

Minutes

County Council – Regular Session

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

---

Tuesday, November 13, 2018

6:00 PM

Council Chambers - 1000 Central Avenue

TELEVISED

---

1. OPENING/ROLL CALL

The Council Vice-Chair, Christine Chandler, called the meeting to order at 6:04 p.m.

The following Councilors were in attendance:

Present: 4 - Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and  
Councilor Sheehey

Remote: 1 - Councilor Izraelevitz

Absent: 2 - Councilor O'Leary and Councilor Reiss

Councilor Izraelevitz arrived remotely during the discussion of Item 10.A. at 6:20 p.m.

2. PLEDGE OF ALLEGIANCE

Led by: All.

3. STATEMENT REGARDING CLOSED SESSION

A motion was made by Councilor Maggiore, seconded by Councilor Pongratz, that Council approve the following statement for inclusion in the minutes: "The matters discussed in the closed session held on November 5, 2018 that began at 12:00 p.m. were limited only to those topics specified in the notice of the closed session, and no action was taken on any matter in that closed session."

The motion passed by acclamation with the following vote:

Yes: 4 - Councilor Chandler, Councilor Maggiore, Councilor Pongratz,  
and Councilor Sheehey

Absent: 3 - Councilor Izraelevitz, Councilor O'Leary, and Councilor Reiss

#### **4. PUBLIC COMMENT**

Mr. Greg White, 600 San Ildefonso Apt. 225, thanked the County Clerk's office for their work on the General Election and congratulated all candidates that were successful for the election.

#### **5. APPROVAL OF AGENDA**

**A motion was made by Councilor Sheehey, seconded by Councilor Pongratz, that the agenda be approved with the following modification; Item 11.C. be moved after Item 9.A.**

**The motion passed by acclamation with the following vote:**

**Yes: 4 - Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 3 - Councilor Izraelevitz, Councilor O'Leary, and Councilor Reiss**

#### **6. PRESENTATIONS, PROCLAMATIONS AND RECOGNITIONS**

- A.** Proclamation declaring Saturday, November 24, 2018 as "Small Business Saturday" in Los Alamos County

Councilor Maggiore read and presented the proclamation to Ms. Ryn Herrmann, Chamber of Commerce Director.

Ms. Herrmann spoke.

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

None.

#### **8. CONSENT AGENDA**

**Consent Motion:**

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

- A.** Incorporated County of Los Alamos Resolution No. 18-26, A Resolution of the Incorporated County of Los Alamos Council Authorizing Application to the New Mexico Department of Transportation (NMDOT) for Federal Fiscal Year 2020/2021 Transportation Alternatives Program (TAP) Funds for the County Wide School Flasher Speed Sign Upgrade Project

**I move that Council approve Incorporated County of Los Alamos Resolution No. 18-26, A Resolution of the Incorporated County of Los Alamos Council Authorizing Application to the New Mexico Department of Transportation (NMDOT) for Federal Fiscal Year 2020/2021 Transportation Alternatives Program (TAP) Funds for the County Wide School Flasher Speed Sign Upgrade Project.**

B. County Council Minutes for October 30, 2018

**I move that Council approve the County Council Minutes for October 30, 2018.**

C. Vacation of Easement Within Lot 264, a Subdivision of Eastern Area No. 2

**I move that Council approve the vacation of easement within lot 264, a subdivision of Eastern Area No. 2.**

D. Consideration of Budget Revision 2019-25

**I move that Council approve Budget Revision 2019-25 as summarized on attachment A and that the attachment be made a part of the minutes of this meeting.**

E. Approval of Agreement No. AGR19-921, Los Alamos County, New Mexico Legal Services Agreement between Gallagher & Kennedy, P.A., and the Incorporated County of Los Alamos

**I move that the County Council approve Agreement No. AGR19-921, Los Alamos County, New Mexico Legal Services Agreement between Gallagher & Kennedy, P.A., and the Incorporated County of Los Alamos authorizing Gallagher & Kennedy, P.A. to assist the County in its claims for recovery of sums from the State of New Mexico, Taxation and Revenue Department, for unlawful reductions of distributions and transfers of gross receipts tax revenue collected by the State on behalf of the County as provided for in Agreement No. AGR19-921.**

**Approval of the Consent Agenda:**

**The motion passed with the following vote:**

**Yes: 4 - Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 3 - Councilor Izraelevitz, Councilor O'Leary, and Councilor Reiss**

**9. INTRODUCTION OF ORDINANCE(S)**

**A. Incorporated County Of Los Alamos Code No. 02-292: An Ordinance Repealing Article VII, Safety in Public Places, of Chapter 28, Offenses and Miscellaneous Provisions**

**Councilor Maggiore introduced, without prejudice, Incorporated County of Los Alamos Code Ordinance No. 02-292 and ask staff to assure it is published as provided in the County Charter.**

*Item 11.C. was to be heard at this point, all parties were not present. Councilor Chandler proposed hearing the item when all parties were present; there were no objections.*

## 10. PUBLIC HEARING(S)

- A. Incorporated County Of Los Alamos Ordinance No.688; an Ordinance authorizing the sale of certain County-owned real property within Tract RM to Thirty301, LLC

Ms. Joanie Ahlers, Economic Development Administrator, spoke.  
Mr. Alvin Leaphart, County Attorney, spoke.

Councilor Izraelevitz arrived remotely during the discussion of this Item at 6:20 p.m.

Public Comment:  
Mr. Greg White, 600 San Ildefonso Apt. 225, spoke.

**A motion was made by Councilor Pongratz, seconded by Councilor Maggiore, that Council adopt Incorporated County Of Los Alamos Ordinance No. 688; an ordinance authorizing the sale of certain county-owned real property within Tract RM to Thirty301, LLC and ask staff to assure it is published as provided in the County Charter.**

**The motion passed with the following vote:**

**Yes: 5 - Councilor Izraelevitz, Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 2 - Councilor O'Leary and Councilor Reiss**

## 11. BUSINESS (Order changed per approval of agenda motion)

- C. Consideration of Resolution No. 18-28, a Resolution of the Incorporated County of Los Alamos In Support of the New Mexico Health Security Act

Councilor Sheehey spoke.  
Ms. Mary Feldblum, Executive Director Health Security Campaign, spoke.

Public Comment:  
Dr. Tyler Taylor, 2011 23<sup>rd</sup> Street Apt. C, spoke.  
Mr. Greg White, 600 San Ildefonso Apt. 225, spoke.

**A motion was made by Councilor Sheehey, seconded by Councilor Maggiore, that Council approve Resolution No. 18-28, a Resolution in Support of the New Mexico Health Security Act.**

**The motion passed with the following vote:**

**Yes: 5 - Councilor Izraelevitz, Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 2 - Councilor O'Leary and Councilor Reiss**

## 10. PUBLIC HEARING(S)

- B. Incorporated County Of Los Alamos Code Ordinance No. 02-290, an Ordinance Amending Chapter 14, Article III, of the Code of the Incorporated County of Los Alamos Pertaining to Cemeteries

Mr. Brian Brogan, Community Services Director, spoke.

