unclaimed County Decedents' remains may be disposed of, provided a record of the place and manner of disposition is retained for not less than five (5) years. Should any funeral director or other person allowed by law to conduct the business of a funeral director accept money from the relatives or friend of a deceased person whom the Board has determined to be an Indigent or Unclaimed County Decedent, the funeral director shall immediately notify the Board of the payment or offer for payment, and the Board shall not thereafter pay for the burial or cremation involved, or, if the Board has already paid for the burial or cremation, the funeral director shall immediately refund the money paid to him/her by the Board for the burial or cremation.

B. OBLIGATIONS TO COUNTY-SUPPORTED MEDICAID AND SAFETY NET CARE POOL.

HCA Funds may be used to make payments to New Mexico State's County-Supported Medicaid Fund in an amount equal to 1/16th Gross Receipts Tax. HCA Funds may also be used to make payments to the New Mexico State's Safety Net Care Pool in an amount equal to 1/12th Gross Receipts Tax.

C. ADDITIONAL COUNTY ADMINISTRATIVE EXPENSES.

HCA Funds may be used to pay for county administrative and planning expenses associated with this Policy, in accordance with Section 27-5-6.

GLOSSARY

The following terms are defined to be used for the purpose of the Incorporated County of Los Alamos Health Care Assistance Policy adopted by the Board, the 14th day of November, 2017, and effective December 1, 2017, regardless of common usage of such terms, or usage for other purposes.

Acute Care means by order of a physician, care of a patient placed in hospital for emergency care; scheduled surgery requiring inpatient operating room, therapeutic procedures which cannot be performed on an outpatient basis; monitoring of drugs; or specialized therapy on an around-the-clock basis as defined by New Mexico Professional Review Organization and does not include ineligible medical services as specified by the provisions of this HCAP policy.

Adult means an individual who is eighteen (18) years or older, or an individual under eighteen (18) years old who is legally emancipated.

Alcohol or Substance Abuse Service means a service provided to a patient for treatment of alcohol or substance abuse that meet the credentialing and/or licensing standards set forth by New Mexico regulatory agencies.

Ambulance Provider or Ambulance Service means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the Board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978.

Assets means cash, or other assets that can quickly or easily be converted to cash, such as checking and savings account balances; retirement accounts; stocks and bonds; equity in real estate, other than residence, based on County Assessor's appraised value; and the cash value of any life insurance policy of a Patient or a Decedent.

Behavioral Health Service means a service or services provided to a patient for treatment of substance abuse or mental health issues that meet the credentialing and/or licensing standards set forth by New Mexico regulatory agencies.

Board means the Los Alamos County Health Care Assistance Board (formerly the Indigent Hospital and County Health Care Board).

Costs means all eligible HCAP claims and expenses for providing funerary and health care services, pursuant to this HCAP Policy, on behalf of an eligible Patient or Decedent.

Dependent means a person: (1) whose income is less than the gross amount per year required by the Internal Revenue Service for filing a federal income tax return; and/or (2) who receives over one-half of his support from his parent or custodian; and/or (3) who is legally married and does not file a joint return with his/her spouse.

Fund means the county Health Care Assistance Fund.

Health Care Provider means: (1) an alcohol and drug treatment facility or program; (2) a behavioral or mental health center or program; (3) a New Mexico licensed, certified or registered health care practitioner, dental practitioner, medical doctor or osteopathic physician, and (4) an Ambulance provider as defined above.

Hospital means a hospital qualified to meet the provisions of the federal Centers for Medicare & Medicaid Services guidelines, or an acute care general or limited hospital licensed by the State Department of Health that is qualified, pursuant to rules adopted by the state agency primarily responsible for the Medicaid program, to receive distributions from the Safety Net Care Pool (SNCP).

Indigent Decedent means an individual whose estate is insufficient to cover the cost of cremation and/or burial and whose recognized estate administrator or next of kin makes application for HCA Fund assistance for funerary expenses in which an eligible HCAP Provider has rendered services.

Indigent Patient means an individual who makes application for HCA Fund assistance for payment of bills in which an eligible HCAP Provider has rendered medical care, ambulance transportation or behavioral health care services and who can normally support him/herself and his/her dependents on present income and assets available to him/her but, taking into consideration this income and those assets and his/her requirement for other necessities of life for him/herself and his/her dependents, is unable to pay the cost of these bills.

Medically Necessary means clinical and rehabilitative, physical, mental or behavioral health services as defined in NMSA Chapter 24: Health and Safety, Article 7A: Uniform Health-Care Decisions, 24-7A-1 through 24-7A-18

Safety Net Care Pool means the funding pool set aside for qualified hospitals that is administered by the State Human Services Department and to which the Board directs payments from the HCA Fund each quarter as required by law.

Unclaimed County Decedent is one whose body has not been claimed by a friend, relative or other interested person assuming the responsibility for and expense of disposition.



LOS ALAMOS

where discoveries are made

INCORPORATED COUNTY OF LOS ALAMOS

County Manager's Office
1000 Central Avenue, Suite 350
Los Alamos, NM 87544
Phone: 505-663-1750
Fax: 505-662-8079

HEALTH CARE ASSISTANCE PROGRAM (HCAP) POLICY

SECTION I. PURPOSE AND ADMINISTRATION.

A. PURPOSE.

1. This Health Care Assistance Program Policy (this "HCAP Policy") is established pursuant to the Indigent Hospital and County Health Care Act, Section 27-5-1 through 27-5-18, N.M.S.A. 1978 (the "Act"). The general purpose of this HCAP Policy is to establish rules and regulations for the administration of the Los Alamos County Health Care Assistance Fund ("HCA Fund"). The HCA Fund consists of gross receipts tax revenues and was established by County ordinance for the purpose of disbursing financial payment to eligible HCAP Providers for health care and treatment of indigent County Patients as determined eligible by the regulations and provisions of this HCAP Policy.
2. The HCA Fund exists to assist eligible indigent Patients who are residents of Los Alamos County with payment of their health care expenses. The Fund is not intended to serve as health care insurance or a substitution for healthcare insurance, but is intended to be a payer of last resort.

B. ADMINISTRATION OF HCA FUND. The HCA Fund shall be administered by the County Health Care Assistance Board (the "Board"), formerly the County Indigent Hospital and Health Care Board, which shall be composed of the members of the County Council of the Incorporated County of Los Alamos and the Chair and Vice-Chair of the County Council shall be the Chair and Vice-Chair, respectively, of the Board. The Board shall have and exercise all powers and duties enumerated in the Act at Section 27-5-6, N.M.S.A. 1978.

C. HCA ADMINISTRATOR. The County Manager shall designate and supervise an HCA Administrator to manage and administer the provisions and procedures of the HCAP Policy. The Board hereby delegates its power and authority under the Act, as and to the extent authorized by the Act, to the HCA Administrator. The HCA Administrator may utilize the facilities and the resources of all County Departments and seek the assistance of the New Mexico Human Services Department, as provided in Section 27-5-16, N.M.S.A. 1978. The HCA Administrator may further delegate specific tasks to other County staff, or to a contractor.

D. INTERPRETATION. This Policy shall be interpreted and construed to conform to the Act. It shall be HCAP Policy that all persons who possess or are eligible for alternative means to cover their own health care expenses shall do so. Patients must demonstrate an inability to provide for their own healthcare expenses as determined by the HCA Administrator in conformity with this Policy. The provisions of this HCAP Policy are intended to accomplish this objective and, therefore, the provisions shall be interpreted strictly. The HCA Administrator shall assure that every reasonable effort has been made to demonstrate that the person applying for such assistance is eligible. Interpretations of the provisions of this

HCAP Policy shall be made by the HCA Administrator, subject to review by the County Manager and County Attorney.

- E. SUPPLEMENTS.** Supplements to this HCAP Policy that are consistent with the provisions of the Act may be written by the HCA Administrator and included as a part of the HCAP Policy upon review and approval of the County Manager and County Attorney. Written supplements are not a revision or amendment to the HCAP Policy, but are written to provide interpretation or clarification of provisions, to provide illustration, examples, forms, other additional information or detail procedures deemed appropriate or necessary to administer the HCAP Policy.
- F. REVISIONS.** Amendments or revisions to the HCAP Policy will be effective only if adopted by the Board.
- G. EFFECTIVE DATE.** This HCAP Policy is adopted this 29th day of November, 2016, and is effective for all purposes December 1, 2016. This HCAP Policy supersedes and replaces in its entirety the Los Alamos Indigent Health Care Policy approved by the Board on June 27, 2014 and effective July 1, 2014.
- H. SEVERABILITY.** If any section, subsection, clause, phrase or portion of this HCAP Policy is, for any reason, held invalid or unconstitutional by any government agency or court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION II. PATIENT ELIGIBILITY.

A. A Patient shall be eligible to receive benefits under this HCAP Policy **only** if:

- 1. RESIDENCY.** The Patient has been a resident of Los Alamos County continuously and without interruption for a period of ninety (90) days prior to the date of service.
- 2. INCOME.** The Patient's household annual gross income, less any adjustments permitted under this HCAP Policy, equals or is less than 225% of federal poverty guidelines. An eligible income level as established by this HCAP Policy, including asset limitations, conclusively establishes that a Patient after consideration of that income and those assets, is not able to pay the cost of medical care, as well as other necessities of life for himself and his dependents; and
- 3. ASSETS.** The Patient's family shall have no more than Ten Thousand Dollars (\$10,000) in assets or no more than Five Thousand Dollars (\$5,000) in assets if Patient is a single person.
- 4. JAIL DETAINEE.** For purposes of eligibility under this HCAP Policy, any person detained in the Los Alamos County jail is deemed to otherwise meet the eligibility requirements while incarcerated.

B. PAYMENT LIMITATIONS.

- 1.** Payment for all services is limited to fifty thousand dollars (\$50,000) lifetime per person. This amount shall be calculated and include all claims for services rendered and paid out of the IHC Funds. A Patient whose benefits have reached the specified amount is no longer an eligible Patient.

2. Payment for all claims eligible for payment shall not exceed fifteen thousand dollars (\$15,000) per person, per County fiscal year.

C. REQUIRED NOTIFICATION. A Patient is required to immediately notify the HCA Administrator in writing if there has been any change in the Patients' circumstances that has caused or may cause the Patient to be ineligible to receive benefits under this HCAP Policy.

SECTION III. APPLICATIONS GENERALLY.

- A. COMPLIANCE.** The HCA Administrator shall accept and consider for HCA Fund assistance only those applications for which the Patient has complied with the provisions of this HCAP Policy.
- B. PATIENT COOPERATION.** Failure of a Patient to cooperate in the investigation of information, or in providing the HCA Administrator with authorization to obtain information, is grounds for rejecting the application.
- C. SUBMITTAL.** An application for HCAP assistance may be submitted at any time to the Provider. The Patient, the Patient's spouse, the Patient's parents or guardian if the Patient is a minor, or the guarantor of the Patient's expenses may submit the application. A minor may initiate an application on his or her own behalf if emancipated. An application made on behalf of a deceased person will not be accepted.
- D. APPLICATION VERIFICATION.** The Patient shall then provide a completed HCAP Application for Assistance to the Social Services Division of Los Alamos County, who will process the Application on behalf of the HCA Administrator. Social Services Division, on behalf of the HCA Administrator, shall review the application and take additional reasonable steps to verify that the information submitted is true and correct within a reasonable time after submittal of the application. Social Services Division may, on behalf of the HCA Administrator, require the Patient to provide information including, but not limited to, verification from the Human Services Department or New Mexico Health Insurance Exchange indicating ineligibility for assistance and/or affordable health insurance, adult household members' financial contribution affidavits, or other information. Social Services Division may, on behalf of the HCA Administrator, require the Patient to participate in an oral interview to determine eligibility.
- E. INCOMPLETE APPLICATIONS.** Social Services Division, on behalf of the HCA Administrator, will notify the Patient within a reasonable time if the application is incomplete. The Patient will have thirty (30) days after the notification date to provide further supporting documentation. If requested information is not received within the allotted time, the application file will be closed.

SECTION IV. APPLICATION CONTENTS.

Applications shall include the following:

- A. PATIENT IDENTIFICATION.** The HCAP Application for Assistance shall include, but not be limited to, the following: Name, address, or other personal identification of the Patient deemed appropriate by Social Services Division, on behalf of the HCA Administrator. If the Application is submitted on behalf of the Patient, it shall additionally include: Name of agency, provider, or Patient's representative submitting the application; along with specific authorization in

writing, signed by the Patient or the Patient's agent if the Patient is unable to sign, that the Patient's representative is authorized to submit the application on the Patient's behalf.

- B. RESIDENCY.** For purposes of determining residency, the HCA Administrator may consider any evidence of residing in a permanent or principal living quarters or residence within the County, such as utility bills, lease agreements, voter registration or other documentation, as Social Services Division may find necessary and sufficient, on behalf of the HCA Administrator. If only one parent of a minor child of separated or divorced parents resides in Los Alamos County, the Patient, on behalf of the minor child, must provide any Separation or Divorce Decree pertaining to the custody of the minor child. HCA Funds may only be used to pay the cost of eligible costs for a minor child whose custodial parent resides in Los Alamos County and only if the child and the custodial parent qualify to receive the benefit of HCA Funds.
- C. JAIL DETAINEE.** For purposes of eligibility under this HCAP Policy, any person detained in the Los Alamos County jail is deemed to meet the Patient eligibility requirements while incarcerated. An HCAP Application is not required; however, verification of incarceration shall be provided by the law enforcement agency to Social Services Division, on behalf of the HCA Administrator, in a timely manner.
- D. INCOME AND ASSETS.** The Patient must provide proof of income and assets as required by this HCAP Policy and as may be deemed necessary and sufficient by the Social Services Division, on behalf of the HCA Administrator, to verify eligibility. Except for allowed assets described in Section IV. D.4. below, an applicant must also demonstrate that any other available sources of payment assistance have been exhausted or are otherwise unavailable or insufficient.

1. HOUSEHOLD ANNUAL GROSS INCOME DETERMINATION.

- (a)** The Patient is required to provide current pay stubs or documentation of other earned and non-earned income, including most recent state and federal income tax returns, and any other documentation necessary to determine the Patient's household annual gross income. Household annual gross income shall include all income earned or received, including without limitation amounts that are untaxed or with respect to which taxes are deferred. Child support received by the Patient shall not be included in calculating the Patient's annual gross income. Payments made by the Patient of child support shall not be deducted from the Patient's household annual gross income.
- (b)** Household annual gross income for Patients who own their own business shall be demonstrated by the Patient's most recent federal income tax returns, including all schedules that support adjusted gross income per the tax return. Depreciation and amortization of goodwill claimed for Patient's business will be added to the household annual gross income for the purpose of computing income eligibility.
- (c)** The Patient may provide alternate forms of verification of annual gross income for the previous twelve months in lieu of or in addition to the most recent federal income tax return, at the discretion of Social Services Division, on behalf of the HCA Administrator.

2. NUMBER OF FAMILY MEMBERS.

- (a)** Dependent family members under eighteen (18) years of age will be counted in determining the number of family members in the household. Their earned

income, if any, will be exempt in determining the household annual gross income of the Patient. Their unearned income, including but not limited to social security, SSI or welfare benefits, shall be included in determining their parents' annual gross income.

- (b) Dependent family members eighteen (18) years of age or older will be counted in determining the number of family members in the household and such dependent family member's annual gross income shall be included in the Patient's household annual gross income unless the dependent is a student, in which case the dependents income will not be countable. If such a dependent family member is the Patient, only his/her annual gross income shall be counted in determining the Patient's household annual gross income and the number of family members will be determined as one (1).
 - (c) A non-dependent child under 18 years of age who is the Patient and who is self-supporting and living with a family unit will be considered as an autonomous adult with the child's income considered separately toward the determination of the child's annual gross income.
- 3. **FINANCIAL OR IN-KIND SUPPORT.** Non-dependent, adult household or non-household member(s) who provide financial or in-kind support for the living expenses of the Patient shall sign and submit to Social Services Division, on behalf of the HCA Administrator, a sworn statement indicating the amount of the support to the Patient. The value of such support shall be included in the determination of the Patient's gross annual income.
- 4. **ASSETS.** Patients are required to complete the financial section, listing their liabilities and liquid assets, on the Application to determine financial eligibility for HCA Fund assistance. Patients must use any liquid assets in excess of Ten Thousand (\$10,000) per household, or Five Thousand (\$5,000) in the case where a Patient is the only member of his/her household, as payment against any bills eligible under HCAP before Social Services Division will consider payment of these bills, on behalf of the HCA Administrator.
- E. **EXTENSION OF BENEFITS.** The HCA Administrator, with the approval of the County Manager and 3-day advance notice to the Board, may extend benefits in exceptional cases where eligibility requirements are otherwise met, but maximum payments are exceeded upon a finding that a strict, mechanical application of any provision would, to a reasonable degree of medical probability based on medical opinions provided to the HCA Administrator, result in an immediate and substantial limitation of the individual's ability to perform major life activities such as caring for oneself, working, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning. The fiscal condition of the HCA Fund will be a consideration in determining whether to extend benefits pursuant to this section. The burden of persuasion for such finding shall be upon the Patient requesting the extension of benefits and must be supported by written certification from the Patient's treating physician that such circumstances exist and the basis for such conclusion. The HCA Administrator shall, in all cases, specifically state the reasons for granting an extension of benefits.

SECTION V. CONFIDENTIALITY; AND APPEALS.

- A. **CONFIDENTIALITY.** Confidentiality of a Patient's personal health information shall be maintained at all times in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

B. CLAIM DENIAL AND APPEAL PROCESS.

1. Social Services Division, on behalf of the HCA Administrator, shall inform the Patient in writing within thirty (30) days after his/her Application has been denied or his/her claim payment has been denied. The Division, on behalf of the HCA Administrator, shall state the reasons for the denial and shall inform the Patient of the appeal rights afforded by this HCAP Policy. The Patient may appeal to the Board an adverse decision by either the Division or the HCA Administrator not later than thirty (30) days after the date of the written notification of denial. Such requests must be in writing and cite specific reasons for appeal including citation to specific provisions of this HCAP Policy in support of the appeal. The appeal may not seek a waiver of any provision of this HCAP Policy. The appellant or his representative may appear at the hearing on the appeal, which may be held in closed session in accordance with the law. The Board will review the basis for the appeal including any new information and may deliberate privately. The Board will render a decision on the appeal in open session of the Board meeting. If the appellant does not appear for the hearing on the appeal, the Board will proceed to a determination on the appeal and the HCA Administrator will notify the appellant of the Board's decision in writing. Appeal hearings shall be held within forty-five (45) days after receipt of a written appeal of a denied claim.
2. Any eligible HCAP Provider aggrieved by a decision of the Board or its designee may appeal to the district court as provided in Section 27-5-12.1, N.M.S.A. 1978.

SECTION VI. PROVIDERS.

A. ELIGIBLE PROVIDERS. The following providers of health care services who have entered into valid provider agreements with the Board, on terms and conditions acceptable to the HCA Administrator and consistent with this HCAP Policy and the Act, and who agree to comply with all applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are eligible to receive payment from the HCA Fund, within the payment limitations stated in Section II.B of this HCAP Policy:

1. Ambulance service providers that are licensed, certified or registered by the appropriate New Mexico state agency. Reimbursements of claims will be paid in an amount not to exceed a predetermined allocation, determined by the County, based on fund availability.
2. Other medical, dental, pharmaceutical, and behavioral health care provider(s) with whom the County has contracted and selected to provide agreed upon services to detainees of Los Alamos County. Reimbursements of claims will be paid in an amount not to exceed a predetermined allocation, determined by the County, based on fund availability.
3. Other medical, dental, and behavioral health care provider(s) with whom the County has contracted and selected to provide agreed upon services to residents of Los Alamos County. Reimbursements of claims will be paid in an amount not to exceed a predetermined allocation, determined by the County, based on fund availability.

As of July 1, 2014, Hospitals formerly designated as Sole Community Provider (SCP) Hospitals receive payment for services directly through New Mexico State's Human Services Department and no longer have any contract with the Board as an eligible HCAP Provider. As such, the Board no longer accepts claims submitted by these Hospitals.

B. CLAIMS PREPARATION AND VERIFICATION. An eligible HCAP Provider shall submit claims to the Social Services Division, on behalf of the HCA Administrator, and shall ensure claims submitted on behalf of eligible HCAP Patients are as payment of last resort.

- C. DISCLOSURE.** Eligible HCAP Providers may be required to provide to Social Services Division, on behalf of the HCA Administrator, reports, financial statements, billing, or other information deemed necessary to processing a claim for eligibility under the HCAP Policy.
- D. LIMITATIONS ON COLLECTIONS.** Once a Patient's claim has been deemed eligible for payment from the HCA Fund, an eligible HCAP Provider shall not pursue any further collection of any portion of the Patient's claim from any person or party. Such payment from the HCA Fund shall be deemed by the eligible HCAP Provider as payment in full.
- E. PROVIDER'S RESPONSIBILITY.**
1. It is the responsibility of the eligible HCAP Provider to verify with the Social Services Division, on behalf of the HCA Administrator, that a Patient meets the eligibility requirements of HCAP, as stated in Section II.A, prior to submitting a claim to the HCA Fund for payment. Once eligibility has been verified, Social Services Division, on behalf of the HCA Administrator, shall then process payment of submitted claims.
 2. It is the responsibility of the eligible HCAP Provider to submit claims to Social Services Division, on behalf of the HCA Administrator, no later than 120 days past the date of service.
 3. At the request of the Social Services Division, on behalf of the HCA Administrator, an eligible HCAP Provider must provide evidence of licensure under the laws of the State of New Mexico, or any state or other governmental entity in which the Provider operates; and also provide any other information or data that may be deemed necessary by the Board to indicate that medically necessary services have been rendered.
 4. As part of any audit of HCAP, eligible HCAP Providers may also be audited to ensure their compliance with the HCAP Policy.

