

**SANTA FE COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
**REGULAR MEETING**  
**October 10, 2017**

Henry Roybal, Chair - District 1  
Anna Hansen, Vice Chair - District 2  
Anna Hamilton - District 4  
Ed Moreno - District 5  
Robert A. Anaya - District 3 - telephonically

SFC CLERK RECORDED 11/15/2017

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**October 10, 2017**

**I. A.** This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:10 p.m. by Chair Henry Roybal in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

**B. Roll Call**

Roll was called by County Clerk Geraldine Salazar and indicated the presence of a quorum as follows:

**Members Present:**

Commissioner Henry Roybal, Chair  
Commissioner Anna Hansen, Vice Chair  
Commissioner Robert A. Anaya [telephonically]  
Commissioner Anna Hamilton  
Commissioner Ed Moreno

**Members Excused:**

None

- C. Pledge of Allegiance**
- D. State Pledge**
- E. Moment of Reflection**

The Pledge of Allegiance was led by Chris Narvaiz, the State Pledge by Rick Francisco and the Moment of Reflection by Rudy Carrillo of the Public Works Department.

- F. Approval of Agenda**
  - 1. Amendments**
  - 2. Tabled or Withdrawn Items**

CHAIR ROYBAL: Is there any amendments or tabled or withdrawn items?

KATHERINE MILLER (County Manager): Yes, Mr. Chair. We posted the amended agenda on Friday the 6<sup>th</sup> at 1:29 pm. That agenda included a few items that had been added or captions changed or moved around. So if you go to page 2 on your

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agenda under miscellaneous II. B. 2, the resolution approving a lease agreement, that item was on but we had to clarify the caption. Then a little further down, under Action Items, Miscellaneous, item III. B. 2, the authorization to utilize design-build project delivery method, that item was added, as well as item III. B. 3, another request to authorize a design-build project delivery method.

Then at the bottom of page 3, under Matters from the County Attorney, we did add some items under executive session, and that would be item VI. A. 2, 3 and 4. And then also item VI. B was added, and that is a resolution authorizing the County Manager to take action necessary or appropriate to join as a plaintiff in an action against the United States Department of Housing, or HUD.

The also under our Public Hearings, item VIII. A. 5. These are land use cases. That item has been tabled. So those are all of the amended or withdrawn or tabled items that were posted to the amended agenda on October 6<sup>th</sup>.

CHAIR ROYBAL: Okay, is there any other tabled, or amendments or withdrawn items to be changed? Okay, I did have one request to move item number VII. B. 1 before executive session, so we'll be moving VII. B. 1 before executive session, and that is a presentation, a recognition of Shelley Mann-Lev for her dedication and service as the director of the Santa Fe Prevention Alliance and prevention coordinator.

So we need a motion. Do I hear a motion to approve?

COMMISSIONER HANSEN: I move to approve the agenda as amended.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: And a second by Commissioner Hamilton.

**The motion passed by unanimous [5-0] voice vote.**

- I. **G. Approval of Minutes**
  - 1. **Approval of September 12, 2017 Board of County Commissioners Meeting Minutes**

CHAIR ROYBAL: Is there any amendments or changes to that? Corrections? No? Okay, seeing none, what's the pleasure of the Board?

COMMISSIONER HAMILTON: Move to approve.

CHAIR ROYBAL: So we have a motion. Do I hear a second?

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: We have a motion from Commissioner Hamilton and a second from Commissioner Moreno.

**The motion passed by unanimous [5-0] voice vote.**

## II. **CONSENT AGENDA**

### A. **Resolutions**

- 1. **Resolution No. 2017-102, a Resolution Requesting a Budget Increase to the Law Enforcement Operations Fund (246) to Budget a Vehicle Purchase From an Insurance Recovery / \$14,742.50 (Finance Division/Don Moya)**

2. **Resolution No. 2017-103, a Resolution Requesting a Budget Increase to the Law Enforcement Operations Fund (246) to Budget Extension Funding Awarded Through the HIDTA Grant Program / \$5,729.11 (Finance Division/Don Moya)**
3. **Resolution No. 2017-104, a Resolution Requesting a Budget Increase to the Assessor's Property Valuation Fund (203) Budget to Purchase a New Chat Service Software Subscription (Assessor/ Gus Martinez)**

