



# County of Los Alamos

Los Alamos, NM 87544  
www.losalamosnm.us

## Agenda - Final County Council - Special Session

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

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Thursday, September 6, 2018

6:00 PM

Council Chambers - 1000 Central Avenue  
**TELEVISED**

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**1. OPENING/ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. PUBLIC COMMENT**

**4. BUSINESS**

**A. [11141-18](#) Response and Follow-up from the Adams and Crow Investigation**

**Presenters:** County Council - Special Session

**Attachments:** [A - Response to Adams & Crow Report](#)  
[B - 2018-08-08 Final A+C LAC Investigation Report](#)  
[C -  
4109 Regional Coalition of LANL Communities August 2018](#)

**5. PUBLIC COMMENT**

**6. 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

September 06, 2018

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**Agenda No.:** A.

**Index (Council Goals):** \* 2018 Council Goal - N/A

**Presenters:** County Council - Special Session

**Legislative File:** 11141-18

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### **Title**

Response and Follow-up from the Adams and Crow Investigation

### **Body**

Chair Izraelevitz requested that staff provide a response to the Adams and Crow investigation dated August 8, 2018. That response is included as Attachment A. In addition, the Chair requested that Council members provide questions to the County Manager prior to this meeting and that the Manager be prepared to discuss both the response and any questions that are proposed. There may be additional materials presented at the time of this meeting, dependent upon the scope of any questions that are presented.

### **Attachments**

- A - Response to Adams and Crow Report
- B - 2018-08-08 Final A+C LAC Investigation Report
- C - 4109\_Regional\_Coalition\_of\_LANL\_Communities\_August\_2018

## Response to Adams + Crow Investigative Report Findings

By Harry Burgess

August 28, 2018

### Introduction

I was asked to provide a response to the recent investigation performed by the Adams+Crow (A+C) law firm regarding the alleged improper use of public funds by the Regional Coalition of LANL Communities (RCLC), dated August 8, 2018. The following narrative constitutes such a response, yet in order to address the many issues relating to this matter, I will also incorporate certain responses to the concurrent special audit of the RCLC as performed by the Office of the State Auditor (OSA).

The A+C investigation was centered around five specific requests made by Councilors O'Leary and (former) Chrobocinski, and I plan to provide my perspective regarding each of these requests, however in doing so I will also attempt to address several misstatements/misunderstandings that were included in the August 8 report. My intent in doing so is to address and hopefully remove any misconceptions regarding any incorrectly reported actions of County officials, thereby allowing the focus to be on the activities that warrant attention and potentially any corrective actions.

### Historical Perspective

The RCLC was created through a Joint Powers Agreement (JPA), initially signed in May 2011. At the time of its creation, Los Alamos County (LAC) was the sole financial contributor and also provided staff to assist in the administrative needs of the new entity. Over time, the RCLC was able to obtain additional financial support from its member agencies and through federal grants. The majority of this funding has been used to employ the services of an executive director through a services contract, and the RCLC is now on its fifth such provider of executive director services.

In addition, the JPA designates LAC as the fiscal agent, however what duties are associated with this role are not defined. Experience has shown that this lack of definition has caused different individuals to assume different duties for LAC relative to such a role. The JPA also calls for the entity to develop a financial policy, and while the organization's minutes reflect that the RCLC members, including its Chair, have at times reminded themselves of this need, such a policy has never been developed. Although not required by the JPA, early in its history the RCLC also discussed hiring legal services and a draft RFP was even proposed (RCLC Agenda/Minutes dated 1/18/13 and 2/15/13) however no action was taken towards this end.

The RCLC did adopt a travel policy on September 21, 2012 (see RCLC minutes from this date), however as has been recently shown this travel policy was not in compliance with state law and has resulted in inappropriate payment to its members over time. Although it has been assumed that this policy was patterned after LAC's policy, the organization's minutes show that it was adopted from the North Central Regional Transit District (NCRTD), an organization that was considered to be analogous to the RCLC and for which many of the same entities were members.

As the RCLC aged, its member representatives changed with election cycles, resulting in differing foci over time. Similarly, the fact that many different entities acted as executive director resulted in different practices, skills, and areas of interest as the individuals in that role expressed their personalities. This somewhat inconsistent and constantly changing leadership resulted in a reliance upon LAC to provide such administrative services, to include soliciting for a new director, coordinating meetings and agendas, and any other actions which were necessary to keep the organization functioning.

#### Disputed Findings

The following are in no particular order yet are being highlighted as I find them to be mistaken and these issues have seen significant coverage in the media, incorrectly coloring the public's view of the events that have occurred. The "findings" referenced here are not word for word to those listed in either the A+C report nor the OSA Audit but serve to express several of the themes that are contained within these documents.

*1. County officials improperly advised the RCLC in its adoption of a Travel Policy that is in violation of state law.*

As A+C and the OSA both concluded, the Travel Policy adopted by the RCLC is inconsistent with state law. The State of NM has adopted guidelines for travel reimbursement that are applicable to most state and local governmental agencies, including RCLC, however as indicated in the A+C report this law does not apply to Los Alamos County (LAC) since it is a "Home Rule" municipality (A+C p.16). A+C notes that their review "does not contain documentation of County involvement assisting RCLC in creating the original travel policy" (A+C, p.16), yet they choose to spend considerable time comparing the RCLC travel policy to that of LAC (A+C, pp. 16-18), concluding that their similarities suggest that the County guided (or misguided) the RCLC's development of such a policy (A+C, P. 16).

When the RCLC travel policy was adopted, RCLC Chair David Coss stated that "the proposed policy follows the Regional Transit District policy" (RCLC Minutes 9/21/12). Chair Coss does continue to state that the proposed policy is similar to LAC's policy, however this resemblance is understandable given that the NCRTD's director is a former LAC manager. Given the clear language in the RCLC minutes at the time of the policy's adoption, I cannot accept that any similarities to LAC's Travel Policy constitute an effort to incorrectly advise the RCLC of its statutory obligations.

*2. Deputy County Manager Steven Lynne withheld information regarding audit requirements from RCLC in 2013.*

An item listed on the February 1, 2013 RCLC Executive Committee meeting agenda, under the "ED Office Update", includes "reviewing any state auditing requirements". The RCLC's February 15, 2013 regular meeting agenda lists a discussion item by its then-executive director Sapient, entitled "DOE Funding; Accounting Process and State Audit Requirements." Unfortunately, the minutes of this meeting are not included on the RCLC website and the focus of that discussion is unknown.

On the same day (February 15, 2013), Steven Lynne emailed the OSA asking to amend the LAC audit contract to engage the County's Auditor to perform a Tier 5 Agreed-upon Procedures (AUP) for the benefit of RCLC (email to Frank Valdez dated 2/15/2013). The OSA responds to this request on February

20, denying that request and instead stating that the RCLC is itself a local public body and therefore must engage such services themselves (OSA letter dated 2/20/2013).

There are no agendas nor minutes listed on the RCLC website between February and August 2013 so it is uncertain if this information was conveyed to the RCLC. The concurrence of the agenda items, Mr. Lynne's inquiry, and the OSA response, however, do suggest a link between these issues, and Mr. Lynne's inquiry is certainly focused upon acquiring the exact information necessary to the RCLC's operations. I find it difficult to conclude, as A+C does, that based upon the lack of available supporting information, such information was not provided to RCLC (A+C, p. 14). There were obviously several inquiries into / conversations regarding the RCLC's audit-related requirements during this time frame, and I believe it is more appropriate to conclude that these concurrent inquiries/conversations suggest a robust discussion of the related issues.

The OSA Special Audit does note that RCLC's budget was not substantial enough to even require agreed-upon-procedures (a lesser audit procedure explained in the next section) until the FY14 fiscal year (OSA, p.4). Based upon this knowledge, one can infer that those persons discussing the various "State Audit Requirements" had either forgotten about this issue or had personally moved on by the time that such actions were required, which would have been over sixteen months after the discussions noted above.

3. *Deputy County Manager Lynne incorrectly advised the RCLC of its obligations under the State Audit Act.*

Page 14 of the A+C report states:

"Contrary to the State Auditor's guidance in the State Auditor Letter, Deputy County Manager Steven Lynne *specifically advised* the RCLC Board during its August 11, 2017, Board Meeting that RCLC was not subject to the Audit Act."

The minutes of the RCLC meeting from that same date state:

"Mayor Gonzales – Is the RCLC subject to any audit regulations? Steve replied no. Due to the small size of the Coalition, a full audit by Los Alamos County is not required. The current audit role has a tiered approach."

In analyzing the statement in the minutes, one must first accept that minutes do not typically represent verbatim conversations. I would further propose that if the individual taking minutes is unfamiliar with the subject matter, the illustrated conversation may not capture the full context of what was discussed. What is represented, however, suggests a completely different conversation than the conclusion that A+C presents.

To explain, as indicated in #2 above, the OSA identified that RCLC was subject to Tier 5 AUP through their letter dated February 20, 2013. For an accountant (and Mr. Lynne has been a CPA for greater than 25 years), an "Audit" is a term of art. There is a distinct difference between AUP and an Audit – with a Tier 5 AUP being a lesser involved review of financial statements. Given this understanding, one can infer from the conversation represented in the minutes that rather than advising Chair Gonzales that an audit is not needed, Mr. Lynne is correctly restating the information provided in the 2013 OSA letter in which it states that RCLC is subject to a Tier 5 AUP. It is understandable that someone who is not an accountant would misunderstand this exchange, however the A+C statement that Mr. Lynne

*“specifically advised the RCLC Board...that it was not subject to the Audit Act” appears to be a gross misrepresentation of the conversation as included in the minutes.*

4. *County officials acted to recharacterize reimbursements made to RCLC in order to minimize the appearance of any improprieties.*

It has been noted that during the fall of 2017, RCLC Treasurer Roybal identified some concerns regarding the travel reimbursement practices of the Coalition. In the subsequent months, an inquiry into these practices identified actions that were inconsistent with RCLC policies, resulting in a February 1, 2018 email from Deputy County Manager Lynne to the RCLC board in which he stated that LAC practices appeared to have not followed the RCLC policies and that the LAC County Manager had initiated an internal review of the RCLC reimbursements. An email from myself to LAC CFO Perraglio, also dated February 1, 2018, requested such a review and established the parameters for this review.

Pursuant to my request, personnel within the LAC Finance department initiated a review of RCLC expenditures and provided a comprehensive accounting for the payments made on behalf of RCLC. It is important to note that at this time, the base assumption was that any discrepancies found would be due to the inappropriate application of LAC’s travel policy instead of RCLC’s. The subsequent report was focused on such a comparison, and the conclusions and recommendations were similarly provided in this context. No further action was taken by LAC with respect to these reimbursements, but instead the LAC Finance Department’s review was presented to the RCLC board at its February 26, 2018 meeting. The RCLC Board, at its March 16, 2018 meeting, then directed LAC to pursue the reimbursement of any improper expenditures, pursuant to the calculations presented in this LAC review.

I find it difficult to understand the assertions by A+C that such efforts were an attempt to recharacterize any expenditures or to correct any improprieties (A+C p.26). Instead, the staff in the Finance department did as I directed – performed an analysis of these expenditures and provided a report. Any actions after that were taken at the direction of the RCLC Board, in a publicly noticed and open meeting. While I accept that such actions taken were ultimately inappropriate given the now-identified improper RCLC travel policy, I do not accept that LAC staff were actively seeking to correct or minimize the extent of such improper reimbursements as part of the process of their review.

5. *Steven Lynne acted to alter the RCLC Travel Policy and the Executive Director’s contract in order to cover up prior mistakes within the reimbursement process.*

Speculation on this matter fails to recognize that several individuals - including the RCLC Treasurer and Executive Director - were discussing the emerging identification of problems with the RCLC reimbursement practices when the recommendations for change were made. It is important to note that the recommendations made by Mr. Lynne were never taken to the RCLC board, as would have been required for any change, and that therefore no actions were ever taken. Even if such recommendations had been considered (and/or approved) by the RCLC board, such action would not have erased the existing inappropriate reimbursements.

My review of the proposed changes highlights that several of the recommendations were focused on correcting identified internal inconsistencies within the existing documents. For example, the

problematic RCLC Travel Policy states in Section VII.a.1 that “no receipts are required” for meal expenses, whereas in Section IX.a states that “itemized receipts are required for lodging, meals, and other miscellaneous incidental costs.” One recommendation made by Mr. Lynne was to eliminate the requirement for receipts under section IX, a recommendation that makes sense if the RCLC wished to continue to reimburse on a per-diem basis (as provided in Section VII), as per-diem payments are by definition a flat rate that would not change even with the production of a receipt. From an operational perspective, allowing only per-diem reimbursement has the potential for eliminating many of the issues that have been identified in this saga, yet this potential correction was never considered by the board.

Similarly, within the existing ARC contract, there were noted “reimbursables” in Attachment A to the contract, yet these same “reimbursables” were illustrated as being provided within the firm’s compensation. By suggesting the removal of Attachment A, I understand that Mr. Lynne was attempting to correct this inconsistency, one which was specifically discussed by LAC staff regarding how to accommodate the varying reimbursement requests during its later review.

Assuming that either of these actions (as well as the others listed on pages 33-34 of the A+C report) constituted an attempt to “minimize the extent of improper reimbursements” (A+C, p.33) reveals a lack of consideration of the operational problems with the current policy and agreement which Mr. Lynne appears to have been attempting to correct. For these reasons I do not concur with A+C’s insinuation of improper intent with regard to the suggested changes that emerged at the time of the discovery of inappropriate expenditures. In fact, several of the actions recommended by Mr. Lynne as part of this exchange were ultimately incorporated into the newly approved Executive Director Services contract with CPLC (successor to ARC) as a means to prevent a recurrence of improper travel/reimbursement procedures going forward.

*6. The investigations found that over \$50,000 in improper reimbursements were made during the subject time frame.*

There are many different numbers represented in the two investigative documents (A+C and OSA), and given the relatively short time frame I was given for a response I have not been able to accurately address each expenditure, however I will attempt to provide commentary on several specific issues as they relate to the extent of any reported improper/over expenditures.

The OSA Special Audit summarizes the extent of improper reimbursements as being \$51,519.45 over a period of July 1, 2014 – June 30, 2018 (OSA finding #2018-18), however the Special Audit does not detail why each expenditure is considered improper, but broadly states that the listed expenditures may have violated the state’s Anti-Donation Clause.

One listed improper expenditure was a \$10,000 payment to Crescent Strategies for strategic planning, for which I did find that the minutes of the February 12, 2016 (mistakenly labeled February 12, 2015) RCLC Board meeting indicate approval of that exact amount, albeit the approval is for the services of David Abelson, LLC. David Abelson is the principal of Crescent Strategies and had previously performed services for the RCLC using that name. He apparently submitted his invoice on the Crescent Strategies letterhead – rather than the name specifically approved as part of the RCLC board action, and such action may have prompted the OSA’s decision to list this expenditure as improper. I recognize this inconsistency yet feel that it is an error that is not related to the issues at hand, and its inclusion in this total serves only to exaggerate the extent of any improprieties involved in the current discussion.

The other large item included in the \$51k number is an apparently miscoded payment to the Energy Communities Alliance in the amount of \$5,000 for annual dues. Both the RCLC and LAC are members of this organization, yet this specific payment was in reference to LAC dues and was inappropriately coded to draw from the RCLC account. This type of mistake, while not common, does occur and I find it understandable that staff could have entered the wrong account number for payment given that both entities made payment to the same organization. Once identified, the amount was reverted to the RCLC. Again, I find that this error is not representative of the focus of the current discussion.

The A+C report includes a total number of \$34,268.84, which is similar to what the OSA reports after the removal of the two aforementioned items, however it is unclear whether the two noted amounts represent the same time frame. More important to the discussion, however is that the relative scale of reported improper reimbursements is dependent upon how it is presented. Both reports appear to have labeled all reimbursements made under the inappropriate travel policy as improper and chose to report the total of all such expenditures. This choice serves to inflate the reported total above what may have been considered as proper if the RCLC had adopted a travel policy consistent with the State Travel Policy. Granted, not all reimbursements included in either the OSA or A+C report would be travel-related, my point is that the extent of any impropriety has not been fully defined.

And finally, at least one reimbursement reported in the A+C document - \$782.00, January 11, 2018 Delancy Street Dinner attended by Councilor Chandler (A+C p. 31) – has been identified as not having been reimbursed to ARC. I am aware of several additional such examples and the inclusion of these amounts again overstates the extent of improper reimbursements and suggests a more comprehensive review of payments may be necessary before any conclusions regarding the amounts of improper payments may be drawn.

### **Who approves?**

One of the most obvious means to have prevented any violations of policy or law is adequate review of any expenditures by the appropriate persons. There are two individuals to whom such responsibilities have been assigned formally – the RCLC treasurer as indicated in the organization's bylaws and the RCLC Executive Director as indicated in the associated contract for services. Both of these individuals have attempted to discount their responsibilities by suggesting they were relying upon LAC staff (Bosshardt and/or Lynne) for such review, however there is no documentation that either had the authority/ability to delegate their identified responsibilities.

The A+C report appropriately recognizes that the process whereby receipts were submitted to the County before they were forwarded to the RCLC treasurer *induced reliance* upon the County for the review of such requested reimbursements (A+C p.13). This is a significant issue central to the problems that have been identified, and the practice cannot be fully explained. I will address several factors that I believe contributed to the lack of this expected oversight by LAC in the following sections, as it appears that such practices evolved over time and took on different forms dependent upon who occupied each respective role.

### **What did happen?**

My goal - since these issues were first reported to me - has been to ascertain the underlying reasons that such violations occurred, to address any misconduct associated with these violations, and to



prevent such issues from recurring. The foregoing discussion, as previously mentioned, is no excuse for what did occur, however it is meant to limit the discussion to the areas where violations actually occurred. In addition, my comments below are intended to focus on LAC related issues (and are specifically oriented towards the inquiries that were identified for the A+C investigation).

There appear to be several potential contributors to the lack of recognition of an inappropriate travel policy and other reimbursements, including:

- 1) The travel policy was derived from that of another similar agency, inducing assumptions of adequacy
- 2) There was no legal review of the travel policy (or any others) as the RCLC has never employed its own counsel (and the various counselors for its member agencies have typically expressed ethical issues when asked to opine on an entity other than their own client)
- 3) The JPA identified the County as fiscal agent but no additional definition of duties/expectations was provided
- 4) The RCLC has no policy relating to non-travel reimbursements or other financial procedures
- 5) The only formal members of the RCLC are elected officials who typically do not perform similar administrative review or policy development within their own entities
- 6) There has been no specific training of RCLC Board members with respect to their duties
- 7) The focus of the RCLC and the work performed by the individual executive directors has evolved over time, resulting in an increased propensity for travel that exposed the organization to such issues
- 8) The contracted entities providing executive director services have predominately had histories focused on marketing or other services not directly related to governmental administration
- 9) The two LAC Deputy Managers assigned to assist the RCLC have each only worked for only one governmental entity within New Mexico – LAC - and therefore were familiar with the practices outlined in the adopted Travel Policy (as they were similar to LAC's travel policy) and not as familiar with the State Law nor how it differed from LAC practices
- 10) Many of the identified improper reimbursements (with the exception of alcohol and entertainment) would have been allowed if RCLC was following LAC policies

And, as I believe is most relevant:

- 11) Each party with responsibility for expenditures inaccurately assumed that another was performing a comprehensive review of these expenditures

There is no doubt that many of the practices of the RCLC with respect to reimbursements for travel, meals, and certain events violated state law. What is not apparent is whether the members of the RCLC, their staff, or Los Alamos County officials (elected or appointed) were aware of these violations and/or intentionally acted in defiance of state law.

### **Expertise**

When the RCLC was initially established, LAC staff were asked to assist in coordinating meetings, their agendas, and any general operational needs. Such duties included developing RFP's for executive director services, providing advice on a wide variety of administrative issues, and essentially acting as executive director whenever such services were not available. LAC staff did attend most RCLC Board

meetings, answered a variety of questions when asked, and did report on the balances within the RCLC account. This reporting of financials at board meetings has been characterized as another example of LAC's de facto fiduciary role, however the suggested correction (RCLC Treasurer making the report) would have still required LAC's provision of the same information to the Treasurer, given that as fiscal agent LAC produced such reported financial balances.

The RCLC is now on its fifth executive director services contract - in six years of existence - and therefore the Coalition has not benefitted from continuity nor longevity in its director-level staff. As stated previously, the various contractors and their employees who have served in this role have not possessed significant prior experience in governmental administration. This fact led to assumptions (and direct requests) that LAC staff assist in each executive director's familiarization with their roles.

Similarly, the board consists of elected officials from nine separate local governmental entities, including cities, counties, an incorporated county, and pueblos. Given that there are election cycles for each of these member agencies, the representatives from each entity have changed over time, giving rise to inconsistencies in oversight and a lack of longer term vision regarding the RCLC's practices and policies.

The A+C report states that "RCLC is subject to the same restrictions imposed upon the individual JPA members" (A+C, p. 4), however this is simply not true. Within the nine separate public bodies there are statutory municipalities (2) and counties (3), a home rule municipality, an incorporated county, and two pueblos. Not only does each differing organization have different rules to abide by, in situations where state law supersedes local authority, the locality still has the ability to be more restrictive than state law. The collaborative effort created by the JPA in this case is therefore a different animal from what many of its members may be familiar, and this fact appears to have been another contributor to the inefficient oversight of RCLC expenditures.

### **Looking in the mirror**

Important to Council's concern are the specific actions by LAC officials, and I will attempt to focus the discussion on such issues as follows. In order to do so I will address the five requests that initiated A+C's investigation and which are listed in their report.

1. *Los Alamos County memo "Regional Coalition of LANL Communities (RCLC) Review," dated February 21, 2018 identifies serious expense charge improprieties by the RCLC, which may include improper gifts of meals, sporting event tickets, and alcohol provided to officials of Los Alamos County and others. The investigation should determine the nature and extent of any improper items of value or prohibited items accepted by current or former elected or appointed officials of Los Alamos County.*

To address this request, one must first consider the role/capacity in which any LAC official was acting if they were in receipt of any meal, ticket, alcohol, or other gift. When an LAC official (elected or appointed) is acting in their official capacity, they are subject to LAC policies and procedures. They would also be subject to state (or federal) laws to the extent that they apply, yet certain state laws do differ for an incorporated County in relation to the other RCLC member entities. Their actions must also be considered in the appropriate context, an issue which I will elaborate on in subsequent paragraphs.

The LAC Travel Policy differs from the State's Travel Policy in a number of areas. Suffice it to say that the LAC policy is typically more liberal, both in activities eligible for reimbursement and in the applicable rates, yet both alcohol and entertainment are similarly prohibited from reimbursement. This more

liberal policy is allowable as LAC is designated as a “home rule municipality”, a fact which allows the organization to adopt its own policies inconsistent with certain state laws.

LAC also has in place a “Discretionary Expenses” policy which provides for:

“Reasonable expenses for meals or refreshments during meetings, either inside or outside of the County, when county business is discussed or conducted. Meetings may or may not be open to the general public. Expenses for meals shall be reimbursed at actual amounts (including tip).”