SECTION VII. PAYMENT OF CLAIMS.

A. PAYMENT RATES.

1. Payment of HCA Funds shall be made only to eligible HCAP Providers, only in payment for eligible services under this HCAP Policy, and subject to the limitations imposed herein. Claims shall be submitted on itemized bills or on standardized medical claim forms acceptable to Social Services Division, on behalf of the HCA Administrator. Total charges to eligible Patients, prior to any adjustment to a final payment rate, shall not exceed the normal charges to non-indigent patients.
2. Payment of HCA Funds to eligible HCAP Providers shall be reimbursed at a rate not to exceed the Medicaid rate, where a Medicaid rate has been established. Where a Medicaid rate has not been established, HCAP Providers shall be reimbursed at the rates established by the State of New Mexico and posted on the New Mexico Human Services Department's website.
3. The HCA Administrator may initiate an independent medical review to determine if any claim for treatment is appropriate. The HCA Administrator may contract for this service, as long as the reviewers are independent of the parties to the claim.
4. The HCA Board authorizes the HCA Administrator to approve payment to eligible HCAP Providers only after determining that: 1) the Patient for whom the claim is made is an eligible Patient; 2) the costs claimed are allowable; and 3) there is compliance by the eligible HCAP Provider and the eligible Patient with this HCAP Policy and with the Act.

5. Except as otherwise authorized by this HCAP Policy, all claims approved pursuant to this HCAP Policy shall be paid to the eligible HCAP Provider within thirty (30) days after approval based upon availability of funds.
- B. HCA FUNDS EVIDENCE OF PAYER OF LAST RESORT.** Eligible HCAP Providers shall provide evidence that all other possible sources of payment are unavailable for payment of their claims, such as but not limited to health insurance, workers compensation, Medicaid and/or Medicare. HCA Funds may then be approved for payment as a payer of last resort, consistent with the provisions of this HCAP Policy.
- C. CLAIMS ELIGIBLE FOR PAYMENT.** Subject to the payment limitations described in Section II.B of this HCAP Policy, claims eligible for payment to eligible HCAP Providers on behalf of eligible Patients include:
 1. Care and treatment that is medically necessary. Medically necessary includes acute care related to the diagnosis and/or treatment of illness or injury or emergency medical services.
 2. Ambulance transportation expense is limited to the distance to the "nearest" acute care hospital where the needed medical care can be provided regardless of where the patient requests to be sent or actually is transported. Subsequent transports for treatment may be eligible for payment if medically necessary and requested by the attending physician.
 3. Behavioral health and alcohol or substance abuse treatment services.
- D. CLAIMS NOT ELIGIBLE FOR PAYMENT.** Claims including, but not limited to, the following are not eligible for payment; 1) surgery or treatment not medically necessary; 2) physician care by a physician not employed or contracted by an eligible HCAP Provider, or otherwise billed by the hospital; 3) services not rendered by an eligible HCAP Provider; 4) prescribed medication and over the counter medication; 5) elective surgery or treatment; 6) any claim for less than Twenty-five Dollars (\$25.00); 7) claims for reimbursement of payments made by the Patient directly to the HCAP Provider and 8) services rendered through a hospital qualified to receive Safety Net Care Pool funds administered by the State Human Services Department, and to which the Board directs payment of HCA Funds in conformity with applicable law.
- E. OVERCHARGES.** Any eligible HCAP Provider found billing for services not rendered or not eligible for payment, overcharging, billing for "no-shows," billing greater than the normal charges to other patients for itemized services paid by HCA Fund, billing more than one insurance company or government agency for the same services, or engaging in other similar activities is in violation of the provisions of the HCAP Policy and is in breach of contract with the Board and shall not receive further payment of HCA Funds. The provider shall be given the opportunity to provide its justification and documentation to the HCA Administrator and the Board prior to any action being implemented. The Board, or the HCA Administrator on behalf of the Board, may, at its discretion, carry out an investigation to determine overcharges or improper billing. An eligible HCAP Provider shall provide to the Social Services Division, on behalf of the HCA Administrator, information requested to verify charges. The HCA Administrator may decline to approve claims made by an eligible HCAP Provider suspected of violating of this HCAP Policy until such time as an investigation is complete.
- F. PAYMENT LIMITED TO AVAILABLE FUNDS.** The Board will pay claims that have been approved pursuant to this HCAP Policy to eligible HCAP Providers provided there are available monies in the HCA Fund. The HCA Administrator will make payment based upon the order in which claims are approved. If the HCA Fund is exhausted, excluding the allotment for administrative and planning costs as specified in the Act under Section 27-5-6(B), NMSA 1978, any outstanding claims will also be paid based upon the order in which they have been approved, as soon as monies become available in the HCA Fund.

- G. SUBROGATION.** Payment to an HCAP Provider, on behalf of an eligible Patient shall operate as an assignment to the Board of any cause of action such an eligible Patient may have against third parties to the extent of the payment from the Fund to the HCAP Provider.

GLOSSARY

The following terms are defined to be used for the purpose of the Incorporated County of Los Alamos Health Care Assistance Policy adopted by the Board, the 27th day of June, 2014, and effective July 1, 2014, regardless of common usage of such terms, or usage for other purposes.

Acute Care means by order of a physician, care of a patient placed in hospital for emergency care; scheduled surgery requiring inpatient operating room, therapeutic procedures which cannot be performed on an outpatient basis; monitoring of drugs; or specialized therapy on an around-the-clock basis as defined by New Mexico Professional Review Organization and does not include ineligible medical services as specified by the provisions of this HCAP policy.

Adult means an individual who is eighteen (18) years or older, or an individual under eighteen (18) years old who is legally emancipated.

Alcohol or Substance Abuse Service means a service provided to a patient for treatment of alcohol or substance abuse that meet the credentialing and/or licensing standards set forth by New Mexico regulatory agencies.

Ambulance Provider or Ambulance Service means a specialized carrier based within the state authorized under provisions and subject to limitations as provided in individual carrier certificates issued by the public regulation commission to transport persons alive, dead or dying en route by means of ambulance service. The rates and charges established by public regulation commission tariff shall govern as to allowable cost. Also included are air ambulance services approved by the Board. The air ambulance service charges shall be filed and approved pursuant to Subsection D of Section 27-5-6 NMSA 1978 and Section 27-5-11 NMSA 1978.

Assets means cash, or other assets that can quickly or easily be converted to cash, such as checking and savings account balances; retirement accounts; stocks and bonds; equity in real estate, other than residence, based on County Assessor's appraised value; and the cash value of any life insurance policy of a Patient.

Behavioral Health Service means a service or services provided to a patient for treatment of substance abuse or mental health issues that meet the credentialing and/or licensing standards set forth by New Mexico regulatory agencies.

Board means the Los Alamos County Health Care Assistance Board (formerly the Indigent Hospital and County Health Care Board).

Costs means all eligible HCAP claims for providing health care services, pursuant to this HCAP Policy, on behalf of an eligible Patient.

Dependent means a person: (1) whose income is less than the gross amount per year required by the Internal Revenue Service for filing a federal income tax return; and/or (2) who receives over one-half of his support from his parent or custodian; and/or (3) who is legally married and does not file a joint return with his/her spouse.

Fund means the county Health Care Assistance Fund.

Health Care Provider means: (1) an alcohol and drug treatment facility or program; (2) a behavioral or mental health center or program; (3) a New Mexico licensed, certified or registered

health care practitioner, medical doctor or osteopathic physician, and (4) an Ambulance provider as defined above.

Hospital means a hospital qualified to meet the provisions of the federal Centers for Medicare & Medicaid Services guidelines, or an acute care general or limited hospital licensed by the State Department of Health that is qualified, pursuant to rules adopted by the state agency primarily responsible for the Medicaid program, to receive distributions from the Safety Net Care Pool (SNCP).

Indigent Patient means an individual who makes application for HCA Fund assistance for payment of bills in which an eligible HCAP Provider has rendered medical care, ambulance transportation or behavioral health care services and who can normally support him/herself and his/her dependents on present income and assets available to him/her but, taking into consideration this income and those assets and his/her requirement for other necessities of life for him/herself and his/her dependents, is unable to pay the cost of these bills.

Medically Necessary means clinical and rehabilitative, physical, mental or behavioral health services as defined in NMSA Chapter 24: Health and Safety, Article 7A: Uniform Health-Care Decisions, 24-7A-1 through 24-7A-18

Safety Net Care Pool means the funding pool set aside for qualified hospitals that is administered by the State Human Services Department and to which the Board directs payments from the HCA Fund each quarter as required by law.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

| | |
|-------------------------------|---|
| Agenda No.: | B. |
| Index (Council Goals): | * 2017 Council Goal – Quality Governance – Operational Excellence – Maintain Quality Essential Services and Supporting Infrastructure |
| Presenters: | Philo Shelton, Public Works Director and Eric Martinez, County Engineer |
| Legislative File: | 10021-17 |

Title

Approval of a Budget Revision No. 2018-08 and Establish a Project Budget in the Amount of \$320,000 Associated with a New Mexico Department of Transportation (NMDOT) Cooperative Project Agreement for Design of the Canyon Rim Trail Underpass Project.

Recommended Action

I move that Council approve Budget Revision No. 2018-08 and Establish a Project Budget in the Amount of \$320,000 Associated with a NMDOT Cooperative Project Agreement for Design of the Canyon Rim Trail Underpass Project.

..County Manager's Recommendation

The County Manager recommends approval of the motion as presented.

Body

During a CIP budget meeting on March 1, 2016, County Council appropriated \$1 million for easement acquisition to extend the Canyon Rim Trail west of Smith's. At this meeting, Council asked staff to pursue all trail grant opportunities to leverage the \$1 million set aside to continue the Canyon Rim Trail.

On April 7, 2016, NMDOT announced a call for projects for funding under the Transportation Alternatives Programs (TAP). Applications under this program require a resolution of sponsorship as part of the application process. Acquisition of right of way or easements are not eligible activities under this program. However, design development and construction are eligible activities.

On October 25, 2016 Council approved Resolution No. 16-20, authorizing the County Engineer to submit a TAP funding application for the Canyon Rim Trail Underpass Project, assured availability of local matching funds, and authorized the County Manager to enter into a Cooperative Project Agreement with the NMDOT should TAP funds be awarded to the County.

By letter dated April 21, 2017, NMDOT notified staff that Los Alamos County's project application was successful. The project was awarded federal FY2018 TAP funding for project study and design in the amount of \$320,000 and FY2020 TAP funding for project construction in the amount of \$2,020,000 for a total award of \$2,340,000.

On October 17, 2017, the County received a Cooperative Project Agreement comprised of

\$273,408 in federal funding and \$46,592 local match (14.56%) for a total amount of \$320,000 for the design phase. The agreement has been signed by the County Manager and returned to NMDOT. The County must await full execution of the agreement by NMDOT prior to commencing design activities. Tentative completion of project design and associated NMDOT certification activities are expected late 2018. Upon design completion and authorization of FY2020 funds, NMDOT will submit a separate agreement at a future date establishing the funds necessary to proceed with project bidding and construction.

The Canyon Rim Trail Underpass Project will include a grade separated structure beginning near the western terminus of Entrada Drive and extending beneath NM 502 to the beginning of the Canyon Rim Trail near the existing trailhead. Given the operating traffic speeds in this area are 50 MPH and greater, an at-grade crossing is not a viable or safe alternative. The Canyon Rim Trail has become a popular destination for residents and visitors alike. With the completion of construction of the segment between Fire Station 6 and Smith's Marketplace, completion of the Knecht Street connection, and pending installation of additional crossing improvements proposed with NMDOT's NM502 Reconstruction Project, pedestrian and bicycle use is expected to increase. Development of the Entrada Drive and Camino Entrada area including the Coop Market, Hotel, and offices has also attracted increased trail use and the proposed underpass would provide a connection to the trail free of vehicular conflicts. Completion of this project would also help bolster the County's resumé to become a nationally recognized bicycle friendly community by the League of American Bicyclists.

Alternatives

Failure to approve the budget revision and project budget would cease further development of the project and put TAP grant funding at risk.

Fiscal and Staff Impact/Unplanned Item

On March 1, 2016, Council appropriated \$1 Million for the Canyon Rim Trail. The Cooperative Project Agreement for design is comprised of \$273,408 (85.44%) in federal funding and requires a local match of \$46,592 (14.56%) for a total amount of \$320,000.

The staff report submitted to Council for approval of Resolution No. 16-20 indicated that if the County received the grant award, staff will return to Council with a Budget Revision to establish the formal project budget. This request is made herein for the design phase and will be repeated upon receiving an agreement from NMDOT for the construction phase.

Attachments

A - Budget Revision No. 2018-08 Canyon Rim Trail Underpass Project

Budget Revision 2018-08 Canyon Rim Trail Underpass Project

| | Fund/Dept | Brass Org | Revenue (decrease) | Expenditures (decrease) | Transfers In(Out) | Fund Balance (decrease) |
|---|---|--------------------|-----------------------|----------------------------|----------------------|-------------------------------|
| 1 | CIP Fund - Public Works (Canyon Rim Trail West) | 311-C65573 8369 | | \$ (46,592) | \$ - | \$ - |
| 1 | CIP Fund - Public Works (Canyon Rim Trail Underpass) | 311-Cxxxxx 8369 | \$ 273,408 | \$ 320,000 | \$ - | \$ - |

Description: The purpose of this budget revision is to increase spending authority in the CIP Fund for the design phase of the Canyon Rim Trail Underpass project via a Cooperative Project Agreement with the NM Department of Transportation (NMDOT). The total for the design portion of this project is \$320,000. NMDOT's share (85.44%) is \$273,408. The County's match (14.56%) is \$46,592 which was previously approved under the Canyon Rim Trail West project. This revision moves spending authority between Canyon Rim Trail West and the Canyon Rim Trail Underpass for the County's match.

Fiscal Impact: The net fiscal impact on the CIP Fund is to increase revenue and expenditures by \$273,408.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

| | |
|-------------------------------|---|
| Agenda No.: | C. |
| Index (Council Goals): | 2015 Council Goal – Quality Governance – Operational Excellence – Maintain Quality Essential Services and Supporting Infrastructure |
| Presenters: | Naomi Maestas |
| Legislative File: | 10092-17 |

Title

County Council Minutes for October 24, 2017

Recommended Action

I move that Council approve the County Council Minutes for October 24, 2017.

County Manager's Recommendation

The County Manager recommends that Council approve these minutes, as presented.

Attachments

A - County Council Minutes for October 24, 2017

Minutes

County Council – Regular Session

* Note – These minutes are **not the official minutes** and are subject to approval by the County Council.

*David Izraelevitz, Council Chair; Susan O’Leary, Council Vice Chair;
Christine Chandler, James Chrobocinski, Antonio Maggiore,
Rick Reiss, and Pete Sheehey, Councilors*

Tuesday, October 24, 2017

6:00 PM

Council Chambers-1000 Central Avenue

TELEVISED

1. OPENING/ROLL CALL

The Chair, David Izraelevitz, called the meeting to order at 6:03 p.m.

The following Councilors were in attendance:

Present: 6 - Councilor Izraelevitz, Councilor O’Leary, Councilor Chandler, Councilor Chrobocinski, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

2. PLEDGE OF ALLEGIANCE

Led by: All

3. PUBLIC COMMENT

None.

A motion was made by Councilor Izraelevitz, seconded by Councilor Maggiore, that Council approve the following statement for inclusion in the minutes: “The matters discussed in the closed session held on October 24, 2017 that began at 5:00 p.m. were limited only to those topics specified in the notice of the closed session, and no action was taken on any matter in that closed session.”

The motion passed by acclamation with the following vote:

Yes: 6 - Councilor Izraelevitz, Councilor O’Leary, Councilor Chandler, Councilor Chrobocinski, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

4. APPROVAL OF AGENDA

A motion was made by Councilor Reiss, seconded by Councilor O'Leary, that the agenda be approved as presented.

The motion passed by acclamation with the following vote:

Yes: 6 - Councilor Izraelevitz, Councilor O'Leary, Councilor Chandler, Councilor Chrobocinski, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

5. PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS

- A.** Proclamation celebrating October 25 as "Atomic City Transit Day" in Los Alamos County

Councilor Maggiore read and presented the proclamation to employees of Atomic City Transit.

6. PUBLIC COMMENT FOR ITEMS ON CONSENT AGENDA

None.

7. CONSENT AGENDA

Consent Motion:

A motion was made by Councilor Chandler, seconded by Councilor Maggiore, that Council approve the items on the Consent Agenda as presented and that the motions contained in the staff reports be included for the record.

- A.** County Council Minutes for September 5, 2017, September 19, 2017 and September 26, 2017

I move that Council approve the County Council Minutes for September 5, 2017, September 19, 2017 and September 26, 2017.

- B.** Approval of Amendment No. 1 to Existing Services Agreement No. AGR 14-4045 with Vision Service Plan for the Purpose of Providing Vision Insurance Benefits for Los Alamos County Employees

I move that Council approve Amendment No. 1 to existing Services Agreement No. AGR14-4045 with Vision Service Plan, in the form attached which has been approved by the County Attorney; and I further move that Council authorize the County Manager to execute the Agreement on behalf of the County.

- C.** Consideration of Budget Revision 2018-06 Health Care Assistance

I move that Council approve Budget Revision 2018-06 as summarized on attachment A and that the attachment be made a part of the minutes of this meeting.

Approval of the Consent Agenda:

The motion passed with the following vote:

Yes: 6 - Councilor Izraelevitz, Councilor O'Leary, Councilor Chandler, Councilor Chrobocinski, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

8. PUBLIC HEARING(S)

- A.** An Application to Rezone the Entrada Business Park, Consisting of 8 Lots, Approximately 15.886 Acres from C-3 (Heavy Commercial District) to MU (Mixed Use).

Ms. Tamara Baer, Senior Planner, spoke.

Mr. Kevin Powers, Assistant County Attorney, spoke.

Public Comment:

Mr. Brady Burke, 2310 39th Street, spoke.

A motion was made by Councilor Chrobocinski, seconded by Councilor O'Leary, that Council adopt Incorporated County of Los Alamos Ordinance No. 674 Revision No. 2017-02 in textual form to the official zoning map of Los Alamos County by rezoning eight (8) contiguous parcels with a total of approximately 15.84 acres of land located at Entrada Business Park, Lots 1, 2, 3, 4, 5, 6A, 6B1, and 6B2, from C-3 (Heavy Commercial District) to MU (Mixed Use); and further moved that, upon passage, the Ordinance be published in summary form.

The motion passed with the following vote:

Yes: 6 - Councilor Izraelevitz, Councilor O'Leary, Councilor Chandler, Councilor Chrobocinski, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

9. BUSINESS-APPEAL

- A.** Appeal of Board of Adjustment Case No. WVR-2017-0042, 3522 Questa Request for a Five (5) foot Waiver From a Required Five (5) Foot Side Yard Setback for the Construction of a Carport Denial by the Board of Adjustment on July 17, 2017

Public Hearing for Case Number WVR-2017-0042.

INTRODUCTION:

Councilor Izraelevitz spoke.

CONFIRMATION THAT NOTICE REQUIREMENTS HAVE BEEN MET:

Councilor Izraelevitz spoke.

Ms. Tamara Baer, Senior Planner, confirmed that notice requirements have been met.

DISCLOSURE OF ANY CONFLICTS:

Councilor Izraelevitz spoke.

All Councilors present confirmed they did not have any conflicts.

DISCLOSURE OF EX PARTE COMMUNICATIONS:

Councilor Izraelevitz spoke.

All Councilors present confirmed they did not have any Ex Parte Communications.

ABSTENTION OF COUNCILORS:

Councilor Izraelevitz spoke.

All Councilors present confirmed they had not reached a decision on the merits of the case that would justify abstaining from further participation.

REVIEW CRITERIA AND STANDARD OF REVIEW:

Councilor Izraelevitz spoke.

PRESENTATIONS BY PARTIES AND QUESTIONS BY COUNCIL:

Councilor Izraelevitz spoke.

Mr. Ari Swartz, property owner, presented.

Mr. Kevin Powers, Assistant County Attorney, presented.

There were no questions of either party by Council.

REBUTTAL:

Councilor Izraelevitz spoke.

Mr. Ari Swartz, property owner, spoke.

CLOSING OF THE APPEAL HEARING; COUNCIL DISCUSSION AND DECISION:

Councilor Izraelevitz spoke.