**B. Miscellaneous**

1. **Request Approval of Sub-Lease Agreement No. 2018-0117-GM Between Santa Fe County and Black Mesa Wireless, LLC to Use the REDI Net Fiber Lines to the Pojoaque Pueblo Fire Station for a Hook Up to an Internet Service Provider in Order to Provide Broadband Service to End-Users in the Pojoaque Valley (Growth Management/Chris Hyer)**
2. **Resolution No. 2017-\_\_\_\_, A Resolution Approving Lease Agreement No. 2018-0119-PW Between Santa Fe County and Santa Fe Recovery Center, Inc. for the Operation of a Detoxification and Sobering Center at 2052 Galisteo Street, Santa Fe, NM (Public Works/Terry Lease) ISOLATED FOR DISCUSSION**
3. **Request Approval of Amendment No. 3 to Price Agreements No. 2015-0073-A-ASD/PL with Matthews Office Supply; Agreement No. 2015-0073-B-ASD/PL with Midway Office Supply; and Agreement No. 2015-0073-C-ASD/PL with School Specialty Office Supply for Office Supplies for all County Departments and Authorization for the County Manger to Sign the Purchase Orders. (Purchasing/Bill Taylor)**
4. **Amendment No. 1 to Collective Bargaining Agreement Between Santa Fe County, New Mexico and the American Federation of State, County, and Municipal Employees; New Mexico Council 18, Local 1782, AFL-CIO (Human Resources/Bernadette Salazar)**

CHAIR ROYBAL: Do we have any items on our Consent Agenda that need further explanation or would like to be moved to III. A. for extended discussion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I'd like to pull the item for the purchase of the fire apparatus from Galveston, and then I just have a couple questions. And then I would just like if Ms. Miller could talk briefly about the lease agreement with the recovery center. Those two items, Mr. Chair.

CHAIR ROYBAL: So this is on the Consent Agenda. Do you know which item numbers those are, Commissioner.

COMMISSIONER HANSEN: B. 2, I would also appreciate a few questions about that under the Consent Agenda.

TONY FLORES (Deputy County Manager): Mr. Chair, the actual item B. 2 is under Action, so we'll have a presentation on that one. That one is not under Consent. If that's the one Commissioner Anaya is referring to, that's where the Houston Galveston cooperative purchasing agreement is.

COMMISSIONER ANAYA: Oh, good. If it's action then I'm fine. I just have a couple questions. So then with the recovery center, that one's on Consent. Right, Tony?

CHAIR ROYBAL: I'm seeing item #B. 2. Is that correct?

MR. FLORES: Yes, Mr. Chair. That's on Consent.

COMMISSIONER ANAYA: B. 2, I just want a brief explanation of that.

CHAIR ROYBAL: Okay, so we're going to go ahead and move item #B. 2 for extended discussion, under III. A. So was that a motion, sir, with that one being pulled for more explanation? Commissioner Anaya.

COMMISSIONER ANAYA: Yes, I'll move it.

CHAIR ROYBAL: Okay, so we have a motion with item #B. 2 under extended discussion. Is there a second?

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: So we have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

[Clerk Salazar provided the numbers for the Resolutions throughout the meeting.]

### III. ACTION ITEMS

#### A. Items from Consent Agenda Requiring Extended Discussion/ Consideration

- II. B 2. **Resolution No. 2017-105, a Resolution Approving Lease Agreement No. 2018-0119-PW Between Santa Fe County and Santa Fe Recovery Center, Inc. for the Operation of a Detoxification and Sobering Center at 2052 Galisteo Street, Santa Fe, NM [Exhibit 1: Resolution Text]**

MR. FLORES: Mr. Chair, how does Commissioner Anaya want this item?

CHAIR ROYBAL: Do you want under discussion, Commissioner Anaya, or do you have specific questions?

COMMISSIONER ANAYA: I just want a brief synopsis of what we're doing.

