

**INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 682**

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN  
COUNTY-OWNED REAL PROPERTY WITHIN  
TRACT MM TO LOS ALAMOS RE, LLC**

**WHEREAS**, the Incorporated County of Los Alamos, New Mexico (the “County”) is the holder and owner of certain real properties (the “Property”) within parcels generally known as Fire Station 6 Parcel, in Los Alamos, New Mexico, and more particularly described in the attached Purchase, Sale and Development Agreement; and

**WHEREAS**, the Property is intended to be utilized by County for economic development of the community and to enhance County’s self-sufficiency by reducing economic dependence on Los Alamos National Laboratory related revenues; and

**WHEREAS**, County finds that the sale of certain real property within Tract MM (Fire Station 6 Parcel) to Los Alamos RE, LLC, will be developed as a parking only to serve the adjacent property of 195 East Road and the deed shall carry a restriction that limits the use of the Property to “parking only” in perpetuity; and

**WHEREAS**, the current appraised fair market value of the Property has been determined by a qualified appraiser to be ONE HUNDRED SEVENTY-ONE THOUSAND FORTY-FIVE DOLLARS (\$171,045.00); and

**WHEREAS**, County agrees to sell the Property to Los Alamos RE, LLC, for ONE HUNDRED SEVENTY-ONE THOUSAND FORTY-FIVE DOLLARS (\$171,045.00) in cash at the closing which shall occur on or about October 1, 2018, in accordance with the terms and conditions contained in the Purchase and Sale Agreement; and

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

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

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

**Section 1.** That the County Manager is authorized to negotiate and enter into a Purchase and Sale Agreement with Los Alamos RE, LLC, whereby County will receive a total of ONE HUNDRED SEVENTY-ONE THOUSAND FORTY-FIVE DOLLARS (\$171,045.00) for the Property, as outlined in the Purchase, Sale and Development Agreement, attached hereto as Attachment A.

**Section 2.** The County Manager is hereby authorized to finalize and execute the Purchase Agreement, Deed, and such other closing documents as may be reasonably necessary

to close the transaction authorized herein provided that the closing documents shall be substantially in a form acceptable to the County Attorney.

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

**Section 4.** This Ordinance shall be effective forty-five (45) days after publication of notice of its adoption.

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

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

**ADOPTED** this 31<sup>st</sup> day of July, 2018.

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

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**David Izraelevitz,  
Council Chair**

**ATTEST:**

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

## Attachment A

### PURCHASE AND SALE AGREEMENT FOR A PORTION OF TRACT MM, 457 EAST ROAD, LOS ALAMOS, NEW MEXICO 87544, TO LOS ALAMOS RE, LLC

**1. PARTIES/PURCHASE.** This Purchase and Sale Agreement (“**Agreement**”), effective as of the last date a party hereto executes the Agreement (the “**Effective Date**”), is made by and between the Incorporated County of Los Alamos (“**Seller**”) who agrees to sell and convey to Los Alamos RE, LLC, a Colorado limited liability company (“**Buyer**”) who agrees to buy from Seller the Property described in Paragraph 2 below, on the terms and conditions contained herein. Buyer and Seller are sometimes collectively referred to herein as the “**Parties**.”

**2. PROPERTY.** Seller owns that certain real property in Los Alamos County, New Mexico located at 457 East Road, Los Alamos, New Mexico and described as Parcel 2 Eastern Area No 1 (the “**Fire Station 6 Parcel**”) on that plat of survey recorded in Los Alamos County Clerk’s office as document 132574 in Book 7, Page 24. A copy of such plat is attached hereto as Exhibit 1. Parcel MM, also known as the Fire Station 6 Parcel consists of approximately 84,000 sq. ft. The property (“**Property**”) which is the subject of this Agreement consists of approximately 32,212 sq. ft. (0.739 acres) of land in the western portion of the Fire Station 6 Parcel as shown on Exhibit 2, along with all rights, privileges, easements, tenements, hereditaments, rights of way and appurtenances that belong or appertain to the Property and are owned by Seller, including, without limitation, all development and air rights, to the extent consistent with paragraph 3.C of this Agreement, but excluding any minerals, oil, gas and other hydrocarbon substances on and under the land. Seller at its sole cost and expense, shall cause the Property to be surveyed by a licensed surveyor in the state of New Mexico and certified to Buyer (“**Subdivision Survey**”) and subdivided (Buyer shall have the right to approve the form of subdivision plat and any conditions included on said plat), and, upon completion of such subdivision and surveying, the legal description of the Property herein shall be conformed to the Subdivision Survey. The Subdivision Survey shall conform to all standards as may be required for subdivision purposes and for the deletion of Standard Exception No. 3 to Schedule B of the Owner’s Policy of Title Insurance [NM Form 1 (eff. 3-1-16)/ATLA Owner’s Policy (6-17-06)].