A motion was made by Councilor Chandler, seconded by Councilor Maggiore, that Council find that the decision of the Board of Adjustment was in accordance with adopted County plans, policies and ordinances and that the facts on which the decision was based are supported by the record and that the decision was not arbitrary, capricious, or a manifest abuse of discretion; and further moved that Council affirm the decision of the Board of Adjustment in Case No. WVR-2017-0042.

A SUBSTITUTE motion was made by Councilor Chrobocinski, seconded by Councilor Izraelevitz, that Council find that the decision of the Board of Adjustment was not based upon sufficient evidence that the decision was in accordance with adopted County plans, policies and ordinances nor was the decision supported by sufficient evidence in the record that the decision was not arbitrary, capricious, or a manifest abuse of discretion; and further moved that Council remand Case No. WVR-2017-0042 to the Board of Adjustment for further development of the facts and the record and to reconsider its decision.

The SUBSTITUTE motion failed with the following vote:

Yes: 1 - Councilor Chrobocinski

No: 5 - Councilor Izraelevitz, Councilor O'Leary, Councilor Chandler, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

The ORIGINAL motion passed with the following vote:

Yes: 5 - Councilor Izraelevitz, Councilor O'Leary, Councilor Chandler, Councilor Reiss and Councilor Maggiore

No: 1 - Councilor Chrobocinski

Absent: 1 - Councilor Sheehey

10. COUNCIL BUSINESS

A. Appointments

None.

B. Board, Commission and Committee Liaison Reports

None.

C. County Manager's Report

1) County Manager's Report for October 2017

Mr. Harry Burgess, County Manager, spoke.

Mr. Paul Andrus, Community Development Director, spoke.

Ms. Tamara Baer, Senior Planner, spoke.

D. Council Chair Report

Councilor Izraelevitz advised the Land Use Committee met and recommendations will be forthcoming.

E. General Council Business

None.

F. Approval of Councilor Expenses

A motion was made by Councilor Chandler, seconded by Councilor Reiss, to approve travel expenses for Councilor Izraelevitz to attend the Municipal Officer Leadership Institute training in November.

The motion passed by acclamation with the following vote:

Yes: 6 - Councilor Izraelevitz, Councilor O'Leary, Councilor Chandler, Councilor Chrobocinski, Councilor Reiss and Councilor Maggiore

Absent: 1 - Councilor Sheehey

G. Preview of Upcoming Agenda Items

None.

11. COUNCILOR COMMENTS

None.

12. PUBLIC COMMENT

None.

13. ADJOURNMENT

The meeting adjourned at 7:45 p.m.

INCORPORATED COUNTY OF LOS ALAMOS

David Izraelevitz, Council Chair

Attest:

Naomi D. Maestas, County Clerk

Meeting Transcribed by: Victoria L. Martinez, Deputy Clerk

**AMENDMENT NO. 1
INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT NO. AGR14-4045**

This **AMENDMENT NO. 1** is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Vision Service Plan Insurance Company**, a California corporation ("Contractor"), to be effective for all purposes January 1, 2018.

WHEREAS, County and Contractor entered into Agreement No. AGR14-4045 dated January 1, 2014, for fully insured Vision Insurance services for Los Alamos County Employees; and

WHEREAS, both parties wish to amend the Agreement to extend the term for the final two (2) year period as allowed for under the same terms and conditions; and

WHEREAS, all Group Vision Care Policy provisions remain the same; and

WHEREAS, the County Council ("Council") approved this Amendment at a public meeting held on October 24, 2017.

NOW, THEREFORE, for good and valuable consideration, County and Contractor agree as follows:

I. To delete **SECTION B. TERM** in its entirety and replace it with the following:

SECTION B. TERM: The term of this Agreement shall commence January 1, 2013 and shall continue until December 31, 2019, unless sooner terminated, as provided herein.

II. To add Subparagraph (a) to Paragraph 1 of **SECTION C. COMPENSATION**, as follows:

(a)

**LOS ALAMOS COUNTY
VISION: FULLY INSURED RATES**

**Proposed Effective Dates:
JANUARY 1, 2018 THROUGH DECEMBER 31, 2019**

| FULLY INSURED VISION PLAN | YEARS 5 & 6 |
|----------------------------|-----------------------|
| MONTHLY RATES: | |
| CURRENT PLAN DESIGN | Signature Plan |
| EE Only | \$7.43 |
| EE + 1 | \$10.80 |
| EE + 2 or more | \$19.37 |

Except as expressly modified by this Amendment, the terms and conditions of the Agreement remain unchanged and in effect.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
HARRY BURGESS **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

VISION SERVICE PLAN INSURANCE COMPANY, A
CALIFORNIA CORPORATION

BY: _____
NAME: _____ **DATE**
TITLE: _____

Exhibit "A"
Rate Schedule
AGR14-4045-A1

RENEWAL AGREEMENT

Group Name/Number: **Los Alamos County / #12064388**

Current Plan Design

| | |
|----------------------|--------------------------|
| Plan Type: | Signature - B |
| Frequency: | 12/12/24 |
| Copays: | \$20 Exam/\$20 Materials |
| RFA & ECL Allowance: | \$200 & \$200 |
| Current Rates: | \$7.08/10.29/18.45 |
| Renewal Rates: | \$7.43/10.80/19.37 |

Open AccessSM Allowances: Examination up to \$50, Single Vision up to \$50, Lined Bifocal up to \$75, Lined Trifocal up to \$100, Lenticular up to \$125, Frame up to \$70, Elective Contact Lenses up to \$105 & Necessary Contact Lenses \$210.

Renewal Options

X Renew with current plan design

Contract Period for all Options: January 1, 2018 through December 31, 2019.

Budget Revision 2018-06 Health Care Assistance Fund

| # | Fund/Dept | Brass Org | Revenue (decrease) | Expenditures (decrease) | Transfers In(Out) | Fund Balance (decrease) |
|---|-----------------------------|--------------------|-----------------------|----------------------------|----------------------|-------------------------------|
| 1 | Health Care Assistance Fund | 151-M40110 8369 | | \$ 191,908 | | \$ (191,908) |
| <p>Description: The purpose of this budget revision is to increase spending authority for the Health Care Assistance Fund. The need for the increase is due to notification from the Human Services Department relating to an increase in the County's Safety Net Care Pool obligation to the state.</p> <p>Fiscal Impact: This revision to the Health Care Assistance Fund (HCAP) increases expenditures and decreases fund balance by \$191,908. There is adequate fund balance to accommodate this revision.</p> | | | | | | |

Los Alamos County Council
Regular Meeting
October 24, 2017
Item 7.C.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

| | |
|-------------------------------|---|
| Agenda No.: | D. |
| Index (Council Goals): | 2016 Council Goal – Quality Governance – Operational Excellence – Maintain Quality Essential Services and Supporting Infrastructure |
| Presenters: | Philo Shelton, Public Works Director |
| Legislative File: | MOU016-17 |

Title

Memorandum of Understanding (MOU) Entered into by and Between the Incorporated County of Los Alamos and the North Central Regional Transit District (NCRTD) for FY2018, Providing the NCRTD with \$350,000.

..Recommended Motion

I move that Council approve a Memorandum of Understanding entered into by and between the Incorporated County of Los Alamos and the North Central Regional Transit District (NCRTD) for FY2018, Providing the NCRTD with \$350,000.

..Manager's Recommendation

The County Manager recommends that Council approve the Memorandum of Understanding as presented.

Body

The purpose of the MOU is to provide \$350,000.00 in FY2018 to the NCRTD for member local government matches of federal grants, additional reserve funds, and such other purposes as the NCRTD deems appropriate.

Beginning in federal fiscal year 2006, the County entered into MOUs directly with the NCRTD and has to date provided \$7,000,000.00 in funding. Through these annual MOUs and as part of the County's regional partnership efforts, the County is willing to provide to NCRTD additional funding for capital and operational expenses, and to increase reserves. These partnership efforts promotes efficient, supportive, sustainable, and multi-modal transportation system services operated by the NCRTD to member entities located in the district.

The County fiscal year 2018 (FY18) budget, beginning July 1, 2017 and ending June 30, 2018, provides NCRTD with \$350,000. NCRTD agrees to utilize the funds provided under this MOU as matching funds for federal grants on behalf of NCRTD and to maintain the NCRTD's midday service routes to Los Alamos County.

Fiscal and Staff Impact/Planned Item

This is a regular planned item and is included in the Progress through Partnering program budget.

Attachments

- A - Memorandum of Understanding
- B - Letter Requesting Funding

C - NCRTD Resolution No. 2017-22

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INCORPORATED COUNTY OF LOS ALAMOS AND
THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT**

This **MEMORANDUM OF UNDERSTANDING** (the “MOU”) is entered into by and between the **Incorporated County of Los Alamos** (“County”) and the **North Central Regional Transit District** (“NCRTD”).

WHEREAS, the NCRTD is a political subdivision of the State of New Mexico; and

WHEREAS, the County is a political subdivision of the State of New Mexico and a member of the NCRTD; and

WHEREAS, the NCRTD is authorized to finance, construct, operate, maintain, and promote an efficient, sustainable, and multi-modal transportation system subject to compliance with the Regional Transit District Act (“Act”); and

WHEREAS, the NCRTD current membership includes the County of Los Alamos, the County of Santa Fe, the County of Rio Arriba, the County of Taos, the City of Santa Fe, the City of Espanola, the Town of Edgewood, the Town of Taos, the Pueblo of San Ildefonso, Pueblo of Pojoaque, Pueblo of Santa Clara, Pueblo of Nambe, Pueblo of Tesuque, and Pueblo of Ohkay Owingeh (the “NCRTD members”); and

WHEREAS, under regional partnership Cooperative Agreements, the County agreed to fund certain expenses and projects of the NCRTD; and

WHEREAS, beginning in federal fiscal year 2006, the County entered into MOUs directly with the NCRTD and has to date provided Seven Million Dollars (\$7,000,000.00) in funding, that was used for capital expenses, operational expenses, and to establish additional reserve funds, including matching federal dollars for NCRTD operations and transit projects for NCRTD; and

WHEREAS, the NCRTD desires additional funding for capital and operational expenses and to increase reserves, that the County is willing to provide under the County's regional partnership efforts; and

WHEREAS, the County wishes to continue partnering with the NCRTD under this MOU in order to promote an efficient, supportive, sustainable, and multi-modal transportation system, including services operated by the NCRTD staff and member entities; and

WHEREAS, the County fiscal year 2018 (FY18) budget, beginning July 1, 2017 and ending June 30, 2018, provides the NCRTD with Three Hundred Fifty Thousand Dollars (\$350,000.00).

NOW, THEREFORE, for good and valuable consideration, including mutual covenants between the parties hereto the receipt of which is acknowledged, the parties do hereby agree as follows:

A. PURPOSE.

The purpose of this MOU is to provide Three Hundred Fifty Thousand Dollars (\$350,000.00) in FY18 to the NCRTD for member local government matches of federal grants, additional reserve funds, and such other purposes as the NCRTD deems appropriate.

B. SCOPE OF MOU.

1. County agrees to provide to the NCRTD Three Hundred Fifty Thousand Dollars (\$350,000.00).

2. The NCRTD agrees to utilize the funds provided under this MOU as matching funds for federal grants on behalf of NCRTD or its members and to maintain the NCRTD's midday service routes to Los Alamos County.

3. The NCRTD agrees to work with the County to evaluate how the service routes to Los Alamos could be changed to be better integrated with connecting routes and other service needs and to make any adjustments that are mutually agreeable to the County and NCRTD and financially feasible for NCRTD, based upon NCRTD's sole evaluation of financial feasibility.

4. The NCRTD agrees to work with the County to implement the FY18 Annual Service Plans submitted by the City of Santa Fe and Los Alamos County providing for specific regional routes

funded by NCRTD Regional Transit Gross Receipts Tax (RTGRT) as adopted by Board Resolution No. 2017-22.

5. The NCRTD agrees to strictly account for all the funds received under this MOU and under any prior MOU and to provide the County with a detailed quarterly report within thirty (30) days after the close of the quarter, showing how the funds provided under this MOU were utilized. NCRTD also agrees to allow the audit of its books by the County or its independent auditor upon reasonable notice and during normal business hours to ensure such compliance.

C. COSTS.

All costs of the parties in implementing this MOU shall be borne by the respective parties.

D. TERM AND EFFECTIVE DATE.

This MOU shall be effective upon execution and shall expire on September 30, 2018.

E. TERMINATION.

This MOU may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Upon notice of termination any funds remaining unmatched by federal grants or unspent, shall be assessed for potential reallocation by the NCRTD.

F. LIABILITY.

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of this MOU. Each party shall be liable for its own actions or inactions in accordance with state law and nothing herein shall be deemed a waiver, indemnity or to otherwise create or effect liabilities between the parties.

G. THIRD-PARTY BENEFICIARIES.

By entering into the MOU, the parties do not intend to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the MOU to maintain a suit for wrongful death, bodily and/or personal injury to persons, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this MOU. No person shall claim any right, title or

interest under this MOU or seek to enforce this MOU as a third party beneficiary of this MOU.

H. NEW MEXICO TORT CLAIMS ACT.

By entering into this MOU, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this MOU. Any liability incurred in connection with this MOU is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA (1978). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. No provision in this MOU modifies and/or waives any provision of the New Mexico Tort Claims Act.

I. AMENDMENT.

This MOU shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

J. SEVERABILITY.

In the event that any of the items or provisions herein are found to be in conflict with any applicable statute or rule of law or are otherwise held to be invalid, then such provision shall be deemed inoperative to the extent of such conflict or invalidity, and the remainder of the provisions shall, to the extent possible, remain in full force and effect.

K. NOTICES.

Any notices required to be given pursuant to this MOU shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

County:

NCRTD:

Public Works Director
Incorporated County of Los Alamos
1000 Central Avenue, Suite 160
Los Alamos, New Mexico 87544

Executive Director
North Central Regional Transit District
1327 North Riverside Drive
Espanola, New Mexico 87532

L. AUTHORIZATION.

The parties warrant that each signatory to this MOU has the appropriate authority and is authorized to execute this MOU on behalf of its respective party.

Memorandum of Understanding
Between the Incorporated County of Los Alamos and the North Central Regional Transit District

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on
the dates set forth below.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
DAVID IZRAELEVITZ **DATE**
COUNCIL CHAIR

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

**NORTH CENTRAL REGIONAL TRANSIT
DISTRICT**

BY: _____
DANIEL BARRONE **DATE**
NCRTD CHAIR

October 23, 2017

Mr. Harry Burgess, County Administrator
Los Alamos County
1000 Central Avenue, Suite 350
Los Alamos, NM 87544



Dear Mr. Burgess,

The North Central Regional Transit District (NCRTD) is respectfully requesting distribution of the \$350,000 from Los Alamos County as fulfillment of its Fiscal Year 2018 funding commitment which was approved by the County Council and incorporated into the County's approved FY 2018 budget.

This annual funding allocation from Los Alamos County to the NCRTD has been enormously valuable in providing the funds for the federal matching contributions for operational costs and capital for regional transportation services for the Districts 14-member entities. Without the ongoing assistance from Los Alamos County it would have been challenging for the District to continue serving the transit needs for the residents of these communities and providing the critical interconnectivity for work, medical, social and quality of life needs.

The District Board's adopted resolution No. 2013-10 provides 20% of the budgeted Regional GRT collected in the four-county region to Los Alamos County Atomic City Transit for Board approved regional transit plans. The District Board approved the Los Alamos County transit plan at its July 7, 2017 meeting. Therefore, for this budget year, a total of \$1,444,500 is expected to be available pursuant to the Districts adopted financial policies. This represents an increase of 1.8% compared to the FY 2017 allocation.

Los Alamos County's annual contribution to the NCRTD over these ten years has been tremendously beneficial for the ~235,503 citizens of the four-county region and the six Pueblos. We want to thank the County of Los Alamos and the County Council for their continued support.

If additional information is needed to finalize the release of these funds, I can be contacted via email at anthonym@ncrtd.org or at 629-4713. Your assistance in this matter is appreciated.

Sincerely,

Anthony J. Mortillaro
Executive Director

Cc: Los Alamos County Councilor Antonio Maggiore, NCRTD Board Member
Philo Shelton, Public Works Director and Board Alternate

Daniel Barrone
Chair

Anthony J. Mortillaro
Executive Director

Governmental
Board of Directors

City of Española

City of Santa Fe

Town of Edgewood

County of Rio Arriba

County of Santa Fe

County of Los Alamos

County of Taos

Nambe' Pueblo

Ohkay Owingeh Pueblo

Santa Clara Pueblo

Pueblo of Pojoaque

Pueblo of Tesuque

Pueblo de San Ildefonso



North Central Regional Transit District (NCRTD)

Resolution No. 2017-22

Adoption of the FY18 Annual Service Plan submitted by the City of Santa Fe and Los Alamos County Providing for Specific Regional Routes Funded by NCRTD Regional Transit Gross Receipts Tax (RTGRT)

WHEREAS, the NCRTD was created through legislative enactment (chapter 65, signed March 21, 2003); and,

WHEREAS, the NCRTD is a sub-division of the State of New Mexico; and,

WHEREAS, the NCRTD was approved and certified by the New Mexico Department of Transportation Commission September 14, 2004; and,

WHEREAS, the NCRTD Financial Policies Adopted by Board Resolution No. 2011-10 on November 4, 2011 provide a definition of regional services which if approved by the Board of Directors and if recurring funds are available may be funded by the allocation of NCRTD RTGRT; and,

WHEREAS, the NCRTD Financial Policies require that service plans from member entities that provide transit services and which have routes that will expand existing regional routes or add new regional routes must submit their Transit Service Plan and the proposed regional routes to be funded by NCRTD RTGRT to the Board of Directors for approval; and,

WHEREAS, the City of Santa Fe and Los Alamos County operate their own transit systems and have had prior review and approval of the regional service routes contained in their transit service plans for FY 10, 11, 12, 13, 14, 15, 16, 17 and 18; and,

WHEREAS, the NCRTD Board of Directors approved on March 4, 2011 the standardization of the cost allocation methodology which is a nationally recognized method for determining administrative and operating costs associated with the delivery of transit routes and which is utilized by the City of Santa Fe, Los Alamos County and the NCRTD; and,

WHEREAS, the NCRTD Board of Directors adopted Resolution No. 2013-04 on March 1, 2013 amending its Financial Policies to incorporate a formula for the annual allocation of RTGRT for existing regional services it approves on an annual basis; and

WHEREAS, the NCRTD Board of Directors has adopted a Fiscal Year 2018 budget utilizing the annual allocation formula for the apportionment of NCRTD RTGRT in the amount of \$1,011,150.00 for

existing City of Santa Fe routes that have been deemed to meet the definition of regional services and which are incorporated into adopted City of Santa Fe Resolution No. 2017-??? Regional Service Transit Plan; and,

WHEREAS, the NCRTD Board of Directors has also allocated in its Fiscal Year 2018 budget utilizing the annual allocation formula for the apportionment of NCRTD RTGRT in the amount of \$1,444,500.00 for existing Los Alamos County routes that have been deemed to meet the definition of regional services, which are incorporated into the Los Alamos County adopted 2018 Service Transit Plan by Resolution No. ???; and,

WHEREAS, the NCRTD Board of Directors requires that Atomic City Transit and Santa Fe Trails whom are recipients of regional services funding provide acknowledgement and notice to their patrons utilizing the regional transit routes and services funded with NCRTD RTGRT of NCRTD funding by means of prominent signage in a fashion acceptable to the NCRTD Executive Director or his Designee; and,

WHEREAS, the NCRTD Board of Directors acknowledges Santa Fe County Resolution No. 2017-51 and their conveyance letter submitting their recommended transit service plan to the North Central Regional Transit District which is inclusive of existing NCRTD provided routes servicing Santa Fe County; and,

WHEREAS, the NCRTD Board Resolution No. 2009-13 provides the standards and practices for the implementation of new service routes to be operated by the District; and,

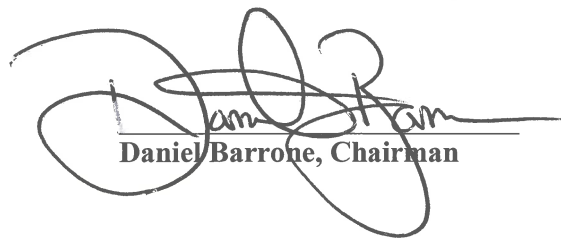
WHEREAS, the NCRTD's 2014 adopted Five (5) Year Service Plan identifies routes to be provided by the District and future routes to be provided when sufficient recurring revenues are available; and,

WHEREAS, the NCRTD Board of Directors in adoption of its Fiscal Year 2018 budget has provided funding from various revenue sources for the provision of and continuation of all existing routes and trial routes provided by the NCRTD serving the Counties of Santa Fe, Rio Arriba, Taos and Los Alamos.

NOW THEREFORE BE IT RESOLVED that:

1. The NCRTD adopts the regional service plan submitted by the City of Santa Fe for FY 2018; and
2. The NCRTD adopts the regional service plan submitted by Los Alamos County for FY 2018; and
3. The NCRTD acknowledges the Transit Service Plan and associated requests submitted by Santa Fe County and directs staff to take appropriate action to assess and respond to County request.

PASSED, APPROVED, AND ADOPTED BY THE GOVERNING BODY OF THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT ON THIS 7th DAY OF July 2017.