CHAIR ROYBAL: Okay.

TERRY LEASE (Public Works): Mr. Chair, Commissioner Anaya, this agreement – Christus St. Vincent has operated the detox center for several years. That agreement terminated August 24<sup>th</sup>. We entered into a short-term agreement with Santa Fe Recovery Center, giving us time to allow to prepare a longer-term agreement, which is before you here today.

The purpose of this agreement before you here today is to allow Santa Fe Recovery Center to continue to operate the detox center in the County building on Galisteo while we prepare a competitive process to find a new, long-term provider.

MS. MILLER: Mr. Chair, I might be able to add to that. If you recall, we had two separate agreements with Christus. We had a lease agreement for the facility, and they leased it from us, and then we had an operating agreement and they operated the facility. Now we have an operating agreement with the Recovery Center and we need to match that with a lease, because the Christus St. Vincent lease has expired or is expiring. So this is to match a lease of the facility to go along with the operating agreement. And then we'll be going out for longer term operating agreement and then we'll also look at whether we need to have the same lessee when we do the operating agreement. So this is to marry the two – the operating agreement and the lease of the facility for them to operate.

CHAIR ROYBAL: Okay, thank you for that explanation Manager Miller and Mr. Lease. Commissioner Anaya, did that answer your question?

COMMISSIONER ANAYA: So Mr. Chair, I appreciate the summary. These are, as everyone knows, essential functions and programs and services that we offer. Could you briefly, Ms. Miller, or Rachel or anyone else, comment on our comfort level with the capacity to deliver these services in the interim basis? Do we feel good, like they're going to be able to handle the administration of these facilities and services provided in the county and in the city?

RACHEL O'CONNOR (Community Services Director): Mr. Chair, Commissioner Anaya, we do. We feel very confident in the program that has been put forth by the Santa Fe Recovery Center. They are accepting new clients. They are providing a more intensive level of service than we have historically provided there that includes long-term navigation, counseling, enhanced medical services. So we have been very pleased thus far with the service that's being provided.

COMMISSIONER ANAYA: Excellent. I appreciate that, Ms. O'Connor and Ms. Miller and the team and Mr. Chair, I think it is an important enough service to make sure we highlight that we're still functioning and providing those services and now we're going to engage in a process to select a longer-term person or group. It may be them; it may not, but that we're currently functioning and providing the continued service to the community which is the operative point. So I just wanted to highlight that and ask those questions. I appreciate the indulgence, Mr. Chair, and I'd move for approval.

CHAIR ROYBAL: Okay. I agree with you 100 percent and I think we all realize that this service is imperative, so thank you, Commissioner Anaya. So I have a motion from Commissioner Anaya. Do I hear a second?

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: And we have a second from Commissioner Hansen. Under discussion, is there anything else? I know, Commissioner Hansen, you may have had other questions?

COMMISSIONER HANSEN: That was adequate and what I wanted to hear also. But I think it's really important, these services that we provide. I'm sure that you're looking forward to working with the Recovery Center continuing. And that relationship, because it seems to be moving in a very positive direction.

CHAIR ROYBAL: Thank you, Commissioner Hansen. Any other discussion from Commissioners? No? So we have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**III. B. Miscellaneous**

**1. Request Board of County Commission Approval to Utilize the Houston Galveston Area Council Cooperative Purchase Agreement, Pursuant to Ordinance No. 2012-5, Section 1, Outside Contracts, to Purchase Two (2) Fire Department Ambulances in the Amount of \$564,373 and Authorization for the County Manager to Sign the Purchase Order**

MR. FLORES: Thank you, Mr. Chair. Good afternoon, Commissioners. Item III. B. 1 is requesting authorization from the Board to utilize the HGAC purchasing agreement process pursuant to Ordinance 2012-5m which allows the County, if approved, to use outside contracts. In this particular case we are looking for approval to purchase two fire ambulances, one that will replace Med 61 for the Agua Fria district and the second one will replace Med 80, which serves the eastern region, specifically the Eldorado, the Hondo, the Galisteo and the Glorieta fire districts. And with that, Mr. Chair, I'll stand for questions.