It is worth noting that the discretionary expenses policy also precludes alcohol and entertainment expenses.

It appears that this discretionary expense policy may be the source of much confusion for LAC officials when attending RCLC events, as anyone familiar with this LAC policy could fail to acknowledge that many of the identified meals that would have been appropriate under LAC rules were improper per RCLC policies. This statement refers both to the participants at events and to those reviewing receipts, and gets even more difficult when an LAC official, who is not an RCLC member, attends an RCLC event yet is being reimbursed by LAC.

In addition, for items not covered by our discretionary expense policy, one must define a gift and any limitations upon such gifts in order to analyze any impropriety. State law typically limits gifts for public employees, including meals and refreshments, to no more than \$100 (Chapter 10, Article 16), while LAC rules typically segregate gifts (benefits) from meals and apply a limit of \$50 (LAC Code, Section 30.1). The consideration herein would therefore be, absent any more restrictive RCLC policy, which standard should apply to LAC officials attending RCLC events. To analyze the request as stated, one must differentiate between the role of an event attendee/ potential recipient of a gift and the responsibility for managing RCLC funds.

The request above therefore has different answers depending upon the perspective. From the perspective of RCLC, I believe the answer is yes that LAC officials received meals, tickets, and alcohol that were improperly reimbursed using RCLC funds. The most obvious issue of impropriety is in the receipt of reimbursement of the expenses, and the questioned reimbursements were not paid to LAC officials.

2. *The investigation should determine whether any current or former elected or appointed official of Los Alamos County double billed taxpayers by accepting meals paid for by RCLC while also claiming per diem reimbursement for meals expensed from the RCLC, Los Alamos County, or any other governmental funding source.*

A+C states quite clearly that they found no evidence of such double reimbursement (pp.31-32) and even implies that LAC may have not been reimbursed for certain eligible expenses by RCLC. Given that my review affirmed that LAC officials were typically reimbursed by LAC, and then LAC sought reimbursement from any other relevant agency, I have nothing further to add regarding this request.

3. *The investigation should determine whether any current or former elected or appointed official acting on behalf of Los Alamos County as Treasurer of the RCLC or otherwise signed approval of improper expenses incurred by RCLC.*

Pursuant to the A+C report, Councilor Kristin Henderson did approve “minor improprieties such as violations of the Per Diem Act limits by a few dollars, and for board meeting meal purchases” (p.32), and from my perspective this impropriety was related to the preceding discussion regarding the difference between LAC, RCLC and State policies. In relation to both Mr. Bosshardt’s or Mr. Lynne’s “approval” of improper expenditures, A+C again states that their practices inferred approval, but the language presented does not state this directly, and instead acknowledges their submission to the RCLC treasurer for his/her approval. The prior discussion regarding formal authority is relevant here, however I have noted and accept that Bosshardt/Lynne’s actions led others to rely upon them for review of RCLC expenditures pursuant to RCLC policies – and that such parameters were not applied. I find that a further note regarding the choice of words used by Jacqueline Salazar when forwarding RCLC reimbursement requests to the LAC finance department is not relevant nor is it representative of any intentional impropriety.

4. *It appears from the original audit, from emails sent by elected and appointed Los Alamos County officials, and from media reports that several members of the Los Alamos County Council and County Staff were intimately aware of the severity and extent of the allegations of impropriety at the RCLC, yet these improprieties have not been disclosed to the full County Council or the public by these officials by either publishing the audit report, by report of the Council RCLC Liaison, by report of the Council Chair, or by report of the County Manager; although ample opportunities to do so have come and gone. The communications that have been forwarded to the full County Council by officials in emails have been misleading or incomplete. The full County Council and the citizens of Los Alamos County should not have to learn about this situation piecemeal, through the media. The investigation should consider whether the communications of Los Alamos County officials in this matter have been intentionally misleading with the purpose of concealing misconduct.*

A+C’s response to this request is to twice state that there was no evidence nor indication that any County Official intentionally attempted to conceal misconduct (A+C, p.33). For perspective, I believe that not all information on the relevant issues was known at the time of the first media stories regarding this subject, and these stories were fueled by somewhat speculative information provided by outside groups. I further recall that both the Council liaison and appointed officials that were knowledgeable of the circumstances were intending to allow the RCLC to discuss the issue before reporting it to others – an act which is reasonable given the lack of clarity at the time but one which is subject to challenge by others with related responsibility such as the elected representatives of the RCLC funding agencies. For whatever reason, and in the absence of any evidence regarding this request, A+C chose to use this request to propose that other actions by LAC staff were improper (i.e. proposed changes to the travel policy and executive director agreement, county financial review “recharacterizing” expenses – A+C, pp. 33-34), yet they again fail to draw any conclusions regarding these actions. I have previously addressed my perspective on these allegations in the initial sections of this document and therefore will not repeat such discussion here.

5. *Finally, the investigation should conduct a review to determine if Los Alamos County internal controls are sufficient to safeguard against similar improprieties or misconduct involving elected or appointed officials of Los Alamos County in cases where Los Alamos County provides funding to groups other than RCLC.*

This is an interesting and very appropriate request, and I personally believe it is central to diagnosing what went wrong with respect to the RCLC reimbursements. LAC has recently received three awards from the Governmental Finance Officers Association (GFOA) – for its Budget, CAFR, and PAFR from the prior fiscal year. LAC has received similar awards for over 25 consecutive years (excluding the PAFR which is a relatively new document but one which has received such awards for all three years that it has been produced). Based upon these reviews and coupled with our annual audits which typically express few or no findings, I would normally answer yes to the inquiry noted above. This experience has altered my perception, however, and the following will discuss what I have gained from such a review.

As previously mentioned, I believe that those with the formal duty to manage RCLC funds failed to act responsibly with respect to reviewing RCLC expenditures. As I have also acknowledged, I believe that the evolution of the RCLC induced a reliance by its Board Members and Staff upon LAC to monitor such expenditures. Unfortunately, a combination of similar reverse expectations coupled with a lack of understanding of non-home-rule limitations caused my two Deputy Directors to miss their opportunity to prevent these issues. Had any one of these three positions – RCLC Treasurer, RCLC Executive Director, or LAC Deputy Manager – performed as I anticipated these issues would not have arisen. It is an unfortunate perfect storm of inaction that led to the situation at hand.

From an internal control perspective, I have determined that the expenditure of RCLC funds did not follow normal LAC processes, and that fact likely accounts for the vast difference between our typically stellar financial accounting procedures and what happened in this instance. There are a number of review points for most LAC expenditures, with department heads being the normal approving authority. Our finance staff do typically review expenditures with an eye towards LAC policy – with specific attention to travel. For external groups such as RCLC, their policies are largely unknown by our Finance staff and therefore the reliance for appropriateness was placed upon the “approving” department head – in this case one of two Deputy County Managers. Based upon my review, I believe that the combination of unfamiliarity with another agency’s policies coupled with the authority of a Deputy County Manager’s involvement resulted in an acceptance of payment for items that normally would have been flagged within the LAC Finance Department.

A single example is difficult to rely upon for such an analysis, so by way of comparison I also considered what other fiscal agent relationships we operate at present. Except for one other example, the majority of any relationships in which LAC would be deemed “fiscal agent” are those in which we have a direct involvement – JJAB, Senior Center, LEDA – and they are more comparable to pass-through grants than fiscal agent relationships. The one other relevant example would be LAC’s fiscal agency for the Energy Communities Alliance (ECA), which is a federally-funded, nationally-focused 501c(3) for which an LAC representative has always held the position of Treasurer.

My investigation of LAC practices related to ECA mirror many of the same concerns as with RCLC. That is not to say that I found anything out of order, but our practices do involve a similar reliance upon the organization’s executive director and treasurer which creates concern that a related event could occur. ECA also operates via a different set of policies and procedures, the Treasurer is the designated approver of expenditures, the individual approving the expenditures is senior in our organization, and generally our staff provide “banking” services without internal review. These facts caused me to already speak with ECA staff and advise them to find an alternate fiscal agent and/or procure such services on

the open market, and I know that such a change is scheduled for discussion on their next board agenda scheduled for September 11.

## **Conclusion**

The problems that are illustrated above are the result of failures at several levels, within numerous organizations, and involving a variety of people over time. Prevention of similar events will require the establishment and communication of clear RCLC policies, education of those responsible for their enforcement, and diligence in the supervision of any related actions. I understand that RCLC has already addressed several of the concerns through the changes it has made to its new Executive Director agreement, and is considering hiring its own accountant for processing receipts and expenditures, however it should also follow up on prior discussions regarding the hiring of legal counsel, adopting financial policies, updating the original JPA, and pursuing an MOU to define the role of its fiscal agent. Any pursuit of reimbursement for the improper expenditures is under the purview of the RCLC board, and I will defer to their consideration of this subject.

Throughout my review I found myself attempting to separate the media stories from what evidence is available, and there are many areas where the public perception may presently differ from the issues that I discovered. One such example has been the focus on alcohol purchased with public funds. The documentation for reimbursement requests that were within LAC's possession (and upon which any approvals were based) contained only one receipt indicating the purchase of alcohol. This one approval was definitely a mistake borne by all parties involved, however as such it is not indicative of the typical actions of LAC personnel who reviewed the numerous reimbursement requests. The fact that it has dominated numerous news articles heightens public perception of any improprieties, however my efforts towards the production of this response have attempted to focus on the available evidence rather than any conjecture.

The LAC financial review performed in February of this year has already offered several recommendations that would act to prevent a recurrence of many concerns previously expressed (Perraglio, February 21, 2018). This report, however, is primarily focused on LAC concerns, and while there are likely other factors that need RCLC's attention, my comments will focus on corrective actions to protect LAC from becoming involved in a similar situation in the future.

In order to prevent a recurrence of the various issues noted below, there are several recommendations that I propose for consideration, as follows:

- LAC Council should consider how its participation on external boards exposes the county to liability, develop a policy that defines what is appropriate activity relating to such external board participation, and train its officers and employees to that policy.
- Any fiscal agent relationship that LAC enters into should include an associated agreement that details what services/expectations are entailed.
- All current fiscal agent roles should be reviewed for appropriateness and consideration should be made as to whether to continue with these relationships.
- Finance department personnel must be reminded and retrained to insure that all expenditures processed by the department receive the same level of review. In the event that an external agency is involved which possesses alternate policies and/or procedures, then LAC should confirm through an MOU or similar agreement what its review process will entail, and should

consider whether LAC can accommodate any differences in practice that such alternate policies would require.

- Any personnel, whether elected or appointed, that act in a fiduciary role for an external agency should recuse themselves from the related LAC review process.
- LAC staff should never be placed in a position of providing services to another entity for which there is no direct supervisory relationship.

As has been described by both the A+C and OSA reports (and elaborated upon in this document), there were a number of areas where either the lack of policy or the presence of inappropriate policies resulted in actions that were not in compliance with state law. There were similarly individuals in positions of authority who chose not to apply the existing policies, when doing so would have greatly reduced the overall level of inappropriate expenditures. And finally, there was no periodic, independent review of the financial activity of the RCLC, which if such had been performed I anticipate that the majority of any resultant improprieties would have been identified and corrected much earlier in the organization's development.

The structure and history of the RCLC also appears to have contributed to the lack of oversight of this organization, and while not an acceptable excuse my focus has been to identify the issues that contributed to any failures. In 2013 the issue of Audits/AUP appears to have been a topic of discussion. Part of that conversation identified that LAC could not provide such services, but instead RCLC should have obtained these services independent of LAC. Why RCLC chose not to pursue this route is not apparent when reviewing the organization's minutes, and therefore it is not possible to explain why nothing occurred. The need for legal services and financial policies were identified prior to the conversation regarding Audits/AUP, yet no action was taken on these items either. Whether the Board anticipated that the executive director would pursue these issues (or if LAC would as has been the more recent suggestion) is unknown, yet it appears that these issues became lost as the RCLC experienced turnover amongst both staff and Board members.

Whether or not LAC continues as fiscal agent for the RCLC is a conversation that both the Council and RCLC Board should approach. As I stated earlier, I am already considering LAC's role as fiscal agent for ECA and anticipate that removal of this responsibility is appropriate. Beyond any specific fiscal agent relationships, this review has also caused me to consider how LAC's participation in other collective organizations could expose LAC elected or appointed officials to similar liabilities. It is not uncommon for LAC to participate in such organizations, either as board members or in supporting roles, and while such participation often supports broad LAC goals, I believe that a review of our authorities/actions with respect to such participation is warranted. This review should then inform any necessary policy adoption that could address our exposure, and once adopted such a policy would need to be presented to any future LAC officials involved in external organizations as a part of their duties.

We must not lose sight of the benefits of collaboration, and I am not recommending that we simply withdraw from such relationships. It is notable to consider how other organizations are structured, and upon what established practices we may rely to insure that their operations do not negatively affect our own. My perspective on this matter is that overall, we rely upon the governing board of the organization and/or their executive director to insure compliance with any laws, regulations, or policies that exist today. It is inconceivable that LAC will be able to monitor not only its own operations, but also that of every entity with which we participate, as suggested by A+C (A+C, p. 35). We must, however,

consider if the organizations with which we collaborate have in place the necessary structure and controls to insure regulatory compliance, including the necessity of periodic external review of each entity's actions to insure such conformance.

I anticipate specific interest in regard to LAC employees, and what consequences they may face for their involvement in the actions surrounding these events. As I have described previously, there were failures on many levels, some of which were the result of unclear authorities and expectations, yet at the same time there were opportunities for action which could have prevented many missteps. I will not disclose any specific personnel/corrective actions in this forum, however please know that the actions of each of the appointed personnel noted as having a role in this affair have been appropriately addressed and that I do not anticipate a recurrence of these issues from LAC personnel. It is also worth noting that many of the personnel (both elected and appointed, and including RCLC and LAC representatives) who may have had a role in the highlighted issues are no longer with either entity - and are beyond any authority that I may possess to address their actions.

With respect to any LAC officials' actions, I have stated previously that I have not discovered any evidence of persons attempting to mislead or obscure their actions and I do not believe that the misunderstandings regarding the RCLC Travel Policy resulted from intentional efforts to do wrong. I anticipate that my comments illustrating the differences in perspective (and thereby accountability) for certain improprieties may require deliberation, and I will be available to explain my thoughts on this matter (or any others identified in this response) as necessary.



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# **INDEPENDENT INVESTIGATION OF IMPROPER USE OF PUBLIC FUNDS BY THE REGIONAL COALITION OF LANL COMMUNITIES**

**INVESTIGATION PERFORMED BY  
THE ADAMS+CROW LAW FIRM  
ON BEHALF OF THE INCORPORATED COUNTY OF LOS ALAMOS**

**August 8, 2018**

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## 1.0 INTRODUCTION

The Incorporated County of Los Alamos (“County”), through the County Council (“Council”), retained the ADAMS+CROW LAW FIRM to perform an independent investigation into alleged administrative misconduct of County employees and County officials with respect to allegations of improper expenses and reimbursements made with funds of the Regional Coalition of LANL Communities (“RCLC” or “Coalition”). The County is a founding member of RCLC and contributes public funds under a Joint Powers Agreement (“JPA”), originally executed in 2012, and made with other Northern New Mexico counties, municipalities and tribal governments. Under the JPA, the County serves as fiscal agent to RCLC and has direct involvement with reimbursements thereto.

The allegations at issue in the investigation were made by County Councilors Susan O’Leary and James Chrobocinski questioning whether RCLC-related expenses and reimbursements violated applicable travel policies and/or state law. The primary allegations relate to expenses made by – and reimbursements issued to – RCLC’s contracted Executive Director, Andrea Romero Consulting, LLC (“ARC”). As a separate notable point, ARC/Ms. Romero was not hired by RCLC as a direct employee, whether full-time or part-time, but, instead, was engaged as an independent contractor earning \$140,000 annually to serve as Executive Director. The subject expenses and reimbursements pertained to travel, meals, alcohol, entertainment, and administrative expenses. An ethics investigation was requested on March 1, 2018, by Councilors O’Leary and Chrobocinski to review allegations, originated by Northern New Mexico Protects, of RCLC’s misuse of public funds (“Complaint”). The Complaint demanded an investigation of the involvement, if any, by County officials and employees in approving or receiving the benefit of improper expenditures made with RCLC funds, and whether any County official acted intentionally to conceal any such misconduct. Specifically, the Complaint identified the following five issues for investigation:

1. *Los Alamos County memo “Regional Coalition of LANL Communities (RCLC) Review,” dated February 21, 2018 identifies serious expense charge improprieties by the RCLC, which may include improper gifts of meals, sporting event tickets, and alcohol provided to officials of Los Alamos County and others. The investigation should determine the nature and extent of any improper items of value or prohibited items accepted by current or former elected or appointed officials of Los Alamos County.*
2. *The investigation should determine whether any current or former elected or appointed officials of Los Alamos County double billed taxpayers by accepting meals paid for by RCLC while also claiming per diem reimbursement for meals expense from the RCLC, Los Alamos County, or any other governmental funding source.*
3. *The investigation should determine whether any current or former elected or appointed official acting on behalf of Los Alamos County as Treasurer of the RCLC or otherwise signed approval of improper expenses incurred by RCLC.*
4. *It appears from the original audit, from emails sent by elected and appointed Los Alamos County Officials, and from media reports that several members of the Los Alamos County Council and County Staff were intimately aware of the severity and extent of the allegations*

*of impropriety at the RCLC, yet these improprieties have not been disclosed to the full County Council or the public by these officials by either publishing the audit report, by report of the Council RCLC Liaison, by report of the Council Chair, or by report of the County Manager; although ample opportunities to do so have come and gone. The communications that have been forwarded to the full County Council by officials in emails have been misleading or incomplete. The full County Council and the citizens of Los Alamos County should not have to learn about this situation piecemeal, through the media. The investigation should consider whether the communications of Los Alamos County officials in this matter have been intentionally misleading with the purpose of concealing misconduct.*

5. *Finally, the investigation should conduct a review to determine if Los Alamos County internal controls are sufficient to safeguard against similar improprieties or misconduct involving elected or appointed officials of Los Alamos County in cases where Los Alamos County provides funding to groups other than RCLC.*

This investigation examined each concern raised in the Complaint but, as explained to the Council on April 3, 2018, was limited to RCLC-related expenditures and reimbursements made and disbursed during the period of March 2016 to March 2018 (the “Review Period”). Given the concerning practices identified in the investigation, it is probable that a review of the period from the inception of RCLC to March 2016 would also reveal similar violations of policy and law. From our preliminary interviews, we found it necessary, as an initial investigatory step, to examine the history of RCLC and compliance matters because, during the preliminary interviews, we were told repeatedly that County Officials and RCLC representatives were “confused” about what type of entity RCLC constitutes. Thus, in order to understand whether funds were used appropriately and how missteps, if any, could have occurred over an extended period of time under the oversight of multiple individuals and agencies, we initially focused on the nature of RCLC and laws to which RCLC is subject. That initial analysis confirmed RCLC *is a governmental agency* through its formation under a JPA, and as a JPA-based entity, RCLC is subject to the same restrictions imposed upon the individual JPA members.

Once that phase of the investigation was completed, we turned to the nature of the expenditures and reimbursements under the applicable policies and laws and determined violations *did* occur. Specifically, impermissible expenditures and reimbursements violated the Per Diem and Mileage Act, the Audit Act and the Anti-Donation Clause of the New Mexico Constitution. These also constitute potential violations of the Governmental Conduct Act and the County Code of Conduct. Multiple practices (or lack thereof) regarding RCLC’s governance, policies, and oversight, including the aforementioned “confusion,” contributed to violations of law.

Although designated in the JPA simply as “fiscal agent” for RCLC, the investigation revealed that, through its conduct over time, the County assumed a greater fiduciary duty to RCLC as a matter of practice. The ambiguous role of the County was found to have contributed to uncertainty or “confusion” by County officials and employees, as well as RCLC members and ARC, allowing impermissible expenditures and reimbursements to occur. This “confusion,” however, was *avoidable* and could/should have been addressed much earlier in the five+ years of RCLC’s existence given the number of educated and sophisticated people working with the County,

including elected County Councilors who served on the RCLC Board and sometimes as RCLC Treasurer. Indeed, at least one County Councilor serving as RCLC Treasurer, in accord with duties of County Councilors to serve on Boards and represent the County, specifically “approved” impermissible reimbursements in writing.

The investigation further revealed that, the “confusion” led to ill-defined practices (or lack thereof) employed to analyze and approve reimbursements, and, under this approach, County officials and employees *were* in fact recipients/beneficiaries of meals and entertainment that violated not only applicable RCLC policies but state law. The investigation then found that, after the County was alerted to possible misconduct through an IPRA request by NNM Protects, the County attempted to correct deficiencies arising from the ill-defined practices regarding RCLC’s governance, policies, and activities. These attempts to “fix it” include, but are not limited to, *post hoc* recharacterization of money *already* reimbursed to ARC as well as an attempt to amend RCLC’s Travel Policy to not only allow the type of impermissible reimbursements that had *already* been made to ARC (and recharacterized during the attempt to “fix it”) but, more concerning, to exempt ARC from being subject to the Travel Policy altogether. In this way, the County’s attempts to “fix it” would have purportedly allowed the “independent contractor” serving as RCLC’s Executive Director to do what an employee of RCLC could never do, i.e., to circumvent the law. From our investigation of documents and interviews, including analysis of witness credibility, we conclude the County’s “corrective” efforts not only reflect poorly on County officials and employees but may constitute efforts to *intentionally* mislead others and/or *conceal* misconduct. Because, through this investigation, we did not have subpoena power or the authority to place witnesses under oath, we cannot opine with legal certainty on the subjective intent of each respective County employee or official involved in these attempts. We confirm we did not find any documented “admissions” by County officials or employees of a concerted effort to mislead or conceal anyone.

As to the matter of internal controls, the investigation did not duplicate the scrutiny/analysis performed by the Office of the State Auditor as to strict accounting controls<sup>1</sup> but did, however, expose, from a non-technical perspective, defective infrastructure that allowed multiple informed and educated County officials and employees to rely upon a purported history of “confusion” that led to careless, and possibly reckless, use of public money.

Based upon the findings and conclusions of this investigation, we recommend the policies and practices for processing reimbursement requests for RCLC be overhauled both within RCLC and through the County as fiscal agent. We also highly recommend this overhaul be done by qualified professionals, well-versed in public accounting principles and governmental accountability, to ensure ongoing legal compliance and consistency. We also recommend RCLC engage in regular independent audits of its financial activities.

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<sup>1</sup> The County informed ADAMS+CROW (“A+C”) that the Office of the State Auditor would be conducting an investigation of RCLC and directed A+C to communicate with the OSA to avoid duplicating efforts, if appropriate and possible. The two entities did communicate initially to discuss their respective perspectives in their individual investigations and jointly agreed the scope of work was different since the OSA investigation was focused on RCLC and the A+C investigation was focused on County conduct. Thereafter, the two entities communicated occasionally and briefly about the status of their respective work.