Daniel Barrone, Chairman

Approved as to form:



Peter Dwyer, Legal Counsel

1 CITY OF SANTA FE, NEW MEXICO

2 RESOLUTION NO. 2017-__

3 INTRODUCED BY:

4
5 Councilor Joseph M. Maestas
6
7
8
9

10 A RESOLUTION

11 ENDORSING THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT'S FY2018
12 BUDGET PROPOSAL, APPROVING THE FY 2018 CITY OF SANTA FE REGIONAL
13 TRANSIT PLAN INCLUDING \$25,000 IN FUNDING, AND SUBMITTING THE CITY'S
14 REGIONAL TRANSIT PLAN FOR FY 2018 TO THE NORTH CENTRAL REGIONAL
15 TRANSIT DISTRICT BOARD OF DIRECTORS FOR CONSIDERATION AND APPROVAL.
16

17 WHEREAS, the North Central Regional Transit District (hereinafter referred to as
18 "NCRTD") was created in 2004 by agreement between the City of Espanola, Los Alamos County,
19 Pojoaque Pueblo, Rio Arriba County, San Ildefonso Pueblo, San Juan Pueblo, Santa Clara Pueblo, the
20 City of Santa Fe, Santa Fe County and Tesuque Pueblo; and

21 WHEREAS, NCRTD Resolution 2008-14 states that "in order to create a truly effective and
22 efficient regional transit system that cooperatively and equitably serves north central New Mexico,
23 the NCRTD believes that the City of Santa Fe should be a member of the District"; and

24 WHEREAS, as a result of City of Santa Fe Resolution 2008-87, the City of Santa Fe joined
25 the NCRTD and soon thereafter expanded City delivered transit services to provide connecting

1 transportation to and from the Rail Runner, through funding made available by the NCRTD; and

2 **WHEREAS**, the City's expanded services include:

- 3 • Santa Fe Trails Route 22, serving the New Mexico 599 Rail Runner station as well as
- 4 Rancho Viejo and Santa Fe Community College;
- 5 • Santa Fe Trails Routes 2 and 4, serving inbound and outbound Rail Runner trains at
- 6 South Capitol station;
- 7 • Santa Fe Pick-Up Historic District Shuttle operations, providing shuttle service to and
- 8 from the Rail Runner station at the Railyard and downtown destinations;
- 9 • Additional enhanced, or "special service", provided to accommodate visitors and
- 10 residents alike, and meet increased demand for Rail Runner transfers, on Folk Art
- 11 Market, Spanish Market, and Indian Market weekends, as well as annual community
- 12 celebrations of Zozobra and the Canyon Road Farolito Walk;

13 **WHEREAS**, the existing services provided by Santa Fe Trails have been deemed to meet the
14 definition of regional services as adopted by the NCRTD Board and incorporated into its financial
15 policies as amended on November 4, 2011 by Board Resolution No. 2011-10; and

16 **WHEREAS**, the NCRTD has identified funding in their FY 2018 budget proposal to keep
17 the aforementioned regional services, operated by the City, funded and running through FY 2018; and

18 **WHEREAS**, the NCRTD will reimburse the City for said regional transit services, upon
19 receipt of invoices for service delivered, up to a FY 2018 total of \$1,011,150; and

20 **WHEREAS**, the City of Santa Fe agreed to pay up to \$25,000 to the NCRTD for the
21 Mountain Trail 255 Route, which will be deducted from the reimbursement to Santa Fe Trails on the
22 first quarterly reimbursement request by the City.

23 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
24 **CITY OF SANTA FE** that the Governing Body hereby endorses the proposed NCRTD FY2018
25 budget that continues to fund regional transit services, and will fund up to \$25,000 as identified above

1 that the City of Santa Fe currently provides on behalf of the NCRTD, and that the aforementioned
2 routes are approved as the City of Santa Fe Regional Transit Plan for FY 2018, and upon approval by
3 the NCRTD Board of Directors are incorporated into the NCRTD service plan.

4 PASSED, APPROVED, and ADOPTED this ____ day of ____, 2017.

5
6
7
8 _____
JAVIER GONZALES, MAYOR

9 ATTEST:

10
11 _____
12 YOLANDA Y. VIGIL, CITY CLERK

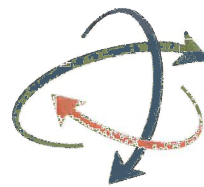
13 APPROVED AS TO FORM:

14
15 
16 _____
KELLEY BRENNAN, CITY ATTORNEY

17
18
19
20
21
22
23
24
25 *M/Legislation/Resolutions 2017/NCRTD – FY2018*



LOS ALAMOS
where discoveries are made



**ATOMIC CITY
TRANSIT**

**Los Alamos County (LAC) FY18 Service Plan
Submitted to the North Central Regional Transit District (NCRTD)
for the Distribution of Transit Gross Receipts Tax**

Wednesday, June 28, 2017

| | <u>FY18 Cost Estimates</u> |
|---|---------------------------------------|
| <u>Continuation of Existing NCRTD Funded Routes</u> | |
| Route 2 White Rock (Park & Ride, White Rock & NCRTD Linked) <i>Note: Includes an additional 7 runs per day in anticipation of construction</i> | \$ 1,017,855 |
| Enhanced Services (Park & Ride and White Rock Linked) <i>Note: 30 minute service all day Route 3 & 4 Peak Service on Route 6</i> | \$ 464,332 |
| Route 11 Afternoon Express (White Rock to Los Alamos) | \$ 30,000 |
| Continuation of Existing NCRTD Routes: | \$ 1,512,187 |

LAC FY18 Billable Capital

A combination of Local Share of Grant Capital Awards (Vehicles, Bus Shelters & Bus Stops, AVA System, Upgrades to Bus Shelters, and Bus Stop Improvements), Upgrade or replacement of existing vehicle video & audio system.

\$ 250,000

FY18 ESTIMATED BILLABLE: \$ 1,762,187

FY18 NCRTD GRT BUDGETED FOR LAC: \$ 1,444,500
Estimated Amount Underfunded in FY18: \$ (317,687)

Notes: Cost of routes and capital listed are estimates. Routes will be billed on a quarterly basis using the Allocated Cost Method, which allocates actual expenses by actual miles, hours, and vehicles. Actual costs of capital will be billed on a quarterly basis.

INCORPORATED COUNTY OF LOS ALAMOS RESOLUTION NO. 17-09

A RESOLUTION ENDORSING THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT'S FY2018 BUDGET PROPOSAL, APPROVING THE FY2018 LOS ALAMOS COUNTY REGIONAL TRANSIT PLAN AND DIRECTING STAFF TO SUBMIT THE FY2018 LOS ALAMOS COUNTY REGIONAL TRANSIT PLAN TO THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT BOARD OF DIRECTORS FOR CONSIDERATION AND APPROVAL

WHEREAS, the North Central Regional Transit District (NCRTD or District) was created in 2004 by agreement between the City of Espanola, Incorporated County of Los Alamos, Pojoaque Pueblo, Rio Arriba County, San Ildefonso Pueblo, San Juan Pueblo, Santa Clara Pueblo, the City of Santa Fe, Santa Fe County and the Tesuque Pueblo; and

WHEREAS, the District has subsequently added Nambé Pueblo, Taos County, the Town of Taos and the Town of Edgewood to its membership, and the San Juan Pueblo is now known as Ohkay Owingeh; and

WHEREAS, regional transit gross receipts taxes that are redistributed by NCRTD are an important and significant local funding source for its members, and NCRTD has developed a funding allocation formula that allocates funding for regional transit services to Los Alamos County (County); and

WHEREAS, NCRTD Resolution 2009-07 states that "the NCRTD Board has the authority and duty to monitor the use of funds it furnishes to members, to coordinate the overall transportation policy within its service area, and to account to the State of New Mexico for its activities"; and

WHEREAS, the coordination of service plans with NCRTD is primary to an effective regional transit system; and

WHEREAS, each member shall submit locally approved service plans to the NCRTD Board in order for such plans to be included in the NCRTD Regional Service Plan, to ensure that transit services funded by the regional transit gross receipts tax meet the criteria established by NCRTD Resolution 2011-10, as amended, and that regional transit services are effectively coordinated by NCRTD; and

WHEREAS, the existing services provided by County have been deemed to meet the definition of "regional public transit" as adopted by the NCRTD Board and incorporated into its financial policies by NCRTD Resolution 2011-10, as amended; and

WHEREAS, NCRTD has identified funding in its FY2018 budget proposal to keep the aforementioned regional services, operated by County, funded and running through FY2018; and

WHEREAS, NCRTD will reimburse County for said regional transit services, upon receipt of invoices for services delivered, up to a FY2018 total of ONE MILLION FOUR HUNDRED FORTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$1,444,500.00).

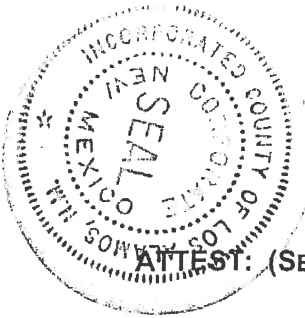
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE INCORPORATED COUNTY OF LOS ALAMOS that the Council hereby endorses the proposed FY2018 NCRTD budget that continues to fund regional transit services, as identified above, that the Incorporated County of Los Alamos currently provides on behalf of NCRTD, and that the aforementioned regional services compose and are approved as the Los Alamos County Regional Transit Plan for FY2018, and upon approval by the NCRTD Board of Directors, are incorporated in the NCRTD Regional Service Plan.

PASSED AND ADOPTED this 27th day of June, 2017.

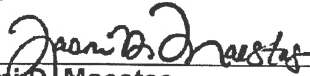
COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS, NEW
MEXICO



David Izraelevitz
COUNCIL CHAIR



ATTEST: (SEAL)



Naomi D. Maestas
LOS ALAMOS COUNTY CLERK

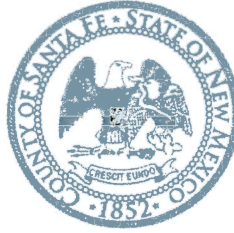
RECEIVED MAY 18 2017

ar

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

May 12, 2017

Anthony J. Mortillaro, Executive Director
North Central Regional Transit District
1327 N. Riverside Drive
Española, NM 87532

Dear Mr. Mortillaro:

This letter is to respectfully submit Resolution No. 2017-51 (see attached) from the Santa Fe County Board of Commissioners (BCC) that adopts the FY 2017 Santa Fe County Regional Transit Plan and directs staff to forward that plan to the North Central Regional Transit District (NCRTD). The 2017 Santa Fe County Transit Plan was reviewed and approved at the May 9, 2017 BCC meeting and is included as Exhibit A to the Resolution.

The Commission had several comments on the FY 2018 Santa Fe County Transit Plan during the meeting. The comments were incorporated into Resolution 2017-51 and are also listed below.

Santa Fe County requests NCRTD analyze the need, benefits and feasibility of:

- a Glorieta transit route,
- a Turquoise Trail transit route,
- a Madrid commuter route.

If you have questions or concerns on any of the above please contact Ray Matthew, Transportation Planner, at 995-2775.

Sincerely,

Tony T. Flores
Assistant County Manager, Santa Fe County

Attachment: SFC BCC Resolution No. 2017-51

102 Grant Avenue • P.O. Box 276 • Santa Fe, New Mexico 87504-0276 • 505-986-6200 • FAX:
505-995-2740 www.santafecountynm.gov

**SANTA FE COUNTY
RESOLUTION NO. 2017- 51**

**A RESOLUTION TO ADOPT THE SANTA FE COUNTY TRANSIT SERVICE PLAN
FOR FY 2018 AND TO DIRECT STAFF TO SUBMIT THAT TRANSIT SERVICE PLAN
TO THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT**

WHEREAS, Santa Fe County Resolution 2003-108 states that “multi-jurisdictional transportation systems would protect our environment and enhance energy efficiency, decrease congestion, decrease automobile accidents, reduce noise and air pollution and improve public health;” and

WHEREAS, the North Central Regional Transit District (NCRTD) was created by agreement of the City of Espanola, Los Alamos County, Pojoaque Pueblo, Rio Arriba County, San Ildefonso Pueblo, San Juan Pueblo, Santa Clara Pueblo, the City of Santa Fe, Santa Fe County (County), and Tesuque Pueblo in 2004; and

WHEREAS, Santa Fe County Ordinance 2008-14 which imposed a County Regional Transit Gross Receipts Tax of one eighth of one percent (.125%) states that “[r]evenue from the county regional transit gross receipts tax will be used for the management, construction or operation of a public transit system or for specific public transit projects or services pursuant to the Regional Transit District Act;” and

WHEREAS, the NCRTD considers the County to be a critical participant in the regional transportation strategy and is willing to work closely with the County to assure that regional transportation needs are met and that the Rail Runner continues to be a well-used mode of public transportation; and

WHEREAS, the 2015 Santa Fe County General Plan, the Sustainable Growth Management Plan, adopted by the Board of County Commissioners by Resolution 2015-155 states under Policy 33.3 that the County will “[c]oordinate with RTD and other entities to evaluate public transit routes and enhance existing transit services (both to existing areas and to areas of new development) to match population demands and future growth to provide an efficient alternative to personal vehicle use;” and

WHEREAS, for FY 2017 the NCRTD funded various transportation routes within the County, which were contained in the FY 2017 regional transit plan submitted to the NCRTD on behalf of the County and the City of Santa Fe; and

WHEREAS, the NCRTD adopted a 2014 Transit Service Plan Update, a five-year plan identifying new services and future services and the routes described in the FY 2018 Santa Fe County Regional Transit Service Plan, which are consistent with that 2014 five-year plan; and

WHEREAS, the NCRTD Board is requesting a FY 2018 Santa Fe County Regional Transit Service Plan by June 1, 2017 and this resolution is a response to that request; and

WHEREAS, the County has considered the existing NCRTD Service Plan and the proposed NCRTD budget for FY 2018, which indicates that there is sufficient funding to continue to provide service for all routes currently being funded by the regional gross receipts tax dollars and other federal grant money, including all of the existing routes in the County; and

WHEREAS, the Board of County Commissioners of Santa Fe County (BCC) desires for staff to submit to the NCRTD a Santa Fe County Regional Transit Plan which includes all routes currently being served in the County.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The BCC hereby adopts the FY 2018 Santa Fe County Regional Transit Plan attached hereto as Exhibit A; and
2. The BCC hereby directs staff to submit to the NCRTD the following:
 - a. the FY 2018 Santa Fe County Regional Transit Plan;
 - b. this Resolution; and
 - c. a request that the NCRTD analyze the need, benefits, and feasibility of the following routes:
 - i. a Glorieta transit route;
 - ii. a Turquoise Trail transit route; and
 - iii. a Madrid commuter route.

PASSED, APPROVED AND ADOPTED THIS 9th DAY OF MAY, 2017

SANTA FE BOARD OF COUNTY COMMISSIONERS


Henry Roybal, Chair

ATTEST:


Geraldine Salazar, Santa Fe County Clerk



APPROVED AS TO FORM:


Gregory S. Shaffer, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC RESOLUTIONS
PAGES: 3

I Hereby Certify That This Instrument Was Filed for record On The 15TH Day Of May, 2017 at 10:28:04 AM and Was Duly Recorded as Instrument # 1825502 If The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

Deputy

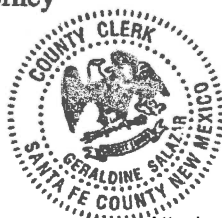


Exhibit A

Santa Fe County Transit Plan for FY 2018

ROUTES FUNDED BY NCRTD IN SANTA FE COUNTY

ROUTES FUNDED BY NCRTD - OPERATED BY SANTA FE TRAILS:

ROUTE 2 SHERIDAN ST. , CERRILOS RD, SANTA FE PLACE
ROUTE 4 SHERIDAN ST., ST. FRANCIS, SANTA FE PLACE
ROUTE 22 - IAIA/SFCC, SUPER WALMART, NM 599 RR STATION
SANTA FE PICK-UP -SPECIALS , DOWNTOWN AND MUSEUM HILL LOOP
SHUTTLES

ROUTES FUNDED AND OPERATED BY NCRTD

ROUTE 150 CHIMAYO
ROUTE 160 SANTA CLARA
ROUTE 200 ESPANOLA TO SANTA FE
ROUTE 210 POJOAQUE -NAMBE TRIBAL
ROUTE 220 TESUQUE TRIBAL
ROUTE 230 SAN ILDEFONSO TRIBAL
ROUTE 255 MOUNTAIN TRAIL (SANTA FE SKI BASIN SHUTTLE)
ROUTE 260 LA CIENEGA/LAS GOLONDRINAS
ROUTE 270 TURQUOISE TRAIL/NM599
ROUTE 280 ELDORADO TO SANTA FE
ROUTE 290 EDGEWOOD TO SANTA FE
ROUTE 400 LOS ALAMOS TO POJOAQUE

Exhibit B

FY 2018 NCRTD FUNDED ROUTE DESCRIPTIONS

Operated by Santa Fe Trails

Route 2 – The route begins at the transit center at Sheridan Street and terminates at Santa Fe Place with stops at Guadalupe St. and Cerrillos Road, and Rail Runner connections at Santa Fe Depot and South Capital Stations. Annual Ridership from July 1, 2015 to June 30, 2016 was 48,474.

Route 4 – This route begins at Sheridan St. Transit Center and terminates at Santa Fe Place. It has stops along St. Francis, Siringo and Camino Carlos Rey with Rail Runner connections at Santa Fe Depot and South Capital Stations. Annual Ridership from July 1, 2015 to June 30, 2016 was 8,928.

Route 22 – The route begins at Santa Fe Place and terminates at the Santa Fe Community College. Stops include Rancho Viejo, the IAIA, the NM Human Services Department near the NM 14/I-25 Interchange and the Super Walmart on Cerrillos Road with a connection to the 599 Rail Runner Station. Annual Ridership from July 1, 2015 to June 30, 2016 was 6,323.

Operated by the City of Santa Fe Parking Division

Santa Fe Pick-Up: Downtown and Museum Shuttles – The Santa Fe Pick- Up Downtown Shuttle is a loop route with stops at the Capital/PERA Building, St. Francis Cathedral, Main Library, City Hall, Convention Center, Plaza, Eldorado/Hilton Hotel, 4 stops along Canyon Rd and also stops at Alameda and Paseo de Peralta. The Shuttle service meets weekday and Saturday Rail Runner Trains at the Depot. The Museum Shuttle is a loop route that provides service to Museum Hill, St. Johns College, the Children's Museum and connects to the Downtown Shuttle. Downtown Shuttle headways are every 10 minutes, Museum Shuttle headways are 30 minutes. Annual Ridership from July 1, 2015 to June 30, 2016 was 76,305.

Operated by the NCRTD

Route 150 Chimayo– This route begins at the Espanola Transit, extends east to Chimayo, and then northeast to Truchas and Las Trampas. For westbound travel from the Santuario Parking Lot there are 5 morning and 4 evening trips. For eastbound travel from the Santuario Parking Lot there are 4 morning and 4 evening trips. Annual Ridership from July 1, 2015 to June 30, 2016 was 8,261.

Route 160-Santa Clara – This route works in conjunction with Ohkay Owingeh who operate their own service. The route has 22 stops with two morning and two evening runs. The first morning run and the last evening run provide transit connections at Sheridan St. and the South Capital station. These runs also have stops at the Santa Fe Indian School and the Santa Fe Indian Hospital on Cerrillos Road. Annual Ridership from July 1, 2015 to June 30, 2016 was 7,242.

Route 200 Espanola to Santa Fe – This route begins at Espanola Transit Center and extends to South Capital Rail Runner Station, connecting with the NCRTD Taos Route, Espanola Route, NMDOT Park and Ride to Los Alamos, Rail Runner and Santa Fe Trails. Annual Ridership from July 1, 2015 to June 30, 2016 was 21,313.

Route 210 Pojoaque –Nambe Tribal - As of March 16, 2015, this former fixed route has changed to a dial a ride where customers can call for a ride. This change was made to provide greater flexibility in trip scheduling than by the former fixed route service. Annual Ridership from July 1, 2015 to June 30, 2016 was 1,093.

Route 220 Tesuque Tribal - This service operates as a circulator between Tesuque and Santa Fe. The AM peak hour, the PM peak hour, and midday service each have a southbound and northbound trip that operate between Santa Fe and the Espanola Transit Hub. Commuter options are provided with connections to the 200 Santa Fe Route and the 160 Santa Clara Route. Annual Ridership from July 1, 2015 to June 30, 2016 was 8,950.

Route 230-San Ildefonso Tribal – This route has two westbound trips in the morning and evening from Ogo Wii Road/Pojoaque Phillips 66. There are two eastbound trips in the morning and one in the evening from NM 30/Battleship View Road. The service begins at the San Ildefonso Visitors' Center with additional stops in the northern end of the Pueblo. Connections to NMDOT Park and Ride and other RTD routes are available at the Cities of Gold Park and Ride. Annual Ridership from July 1, 2015 to June 30, 2016 was 4,060.