Public Comment:

Mr. Vernon Kerr, 85 Chiquita, spoke.

**A motion was made by Councilor Pongratz, seconded by Councilor Maggiore, that Council adopt Incorporated County of Los Alamos Ordinance No. 02-290, an Ordinance Amending Chapter 14, Article III, of the Code of the Incorporated County of Los Alamos Pertaining to Cemeteries.**

**The motion passed with the following vote:**

**Yes: 5 - Councilor Izraelevitz, Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 2 - Councilor O'Leary and Councilor Reiss**

## 11. BUSINESS

- A. Certification of the Canvassing Committee Results of the 2018 General Election

Ms. Robyn Schultz, Canvass Committee Member, spoke.

**A motion was made by Councilor Maggiore, seconded by Councilor Sheehey, that Council accept results of the Canvassing Committee and direct the County Clerk to certify the results to the State Canvassing Board in conformity with applicable New Mexico election law.**

**The motion passed with the following vote:**

**Yes: 5 - Councilor Izraelevitz, Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 2 - Councilor O'Leary and Councilor Reiss**

- B. Citizen Petition Requesting Council to Address Reporting of Criminal Activity in Los Alamos County

Mr. James Whitehead, 200 Camino Encantado, spoke.  
Chief Dino Sgambellone, Chief of Police, spoke.

Public Comment:

Ms. Joanne Temple, 2231 34<sup>th</sup> Street, spoke.  
Mr. Greg White, 600 San Ildefonso Apt. 225, spoke.  
Mr. Paul Jaramillo, 303 Paige Loop, spoke.  
Ms. Amy Storey, 70 Barranca, spoke.

A motion was made by Councilor Sheehey, seconded by Councilor Pongratz, that Council acknowledge the petition, thank the petitioners for their recommendation, and take no further action.

The motion passed with the following vote:

**Yes: 5 - Councilor Izraelevitz, Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 2 - Councilor O'Leary and Councilor Reiss**

## **RECESS**

***Councilor Chandler called for a recess at 8:23 p.m. The meeting reconvened at 8:34 p.m.***

### **D. Proposed Cemetery Fee Schedule**

Mr. Brian Brogan, Community Services Director, spoke.  
Mr. Alvin Leaphart, County Attorney, spoke.

Public Comment:  
None.

**A motion was made by Councilor Pongratz, seconded by Councilor Maggiore, that Council approve the Proposed Cemetery Fee Schedule as presented.**

The motion passed with the following vote:

**Yes: 5 - Councilor Izraelevitz, Councilor Chandler, Councilor Maggiore, Councilor Pongratz, and Councilor Sheehey**

**Absent: 2 - Councilor O'Leary and Councilor Reiss**

## **12. COUNCIL BUSINESS**

### **A. Appointments**

#### **1) Board/Commission Appointments-Library Board**

Mr. Brian Brogan, Community Services Director, spoke.  
Mr. Harry Burgess, County Manager, spoke.

**A motion was made by Councilor Sheehey to nominate John Gustafson, Whitney Spivey, Kelly Dolejsi, Sarah Nichols and Dana Kline to fill three vacancies on the Library Board as follows:**

**By roll call vote, Councilors vote for three nominees and the three with the highest vote total of four or more be appointed to fill the vacancies.**

Councilor Chandler called for a roll call vote to appoint members to the Library Board:

**Councilor's Sheehey, Maggiore, Izraelevitz, Chandler, and Pongratz voted for:  
John Gustafson**

**Councilor's Sheehey, Maggiore, Izraelevitz, Chandler, and Pongratz voted for:**  
Whitney Spivey

**Councilor's Sheehey, Izraelevitz, and Pongratz voted for:**  
Dana Kline

**Councilor's Maggiore and Chandler voted for:**  
Kelly Dolejsi

**After a roll call vote Mr. John Gustafson and Ms. Whitney Spivey were appointed to the Library Board.**

Councilor Chandler called for a second roll call vote to appoint a third member to the Library Board:

**Councilor's Izraelevitz and Pongratz voted for:**  
Dana Kline

**Councilor's Sheehey, Maggiore, and Chandler voted for:**  
Kelly Dolejsi

Councilor Chandler called for a third roll call vote to appoint a third member to the Library Board:

**Councilor's Izraelevitz, Sheehey, Maggiore, Pongratz, and Chandler voted for:**  
Kelly Dolejsi

**After a roll call vote Ms. Kelly Dolejsi was appointed to the Library Board.**

#### **B. Board, Commission, and Committee Liaison Reports**

Councilor Pongratz reported that he will find out when the next Regional Coalition of LANL Communities meeting will be.

Councilor Sheehey reported on the New Mexico Counties Association and the New Mexico Municipal League Board.

#### **C. County Manager's Report**

County Manager Harry Burgess reported on the transfer of property to Bethel Development Corporation for affordable housing; a letter of interest from Bethel Development Corporation regarding senior affordable housing; the quarterly financial report; and the implementation of a Wellness Program for employees.

#### **D. Council Chair Report**

Council Chair David Izraelevitz advised that he will report on the Community Alliance meeting that he is attending now at the next meeting.

#### **E. General Council Business**

Councilor Pongratz inquired on when a meeting will be held to discuss Council's Legislative Agenda.

**F. Approval of Councilor Expenses**

None.

**G. Preview of Upcoming Agenda Items**

None.

**13. COUNCILOR COMMENTS**

None.

**14. PUBLIC COMMENT**

None.

**15. ADJOURNMENT**

The meeting adjourned at 9:07 p.m.

INCORPORATED COUNTY OF LOS ALAMOS

---

David Izraelevitz, Council Chair

Attest:

---

Naomi D. Maestas, County Clerk

Meeting Transcribed by: Victoria L. Martinez, Deputy Clerk



## Budget Revision 2019-25

Council Meeting Date: Nov 13, 2018

---

|  | Fund/Dept                      | Munis Org | Revenue<br>(decrease) | Expenditures<br>(decrease) | Transfers<br>In(Out) | Fund<br>Balance<br>(decrease) |
|--|--------------------------------|-----------|-----------------------|----------------------------|----------------------|-------------------------------|
| 1  | General Fund - Municipal Court | 1118020   | \$ 10,000             | \$ 10,000                  | \$ -                 | \$ -                          |
| <p><b>Description:</b> The purpose of this budget revision is to increase revenue and expenditure budget authority for Municipal Court for a Juvenile Adjudication Fund Grant. The grant award is for \$10,000 and requires a \$1,000 match which will come from existing operational budget.</p> <p><b>Fiscal Impact:</b> The net fiscal impact to the General Fund is to increase revenues and expenditures by \$10,000.</p> |                                |           |                       |                            |                      |                               |

STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION  
JUVENILE ADJUDICATION FUND GRANT PROGRAM

JUVENILE ADJUDICATION FUND GRANT AGREEMENT  
Project No. 19-J-16

RECEIVED  
DFA-LOCAL GOVT. DIV.  
2018 OCT 29 PM 2:10  
BATAAN BLDG. RM 201  
SANTA FE, NM 87501

**THIS GRANT AGREEMENT** is made and entered into by and between the Department of Finance and Administration ("DFA"), State of New Mexico, acting through the Local Government Division ("Division"), Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, hereinafter called the **DIVISION**, and **Incorporated County of Los Alamos** hereinafter called the **GRANTEE**.