## **2.0 TIMELINE AND EVENTS LEADING UP TO INVESTIGATION**

We include with this report a detailed timeline of events, meetings, and travel that occurred during the 2016 to 2018 timeframe of this investigation, attached as Appendix A. This timeline includes links to meeting minutes, agendas, and correspondence.

The material allegations of misconduct sparking this investigation were formally raised on February 15, 2018, by NNM Protects, a 501(c)(3) tax-exempt organization, in correspondence sent to the RCLC Board. *See* Appendix A, Event No. 36. Previously, on December 8, 2017, NNM Protects submitted a public records request to the County to obtain financial documentation related to RCLC expenses and travel. *Id.* NNM Protects raised concerns about the appropriateness of reimbursements paid to RCLC's contracted Executive Director, Andrea Romero Consulting, and other reimbursements paid to Mayor Alice Lucero and Mayor Javier Gonzales. *Id.*

Internally, the County's Deputy County Manager, Steven Lynne, first noted potential issues with RCLC's reimbursements and notified the RCLC Board and County Council on February 1 and February 2, 2018, respectively. On February 21, 2018, the County's Chief Financial Officer, Helen Perraglio, released an informal audit ("County Audit") analyzing over \$30,000 in RCLC expenditures and reimbursements during which numerous reimbursements to ARC were adjusted by removing them from a clearly impermissible reimbursement category to a more general category that might not appear to be problematic. As a result of the adjustment, the County Audit found that only \$2,246.90 of the \$30,000 in reimbursements had been improperly issued to ARC. On March 1, 2018, Councilors O'Leary and Chrobocinski published the Complaint calling for a more thorough investigation into the allegations. On March 13, 2018, the RCLC Board was informed by the Office of the State Auditor that a Special Audit would be performed.

## **3.0 SUMMARY OF INVESTIGATION**

### **3.1 Steps of the Investigation**

In the preliminary phase of the investigation, we conducted interviews to gather information about the Complaint and determine the scope of the investigation for proposal to the Council. This first phase included research upon the history of RCLC and the County's involvement in RCLC-related activities. Interviews were conducted on March 21-22, 2018, with County officials and employees. The individuals interviewed included: Councilor Christine Chandler, Councilor David Izraelewitz, Councilor Susan O'Leary, Councilor Antonio Maggiore, Councilor Rick Reiss, County Manager Harry Burgess, Deputy County Manager Steven Lynne, and County CFO Helen Perraglio. Councilor James Chrobocinski declined to be interviewed.

The interviews were helpful in clarifying the background and context of the impermissible expenditures and reimbursements identified in the investigation. Of note, CFO Helen Perraglio was particularly helpful and candid throughout the investigation, specifically with regard to gathering requested information, providing documentation and providing ongoing verbal information during the course of the investigation.

After conducting interviews, the investigation focused on documentation available to the County *at the time expenditures and reimbursements were made*; this documentation was relevant to analyzing what the County knew at the time it actually processed reimbursements as well as what it knew thereafter when performing its own informal audit of the same.

Finally, we sought an interview of former contracted RCLC Executive Director Andrea Romero, but she declined. She agreed, however, to provide written information regarding attendees, alcohol consumption, and itemized receipts for certain events occurring during the Review Period. *See* ARC Table of Attendees and Receipts, July 27, 2018, attached as Exhibit A. This information was incorporated into our report.

### **3.2 Public Records Request**

This firm submitted a public records request to the County on April 13, 2018, pursuant to the New Mexico Inspection of Public Records Act (“IPRA”). We requested all financial documentation from the County pertaining to RCLC, including deposits, credits, and debits. On April 18, 2018, we clarified our request to allow for extended deadlines and waiver of document fees. On May 31, 2018, we supplemented our request to request job descriptions for various County personnel. Our IPRA request is attached as Exhibit B. Recently, on July 27, 2018, we were informed by CFO Perraglio that a box of documents belonging to former Deputy County Manager Brian Bosshardt had been discovered by the County. As understood from the County, this box contained procurement documents related to RCLC, however, we were not able to review the contents of this box prior to the release of the report.

### **3.3 Complications of Investigation**

There were a number of unanticipated RCLC-related accounting and legal issues that arose during the course of this investigation, potentially implicating RCLC and its Board members. We assume the State Auditor’s investigation and any subsequent government investigations by the NM Attorney General or Department of Finance and Administration (“DFA”) will examine potential issues with procurement, Open Meetings Act, and auditing compliance. This investigation focused primarily on examining alleged improper conduct related to RCLC expenses and reimbursements during the Review Period to the extent any such conduct was approved or sanctioned by County officials or employees.

Several difficulties were related to determining what standards applied to measure improper conduct since RCLC’s only expense policy (the Travel Policy) is in conflict with the Per Diem and Mileage Act. For instance, certain expenditures and reimbursements that were found to be in compliance with the Travel Policy were nonetheless found to violate the Per Diem and Mileage Act. Further, expenditures and reimbursements that were allegedly approved by the RCLC Board of Directors nevertheless violate the Anti-Donation Clause of the New Mexico Constitution.

As a general matter, we found little direct documentation of advanced RCLC Board approval for any of the expenditures incurred or reimbursed during the review period. RCLC meeting minutes show that in certain instances, the RCLC Board generally approved “travel” to certain meetings and conferences. *See* Appendix A, Event Nos. 17 and 19. The meeting minutes, however, do not



indicate who was permitted to attend the meetings and do not indicate prior approval for expenditures specifically prohibited by RCLC's own Travel Policy. It could be true that RCLC, its Chair, or its Board members informally or formally approved the expenditures discussed herein, however, given the documentation made available to us, we did not identify documented approvals.

Importantly, we do not find merit in County explanations that impermissible expenditures or reimbursements by ARC should be excused or overlooked because they were purchased by a third-party contractor. We note that the arrangement between RCLC and its various third-party executive directors seems to have been designed for the purpose of allowing its executive directors to perform powers RCLC could not. Had RCLC's Executive Director been a public employee, applicable state law would have clearly prohibited the purchase of alcohol, sporting event tickets, and expensive meals for private individuals with the use of public funds. Using ARC, or any other contracted executive director, as an intermediary to spend public funds impermissibly is, at best, careless and, at worst, a calculated action by the RCLC and its governing members to avoid legal restrictions on use of public money. For the reasons described herein, our analysis applied all state laws and policies applicable to use of the public funds.

## **4.0 BACKGROUND AND HISTORY OF RCLC**

### **4.1 The Joint Powers Agreements Act, Purpose and Membership**

The RCLC was organized by a group of local counties, municipalities and tribal governments under the New Mexico Joint Powers Act<sup>2</sup>. NMSA 1978, § 11-1-1 et seq. The Joint Powers Agreements Act allows two or more public agencies by agreement to jointly exercise any power common to the contracting parties. *Id.* at § 11-1-3. The administering agency under any such joint powers agreement "shall be considered under the provisions of this Joint Powers Agreements Act as an entity separate from the parties to such agreement." *Id.* at § 11-1-5(B). Importantly, the agency created under a joint powers agreement:

shall possess the *common power* specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

*Id.* at § 11-1-5(C) (emphasis added).

The participating members of RCLC collectively entered into a joint powers agreement, which was approved and made effective by the Secretary of Finance and Administration (Tom Clifford) on October 13, 2011. *See* RCLC's Joint Powers Agreement ("JPA"), attached as Exhibit C. The original members of RCLC included the following communities: (1) the Incorporated County of Los Alamos ("County"), (2) the City of Santa Fe, (3) Santa Fe County, (4) the City of Espanola,

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<sup>2</sup> "If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties [...]" NMSA 1978, § 11-1-3.

(5) Rio Arriba County, (6) the Town of Taos, and (7) Taos County. The tribes of Ohkay Owingeh (October 9, 2012) and Pueblo of Jemez (August 16, 2014) following RCLC's initial formation in 2011.

The primary purpose of RCLC is stated in the recital section of the JPA:

*WHEREAS, the Parties share the goals of engaging LANL, the U.S. Department of Energy, the State of New Mexico, and other government agencies with respect to local concerns about LANL activities, and of increasing the Parties' ability to participate in and influence federal and state government decision-making affecting LANL [...]*

The JPA also identifies the following additional purposes and common powers to be exercised by RCLC:

*A. Promotion of economic development*

- (i) promotion of new missions for LANL that the citizens of the Coalition members support;*
- (ii) advocacy of long-term stable funding of LANL missions;*
- (iii) promotion of new and diverse scientific endeavors at LANL, focusing on employment and educational opportunities within the Coalition members' jurisdiction;*
- (iv) support of business incubation and business development on non-federal lands;*
- (v) support of workforce training and development; and*
- (vi) promotion of awareness of LANL of its contributions toward and impact on the region.*

*B. Promotion and coordination of environmental protection and stewardship*

- (i) clean-up activities and site maintenance to ensure consistency with community values and future use goals;*
- (ii) planning activities to address future use goals, stewardship needs and obligations, and prevention of future contamination;*
- (iii) evaluation of cleanup planning, implementation and oversight for protection of workers and neighboring communities.*

*C. Participation in regional planning*

- (i) evaluation of policy initiatives and legislation for impacts on Coalition members;*
- (ii) development of long-term relationships between local, state and federal officials and LANL officials;*
- (iii) coordination of regional planning with LANL strategic initiatives and other advocacy organizations and initiatives.*

*D. Evaluation of policy initiatives and legislation for impact on the RCLC*

- (i) participation in public comment and outreach initiatives to influence decision-making concerning LANL activities;*
- (ii) advocacy in state and federal legislative process and administrative proceedings.*

See JPA, ¶ 2. The cover brief submitted to DFA for approval noted that RCLC’s purpose is to “Establish Regional Coalition for Regional Planning, Economic Development & Lobbying.” See RCLC Cover Brief, dated, attached as Exhibit D.

To accomplish the above-stated purposes and common powers, the members of RCLC agreed to contribute public funds to support RCLC’s activities<sup>3</sup>. See JPA, ¶ 8(A). These funds were used primarily to conduct monthly Board meetings, produce regional advertising materials, pay compensation to RCLC’s Executive Director, and fund travel activities for RCLC Board members and contract staff. Since formation, RCLC received the following estimated contributions as of December 2017: \$765,000.00 from the County, \$272,224.95 from the Department of Energy, and \$166,375.00 from RCLC members. See RCLC’s 2016 and 2017 Operating Budget Summaries, attached as Exhibit E.

Each RCLC Board member is required to be an elected public official from a governing body “with current experience in strategic planning, economic development, environmental protection or the legislative process.” See JPA, ¶ 4. RCLC’s officers include a Chair, Vice Chair, and Secretary/Treasurer who are elected annually by the Board of Directors. See Bylaws of the Board of Directors of the RCLC, dated August 17, 2012 (“Bylaws”), attached as Exhibit F. During 2017, the RCLC Board’s composition included: Santa Fe Mayor Javier Gonzalez, Rio Arriba County Commissioner Barney Trujillo, Los Alamos County Councilor Christine Chandler, Espanola Mayor Alice Lucero, County of Taos Commissioner Mark Gallegos, Santa Fe County Commissioner Henry Roybal, Pueblo of Jemez Lt. Governor Ward Yeppa, Ohkay Owingeh Representative Ron Lovato, and Town of Taos Councilor Darien Fernandez.

**4.2 RCLC’S Executive Director - Andrea Romero Consulting, LLC**

From about 2012 to March 2018, RCLC utilized the services of an independent contractor to serve as Executive Director. RCLC’s Executive Director was tasked with overseeing operations and administration. During the period of examination from 2016-2018, RCLC contracted Andrea Romero Consulting, LLC, a New Mexico limited liability company, to serve as Executive Director. See RCLC Services Agreement with ARC, dated March 1, 2016, AGR16-01 (“ARC Agreement”), attached as Exhibit G. Andrea Romero is believed to be the sole member of ARC.

The Executive Director position was competitively bid through a request for proposals by the County’s procurement manager under the County’s procurement procedures. See Procurement

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<sup>3</sup> The Joint Powers Agreements Act instructs that: “(1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or (2) payments of public funds may be made to defray cost of such agreement; or (3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.” NMSA 1978, § 11-1-4(B).

documentation for Executive Director Position, attached as Exhibit H. The RFP was awarded to ARC after the only other competitive bidder withdrew from consideration. *Id.* The RCLC Board approved the ARC Agreement on February 12, 2015, for a term of two years with the option of two additional one (1) year renewals, with annual compensation of \$140,000 per year. *Id.* at Section B.

Following the same analysis outlined below in Section 6.2, any procurement of services by RCLC should have followed the State's Procurement Code unless authorized by home rule charter or excepted by DFA. RCLC's meeting minutes do not show that that RCLC's Board of Directors adopted procurement regulations governing the solicitation of professional services pursuant to NMSA 1978, § 13-1-117.1<sup>4</sup>. We expect the State Auditor's special audit to focus more directly on RCLC's procurement compliance but note this as another point of "confusion" by the County wherein it appears, during procurement, the County's procurement code was incorrectly applied to RCLC's engagement of ARC rather than the State's Procurement Code.

The ARC Agreement provided that ARC would perform the following tasks:

1. Assist the Regional Coalition in becoming a more effective advocacy organization;
2. Manage the Regional Coalition and help ensure all legal and financial responsibilities are met;
3. Advise the Board of Directors on strategic direction and policies, including legislative strategies to achieve the organization's mission;
4. Provide technical assistance; Summarize and analyze issues, and provide comment and advice as necessary or requested; Prepare technical memos and issue briefs as needed;
5. Serve as facilitator for Board meetings;
6. Develop and circulate agenda items and briefing memos for the Board meetings;
7. Prepare and distribute minutes of the Board meetings;
8. Make presentations to each participating member's governing body, at least annually, or as requested by Board members;
9. Maintain the website;
10. Negotiate and collaborate with outside entities, and convey and advocate for organizational policies, as directed by the Board;
11. Implement public information strategies;
12. Serve as spokesperson for the Regional Coalition with the Department of Energy, state, and federal agencies, the media and the public;
13. Monitor regional and national issues and coordinate with outside agencies on issues affecting Los Alamos National Laboratory;

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<sup>4</sup> "[E]ach local public body shall adopt regulations regarding its selection and award of professional services contracts." NMSA 1978, § 13-1-117.1

14. Make monthly presentations to the Board and at other forums on a range of issues;
15. Represent the organization at local and national meetings as directed by the Board;
16. Prepare monthly updates on relevant congressional and DOE policies and actions;
17. Report progress on the strategic plan, and annually provide an updated plan for the Board's discussion and consideration;
18. Prepare the draft annual budget for the Board's consideration, and implement as appropriate;
19. Generate funds from a variety of sources to diversify revenue streams in support of continued operations; and
20. Provide monthly updates to the Board regarding overall progress.

Documentation shows ARC was aware of RCLC's Travel Policy and its restrictions at the time the ARC Agreement was made on March 1, 2016. Further, at no point has ARC challenged the Travel Policy's application to the expenditures and reimbursements. The ARC Agreement states that all reimbursable travel expenses must be "paid in accordance with the Regional Coalition's travel policy." See Exhibit G. ARC also confirmed knowledge of the Travel Policy in a memorandum from Ms. Romero to Brian Bosshardt dated March 20, 2017. In that memorandum, Ms. Romero states that "[a]s per any receipts not attached, I will defer to the meal per diem policy in our *Travel Policy (12-03) document*." Exhibit I. (emphasis added).

## 5.0 CONFUSION BY THE COUNTY REGARDING RCLC'S OVERSIGHT AND LEGAL STATUS

### 5.1 Confusion Regarding the County's Role as Fiscal Agent

The JPA provides that "[t]he Incorporated County of Los Alamos shall act as the fiscal agent for implementation and administration of this agreement," see JPA, ¶ 6(B), but that RCLC agrees to be "strictly accountable for all receipts and disbursements under this Agreement." See JPA, ¶ 9. The County played a significant role in founding RCLC and assisting in its ongoing administration and operation.

From the inception of RCLC, it appears it was unclear what duties the County was required to perform as RCLC's fiscal agent. There is no definition of "fiscal agent" under the JPA. As explained by CFO Perraglio during her preliminary interview, it was her understanding that the County's role as fiscal agent was strictly to disburse funds within the control of the County. According to CFO Perraglio, RCLC's financial and accounting oversight was to be performed by RCLC's Treasurer/Secretary under the following duties stated in the Bylaws:

1. Shall keep or cause to be kept, the minutes of the meetings of the Board;
2. **Shall have oversight of Regional Coalition funds and assets. He/she shall review accounts of receipts, disbursements and deposits of all Regional Coalition monies and other valuable effects in the name and to the credit of the Regional Coalition and report to the Board of Directors upon request.**

- 3. Shall provide or cause to be provided a detailed financial statement to the Board. The financial statement shall include all revenue, revenue sources, expenditures and balances, and include monthly and year-to-date figures. The presentation of such a financial statement shall be a recurring item on each of the Board's regular meeting agendas.**

*See RCLC Bylaws, Art. III, Sec. F.*

RCLC's meeting minutes show, however, that rather than the RCLC Treasurer/Secretary providing detailed financial statements to the RCLC Board, *the County did so* through Deputy County Manager Brian Bosshardt, from 2012 to February 2017. Shortly after Mr. Bosshardt's departure, current Deputy County Manager Steven Lynne assumed this role of presenting regular budget updates to the RCLC Board during RCLC Board meetings. There are also additional instances when the County and its employees performed duties assigned to the RCLC Treasurer/Secretary, such as reviewing receipts and approving disbursements, preparing and presenting RCLC's financial statements, recommending the RCLC Board enter into services agreements, preparing and amending travel and expense policies, and conducting informal audits of RCLC finances. *See* Section 13.1 for additional discussion.

The County's actions induced reliance by RCLC that expenditures and reimbursements were receiving appropriate review by the County pursuant to applicable state laws and the Travel Policy.<sup>5</sup> Yet, at the same time, it was unclear to the County what standards apply to RCLC's expenditures and reimbursements. *See* Appendix A, Event No. 37, Email from Steven Lynne, dated February 1, 2018 ("I have learned that Los Alamos County as fiscal agent has used the wrong standard for payment. We had assumed that the County's policies were to be followed but the RCLC travel policy is the standard that should have been applied."<sup>6</sup>).

## **5.2 Confusion Regarding RCLC's Status as a Local Public Body**

There was additional confusion among County officials and employees regarding whether RCLC was a public entity subject to the state's Audit Act. Although an administering agency/entity formed under a joint powers agreement is considered separate from the parties to the agreement, under Section 11-1-5(B) of the Joint Powers Agreements Act, administering agencies have been

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<sup>5</sup> Los Alamos Daily Post, March 2, 2018, *RCLC Executive Director Andrea Romero Addresses Allegations About Travel Expenses And Reimbursements*, <https://www.ladailypost.com/content/rclc-executive-director-andrea-romero-addresses-allegations-about-travel-expenses-and>.

When I began serving as executive director in 2015, it was explained this was RCLC's travel reimbursement procedure: to seek approval for an expense (e.g. a dinner with board members in Washington, DC), pay for the expense with my own funds, and then request a reimbursement, subject to approval by Los Alamos County and RCLC's Treasurer. I never attempted to hide an expense and I would never have requested reimbursement for anything that I thought was out of compliance. I also do not believe RCLC's Treasurer nor Los Alamos County would have approved an expenditure or reimbursement request if they did not believe those expenditures were permissible. Simply put, as a private contractor, I did not know that alcohol included in a meal was not allowed.

<sup>6</sup> This information comports with the interview conducted with Steven Lynne on March 22, 2018.

determined to be local public bodies in the same manner as their member agencies.<sup>7</sup> An entity formed under the Joint Powers Agreements Act is permitted to exercise the powers of its member agencies, but *only* subject to any restrictions placed on such powers. *Id.*

The confusion among County officials and employees is inexplicable. In 2013, the County sought guidance from the Office of the State Auditor whether RCLC should be included in the County's Tier Five Audit. *See* State Auditor's Letter from Carla Martinez to Steven Lynne, dated February 20, 2013 ("State Auditor's Letter"), attached as Exhibit J. The State Auditor advised the County that RCLC, as a local public body, was required to obtain its own tier system audits from an independent public accountant pursuant to Subsection D of Section 2.2.2.16 NMAC. From 2013 to present, however, it does not appear that RCLC performed tier system audits. Contrary to the State Auditor's guidance in the State Auditor Letter, Deputy County Manager Steven Lynne *specifically advised* the RCLC Board during its August 11, 2017, Board Meeting that RCLC was not subject to the Audit Act:

**"E. Discussion/Action Items | 9:10-10:03a**

**c. Budget Update, Steve Lynne – 10:04a-**

- i. member contribution funds were recorded for Ohkay Owingeh
  - i. Mayor Gonzales – Is the RCLC subject to any audit regulations? Steve replied no. Due to the small size of the Coalition, a full audit by Los Alamos County is not required. The current audit role has a tiered approach."

*See* RCLC's August 11, 2017, Meeting Minutes, attached as Exhibit K. Based on the State Auditor's Letter, it appears RCLC should have been treated as a local public body for Audit Act purposes, however, it does not appear that RCLC was ever informed or advised that tier system audits were required. *See* Section 9.4 for additional discussion. Deputy County Manager Lynne's advice to the RCLC Board paired with the County taking responsibility for examining the nature and character of RCLC is part of the basis for reliance by RCLC upon the County to keep RCLC compliant.

## **6.0 COMPLIANCE ISSUES WITH RCLC'S TRAVEL POLICY**

### **6.1 Overview of RCLC's Travel Policy**

RCLC's Bylaws state that the "Board of Directors shall adopt, by separate action, a resolution detailing the procedures for reimbursement of expenses related to Director and Alternate Director participation in Coalition Activities." *See* RCLC Bylaws, Art. II (D). Rather than resolve to be bound by existing state law under the Per Diem and Mileage Act, RCLC's Board of Directors

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<sup>7</sup> *See State ex rel. Educ. Assessments Sys., Inc. v. Coop. Educ. Services of New Mexico, Inc.*, 1993-NMCA-024, ¶ 9, 848 P.2d 1123, 1125 ("Local public bodies encompass "every political subdivision of the state and the agencies, instrumentalities and institutions thereof." Section 13-1-67. Both EASI and CES agree that the parties to the joint powers agreement are local public bodies. Thus, as local public bodies, school districts are generally subject to the provisions of the Procurement Code. Under the Joint Powers Agreements Act, a joint agency can exercise the powers of any of its member agencies "subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies."").



adopted a separate written policy titled “Regional Coalition Travel Policies and Budget” by resolution on September 21, 2012 (“Travel Policy”), attached as Exhibit L. The Travel Policy appears to constitute the guidance under which all RCLC travel and other expenses<sup>8</sup> were analyzed and reimbursed, whether the analysis was performed by RCLC or the County.