### **3. CONDITIONS OF SALE.**

**A.** Buyer agrees that the Property will be developed as parking only, to serve the adjacent property of 195 East Road.

**B.** Buyer agrees to landscape the Right of Way for the East Road (NM 502) frontage, provided that such landscaping shall include trees (minimum of 4) and shrubs (minimum of 6) to be completed at the time of construction of the parking lot.

**C.** Buyer agrees that the deed shall carry a restriction that limits the use of the Property to “parking only” in perpetuity.

**4. PURCHASE PRICE AND EARNEST MONEY.** The purchase price (“**Purchase Price**”) for the Property (subject to adjustment as described below) shall be calculated by multiplying the Net Square Footage (as defined below) by \$5.31. “**Net Square Footage**” shall mean the total gross square footage of the land, less any (i) land dedicated or required to be dedicated for public streets, sidewalks or any other public improvements, and (ii) areas that are subject to easements or public street rights of way that prohibit the construction of any

improvements (such as parking areas) other than landscaping. Notwithstanding anything to the contrary in the preceding sentence, areas required to be landscaped by Buyer pursuant to paragraph 3.B of this Agreement shall be included in the Net Square Footage regardless of topography or slope. The Net Square Footage shall be determined by the surveyor preparing the Survey. The Purchase Price shall be paid as follows:

<b>A. Purchase Price:</b>	\$171,045.00
<b>B. Earnest Money Deposit:</b>	\$ 5,000.00
<b>C. Balance of Purchase Price:</b>	\$166,045.00

The Earnest Money Deposit shall be paid to and deposited with Title Guaranty, LLC (the "**Title Company**") within three (3) business days of the **Effective Date**. The Earnest Money Deposit shall be credited to the Purchase Price at Closing (as hereafter defined), unless otherwise applied in accordance with the terms of this Agreement. The balance of the Purchase Price shall be paid by wire transfer or other immediately available certified funds acceptable to the Title Company at Closing. The Parties acknowledge and agree that Seller has not conditioned this Agreement on the use of any particular title company. Instead, the Parties have mutually agreed to designate Title Guaranty, LLC as the "Title Company" for purposes of this Agreement.

**5. PRE-CLOSING AND DUE DILIGENCE COSTS.** Buyer shall bear the cost of any inspections, tests, appraisals, and other activities related to Buyer's due diligence or financing. Each party shall bear the cost of its own attorneys and consultants.

**6. CLOSING DATE AND CLOSING COSTS.** The closing of the purchase and sale transaction contemplated under this Agreement ("**Closing**") shall take place in escrow at the offices of the Title Company within thirty (30) days of the satisfaction of all contingencies contained in this Agreement, or on such other date as the parties may mutually agree to in writing (the "**Closing Date**"). At Closing, the Parties shall deliver and execute the necessary documents to complete this transaction and submit the funds necessary to complete this transaction by wire transfer or other certified funds acceptable to the Title Company (and Seller agrees to deliver any reasonable and customary certificates and affidavits that may be required in the normal course by the Title Company, including, but not limited to affidavits stating that Seller has sole and exclusive possession of the Property, subject only to the Permitted Exceptions and stating that there have been no improvements, additions, alterations, repairs or any changes of any kind whatsoever made to the Property during the twelve (12) months immediately preceding Closing). The Parties shall share equally in all costs of Closing, except as provided otherwise by this Agreement. Buyer shall pay all Closing costs which are incurred as a result of the recordation of the deed conveying the Property to Buyer, all costs of Buyer obtaining financing and all costs incurred as a result of requirement of the Buyer's lender, including but not limited to, appraisals, credit reports, mortgage recording fees, mortgagee's title commitment and policy, and loan transfer fees. Property-specific fees, including real estate taxes and assessments, shall be prorated between the Parties as of the Closing Date.

