
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 controls¹ 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.

¹ 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 Act². 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,

² "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 activities³. 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

³ 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, § 13-1-117.1⁴. 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;

⁴ "[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.⁵ 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."⁶).

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

⁵ 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-reimbursements>.

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.

⁶ 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.⁷ 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

⁷ *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 expenses⁸ 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.

⁸ 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.⁹ 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
Meal Per diem for out-of-state travel	(1) Actuals in lieu of per diem, \$45 per day for actual meal expenses , and lodging not to exceed \$215 per night . Lodging may exceed \$215 if prior approval is obtained. Receipts required. OR (2) \$115 flat per diem . Inclusive of meals and overnight lodging. No receipts required.	\$60 flat per diem 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.	\$60 flat per diem . No receipt needed.
Meal per diem for in-state travel	(1) Actuals in lieu of per diem, \$35 per day for actual meal expenses , and lodging not to exceed \$215 per night. Lodging may exceed \$215 if prior approval is obtained. Receipts required. OR (2) \$85 flat per diem . Inclusive of meals and lodging. No Receipts required.	\$45 flat per diem 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.	\$50 flat per diem . No receipts required.

⁹ 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.

Partial meal per diem for out-of-state travel	Less than 2 hours: none. 2 hours but less than 6: \$12 6 hours but less than 12: \$20 12 hours or more: \$30	Less than 5 hours: none. 5 hours or more, less than 12: \$10 12 hours or more, less than 18: \$25 18 hours or more: \$45	Breakfast \$12 Lunch \$15 Dinner \$33 *Not based on hours. To be adjusted when travel starts and finishes.
Per diem reduction for complimentary meals provided during travel	If traveler receives complimentary meals or lodging can only reimbursed for Actuals.	Requires traveler to disclose meals provided. Reduce per diem in the following amounts: breakfast -\$13, lunch -\$20, Dinner -\$27.	Requires traveler to disclose meals provided. Reduce per diem in the following amounts: breakfast -\$12, lunch -\$15, dinner -\$33.
Lodging	(1) Actuals in lieu of per diem, \$45 per day for actual meal expenses, and lodging not to exceed \$215 per night. Lodging may exceed \$215 if prior approval is obtained. Receipts required. OR (2) \$115 flat per diem. Inclusive of meals and overnight lodging. No receipts required.	Cost not to exceed \$160. For high cost areas, not to exceed \$215 (including D.C.). If over that amount, approving authority may approve full reimbursement. Itemized receipts required.	No limit. Standard room rate for single occupancy. Itemized receipts required.
Air Travel	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.
Incidental expenses	\$6 per day, not to exceed \$30 per trip. If exceeds amount, entire amount of reimbursement claim must be accompanied by receipts.	When overnight travel required. In-state: \$7, not to exceed \$35 per trip. Out-of-state: \$10, not to exceed \$50 per trip.	\$8 per day. Examples: reasonable personal telephone calls. No receipts.
Mileage Reimbursement	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.
Taxi and ground transportation	\$6 per diem not to exceed \$30 per trip. This cost counts toward incidental expenses. OR Actuals with receipt.	No limit. Supporting documentation to substantiate claimed expense required.	No limit. Necessitated by business trip when date, origination, and destination are documented.
Training/Conferences	Yes. Receipt required.	N/A, but presumably covered.	Yes. In-state with Executive Director approval. Out-of-state with RCLC Board approval.
Travel advances	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

Prohibited expenses	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.
Companion expenses	Prohibited.	Prohibited.	Prohibited.
Total Annual Travel Limitation	\$1,500. Approval from chair or department head required to exceed. NMSA 1978, § 10-8-5(I).	No limit.	\$10,000 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 5.23¹⁰ 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

¹⁰ 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.

- 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”) ¹¹ for

¹¹ 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.
 - 16th 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 2.¹² 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:

¹² “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.