**RECITALS**

**WHEREAS**, Section 34-16-1 NMSA 1978 (the "Act") created the Juvenile Adjudication Fund ("JAF"), money in which is appropriated to DFA to administer the fund and to provide an Alternative Adjudication Program ("AAP") for juveniles charged with traffic offenses and other misdemeanors; and

**WHEREAS**, DFA established a JAF grant program to fund programs providing alternative procedures of adjudication for juveniles charged with traffic offenses and other misdemeanors in 2.110.5 NMAC (the "Regulations"); and

**WHEREAS**, the Grantee was selected to receive a grant from the JAF; and

**WHEREAS**, the parties desire to memorialize the terms and conditions of the grant in this Grant Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained here, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do mutually agree as follows:

**ARTICLE I – PROGRAM DESCRIPTION/SCOPE OF WORK**

- A. The Grantee agrees that it will implement, in all respects, the activities outlined in the Program Description attached hereto as Exhibit 1 and incorporated and made a part of this Grant Agreement by this reference as if fully set forth herein.

**ARTICLE II - TERM OF GRANT AGREEMENT**

- A. The term of this Grant Agreement shall be from the date fully executed by the Division through June 30, 2019.

Los Alamos County Council  
Regular Meeting  
November 13, 2018  
Item 8.D.

- B. In the event that, due to unusual circumstances, it becomes apparent that this Grant Agreement cannot be brought to full completion within the time period set forth in Paragraph A of this Article II, the Grantee shall immediately notify the Division in writing. The Grantee and Division shall review the progress to date and the circumstances giving rise to delay. The Division will determine, in its sole and absolute discretion, whether there is sufficient justification to modify this Grant Agreement. The Division's decision whether or not to modify this Grant Agreement is final and non-appealable.

### **ARTICLE III - REPORTS**

A. Progress Reports

1. The Grantee shall submit quarterly Progress Reports to the Division. The reports shall contain a narrative and/or bulleted highlights of accomplishments and/or problems and delays encountered to date, a detailed budget breakdown of expenditures to date, the number of clients served during the reporting period, the gender, age, grade, and ethnicity of clients served during the reporting period, the type of offenses with which clients were charged, the number of components provided to clients, and the number of open, pending, and closed cases, in accordance with the form attached hereto as Exhibit 2 (Quarterly Progress Report and Certification), and shall include such other information following the objectives of the Grantee's evaluation as may be of assistance to the Division in its evaluation.
2. The quarters covered by the quarterly Progress Reports shall correspond to the quarters of the State's fiscal year, i.e., July 1 to September 30; October 1 to December 31; January 1 to March 31, and April 1 to June 30.
3. One copy of the corresponding quarterly Progress Report shall be submitted to the Division for review and comment no later than October 15, 2018; January 15, 2019; April 15, 2019 and July 10, 2019. If the due date for a quarterly report falls on a weekend or legal holiday, the due date shall automatically be extended to the next day that is not a weekend or legal holiday.

- B. Additional Reports. Events may occur between scheduled reporting dates that have significant impact upon the grant supported activity. In such cases, the Grantee shall provide interim written reports to the Division. Without limiting the generality of the foregoing, the Grantee must inform the Division in writing as soon as the following types of conditions occur:

1. Problems, delays, or adverse conditions which may materially impair the ability to complete the grant supported activities in accordance with this Grant Agreement and Program Description. This disclosure must include a statement of the action taken, or contemplated, and any assistance from the

Division needed to resolve the situation.

2. Favorable developments that enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.
3. The Grantee is no longer in compliance with the financial management system or eligibility requirements of 2.110.5.8(C) and 2.110.5.9 NMAC or there is a significant risk that the Grantee will not be in compliance with those requirements in the future.

- C. Requests for Additional Information. At any time during the term of this Grant Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VII, the Division or State Auditor may (i) request such additional documentation and information regarding the AAP funded under this Agreement as it deems necessary to discharge its monitoring and compliance responsibilities and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the AAP and Grantee's financial and other records concerning the program. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Division (or State Auditor) in the request. Requests made pursuant to this subparagraph C are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A and B of this Article.

#### **ARTICLE IV - AMOUNT OF GRANT; ALLOWABLE COSTS; BUDGET; AND METHOD OF PAYMENT**

- A. Amount of Grant. The amount of the grant made hereunder is **Ten Thousand Dollars and No Cents (\$10,000.00)**. Grantee acknowledges and agrees (i) that this is the maximum amount of money available to Grantee under this Grant Agreement in any event and (ii) that Grantee must have available other funds to pay all program expenditures above this amount, in accordance with Subparagraph F of this Article and the Program Budget established pursuant to Subparagraph E of this Article. Money made available under this Grant Agreement is sometimes referred to throughout the remainder of this Grant Agreement as "Grant Funds".
- B. Reimbursement Basis. Grantee shall be paid on a reimbursement basis. This means that the Division shall transfer funds to Grantee only after the Grantee has already paid out funds for eligible expenditures as described in 2.110.5.11 NMAC, the approved Budget for the Grant and this Grant Agreement.
- C. Expenditure Period. The Grant Funds may only be used to reimburse Grantee for eligible expenditures incurred after the effective date of this Grant Agreement but on or before the termination date of this Grant Agreement. By way of emphasizing rather than contradicting the previous sentence, Grantee acknowledges and agrees that it cannot be reimbursed for eligible expenditures incurred before the effective date of this Grant Agreement or after the expiration

or termination of this Grant Agreement.

D. Allowable Costs. Grant Funds may only be expended on expenditures that are eligible expenditures under the Act, 2.110.5.11 NMAC, the approved Budget for the Grant, and this Grant Agreement.

E. Budget.

1. The initial budget for Grant Funds and the alternative adjudication program is set forth in Exhibit 3, which is incorporated by this reference as if set forth fully herein.
2. Any budget revision may only be made with the prior written approval of the Division via a written amendment to this Grant Agreement. The requested revised budget must be in the same budget format as Exhibit 3. The request for a Grant Agreement amendment for a revision to the budget shall be accompanied by the following:
  - a. An analysis of the proposed changes and a revised budget which addresses the proposed additional or altered expenditures;
  - b. A narrative justification for the proposed changes; and
  - c. An explanation of what (if any) impact the proposed budget revision will have on the Program Description and AAP being funded with Grant Funds.
3. The Division will promptly review the Grant Agreement amendment and shall approve or disapprove the request in writing. The Division will not approve any proposed amendment to the budget or program revision that it determines to be inconsistent with the purpose or terms and conditions of the Act, Regulations, or Grant Agreement. The Division's decision whether or not to approve the proposed budget revision is final and non-appealable.