**7. POST CLOSING.** Following the satisfaction or waiver of all Contingencies set forth in paragraph 16 hereof, and the receipt of the Purchase Price and other items specified in paragraph 6 hereof, the Title Company shall (i) file the Deed of record, (ii) deliver the Deed and title insurance policy to Buyer, (iii) deliver such other documents as applicable to the proper party and (iv) disburse the funds as shown on the closing settlement statements. If the Contingencies are not satisfied or waived and the transaction does not close, the Title Company shall hold the

unrecorded documents and funds thereafter as agent for the parties. The documents and funds shall be delivered as provided in paragraph 16, below.

## **8. TITLE INSURANCE AND CONVEYANCE.**

**A.** Buyer is responsible for all costs of title insurance, including the removal of any preprinted exclusions to the title insurance policy and the addition of any endorsements to such policy.

**B.** Seller shall convey the Property to Buyer by special warranty deed ("**Deed**") at Closing subject to the deed restrictions set forth in paragraph 3, *ad valorem* real estate taxes for 2018 subsequent years and any restrictions, and Permitted Exceptions (as defined in paragraph 16.A hereof).

**C.** Buyer will receive title under the name set forth above and the address for property tax notices shall be Buyer's address set forth in paragraph 13 below.

**9. LEGAL DESCRIPTION.** Seller shall provide an updated legal description of the Property at the time of Closing, consistent with the Subdivision Survey.

**10. POSSESSION.** Seller agrees that vacant and physical possession of the Property shall be delivered to Buyer at Closing. The Property shall be delivered in its present condition, unless otherwise required by this Agreement.

**11. CASUALTY PROVISIONS.** Prior to Closing, risk of loss or damage to the Property or any improvements located thereon, whether by fire, windstorm or other peril (including water damage) shall be on Seller, and in the event of loss, Buyer shall have the option (to be exercised by written notice to Seller within five (5) days after receipt of notice of loss) of canceling this Agreement and receiving back the earnest money or closing with the Property "as is" and receiving assignment at closing of Seller's portion of the insurance proceeds, if any, necessary to restore the Property to its present condition. If Buyer fails to timely notify Seller of its election, Buyer shall be deemed to have elected to close.

**12. DEFAULT.** Time is of the essence. If any payment or any other condition hereof is not made, tendered or performed by either Seller or Buyer as herein provided, then this Agreement, at the option of the party who is not in default, may be terminated by such party. In the event of such default by Seller, then the Earnest Money Deposit shall be returned to Buyer and Buyer shall have no further rights under this Agreement, except for the right of specific performance. In the event of such default by Buyer, the Earnest Money Deposit shall be forfeited by Buyer as fixed and liquidated damages and immediately paid to Seller and Seller shall have no further rights under this Agreement.

**13. NOTICE.** Any notice, demand, request, approval, or other communication (a "**Notice**") which, under the terms of this Agreement or under any statute, must or may be given by the parties, must be in writing and shall either be hand-delivered, transmitted by facsimile, sent by overnight courier or delivery service, or sent by United States Mail, registered or certified, return receipt requested and postage prepaid, addressed to the respective parties at the following addresses:

To Seller: County of Los Alamos  
C/O Harry Burgess, County Administrator  
1000 Central Avenue, Suite 350  
Los Alamos, New Mexico 87544  
Facsimile: 505-662-8079

To Buyer: Los Alamos RE, LLC  
c/o Leadership Circle, LLC  
1521 Oxbow Drive, Suite 210  
Montrose, Colorado 81401  
Tel: 970-249-3398  
Email: info@leadershipcirclellc.com

With a copy to: Pack & Rees, PLLC  
7373 N. Scottsdale Road, Suite B210  
Scottsdale, Arizona 85253  
Attention: Stuart Pack  
Facsimile: 480-264-2201

Title Company: Title Guaranty Company  
1631 Central Avenue  
Los Alamos, New Mexico 87544  
Attention: Andrew Martinez  
Facsimile: 505-662-6891

Notices, demands, requests, and exercises served in the above manner shall be considered sufficiently given or served for all purposes under this Agreement (a) upon actual receipt, if hand-delivered, (b) upon confirmation of transmission, if sent by facsimile, (c) the date of deposit, if sent by U.S. Express Mail or overnight courier service, or (d) three (3) days after postmark, if sent by U.S. Mail. Copies of all notices shall also be given to the Title Company. Notices by a party may be given by legal counsel or the authorized agent of such party.