Route 255 Mountain Trail (Santa Fe Ski Basin)

The Mountain Trail route now operates as a year round service. The non-winter service is from Apr. 2 (last day of ski season) to Nov./Dec. (opening of ski basin) and has service twice a day during the week and 3 times a day on the weekend. The winter season schedule, from Nov./Dec. to Apr. 2, has service 3 times a day during the week and 6 times a day on the weekends. The route starts at the South Capital Rail Station; stops include the downtown area, Fort Marcy, Black Canyon Campground, Hyde Park, Ten Thousand Waves, Aspen Vista and the Ski area. FY 2015/16 ridership was 4,597; FY 2016/17 as of March 27 was 5,249.

Route 260 La Cienega/Las Golondrinas Route

Service began March 28, 2016 as a Pilot Route which would be assessed after 6 months of operation. In December, 2016 NCRTD determined that ridership levels were sufficient to continue the La Cienega service as a regular NCRTD route. There are three roundtrips per day: morning, midday, and afternoon, Monday through Friday. Stops include the Community Center, Los Pinos Road, the NM Human Services Dept. on NM 14, the VA Clinic, Walmart, and Santa Fe Place. Park Ride is available at Las Golondrinas, NM 599 Rail Runner Station, and Santa Fe Place Mall. Ridership for FY 2016/17 so far, July 1, 2016 to Feb. 2017, was 840.

Route 270 Turquoise Trail/NM599 Route – This route begins at the NM 599 Rail Runner Station with stops at the National Guard and New Mexico Corrections facilities, Santa Fe County Public Safety Complex, Turquoise Trail Fire Department, Cerrillos and Madrid. There are three morning round trips, two PM hour round trips, and one midday round trip. Annual Ridership from July 1, 2015 to June 30, 2016 was 7,166.

Route 280 Eldorado to Santa Fe – The route begins in Eldorado with stops at Christus St. Vincent's, the South Complex, the NMDOT at the South Capital Rail Runner Station, former PERA

on Paseo De Peralta, and the Santa Fe Transit station on Sheridan. There are 3 morning roundtrips and two PM peak hour roundtrips. Annual Ridership from July 1, 2015 to June 30, 2016 was 4,760.

Route 290 Edgewood to Santa Fe – This route begins at the Edgewood Senior Center with stops in Moriarty, Stanley, Galisteo, the Sheridan Transit Center, and the Santa Fe Adult Detention Center on NM 14. There is one northbound trip in the morning and one southbound trip in the evening. Annual Ridership from July 1, 2015 to June 30, 2016 was 7,003.

Route 400 Los Alamos to Pojoaque (also serving Espanola) – This route provides mid-day service that originates at Espanola Park and Ride lot with 12 stops connecting to Los Alamos ACT Transit Hub and the Cities of Gold Park and Ride. Annual Ridership from July 1, 2015 to June 30, 2016 was 1,318.



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

Agenda No.: A.

Index (Council Goals): * 2017 Council Goal – Quality Governance - Operational Excellence and Communication – Establish and implement a mechanism for effective Utility policy setting and review.

Presenters: Tim Glasco, Utilities Manager

Legislative File: CO0510-17b

Title

Incorporated County of Los Alamos Code Ordinance No. 02-280; An Ordinance to Amend Section 40-64 of the Los Alamos County Code of Ordinances to Provide Authority to Council and Board of Public Utilities to Transfer Revenues or Funds of a System to Another System.

Recommended Action

I move that Council adopt Incorporated County of Los Alamos Code Ordinance No. 02-280; An Ordinance to Amend Section 40-64 of the Los Alamos County Code of Ordinances to Provide Authority to Council and Board of Public Utilities to Transfer Revenues or Funds of a System to Another System; and ask staff to assure that it is published in summary form.

Utilities Manager Recommendation

The Utilities Manager recommends that Council adopt the code ordinance as presented.

Board, Commission or Committee Recommendation

The Board of Public Utilities recommends that Council adopt the code ordinance as presented. (See attached endorsement letter.)

Body

County ordinance currently does not allow for one utility sub-fund to subsidize another. While loans between utilities are allowed so long as market rate interest is applied, outright transfers from one sub-fund to another is prohibited. The proposed ordinance 02-280 would add language permitting transfers between utilities systems with concurrence of both the Board of Public Utilities and the County Council. This necessity of both entities agreeing to the transfer would allow for flexibility when there are unusual circumstances. Should Council adopt the ordinance, it would be with the understanding that such fund transfers in the future would be done rarely and only with a very compelling reason.

Adoption of this ordinance does not necessarily indicate Council endorsement of any particular transfer at this time. It simply allows the Board and Council to consider intra-utility fund transfers in the future.

Alternatives

Council could decide not to adopt the proposed ordinance. The proposed ordinance would only allow transfers between utilities systems with the concurrence of both Board and Council, so either body could still prevent any specific transfer from happening.

Fiscal and Staff Impact/Planned Item

No staff impact or immediate fiscal impact. If the ordinance is adopted by Council, and the Board and Council subsequently do decide to make a transfer, then there would be some as yet undetermined fiscal impact.

Attachments

A - Incorporated County of Los Alamos Code Ordinance No. 02-280

B - BPU Endorsement of Code Ordinance 02-280

C - Notice of Publication

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-280

AN ORDINANCE TO AMEND SECTION 40-64 OF THE LOS ALAMOS COUNTY CODE OF ORDINANCES TO PROVIDE AUTHORITY TO COUNCIL AND THE BOARD OF PUBLIC UTILITIES TO TRANSFER REVENUES OR FUNDS OF A SYSTEM TO ANOTHER SYSTEM

WHEREAS, the Incorporated County of Los Alamos ("County") Council in 1986 adopted, in Ordinance No. 85-20, establishing various financial policies for the County's Department of Public Utilities ("Department" or "DPU"); and

WHEREAS, Section 40-64 currently requires that the Department maintain separate financial records and accounts for each utility system (e.g., gas, water, wastewater, electric); and

WHEREAS, Section 40-64 also further limits and restricts the transfer of one utility system revenue to another utility system; and

WHEREAS, the County Council finds that on rare occasions the need to rebalance reserve levels between the County-owned electric, gas, water and utility systems may arise; and

WHEREAS, to insure that such rebalancing of reserve levels between the County-owned electric, gas, water and utility systems can occur, but only occur under rare circumstance, the County Council finds that the below ordinance amendment is needed and necessary.

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS:

Section 1. Article II, Division 2, of Chapter 40 of the Los Alamos County Code of Ordinances Section 64 is hereby amended as follows:

Sec. 40-64. - Separate accounts for separate utilities systems.

Separate financial records and accounts shall be kept for each utility system following, to the extent practicable, the system of accounts and the rules and regulations promulgated by the Federal Energy Regulatory Commission (or its successor). Each utility system shall be operated as an independent organization, unless otherwise provided, and insofar as joint operations are directed, the expenses shall be equitably prorated among the systems. Direct transfers of revenues or funds of a system shall not be made for the purpose of supporting another system unless approved by the board of public utilities and county council.

Section 2. Effective Date. This Ordinance shall become effective thirty (30) days after notice is published following its adoption.

Section 3. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 4. Repealer. All ordinances or resolutions, or parts thereof, inconsistent here with are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

PASSED AND ADOPTED this _____, day of _____ 2017.

INCORPORATED COUNTY OF LOS ALAMOS

David Izraelevitz, Council Chair

ATTEST:

Naomi D. Maestas
Los Alamos County Clerk



Department of Public Utilities
Electric, Gas, Water, and Wastewater Services

October 3, 2017

RE: Board of Public Utilities Endorsement of Incorporated County of Los Alamos Code Ordinance No. 02-280

To Los Alamos County Council:

On October 3rd, 2017, the Board of Public Utilities met to review proposed Code Ordinance No. 02-280. The Board voted and passed the following motion:

BOARD OF PUBLIC UTILITIES

Jeff Johnson, Chair
Stephen McLin, Vice Chair
Paul Frederickson
Kathleen Taylor
Carrie Walker

EX OFFICIO MEMBERS

Timothy Glasco
Harry Burgess

I move that the Board of Public Utilities endorse Incorporated County of Los Alamos Code Ordinance No. 02-280; An Ordinance to Amend Section 40-64 of the Los Alamos County Code of Ordinances to Provide Authority to Council and Board of Public Utilities to Transfer Excess Utility Funds to Other Utility Accounts, and recommend Council adoption of the ordinance.

The Board of Public Utilities does hereby recommend adoption of Code Ordinance 02-280.

Sincerely,

Jeffrey Johnson
Board of Public Utilities Chair

Administrative Offices
1000 Central Avenue, Suite 130
Los Alamos, NM 87544
P 505.662.8333 F 505.662.8005
dpu@lacnm.us
losalamosnm.us/government/departments/utilities

NOTICE OF CODE ORDINANCE NO. 02-280

STATE OF NEW MEXICO, COUNTY OF LOS ALAMOS

Notice is hereby given that the Council, Incorporated County of Los Alamos, State of New Mexico, has directed publication of Los Alamos County Code Ordinance No. 02-280. This will be considered by the County Council at an open meeting on Tuesday, November 14, 2017 at 6:00 PM, at the LA Municipal Building: 1000 Central Ave. The full copy is available for inspection or purchase, during regular business hours, in the County Clerk's Office: 1000 Central Ave, Suite 240.

Council of the Incorporated County of Los Alamos

By: /s/ David Izraelevitz, Council Chair

Attest: /s/ Naomi D. Maestas, County Clerk

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-280

AN ORDINANCE TO AMEND SECTION 40-64 OF THE LOS ALAMOS COUNTY CODE OF ORDINANCES TO PROVIDE AUTHORITY TO COUNCIL AND THE BOARD OF PUBLIC UTILITIES TO TRANSFER REVENUES OR FUNDS OF A SYSTEM TO ANOTHER SYSTEM



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

| | |
|-------------------------------|--|
| Agenda No.: | B. |
| Index (Council Goals): | * 2017 Council Goal – Quality of Life – Housing – Promote the Creation of a Variety of Housing Options for all Segments of the Los Alamos Community, including infill Opportunities as Appropriate |
| Presenters: | Joanie Ahlers, Economic Development Administrator |
| Legislative File: | OR0784-17 |

Title

Incorporated County Of Los Alamos Ordinance No.673, An Ordinance Authorizing The Sale Of Certain County-Owned Real Property within Site A-13-2 and A-12 To LAH Investors, LLC.

Recommended Action

I move the Council adopt Incorporated County Of Los Alamos Ordinance No. 673; An Ordinance Authorizing The Sale Of Certain County-Owned Real Property within Site A-13-2 and A-12 To LAH Investors, LLC and ask staff to assure it is published in summary form.

County Manager's Recommendation

The County Manager recommends adoption of this Ordinance as presented.

Body

This Ordinance authorizes the sale of County-owned property identified as the A-13-2 and A-12 sites located approximately on the south end of 35th Street. The parcels sit just east of Los Alamos Medical Center, west of Mountain View condos and south of Alpine Laser Dental offices. This property is the site of the former Los Alamos Site Office building, and was transferred to the County after that facility's demolition.

Tract A-13-2 is generally described to encompass the southern portion of A-13 (excluding the northern portion known as A-13-1) and consists of approximately 7.5 acres. The parcel known as A-12 is a complete parcel and consists of approximately 4.5 acres. The parcels that are proposed to be sold to the buyer when combined yield approximately 12 acres. The property was included in a bulk parcel of land that was transferred from the DOE to Los Alamos County in the fall of 2010. Tract A-13 was subdivided into two separate tracts. The result of that Subdivision includes A-13-1, ownership to be retained by Los Alamos County, which is zoned PL- Public Land and A-13-2 and A-12 which are currently zoned MU-Mixed Use and being considered for sale to LAH Investors, LLC.

The proposed buyer for this site is LAH Investors, LLC, which is managed by Santa Fe Properties Real Estate Company, Gerald Peters, president. With Council's approval of this Ordinance, LAH Investors LLC will enter into a Purchase, Sale and Development Agreement with Los Alamos County.

The Purchase, Sale and Development Agreement (attached to the Ordinance) outlines the details of the development of A-13-2/A-12, which will consist of a Class A market rate apartment community of approximately 150 units. LAH Investors LLC will conduct the development of all on-site utilities, roadways and other infrastructure to serve the project. LAH Investors LLC will also, on behalf of Los Alamos County, oversee and perform the construction of off-site utilities and road work as proposed within "Exhibit C" of the Purchase, Sale and Development Agreement.

Council is authorized to sell county-owned real property and interests in real property through Chapter 14 of the Los Alamos County, New Mexico - Code of Ordinances. An appraisal dated February 23, 2017 estimated the market value of parcels consisting of Tract A-13-2 along with A-12 to be \$2,175,000. The proposed purchase price for the site is \$2,175,000 and the proposed terms of the sale are outlined within the Purchase, Sale and Development Agreement attached to the Ordinance. The key terms are:

- (1) Effective Date: The Effective Date of the Agreement shall be the date the Agreement is fully executed by both the Purchaser and the Seller.
- (2) Purchase Price: TWO MILLION ONE HUNDRED SEVENTY FIVE THOUSAND AND NO 00/100 DOLLARS (\$2,175,000.00), to be paid in cash at closing, subject to the closing cost allocations and proration set forth herein.
- (3) Earnest Money: TWENTY-FIVE THOUSAND AND NO 00/100 DOLLARS (\$25,000.00) to be delivered to the Escrow Agent within five (5) business days from the Effective Date.
- (4) Additional Earnest Money: TWENTY FIVE THOUSAND AND NO 00/100 DOLLARS (\$25,000.00) to be delivered to the Escrow Agent in order for the Purchaser to exercise its one-time option to extend the Closing Date by ninety (90) days.
- (5) Due Diligence Period: The Due Diligence Period shall begin on the Effective Date, and continue for no more than four hundred fifty (450) days from the Effective Date.
- (6) Closing Date: The Closing Date shall be a date within ninety (90) days after the end of the Due Diligence Period unless extended as outlined in #4 above.

Fiscal and Staff Impact/Planned Item

There should be minimal staff impact as a result of the sale of these parcels. The fiscal impact to LAC will be in the form of the off-site utilities, roadway, and possibly up to one-half of the cost of any intersection signal improvements. The current estimate for the total of these items is \$1.2 million. The FY 2018 budget included a placeholder amount of \$800,000, so if the sale and development proceed as outlined in the agreement, this budget would need to be amended in the future. The sale of the land will gross the County \$2,175,000. The FY 2018 budget included a placeholder of \$2,066,250. The expected timing of closing is such that these proceeds would be expected in FY 2019. In addition the project is estimated to generate one-time GRT revenue of approximately \$500-750K and annual property tax revenue of approximately \$50-75K, as well as increase the housing units within the county by approximately 150.

Alternatives

Council could choose to not adopt the Ordinance and the sale and development would not proceed, or Council could direct staff to amend the proposed ordinance and related agreement.

Attachments

A - Ordinance No.673

B - Notice of Publication

C - Project Concept

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 673

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN
COUNTY-OWNED REAL PROPERTY WITHIN SITE
A-13-2 AND A-12 TO LAH INVESTORS, LLC**

WHEREAS, the Incorporated County of Los Alamos, New Mexico (the "County") is the holder and owner of certain real properties (the "Property") within parcels generally known as Site A-13-2 and Site A-12, in Los Alamos, New Mexico, and more particularly described in the attached Purchase, Sale and Development Agreement; and

WHEREAS, the Property has been obtained by County from the United States as a "land transfer parcel" and is intended to be utilized by County for economic development of the community and to enhance County's self-sufficiency by reducing economic dependence on Los Alamos National Laboratory related revenues; and

WHEREAS, County previously advertised the availability of the Property for development and selected LAH Investors, LLC, to ensure that the sale would address the housing goals set forth in the County's Comprehensive Plan for the development of the Property; and

WHEREAS, County finds that the sale of certain real property within Site A-13-2 and Site A-12 to LAH Investors, LLC, meets County's housing goals as outlined in County's Comprehensive Plan and comports with general principles of law and is fair and equitable; and

WHEREAS, the current appraised fair market value of the Property has been determined by a qualified appraiser to be Two Million One Hundred Seventy-Five Thousand and No 00/100 Dollars (\$2,175,000.00); and

WHEREAS, County agrees to sell the Property to LAH Investors, LLC, for Two Million One Hundred Seventy-Five Thousand and No 00/100 Dollars (\$2,175,000.00) in cash at the closing which shall occur on or about April 30, 2019, in accordance with the terms and conditions contained in the Purchase, Sale and Development Agreement; and

WHEREAS, under the conditions expressed herein, the Council of the Incorporated County of Los Alamos wishes to enter into a private sale of the land in accordance with NMSA 1978, Section 3-54-1B, and this Ordinance is subject to referendum as provided in such Section; and

WHEREAS, this Ordinance was published prior to its adoption pursuant to the provisions of Subsection J of Section 3-1-2, NMSA 1978 and Section 3-17-3, NMSA 1978.

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS as follows:

Section 1. That the County Manager is authorized to negotiate and enter into a purchase agreement with LAH Investors, LLC, whereby County will receive a total of Two Million One Hundred Seventy-Five Thousand and No 00/100 Dollars (\$2,175,000.00) for the Property, as outlined in the attached Purchase, Sale and Development Agreement;

Section 2. The County Manager is hereby authorized to finalize and execute the Purchase, Sale and Development Agreement, Deed, and such other closing documents as may be reasonably necessary to close the transaction authorized herein provided that the closing documents shall be substantially in the form attached hereto and in form acceptable to the County Attorney.

Section 3. The County Manager is directed to publish this Ordinance at least once within one (1) week after adoption of this Ordinance pursuant to Subsection J of Section 3-1-2, NMSA 1978, Subsection A of Section 3-17-3 NMSA 1978 and in accordance with NMSA 1978, Section 3-54-1D.

Section 4. This Ordinance shall be effective forty-five (45) days after adoption unless the referendum process is commenced in accordance with the requirements of Section 3-54-1 NMSA 1978.

Section 5. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 6. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

ADOPTED this _____ day of November, 2017.

**COUNCIL OF THE INCORPORATED COUNTY
OF LOS ALAMOS**

David Izraelevitz, Council Chair

ATTEST:

**Naomi D. Maestas
Los Alamos County Clerk**

PURCHASE, SALE AND DEVELOPMENT AGREEMENT FOR REAL PROPERTY LOCATED IN THE INCORPORATED COUNTY OF LOS ALAMOS COMMONLY REFERRED TO AS A-13-2 AND A-12 SITES

This Purchase, Sale and Development Agreement (“Agreement”), for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, is entered into by and between LAH Investors, LLC, a New Mexico limited liability company (“Purchaser”) and Incorporated County of Los Alamos, a New Mexico County (“Seller”), effective the date the Agreement is signed by Purchaser and Seller.

ARTICLE I BASIC INFORMATION

Purchaser and Seller have set out the terms and conditions of their agreement in the body of the Agreement below. For convenience, they provide in this Article I certain terms that reappear throughout the Agreement.

1.1 Certain Basic Terms:

(a) **Effective Date:** The Effective Date of the Agreement shall be the date the Agreement is fully executed by both the Purchaser and the Seller.

(b) **Purchaser and Notice Address:**

LAH Investors, LLC, a New Mexico limited liability company.

Attn: Peter Kerwick, Vice President

4056 Cerrillos Road, Suite F-1

Santa Fe, New Mexico 87507

Telephone: (505) 983-7997

Facsimile: (505)983-7421

E-Mail: pkerwick@peterscorp.com

With Copy to:

C. Mott Woolley

The Peters Corporation

4056 Cerillos Road, Suite F-1

Santa Fe, New Mexico 87507

Telephone: (505)231-5087

Facsimile: (505)424-1890

E-Mail: cmwoolley@peterscorp.com

(c) **Seller and Notice Address:**

Incorporated County of Los Alamos

a New Mexico County

Attn: Harry Burgess, County Manager

1000 Central Avenue, Suite 350

Los Alamos, New Mexico 87544

Telephone: (505)663-1750
Facsimile: (505)662-8079
E-Mail: harry.burgess@lacnm.us

- (d) Purchase Price: TWO MILLION ONE HUNDRED SEVENTY FIVE THOUSAND AND NO 00/100 DOLLARS (\$2,175,000.00), to be paid in cash at closing, subject to the closing cost allocations and proration set forth herein.
- (e) Earnest Money: TWENTY-FIVE THOUSAND AND NO 00/100 DOLLARS (\$25,000.00) to be delivered to the Escrow Agent within five (5) business days from the Effective Date.
- (f) Additional Earnest Money: TWENTY FIVE THOUSAND AND NO 00/100 DOLLARS (\$25,000.00) to be delivered to the Escrow Agent in order for the Purchaser to exercise its one-time option to extend the Closing Date as provided for in Paragraph 5.2 of this Agreement.
- (g) Due Diligence Period: The Due Diligence Period shall begin on the Effective Date, and continue for no more than four hundred fifty (450) days from the Effective Date.
- (h) Closing Date: The Closing Date shall be a date within ninety (90) days after the end of the Due Diligence Period unless extended pursuant to Paragraph 5.2 of this Agreement in which case the Closing Date shall be a date within one hundred eighty (180) days after the end of the Due Diligence Period.
- (i) Title Company: Any funds escrowed pursuant to this Agreement shall be escrowed with the following Escrow Officer upon Title Guaranty, LLC executing an *Acknowledgement by Title Guaranty, LLC* for all escrowed funds received as shown in **Exhibit "B"** to this Agreement.