F. Availability of Other Funds.

1. Grantee must have available other funds or in-kind services to pay all AAP expenditures not being covered by Grant Funds.
2. At the Division's request, Grantee shall submit to the Division documentation sufficient to establish to the Division's satisfaction that non-Grant Funds set forth in the Budget are available. Grantee's failure to satisfactorily document the availability of non-Grant Funds is a substantial and material breach of this Grant Agreement, entitling the Division to take enforcement action in accordance with 2.110.5.18 NMAC.
3. Grantee shall immediately notify the Division if non-Grant Funds contained in the Budget cease to be available for any reason and such non-availability of non-Grant Funds may cause the Grantee to not meet its matching requirement or cause it to be unable to fully perform the Program Description.

G. It is understood and agreed that if any portion of the funds paid hereunder by the

Division to the Grantee for the purposes designated herein remain unexpended at the completion of this Grant Agreement period, the unexpended funds shall revert to the Division for disposition.

H. Request for Payments.

1. All payments will be made on a reimbursement of actual cost basis upon receipt by the Division of individual quarterly reports accompanied by the following completed forms: Request for Payment Form (Exhibit 4); Detailed Breakdown By Budget Category Form (Exhibit 5); and Client Data Sheet (Exhibit 6). Requests for payment shall specify all in-kind administrative costs.
2. The Request for Payment Form must be signed by two authorized signatories, as set forth in the Request for Payment Form.

I. Ineligible Costs will Not be Reimbursed. Grantee shall not be reimbursed for costs that are ineligible under 2.110.5.12 NMAC, other applicable laws, regulations, rules, guidance or this Grant Agreement.

J. Return of Payments for Ineligible or Unincurred Costs. Grantee shall immediately notify the Division if Grantee discovers that it was reimbursed for ineligible costs or costs that were not, in fact, incurred and shall promptly return to the Division the amount of ineligible or unincurred costs for which it was reimbursed.

K. Recovered Funds. Grantee shall promptly notify the Division if it recovers any Grant Funds previously paid to Grantee through rebates, refunds, contract settlements, audit recoveries or other means. Grantee shall use such recovered funds before requesting additional payments under this Grant Agreement. If Grant Funds and non-grant funds were both used to fund the contract under which funds are recovered, the recovery must be split between Grant Funds and non-grant funds proportionately. For example, if Grant Funds and non-Grant Funds each constituted 50% of the compensation under a contract and the Grantee recovers \$100 under that contract from the contractor, Grantee must allocate \$50 of the recovery to Grant Funds and \$50 to non-Grant Funds.

L. **The Grantee may not request reimbursement from the Division for any expenditure billed to another funding agency or source.**

M. Deadline for Submitting Requests for Payment. Requests for Payment for all unreimbursed expenditures must be received by the Division by the earlier of July 10 after the fiscal year in which the expenditures were incurred or fifteen (15) calendar days after the termination of this Grant Agreement; provided, however, that in the event this deadline falls on a weekend or other legal holiday, the deadline shall be extended until the next day that is not a weekend or legal holiday. Requests for Payment received after such deadline MAY NOT BE PAID.

N. Deficient Requests for Payment. The Division may disallow a Request for Payment,

in whole or in part, if the Request for Payment is deficient. Examples of deficient Requests for Payment include the lack of required signatures, lack of required supporting documentation, computational errors, seeking reimbursement for unallowable or ineligible expenditures, or questions concerning whether the reported expenditures are eligible expenditures under the Regulations, this Grant Agreement and applicable law and regulations. If a Request for Payment is disallowed, in whole or part, the Division shall promptly notify the Grantee of the disallowed amount, the nature of the deficiency, and what the Grantee must do to correct it.

## **ARTICLE V - MODIFICATION AND TERMINATION**

- A. Written Amendment Required. The terms and conditions of this Grant Agreement can only be modified or changed by written amendment executed by both the Division and the Grantee. Any attempted oral modification of the terms and conditions of this Grant Agreement shall be null and void and of no force or effect.
- B. Early Termination for Convenience (Without Cause): Except as provided in Article X (Appropriations), this Grant Agreement may be terminated early without cause by either party with 60 days written notice.
- C. Liability in the Event of Early Termination for Convenience (Without Cause): In the event of early termination of this Grant Agreement by either party for convenience, the Division's sole liability shall be to reimburse Grantee in accordance with this Grant Agreement for eligible expenditures that were:
  - 1. Incurred pursuant to a legally binding agreement entered into by Grantee before Grantee's receipt of the Division's notice of early termination or the date of Grantee's notice of early termination;;
  - 2. Incurred on or before the termination date in the notice of early termination;
  - 3. For permissible purposes under this Agreement's Program Description and procured and executed in accordance applicable law; and
  - 4. The subject of a request for payment properly and timely submitted in accordance with Article IV(M) of this Agreement.
- D. Termination for Cause. The Division may terminate this Agreement, impose sanctions and take other enforcement action for cause as provided in 2.110.5.18 NMAC.
- E. Termination Management: Immediately upon receipt by the Grantee of the Division's notice of termination or the date of the Grantee's notice of termination, of this Grant Agreement, the Grantee shall 1) not incur any further obligations for expenditure of funds under this Grant Agreement without written approval of the Division; and 2) comply with all directives issued by the Division as to the performance under this Grant Agreement.

## **ARTICLE VI – CERTIFICATIONS AND GENERAL TERMS**

- A. The Grantee hereby represents, warrants, and certifies that:
1. It has the legal authority to apply for and accept the Grant Funds.
  2. It has the institutional, managerial and financial capability (including sufficient non-grant resources) to ensure proper planning, management and completion of AAP being funded by this Agreement.
  3. The execution and delivery of this Grant Agreement by the Grantee and the consummation by the Grantee of the transactions contemplated herein have been duly authorized by all necessary corporate, county or municipal action on the part of the Grantee and no other corporate, county or municipal action on the part of the Grantee is necessary to authorize this Grant Agreement or to consummate the transactions contemplated herein.
  4. The person executing this Grant Agreement on behalf of the Grantee has the authority to do so, and, once executed by the Grantee and the Division, this Grant Agreement shall constitute a valid and binding obligation of the Grantee, enforceable in accordance with its terms.
  5. This Grant Agreement and the Grantee's obligations hereunder do not conflict with the Grantee's charter, ordinances, resolutions, or policies or any law or court order or decree to which it is subject.
  6. Debarment and Suspension and Other Responsibility Matters.
    - a. Grantee certifies by signing this Grant Agreement, that Grantee and Grantee's principals, if applicable, to the best of Grantee's knowledge and belief: (i) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal or New Mexico State department or agency; (ii) have not, within a three-year period preceding the effective date of this Grant Agreement, been convicted of or had a civil judgment rendered against Grantee or Grantee's principals for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Grantee's present responsibility; (iii) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the offenses enumerated in subsection b of this Paragraph; and, (iv) have not,



within a three-year period preceding the effective date of this Grant Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default. If applicable, Grantee certifies that it and its principals have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a.