**14. SURVIVAL CLAUSE.** Terms of this Agreement that provide for rights, duties, and/or obligations that expressly or logically extend beyond the expiration or earlier termination of this Agreement, including indemnity obligations, shall survive such expiration or earlier termination of this Agreement and shall not merge at Closing; rather, they shall survive the Closing and bind the parties hereto.

**15. BUYER'S DISCLOSURES.** Buyer hereby discloses, represents and warrants to Seller that:

**A.** The sale of the Property hereunder is and will be made on an "as is, where is" basis and Seller has not made, does not make and specifically negates and disclaims any representations, warranties or guarantees of any kind or character, whatsoever, whether express or implied, oral or written, past, present, future or otherwise, of, as to, concerning or with respect to the Property.

**B.** Buyer has or will complete all physical and financial examinations relating to the acquisition of the Property hereunder and will acquire the same solely on the basis of such examinations and the title insurance protection afforded by the title policy and not on any information provided or to be provided by Seller.

C. Any information provided or to be provided with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information.

D. Seller shall not be liable for any negligent misrepresentation or any failure to investigate the Property nor shall Seller be bound in any manner by any verbal or written statements, representations, appraisals, environmental assessment reports or other information pertaining to the Property or the operation thereof, furnished by Seller or by any real estate broker, agent, representative, employee, servant or other person acting on Seller's behalf.

E. It is understood and agreed that the Property is sold by Seller and purchased by Buyer subject to the foregoing.

**16. CONTINGENCIES.** Buyer's obligations to purchase the Property shall be contingent upon the following:

**A. Title Contingency.** Buyer, at Buyer's expense, shall order a commitment to insure title (the "**Title Commitment**") from the Title Company within three (3) business days of the Effective Date. Buyer shall have twenty (20) days from the receipt of the Title Commitment (and all items listed as special exceptions therein) (the "**Title Review Period**") in which to object to the Title Commitment by delivering to Seller written notice of objection. If Buyer fails to notify Seller of any objections within the Title Review Period, Buyer shall be deemed to have accepted the Title Commitment, including any exceptions identified therein, and this Title Contingency shall be removed. Seller has the option to remove objections at its cost. If Seller elects to cure, it shall notify Buyer of its intent to cure within twenty (20) days of receipt of Buyer's written objection(s) and this Agreement shall remain in full force and effect. Failure of Seller to respond to Buyer's objection(s) within this period shall be deemed a refusal to cure any of them. Seller shall have five (5) business days from delivering notice of intent to cure to effect a cure of Buyer's title objections. If Seller is unable or unwilling to cure Buyer's title objections, Buyer may either choose to: (i) accept the Property as offered or remedied by the Seller and proceed to Closing; or (ii) terminate this Agreement and have returned the Earnest Money Deposit. Any exceptions to title not objected to by Buyer or as to which objections have been waived shall be deemed "**Permitted Exceptions.**"

**B. Survey Contingency.** Within three (3) business days of the Effective Date, Seller shall order the Subdivision Survey, which shall be sufficient for the creation of the Property by subdivision as contemplated by paragraph 2 hereof. Buyer shall have five (5) days from receipt of the Survey in which to object to the Survey or any condition revealed thereby ("**Survey Review Period**") by delivering to Seller written notice of objection. If Buyer fails to notify Seller of any objections within the Survey Review Period, Buyer shall be deemed to have accepted the Survey and this Survey Contingency shall be removed. Seller has the option to remove objection(s) at its cost. If Seller elects to remove the objection(s), it shall notify Buyer of its intent to cure within thirty (30) days of receipt of notice of Buyer's objection(s) and this Agreement shall remain in full force and effect. Failure of Seller to respond to Buyer's objection(s) within this period shall be deemed a refusal to cure any of them. Seller shall have five (5) business days from providing notice of intent to cure to effect a cure of Buyer's survey objections. If Seller is unable or unwilling to cure Buyer's survey objections, Buyer may either choose to: (i) accept the Property as offered or remedied by the Seller and proceed to Closing; or (ii) terminate this Agreement and have returned the Earnest Money Deposit.