The Travel Policy is intended to “delineate those valid business expenses for which Board members and staff of the Regional Coalition may qualify for payment or reimbursement.” *See* Travel Policy, Sec. II. The Travel Policy applies to “all employees, contract staff, and board members of the Regional Coalition.” *Id.* at Sec. III. Importantly, the Travel Policy states that “[a]nything not specifically covered must be authorized by the Board of Directors of the Regional Coalition.” *Id.* at Sec. II. “For out-of-state travel and training, that will be paid for with Regional Coalition funding, approval is required by the Board of the Regional Coalition.” *Id.*

The Travel Policy appears provide flat per diem meal rates, inclusive of gratuities and tax, but the policy itself bears contradiction. *Id.* at 5. The Travel Policy first instructs that “no receipts” are required for meals, but then states “itemized receipts” for meals and incidentals *are* required. *Id.* at 6. For in-state travel, the rate is \$50 a day; on “those days where the staff member is not eligible for three meals at Regional Coalition expense,” the rate is \$10 for breakfast, \$14 for lunch, and \$26 for dinner. *Id.* at 5. For out-of-state travel, the rate is \$60 a day; “on those days where the staff member is not eligible for three meals at Regional Coalition expense,” the rate is \$12 for breakfast, \$15 for lunch, and \$33 for dinner, excluding tips. *Id.* “Part day travel per diem is prorated by the meal component based upon when travel starts.” *Id.* Per diem rates are to “be reduced for any meals provided as part of a conference/function.” *Id.* The daily rate for incidental expenses, such as phone calls, is \$8. *Id.*

The Travel Policy imposes no monetary limits on lodging per se, but lodging expenses are “limited to the standard room rate for single occupancy for the minimum number of nights required to attend the function,” and retention of itemized receipts is required. *Id.* at 4. Stays outside the number of nights required to attend the function are personal expenses and shall not be reimbursed. *Id.*

The Travel Policy requires travelers to purchase the lowest airfare available. *Id.* at 2. “[U]pgrades or enhancements” to airfare, such as first-class airfare, “are personal expenditures and will not be paid by the Regional Coalition.” *Id.* The Travel Policy also prohibits specific expenses. Of note are prohibited items such as beverages, snacks, gifts, “entertainment and recreation expenses,” and alcoholic beverages. *Id.*

## **6.2 RCLC’s Travel Policy Does Not Align with the Per Diem and Mileage Act**

RCLC’s Travel Policy deviates significantly from the Per Diem and Mileage Act regulations. The Per Diem and Mileage Act regulations apply “to the reimbursement of expenses for all salaried and non-salaried public officers and employees of all states agencies and local public bodies,” with the exception of state legislators and educational officials. 2.42.2.2 NMAC.

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<sup>8</sup> RCLC did not adopt any additional policies, other than the Travel Policy, to govern allowable expenses of the RCLC. Accordingly, it is assumed that the RCLC Board of Directors intended all expenses to follow the Travel Policy or as otherwise approved by the Board of Directors.



RCLC is not excepted or exempt from the Per Diem and Mileage Act under any known DFA guidance. Notably, the Per Diem and Mileage Act does allow local public bodies to decrease or eliminate per diem rates set by statute and regulation, but *not* to increase rates. 2.42.2.12.C NMAC. Although the Review Period does not contain documentation of County involvement assisting RCLC in creating the original Travel Policy, notably, the RCLC Travel Policy does incorporate certain procedures found in the County’s Travel Policy suggesting the County did guide development of the Travel Policy. *See* Table 1.0, Comparison of Per Diem and Mileage Act to Travel Policies. Moreover, the evidence shows the County recently assisted RCLC in attempting to amend the Travel Policy, which amendment would have exempted the executive director from any restrictions on expenditures at all. This amendment was not adopted by the Board.

The problem with applying the County’s Travel Policy to RCLC is that the County is excepted from the Per Diem and Mileage Act as a “Home Rule” municipality and is permitted to adopt its own travel policies.<sup>9</sup> RCLC, as an entity formed under the Joint Powers Agreement Act, however, does not have a home rule charter and thus is subject to the restrictions imposed upon any of its contracting public agencies in exercising joint powers, including restrictions related to travel reimbursements. Since a number of the other members of the JPA do not have the “Home Rule” permission, the restrictions placed upon them under the state laws applies to RCLC. This “confusion” about what rules govern RCLC may have led to RCLC adopting the Travel Policy rather than resolving to follow the Per Diem and Mileage Act.

The Travel Policy’s reimbursement procedures and limits do not comply with the Per Diem and Mileage Act. *Id.* Below, please find Table 1.0 Comparison of Per Diem and Mileage Act to Travel Policies.

Provisions	Per Diem and Mileage Act 2.42.2 NMAC	Los Alamos County Travel Policy (Home Rule Charter)	RCLC Travel Policy
<b>Meal Per diem for out-of-state travel</b>	(1) <b>Actuals</b> in lieu of per diem, <b>\$45 per day for actual meal expenses</b> , and <b>lodging not to exceed \$215 per night</b> . Lodging may exceed \$215 if prior approval is obtained. Receipts required.  <b>OR</b>  (2) <b>\$115 flat per diem</b> . Inclusive of meals and overnight lodging. No receipts required.	<b>\$60 flat per diem</b> if overnight lodging required. No receipts required.  May exceed limits at business meetings at restaurants where average meal cost exceeds meal allowance under County’s Discretionary Expenses Policy.	<b>\$60 flat per diem</b> . No receipt needed.
<b>Meal per diem for in-state travel</b>	(1) <b>Actuals</b> in lieu of per diem, <b>\$35 per day for actual meal expenses</b> , and lodging not to exceed \$215 per night. Lodging may exceed \$215 if prior approval is obtained. Receipts required.  <b>OR</b>  (2) <b>\$85 flat per diem</b> . Inclusive of meals and lodging. No Receipts required.	<b>\$45 flat per diem</b> if overnight lodging required. No receipts required.  May exceed limits at business meetings at restaurants where average meal cost exceeds meal allowance under County’s Discretionary Expenses Policy.	<b>\$50 flat per diem</b> . No receipts required.

<sup>9</sup> Under the “Home Rule” provision of the New Mexico Constitution, citizens of a municipality may adopt a home rule charter, which allows a municipality or local entity to exercise powers normally reserved to the state legislature, unless those powers are specifically prohibited by statute. N.M. Constitution, Art. X, Sec. 6.

<b>Partial meal per diem for out-of-state travel</b>	Less than 2 hours: none. 2 hours but less than 6: <b>\$12</b> 6 hours but less than 12: <b>\$20</b> 12 hours or more: <b>\$30</b>	Less than 5 hours: <b>none.</b> 5 hours or more, less than 12: <b>\$10</b> 12 hours or more, less than 18: <b>\$25</b> 18 hours or more: <b>\$45</b>	Breakfast <b>\$12</b> Lunch <b>\$15</b> Dinner <b>\$33</b>  *Not based on hours. To be adjusted when travel starts and finishes.
<b>Per diem reduction for complimentary meals provided during travel</b>	If traveler receives complimentary meals or lodging can only reimbursed for <b>Actuals.</b>	Requires traveler to disclose meals provided. <b>Reduce per diem in the following amounts: breakfast -\$13, lunch -\$20, Dinner -\$27.</b>	Requires traveler to disclose meals provided. <b>Reduce per diem in the following amounts: breakfast -\$12, lunch -\$15, dinner -\$33.</b>
<b>Lodging</b>	(1) <b>Actuals</b> in lieu of per diem, <b>\$45 per day for actual meal expenses, and lodging not to exceed \$215 per night.</b> Lodging may exceed \$215 if prior approval is obtained. Receipts required.  <b>OR</b>  (2) <b>\$115 flat per diem.</b> Inclusive of meals and overnight lodging. No receipts required.	<b>Cost not to exceed \$160.</b> For high cost areas, not to exceed \$215 (including D.C.). If over that amount, approving authority may approve full reimbursement. Itemized receipts required.	<b>No limit.</b> Standard room rate for single occupancy. Itemized receipts required.
<b>Air Travel</b>	Actual costs for travel by common carrier, provided such travel is accomplished in the most economical manner practical.	Coach fare rates are maximum allowable expense.	Lowest possible round-trip coach fare. Upgrades or enhancements not to be paid.
<b>Incidental expenses</b>	<b>\$6 per day, not to exceed \$30 per trip.</b> If exceeds amount, entire amount of reimbursement claim must be accompanied by receipts.	When overnight travel required. <b>In-state: \$7, not to exceed \$35 per trip. Out-of-state: \$10, not to exceed \$50 per trip.</b>	<b>\$8 per day.</b> Examples: reasonable personal telephone calls. No receipts.
<b>Mileage Reimbursement</b>	80% of the IRS rate set January 1 of the previous year.	Reimbursement at allowable rate established by IRS.	Reimbursement at allowable rate established by IRS.
<b>Taxi and ground transportation</b>	<b>\$6 per diem not to exceed \$30 per trip.</b> This cost counts toward incidental expenses.  <b>OR</b>  <b>Actuals</b> with receipt.	<b>No limit.</b> Supporting documentation to substantiate claimed expense required.	<b>No limit.</b> Necessitated by business trip when date, origination, and destination are documented.
<b>Training/Conferences</b>	Yes. Receipt required.	N/A, but presumably covered.	Yes. In-state with Executive Director approval. Out-of-state with RCLC Board approval.
<b>Travel advances</b>	Written request accompanied by travel voucher. Board may approve up to 80% for per diem or for actual cost of lodging and meals.	Yes. Up to 80% of allowable estimated travel costs requiring one night or more away from work location and place of residence. Not less than \$100.	N/A

<b>Prohibited expenses</b>	Expenses prohibited by the Anti-Donation Clause and DFA rules, including alcohol, entertainment expenses and any expense that does not serve a public or statutory purpose.	Entertainment, tours, competitions, alcoholic beverages, mini bar refreshments, tobacco, expenses for guests, personal expenses.	Personal items, beverages and snacks, gifts, entertainment and recreation expenses, alcoholic beverages, expenses for guests.
<b>Companion expenses</b>	<b>Prohibited.</b>	<b>Prohibited.</b>	<b>Prohibited.</b>
<b>Total Annual Travel Limitation</b>	<b>\$1,500.</b> Approval from chair or department head required to exceed. NMSA 1978, § 10-8-5(I).	No limit.	<b>\$10,000</b> for contract staff and Board members

## 7.0 OVERVIEW OF STATUTES, REGULATIONS AND CODES APPLICABLE TO INVESTIGATION

### 7.1 Summary of Statutes, Regulations and Laws Applied in Investigation

#### 7.1.1 *Per Diem and Mileage Act*

The Per Diem and Mileage Act and Department of Finance regulation 2.42.2 NMAC govern per diem and mileage allowance for public officers and employees. NMSA 1978, § 10-8-2 (1971). A “public officer” is “every elected or appointed officer of . . . [a] local public body.” An “employee” is “any person who is in the employ of any . . . local public body . . . and whose salary is paid either completely or in part from public money[.]” *Id.* at § 10-8-3.

The Per Diem and Mileage Act and corresponding regulations provide for three types of claims: (1) partial per diem; (2) a flat daily per diem rate; and (3) reimbursement for actual expenses. When lodging and/or meals are provided or paid for by the governing body, or another entity, the public officer or employee is entitled to reimbursement only for actual expenses. 2.42.2.8.A NMAC. Partial per diem is granted for “public officers or employees who occasionally and irregularly travel which does not require overnight lodging, but extends beyond a normal work day[.]” 2.42.2.8.B.1 NMAC. Occasional and irregular travel is defined as “not on a regular basis and infrequently,” e.g. “once a month with irregular destinations and at irregular times or travels four times in one month and then does not travel again in the next two months, so long as this is not a regular pattern.” *Id.*

A normal workday is “8 hours within a nine-hour period.” Partial per diem is calculated as follows: (a) for less than 2 hours of travel beyond normal work day, none; (b) for 2 hours, but less than 6 hours beyond the normal work day, \$12.00; (c) for 6 six hours, but less than 12 hours beyond the normal work day, \$20.00; (d) for 12 hours or more beyond the normal work day, \$30.00. *Id.* For in-state travel that does not require overnight lodging, nonsalaried public officers may elect to receive a flat per diem rate of \$95 per meeting day for each board or committee meeting attended. 2.42.2.8.C NMAC. Nonsalaried public officers who serve in dual capacities, i.e., concurrently in positions with a salary and without a salary, “may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless on leave from position as public officers or employees.” *Id.*

Public officers and employees who travel in-state overnight where lodging is required may elect to claim a flat per diem rate of \$85, and if traveling out-of-state overnight, \$115. On the day of

return from out-of-state overnight travel, partial per diem is granted. Calculating the number of hours eligible for partial per diem when returning involves noting the time the traveler initially departed, then “[dividing the] number of hours traveled by 24. Hours remaining constitute partial day which shall be reimbursed [according to partial per diem rates.]” 2.42.2.8.B.3 NMAC.

Public officers and employees may elect to claim reimbursements for actual expenses in lieu of per diem rates. 2.42.2.9 NMAC. In order to qualify for reimbursement of actual expenses, the governing authority of the local public body must give prior written approval. *Id.* Eligible expenses are lodging and meals. *Id.* If lodging costs exceed \$215 per night, the public employee or officer requesting reimbursement “must obtain the signature of . . . the chairperson of the governing board on the travel voucher prior to requesting reimbursement and on the encumbering document at the time of encumbering the expenditure.” *Id.*

Actual meal expenses are capped at \$30 for in-state travel and \$45 for out-of-state travel per day. *Id.* Reimbursement requests for actual lodging and meal expenses must be accompanied by the original receipts; in the event that providing “receipts would create a hardship, an affidavit from the officer or employee attesting to the expenses may be substituted for actual receipts.” *Id.* This affidavit “must accompany the travel voucher and include the signature of the . . . [chair of the] governing board.” *Id.* Other expenses such as ground transportation, gratuities, and parking fees may be reimbursed without receipts at \$6 per day, not to exceed \$30.00 per trip. 2.42.2.12 NMAC. If the requested reimbursement amount exceeds \$6 per day or \$30 per trip, receipts must be submitted to be reimbursed for actual “other” expenses incurred.

“[R]egistration fees for educational programs or conferences” may be reimbursed, “provided, if the fee includes lodging or meals, then no per diem rates shall be paid and only actual expenses paid by the officer or employee and not included in the fee shall be reimbursed within the limits of 2.42.2.9 NMAC[.]” 2.42.2.12.B(3) NMAC.

### **7.1.2 Anti-Donation Clause**

The Anti-Donation Clause of the New Mexico State Constitution provides:

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through G of this section.

N.M. Const. art. IX, § 14. The Anti-Donation Clause applies to any governmental body that uses public money. A “donation” means a “‘gift,’ an allocation or appropriation of something of value, without consideration[.]” *Village of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36. The Anti-Donation Clause was originally aimed at preventing local governments from using public money to purchase stocks and bonds to aid private businesses, which was common in the late 1800s and early 1900s. *City of Clovis v. Southwestern Pub. Serv. Co.*, 1945-NMSC-030, ¶ 23, 24. Many of the businesses failed, leaving public entities responsible for business debts and obligations. *Id.* The

Anti-Donation Clause was not otherwise intended to affect governmental services to the public to accomplish government functions. N.M. Att’y Gen. Op. 97-02 (1997) at 4.

“Reasonable” reimbursement for travel, lodging and meal expenses is permissible under the Anti-Donation Clause, provided the purpose of the travel is demonstrably related to the public entity’s statutory functions. N.M. Att’y Gen. Op. 97-02 (1997) at 5. On the other hand, expenditures of public money that are not sufficiently related to an entity’s statutory duties or amount to a subsidy of private individuals are not permissible under the Anti-Donation Clause. *Id.* at 6. Such impermissible expenditures include expenses for employee birthday parties and “entertainment such as plays, sporting events and concerts” that do not have a sufficiently direct relationship to authorized business. *Id.*

DFA provides four criteria for determining if an expenditure qualifies “for a purpose authorized by law,” pursuant to NMSA 1978, Section 6-5-6:

1. An agency’s expenditures be consistent with the agency’s mission.
2. The expenditure must serve public benefit and purpose.
3. The expenditure must be the result of making the best choice between options that results in the least amount of expenditure possible.
4. The expenditure must be based on sufficient appropriation, budget, and available resources.

See DFA White Paper: “Authority and the Propriety of Expenditures.” Expenditures for a public purpose are those that “aid or promote progress towards an agency achieving its constitutional, statutory, or contractual mission[.]” *Id.* “If expenditures result in an agency achieving that mission (either in whole or in part), the expenditures provide a public benefit.” *Id.* Alcohol is an example of an item that does not provide a public purpose or benefit. *Id.*

Further, with respect to non-travel-related purchases of food, refreshments and snacks by a public agency, DFA Policies and Procedures FIN 5.23<sup>10</sup> states that such purchases must comply with the following:

1. The purchases must be related directly to an event (training, conference, etc.) that is a part of the agency’s mission and regular course of business.
2. The purchases must not exceed the current partial day per diem rate for meals per attendee at the event. For example, single meal \$12.00; two meals \$20.00 per individual.
3. Certification of per person expenditure must accompany the invoice when submitted to Financial Control Division of DFA for payment.
4. In those cases where the amounts would exceed those established in this Standard, a White Paper will be required. However, every effort should be made to keep costs

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<sup>10</sup> State of New Mexico Manual of Model Accounting Practices (2018). A copy can be obtained at [http://nmdfa.state.nm.us/uploads/FileLinks/9028a1a2029249e6a7cdcf12cd356e99/Model\\_Accounting\\_Practices\\_Manual\\_2018\\_1.pdf](http://nmdfa.state.nm.us/uploads/FileLinks/9028a1a2029249e6a7cdcf12cd356e99/Model_Accounting_Practices_Manual_2018_1.pdf).

- below the current per diem rate for meals. Compelling exigent circumstances will need to be present and proven in order to exceed current per diem meal rates.
5. Such purchases are considered miscellaneous expenses and must be charged to the correct expenditure chart of accounts (400) and account code (547900).
  6. Must be for the convenience of the agency.
  7. Must be infrequent.
  8. Employer paid meals are considered a fringe benefit by the IRS and could be taxable income. However, meals for the most part are excluded from the employee's wages as it is considered a de minimis (little value) benefit. Care needs to be taken as to frequency and amount spent on meals to ensure it remains de minimis in the eyes of the IRS.

### **7.1.3 State Audit Act**

The Audit Act, NMSA 1978, Sections 12-6-1 to -14, mandates procedures for financial reporting and accountability. The Audit Act applies to state agencies and local public bodies. NMSA 1978, § 12-6-3 (2012). Under Section 12-6-3 of the Audit Act and 2.2.2.16 NMAC, a local body with revenue totaling more than \$50,000 but less than \$250,000 must hire an Independent Public Accountant (“IPA”) to perform a tier four “agreed upon procedures engagement.” Based on RCLC’s annual revenue discussed in Section 3.1, RCLC falls under the tier four requirements. RCLC is a local public body subject to a tier four audit in accordance with the State Auditor Letter.

### **7.1.4 Governmental Conduct Act**

The Governmental Conduct Act places a subjective, ethical duty on public officers and employees. NMSA 1978, § 10-16-3 (2011). It is primarily concerned with conflicts of interest and other misuses of public power. The Governmental Conduct Act mandates that public officials are to act ethically and responsibly and prohibits bribery. NMSA 1978, § 10-16-3. Implied under the Act is the responsibility to ensure public funds are used and appropriated in a responsible manner.

### **7.1.5 Los Alamos County Code of Conduct**

The County’s Code of Conduct applies to County officials and employees and mirrors the Governmental Conduct Act with regard to its prohibitions of conflicts of interest and other misuses of public power. Los Alamos County, N.M., Code of Ordinances ch. 30, art. I, § 30-4 (2014). Section 30-5 states that public officials shall not “use or misuse . . . resources for personal benefit[.]” *Id.* Violation of the Code exposes a public official to discipline, removal, civil or criminal penalties under state law. *Id.* at § 30-16.

## **8.0 OVERVIEW OF ARC REIMBURSEMENTS**

Almost all of RCLC’s administrative, travel, and operating expenses were incurred by ARC on behalf of RCLC. With the exception of a reimbursement to the City of Santa Fe, all impermissible reimbursements identified in the Review Period were incurred by ARC as a private contractor.

Notably, ARC agreed to be bound by the provisions of the Travel Policy. *See* ARC Agreement, Section C(3). As mentioned above, the Travel Policy was the only policy RCLC adopted to govern expenditures and reimbursements.

In response to our IPRA Request, we received from the County reimbursement documentation for all months of the Review Period except November 2016, December 2016, November 2017, and December 2017. We were not able to confirm whether ARC submitted reimbursement requests for expenses during these months and, if so, why this documentation is missing.

### **8.1.1 *Summary of Reimbursements***

ARC requested reimbursement for a total of **\$34,268.84** in expenses during the Review Period, none of which appear to have been denied by the County. This amount was exclusive of the ARC's monthly compensation, and included reimbursements for travel, mileage, meals, entertainment, marketing costs, conference fees. *See* Summary of Impermissible Expenses and Reimbursements, attached as Appendix B.

### **8.1.2 *Meals***

A total of **101 reimbursements for meals or food items** were disbursed to ARC during the Review Period, totaling **\$8,122.60**. With respect to meals and food reimbursement, lack of prior approvals, lists of attendees, and itemized receipts made it difficult to determine if certain reimbursements treated private individuals, included alcohol, or served an appropriate business purpose. Obviously, the County would have suffered the same difficulty at the time the reimbursements were approved but nonetheless the County did not provide evidence of ever having denied such incomplete reimbursement requests. Reimbursement for meals were categorized as follows:

- **Twenty-two (22) reimbursements, totaling \$783.47**, were attributable to meals and refreshments purchased for RCLC Board Meetings. In these instances, ARC would purchase things like coffee, breakfast or lunch to be served at RCLC Board meetings. We did not locate any documented prior approvals by the Board for these purchases.
- **Forty-three (43) reimbursements, totaling \$6,817.76**, were attributable to non-Board meeting/non-travel related meals that included guests or involved dining with non-RCLC individuals. The line item descriptions for these reimbursements included descriptions noting guests or a group expenditure (i.e. **8/30/16** Paper Dosa – Dinner with Brian Crone, Rep. Lujan \$26.02; **12/15/2017** – La Cocina – NNM Stakeholder Breakfast w/A&M Team \$193.17). Because we have no Board approvals for these expenditures prior to reimbursement, and in many cases no itemized receipts and/or list of attendees, it is difficult to determine if some of these food purchases included alcohol, served non-RCLC affiliated individuals or should otherwise be attributable to meals claimed as travel per diem. Appendix B notes those reimbursements that lack inappropriate and incomplete documentation, and have noted Travel Policy or Anti-Donation Clause violations.



- **Thirty-five (35) reimbursements, totaling \$521.37**, were attributable to meals related to travel of ARC employees, which are assumed to be “reasonable” based upon the dates of travel.
- **Sixty-five (65) reimbursements** violated the Travel Policy for exceeding per diem limits without documented prior approval, or for treating guests, purchasing alcohol, or otherwise violating expense restrictions. *See* Summary of Impermissible Expenses and Reimbursements, attached as Appendix B.