- b. Grantee's certification in Subparagraph 6a is a material representation of fact upon which the Division relied when this Grant Agreement was entered into by the parties. Grantee shall provide immediate written notice to the Division if, at any time during the term of this Grant Agreement, Grantee learns that Grantee's certification in Subparagraph 6a was erroneous on the effective date of this Grant Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined that Grantee's certification in Subparagraph 6a was erroneous on the effective date of this Grant Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Division, the Division may terminate the Grant Agreement.
- c. Grantee shall require each proposed subgrantee, contractor, and subcontractor whose subgrant, contract, or subcontract will equal or exceed \$5,000 to disclose to the Division whether as of the time of award of the subgrant, contract, or subcontract, the subgrantee, contractor, or subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal or New Mexico State department or agency. Grantee shall make such disclosures available to the Division. If the subgrantee, contractor, or subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal or New Mexico State department or agency, the Division may refuse to approve the use of the subgrantee, contractor, or subcontractor.

Upon request, the Grantee shall provide evidence satisfactory to the Division that the representations, warranties, and certifications contained in this paragraph are true and accurate.

- B. The Grantee must comply with the following general conditions.
  - 1. All Grant activities must comply with the Act, the Regulations, and all other applicable state or federal laws and regulations.
  - 2. Grantee shall administer the Grant and finance its share of the costs of the AAP (if any), as reflected in the program Budget.
  - 3. All procurement for the program, whether using grant funds or not, must be conducted in accordance with (i) the State Procurement Code or, if Grantee is

a home-rule municipality or county that has adopted its own purchasing ordinance, its purchasing ordinance as well as (ii) Grantee's purchasing policies and regulations. .

Grantees, associated AAPs, and subcontractors will be **required** to complete a request-for-proposal (RFP) for contracts over \$60,000 unless their County's guidelines have more stringent requirements. In which case, the County's guidelines must be followed. Sole Source contracts may be utilized if justification can be provided that the contractor is the only one that can provide the services. The Grantee will be required to submit to DFA written documentation as to the reason for sole source contracting prior to entering into the contract and all provisions of the Procurement Code **MUST** be adhered to in regard to the requirements.

4. Contract Approval by the Division.

- a. All contracts to be funded with Grant Funds must be reviewed and approved in writing by the Division before Grantee can be reimbursed for expenditures under such contracts. By way of emphasis, Grantee has no right to reimbursement for an expenditure under a contract unless and until the contract has been approved by the Division in writing.
  - b. Unless a different standard of review is required by statute, regulation, or other provisions of this Grant Agreement, the Division's review and approval of contracts and amendments shall be limited in scope to determining whether the scope of the contract is consistent with the Program Description, the Budget, the Act, and the Regulations. This administrative review is not a legal review. By way of example, the Division shall not under any circumstances be required to make or make any determination as to whether a contractor is, in fact and law, an independent contractor or employee for tax law or other purposes.
5. Grantee shall adhere to all financial and accounting requirements of DFA, including, but not limited to, the financial management requirements set forth in 2.110.5.8(C) NMAC.
  6. Grantee shall comply with all applicable conditions and requirements prescribed by the Division in relation to receipt of Grant Funds.
  7. Grantee shall comply with all applicable guidelines requiring an annual background check on all staff and volunteers involved directly with youth in an alternative adjudication program.
  8. Grantee shall not at any time utilize or convert any equipment or property acquired or developed pursuant to this Grant Agreement for other than the uses specified in the Program Description without the prior approval of the

Division.

9. No member, officer, employee or family member(s) of the Grantee, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract, or the process thereof, for work to be performed in connection with the program assisted under the grant, and the Grantee shall incorporate, in all such contracts, a provision prohibiting such interest pursuant to the purposes of this certification.
10. Grantee shall ensure that all activities and programs funded through this grant comply with the Health Insurance Portability and Accountability Act of 1996, the Driver's Privacy Protection Act of 1994 and all other applicable state and federal requirements and regulations regarding confidentiality of youth participants.
11. In addition to contractual clauses required to be included in contract and subcontracts by other provisions of this Grant Agreement, Grantee shall include or cause to be included in any contract or subcontract funded with Grant Funds an affirmative obligation upon the contractor and subcontractor to comply with and submit to the access to information provisions of Article III (D) of this Grant Agreement.
12. Mandatory Waste, Fraud or Abuse Reporting. Grantee shall:
  - a. Promptly report to the Division any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has committed fraud, waste, or abuse involving Grant Funds.
  - b. Grantee shall include or cause to be included in any contract or subcontract funded with Grant Funds an affirmative obligation to comply with the mandatory waste, fraud or abuse reporting requirements specified herein.
13. Throughout the term of this Grant Agreement, Grantee must continuously be in compliance with the eligibility requirements of 2.110.5.9 NMAC.

## **ARTICLE VII - RETENTION OF RECORDS**

The Grantee shall keep records that fully disclose the amount and disposition of the total funds from all sources budgeted for the Grant Agreement period, the purpose for which such funds were used, the amount and nature of all contributions from other sources, other records to facilitate an effective audit, records to show its compliance with applicable law and this Grant Agreement, and other records as the Division shall prescribe. The records shall be preserved for a period of not less than six years following completion of all the conditions of this Grant Agreement.

## **ARTICLE VIII - REPRESENTATIVES; NOTICES**

- A. The Grantee designates the person listed below as the official Grantee Representative responsible for implementation of this Grant Agreement:

Name: Juanita McNiel  
Title: AJAP Representative  
Address: 2500 Trinity Drive, Suite C  
Los Alamos, NM 87544

Telephone: 505-662-8025  
Email: [juanita.mcniel@lacnm.us](mailto:juanita.mcniel@lacnm.us)

Grantee may change the Grantee Representative by giving the Division written notice of the change, in accordance with subparagraph C of this Article.

- B. The Division designates the person listed below as its Program Manager, responsible for overall administration of this Grant Agreement, including compliance and monitoring of Grantee:

Name: April Marie Salazar  
Title: Program Manager  
Address: Department of Finance and Administration  
Local Government Division  
407 Galisteo Street, Suite 203  
Santa Fe, NM 87501

Telephone: 505-827-4332  
Email: [april.salazar2@state.nm.us](mailto:april.salazar2@state.nm.us)

The Program Manager is the Division representative with the authority to approve on behalf of the Division all things requiring Division approval under this Agreement other than written amendments to this Agreement. The Division may change the Program Manager by giving Grantee written notice of the change, in accordance with subparagraph C of this Article.

- C. Notices of termination and any other notice required to be in writing and delivered in accordance with this paragraph shall be sent by email and facsimile or regular mail, addressed to the Grantee Representative or the Program Manager, as applicable, at their respective addresses and other contact information listed in Article VIII(A) or (B) above.

In the case of notices sent by mail only, notices shall be deemed to have been given/received upon the date of the party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of notice sent by email and facsimile transmission, the notice shall be deemed to have been given/received on the date reflected on the facsimile or email confirmation indicating a

successful transmission of all pages included in the writing. A party may specify a different person and/or address to send notices to by giving the other party advance, written notice of the change in accordance with this Paragraph.