Title Guaranty, LLC
1200 Trinity Drive
Los Alamos, New Mexico 87544
Phone: (505)662-2241
Fax: (505)662-6891
Escrow Officer: Denise G. Terrazas
E-mail: denisgt@titleguarantynm.com

1.2 Property: Subject to the terms of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, certain real property within a parcel commonly known as the A-13-2 and A-12 Sites as more particularly described on **Exhibit "A"** attached hereto, owned by Seller but none other:

The real property is described in **Exhibit "A"**, together with easements or rights-of-way relating thereto, and all appurtenances thereunto belonging, and, without warranty except as otherwise warranted in the Special Warranty Deed transferring ownership, all rights, title, and interest, if any, of Seller in and to the land lying within any street or roadway adjoining the real property described in Exhibit A or any vacated or hereafter vacated street or alley adjoining said real property;

Purchase, Sale and Development Agreement for Real Property Located in
the Incorporated County of Los Alamos Commonly Referred to as A-13-2 and A-12 Sites

including any and all oil, gas and other mineral interests in and under said land, and all rights incidents thereto, not previously reserved or conveyed of record (collectively "Property"). It is understood and agreed that upon completion of a survey of the Property, the plat of survey shall become a part of Exhibit A and incorporated by reference therein.

1.3 **Purchaser Cash Payment:** The Purchase Price, subject to the proration and closing cost allocations as provided in Sections 6.1 and Sections 1.5 respectively, shall be paid in cash at Closing by Purchaser to Seller. The Earnest Money shall be applied to the Purchase Price as stated in this Agreement.

1.4 **Earnest Money:** The Earnest Money, in immediately available federal funds, shall be deposited by Purchaser with the Escrow Agent as provided in Section 1.1(e). In the event that Purchaser fails to timely deposit the Earnest Money with the Escrow Agent, this Agreement shall be of no force and effect. The Earnest Money shall be held in an interest bearing account, interest to accrue for the benefit of Seller or Purchaser as the case may be and all amounts deposited pursuant to the terms hereof and interest earned thereon shall be the "Earnest Money". If this Agreement is terminated by Purchaser during the Due Diligence Period, the Earnest Money shall be paid to Purchaser. In the event this Agreement is not terminated within the Due Diligence Period as permitted under Section 2.8 hereof or as otherwise provided for in this Agreement, the Earnest Money shall be non-refundable except in the event of Seller default for failure or refusal to close as provided in Section 8.2 of this Agreement.

1.5 **Closing Costs:** Closing costs shall be allocated and paid as follows at Closing:

| <u>Cost/Obligation</u> | <u>Responsible Party</u> |
|--|---------------------------------|
| Title Commitment required to be delivered pursuant to <u>Section 3.1</u> | Seller |
| Premium for standard form Title Policy required to be delivered pursuant to <u>Section 3.1</u> in the amount of Purchase Price | Seller |
| Premium for any upgrade of Title Policy for extended or additional coverage and any endorsements desired by Purchaser, any inspection fee charged by the Title Company, tax certificates, municipal and utility lien certificates, | Purchaser |
| Costs of Survey and/or any revisions, modifications or re-certifications thereto (if any) | Seller |
| Costs for UCC Searches (if any) | Seller |
| Recording Fees | Purchaser |
| Any deed taxes, documentary stamps, transfer taxes, intangible taxes, mortgage taxes or other similar taxes, fees or assessments | Seller |

| <u>Cost/Obligation</u> | <u>Responsible Party</u> |
|--|---------------------------------|
| Any escrow fee charged by Escrow Agent for holding the Earnest Money or Settlement/Closing Fee | Purchaser ½ Seller ½ |
| Any and all fees associated with Purchaser's lender (if any) | Purchaser |

1.6. **Time Limit of Offer:** The Offer set forth in this Agreement to the Purchaser shall expire at 6:00 p.m., on the tenth (10th) day after the Purchaser receives written notice from the County Attorney for the Incorporated County of Los Alamos that the Ordinance adopted by the County Council of the Incorporated County of Los Alamos authorizing the sale of Property is effective. The Purchaser shall, within ten (10) days of receipt of said notice, execute two (2) originals of this Agreement, in the form approved by Purchaser and Seller not changed in form or substance, and return same to Seller. In the event the Purchaser fails to timely execute the Agreement as prescribed here and return same to Seller, the Offer set forth in this Agreement shall stand rescinded, and the Agreement shall be of no force and effect. The date the Agreement is fully executed by both parties shall be the Effective Date as defined in Paragraph 1.1, Subpart A.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article I shall survive the Closing Date only for a period of two (2) years.

ARTICLE II INSPECTIONS AND DUE DILIGENCE

2.1 **Property Information:** During the Due Diligence Period, as defined in Section 1.1(g), the Purchaser may make written requests upon the Seller for documents. Upon receipt by the Seller of a request for documents from the Purchaser, the Seller shall determine whether responsive documents are in the possession and control of the Seller. If the requested documents are in the possession and control of the Seller, the Seller shall furnish the requested additional documents to the Purchaser as soon as reasonably possible but no later than fifteen (15) days after Seller receives Purchaser's request for documents unless a later time is agreed to by the Purchaser and Seller in writing. If the requested documents enjoy a legal privilege, or the Purchaser is required by law to maintain the confidentiality of the requested additional documents, the Seller shall provide a written response to Purchaser stating that the Seller has the requested documents citing legal privilege, if any, and/or the legal authority that requires the Seller to maintain the confidentiality of the documents. If the Seller does not have documents Purchaser has requested in its possession and control, the Seller shall provide a written timely response to Purchaser stating same.

2.2 **Inspections in General, Insurance Requirements, and Indemnity:**

a. During the Due Diligence Period, the Purchaser, its agents, and employees shall have the right to enter upon the Property for the purpose of making all such inspections as Purchaser deems appropriate at Purchaser's sole risk, cost and expense. If any inspection or test disturbs the Property, Purchaser will restore the Property to substantially the same condition as existed prior to the inspection or test. All such entries upon the Property shall be at reasonable times.

b. Purchaser shall provide to Seller a certificate of insurance showing Seller as an additional insured with a national insurance company acceptable to Seller in the minimum amount of ONE MILLION AND NO 00/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION AND NO 00/100 DOLLARS (\$2,000,000.00) in the aggregate, insuring Seller against any and all liability which may arise from Purchaser's entry on the property during the Due Diligence Period, and Purchaser's activity on the Property during the Due Diligence Period.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article II Section 2.1 and Section 2.2 subparts a. and b. shall survive the Closing Date only for a period of two (2) years.

c. Purchaser shall defend, indemnify Seller and hold Seller, agents, members, and employees and the Property harmless from and against such losses, costs, damages, claims, or liabilities, if any, for which Purchaser is responsible for physical damage to persons or property lawfully upon the Property and claims for nonpayment for services and materials ordered by Purchaser, but none other, including but not limited to, mechanic's and materialmen's liens arising out of or in connection with Purchaser's inspection of the Property as allowed herein. The Purchaser's indemnity herein shall survive Closing, and shall not be limited by the default provisions contained in Section 8.1 hereof, or the termination provisions contained in Section 2.8 herein.

d. Purchaser acknowledges and agrees that it is relying on its inspections and investigations in acquiring the Property, and that the Due Diligence period allows the Purchaser an adequate opportunity to inspect the Property and perform any other investigation and analysis to determine whether Purchaser wants to purchase the Property per the terms of this Agreement including purchasing the Property **"AS IS, WHERE IS, WITH ALL FAULTS"** as specifically provided in Section 10.16 of this Agreement, subject to the representations in Section 5.3 (h).

e. Purchaser further acknowledges and agrees that the Due Diligence Period allows the Purchaser an adequate opportunity to determine whether obtaining financing to construct the Project as provided for in the Development Agreement in Article IV of this Agreement is a reasonable likelihood, it being understood and agreed that Purchaser shall have the right to terminate this Agreement in the event the Purchaser is unable to obtain financing upon terms and conditions satisfactory to Purchaser.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article II Section 2.2 subparts c., d., and e. shall survive the Closing Date.

2.3. Construction Financing: During the Due Diligence Period the Purchaser shall undertake to obtain a commitment for construction financing upon terms and conditions satisfactory to Purchaser, sufficient to construct the Project as provided for in the Development Agreement in Article IX of this Agreement, and provide proof of same to Seller prior to the end of the Due Diligence Period, if obtained. If not obtained upon terms and conditions satisfactory to Purchaser, Purchaser shall deliver to Seller a termination of this Agreement.

2.4 Necessary Easements: As soon as reasonably possible and prior to the end of the Due Diligence period, Purchaser shall provide to Seller legal descriptions as well as needed conditions of all easements the Purchaser deems necessary to complete the Project.

2.5 Sufficient Ingress and Egress: As soon as reasonably possible and prior to the end of the Due Diligence period, Purchaser shall provide to Seller legal descriptions and as well as needed conditions of all ingress and egress to the Property the Purchaser deems necessary for completion of the Project.

2.6 Necessary Curb Cuts: As soon as reasonably possible and prior to the end of the Due Diligence period, Purchaser shall identify any needed curb cuts or relocation of curb cuts necessary to provide ingress and egress from the Property from Highway 502 (Trinity Drive) as well as any needed curb cuts necessary to align needed ingress and egress with surrounding streets and intersections.

2.7 Service Contracts: As soon as reasonably possible and prior to the end of the Due Diligence period, Purchaser shall identify any service contracts that exist between the Seller and a Third-Party that provides services to the Property, and shall notify the Seller in writing of any service contract the Purchaser requires the Seller to terminate.

2.8 Termination During Due Diligence Period: Purchaser may elect, in its sole unfettered discretion, for any reason or no reason, to terminate this Agreement prior to the end of the Due Diligence Period by giving Seller written notice thereof as herein provided, including but not limited to Purchaser's rejection of terms and conditions imposed by a lender in response to Purchaser's application for financing. In the event Purchaser exercises this right of termination, Escrow Agent is hereby irrevocably instructed to refund the Earnest Money to Purchaser without the necessity of Seller's consent, and neither party shall have any further rights or liabilities hereunder except for those provisions which survive the termination of this Agreement provided that Purchaser, upon such termination, shall deliver to Seller all information and documentation regarding the Property Purchaser obtained during the Due Diligence Period.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article II Sections 2.3 through 2.8 shall survive the Closing Date only for a period of two (2) years.

ARTICLE III TITLE/SURVEY/ENVIRONMENTAL REVIEW

3.1 Timing of Title/Survey: Within fifteen (15) days after the Escrow Agent's receipt of the Earnest Money, Seller, at Seller's cost, shall provide Purchaser, a current American Land Title Association (ALTA) owner's title commitment for the Property from the Title Company and copies of all documents referenced in exceptions to title shown thereon ("Title Report"). Within thirty (30) days after the Escrow Agent's receipt of the Earnest Money, Seller shall provide Purchaser a current ALTA Survey ("Survey") at Seller's cost and expense. As used in this Paragraph 3.1 "current" shall mean dated no earlier than thirty (30) days from the Effective Date.

3.2 Title/Survey/Environmental Review and Cure:

a. Purchaser shall review the Title Report and Survey obtained pursuant to Section 3.1 hereof, and Purchaser shall review the environmental status of the Property during the Due Diligence Period. Purchaser shall notify Seller in writing of any title, survey and/or environmental objections prior to expiration of the Due Diligence Period. Seller shall have no obligation to cure any title or survey or environmental objections and Purchaser shall have no obligation to purchase the Property in the event Seller elects not to cure a defect identified by Purchaser.

b. In the event the Purchaser waives objections raised pursuant to Paragraph 3.2(a) and elects to proceed to Closing, the Closing shall occur as contemplated herein and Purchaser shall accept the Property subject to such condition without reduction of Purchase Price.

c. In the event Purchaser does not object to the condition of the title to the Property as shown on the Title Report or Survey within the Due Diligence Period, the condition of the title as shown therein shall be deemed approved and any exceptions to title shown in the Title Report which are approved or deemed approved shall constitute "Permitted Exceptions" for purposes of the Title Policy and the Special Warranty Deed.

d. If the Title Company or surveyor revises the Title Report or Survey after the expiration of the Due Diligence Period and prior to Closing to add or modify exceptions or requirements that adversely and materially affect title to the Property, Purchaser may object to such matter by notice to Seller within ten (10) days after such revised Title Report or Survey is delivered to Purchaser. Seller may, but shall not be obligated to, attempt to cure any title or survey objection by the Closing Date.

e. If Seller elects not to cure any such title or survey objection raised pursuant to Paragraph 3.2(d) or fails to cure any such objection raised pursuant to Paragraph 3.2(d) within fifteen (15) days following Purchaser's notice of objections, then Purchaser may either terminate this Agreement by written notice to Seller given on or before fifteen (15) days after receipt of any notice by Seller that it elects not to cure or cannot cure the required objections. In this event, the Earnest Money shall be refunded immediately to the Purchaser unless the Purchaser waives objections and elects to proceed to closing.

f. In the event the Purchaser waives objections raised pursuant to Paragraph 3.2(d) and elects to proceed to Closing, the Closing shall occur as contemplated herein and Purchaser shall accept the Property subject to such condition without reduction of Purchase Price.

3.3 Title Policy: As soon as possible after the Closing, at Seller's cost and expense, the Title Company shall deliver to Purchaser a standard Owner's Title Insurance Policy (the "Title Policy"), issued by the Title Company dated the date of recording of the Special Warranty Deed in the amount of the Purchase Price, insuring Purchaser as owner of fee simple title to the Property subject only to the Permitted Exceptions. Any endorsements or extended and special coverages to the Title Policy shall be obtained by Purchaser at Purchaser's sole cost and expense.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article III shall survive the Closing Date only for a period of two (2) years.

ARTICLE IV CONDEMNATION

4.1 Condemnation: Risk of loss resulting from any condemnation or eminent domain proceeding which is commenced or has been threatened prior to the Closing, shall remain with Seller. If prior to the Closing, the Property or any portion of the Property shall be subject to a bona fide threat of condemnation or shall become the subject of any proceedings, judicial, administrative or otherwise, with respect to the taking by eminent domain or condemnation, Seller shall immediately notify Purchaser thereof after receipt of actual notice thereof by Seller, but in any event prior to Closing. If a material portion of the Property is subject to eminent domain or condemnation, Purchaser may elect within fifteen (15) days after receipt of such notice, to terminate this Agreement (the "Election Period") and receive an immediate refund of the Earnest Money or to proceed to Closing. If the Closing Date is within the Election Period, then Closing shall be extended to the next business day following the end of the Election Period. If Purchaser does not elect to terminate this Agreement, and in any event if the taking is not material, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any interest taken by eminent domain or condemnation, shall be effected and Purchaser shall accept an assignment from Seller of the condemnation proceeds. For the purposes of this paragraph, "material portion" as to a taking or condemnation means a twenty percent (20%) or greater portion of the Property being condemned or taken.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article IV shall survive the Closing Date only for a period of two (2) years.

ARTICLE V CLOSING

5.1 Closing: The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date as defined in Paragraph 1.1, subpart (h), or such other time no later than seven (7) days after the Closing Date, as the parties, through their respective agents who are executing this Agreement, may mutually specify in writing for the Closing.

5.2 Purchaser's One-Time Option to Extend Closing Date: Seller, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, hereby grants to Purchaser an option to extend the Closing Date for an additional ninety (90) days beyond the Closing Date as defined in Paragraph 1.1, Subpart (h) upon delivery of TWENTY FIVE THOUSAND AND NO 00/100 DOLLARS (\$25,000.00) as Additional Earnest Money to the Escrow Agent at least ten (10) days before the Closing Date as defined in Paragraph 1.1, Subpart (h). This Additional Earnest Money is separate and distinct from the Earnest Money, and unlike the Earnest Money is not refundable to the Purchaser under any condition.

5.3 Conditions to Purchaser's Obligations to Close: In addition to such other conditions to Closing as are specified throughout this Agreement, the obligation of Purchaser to consummate the transaction contemplated hereunder is contingent upon the following:

- (a) The representations of Seller contained herein shall be true and correct in all material respects as of the Closing Date.
- (b) Seller shall have performed all obligations required to be performed prior Closing per the terms of this Agreement.
- (c) There shall exist no pending or threatened legal action, suit or proceeding with respect to the Property or this Agreement.
- (d) Seller shall deliver to Purchaser the easements that meet the legal description and conditions of the easements identified by Purchaser to Seller per Paragraph 2.4 of the Agreement.
- (e) Seller shall deliver to Purchaser documents showing that Purchaser shall have the right of ingress and egress to the Property as identified in the legal descriptions and conditions needed for ingress and egress submitted by Purchaser to Seller per Paragraph 2.5 of this Agreement.
- (f) Approval by the New Mexico Department of Transportation (NMDOT), if needed, and Seller for necessary curb cuts identified and submitted by Purchaser to Seller per Paragraph 2.6 of this Agreement shall have been obtained.
- (g) No moratoria shall have been imposed, and no moratoria shall be known to be under consideration by a governmental entity or utility provider that would materially and adversely impact the development of the Property or future economic viability of the Project. If such a moratoria shall have been imposed, or it is known that such a moratoria is under consideration by a governmental entity or utility provider the Purchaser may, its sole discretion, terminate this Agreement and receive the Earnest Money Deposit, with interest, or delay Closing for the shorter time period of the following; (i) until the moratoria is lifted; (ii) until the moratoria is dismissed from consideration by the governmental entity or utility provider, or (iii) one hundred eighty (180) days. For a moratoria to be deemed under consideration by a governmental entity or utility provider, the moratoria must appear as a potential item for action on an agenda for a meeting of the governing body of the governmental entity or utility provider, or competent evidence must be produced showing that an agent of the governmental entity or utility provider with legal authority to impose such a moratoria, is in fact, likely to impose such a moratoria.
- (h) The Seller represents that it has provided to the Purchaser all documentation, notices, reports, and records concerning the Property.

If any of the foregoing conditions to Purchaser's obligation to proceed with the Closing have not been satisfied as of the Closing Date, Purchaser may, in its sole discretion, terminate this Agreement by delivering written notice to Seller on or before the Closing Date, in which event the Earnest Money shall be immediately returned to Purchaser, or Purchaser may elect to seek specific performance as provided in paragraph 8.2., or to close, notwithstanding the non-satisfaction of such condition, in which event Purchaser shall be deemed to have waived any such condition.

5.4 Conditions to Seller's Obligations to Close: In addition to such other conditions to Closing as are specified throughout this Agreement, the obligation of Seller to consummate the transaction contemplated hereunder is contingent upon the following:

- (a) The representations of Purchaser contained herein shall be true and correct in all material respects as of the Closing Date.
- (b) Purchaser shall have performed all obligations required to be performed prior Closing per the terms of this Agreement.
- (c) There shall exist no pending or threatened legal action, suit or proceeding with respect to the Property.
- (d) Purchaser shall provide proof of construction financing commitment sufficient to complete the Project.

If any of the foregoing conditions to Seller's obligation to proceed with the Closing have not been satisfied as of the Closing Date, Seller may, in its sole discretion, terminate this Agreement by delivering written notice to Seller on or before the Closing Date, in which event the Earnest Money shall be immediately returned to Purchaser, or elect to close, notwithstanding the non-satisfaction of such condition, in which event Seller shall be deemed to have waived any such condition.

5.5 Seller's Deliveries in Escrow: Ten (10) days before the Closing Date, Seller shall deliver in escrow to the Escrow Agent with copies of same delivered to in escrow to the Escrow Agent the purchaser the following:

- (a) Transfer Documents:
 - (i) Deed: A New Mexico Special Warranty Deed (the "Deed") for review and approval by Purchaser whereby Seller conveys to Purchaser the Property with special warranty covenants. If the Deed is approved, Purchaser shall deliver it to Escrow Agent for execution by Seller.
 - (ii) FIRPTA: A Foreign Investment in Real Property Tax Act affidavit executed by Seller reciting under penalty of perjury that Seller is not a foreign person;
 - (iii) Authority: Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller

reasonably satisfactory to Purchaser, the Escrow Agent and the Title Company;

- (iv) Additional Documents: Any additional documents that Escrow Agent or the Title Company or Purchaser may reasonably require for the proper consummation of the transaction contemplated by this Agreement including the Title Company's standard lien and possession affidavit;
- (v) Closing Statement: A Closing Statement prepared by the Escrow Agent accurately reflecting the Purchase Price, cost allocations and proration as herein provided for;
- (vi) Appurtenances: An assignment in recordable form of Seller's right, title, and interests, if any such rights, title and interests are vested in the Seller, to all appurtenances, plans, property contracts, entitlements, intangibles and all other portions of the Property not constituting real property to Purchaser; provided, however, that by accepting such assignment, Purchaser shall not assume any obligations under any instrument or right assigned, unless Purchaser has expressly assumed such obligations in writing. Seller will not amend or modify any of the above items included in the Property without Purchaser's prior written consent; and
- (vii) Service Contracts: Evidence of termination of any service contracts that the Purchaser has requested Seller to terminate in writing pursuant to Paragraph 2.7 of this Agreement.