### **8.1.3 Airfare and Lodging**

**ARC submitted six (6) reimbursements for airfare, totaling \$2,888.43, and eight (8) reimbursements for out-of-state lodging, totaling \$6,978.31**, during the Review Period. Appendix B identifies those reimbursements with noted Travel Policy, Per Diem and Mileage Act or Anti-Donation Clause violations.

### **8.1.4 Unconventional Reimbursement Practices**

Several unconventional reimbursement practices by ARC and RCLC were discovered during the investigation. The circuitous route taken to pay and request reimbursement appears to have been undertaken, in some cases, to circumvent necessary approvals:

1. **ARC purchased meals or sporting event tickets for RCLC Board members and non-Board members.** At least forty-three (43) reimbursements were related to group meals, and seven (7) reimbursements are confirmed to have included non-RCLC guests. *See* Summary of Impermissible Expenses and Reimbursements, attached as Appendix B. Reimbursement for Twelve (12) tickets (totaling \$307.00) to a Washington Nationals MLB baseball game on September 5, 2017 violated Section VIII (Prohibited Expenses) of the Travel Policy and included guests (“Alice Lucero, Alice Lucero’s guest, Roger Gonzales, Joe Sanchez, Rick Reiss, Andrea Romero”; six tickets went unused). *See* ARC Table of Attendees and Receipts, Exhibit A.
2. **ARC reimbursed Board members on behalf of RCLC.** ARC reimbursed per diem, lodging and airfare expenses to RCLC Board members Peter Ives and Robert Anaya for travel that occurred from February 20-24, 2017 to Washington, D.C. ARC then subsequently sought reimbursement from RCLC for such expenses. An attached memorandum from ARC states “it would be appropriate for Andrea Romero Consulting to issue payment in a timely fashion versus having to receive separate approval from the Coalition to issue”. *See* Memorandum of Andrea Romero, dated March 20, 2017, Exhibit I.
3. **ARC requested double reimbursement and then credited back RCLC.** In at least three (3) instances (January 2017, September 2017, and January 2018), ARC requested reimbursement from RCLC and Environmental Communities Alliance (“ECA”) <sup>11</sup> for

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<sup>11</sup> ECA is a third-party organization with its business address listed in Washington, D.C. It is our understanding that the County also serves as ECA’s fiscal agent.



the same travel. Upon receiving reimbursement from ECA, ARC then issued a credit to RCLC to repay the double reimbursement. It is not clear why this occurred. *See Appendix B.*

## **9.0 ANALYSIS OF COMPLAINT ITEM NO. 1**

Complaint Item No. 1 of the Ethics Complaint states:

*“Los Alamos County memo “Regional Coalition of LANL Communities (RCLC) Review,” dated February 21, 2018 (“Memo”) identifies serious expense charge improprieties by the RCLC, which may include improper gifts of meals, sporting event tickets, and alcohol provided to officials of Los Alamos County and others. The investigation should determine the nature and extent of any improper items of value or prohibited items accepted by current or former elected or appointed officials of Los Alamos County.”*

We have identified multiple instances in which expenses of RCLC and travel reimbursements violated state law and constitutional provisions during the Review Period. *See* Summary of Impermissible Expenses and Reimbursements, attached as Appendix B. There are instances in which some of these improper expenses (i.e. meals and entertainment) were attended by County officials including County Manager Harry Burgess, Councilor Rick Reiss, former Councilor Kristin Henderson, former Deputy County Manager Brian Bosshardt, Councilor Christine Chandler, and former Councilor Steven Girrens. Below is an analysis of the expenditures and reimbursements identified in Appendix B under the Per Diem and Mileage Act, the Anti-Donation Clause, Governmental Conduct Act and County Code of Conduct.

### **9.1 Analysis of Per Diem and Mileage Act Violations**

This investigation found evidence of multiple violations of the Per Diem and Mileage Act. *See Appendix B.*

1. RCLC’s Travel Policy violates the Per Diem and Mileage Act on its face. *See* Table 1.0.
2. ARC and RCLC Board members failed to obtain approval from the Chairperson prior to incurring actual expenses for food, lodging, and other expenses that may be claimed *in lieu of per diem* only with prior approval.
3. ARC and RCLC Board members failed to obtain approval from the Chairperson prior to incurring amounts in excess of \$215 for lodging expenses.
4. The Travel Policy’s incidental per diem of \$8 per day exceeds the Per Diem and Mileage Act limit of \$6 per day (up to \$30 per trip) for ground transportation, parking, and gratuities. If the amount exceeds \$6 per day, or \$30 per trip, receipts are required. Documentation provided by the County shows reimbursements in excess of \$30 per trip.
5. Per Diem regulations require that if meals are provided, the traveler is *only* entitled to claim actual expenses. *See* Table 1.0.
6. To clarify, the Per Diem and Mileage Act only allows for a flat per diem rate or partial per diem as calculated in the regulation, or actual expense reimbursement with receipt in lieu

of per diem rates. The Per Diem and Mileage Act does not authorize an individual “meal” per diem rate separate from and simultaneously claimed with actual costs of lodging and other expenses. Thus, the RCLC Travel Policy’s allowance of a meal per diem rate of \$50 and \$60 for in-state and out-of-state travel, respectively, is inconsistent with the Per Diem and Mileage Act.

## **9.2 Analysis of Travel Policy Violations**

The Travel Policy on its face violates the Per Diem and Mileage Act by allowing meal expenditures in excess of the Act’s \$30 in-state and \$45 out-of-state limits. Even if the Travel Policy were legal, however, documentation indicates multiple violations thereof.

### **9.2.1 Uneven Application of the Travel Policy**

The difficulty in analyzing County official conduct under the RCLC Travel Policy lies in how the policy is to be interpreted and how inconsistently it has been applied. Taken on its face, the Travel Policy appears to provide a flat per diem meal rate and does *not* provide for actual expense reimbursement. During the Review Period, however, ARC and RCLC Board members submitted reimbursement requests with receipts, apparently for reimbursement of actual meal expenses. This reimbursement procedure, entirely outside of the RCLC Travel Policy, is not authorized.

### **9.2.2 Violations of the Travel Policy**

**Fifty-seven (57) Travel Policy violations** occurred during the Review Period. *See* Summary of Impermissible Expenses and Reimbursements, Appendix B. Some expenditures and reimbursements violated multiple provisions of the Travel Policy.

The investigation identified numerous violations of the Travel Policy in which ARC was reimbursed for expenses exceeding the Travel Policy limits of \$50 and \$60 for in-state and out-of-state spending, respectively, as discussed in more detail in the Summary of Impermissible Expenses and Reimbursements attached as Appendix B. The primary categories of impermissible expenses included:

- **Eighteen (18) reimbursements** for meals that exceeded the daily in-state per diem limit of \$50. *See* Appendix B, at 15.
- **Eighteen (18) reimbursements** for meals that exceeded the daily out-of-state per diem limit of \$60. *See* Appendix B, at 17.
- **Thirteen (13) reimbursements** for prohibited expenditures such as alcohol, beverages, snacks, expenditures for guests, and entertainment, such as 12 tickets to the Washington Nationals baseball game. *See* Appendix B, at 19.
- **Eight (8) reimbursements** for meals, entertainment, and travel expenses purchased on behalf of other RCLC Board members. *See* Appendix B, at 19.

### 9.2.3 *Difficulties in Substantiating the County's Audit Findings Under the Travel Policy*

With respect to ARC reimbursements, the County Audit examined reimbursements *already* made during 2016-2018 and identified **nineteen (19) reimbursements** that should have been disallowed. *See* County's Informal Audit of RCLC's Reimbursements, dated February 21, 2018 ("County Audit"), attached as Exhibit M. The County attempted to correct these improprieties by going back and debiting the impermissible expenses from each reimbursement request, and then crediting travelers *after the fact* for all possible per diem that could have been incurred for any ARC traveler if that had been the nature of the request at the time. *Id.* The County Audit ultimately determined ARC owed RCLC \$2,246.90 to "remedy non-compliance with the Travel Policies." *See* County Audit, at 3. This dollar amount was widely-publicized as the extent of possible improper expenditures and reimbursements during the Review Period. Our investigation revealed otherwise.

The County Audit's finding of \$2,246.90 largely under-characterizes the amount and extent of impermissible RCLC-related expenditures and reimbursements, which is problematic for two reasons:

First, RCLC's ability to circumvent statutory restrictions on use of public money through purchases by an "independent contractor" is suspect because this circuitous method allows RCLC ultimately to do what it could not do if it directly employed an executive director. Then, the County's attempt to adjust the discrepancies and seek reimbursement from ARC does not otherwise "unwind" the careless and possibly recklessness of the activity itself under state law.

Second, when the County took on the project of adjusting reimbursements *after the fact*, such action required significant speculation by the County as to when travel occurred and what meals were provided that would reduce an individual's per diem entitlement. There were several instances where we could not substantiate the County Audit findings that travelers had traveled out of state for a particular number of days. For example:

- For ARC's September 2017 reimbursement, the County credited ARC \$60 per diem for seven days of travel (totaling \$420). *See* ARC's September 2017 Reimbursement, Appendix B.
  - o According to the hotel receipt submitted with the reimbursement, however, Ms. Romero's only out-of-state travel for that month was Sunday, September 10 to Thursday, September 14. (Ms. Romero's airfare receipt shows a departure on September 11).
  - o Thus, in this instance, Ms. Romero should have only been credited for five days, not seven.

Further, we could not substantiate the County's finding that Ms. Romero should receive full per diem without adjustment for meals *provided to her* during her travel requiring a reduction in per diem pursuant to Section VII of the Travel Policy. For example, utilizing the same September 2017 travel to Washington, D.C:

- ARC originally claimed meal reimbursement for two meals on September 11 (Casa Luca, \$1,850.95, and Alibi, \$93.00). *See* ARC's September 2017 Reimbursement, Appendix B.
  - o On September 11, we do not know whether Ms. Romero went without breakfast, if breakfast was included as part of a conference or function, or if per diem was subject to only partial-day per diem for a travel day.
  - o If any of the above were the case, ARC could only claim credit for the meals that were reimbursable, pursuant to the breakfast/lunch/dinner breakdown in the Travel Policy. In essence, much of the meal and incidental per diem that the County Audit credited to ARC is problematic because it consistently credited her for full per diem reimbursement based on conjecture and no documentation.
  - o As stated above, ARC was credited for a full seven days of per diem at \$60, totaling \$420.
  - o ARC was also credited \$258.00 in incidentals *post hoc* for these travel days, which had not previously been claimed by ARC during the Review Period.

In sum, the County credited ARC with thirty-three (33) days of per diem travel, totaling \$1,980.00. Each day requires a similar analysis, which we are unable to substantiate with the documentation available to the County at the time the County Audit was performed.

### **9.3 Analysis of Anti-Donation Clause Violations**

We found **nine (9) Anti-Donation Clause violations** that occurred during the Review Period, totaling \$5,326.06. *See* Summary of Impermissible Expenses and Reimbursements, attached as Appendix B, at 12; *see also* ARC Table of Attendees and Receipts, July 27, 2018, attached as Exhibit A. These violations included the following reimbursements:

- 1. May 2016: Rasika West End Coalition Dinner (\$670.70)**
  - o Alcohol was served.
  - o 6 confirmed attendees.
  - o Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 2. May 2016: Washington Nationals Dinner (\$39.00)**
  - o Unknown attendees.
  - o Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 3. February 2017: Casa Luca RCLC/ECA Group Dinner (\$796.25)**
  - o Alcohol was served.
  - o 12 attendees, including one guest.
  - o Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 4. February 2017: Momofuku CCDC—RCLC Group Dinner (ECA & RCLC) (\$197.12)**
  - o Alcohol was served.
  - o 5 attendees.
  - o Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 5. August 2017: Bull Ring Dinner Meeting (\$286.78)**

- Alcohol was served.
  - 4 attendees.
  - Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 6. August 2017: El Paragua—EM & Board members Dinner (\$396.26)**
- Possible that alcohol was served.
  - 7 attendees.
  - Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 7. August 2017: purchase of 12 tickets to the MLB Nationals Game on September 5, 2017 (\$307.00)**
- The game was attended on the September 2017 DC trip.
  - 6 attendees, including 1 guest. 12 tickets total had been purchased—other attendees did not show up.
  - Does not serve RCLC statutory or contractual purpose.
- 8. September 2017: Casa Luca 16-Person RCLC Dinner, (\$1,850.95)**
- Alcohol was served.
  - 15 attendees, including one guest.
  - 16<sup>th</sup> person’s meal was paid for but did not show up.
  - Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.
- 9. January 2018: Delancy Street Foundation Board Dinner—Catering (\$782.00)**
- Alcohol was served.
  - Cost per person exceeded meal limits under DFA Policies and Procedures FIN 5.23.

**TOTAL: \$5,326.06**

As stated above, there are four criteria for determining if an expenditure is “for a purpose authorized by law,” pursuant to NMSA 1978, Section 6-5-6; *see* N.M. DFA at 2.<sup>12</sup> Department of Finance and Administration guidance is also informative in an Anti-Donation Clause analysis. The first criterion is whether the expenditure is consistent with the “Constitutional, Statutory, and Contractual Mission” of the agency. *Id.* The second criterion whether the expenditure “aid[s] or promote[s] progress towards an agency achieving its constitutional, statutory, or contractual mission[.]” *Id.* “If expenditures result in an agency achieving that mission (either in whole or in part), the expenditures provide a public benefit.” *Id.* Alcohol is an example of an item that does not provide a public purpose or benefit. *Id.* The third criterion is whether this expenditure is the “best choice between options,” that results in “the least amount of expenditure possible.” *Id.* at 4. The fourth criterion is the expenditure must be intended for the purposed designated by the legislature or other governing body. *Id.*

Applying the above framework to the facts, several transactions are particularly concerning where RCLC’s general purposes in the JPA include the following:

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<sup>12</sup> “Authority and the Propriety of Expenditures”, DFA White Paper, July 2002. A copy can be obtained at <http://nmdfa.state.nm.us/uploads/FileLinks/5e26b7e8bfa94c68a3e8fe29d8a1670c/WPPProExp.pdf>

1. Promotion of economic development
2. Promotion and coordination of environmental protection and stewardship
3. Participation in regional planning
4. Evaluation of policy initiatives and legislation for impact on the RCLC

JPA at 2-3. Several RCLC travel, meal and alcohol expenses on their face benefitted or subsidized *private individuals* rather than RCLC. While RCLC Board members may claim that travel, meals, and alcohol were related to accomplishing RCLC's duties and mission, and therefore did not amount to subsidizing private individuals. these expenses were generally excessive and not reasonable or necessary, especially with respect to the high cost of some meals, alcohol, and a first-class plane ticket. Certain meals, such as the August 2017 Bull Ring dinner and September 2017 Casa Luca dinner, which included substantial alcohol and food expenses that exceeded \$100 per participant, cannot be justified. The expectation created by the Anti-Donation Clause and DFA White Paper is that public officials and employees will not buy alcohol and will only purchase food necessary for the travel.

The purchase of Washington Nationals baseball tickets is particularly problematic. These tickets were an impermissible expense under the Anti-Donation Clause because they were not sufficiently related to RCLC's duties or mission, and were unnecessary. Instead, they constitute an outright gift benefiting private individuals. It is irrefutable that RCLC's duties and mission could have been furthered *without* purchasing these tickets.

To the extent the meal expenditures identified in this section were not related to travel, they exceeded the reasonable limits stated in DFA Policies and Procedures FIN 5.23(D). Purchases for food, refreshments, and similar purchases "must not exceed the current partial day per diem rate for meals per attendee at the event" (e.g. single meal \$12.00, two meals \$20.00 per individual). *Id.* The expense of the meals listed in this section, if divided per person, exceeded such limitations. The prohibitions of FIN 5.23, which generally apply to state agencies, also require agencies to have internal controls to verify that all disbursements are authorized by law. *Id.* at FIN 5.23(A).

#### **9.4 Analysis of State Audit Act Compliance Issues**

This investigation concluded that RCLC is subject to the Audit Act, NMSA 1978, Sections 12-6-1 to -14. The County was advised in the State Auditor letter that RCLC is subject to tier system audits. *See* State Auditor's Letter. Under NMSA 1978, Section 12-6-3 (2012) and 2.2.2.16 NMAC, a local body with revenue totaling more than \$50,000 but less than \$250,000 must hire an Independent Public Accountant ("IPA") to perform a tier four "agreed upon procedures engagement."

To our knowledge and belief, RCLC has never retained an IPA or produced a financial report for auditing purposes *despite* the County's awareness in 2013. Inexplicably, Deputy County Manager Steven Lynne specially advised RCLC during its August 11, 2017, Board meeting that RCLC was *not subject* to the Audit Act. *See* RCLC's August 11, 2017, Meeting Minutes, Appendix A, Event No. 20. It appears the RCLC Board relied upon Mr. Lynne's advice.



## **9.5 Analysis of Governmental Conduct Act and County Code of Conduct Violations**

Both the Governmental Conduct Act, NMSA 1978, § 10-16-3 (2011), and the County's Code of Conduct, Los Alamos County, N.M., Code of Ordinances ch. 30, art. I, § 30-4 (2014), are primarily concerned with conflicts of interest and other misuses of public power. The Governmental Conduct Act mandates that public officials are to act ethically and responsibly and prohibits bribery. Implied under the Act is that public funds are to be used and appropriated in a responsible manner. Section 30-5 of the County's Code states that public officials shall not "use or misuse [...] resources for personal benefit[.]" *Id.* Violation of the Code exposes a public official to discipline, removal, civil or criminal penalties under state law. *Id.* § 30-16.

While this investigation has identified multiple instances of impermissible expenditures and reimbursements, we understand the State Auditor and/or the New Mexico Attorney General may be evaluating whether any individual conduct rises to the level warranting further investigation under these ethical laws.

## **9.6 Participation of County Officials**

Based on documentation received by ARC, County officials and employees attended meals or functions that were improper expenditures or improper reimbursements with public funds for the various reasons discussed above. *See* ARC Table of Attendees and Receipts, July 27, 2018, attached as Exhibit A. The following attendees attended such functions:

- **Former Deputy County Manager Brian Bosshardt**
  - May 9, 2016, Rasika West End Coalition Dinner (\$670.70)
    - Alcohol was reimbursed, no itemized receipt. *See* Exhibit A.
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
  - February 20, 2017, Casa Luca RCLC/ECA Dinner (\$796.25)
    - Alcohol was reimbursed, no itemized receipt. *See* Exhibit A.
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
  - February 22, 2017, Momofuku CCDC-RCLC group dinner (\$197.12)
    - Alcohol was reimbursed, no itemized receipt. *See* Exhibit A.
    - No prior RCLC Board approval
- **Former County Councilor Steven Girrens**
  - May 9, 2016, Rasika West End Coalition Dinner (\$670.70)
    - Alcohol was reimbursed, no itemized receipt. *See* Exhibit A.
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
- **Former County Councilor Kristin Henderson**
  - August 11, 2017, Bull Ring Dinner Meeting w/ Mayor Gonzales and Harris Walker (NNSA) (\$286.78)

- Alcohol was reimbursed (based on August 2017 reimbursement and itemized receipt)
  - Exceeded per diem meal limits
  - No prior RCLC Board approval
- September 11, 2017, Casa Luca – 16-person RCLC Dinner (\$1850.95)
  - Alcohol was reimbursed, no itemized receipt. *See Exhibit A.*
  - Exceeded per diem meal limits
  - No prior RCLC Board approval
- **County Councilor Rick Reiss**
  - February 20, 2017, Casa Luca RCLC/ECA Dinner (\$796.25)
    - Alcohol was reimbursed, no itemized receipt. *See Exhibit A.*
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
  - September 11, 2017, Casa Luca – 16-person RCLC Dinner (\$1850.95)
    - Alcohol was reimbursed, no itemized receipt. *See Exhibit A.*
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
  - September 5, 2017, Washington Nationals MLB Game (12 tickets at \$307.00)
    - Prohibited Travel Policy expense
- **County Manager Harry Burgess**
  - September 11, 2017, Casa Luca – 16-person RCLC Dinner (\$1850.95)
    - Alcohol was reimbursed, no itemized receipt. *See Exhibit A.*
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
- **Councilor Christine Chandler**
  - January 11, 2018, Delancey Street Foundation Board Dinner (\$782.00)
    - Alcohol may have been reimbursed, no itemized receipt. *See Exhibit A.*
    - Exceeded per diem meal limits
    - No prior RCLC Board approval
  - \* Christine Chandler was incorrectly listed on Exhibit A as attending the February 20, 2017, Casa Luca dinner.

## 10.0 ANALYSIS OF COMPLAINT ITEM NO. 2

Complaint Item No. 2 of the Ethics Complaint states:

*The investigation should determine whether any current or former elected or appointed officials of Los Alamos County double billed taxpayers by accepting meals paid for by RCLC while also claiming per diem reimbursement for meals expensed [sic] from the RCLC, Los Alamos County, or any other governmental funding source.*

We found no evidence from the reimbursement documentation for the Review Period of County officials double-billing taxpayers. The investigation noted instances where County officials who



attended RCLC-related out-of-state travel used County purchase cards to purchase travel expenditures and then submitted reimbursement forms to RCLC for the purpose of reimbursing the County. *See* Reimbursements for Harry Burgess and Rick Reiss, dated September 20 and September 21, 2017, attached as Exhibit N. We were not able to confirm, however, that these amounts were actually paid by RCLC to the County. Although such examples of reimbursements were processed through multiple intermediaries, we did not find evidence of double reimbursement. Our investigation did not review whether other officials and RCLC Board members from other communities received double reimbursement.

## **11.0 ANALYSIS OF COMPLAINT ITEM NO. 3**

Complaint Item No. 3 of the Ethics Complaint states:

*The investigation should determine whether any current or former elected or appointed official acting on behalf of Los Alamos County as Treasurer of the RCLC or otherwise signed approval of improper expenses incurred by RCLC.*

The investigation revealed that three County officials signed approval of improper expenses incurred by RCLC. Kristin Henderson, who served as RCLC Treasurer/Secretary from July 2015 to sometime in early 2017, gave final approval for minor improprieties such as violations of the Per Diem Act limits by a few dollars, and for board meeting meal purchases. *See* Henderson Reimbursement Documentation, attached as Exhibit O. Brian Bosshardt and Steve Lynne, who each served as Deputy County Manager during a portion of the Review Period, functionally acted as a gatekeeper for ARC reimbursement requests because each served as the “first stop” in analyzing *and approving* the reimbursements before the RCLC Treasurer/Secretary even saw the paperwork. Almost every reimbursement includes a specific notation by Mr. Bosshardt or Mr. Lynne confirming they had reviewed the reimbursement request and were “prepared to issue payment” with the RCLC Treasurer/Secretary’s approval. This practice of ARC submitting reimbursement requests to the County *first*, rather than the RCLC Treasurer/Secretary vetting compliance before submitting to the “fiscal agent,” reinforced the “confusion” that the County was actually screening reimbursement requests for propriety and legality, not simply crediting and debiting the RCLC account under RCLC’s direction. *See* Exhibit P. Significantly, County CMO Jackie Salazar frequently submitted memoranda to David Griego in County Finance stating that ARC’s reimbursable expense requests had “been approved by Steve Lynne, Deputy County Manager.” Exhibit Q.