#### **ARTICLE IX - SPECIAL CONDITIONS**

- A. A minimum of 10 percent of the proposed operating budget of the AAP assisted with the Grant Funds must come from sources other than Grant Funds or other state funds. Cash valued in-kind contributions may be used to meet this matching requirement; provided, however, that, in the event the Division disagrees with the Grantee's valuation of in-kind contributions, the Division's determination of the cash value of the in-kind contributions shall control for purposes of compliance with this matching requirement. The Grantee hereby budgets **One Thousand Dollars and No Cents (\$1,000.00), representing 10% of the alternative adjudication program's budget,** as its matching funds commitment.
- B. The Grantee shall not budget, nor at any time expend more than 5% of the grant amount awarded for indirect administrative costs incurred during the grant period.
- C. The Grantee shall not budget, nor at any time expend, Grant Funds for capital expenses or any other expenditure that is ineligible under 2.110.5.11-12 NMAC.
- D. The Grantee shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this Grant Agreement. The Grantee shall be liable for its acts or failure to act in accordance with this agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE X - APPROPRIATIONS**

The terms of this Grant Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of the Grant Agreement. If sufficient appropriations and authorizations are not made by the Legislature, the Division may *immediately* terminate this Grant Agreement, in whole or in part, regardless of any existing legally binding third party contracts entered into by or between Grantee and a third party, by giving Grantee written notice of such immediate early termination. The Division's decision as to whether sufficient appropriations are available shall be accepted by the Grantee and shall be final and non-appealable.

#### **ARTICLE XI – REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee shall include the following or a substantially similar termination clause in all contracts that are funded in whole or part by funds made available under this Grant Agreement:

“This contract is funded in whole or in part by funds made available under  
Department of Finance and Administration Local Government Division

(Division) grant agreement. Should the Division terminate the grant agreement, **Los Alamos County** may terminate this contract by providing contractor written notice of the termination in accordance with the notice provisions in this contract. In the event of termination pursuant to this paragraph, **Los Alamos County's** only liability shall be to pay contractor for acceptable goods and/or services delivered and accepted prior to the termination date."

#### **ARTICLE XII – CONFLICT BETWEEN AGREEMENT AND APPLICABLE LAW**

If any provision of this Grant Agreement irreconcilably conflicts with applicable law, rule or regulations, the applicable law, rule or regulation shall control and the conflicting provision of the Grant Agreement shall be deemed to have been amended to the extent necessary to make it consistent with applicable law, rule or regulation.

#### **ARTICLE XIII – SEVERABILITY**

If any term or condition of this Grant Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Grant Agreement shall not be affected and shall be valid and enforceable.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Grantee and the Division do hereby execute this Grant Agreement.

THIS GRANT AGREEMENT has been approved by:

LOS ALAMOS COUNTY

By: \_\_\_\_\_  
Authorized Signatory

Cathy Manager  
(Type or Print Name and Title)

10/16/18  
Date



STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF LOS ALAMOS )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October, 2018 by  
Harry Burgess.

Jacqueline D. Salazar  
Notary Public

My Commission Expires: 5-24-2021

DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION

By: \_\_\_\_\_  
Rick Lopez, Division Director

10/30/18  
Date

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 30 day of October, 2018 by  
Rick Lopez

Barela  
Notary Public



My Commission Expires: 3/16/2020

## **EXHIBIT 1**

### **PROGRAM DESCRIPTION**

**Name of Grantee: Incorporated County of Los Alamos**

**Grant No.: 19-J-16**

**Grant Amount: \$10,000.00**

The Los Alamos Teen Court Graduated Sanction Program, (TCGS) is an Alternative Juvenile Adjudication Program that is an entity of the local government of Los Alamos County through the Municipal Court. The graduated sanctions program has been in operation since December of 2015 and continues to offer comprehensive assessments, psycho-educational classes and case-management to the teens that meet the qualifications to participation in the program. TCGS has further contracted with Mesa Vista Wellness to provide the case-management and emotional management classes. JAF funds will be used to support the Teen Court coordinator in managing the direct referral program, support assessments for the offenders and provide psycho-educational classes. Since its inception, the graduated sanctions program continues to reach those teens and families who need these services the most, addressing the underlying problems that results in the criminal activity, evidenced by our participants completed programming, fulfilled requirements, and the lack of recidivism.

The Los Alamos TCGS Program accepts misdemeanor and felony charges, including, but not limited to charges of possession of paraphernalia, possession of a controlled substance, minor in position of alcohol, battery, public affray, shoplifting, larceny, petty larceny, criminal damage to property, reckless driving, negligent use of explosives, burglary, and harassment.

#### **Performance Measures/Activities:**

The program expects to work with 25 teens with a 90% completion rate.

#### **Services Available:**

All teen offenders entering the TCGS Program will be mandated to participate in the proposed programming of:

- Drugs and Alcohol Evaluation
- Comprehensive Assessment,
- Community Service (amount determined by charge)
- Anger Management /Emotional Self-Regulation psycho-educational class,
- Weekly meeting with case management supervisor.
- Attend a six week Emotional Management Class
- Attend weekly case management meetings



## EXHIBIT 2

### JUVENILE ADJUDICATION FUND QUARTERLY PROGRESS REPORT AND CERTIFICATION

**Name of Grantee: Incorporated County of Los Alamos**

**Grant No.: 19-J-16**

**Grant Amount: \$10,000.00**

**Reporting Period: July 1, 2018 – June 30, 2019**

#### Juvenile Adjudication Fund Reporting

1. Attach Juvenile Adjudication Fund Report Checklist
2. List accomplishments and/or any challenges in the implementation and administration of the program in a narrative or bulleted format. Include solutions to any challenges.
3. Attach the original signed and dated Request for Payment Form, Exhibit 4, which includes the in-kind/local match.
4. Attach the original signed and dated Exhibit 5, which includes the in-kind/local match.
5. Attach a copy of the Client Data Sheet, Exhibit 6.

#### Certification

1. I certify that all expenditures of Juvenile Adjudication Fund grant funds included within the attached Request for Payment Form were verified and accounted for in accordance with generally accepted accounting principles and a financial management system that meets the standards of 2.110.5.8(C) NMAC.
2. Under penalty of law, I hereby certify that to the best of my knowledge and belief, the information contained in this report, including all attachments, is correct and true and that **no other funding source is reimbursing the expenditures included within the attached Request for Payment Form for which reimbursement is being sought from Juvenile Adjudication Fund grant funds.**

*Sign and submit this form as part of each quarterly report.*

\_\_\_\_\_  
Grantee Representative

\_\_\_\_\_  
Grantee Fiscal Officer

\_\_\_\_\_  
Grantee Representative (print name)

\_\_\_\_\_  
Grantee Fiscal Officer (print name)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**..Title**

**Incorporated County of Los Alamos Code No. 02-292: An Ordinance Repealing Article VII, Safety in Public Places, of Chapter 28, Offenses and Miscellaneous Provisions.**

**..Recommended Action**

**I introduce, without prejudice, Incorporated County of Los Alamos Code Ordinance No. 02-292 and ask the staff to assure that it is published as provided in the County Charter.**

**..County Manager's Recommendation**

The County Manager recommends that Council introduce this Code Ordinance repealing Article VII, Safety in Public Places, of Chapter 28, Offenses and Miscellaneous Provisions contained in the Code of Ordinances of the County of Los Alamos, New Mexico. (See Attachment A)

**..Body**

On or about August 28, 2018, the Chair of the County Council received a letter from the American Civil Liberties Union of New Mexico (ACLU NM) raising constitutional concerns regarding Chapter 28, Article VII, Safety in Public Places of the Los Alamos County Code of Ordinances ("Safety in Public Places Ordinance"). (See Attachment B) The County Attorney's Office reviewed the letter, the Code Ordinance in question, as well as controlling case law.