5.6 Purchaser's Deliveries in Escrow: On or before the Closing Date, Purchaser shall deliver in escrow to the Escrow Agent the following:

- (a) Purchase Price: The Purchase Price, less the Earnest Money and Additional Earnest Money if Additional Earnest has been paid, that is applied to the Purchase Price, which shall be delivered to Seller by Escrow Agent, plus or minus applicable proration. The Purchase Price shall be deposited by Purchaser with the Escrow Agent in immediate, same-day federal funds wired for credit into the Escrow Agent's escrow account;
- (b) Additional Documents: Any additional documents that Escrow Agent or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement;
- (c) Authority: Evidence of the existence, organization and authority of Purchaser and of the authority of the persons executing documents on behalf of Purchaser reasonably satisfactory to Seller, the Escrow Agent and the Title Company.

5.7 Title Policy: The Title Policy (as described in Section 3.1 hereof) shall be delivered to Purchaser as soon as possible after the Closing as provided in Section 3.3 hereof.

5.8 Possession: Seller shall deliver possession of the Property to Purchaser at the Closing, subject only to the Permitted Exceptions.

5.9 Close of Escrow: Upon satisfaction or completion of the foregoing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the documents described above to the appropriate parties and make disbursements according to the closing statement executed by Seller and Purchaser.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article V shall survive the Closing Date only for a period of two (2) years.

ARTICLE VI PRORATION

6.1 Proration: The items in this Paragraph 6.1 shall be prorated between Seller and Purchaser as of the Closing Date with Seller receiving credit for all Closing Date income and Seller paying the following Property related expenses through the Closing Date.

- (a) Taxes and Assessments: General real estate taxes imposed by governmental authority ("Taxes") not yet due and payable shall be prorated. If the Closing occurs prior to the receipt by Seller of the tax bill for the calendar year or other applicable tax period in which the Closing occurs, Purchaser and Seller shall prorate Taxes for such calendar year or other applicable tax period based upon the most recent ascertainable assessed values and tax rates. Upon receipt of the tax bill for the year of Closing, the Escrow Agent shall make any adjustments to the Closing proration, based upon the actual tax bill.

6.2 Commissions: Seller and Purchaser represent to the other that they have not dealt with any real estate broker, sales person or finder in connection with this transaction.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article VI shall survive the Closing Date only for a period of two (2) years.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties: As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

- (a) Organization and Authority: Seller has been duly organized and validly exists as an Incorporated County in good standing in the State of New Mexico. Seller has the full right and authority and will have obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby prior to Closing. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and

properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

- (b) Conflicts and Pending Action: There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. There is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or the Property, including condemnation proceedings, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.
- (c) Litigation: There is no litigation or arbitration or other legal or administrative suit, action, proceeding of any kind pending, or to the best of Seller's knowledge, threatened or under investigation against or involving the Property, or any part thereof.
- (d) Environmental, Historical, and the Archeological: The Seller has searched its records for records containing information regarding the generation, location, transportation, storage, treatment, discharge, disposal, or release of any toxic or hazardous waste or any pollutant upon or under the Property subject to regulation under the Resource Conservation and Recovery Act (as amended by the Hazardous and Solid Waste Amendments of 1984), the Comprehensive Environmental Response, Compensation and Liability Act (as amended by the Superfund amendments and Reauthorization Act of 1986), or any other applicable State or Federal environmental protection law or regulation, as well as for records containing information regarding human burial sites or historical and/or archeological artifacts that may interfere with the use of the Property and have furnished any record found containing such information to the Purchaser. Nothing in this provision relieves the Purchaser of its duty to perform its own investigations and inspections of the Property during the Due Diligence period for purpose of the Purchaser determining whether Purchaser desires to purchase the Property "**AS IS, WHERE IS, WITH ALL FAULTS**" as specifically provided in Section 10.16 of this Agreement.
- (e) Bills: Seller has paid or will pay in full all bills and invoices for labor and material of any kind arising from the Seller's ownership, operation, management, repair, maintenance or leasing of the Property, and there are no actual or potential mechanic's liens outstanding or available to any party in connection with the Seller's ownership, operation, management, repair, maintenance or leasing of the Property.
- (f) Possessory Rights: There are no purchase contracts, options or any other agreements of any kind, oral or written, by which any person or entity other than Seller will have acquired or will have any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of, any part or all of the Property, except as to rights created under the Leases or Service Contracts or as otherwise disclosed in this Agreement, the Commitments, or in the deliveries made

by Seller pursuant to this Agreement. It is understood and agreed that if such leases or contracts or rights do not meet with Purchaser's approval, their existence shall entitle Purchaser to terminate this Agreement and receive back the Earnest Deposit and interest.

- (g) Violations of Law: Seller has received no notice of violation of any applicable Federal, state or local law, statute, ordinance, order, requirement, rule or regulation, or of any covenant, condition, restriction or easement affecting the Property, or this Agreement and Seller does not have any actual notice of any such violation.
- (h) Ownership: Seller is the owner of the Property and as of Closing Seller will own all such Property free and clear of all liens, financial encumbrances, leases, covenants, conditions, restrictions, rights-of-way, easements, encroachments and other matters affecting title, excepting only the Permitted Exceptions. Seller further represents and warrants to Purchaser that no other party has any rights in and to the Property.
- (i) Parties in Possession: To the best of Seller's knowledge, there are no parties other than Seller in possession of any portion of the Property.
- (j) In the event of any material adverse change in any of Seller's representations and warranties in this Article or elsewhere in this Agreement, Seller shall promptly notify Purchaser of such change.

7.2 Purchaser's Representations and Warranties: As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

- (a) Organization and Authority: Purchaser has been a duly organized and is a valid existing entity in good standing in the state of New Mexico. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitutes, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.
- (b) Conflicts and Pending Action: There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article VII Sections 7.1 and 7.2 (a), and (b) shall survive the Closing Date only for a period of two (2) years.

- (c) Purchaser warrants that it is relying solely on its inspections and its investigations of to determine whether Purchaser desires to purchase "**AS IS, WHERE IS, WITH ALL FAULTS**" as specifically provided in Section 10.16 of this Agreement.
- (d) In the event of any material adverse change in any of Purchaser's representations and warranties in this Article or elsewhere in this Agreement, Purchaser shall promptly notify Seller of such change.
- (e) In the event Purchaser terminates this Agreement, Purchaser shall provide Seller timely written notice that states the reason or reasons – if any- for such termination. If the reason or reasons provided in the notice derive from adverse information regarding the Property discovered by the Purchaser during the Due Diligence period, Purchaser agrees to provide that adverse information to the Seller.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article VII 7.2 (c), (d) and (e) shall survive the Closing Date.

ARTICLE VIII

REMEMDIES FOR FAILURE TO CLOSE ONLY

8.1 Default By Purchaser For Failure to Close: In the event that Purchaser fails or refuses to Close the purchase of the Property except as allowed by this Agreement, Purchaser agrees that Seller shall have the right to have the Escrow Agent deliver the Earnest Money to Seller as liquidated damages to compensate Seller for time spent, labor and services performed, and the loss of its bargain as a result of Purchaser's failure or refusal to Close. Purchaser and Seller agree that it would be impracticable or extremely difficult to affix damages in the event of Purchaser's failure or refusal to Close, and that the Earnest Money, together with the interest thereon, represents a reasonable estimate of Seller's damages for Purchaser's failure or refusal to Close, except as allowed in this Agreement. Under such circumstances, Seller agrees to accept the Earnest Money as Seller's total damages and relief for Purchaser's failure or refusal to Close, except when such failure or refusal to close is expressly allowed by this Agreement. In the event that Purchaser shall fail or refuse to Close, Seller expressly waives the right to sue for damages for Purchaser's failure or refusal to Close or to seek specific performance. In the event that Purchaser does so default by failing or refusing to Close, this Agreement shall be terminated and Purchaser shall have no further right, title, or interest in the Property.

8.2 Default By Seller for Failure to Close: Purchaser and Seller agree that it would be impracticable or extremely difficult to affix damages in the event Seller fails or refuses to Close, and that the below remedies are sufficient remedies to redress and compensate the Purchaser for Seller's failure or refusal to Close under conditions not allowed by this Agreement. In the event Seller shall fail or refuse to Close the purchase of the Property, except when such failure or refusal to close is expressly allowed by this Agreement. Purchaser shall be entitled to seek any and all remedies at law and equity, however damages shall be limited to actual costs incurred. In the event

Purchaser elects to bring an action, it shall commence such action, if at all, within ninety (90) days after the scheduled Closing date hereunder.

8.3 The above default and damages provisions only apply to claims and damages that arise and result from a default for the failure of the Seller or Purchaser to Close. Unless otherwise specifically limited elsewhere in the Agreement, Seller and Purchaser shall retain all rights and remedies provided in law and equity to seek redress of any other default or breach of this Agreement.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article VIII shall survive the Closing Date only for a period of two (2) years.

ARTICLE IX

DEVELOPMENT AGREEMENT

9.1 In the event the Purchaser purchases the Property, but only in that event, the Purchaser shall develop the Property pursuant to the terms and conditions prescribed in this Article.

9.2 The Purchaser shall build a Class A market rate apartment community that materially and substantially meets the specifications, design, character and quality represented in the Proposal made in response to RFP Number 17-44 by SH Acquisitions LLC, that was submitted to the Seller on or about May 3, 2017, hereinafter referred to as "Project" and that comply with ordinances and codes of the Incorporated County of Los Alamos in effect as of the Effective Date of this Agreement as well as all applicable state and federal laws and regulations.

9.3 A copy of the Proposal made in response to RFP Number 17-44 by SH Acquisitions LLC, that was submitted to the Seller on or about May 3, 2017 and the specifications, design, character and quality represented in the Proposal are adopted here as material terms of Article IX as if fully stated here in Article IX.

9.4 Purchaser acknowledges and agrees that a condition precedent to the Seller issuing any building permit for the Project is that the plans, specifications and documentation submitted by Purchaser to Seller in support of Purchaser's application for any building permit for the Project shall show that the construction to occur under the requested building permit will materially and substantially meet the specifications, design, character and quality of the Project. Seller's issuance of any requested building permit for the Project shall not be unreasonably withheld or delayed, and when issued, shall serve as Seller's affirmation that the Project substantially meets the specifications, design, character, and quality called for in this Article IX.

9.5 The Purchaser shall complete the Project no later than one thousand two hundred seventy-five (1,275) days from the Closing Date, hereinafter referred to as the Project Completion Date.

- (a) If the Purchaser fails to complete the Project by the Project Completion Date, the Purchaser shall continue to diligently work to complete the Project, and Purchaser shall complete the Project.

- (b) Purchaser and Seller acknowledge and agree: (i) that it would be impracticable or extremely difficult to affix damages for delay related damages to the Seller caused by the Purchaser's failure or refusal to complete the Project by the Project Completion Date; (ii) in order to avoid difficulty and uncertainty in affixing damages for delay related damages, the parties have bargained for the below amount as liquidated damages for delay related damages caused by the Purchaser's failure or refusal to complete the Project by the Project Completion Date; and (iii) the amount of liquidated damages for delay related damages to the Seller caused by the Purchaser's failure or refusal to complete the Project by the Project Completion Date shall be calculated at a rate of FIVE HUNDRED FIFTY AND NO 00/100 DOLLARS (\$550.00) per day. The \$550.00 per day penalty shall be payable quarterly until the Project is complete, or the passage of five years, whichever first occurs. Completion of the Project shall occur when Certificates of Occupancy are issued by the Seller for each and every home and structure that comprises the Project. Seller's issuance of these Certificates of Occupancy shall not be unreasonably withheld or delayed. Seller agrees and acknowledges that should damages be awarded by verdict and/or judgment against the Purchaser in favor of Seller for delay related damages the damages assessed for delay related damages shall be limited by the liquidated damages for delay related damages provided herein, and, if such verdict or judgment does not take into account the amounts delivered to Seller by the Escrow Agent, as above provided, then said verdict and/or judgment shall be reduced by an amount equal to the amount delivered to Seller by the Escrow Agent as above provided.
- (c) The Project Completion Date shall be extended by the number of days any delay is caused by force majeure or governmental actions that delay completion of the project for more than ninety (90) days excluding delays related to ordinary regulatory activities.
- (d) Completion of the Project shall occur when Certificates of Occupancy are issued by the Seller for each and every home and structure that comprises the Project. Seller's issuance of these Certificates of Occupancy shall not be unreasonably withheld or delayed.

9.6 As additional mutual consideration to induce Purchaser and Seller to enter this Agreement, the Purchaser agrees to construct certain street and utility improvements that are not located on the Property, but are necessary for the development of the Property, which are hereinafter referred to as "Off Site Improvements."

(a) A preliminary description of the needed Off-Site Improvements along with estimated cost of same are attached to this Agreement as **Exhibit "C."**

(b) As soon as reasonably possible and within the Due Diligence period Seller shall procure and bear the costs of engineering and designing the Off-Site Improvements including costs of studies and financial analysis needed to reasonably determine the scope of the Off-Site

Improvements as well as reasonably determine the estimated actual costs of constructing the Off-Site Improvements.

(c) As soon as reasonably possible and within the Due Diligence period Seller shall provide to Purchaser for consideration and review, proposed construction plans for the Off-Site Improvements along with the results of any studies and financial analysis obtained or employed by the Seller to determine scope of the necessary Off-Site Improvements and the estimated actual costs of constructing the Off-Site Improvements. Seller shall also provide Purchaser a statement showing the remaining funds available to Seller to fund the construction of the Off-Site Improvements.

(d) Upon acceptance by the Purchaser of the proposed construction plans as well as the estimated actual costs and Seller's funding limitations, or upon acceptance of modified construction plans agreed to by Purchaser and Seller as well as the Purchaser's acceptance of the estimated actual costs and Seller's funding limitation, the Purchaser shall begin construction of the Off-Site Improvements.

(e) In amount not to exceed the Seller's funding limitations, the Seller shall reimburse the Purchaser for the actual costs of constructing the Off-Site Improvements. If the actual costs to construct the Off-Site Improvements exceed the Seller's funding limitations, the Purchaser shall bear all remaining costs and shall complete construction of the Off-Site Improvements.

(f) Purchaser shall submit detailed invoices to Seller showing Developer's actual costs incurred for constructing the Off-Site Improvements, and Seller shall pay the Developer those actual costs within fifteen (15) days of receipt of the invoice.

(g) The Seller's total funding limitations for engineering and designing the Off-Site Improvements including costs of studies and financial analysis needed to reasonably determine the scope of the Off-Site Improvements; costs necessary reasonably determine the estimated actual costs of constructing the Off-Site Improvements, as well as the actual costs of construction of the Off-Site Improvements is ONE MILLION DOLLARS (\$1,000,000.00).

(h) The Seller's total funding limitations for engineering and designing the Off-Site Improvements including costs of studies and financial analysis needed to reasonably determine the scope of the Off-Site Improvements; costs necessary to reasonably determine the estimated actual costs of constructing the Off-Site Improvements, as well as the actual costs of construction of the Off-Site Improvements, or any other funding limitation prescribed in this Agreement, can only be increased through an Amendment to this Agreement approved by the County Council of the Incorporated County of Los Alamos.

(i) If the Seller and Purchaser agree that a traffic control device is needed or required for the development of the Property, the Purchaser shall be responsible for obtaining all appropriate permits for the traffic control device as well as the design, engineering, construction of the traffic control device. In an amount not to exceed TWO HUNDRED THOUSAND AND NO 00/100 DOLLARS (\$200,000.00) the Seller shall be reimburse the Purchaser for one-half the actual costs of designing, engineering, and constructing the traffic control. Purchaser shall submit detailed

invoices to Seller showing Purchaser's actual costs incurred for designing, engineering, and constructing the traffic control device, and Seller shall pay the Purchaser those actual costs within fifteen (15) days of receipt of the invoice. The funding limit prescribed here is in addition to, and not a part of, the funding limits prescribed in Paragraph 9.5, subpart (g). If the actual costs to design, engineer and construct the traffic control device exceeds the Seller's funding limitations prescribed here, the Purchaser shall bear all remaining costs and shall complete the design, engineering, and construction of the traffic control device.

(j) The Purchaser acknowledges and agrees that the construction of the Off-Site Improvements, as well as the optional construction of a traffic control device if said optional construction of a traffic control device is undertaken, are part of the Project as defined in Paragraph 9.1, and that construction of the Off-Site Improvements, as well as construction of the optional traffic control device if said optional construction of a traffic control device is undertaken, shall be completed by the Project Completion Date prescribed in Paragraph 9.5. Failure to complete construction of the Off-Site Improvements, as well as the optional construction of a traffic control device if said optional construction of a traffic control device is undertaken, by the Project Completion Date prescribed in Paragraph 9.5 constitutes a failure to complete the Project by the Project Completion Date, and subjects to Purchaser to the payment obligations as well as all other obligations prescribed in Paragraph 9.5.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article IX shall survive the Closing Date.

ARTICLE X

MISCELLANEOUS

10.1 **Parties Bound:** This Agreement may only be assigned without the written consent of the Seller to an affiliate or subsidiary of the Purchaser if and only if the affiliate or subsidiary is directly controlled by Gerald Peters. The prior written consent of Seller shall be required for any other assignment. If so assigned, and as a condition of assignment, all the terms and conditions of this Agreement shall extend to and be binding upon the assignee. Notwithstanding the foregoing, Purchaser has the right to assign its rights hereunder to a lender providing construction financing for the Project as defined in the Development Agreement. In the event of such an assignment, Purchaser shall not be released from any obligations under this Agreement. The Seller may not assign this Agreement without the prior written consent of the Purchaser. Any prohibited assignment shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties. Purchaser shall provide written notice to Seller no less than ten (10) days prior to Closing of any permitted assignment hereunder.

10.2 **Headings:** The article and paragraph headings of this Agreement are of convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

10.3 **Invalidity And Waiver:** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible and so long as each party obtains the principal benefits for which it bargained, the remainder of this Agreement shall be deemed valid and operative, and

effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

10.4 Governing Law: This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the state of New Mexico, and the Parties agree and consent that the venue for any cause of action arising from this Agreement shall only be the First Judicial District Court of Los Alamos.

10.5 Mediation The parties agree that in the event a dispute arises regarding any of the duties, rights or obligations of any of the parties or regarding any provision in the Agreement, except default for failure to close as provided for in Article VIII of the Agreement, the parties shall first attend a mediation before a mutually agreed upon mediator, to attempt to resolve any disputes prior to filing any cause of action in law or equity. The party seeking mediation shall notify the other party, in writing, of its request to mediate, and said mediation shall occur within thirty (30) days of said notice unless mutually agreed otherwise by the parties in writing and the costs thereof shall be split equally by the parties.

10.6 Contractual Liability: The parties agree that this is a valid written contract for purposes of NMSA 1978, Section 37-1-23.

10.7 No Third Party Beneficiary: This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

10.8 Entirety and Amendments: This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by both Parties.

10.9 Time: Time is of the essence in the performance of this Agreement.

10.10 Attorney's Fees: Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered, including but not limited to, judgment on appeal to the New Mexico Supreme Court, shall pay, to the extent allowed by law, the prevailing party's reasonable costs, charges, and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

10.11 Notices:

- (a) All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Paragraph 1.1. Any such notices shall be either (a) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered upon actual date of receipt, or, (b) sent by overnight delivery for next business day delivery using a nationally recognized overnight courier, in which case notice shall be deemed

delivered upon actual date of receipt, or, (c) sent by facsimile, in which case notice shall be deemed delivered upon transmission of such notice and evidence of receipt of said transmission, with a hard copy mailed the same business day, or (d) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. As regards notice by email transmission, the parties agree that an email transmission shall be a proper form of notice under this agreement, provided, the sender require that the email recipient acknowledge receipt of the email and upon such acknowledgment the notice shall be deemed to have been delivered; if acknowledgment of receipt of email is not forthcoming on the day the email was sent, the attempt to give notice via email shall be disregarded and the party seeking to give notice shall do so by one of the methods enumerated above in this Article 10.11.

- (b) Unless a party delivers notice to the other party of a breach of representations, warranty or covenant that survives Closing for a period of only two (2) years within (2) two years of the Closing Date that representation, warranty or covenant shall be of no further force and effect.

10.12 Construction: The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.13 Calculation Of Time Periods: Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

10.14 Execution in Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange telephonic facsimile or electronic counterparts of the signature pages.

10.15 Section 1031 Exchange: At either party's request (with notice thereof and copies of all documents for execution by either party to be given to the other party not less than five (5) business days prior to Closing), either party will execute such documents and perform such other acts as the other party reasonably requests in cooperation with such party's effort to have the sale of the Property to Purchaser considered to be part of a so-called "like-kind exchange" under applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), provided:

- (a) All such documents shall be prepared by or at the direction and expense of the party making such request;

Purchase, Sale and Development Agreement for Real Property Located in
the Incorporated County of Los Alamos Commonly Referred to as A-13-2 and A-12 Sites

- (b) Neither Party shall incur any expense or be required to assume any obligations in connection with the performance of this Section; and
- (c) Any such requested conduct will not delay the closing of the transaction beyond the specified Closing Date.