## **12.0 ANALYSIS OF COMPLAINT ITEM NO. 4**

Complaint Item No. 4 of the Ethics Complaint states:

*It appears from the original audit, from emails sent by elected and appointed Los County Officials, and from media reports that several members of the Los Alamos County Council and County Staff were intimately aware of the severity and extent of the allegations of impropriety at the RCLC, yet these improprieties have not been disclosed to the full County Council or the public by these officials by either publishing the audit report, by report of the Council RCLC Liaison, by report of the Council Chair, or by report of the County*

*Manager; although ample opportunities to do so have come and gone. The communications that have been forwarded to the full County Council by officials in emails have been misleading or incomplete. The full County Council and the citizens of Los Alamos County should not have to learn about this situation piecemeal, through the media. The investigation should consider whether the communications of Los Alamos County officials in this matter have been intentionally misleading with the purpose of concealing misconduct.*

The investigation did not reveal any direct evidence of County officials or employees intentionally attempting to mislead or conceal misconduct. We did find evidence, however, of attempts to “correct” prior missteps that we conclude were efforts to *minimize* the appearance of what actually occurred at the time improper expenditures and reimbursements were made. We conclude these attempts to “fix it” constitute indirect evidence of efforts to conceal but, without the power to interview witnesses under oath, cannot opine definitively as to the subjective intent of each County actor in this regard.

Documentation demonstrates Deputy County Manager Lynne notified the County Council of the reimbursement issue on February 2, 2018, one day after notifying the RCLC Board members. *See Appendix A*, Event No. 35, February 2, 2018, email from Steven Lynne. Review of earlier emails and correspondence prior to February 2, 2018, do not reveal, at that point, any indication that County officials or employees were intentionally attempting to conceal misconduct.

Prior to this notification, however, the County sought to remedy or minimize the extent of improper reimbursements once issues began to surface in early 2018. These include the following actions:

1. **Amendment of Travel Policy.** On January 17, 2018, Deputy County Manager Steven Lynne assisted RCLC Executive Director Andrea Romero and RCLC Treasurer Henry Roybal in amending the Travel Policy to:
  - (1) Strike and remove the Travel Policy’s application to “contract staff.”
  - (2) Strike and remove the \$10,000 annual travel restriction for contract staff and board members.
  - (3) Strike and remove the airfare restriction on reimbursement for “upgrades and enhancements.”
  - (4) Strike and remove the requirement for itemized receipts for “meals, and other miscellaneous incidental costs.”

*See Appendix A*, Event No. 33, February 2, 2018, email from Andrea Romero.

2. **Amendment of Draft ARC Agreement.** On January 17, 2018, Deputy County Manager Steven Lynne assisted RCLC Executive Director Andrea Romero and RCLC Treasurer Henry Roybal in amending the draft ARC Agreement to:
  - (1) Strike and remove the “Attachment A: Rate Schedule” for services performed by ARC.

- (2) Strike and remove requirement that travel costs “will be paid in accordance with the Regional Coalition’s Travel Policy.”

See Appendix A, Event No. 33, February 2, 2018, email from Andrea Romero.

3. **The County Audit.** As discussed above, the County Audit minimized the appearance of impropriety by taking the total amount of reimbursement to ARC over the period under review by the County (roughly \$29,000) and, from that number, subtracting what the County considered to be clearly impermissible expenditures (about \$5,000). This step of the County Audit showed ARC was over-reimbursed by about \$5,000. Rather than demand repayment by ARC for that amount, however, the County developed an “offset” credit for Ms. Romero by allocating for each travel day a per diem credit at the max rate allowable (\$2,800). In the County’s assessment, then, this resulted in a conclusion that ARC had only been improperly reimbursed about \$2,200. The County then sought to resolve the situation by requesting reimbursement from ARC in that amount. Although ARC did, in fact, make the reimbursement, the amount due was lowered after the County made another correction to its math. \*It is critical to note our investigation departed from the County’s Audit in that we found numerous additional violations totaling much more than \$5,000. See Appendix B.

We do not know the intention behind the County’s actions. We understand by analyzing correspondence from CFO Perraglio and Deputy County Manager Lynne that the County’s primary goal at that time was to address some of the “confusion” related to RCLC’s reimbursement structure. See Appendix A, Event No. 34, February 1, 2018, email from Steven Lynne; see also Exhibit M, County Audit, at 4-5. It is unclear why the County did not seek clarification from the State Auditor’s Office or DFA about how to resolve the situation or take proper next steps.

### 13.0 ANALYSIS OF COMPLAINT ITEM NO. 5

Complaint Item No. 5 of the Ethics Complaint states:

*Finally, the investigation should conduct a review to determine if Los Alamos County internal controls are sufficient to safeguard against similar improprieties or misconduct involving elected or appointed officials of Los Alamos County in cases where Los Alamos County provides funding to groups other than RCLC.*

As to the matter of internal controls, the investigation did not duplicate the scrutiny/analysis performed by the Office of the State Auditor as to strict accounting controls but did, however, expose, from a non-technical perspective, defective infrastructure that allowed multiple informed and educated County officials and employees to rely upon a purported history of “confusion” that led to careless, and possibly reckless, use of public money.

Generally, Los Alamos County internal controls are presently insufficient to safeguard against improprieties or misconduct of the sort identified in this investigation. First, the County’s role as “fiscal agent” is not defined within the JPA and thus was defined differently among all of the relevant players. Second, it appears the County did not seek legal counsel regarding the legal status

of RCLC and the legality of the Travel Policy. Since the County contributes public money to entities such as RCLC, the County should ensure any such entity has proper fiscal management and oversight from qualified personnel and legal counsel who can ensure the entity complies with applicable state and County laws, regulations, and ordinances.

### **13.1 Defining the County’s Confusing Role as “Fiscal Agent”**

The County accepted the role of “fiscal agent” for RCLC, however, the term fiscal agent was never defined among the parties to the JPA. The County has indicated repeatedly its role is similar to a bank, i.e., receiving and disbursing funds (or administering an agency fund). The County maintains that the responsibility for substantively approving and authorizing use of RCLC funds lies solely with the RCLC Board and its Treasurer/Secretary.

In contrast, we have found significant actions on the part of the County and its personnel that gave the perception the County accepted a greater responsibility for oversight of RCLC and its financial and accounting matters. In particular, we identified the following actions taken by the County strongly indicating it accepted a *fiduciary duty* to ensure public funds were spent appropriately:

1. RCLC’s meeting minutes show that either former Deputy County Manager Brian Bosshardt, current Deputy County Manager Steven Lynne, or a designee from the County regularly attended RCLC Board meetings and provided budget updates to the RCLC Board from 2012 to February 2018. *See Appendix A.* This is a function of the RCLC Treasurer/Secretary according to the RCLC bylaws.
2. Brian Bosshardt reviewed and pre-approved reimbursements subject to the Travel Policy. In a few instances, Andrea Romero requested and obtained County approval for reimbursements entirely bypassing RCLC Treasurer approval. *See Exhibit R.*
3. Steven Lynne reviewed and pre-approved reimbursements. *See Exhibit P.*
4. In a February 7, 2017 email to Andrea Romero, Brian Bosshardt identified corrections needed before submission of the reimbursement request to the RCLC Treasurer/Secretary. *See Exhibit S.* In the same email, Brian Bosshardt indicated to Andrea Romero that her reimbursement requests *may be subject to audit*. *See Exhibit S.* These are instances of the County acting as gatekeeper.
5. Steven Lynne advised the RCLC Board that *it is not subject to audit* regulations at the August 11, 2017 RCLC board meeting. *See Appendix A*, Event No. 20. This information was incorrect based on the State Auditor Letter. This letter clearly stated RCLC was a local public body subject to a tier 4 audit engagement. It appears RCLC relied upon Mr. Lynne’s advice.
6. Rather than RCLC addressing allegations of impropriety, the County performed a thorough internal audit of all RCLC-related payments with Los Alamos County as fiscal agent for fiscal year 2017 to Andrea Romero, Alice Lucero, and the City of Santa Fe (on behalf of Javier Gonzales). *See Exhibit M.* This activity begs the question of why the County felt responsible to analyze and account for the ARC reimbursements. If the County was only acting as “the bank,” ARC should have taken responsibility to address the allegations. Moreover, in the County Audit, the County undertook to recharacterize

the reimbursements claimed by ARC and in place credited daily meal and incidental per diem rates to her. *Id.* It is concerning that the County both disavows responsibility for vetting the reimbursement requests but then assumes direct authority for recharacterizing the requests when they came under scrutiny. Additionally, ARC did not dispute the County's authority to conduct the audit or make a demand for repayment of her. Indeed, ARC repaid the amount ultimately identified by the County.

7. Steven Lynne as an employee of the County assumed sole responsibility for following the wrong policy. *See Appendix A*, Event No. 34. If the County were not responsible for vetting reimbursement requests, there would have been no basis for Mr. Lynne taking on this burden.

By assuming the above-listed duties, the County voluntarily broadened its fiduciary duty upon which RCLC and its contracted Executive Director relied. In essence, the County's actions expanded its role as fiscal agent by taking on more authority and responsibility to assist RCLC, which, in part, contributed to the lack of oversight and ultimate improper conduct discussed in this report. Before moving forward with contributing public funds to this organization or any other organization, the County should ensure its role is clearly defined in writing.

### **13.2 Performing Legal Review of RCLC's Organizational Documents**

Neither RCLC nor the County appear to have sought adequate legal counsel but they could have done so and had the internal resources, both as County officials and employees to perform legal reviews of RCLC's practices. Where the roles identified in the JPA are undefined and vague, and the Travel Policy violates the Per Diem and Mileage Act *on its face*, both RCLC and the County appear to have been careless in vetting compliance with state law.

The County should ensure that all subsequent organization documents receive proper legal review by either the County attorney or RCLC's own legal counsel.

### **13.3 Oversight of RCLC's Accounting and Financial Management**

It is abundantly clear RCLC needs proper accounting and financial oversight since it is a local public body that expends public funds. RCLC requires the services of qualified budget and financial analysts who can assist with state Audit Act and DFA compliance.

### **13.4 Possible Violations for Use of Federal Funds for Lobbying**

We identified another significant internal control that bears notation because of its implications. From the documentation provided in the investigation, it appears the County, as fiscal agent for an entity that receives restricted funds, *did not segregate* restricted funds from general use funds available to RCLC for any purpose. While this practice may implicate federal law regarding possible use of federal funds for lobbying activities, our concern focuses on the practice of serving as "the bank" but indiscriminately administering accounts that may obscure proper allocation of funds that are dedicated for particular purposes or restricted from the same.

## 14.0 FINDINGS AND CONCLUSIONS

1. Through its conduct, the County accepted a greater role, as fiscal agent, for providing oversight to RCLC by assuming additional fiduciary duties, such as: providing regular budget updates at RCLC Board Meetings; reviewing and approving reimbursements to ARC; performing informal reviews and audits of RCLC funds; procuring professional services on behalf of RCLC; providing legal advice regarding RCLC's audit compliance; and working with ARC and RCLC to amend RCLC's Travel Policy.
  - a. Due to the actions of the County, RCLC and its Executive Director relied on the County to vet expenditures and reimbursements and ensure they were appropriately scrutinized in accordance with the Travel Policy and applicable state law.
2. RCLC is considered a local public body under the Audit Act. NMSA 1978, §§ 12-6-1 to -14.
  - a. RCLC violated the Audit Act by failing to perform tier system audits after being informed by the State Auditor's Letter dated February 20, 2013, that RCLC was subject to the Audit Act.
3. RCLC is subject to the Per Diem and Mileage Act because it is a local public body and it is formed under a Joint Powers Agreement. NMSA 1978, § 10-8-2 (1971).
  - a. The RCLC Travel Policy is not compliant with the Per Diem and Mileage Act, and RCLC was not otherwise granted permission to deviate from the Per Diem and Mileage Act.
4. ARC was subject to the RCLC Travel Policy under ARC's professional services agreement with RCLC.
  - a. ARC violated the RCLC Travel Policy by exceeding travel per diem limitations and making prohibited expenditures that were reimbursed by RCLC.
5. ARC was reimbursed for meal, travel, and entertainment expenditures purchased for RCLC Board members and guests.
  - a. Certain meals and entertainment purchased for County officials and employees by ARC that violated the RCLC Travel Policy, Per Diem and Mileage Act and the Anti-Donation Clause of the New Mexico Constitution.
  - b. Certain meals and entertainment purchased for guests violated the RCLC Travel Policy and the Anti-Donation Clause of the New Mexico Constitution.
6. There is no evidence that any County official or employee received double reimbursement in conjunction with RCLC-related travel.
7. Certain County officials and employees reviewed and approved impermissible expenditures and reimbursements issued to ARC during the Review Period, either as RCLC's Treasurer or fiscal agent.
8. County personnel acted to remedy improper RCLC-related expenditures and reimbursements rather than seek appropriate legal counsel. These actions included, but are not limited to, recharacterizing the nature of ARC impermissible reimbursements in the County's Audit by crediting ARC for maximum out-of-state per diem limits and

incidentals under the Travel Policy, assisting ARC and the RCLC in amending RCLC's Travel Policy to strike restrictions applicable to ARC after reimbursement issues became known, and assisting ARC in amending ARC's professional services agreement to strike the Travel Policy's application to ARC. We did not find any documented "admissions" by County officials or employees of a concerted effort to mislead or conceal but the County's "corrective" efforts not only reflect poorly on County officials and employees but may constitute efforts to *intentionally* mislead others and/or *conceal* misconduct.

9. The County should ensure any future entities that receive County funds obtain proper legal and financial oversight to ensure such entities comply with all applicable state law, including the Audit Act, Per Diem and Mileage Act and the Anti-Donation Clause of the New Mexico Constitution.
10. Finally, we did not place much value on the claim of "confusion" in this matter where the JPA states RCLC meetings are to follow the Open Meetings Act, which applies *only* to public entities, where the State Auditor specifically instructed the County that RCLC is subject to the Audit Act, and where, among other things, County officials assisted RCLC in knowingly *proposing* amendments to the Travel Policy and ARC Agreement that would permit obviation of state law. The claim of confusion is dismissed given the sophistication level of the Council, County officials and employees.

# OFFICE OF THE STATE AUDITOR



**Regional Coalition of LANL Communities**

**Special audit**

**For the Period of July 1, 2014 through June 30, 2018**



## **Regional Coalition of LANL Communities**

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## **Regional Coalition of LANL Communities**

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### **OFFICIAL ROSTER**

#### **COALITION COUNCIL**

Mayor Alan Webber and Former Mayor Javier Gonzales	City of Santa Fe
Commissioner Barney Trujillo	Rio Arriba County
Commissioner Henry Roybal	Santa Fe County
Councilor Chris Chandler	Los Alamos County
Representative Ron Lovato	Ohkay Owingeh
Mayor Javier Sanchez and Former Mayor Alice Lucero	City of Espanola
Commissioner Mark Gallegos	Taos County
Councilor Darien Fernandez	Town of Taos
Lt. Governor Ward Yeppa	Jemez Pueblo

#### **COALITION OFFICIALS**

Andrea Romero Consulting, LLC and Formerly JLH Media, Inc.	Executive Director
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## **I. BACKGROUND**

On October 13, 2011, New Mexico Department of Finance and Administration approved a Joint Powers Agreement (JPA) authorizing the creation of the Regional Coalition of Los Alamos National Laboratories (LANL) Communities (hereafter “RCLC”).

The JPA provides that the purpose of the RCLC is to promote economic development, including new missions for the LANL; advocacy of long-term stable funding of LANL missions; promotion of new and diverse scientific endeavors at LANL focusing on employment and educational opportunities; support of business incubation and business development on non-federal lands; support of workforce development and training and promotion of awareness of LANL and its contribution toward and impact on the region. The RCLC was also formed to engage in promotion and coordination of environmental protection including clean-up activities and site maintenance; planning activities and prevention of future contamination; and evaluation of cleanup, planning, implementation and oversight for protection of workers and neighboring communities.

The JPA also provides that the RCLC will participate in regional planning and evaluate policy initiatives and legislation, to include participation in public comment, outreach initiatives and advocacy in state and federal legislative process and administrative proceedings.

The Regional Coalition is comprised of elected and tribal officials from the City of Española, County of Los Alamos, County of Rio Arriba, City of Santa Fe, County of Santa Fe, Pueblo of Jemez, Ohkay Owingeh Pueblo, Town of Taos, and the County of Taos.

The JPA provided that Los Alamos County, a member entity, would serve as the fiscal agent for the newly formed entity. On February 20, 2013, the Office of the State Auditor (OSA) notified the RCLC that the entity met the definition of a “special district” and that the entity was subject to the Audit Act under the monetary tier levels provided for “local public bodies.” The records indicate that RCLC acted in limited form with a budget of less than \$50,000 annually from its inception through June 30, 2014. Under the Audit Act, the entity did not become subject to audits through an agreed-upon procedures process until its budget exceeded statutory thresholds.

The entity began to receive sufficient public funds in FY2014 to require it to have annual audits under the Audit Act. Beginning in FY2014 (November 2013), the RCLC Board entered into a contract with JLH Media, Inc., a New Mexico consulting firm to provide Executive Director Services through November 2015.

Under the terms of the contract, the Executive Director’s services were subject to the Travel Policy adopted by the RCLC Board. In August 2015 (FY2016), the Executive Director applied and received a grant from the U.S. Department of Energy (DOE). The DOE Grant provided \$500,000 in funding for a five (5) year period (July 1, 2015 to June 30, 2020). Under the Grant, the RCLC receives \$100,000 each fiscal year.

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In March 2016 (FY2016) the RCLC Board advertised and selected a new company to provide Executive Director Services. Andrea Romero Consulting, LLC became the new contract Executive Director. Ms. Romero had been employed by JLH Media, Inc. the previous Executive Director.

Since FY2015, the Regional Coalition of LANL Communities has received \$100,000 annually in restricted funding from the DOE Grant, as well as approximately \$97,000 annually from its member entities. Its average budgeted expenditures are approximately \$189,500 for FY2015, FY2016, FY2017 and FY2018. Based on these amounts and the RCLC's formation as a JPA entity, the RCLC is subject to the Audit Act and should have submitted annual audits to the OSA for FY2015-2017.

On January 22, 2018, the ("OSA") received a letter from a member of the public alleging misuse of public funds by the RCLC. The OSA initiated the process set forth in the Audit Rule for investigation of complaints received. Subsequently, the OSA received another letter of concern that had been sent to the RCLC's Board Members, again alleging misuse of public funds.

In March 2018, Los Alamos County, the fiscal agent for the RCLC, provided the OSA with an internal audit report in response to the allegations sent to the RCLC Board. The internal audit report appeared to support some of the allegations contained in the complaint. The OSA conducted additional fact finding procedures to determine if the transactions were in compliance with relevant laws, regulations, policies, procedures, the New Mexico Procurement Code and agreements applicable to the RCLC and its member entities.

The OSA's fact-finding procedures led to the OSA designating the RCLC for a Special Audit. Under § 12-6-3(C) NMSA 1978 ("Audit Act"), the State Auditor, in addition to annual financial audits, "may cause the financial affairs and transactions of an agency to be audited in whole or in part." Additionally, under 2.2.2.15 NMAC ("Audit Rule"), the State Auditor may initiate a special audit regarding the financial affairs and transactions of an agency or local public body based on information it receives.

On March 12, 2018, the OSA formally designated RCLC for a special audit. The scope of work was agreed upon and set forth in the contract dated April 27, 2018.

The OSA notes that, in addition to this Special Audit, Los Alamos County entered into a contract with the Adams + Crow Law Firm, to "conduct an investigation into matters related to alleged administrative misconduct of County employees and County Officials, with respect to reimbursements and expenditures associated with the Regional Coalition of LANL Communities, and any additional matters related thereto."

## **II. EXECUTIVE SUMMARY**

The Internal Audit Report produced by Los Alamos County raised significant concerns of non-compliance by the RCLC with state law. That Report found that Andrea Romero Consulting, LLC had been reimbursed \$2,246.90 more than should have been allowed under the RCLC's adopted Travel Policy. In April 2018, the Andrea Romero Consulting, LLC reimbursed the Coalition for that amount. The report also found that two of the member representatives of the RCLC had not been properly reimbursed resulting in underpayments of \$411.54 and \$425.43.

The Scope of Work for this Special Audit provided that the OSA would review specific transactions to determine if they were compliant with relevant laws, regulations, policies, procedures, the New Mexico Procurement Code and agreements applicable to the RCLC. Additionally, the OSA considered the risks of potential fraud, waste or abuse and addresses the need for additional internal controls.

The Special Audit scope included a review of:

1. Detailed audit of all payments since March 1, 2015 paid to ANDREA ROMERO CONSULTING, LLC for compliance with duly adopted RCLC Board policies, contractual agreements between the parties and applicable procurement code.
2. Detailed audit of all payments for FY 2015, 2016, 2017 and 2018 for all payments of reimbursements to any Board member or member entity of the RCLC for compliance with duly adopted RCLC Board Policies, Joint Powers Agreements and applicable procurement codes.
3. Audit to determine whether ANDREA ROMERO CONSULTING, LLC or any Board member or entity received reimbursement for travel or per diem which represented a double reimbursement, including, but not limited to, whether ANDREA ROMERO CONSULTING, LLC was paid twice for travel with two staff members attending the same meeting or event; and whether any Board member or entity received reimbursement from the RCLC, in addition to any other entity.
4. Audit of the Request for Proposals No. 2016-01, the procurement process and all resulting contracts between RCLC and ANDREA ROMERO CONSULTING, LLC for compliance with the Joint Powers Agreement, duly adopted Board Policies and applicable procurement code.

The RCLC's fiscal agent, Los Alamos County, provided documentation of RCLC's expenditures and revenues for the conduct of the Special Audit. The OSA also obtained additional documentation from certain member entities and received further information as part of the complaints that were filed with the OSA's Special Investigation Division.

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The Special Audit makes a number of findings related to the RCLC's reimbursements paid to JLH Media, Inc. and Andrea Romero Consulting, LLC which violate the Per Diem and Mileage Act, § 10-1-1 et seq. NMSA 1978, as well as NMAC 2.42.2.1 regarding the payment of mileage and per diem to public officials. Additionally, the Special Audit makes findings regarding the RCLC's failure to follow its own Travel Policy and contract provisions between the RCLC and the respective contracted Executive Director with regard to reimbursements for guests, alcoholic beverages and recreational expenses.

Specifically, the RCLC Board approved reimbursements to both JLH Media, Inc and Andrea Romero Consulting, LLC for meals for board members while the Board member was in his or her home jurisdiction. The RCLC also approved improper reimbursement for alcoholic beverages and recreational items (baseball tickets). Hotel reimbursements do not comply with the Travel Policy and there is a lack of adequate documentation to support many expenditures, in the form of itemized receipts, again in violation of the published Travel Policy and state law. It also appears the Executive Director(s) may have been reimbursed for some expenses by both the RCLC and the Energy Communities Alliance (ECA), a third party entity.