Based on that review, the County Attorney's office concluded that the constitutional concerns raised in the August 28, 2018 letter warranted review of the Code Ordinance for potential revision or repeal. Given these warranted concerns, the County Council enacted a moratorium through Resolution 18-22 on the enforcement of the Code Ordinance. (See Attachment C)

Based on subsequent review, the County Attorney's office found numerous county ordinances, which do not raise the First Amendment concerns plaguing the current Safety in Public Places Ordinance, that should address the public safety concerns expressed in the Safety in Public Places Ordinance. These County ordinances include, but are not limited to, Section 28-101 (Disorderly Conduct), Section 28-102 (Disturbing the Peace), Section 18-103 (Obstructing Movement), Section 28-115 (Interfering with Traffic or Pedestrians), Section 28-141 (Trespass).

Further, should it later be demonstrated that the above ordinances are not sufficient to address an aggressive panhandling problem within the County, the County would be warranted in adopting a more carefully tailored ordinance to overcome the First Amendment concerns inherent in the current Safety in Public Places Ordinance.

**..Alternatives**

If the County Council does not approve Ordinance No. 02-292 repealing the Safety in Public Places Ordinance then the ordinance will remain in effect, and enforcement of the ordinance may resume after the expiration of the moratorium.

**..Fiscal and Staff Impact/Planned Item**

There is no substantial fiscal or staff fiscal impact associated with the adoption of Ordinance No. 02-292

**..Attachments**

A - Incorporated County of Los Alamos Ordinance No. 02-292

B - American Civil Liberties Union of New Mexico Letter Dated August 28, 2018, to County Council

C - Incorporated County of Los Alamos Resolution No. 18-22



## **UCR COUNCIL PRESENTATION**

**NOVEMBER 2018**

The Uniform Crime Reporting (UCR) program was established by the FBI in 1930 with the intent of establishing a reliable set of crime statistics for use in law enforcement administration, operation, and management. The contribution of UCR data by individual agencies is, and has always been, voluntary. While there are limitations to the UCR program, it is the pre-eminent law enforcement data collection process and over 17,000 law enforcement agencies submit their data to better inform policy development, grant funding, strategic and operational decision making, and criminological research and analysis. While presenting a nationwide view of crime, the data is regularly used comparatively amongst city, county, state, tribal, and federal law enforcement agencies.

Most states, including New Mexico, centralize data collection within the state prior to submitting the data to the FBI. The FBI then compiles, publishes, and distributes the data in three annual publications: Crime in the United States, Hate Crime Statistics, and Law Enforcement Officers Killed and Assaulted. Additionally, twice per year, the FBI publishes a Preliminary Semiannual Uniform Crime Report and Preliminary Annual Uniform crime Report, which provide the percent change of Part 1 offenses from the previous reporting period to the current one for population groups and geographical regions.

Offenses reported as crime statistics are determined by the FBI Uniform Crime Report Program and are classified as crimes against persons (violent crime) and crimes against property. The offenses of murder (homicide), rape, robbery and aggravated assault make up the violent crime category. The offenses of arson, burglary, larceny, and auto theft make up the property crime category. Both of these categories combined are referred to as Part I Offenses.

From the inception of the program, it was evident that differences among state criminal codes precluded a mere aggregation of state statistics to arrive at a national total. Therefore, a standardized model was created to include offense definitions by which law enforcement were to submit data without regard for local statutes.

There have been multiple changes to the program including a finer level of detail regarding many data points such as victim demographics, the addition of arson, the addition of Hate Crimes and bias motivation, and expanded definitions.

The need for more detail has resulted in another data collection program called the National Incident Based Reporting System (NIBRS). NIBRS collects data on each incident and arrest within 22 different offense categories made up of 46 specific crimes called Group A offenses. Data collection includes administrative, offense, victim, property, offender, and arrestee information. In addition, there are 11 Group B offenses for which only arrest data are collected. The intent of NIBRS is to take full advantage of available crime data maintained in modern law enforcement records systems, resulting in fuller and more meaningful data than

those traditionally produced by the UCR system. All law enforcement agencies are required to transition to NIBRS by 2021.

## **PROCESS**

Modern law enforcement records management systems are built to accommodate UCR reporting guidelines including the recent RMS system LAPD transitioned to (Executive Information Services EIS). The Officer who completes the report, is required to identify by statute, the relevant violations of law. The selection of the case type by the Officer results in the proper coding for Uniform Crime Reporting. In addition to them selecting the case type, the Officer must select the corresponding UCR code that specifically identifies a Part 1 crime, if applicable. The supervisor, then checks the report for errors. A second and third check is then conducted by the Records Supervisor and Operations Commander prior to a monthly compilation. However, it should be noted, the reconciliation of crime data can, and does change given the status of cases that are re-categorized based on additional information. This can occur up to months later. For example, we had a report of an aggravated robbery at an ATM which was initially classified and reported as a Part 1 Crime (Robbery). Through subsequent investigation, the robbery was determined to be unfounded as the incident was actually the result of a drug deal gone badly. Other examples could include an aggravated assault where the person ultimately dies. While initially classified and scored as an Aggravated Assault, it would ultimately be re-classified as a homicide. Sometimes the reconciliation can result in a change in the total Part 1 crime number, and other times it may result in a re-classification where the overall Part 1 crime number does not change.

Two other guidelines that impact overall Part 1 Crime numbers include the hierarchy rule with multiple-offense situations and the separation of time and place rule. The hierarchy rule is utilized when more than one Part 1 offense is classified as a result of the same incident, only the highest on the hierarchy list is scored and not the other offenses in the multiple-offense situation. For example, a burglar breaks into a home, steals several times, and places them in a car belong to the owner of the home. The homeowner returns and surprises the thief, who in turn knocks the owner unconscious by hitting him over the head with a chair. The burglar then drives away in the home owner's car. Applying the hierarchy rule to crime reporting, you would classify the offenses to include Burglary, Larceny, Robbery, Aggravated Assault, and Motor Vehicle Theft, while scoring only one offense, the Robbery, as the highest crime indicated within the list of Part 1 Offenses. For the Separation of Time and Place Rule, if the interval between offenses and distance between locations are insignificant, i.e. the offenses occur during an unbroken time duration at the same or adjoining locations, this constitutes a single criminal transaction. For example, 10 vehicles are broken into overnight all along the same street. Though multiple vehicle burglaries occurred, they are scored as one Part 1 crime due to the interval and location.