**C. Updates.** If any title exceptions or survey matters are disclosed by updates of the Commitment and/or Survey or other title "date-downs" that affect the marketability or insurability of the title to the Property, Buyer may, within ten (10) days of receiving the update or "date-down" (the "**Update Review Period**"), object to any such matter by delivering to Seller written notice of objection. If Buyer fails to notify Seller of any objections within the Update Review Period, Buyer shall be deemed to have accepted the updated Title Commitment, including any exceptions identified therein, and this contingency shall be removed. Seller has the option to remove objections at its cost. If Seller elects to cure, it shall notify Buyer of its intent to cure within twenty (20) days of receipt of Buyer's written objection(s) and this Agreement shall remain in full force and effect. Failure of Seller to respond to Buyer's objection(s) within this period shall be deemed a refusal to cure any of them. Seller shall have five (5) business days from delivering notice of intent to cure to effect a cure of Buyer's objections. If Seller is unable or unwilling to cure Buyer's objections, Buyer may either choose to: (i) accept the Property as offered or remedied by the Seller and proceed to Closing; or (ii) terminate this Agreement and have returned the Earnest Money Deposit. Any exceptions to title not objected to by Buyer or as to which objections have been waived shall be deemed "**Permitted Exceptions.**" Notwithstanding anything herein contained to the contrary, any existing mortgages, deeds of trust, deeds to secure debt, mechanics' or materialmen's liens, judgment liens or similar monetary liens and encumbrances, as well as any tenants or other parties in possession of all or any portion of the Property, shall be automatically deemed matters to which objection is made by Buyer, regardless of whether Buyer gives written notice of objection thereto to Seller, and Buyer under no circumstances shall be deemed to have waived any such matters, nor shall same be considered Permitted Exceptions hereunder, unless such waiver shall be an express waiver in writing executed by Buyer.

**D. Inspection Contingency.** Buyer has thirty (30) days from the Effective Date ("**Inspection Period**") in which to secure whatever inspections Buyer feels it prudent to perform. Should Buyer desire to terminate this Agreement for any reason on or before the expiration of the Inspection Period, then Buyer may, at its option, terminate this Agreement by giving written notice of termination to Seller on or before the expiration of the Inspection Period whereupon Title Company shall immediately refund to Buyer the Earnest Money Deposit and this Agreement shall be deemed null and void and of no further force or effect with Buyer and Seller having no further rights, obligations or liabilities hereunder, except for matters that by the terms hereof expressly survive termination. Seller will provide Buyer or its agent reasonable access to the premises to perform inspections. Should inspections reveal any conditions that Buyer wishes Seller to remedy, Buyer will provide a written report of such condition to Seller within the Inspection Period. If Buyer fails to terminate this Agreement within the Inspection Period, Buyer will be deemed to have waived this Inspection Contingency. Seller has the option of remedying any reported condition(s) at its cost. If Seller elects to remedy the condition(s), it shall notify Buyer of its intent to cure within thirty (30) days of receipt of the report and this Agreement shall remain in full force and effect. Failure of Seller to respond within this period shall be deemed a refusal to cure any reported condition. Should Seller elect to perform the remediation, it will provide the results of its work to the Buyer within ten (10) days of completion. Buyer will then have ten (10) days to notify Seller in writing of its election to either (i) waive its Inspection Contingency and proceed to Closing, or (ii) terminate this Agreement and have returned the Earnest Money Deposit.

All inspections shall be paid for by Buyer. Buyer shall indemnify, defend, and hold Seller harmless from and against any and all costs, claims, liabilities or damages (including attorneys' fees) incurred by or asserted against Seller (including damage to the Property) arising out of or resulting from any inspection or survey of the Property made by or on behalf of Buyer.