During the course of the special audit, the OSA noted that reimbursements requested for mileage were duplicated by the contracted Executive Director and its staff. The individuals collected mileage for travel to and from the same location on the same day. The OSA identified twenty-eight (28) instances of duplicate mileage reimbursements totaling \$1,115.76.

The Special Audit makes several findings regarding the RCLC Board's oversight and compliance duties and responsibilities under the Joint Powers Agreement Act. Specifically, the RCLC Board failed to comply with the Joint Powers Agreement Act, the Joint Powers Agreement itself, and the Per Diem and Mileage Act, § 10-8-1 et seq. In addition, the RCLC failed to comply with the Audit Act, § 12-6-1 et seq. NMSA 1978, and the Audit Rule, NMAC § 2.2.2.1 et seq. despite being on notice from the State Auditor's Office as early as 2013 that it was required to do so. Finally, the RCLC issued 1099 statements which were incorrect and the RCLC budget contained accounting errors which may have been misleading to the Board.

The Special Audit also makes findings regarding the actions of the fiscal agent, Los Alamos County. The County pooled the RCLC funds in an account with Los Alamos County funds and certain funds were miscoded and paid by the wrong entity. The RCLC Board and Los Alamos County do not appear to have maintained full and adequate records of all expenditures.

The OSA has made recommendations for corrective actions and provided the RCLC Board with an opportunity for response.

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The following table summarizes the OSA's findings:

<b><i>Finding No.</i></b>	<b><i>Finding Description</i></b>
2018-001	<i>Reimbursement for Board Members meals, alcoholic beverages or entertainment in violation of Per Diem and Mileage Act and NMAC 2.42.2.1</i>
2018-002	<i>Reimbursements for guests, which is prohibited by both the Travel Policy Section VII and the Per Diem and Mileage Act</i>
2018-003	<i>Reimbursement for alcoholic beverages, entertainment and recreation and personal items in violation of the Travel Policy and State Law</i>
2018-004	<i>Gross Receipts tax charged on reimbursements resulting in double taxation</i>
2018-005	<i>Duplicate billing of mileage by contractor</i>
2018-006	<i>RCLC Governing Board not exercising control over finances in accordance with the Joint Powers Agreement Act</i>
2018-007	<i>Travel expenditures in excess of board approved budget</i>
2018-008	<i>Potential non-compliance with DOE Grant specifically with regard to explicitly prohibited lobbying</i>
2018-009	<i>Potential violation of Executive Order 12674, Fourteen Principals of ethical Conduct for Federal employees' item 4 related to the solicitation or acceptance of gifts</i>
2018-010	<i>Breach of Fiduciary Duty by the Fiscal Agent- Los Alamos County</i>
2018-011	<i>Failure to comply with State Audit Act</i>
2018-012	<i>Fiscal Agent combined RCLC monies with Los Alamos County's polled cash account resulting in a lack of transparency</i>
2018-013	<i>Miscoding of expenditures and using a polled cash account resulted in the RCLC paying for expenditures of Los Alamos County</i>
2018-014	<i>Improper reporting of contract labor</i>
2018-015	<i>Improper accounting for reimbursements, including the netting of reimbursements with expenditures</i>
2018-016	<i>Management could not provide all requested information</i>
2018-017	<i>Budget irregularities</i>
2018-018	<i>Expense reimbursements that may violate the Anti-donation clause of the New Mexico Constitution</i>

## SCOPE AND PROCEDURES

The scope of the Special Audit required the OSA to consider whether specific sampled transactions are compliant with relevant laws, regulations, policies, procedures, procurement code and agreements applicable to the agency. The OSA will consider the risks of potential fraud, waste or abuse and, at a minimum, the following:

1. Detailed audit of all payments since March 1, 2015 paid to ANDREA ROMERO CONSULTING, LLC for compliance with duly adopted RCLC Board policies, contractual agreements between the parties and applicable procurement code.

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2. Detailed audit of all payments for FY 2015, 2016, 2017 and 2018 for all payments of reimbursements to any Board member or member entity of the RCLC for compliance with duly adopted RCLC Board Policies, Joint Powers Agreements and applicable procurement codes.
3. Audit to determine whether ANDREA ROMERO CONSULTING, LLC or any Board member or entity received reimbursement for travel or per diem which represented a double reimbursement, including, but not limited to, whether ANDREA ROMERO CONSULTING, LLC was paid twice for travel with two staff members attending the same meeting or event; and whether any Board member or entity received reimbursement from the RCLC, in addition to any other entity.
4. Audit of the Request for Proposals No. 2016-01, the procurement process and all resulting contracts between RCLC and ANDREA ROMERO CONSULTING, LLC for compliance with the Joint Powers Agreement, duly adopted Board Policies and applicable procurement code.

This report was developed based on information from interviews, observations, and the OSA's review of selected documentation and records.



## **GENERAL OBSERVATIONS**

### **REIMBURSEMENTS PAID TO CONTRACTED EXECUTIVE DIRECTOR**

#### **Improper Variances between the RCLC Travel Policy and State Law**

The RCLC meets the definition of a local public body under the Audit Act, as well as the NMAC Regulations governing mileage and per diem. NMAC 2.42.2.7 defines a “local public body” to mean “every political subdivision of the state, whether created under general or special act including, but not limited to, counties, municipalities, drainage, conservancy, irrigation, school or other districts, that receives or expends public money from whatever source derived.” That section defines “public officers”, which include “all board, advisory board, committee and commission members elected or appointed to a board, advisory board, committee or commission specifically authorized by law or validly existing as an advisory committee pursuant to Section 9-1-9 NMSA 1978.”

Under Rule 2.42.2.8, “per diem rates shall be paid to public officers and employees only in accordance with the provisions of this section.”

The RCLC Board adopted a Travel Policy (in its Resolution 2012-03) which did not entirely comply with the Per Diem and Mileage Act. While the Board’s own Travel Policy may contain provisions that are more restrictive than the Administrative Rules, it cannot adopt a policy that provide more generous per diem and mileage rates for its public officers and employees.

Specifically, the Travel Policy contains provisions that exceed the allowable rates under the Administrative Rule by providing for an in-state per diem rate of \$50 per day, including taxes and gratuities. The maximum rate provided under state law, NMAC 2.42.2.9, is \$30 per day for in-state travel. The Travel Policy establishes an out-of-state per diem rate of \$60 per day, while the rate published in Rule 2.42.2.9 is \$45 per day. The Travel Policy provides that no receipts are required for these expenditures, while the Rule, in subsection (3) expressly provides that “the public officer or employee must submit receipts for the actual meal and lodging expenses incurred.”

NMAC 2.42.2.8(C)(3) also addresses the situation where Board members are serving in a dual capacity. That section provides:

Non-salaried public officers who also serve as public officers and employees of state agencies or local public bodies may receive mileage and per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by

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employees or officers of local public bodies who also serve on boards or commissions, subject to this rule.

JLH Media, Inc. and Andrea Romero Consulting, LLC (ARC) served as the contracted Executive Directors of the RCLC pursuant to a contract, which provided for specific compensation. Section C of the contract provided that ARC would receive a flat fee of \$140,000 per fiscal year, plus reimbursable expenses to be paid in accordance with the RCLC's Travel Policy. The Contract in Subsection C (3) states:

Reimbursable Expenses: Reimbursement of travel cost shall be subject to the annual budget as approved by the Board and will be paid in accordance with the Regional Coalition's travel policy.

The contract does not provide for the contracted Executive Director to be reimbursed for any expenses outside those contained within the Travel Policy. The Travel Policy also provides that staff members are expected to use the most economical means available with reasonable consideration given to the time and distance involved.

The Travel Policy specifically prohibits certain types of expenses, including specifically gifts, entertainment and recreation expenses, alcoholic beverages, and expenses for spouses, guests or family members.

The internal audit performed by Los Alamos County and the special audit by the Office of the State Auditor found numerous expenditures for meals that included guests of the Executive Director, including meals with alcohol costing hundreds of dollars at restaurants in Washington, D.C. and Santa Fe. Some of these meals appear to have included employees of the DOE. The Executive Director was not entitled to reimbursement for these types of entertainment expenses, nor for any expenditures for alcoholic beverages, under her contract with the RCLC and the Travel Policy. The Executive Director was not authorized to bill for or be reimbursed for any meal expenses for third parties, including Board Members, entertainment expenses or expenses for alcohol. Additionally, it would be inappropriate for the RCLC to have reimbursed the Executive Director for any meals that may have been provided to DOE employees in violation of federal rules.

The internal audit identified expenditures for tickets to a baseball game which constitute prohibited entertainment or recreational expenses under the Travel Policy. The Executive Director was not entitled to reimbursement under the contract or Travel Policy for those expenditures.

The RCLC Board cannot reimburse its contract Executive Director for meals or expenses for its Board members when those members would not have been entitled to reimbursement themselves under the Mileage and Per Diem Act, or the NMAC Rule.

## **SCHEDULE OF FINDINGS AND RESPONSES**

**Finding 2018-001 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. for meals, alcoholic beverages or entertainment expenses for Board members who would not have been entitled to receive per diem and mileage themselves, in violation of the Per Diem and Mileage Act and NMAC 2.42.2.1 (Material Weakness)**

### **Condition**

The contracted Executive Director(s) were reimbursed \$ 780.22 for the following meals, alcoholic beverages or entertainment expenses on behalf of board members:

\$34.99 for “in-room entertainment”, and \$5.29 for “Honor Bar beverage” made by Board Member Peter Ives at the Hotel Palomar in Washington, D.C.

\$7.50 for Merlot at Antoine’s with Mayor Lucero and Andrew.

\$22.00 for a ticket to the Tony Hseih Venture Capitalist Seminar.

\$40.00 for tickets to a museum.

\$307.00 for major league baseball tickets.

\$286.78 at the Bull Ring Restaurant in Santa Fe. The billing detail for this dinner states that the guests were Board member Javier Gonzales and Harris Walker, NNSA. Board member Javier Gonzales was not entitled to receive per diem for a meal in his home jurisdiction of Santa Fe.

\$38.91 for a “meeting with Mayor Alice” at El Paragua Restaurant in Espanola. Alice Lucero was not entitled to receive per diem for a meal in her home jurisdiction of Espanola.

\$37.75 for “Lunch with Mayor Alice” at La Cocina Restaurant in Espanola.

### **Criteria**

NMAC 2.42.2.8 (C)(3) addresses public officers who serve in dual capacities. It states:

Non-salaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

**Finding 2018-001 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. for meals, alcoholic beverages or entertainment expenses for Board members who would not have been entitled to receive per diem and mileage themselves, in violation of the Per Diem and Mileage Act and NMAC 2.42.2.1 (Material Weakness) (Continued)**

**Cause**

The RCLC Board and its fiscal agent, Los Alamos County, appear to have been unaware of the prohibition on paying per diem for non-salaried public officers who serve in a dual capacity on two different boards when they attend a luncheon or dinner meeting that would not otherwise qualify for per diem because it is held in the officer's home jurisdiction.

**Effect**

The RCLC appears to have improperly reimbursed JLH Media, Inc. or ARC, LLC for meal expenses for public officers in their home jurisdictions.

**Recommendation**

The RCLC Board should ensure that it follows the requirements of NMAC 2.42.2.1 et seq. when providing mileage or per diem reimbursements to any of its Board members.

**Response**

The RCLC does not agree with portions of the listed conditions. Some Board members have indicated that they did not charge back for entertainment or alcohol but rather paid for those items directly themselves.

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2.

**Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness)**

**Condition**

The RCLC Board reimbursed both JLH Media, Inc. and Andrea Romero Consulting, LLC for meal and drink expenses for guests, totaling \$5,799.69, which include the following reimbursements:

\$6.98 for “coffee with Carlos @ Ohori’s”  
\$31.83 for Lunch with James Ross, Governors Cabinet  
\$25.62 for “Alex and me” @ Angelina’s Restaurant  
\$30.29 for lunch with Andrew @ Blue Window Bistro  
\$70.04 at La Fonda for Chris, Alex, Mark, and Oswald  
\$32.48 at Blue Corn with Marie Longseere  
\$25.89 for breakfast with Councilor Maestas  
\$86.31 at Gabriel’s Restaurant for Chris M, Davis Griscom, Sean M, and David Trujillo  
\$64.59 at Jinga Bar and Bistro for David Trujillo and Chris Madrid  
\$66.85 at Old Martina’s Hall for Tom, Andrew, and Chris  
\$24.56 lunch for Darien Cabral and Vangie  
\$31.73 at Angelina’s with Chris Madrid  
\$197.12 at Monafuku CCDC for RCLC Group  
\$6.96 lunch for Henry Roybal at El Parasol  
\$140.78 for “Xmas Lunch” at El Paragua Restaurant in Espanola  
\$144.87 at Bourbon House Restaurant in New Orleans  
\$162.70 at Antoine’s Restaurant in New Orleans  
\$322.48 for “dinner with NMED, LA county” in New Orleans  
\$32.90 for “lunch with Duncan Sill, REDI net”  
\$286.78 at the Bull Ring Restaurant in Santa Fe. The billing detail for this dinner states that the guests were Board member Javier Gonzales and Harris Walker, NNSA.  
\$1,850.95 at the Casa Luca Restaurant in Washington, D.C.  
\$396.26 for a meal for “EM and Board Members Dinner” at El Parasol Restaurant  
\$21.09 for a meal at the Santa Fe Bar and Grill with guest, Peter Woerhle  
\$30.50 for “lunch with Jeff of RDC/LANL MSC” at the Compound Restaurant in Santa Fe  
\$20.64 for “Lunch with Liddie @ RDC” at La Mesita Eatery  
\$38.75 for “lunch with Patrick Woerhle, LANS” at La Cocina Restaurant  
\$121.95 for “lunch for RCLC meeting” at Beestro Restaurant in Santa Fe  
\$33.09 for “lunch with Comm. Gallegos” at Capitol Grill  
\$33.19 for “lunch with Councilor Fernandez” at Gutiz  
\$38.91 for a “meeting with Mayor Alice” at El Paragua Restaurant in Espanola  
\$37.27 for “lunch with Brent Jaramillo, Econ Dev. Taos” at the Gorge Restaurant in Taos

**Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness) (Continued)**

\$11.21 for “Mtg w/Councilor Ives, Santa Fe” at the Sage Bakehouse in Santa Fe  
\$18.76 for “Mtg with Michele, Sen Udall’s staff” at Vinaigrette Restaurant in Santa Fe  
\$39.22 for “Meeting with Jeff, LANL-MSU” at La Cocinca Restaurant in Espanola  
\$31.19 for “Meeting with Patrick Woerhle” at Clafoutis in Santa Fe  
\$37.75 for “Lunch with Mayor Alice” at La Cocina Restaurant in Espanola  
\$18.56 for “Lunch with Dave Lyons” at Blue Window Bistro  
\$49.09 for “lunch with Patrick W, LANL” at Gabriel’s Restaurant in Pojoaque  
\$26.02 for “Dinner with Brian Crone, Rep. Lujan” at Paper Dosa Restaurant in Santa Fe  
\$35.59 for “lunch with Kathy Keith, LANL CPO” at La Posada Restaurant in Santa Fe  
\$29.03 for “lunch with Justin Greene, review of CPO” at La Posada Restaurant in Santa Fe  
\$796.25 for “RCLC/ECA group dinner” at Casa Luca Restaurant in Washington, D.C.  
\$131.07 for “RCLC group lunch” at Thunder Grill

**Criteria**

Section VIII of the Travel Policy states, “Prohibited expenses include, but are not limited to, the following:

- Personal items, including personal grooming items
- Beverages and snacks, hotel mini bar charges
- Gifts
- Entertainment and recreation expenses, including hotel movie and health club activities
- Golf outings, fitness events and other “recreational” activities
- Alcoholic Beverages
- Expenses for spouses, guests or family members

NMAC 2.42.2.1 et seq. does not contain any provisions that allow for payment of per diem rates to persons who are not public officers or employees.

**Cause**

The RCLC did not follow its own Travel Policy or the NMAC Rule with regard to reimbursements for meals for third party guests of the Executive Director.

**Effect**

The RCLC improperly expended public funds to pay for meals for individuals who are not public officers or employees.

**Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness) (Continued)**

**Recommendation**

The RCLC should follow the rules applicable to a local public body when paying any per diem reimbursements.

**Response**

The RCLC does not agree with portions of the listed conditions. Some charges are clearly for only one person indicating that the guest paid separately. In other cases, guests have indicated that they reimbursed the Executive Director directly in cash.

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2.

**Finding 2018-003 The RCLC Board approved reimbursements to JLH Media, Inc. or Andrea Romero Consulting, LLC for expenditures for alcoholic beverages, personal expenses and entertainment and recreation expenses, in violation of the Travel Policy and state law. (Material Weakness)**

**Condition**

The RCLC reimbursed JLH Media, Inc. or Andrea Romero Consulting, LLC for alcoholic beverages, personal expenses and entertainment and recreation expenses, totaling \$2,639.90.

\$286.78 for a meal at the Bull Ring Restaurant in Santa Fe that included ten (10) alcoholic beverages.

\$22.00 for a ticket to the Tony Hsieh Venture Capitalist Seminar.

\$10.81 for a mirror at Ross Dress for Less.

\$1,850.00 for a meal at Casa Luca in Washington, D.C. that included \$380.00 in charges for alcoholic beverages, including four (4) bottles of wine and ten (10) additional alcoholic beverages.

\$37.48 for charges at the Hilton Alexandria Hotel in Alexandria, VA for “Finn & Porter” and \$41.11 for “room service” for Board member Peter Ives.

\$64.72 for charges at the Hilton Alexandria Hotel in Alexandria, VA for “Finn & Porter” for Board member Javier Gonzales.

\$20.00 for a ticket to the Lensic Theater in Santa Fe.

\$307.00 for (12) tickets to a baseball game in Washington D.C.

**Criteria**

Section VIII of the Travel Policy states, “Prohibited expenses include, but are not limited to, the following:

- Personal items, including personal grooming items
- Beverages and snacks, hotel mini bar charges
- Gifts
- Entertainment and recreation expenses, including hotel movie and health club activities
- Golf outings, fitness events and other “recreational” activities
- Alcoholic Beverages
- Expenses for spouses, guests or family members

• The RCLC did not follow its own Travel Policy or the NMAC Rule with regard to reimbursements for meals for third party guests of the Executive Director.

**Effect**

The RCLC improperly expended public funds to pay for entertainment expenses and alcoholic beverages for both its own Board members as well as individuals who are not public officers or employees.



**Finding 2018-003 The RCLC Board approved reimbursements to JLH Media, Inc. or Andrea Romero Consulting, LLC for expenditures for alcoholic beverages, personal expenses and entertainment and recreation expenses, in violation of the Travel Policy and state law. (Material Weakness) (Continued)**

**Recommendation**

The RCLC should follow the rules applicable to a local public body when paying any per diem reimbursements.

**Response**

The RCLC does not agree with portions of the listed conditions. Some Board members have indicated that they did not charge back for entertainment or alcohol but rather paid for those items directly themselves.

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2.

**Finding 2018-004 JLH Media, Inc. charged NM gross receipts tax on mileage and travel and per diem expenditures resulting in double taxation to the RCLC. (Significant deficiency)**

**Condition**

The invoices submitted by JLH Media, Inc. include charges for gross receipts taxes on reimbursements mileage and reimbursements totaling \$271.65.

**Criteria**

DFA 95-1 permits the reimbursement of mileage and actual receipts for expenditures up to \$30 per day (in state) and \$45 per day (out of state) excluding lodging. NM Gross Receipts tax is not calculated on reimbursements to the extent that it would equate to taxing an already imposed tax.

**Cause**

JLH Media, Inc. did not consider taxation regulations when compiling expenditures and mileage to be included in the monthly billing and the Fiscal Agent did not adequately review invoices prior to payment, indicating that neither party understands NM taxation regulations.

**Effect**

The contracted Executive Director claimed NM gross receipts tax on mileage and travel and per diem expenditures resulting in double taxation to the RCLC.

**Recommendation**

Invoices should be scrutinized for clerical or application errors prior to payment by the fiscal agent.

**Response**

The RCLC concurs with the recommendation and will be developing and implementing an agreement with the fiscal agent that specifies these duties.

Los Alamos County, as fiscal agent (LAC) concurs with the recommendation and will be developing and implementing an agreement with the RCLC that specifies these duties.

**Finding 2018-005 Duplicate billing of mileage by Contractor (Significant deficiency)**

**Condition**

During the course of the special audit, the OSA noted that reimbursements requested for mileage were duplicated by both Executive Directors and their staff. The individuals collected mileage for travel to and from the same location on the same day to attend the same meeting. The OSA identified twenty-eight (28) instances of duplicate mileage reimbursements totaling \$1,115.76.

**Criteria**

The Contact agreement for Executive Director Services provides that reimbursement of travel costs shall be in accordance with the RCLC's Travel Policy. The Travel Policy provides that "No specific mode of transportation is mandatory. However, staff members are expected to use the most economical means available with reasonable consideration given to the time and distance involved." The Travel Policy also provides for in-state travel to be approved by the Executive Director.

**Cause**

A lack of proper monitoring by the Executive Director prior to submission to the fiscal agent for processing of payment. Additionally, the Executive Director is responsible for approving the in-state travel for which her company requests reimbursement. There is a lack of internal controls in the Travel Policy which can allow a contract Executive Director to financially benefit from his or her own travel approvals.

**Effect**

The RCLC reimbursed what appear to be excessive, duplicate mileage charges by the Executive Director that do not appear to comply with the Travel Policy.

**Recommendation**

The Executive Director should not be allowed to approve in-state travel if the Executive Director will receive reimbursement for that travel under his or her contract. The Coalition should ensure that all expenditures related to the contract Executive Director be reviewed and authorized by someone other than the Executive Director.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that all expenditures related to the executive director contract be reviewed and authorized by someone other than the Executive Director.

**Finding 2018-006 The RCLC Governing Board not exercising control over finances in accordance with the Joint Powers Agreement Act, § 11-1-5(D), NMSA 1978 (Material Weakness)**

**Condition**

The RCLC Board approved reimbursement checks for travel and per diem expenditures that did not appear to be adequately reviewed against the RCLC's Travel Policy, the Per Diem and Mileage Act, and NMAC 2.42.2.1.

**Criteria**

The RCLC Board's responsibility for control over the Coalition's finances is set forth in the Joint Powers Agreement Act § 11-1-4(D) and Section 9 of the Joint Powers Agreement which formed the RCLC. Both the statute and the Agreement provide that the RCLC Board is "strictly accountable" for all receipts and disbursements of the entity.

**Cause**

The RCLC failed to follow the requirements of the Joint Powers Agreement Act, and the Agreement itself.

**Effect**

The RCLC improperly expended public funds in violation of state law.

**Recommendation**

In order to ensure that each party is fulfilling its statutory duties and fiduciary responsibilities to the RCLC, the Executive Director and Coalition Board should implement and formalize policies and procedures for the processing of transactions. Additionally, the Coalition Board should provide training to all members and contractors. Only payments reviewed in accordance with the policies and procedures and related laws and regulations should be approved by the Board's Treasurer prior to processing by the fiscal agent.