Despite limitations in the UCR program as a whole, significant internal and external processes are in place to enhance data collection accuracy. Permanent documentation of each crime is

made immediately upon receipt of a complaint or call for service. Shift supervisors have immediate oversight at the shift level to ensure all complaints and calls for service are promptly recorded and accurately tabulated, which is again evaluated by Records personnel and the Operations Commander to ensure the crime classification conforms to the uniform classification of offenses. Documentation is made in each case showing fully the details of the offense as alleged by the complaint and as disclosed by the investigation. The Chief Executive Officer signs off on all statistical reports and ensures the reports conform in all respects to the UCR standards and regulations.

The New Mexico State Program, who receives these reports must conform to the National UCR program standards. To participate in the program, the state must have a proven, effective, statewide program and have instituted acceptable quality control procedures. The state program must have adequate staff assigned to conduct audits and to assist contributing agencies in record-keeping practices and crime reporting procedures. The state program must have the proven capability to supply all the statistical data required in time to meet publication deadlines. The FBI edits and reviews individual agency reports for both completeness and quality. The FBI has direct contact with individual agency contributors within the state when necessary, assessing the validity of reported data by providing a quality assurance review. The FBI coordinates with the state UCR program to conduct training within the state on law enforcement record keeping and crime reporting procedures.

Beyond these stated accountability systems, the Los Alamos Police Department has a proven record of transparency as evidenced by: quarterly reporting of UCR crime to the community, community partnerships to include the Crime Tip Line and Website Crime Reporting in an effort to identify persons of interest and suspects in criminal activity, achieving National Accreditation through CALEA where all of our policies and records are open to inspection by Accreditation assessors (and by the way we were accredited with 100% compliance of all applicable standards), trust building programs within the community to include Coffee with a Cop where any citizen can inquire about the operations of the Department, Pro-Active crime prevention programs to include active shooter awareness and training, Crime Alert cards, public education, media releases to inform the public on emerging trends and scams, a comprehensive and accountability driven complaint process, and an open door policy with the Chief of Police who has consistently demonstrated a willingness to meet with citizens regarding concerns with the department.

The petitioners in this matter indicate, in pertinent part, they call on the County Council to address the issues of under-reporting criminal activity within the County of Los Alamos, and a review of the monthly UCR Return A forms submitted to NMPDA which represent higher levels of crime than that which is reported in the Annual Crime Reports submitted by LAPD.

I must assume that the impetus for the petition is related to a string of email inquiries by one of the petitioners, James Whitehead, who on May 16<sup>th</sup>, 2018 emailed me the following:

Chief,

I have been doing research on crime within Los Alamos County, and I notice that the reported occurrences of Part 1 violent crimes do not match the Uniform Crime Reports submitted by your office to the New Mexico Department of Public Safety. Specifically, 99 occurrences of part 1 violent crime were reported to the state in 2016, but only 17 occurrences were reported in the 2016 annual report submitted to the county. In 2017 only 25 occurrences of the 58 occurrences of Part 1 violent crimes reported to the state were included in the 2017 annual report. Why are the reports different?

I have requested and received all of the UCR Return A forms submitted by your office to the New Mexico Department of Public Safety, and the form clearly eliminates all unfounded/unsubstantiated reports of these crimes. I am hoping there is a reasonable explanation for the inconsistency, but after speaking with the DPS Records Staff, they have assured me that their records are accurate.

I am looking forward to receiving your reply.

Regards,

James Whitehead

Attached to this correspondence were copies of the 2016 and 2017 forms referred to in the email.

I responded to Mr. Whitehead that simply adding numbers on these forms versus what is reportable UCR activity are two separate functions. I included the UCR handbook so that he could gain a proper understanding of what the UCR program is and how various incidents are defined and reported. Other than some additional UCR related IPRA requests, I have not been contacted about this issue by Mr. Whitehead following this email exchange.

I conducted the following analysis for the 2016 and 2017 numbers comparing what was published in the annual report, versus the numbers submitted to the state for UCR, versus what appears on the FBI website:

|          | 16 Annual Report | 16 UCR Submission | 16 FBI Website |
|----------|------------------|-------------------|----------------|
| Rape     | 3                | 3                 | 3              |
| Robbery  | 1                | 1                 | 1              |
| Assault  | 13               | 14                | 14             |
| Burglary | 12               | 12                | 16             |
| Larceny  | 120              | 117               | 117            |
| MV Theft | 6                | 6                 | 6              |
|          |                  |                   |                |
| Total    | 155              | 153*              | 157            |
|          |                  |                   |                |
|          | 17 Annual Report | 17 UCR Submission | 17 FBI Website |
| Rape     | 4                | 4                 | 4              |
| Robbery  | 2                | 2                 | 2              |
| Assault  | 19               | 23                | 24             |
| Burglary | 11               | 11                | 11             |
| Larceny  | 88               | 80                | 80             |
| MV Theft | 2                | 2                 | 2              |
|          |                  |                   |                |
| Total    | 126              | 122               | 123            |

\*Two Arson offenses not listed on the Return A Forms

In evaluating Mr. Whitehead's concern regarding his email it appears he has added the total number of offenses known to police which include simple assault. For example, Mr. Whitehead stated in his email:

I have been doing research on crime within Los Alamos County, and I notice that the reported occurrences of Part 1 violent crimes do not match the Uniform Crime Reports submitted by your office to the New Mexico Department of Public Safety. Specifically, 99 occurrences of part 1 violent crime were reported to the state in 2016, but only 17 occurrences were reported in the 2016 annual report submitted to the county. In 2017 only 25 occurrences of the 58 occurrences of Part 1 violent crimes reported to the state were included in the 2017 annual report. Why are the reports different?

For 2016, Mr. Whitehead states there were 99 occurrences of violent crime reported to the state in 2016, but only 17 occurrences reported in the annual report. In 2016, we did report a total of 97 offenses under the Assault Category on the Return A. However, 2 of those were unfounded, and 81 were simple assault, neither of which are reported as Part 1 Crime.

Mr. Whitehead was further concerned that in 2017, only 25 occurrences of the 58 occurrences of Part 1 violent crimes reported to the state were included in the 2017 annual report. In 2017, there were a total of 58 total offenses reported under the Assault Category of the Return A. However, the 11 reported in January included a misprint as it was actually 10, 5 offenses were unfounded, and 28 were simple assault. Again, unfounded offenses and simple assault offenses are not Part 1 crimes and are not calculated as such.

In summary, I have highly dedicated and trained staff who devote considerable time to ensure all of our data entry and reporting are accurate. While these numbers do not always match across reporting platforms, the minor disparities are a product of either UCR reporting rules, cleared cases after the fact, or at times subject to human error in calculation. However, the numbers appropriately reflect crime rates in Los Alamos and are well within the range of acceptability.

Chief D. Sgambellone