**ATTEST**

**INCORPORATED COUNTY OF LOS ALAMOS**

\_\_\_\_\_  
**NAOMI D. MAESTAS**  
**COUNTY CLERK**

**By:** \_\_\_\_\_ **DATE**  
**HARRY BURGESS**  
**COUNTY MANAGER**

**Approved as to form:**

\_\_\_\_\_  
**J. ALVIN LEAPHART**  
**COUNTY ATTORNEY**

# Exhibit 1

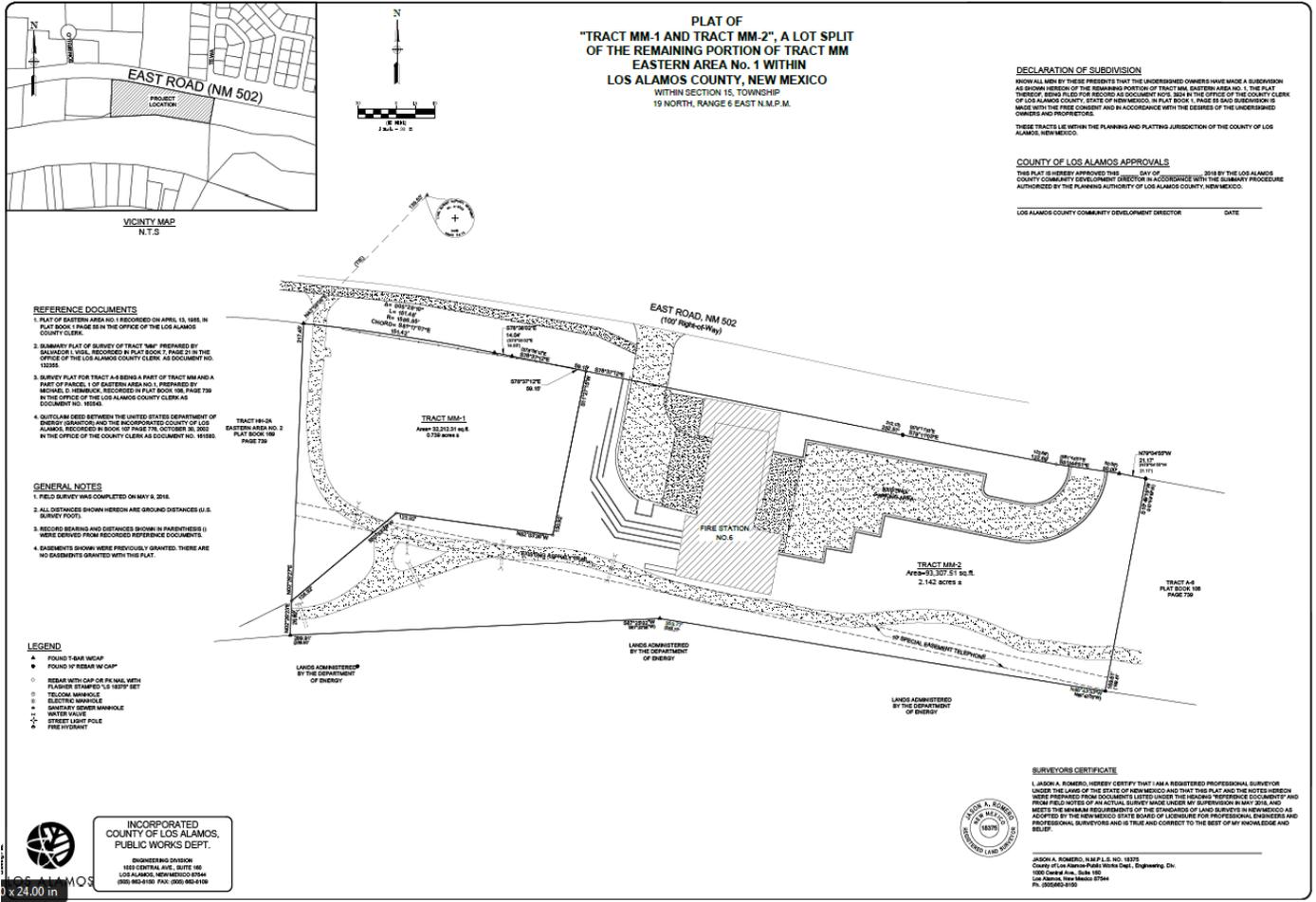


Exhibit 2