By this Agreement or acquiescence to the exchange, neither party shall (1) have its rights under this Agreement affected or diminished in any manner, or (2) be responsible for compliance with or be deemed to have warranted to the other that the exchange in fact complies with the Code.

10.16 Disclaimer: EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THE DOCUMENTS EXECUTED AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "**AS IS, WHERE IS, WITH ALL FAULTS**", WITH NO RIGHT OF SETOFF OR REDUCTION IN THE PURCHASE PRICE AND WITHOUT ANY REPRESENTATION OR WARRANTY BY SELLER EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER HAS NOT MADE AND IS NOT MAKING, EXCEPT AS HEREIN MADE IN WRITING, ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PROPERTY, FITNESS FOR ANY PARTICULAR PURPOSE OF THE PROPERTY, ACCURACY OF DIMENSIONS, AND RELATING IN ANY WAY TO HAZARDOUS MATERIALS OR ANY ENVIRONMENTAL MATTERS, SUITABILITY OF SOIL OR GEOLOGY, OR ABSENCE OF DEFECTS OR HAZARDOUS OR TOXIC MATERIALS OR WASTES; AND PURCHASER ACKNOWLEDGES AND REPRESENTS THAT PURCHASER IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING UPON ANY SUCH STATEMENT, REPRESENTATION OR WARRANTY MADE BY SELLER OR BY SELLER'S AGENT OR BY ANY OTHER PERSON AND, EXCEPT AS HEREIN EXPRESSLY SET FORTH IN WRITING, IS ACQUIRING THE PROPERTY BASED SOLELY UPON PURCHASER'S OWN INSPECTIONS, INVESTIGATIONS AND FINANCIAL ANALYSIS. PURCHASER ACKNOWLEDGES IT HAS HAD AN ADEQUATE OPPORTUNITY TO INSPECT THE PROPERTY AND PROPERTY INFORMATION AND HAS CONSULTED WITH SUCH EXPERTS AND PROFESSIONALS AS IT DEEMS APPROPRIATE.

The terms, conditions, representations, warranties, and covenants made by Purchaser and Seller in Article X shall survive the Closing Date.

(document continued on next page)

IN WITNESS WHEREOF, the parties have entered into this Purchase and Sale Agreement effective as of the date first written above.

LAH INVESTORS, LLC
BY ITS MANAGING MEMBER:
SANTA FE PROPERTIES REAL ESTATE CO., INC.
A NEW MEXICO CORPORATION

BY: _____
GERALD P. PETERS, PRESIDENT
DATED THIS ____ DAY OF _____, 2017

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS,
COUNTY CLERK

By: _____
HARRY BURGESS, IN HIS CAPACITY AS COUNTY
MANAGER AND AS AN AUTHORIZED AGENT OF THE
INCORPORATED COUNTY OF LOS ALAMOS
DATED THIS ____ DAY OF _____, 2017

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

EXHIBIT "A"

TRACT A-13-2

Plat of Tract A-13-2, as certified by Josh A. Romero, N.M.P.L.S. No. 18375, and approved by the Incorporated County of Los Alamos Council on March 31, 2014, and held in the Los Alamos County Clerk's Office, Document No. 220243, Book 166, Page 128, Envelope 131, Drawer B-5.

Transcribed Legal Description for Tract A-13-2:

A parcel of land formerly Tract A-13-2, situated within Eastern Area No. 3, Los Alamos, Los Alamos County, New Mexico more particularly described as:

Beginning at the point for control monument No. A-0009 "Pajarito School" with the Los Alamos National Laboratory Permanent Monument Record, Thence S. 1" 45' 32" E., a distance of 8248.17 ft.

Thence south 0" 50' 24" W., a distance of 83.01 ft. to the northeast corner and the true point of beginning;

Thence S. 36" 38' 36" E., a distance of 43.46 ft.;

Thence S. 36" 38' 36" E., a distance of 372.66 ft.;

Thence S. 36" 40' 04" E., a distance of 170.48 ft.;

Thence S. 19" 38' 45" W., a distance of 160.10 ft.;

Thence S. 81" 19' 33" W., a distance of 219.38 ft.;

Thence N. 75" 21' 11" W., a distance of 428.31 ft.;

Thence N. 12" 12' 03" W., a distance of 221.49 ft.;

Thence N. 13" 13' 09" W., a distance of 224.19 ft.;

Thence N. 87" 03' 30" E., a distance of 265.31 ft.;

Thence a distance of 140.86 ft. along a curve to the left having a radius of 467.69 ft. and a chord of N. 46" 14' 27" e. a distance of 28.41 ft. To the point of beginning. Tract contains 7.52 acres +/-.

(Exhibit A is continued onto the next page)

EXHIBIT "A" (cont'd)

TRACT A-12

Plat of Tract A-12, as certified by Michael D. Heimbuck, P.L.S. No. 8732, and held in the Los Alamos County Clerk's Office, Document No. 160545, Book 106, Envelope 237-B-4, Page 741.

Transcribed Legal Description for Tract A-12:

A parcel of land situate in Section 16, Township 19 North, Range 6 East of the New Mexico P.M., County of Los Alamos, State of New Mexico. Being more particularly described as follows:

Beginning at a point on the Southerly Right-of-Way line of 35th Street as shown on the plot recorded for Eastern Area No.3, Los Alamos, New Mexico as filed in the office of the County Clerk of Los Alamos County, State of New Mexico, in Book 1 of Page 74 of the Records of Plots, said point also being the Northeasterly angle point of Trace E of said Eastern Area No. 3, thence 116.12 feet continuing along said Southerly Right-of-Way line of 35th Street, along the arc of a 467.69 foot radius curve to the right having a central angle of 14°13'30" and subtending a chord bearing N55°43'31"E a distance of 115.82 feet to an angle point on the Westerly line of tract line of Tract F of said Eastern Area No. 3; thence departing said Southerly Right-of-Way line of 35th Street and along the Southerly line of said Tract F the following seven (7) courses: (1) thence S79°11'29"E a distance of 122.67 feet; (2) thence N64°37'53"E a distance of 152.14 feet; (3) thence N77°53'14"E a distance of 314.38 feet; (4) thence S34°25'56"E a distance of 176.81 feet; (5) thence S63°53'51"E a distance of 162.62 feet; (6) thence S63°27'22"E a distance of 87.88 feet; (7) thence S18°43'43"E a distance of 45.05 feet; thence S78°31'32"W departing said Southerly line a distance of 120.85 feet; thence N82°11'52"W a distance of 80.31 feet; thence S62°19'22"W a distance of 106.02 feet; thence N47°06'13"W a distance of 87.75 feet; thence N04°18'23"W a distance of 89.91 feet; thence N19°13'56"W a distance of 50.66 feet; thence N76°25'18"W a distance of 60.54 feet; thence S71°48'04"W a distance of 21.97 feet; thence S48°09'03"W a distance of 173.23 feet; thence S25°51'14"W a distance of 51.09 feet; thence S42°46'56"W a distance of 45.96 feet; thence S56°45'45"W a distance of 90.57 feet; thence S11°51'31"W a distance of 124.54 feet to a point of the Northeasterly line of said Trace E; thence N36°38'58" W continuing along said Northeasterly line a distance of 415.95 feet to the Point of Beginning.

Said parcel contains 196.545 square feet (4.5120 acres) more or less.

EXHIBIT B

ACKNOWLEDGMENT BY ESCROW HOLDER

The Escrow Holder hereby agrees to perform its obligations under this Agreement and acknowledges receipt of the Earnest Money of _____ DOLLARS (\$_____.00), and a fully executed counterpart of this Agreement.

Escrow Agent shall hold and dispose of the Earnest Money in accordance with the terms of this Agreement. Seller and Purchaser agree that the duties of the Escrow Agent hereunder are purely ministerial in nature and shall be expressly limited to the safekeeping and disposition of the Earnest Money in accordance with this Agreement. Escrow Agent shall incur no liability in connection with the safekeeping or disposition of the Earnest Money for any reason other than Escrow Agent's tortious acts or omissions. In the event that Escrow Agent shall be in doubt as to its duties or obligations with regard to the Earnest Money, or in the event that Escrow Agent receives conflicting instructions from Purchaser and Seller with respect to the Earnest Money, Escrow Agent shall not be required to disburse the Earnest Money and may, at its option, continue to hold the Earnest Money until both Purchaser and Seller agree as to its disposition or until a final judgment is entered by a court of competent jurisdiction directing its disposition, or Escrow Agent may interplead the Earnest Money in accordance with the laws of the state of New Mexico.

Escrow Agent shall not be responsible for any interest on the Earnest Money except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Earnest Money prior to the date interest is posted thereon if such withdrawal is upon instruction of either the Seller or Purchaser.

By: _____
Name: _____
Title: _____

DATE: _____, 2017

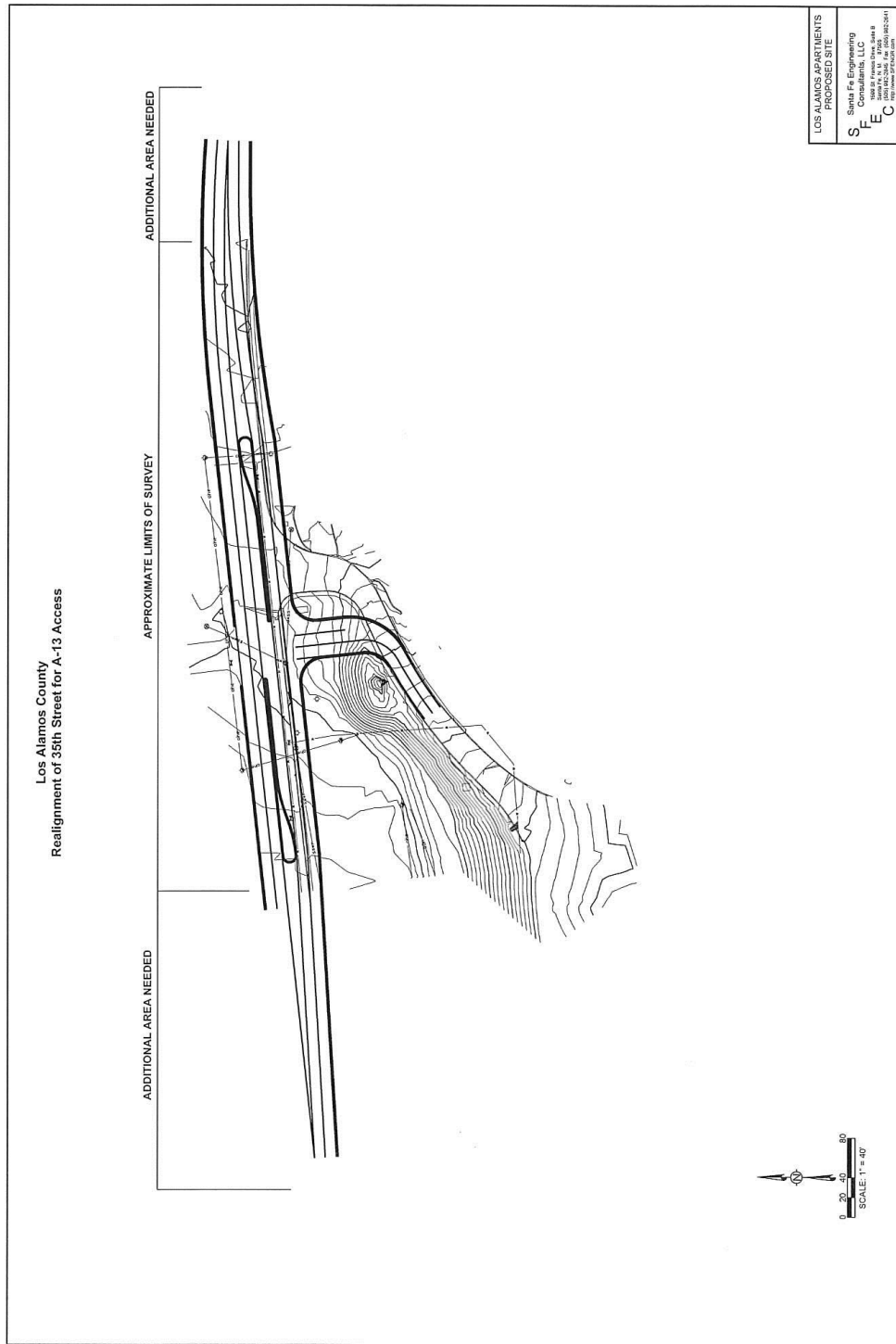
EXHIBIT C

Purchase, Sale and Development Agreement for Real Property Located in
the Incorporated County of Los Alamos Commonly Referred to as A-13-2 and A-12 Sites

DRAFT

"THE HILL" RESIDENTIAL
LOS ALAMOS, NM
CONCEPTUAL OFFSITE COST ESTIMATE
SUMMARY
TABLE 1
8/23/2017

| ITEM NO. | DESCRIPTION | UNIT | APPROX. QUANTITY | UNIT PRICE | EST. PRICE |
|--|---|------|---------------------|---------------|----------------|
| 1 | INTERSECTION IMPROVEMENTS (SEE TABLE 2 FOR DETAILS) | L.S. | 1 | \$751,118.91 | \$751,118.91 |
| 2 | OFFSITE WATER IMPROVEMENTS (SEE TABLE 3 FOR DETAILS) | L.S. | 1 | \$51,765.30 | \$51,765.30 |
| 3 | OFFSITE SEWER IMPROVEMENTS (SEE TABLE 4 FOR DETAILS) | L.S. | 1 | \$20,173.33 | \$20,173.33 |
| 4 | OFFSITE ELECTRIC SERVICE IMPROVEMENTS (SEE TABLE 5 FOR DETAILS) | L.S. | 1 | \$17,470.52 | \$17,470.52 |
| 5 | OFFSITE GAS SERVICE IMPROVEMENTS (SEE TABLE 6 FOR DETAILS) | L.S. | 1 | \$42,247.88 | \$42,247.88 |
| CONSTRUCTION SUBTOTAL (ITEM NUMBERS 1-5) | | | | | \$882,775.93 |
| 6 | GEOTECHNICAL REPORT | L.S. | 1 | \$11,500.00 | \$11,500.00 |
| 7 | SUBSURFACE UTILITY INVESTIGATIONS | L.S. | 1 | \$8,000.00 | \$8,000.00 |
| SUBTOTAL | | | | | \$902,275.93 |
| 8 | CONTINGENCIES @ 20% | L.S. | 1 | \$180,455.19 | \$180,455.19 |
| SUBTOTAL | | | | | \$1,082,731.12 |
| NMGRT@ 7.3125% | | | | | \$79,174.71 |
| TOTAL | | | | | \$1,161,905.83 |



Purchase, Sale and Development Agreement for Real Property Located in
the Incorporated County of Los Alamos Commonly Referred to as A-13-2 and A-12 Sites

NOTICE OF ORDINANCE NO. 673

STATE OF NEW MEXICO, COUNTY OF LOS ALAMOS

Notice is hereby given that the Council, Incorporated County of Los Alamos, State of New Mexico, has directed publication of Los Alamos County Ordinance No. 673. This will be considered by the County Council at an open meeting on Tuesday, November 14, 2017 at 6:00 PM, at the LA Municipal Building: 1000 Central Ave. The full copy is available for inspection or purchase, during regular business hours, in the County Clerk's Office: 1000 Central Ave, Suite 240.

Council of the Incorporated County of Los Alamos

By: /s/ David Izraelevitz, Council Chair

Attest: /s/ Naomi D. Maestas, County Clerk

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 673

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN COUNTY-OWNED REAL PROPERTY WITHIN SITE A-13-2 AND A-12 TO LAH INVESTORS, LLC

PROJECT CONCEPT

The Concept of the project is to build a Class "A" market rate apartment community that provides a range of living opportunities for seniors and the area work force. On this special site we will be able to provide a project that maximizes the views of the natural vistas nature has provided and to encourage use of outdoor spaces. This is accomplished by the location of the buildings along the south property line maximizing views from the living spaces to the canyon south of the property. Additionally, we are providing warm and inviting exterior spaces spread out as amenity spaces for residents to enjoy. The site will include the alignment for a potential future trail by Los Alamos County; a meandering walking trail through the site connecting to adjacent off-site walks and trails.

The use of the site as a multi-family development is in direct response to the Los Alamos County's Comprehensive Plan, The Strategic Leadership Plan and The Housing Fact Sheets showing that there is a demand for additional housing in the area. The project fulfills the Council's priority of increasing the housing stock of Los Alamos.

If awarded the project, we are looking forward to advancing the Project as soon as possible. A project schedule has been provided through to completion of construction. We expect the first units to be made available approximately eight (8) months after the start of construction, and the entire project will be completed within seventeen (17) months from the start of construction. With the assistance of the County, the schedule may be able to be shortened.

The site plan and sketches included are a conceptual representation of the type of product our design team envisions for the site. The design embraces the vibrant residential community that will reflect the atmosphere in Los Alamos.

The site design integrates connectivity to Downtown and the surrounding areas with the use of integrated pedestrian ways and trails. As noted for enhanced open space and trail in the Comprehensive Plan, the proposed design will have open spaces throughout the site and the walking trail along the rim of the South property edge, overlooking the canyon. The architectural design will be a subtle contemporary style with natural color tones of the Los Alamos landscape. The buildings will incorporate energy efficient building standards.

The garden style complex will include 2, 3 and 4 story buildings with a choice of parking areas inclusive of surface parking, assigned covered parking and private garages. Our design incorporates elevators to accommodate people with special needs. The 149 state of art units will include upgraded finishes throughout with beautiful quartz or granite countertops and energy star appliances. The variety of units range from studio, one, two and three-bedroom with spacious living spaces and large, private balconies allowing for breathtaking views.

PROJECT CONCEPT

The main clubhouse will host the leasing offices, a relaxing lounge, pool tables, a kitchen dining area exclusive for the residents use and a 24-hour fitness gym. Outdoor amenity areas will be beautifully landscaped with open air eating spaces, gas BBQ's, outdoor fireplaces with conversation seating, and sensational views.

We are excited for the possibility to work with the Los Alamos County to develop a design that will meet the needs of the community.



SITE CONCEPT

PRELIMINARY





SH Acquisition LLC

THE HILL RESIDENTIAL



County of Los Alamos

Staff Report

November 14, 2017

Los Alamos, NM 87544
www.losalamosnm.us

| | |
|-------------------------------|--|
| Agenda No.: | A. |
| Index (Council Goals): | * 2017 Council Goal – Economic Vitality – Build the Local Tourism Economy ; * 2017 Council Goal – Quality Governance – Intergovernmental Relations – Strengthen Coordination and Cooperation Between County Government, LANL, and Regional and National Partners |
| Presenters: | Harry Burgess, County Manager |
| Legislative File: | 9631-17 |

Title

Approval of Budget Revision 2018-03 in the Amount of \$50,000 for Support of the City of Santa Fe to Help Develop Regional Airline Service.

Recommended Action

I move that Council approve budget revision 2018-03 as attached.

County Manager's Recommendation

The County Manager recommends that Council approve the budget revision as requested.

Body

The City of Santa Fe has received \$700,000 in Federal and State Grants to promote the Santa Fe Municipal Airport and regional airline service. They are seeking partners to assist with the grant matching requirements and have requested that the County contribute \$50,000. The attached budget revision, if approved, would provide funding authorization for this contribution.

The benefits for the County for supporting the City of Santa Fe include:

1. Access to commercial air service critical to local economic well-being (businesses and tourism)
2. Santa Fe Regional Airport is closest commercial airport to the community of Los Alamos
3. Although Santa Fe Regional Airport is currently served by two airlines with three non-stop destinations, the effort by regional partners is working to expand air service by adding destinations, more airlines, and improving the frequency of flights
4. In addition to support from the County of Los Alamos, the partnership includes the City of Santa Fe, Santa Fe County, Town of Taos, Taos Ski Valley, Angel Fire, and a number of other individuals and businesses
5. The Northern NM Air Alliance, which is providing marketing support, has already experienced success in starting new daily non-stop service to Phoenix and introducing larger aircraft to the Dallas route

Robust and expanding regional airline service out of Santa Fe is expected to help support our County's economic development initiatives.

Alternatives

Council could choose to not approve the budget revision and the support would not be provided to the City of Santa Fe.

Fiscal and Staff Impact/Unplanned Item

This action would reduce the fund balance of the the Economic Development fund by \$50,000.

Attachments

A - Budget Revision 2018-03 City of Santa Fe Regional Airline Service

Budget Revision 2018-03 Support for Regional Airline Service

| | Fund/Dept | Brass Org | Revenue (decrease) | Expenditures (decrease) | Transfers In(Out) | Fund Balance (decrease) |
|--|----------------------|-------------|-----------------------|----------------------------|----------------------|-------------------------------|
| 1 | Economic Development | 171-SS15-60 | \$ - | \$ 50,000 | \$ - | \$ (50,000) |
| <p>Description: The purpose of this budget revision is to increase the expenditure budget in the Economic Development Fund to provide support to the City of Santa Fe to expand regional airline service.</p> | | | | | | |
| <p>Fiscal Impact: The impact on the Economic Development Fund in FY2018 is to increase the expenditure budget and decrease fund balance by \$50,000.</p> | | | | | | |