**Response**

The RCLC concurs with the recommendation and will be formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent. The RCLC Board will also provide training to all members and contractors. These updated policies and procedures will also be reflected in the upcoming fiscal agent agreement.

**Finding 2018-007 Travel expenditures in excess of board approved budget (Material Weakness)**

**Condition**

In fiscal years 2015 and 2018, the RCLC expended more than the approved \$10,000 annual budget for travel purposes separately for contract staff and board. The fiscal agent combines the travel into one line-item making it difficult to ascertain whether either or both exceed budgetary authority. The total amount for 2014-2015 was \$433.22 over the combined budgeted total of \$20,000. The total amount for 2017-2018 was \$1,012.04 over the combined budgeted total of \$20,000.

**Criteria**

The RCLC Travel Policy states that both the board and contract staff are separately authorized up to \$10,000 annually for travel purposes.

**Cause**

The Coalition's Board and fiscal agent did not perform adequate oversight and approval of expenditures. By combining the expenditure in one account it was impossible to verify compliance with the budget.

**Effect**

The RCLC reimbursed unauthorized expenditures totaling \$1,445.26. Non-compliance with the RCLC travel policy requirement not to exceed \$10,000 for travel purposes separately by the Contract staff and the Board resulting in unauthorized expenditures.

**Recommendation**

The Coalition's Board and fiscal agent should review appropriate travel policies and should perform regular and consistent oversight and approval of expenditures in relation to their adopted policies.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2. In addition, the RCLC will be formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent.

**Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness)**

**Condition**

The RCLC appears to be engaged in prohibited lobbying activities. The RCLC documentation provided contains a statement that the RCLC “has positioned itself as sole, consistent lobbying body for legacy waste cleanup dollars into LANL at the Congressional level.” Further, Statements contained in a letter dated February 22, 2018, from Executive Director Andrea Romero Consulting, LLC outline state and federal activities by the RCLC which appear to be lobbying, as follows:

*Following the House Tax and Revenue tabling of our Bill on March 3, 2017, we worked diligently in the interim session to ensure that we had the best technical capacity on our bill going into the 2018 session with the Legislative Finance Committee and Legislative Council.*

- *Gained supporters of GRT Legislation: North Central Regional Transit District, New Mexico Association of Counties, City of Espanola, City and County of Santa Fe, and the New Mexico Municipal League.*
- *Reworked strategy to move bill through Senate and pre-filed the bill to get a low number. Senate Bill 17*
- *Engaged with NNSA and House Armed Services on alternatives and discussion on our strategy to ensure this revenue is protected.*
- *Presented to NM’s Radioactive and Hazardous Waste Subcommittee on RCLC engagement on waste and cleanup, where legislators were alerted on the GRT losses on September 21, 2017 in ongoing outreach efforts.*
- *Served as an ‘expert’ to impact bill in relationship to the Laboratory through 30-day session. 2018 Legislative Session marked last chance for protection of this tax revenue stream to the State and local communities. Provided handouts, updated each committee hearing to ensure we addressed common questions and themes.*
- *January 26, 2018 – Passed through Senate Corporations and Transportation Committee*
- *February 1, 2018 – Passed through Senate Finance Committee*
- *February 3, 2018 – Defended on Senate Floor and passed 31-4*
- *February 12, 2018 – Passed through House Taxation and Revenue Committee and passed 10-5. Prepared testimony with NCRTD to serve as testimony provider.*
- *February 13, 2018 – Passed through House.*
- *Prepared letter of support for NM Governor Susana Martinez citing all communities and organizations in support of legislation in hope that she will sign the bill into law.*

**Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness) (Continued)**

**Criteria**

The Department of Energy Grant contains an explicit restriction on federal lobbying efforts. Paragraph 17 of the Grant Agreement states:

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913, Lobbying with appropriated moneys. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Section 18 U.S.C. 1913 provides:

**§1913. Lobbying with appropriated moneys**

*No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.*

**Cause**

The RCLC may have failed to abide by the terms of the DOE Grant when it “*Engaged with NNSA and House Armed Services on alternatives and discussion on our strategy to ensure this revenue is protected.*” In addition, the RCLC’s self-described state lobbying activities may have violated 18 U.S.C. 1913.

**Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness) (Continued)**

**Effect**

Possible non-compliance with the DOE grant agreement which could result in the claw back of approximately \$372,000.

**Recommendation**

The Coalition's Board and fiscal agent should ensure that it follows all lobbying restrictions with regard to any federal or state grant funds it receives.

**Response**

The RCLC disagrees with this finding. Only a minority fraction of RCLC's activities and expenditures relate to advocacy activities. There is clearly more than enough non-grant member contribution revenue to cover those costs, ensuring that restricted grant revenues are not utilized for prohibited lobbying activities.

RCLC agrees with the recommendation that the RCLC Board should ensure that it follows all lobbying restrictions with regard to any grants it receives. The RCLC's new executive director contract requires that invoices show the allocation of tasks and compensation due split between those that are DOE grant applicable and those that are not. The RCLC will also be contracting for third party accounting services that will provide for a segregated special revenue fund for grant activity accounting.

LAC disagrees with the recommendation as it related to LAC. As fiscal agent, LAC is not responsible for ensuring RCLC's compliance with lobbying restrictions nor for any portion of grant reporting.

The respective duties and obligations of the RCLC and LAC will be clarified in the new agreement to be entered into between them.



**Finding 2018-009 Potential violations of (Executive Order 12674) Fourteen Principles of ethical Conduct for Federal employees' item 4 related to the solicitation or acceptance of gifts. (Material Weakness)**

**Condition**

The RCLC paid for meals and entertainment of DOE employees. Although all of the participants could not be identified, the OSA was able to identify the participation of certain DOE employees.

**Criteria**

(Executive Order 12674) Fourteen Principles of Ethical Conduct for Federal Employees states:

4. Employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

**Cause**

Unknown cause however, the appearance is that the meals and entertainment may have been used to influence an official action.

**Effect**

Potential non-compliance with DOE's (Executive Order 12674) Fourteen Principles of ethical Conduct for Federal employees' item 4 related to the solicitation or acceptance of gifts.

**Recommendation**

The Coalition's Board should create a policy that prohibits any coalition staff from purchasing, gifts, meals or entertainment for federal employees.

**Response**

The RCLC disagrees with the finding. The criteria relates to the actions of federal employees and is not a standard that applies to the actions of the RCLC.

However, given the expected occasional interactions with federal employees, the RCLC concurs with the recommendation and will be changing its policies to prohibit RCLC Board, staff and contractors from purchasing gifts, meals or entertainment for federal employees.

**Finding 2018-010 Breach of Fiduciary Duty by the Fiscal Agent – Los Alamos County (Material Weakness)**

During the special audit, the OSA noted several emails where the Board treasurer or representative questioned specific expenditures but upon receiving a response from Los Alamos County, the fiscal agent, they allowed the reimbursement of those expenditures. In each of these questioned transactions, the response by the fiscal agent, Los Alamos County, appeared inadequate to sufficiently validate the legitimacy of the expenditures by New Mexico laws, regulations and statutes.

The Executive Director filed reimbursement claims that were improper under the Per Diem and Mileage Act, NMAC 2.42.2.1 et seq. and the Travel Policy. The fiscal agent, Los Alamos County, approved and/or facilitated the approval of improper expenditures without regard to New Mexico laws, regulations and statutes.

**Criteria**

The fiscal agent has a fiduciary duty to process receipts and expenditures. In addition, the fiscal agent should exercise due care in reviewing proposed expenditures and obtain proper approval from RCLC officers prior to payment. Also the County had no written procedures regarding processing of RCLC transactions.

**Cause**

Since there were no standard procedures, expenditures were made without prior written approval. The County did not seek approval subsequent to the expenditures by the contractor and/or board members. In addition, the subsequent approval was made by someone not familiar with the rules regarding travel and per diem.

**Effect**

The RCLC paid expenditures that were not eligible under state law or travel and per diem policies.

**Recommendation**

The Board should create and implement policies and procedures for expenditures that require approval of the board or authorized representative prior to payment. The policies should adhere to all applicable state laws and administrative rules.

**Response**

The RCLC concurs with the recommendation and will be formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent.

LAC disagrees with the finding. LAC's duties as fiscal agent are not defined, and this likely contributed to this situation. However, since they are not defined, it is not appropriate to presume

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what level of responsibility LAC had. This is especially true given the clear responsibility placed upon the Treasurer in the RCLC by-laws and upon the Executive Director in those contracts. LAC has always sought approval from the RCLC Treasurer prior to disbursements and always provided whatever information it had available, generally from the Executive Director, to the Treasurer.

LAC concurs with the recommendation.

## **Finding 2018-011 Failure to comply with State Audit Act (Material Weakness)**

### **Condition**

The funds of the RCLC were not subjected to the State Audit Act. Despite seeking and receiving an opinion by the NM Office of the State Auditor, the RCLC and its fiscal agent, Los Alamos County, made a decision based on advice from the County's auditor to classify the funds as an agency fund of Los Alamos County. Classifying the RCLC as an agency fund circumvents transparency in the use of public monies.

### **Criteria**

The Joint Powers Act Section 11-1-1 to 11-1-7, NMSA 1978, specifically, Section 11-1-5 C states:

“The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such powers of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.”

Additionally, on February 20, 2013, the OSA issued a letter of determination stating that the RCLC was a “special district”, further classified and subject to all regulations and laws of a “local public body”, including the Audit Act.

### **Cause**

A deliberate decision was made by the RCLC and/or its fiscal agent to avoid an audit of the RCLC funds.

### **Effect**

The lack of oversight of public monies through the Audit Act led to improper payments from public funds and non-compliance with laws, regulations, statutes and agreements which may result in criminal violations.

### **Recommendation**

Beginning with the fiscal year ending June 30, 2018, the Coalition should immediately become compliant with the State Audit Act and have all financial statements audited by an approved auditor on the OSA website.

### **Response**

The RCLC concurs with the recommendation and will become compliant with the State Audit Act.

LAC disagrees with the finding. LAC does not have authority to contract for audit services on behalf of the RCLC and has no decisions making authority regarding the RCLC's choices in this matter. The decision to account for the receipts and disbursements of the RCLC in an Agency Fund of LAC is the correct accounting treatment for LAC's accounting records as fiscal agent.

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There were no efforts by LAC to circumvent transparency in the use of public money as is demonstrated by LAC's regular reporting of fiscal activity to the RCLC board.

LAC concurs with the recommendation and will assist RCLC to become compliant with the State Audit Act.

The respective duties and obligations of the RCLC and LAC will be clarified in the new agreement to be entered into between them.

**Finding 2018-012 Fiscal Agent combined RCLC monies with Los Alamos County's pooled cash account resulting in a lack of transparency (Material Weakness)**

**Condition**

The cash of the RCLC and Los Alamos County was being accounted for in one bank account making it difficult to distinguish between the expenditures of each entity.

**Cause**

The fiscal agent uses a pooled cash account for all transactions of Los Alamos County including those of the RCLC.

**Effect**

The inability to identify discrepancies and to reconcile the individual funds included in pooled cash. Additionally, it does not appear that the RCLC or Los Alamos County have properly reconciled cash accounts.

**Recommendation**

It is recommended that the RCLC, through its fiscal agent, create a separate bank account and a special revenue fund to track the assets, liabilities, equity, revenues and expenditures of the RCLC.

**Response**

The RCLC concurs with the recommendation and will be creating a separate bank account. The RCLC will also be contracting for third party accounting services that will provide for a segregated special revenue fund for grant activity accounting.

LAC disagrees with the finding. The use of a one bank account and a pooled cash account does not make it difficult to distinguish between the expenditures of each entity because RCLC transactions are segregated into a separate fund. Similarly LAC has no difficulty distinguishing between the transactions of its own separate funds.

However, LAC concurs with the recommendation to create a separate bank account in order to simplify the interactions with the anticipated third party accountant.

**Finding 2018-013 A miscoding of expenditures and using a pooled cash account, resulted in the RCLC paying for expenditures of Los Alamos County (Material Weakness)**

**Condition**

On June, 29, 2017, the Regional Coalition of LANL Communities issued a check for \$5,000 to the ECA Annual Membership. Upon the OSA's inspection of this check, it appeared that the ECA conference dues were billed to Los Alamos County. Further investigation revealed that the invoice did belong to Los Alamos County, however, the expenditure was coded to RCLC and paid out of RCLC funds. The improper payment was not identified through the reconciliation of the pooled cash account and went undetected until the special audit. It was noted that the Coalition did recoup the \$5,000 from Los Alamos County in June 2018.

**Cause**

The fiscal agent uses a pooled cash account for all transactions including those of the RCLC. The fiscal agent utilizes the same chart of accounts with only slight variation.

**Effect**

The RCLC paid for expenditures that were not intended for the RCLC. As a result there is a misappropriation of Coalition cash assets and the financial reports presented to the board may not be accurate.

**Recommendation**

Together the Coalition and the fiscal agent should brainstorm ways to rectify the lack of controls and monitoring while minimizing the impact to the Coalition vendors who receive payment. It would be advisable to create a separate bank account and a special revenue fund to track the assets, liabilities, equity, revenues and expenditures of the RCLC.

**Response**

The RCLC concurs with the recommendation and will be creating a separate bank account. The RCLC will also be contracting for third party accounting services.

The miscoding of a single check was a clerical error unrelated to the pooled account. However, LAC concurs with the recommendation to create a separate bank account in order to simplify the interactions with the anticipated third party accountant.

**Finding 2018-014 Improper reporting of contract labor (Material Weakness)**

**Condition**

The taxable earnings of contractors were not properly reported on form 1099. In calendar year 2016, ARC was paid a total of \$121,467.95 however the 1099 was issued for \$113,721.66, a difference of \$7,746.29. In calendar year 2017, ARC was paid a total of \$189,493.18 however the 1099 was issued for \$ 176,957.44, a difference of \$12,535.74.

**Criteria**

Internal Revenue Service Code states that all earnings are subject to tax. For a contractor, all payments are reported on form 1099 and are subject to federal, state and self-employment tax on the net income of the contractor.

**Cause**

The Coalition, through its fiscal agent, did not properly accumulate all payments to the contractor in each calendar year.

**Effect**

The Coalition has not complied with IRS requirements nor the State of New Mexico's taxation requirements. The Coalition issued incorrect 1099's which were used in the reconciliation of annual federal and state taxes.

**Recommendation**

The Coalition will need to evaluate the potential consequences with the IRS and NM Taxation and Revenue Department and find ways to rectify the noncompliance while minimizing the impact to the Coalition. Further analysis of 1099 forms and contractor payments is required for all contractors paid more than \$600 in each calendar year. At a minimum, the Coalition should analyze 1099's from inception of the RCLC to current and make every effort to correct 1099 forms and related reporting. The Coalition and its fiscal agent staff responsible for the issuance of public monies should receive additional training with regard to IRS regulations related to contractors/vendors.

**Response**

The RCLC and LAC concurs that 1099 forms should be correct. LAC as fiscal agent making disbursements for the RCLC will conduct a review of all RCLC vendor information to ensure the 1099 forms are correct.



**Finding 2018-015 Improper accounting for reimbursements, including the netting of reimbursements with expenditures. (Significant deficiency)**

**Condition**

During the course of the special audit, the OSA noted that some of the reimbursement claim forms had a credit amount applied to them. Further research revealed that these were reimbursements for travel expenditures provided by the ECA. These credits reduced the amount of the total reimbursement but did not accurately report the reimbursement as a contra-revenue but instead netted the reimbursement against expenditures.

**Criteria**

Generally accepted accounting principles and grant accounting do not provide for the netting of reimbursements with expenditures as it creates misstatements in both revenues and expenditures for the period.

**Cause**

The Executive Director filed the reimbursement claim with the refund reflected but the fiscal agent did not properly apply U.S. GAAP when processing the reimbursement perhaps as a result of no Board approved fiscal policies or procedures.

**Effect**

The Coalition's financial statements may be misstated. Additionally there may be a violation of U.S. GAAP and of grant accounting. Netting of reimbursements with expenditures does not allow for proper follow-up of reimbursements due to the RCLC and creates an environment ripe for fraud, waste and abuse.

**Recommendation**

The Coalition should comply with U.S. GAAP and grant accounting to ensure proper reporting and tracking of reimbursements due to the RCLC.

**Response**

The RCLC concurs with the recommendation and will be contracting for third party accounting services that specifies compliance with U.S. GAAP, grant accounting and tracking of reimbursements due to the RCLC.

**Finding 2018-016 Management Could Not Provide All Requested Information (Material Weakness)**

**Condition**

The Coalition and its fiscal agent did not provide the OSA investigators with all supporting documentation related to transactions for the period July 1, 2014 through June 30, 2018. One example is the lack of a contract for professional services of \$10,000.

**Criteria**

Section 14-3-13 NMSA 1978 requires the Coalition to carefully preserve and protect public records.

**Cause**

It is unknown why the Coalition and its fiscal agent did not provide all supporting documentation.

**Effect**

The Coalition's Board or its fiscal agent did not provide all supporting documentation requiring the OSA to obtain documents through other means and resulting in a concern that there may be other documents that were not provided or that there may be an underlying reason for not providing the documentation. Missing records can be indicators of more serious issues including fraud.

**Recommendation**

The Coalition and its fiscal agent should have a filing system that enables them to locate supporting documentation for all Coalition transactions.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that supporting documentation for all transaction is properly maintained.

LAC provided all documentation that was provided to it by the Executive Director to the OSA. LAC concurs with the recommendation and will be developing and implementing an agreement with the RCLC that specifies what documentation must be received prior to authorized disbursements occurring.

**Finding 2018-017 Budget irregularities (Significant deficiency)**

**Condition**

During the course of the OSA's special audit, it was noted that the budget did not foot correctly and presented a misleading projection regarding unrestricted fund balance to the board. Additionally, the budget includes a statement that the DOE grant will be used for RCLC operating expenses but not for travel. If there is a violation of the grant agreement, then there would not be sufficient funding to cover operating expenditures, not including travel.

**Criteria**

Good accounting practices indicate that financial data should be clerically accurate. Additionally, the statement on the budget indicates that it is the Boards intent to not utilize the DOE grant funding for travel.

**Cause**

A lack of proper oversight by the Board and fiscal agent with regard to budgeting.

**Effect**

The Coalition's budget is not accurate and may be misleading for the board.

**Recommendation**

The Coalition should prepare its budget and ensure that it is clerically accurate and that the RCLC has appropriate funding for all costs associated with the RCLC.

**Response**

The RCLC concurs with the recommendation and will be contracting for third party accounting services that specifies preparation of a budget that is clerically accurate and has appropriate funding for all costs associated with the RCLC.

**2018-018 Failure to comply with the State Constitutions Anti-Donation of Public Monies Act Article IX (Material Weakness)**

**Condition**

The OSA's special audit revealed many expenditures paid by the RCLC to governing board members, the Executive Director(s) and third parties totaling \$51,519.45 in improper expenditure payments from July 1, 2014 through June 30, 2018.

JLH Media	4,793.42
Andrea Romero Consulting, Inc.	26,862.18
Alice Lucero	2,324.08
City of Santa Fe	1,872.81
Crescent Strategies	10,000.00
ECA Annual Conference	5,000.00
Los Alamos County Credit Card	666.96
	<u>51,519.45</u>

**Criteria**

Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause) prohibits any donation to or in aid of any person, association or public or a private corporation.

**Cause**

The Executive Director Firms submitted, to the fiscal agent, previously paid invoices and receipts for reimbursement by the RCLC. Many of these reimbursement requests did not have prior approval by the Board so the fiscal agent would obtain, after the fact, approval to pay the reimbursement via email correspondence with a Board member. The Board members may not have had adequate time to review the reimbursements against the RCLC policies and procedures, NMAC 2.42.2.1, and applicable laws and regulations.

**Effect**

The improper payments may have constituted an unwarranted donation of public funds to private individuals in violation of the Anti-Donation Clause.

**Recommendation**

The Coalition should require review and approval of all invoices prior to the processing of payments by the fiscal agent. Additionally, the Coalition should follow federal and state laws, regulations and agreements with regard to expenditures.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that appropriate reviews and approval of invoices for compliance with all applicable

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regulations occur prior to authorizing the fiscal agent to make payments. The RCLC board will be developing and adopting financial policies that clearly delineate the roles and responsibilities of the RCLC board, the Treasurer, the executive director, the third party accountant, and the fiscal agent as it relates to the fiscal transactional business of the RCLC.

### **EXIT CONFERENCE**

On July 30, 2018 the OSA held an exit conference with the following individuals to discuss the results of the consulting service engagement and the findings.

#### **Regional Coalition of LANL Communities**

Harry Burgess, County Manager	Los Alamos County
Steven Lynne, Deputy County Manager	Los Alamos County
Helen Perraglio, CPA, Chief Financial Officer	Los Alamos County
David Griego, Senior Management Analyst	Los Alamos County
Commissioner Henry Roybal, RCLC Chair	Santa Fe County
Councilor Morrie Pongratz, RCLC Secretary	Los Alamos County

#### **Office of the State Auditor**

C. Jack Emmons, CPA, CFE, Deputy State Auditor  
Bob Parker, Chief Governmental Accountability Officer & General Counsel  
Melissa Santistevan, CPA, CFE, CGMA, CICA, Director of Special Investigations



Wayne Johnson  
State Auditor

C. Jack Emmons, CPA, CFE  
Deputy State Auditor

## **State of New Mexico**

### **OFFICE OF THE STATE AUDITOR**

August 7, 2018

Governing Board  
Regional Coalition of LANL Communities  
c/o Los Alamos County Manager  
1000 Central Avenue Suite 300  
Los Alamos, NM 87544

Dear Coalition Directors:

The Office of the State Auditor performed a special audit of certain accounting and financial records maintained by the Regional Coalition of LANL Communities (the "Coalition") for the period of July 1, 2014 through June 30, 2018. The purpose of the special audit was to determine if certain transactions issued by the Coalition were compliant with relevant laws, regulations, policies and procedures, procurement code and agreements applicable to the agency. In the course of the special audit, additional findings were uncovered which are set forth in the audit report. The Office entered into a contract with the Coalition for the conduct of the Special Audit. The special audit was conducted in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants.

Coalition management is responsible for maintaining the accounting records and for establishing and maintaining effective internal control over compliance with applicable laws, regulations, and procurement policies of the Coalition. The Special Audit was limited in its scope. Had the OSA performed additional procedures, other matters might have come to our attention that would have been reported to you. The OSA may, in addition to this Special Audit, refer matters found to the Coalition's independent public accountant to be reviewed as a part of the Coalition's 2018 annual audit.

This report is intended to identify violations of state and local law, and provide recommendations to the Coalition to correct the existing violations found, as well as provide recommendations to prevent future violations and lack of adequate controls. If the Coalition wishes to discuss the report and recommendations in further detail, please do not hesitate to contact our office at (505) 476-3800.

Sincerely,

C. Jack Emmons, CPA, CFE  
Deputy State Auditor

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