CHAIR ROYBAL: Do we have any questions from the Board?

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I appreciate letting me ask a question. Mr. Flores, we routinely purchase our fire apparatus, medical units, from a couple different providers and highly specialized – I understand they're highly specialized acquisitions and require highly specialized companies. But I wanted to just get your feedback as the former purchasing director and if anybody else would want to comment I'd be all ears open to assure that we're doing everything we can on our end to make sure that we're going through a competitive process and that we don't get too comfortable with agreements that we have with primary operators and companies. And I say that respectfully.

I don't say that and thinking that any staff or anything in any way but when you look at the acquisitions of this type of apparatus and the money that we expend to acquire this type of apparatus, it's a lot of money. And so I always like to stop and take a look at it and say, are we still as confident as we've always been that we're utilizing our money with the highest and best practice and functionally providing all providers that opportunity for competitive acquisitions.

So I can think of two companies – Becker and these guys and maybe one or two others but is our comfort level still the same associated with our acquisitions for these very large purchases?

MR. FLORES: So, Mr. Chair, Commissioner Anaya, I think that's an excellent question and one that I think you and I struggled with back in the early 1990s and 2000s when we were doing different types of acquisitions. I can tell you when we

utilize outside contracts, in this case the HGAC contract, that contract is competitively bid and that's one of the reasons why that mechanism is – I don't like to use the word convenient, but it is convenient for the County to readily acquire emergency apparatus in a timely fashion rather than going through a traditional bid-build process where we get the specs and then we send them out and then they build.

So with the HGAC contract, having an in-depth familiarity with it not only at the County but also with the City of Albuquerque we've purchased every one of our transit authority buses through this contract because of the fact that they do a national competitive process and they refine and they refine the bids. So I think from this particular acquisition, I am very confident. I am not the purchasing manager but very confident that HGAC provides the County a convenient and cost-effective way to acquire these large buys.

COMMISSIONER ANAYA: Mr. Chair, Tony, I appreciate that. Like I said, we make some large acquisitions with these companies and I just – from time to time, want to maybe reframe and restate the reasoning, and you've articulated that and I think it's just important to put on the record that we care and are cautious about the tax dollars we spend and do everything we can in due diligence to make sure we're getting the best price we can for the very specific needs that we have as it relates to this type of equipment. Thank you, Mr. Chair. I'll move for approval.

CHAIR ROYBAL: Thank you, Commissioner Anaya. Okay, we have a motion. Do I hear a second?

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: I have a motion and a second. Under discussion, I'm going to go to Commissioner Hansen and then I'm going to go to Commissioner Hamilton.

COMMISSIONER HANSEN: Yes, thank you. Thank you, Commissioner Anaya, for your questions. Also, I noticed on the back page that one person will be going to Horton for final inspection and to pick up the trucks. Who will that be so that we're making sure that we get what we ordered?

DAVE SPERLING (Fire Chief): Mr. Chair, Commissioner Hansen, normally, we send our chief fleet mechanic to do the final inspection at the site to make sure that the vehicle has been built in accordance with our specifications.

COMMISSIONER HANSEN: Okay. Thank you very much.

MR. FLORES: And Mr. Chair, I just want to point out that that's standard operating procedure with the Fire Department, whether we use this contract or do our own bid. They always require the Fire Department to go out and inspect and accept before delivery is made.

CHAIR ROYBAL: Okay. Thank you. Commissioner Hamilton

COMMISSIONER HAMILTON: I actually just had a quick follow-up question to Commissioner Anaya's question. Does working through this contract – you mentioned it was competitively bid itself. Does that give us some – and this is just partly interest, future knowledge – does that give us some better buying power, essentially because they're doing more purchases than we ourselves would do and so you get some –

MR. FLORES: Mr. Chair, Commissioner Hamilton, absolutely. We leverage their buying power or their power to go out and solicit large contracts with a

definite quantity of items on there. So we're actually leveraging HGAC's ability to go out and get the best obtainable price for different pieces of equipment or apparatus.

COMMISSIONER HAMILTON: Question to Chief Sperling through. I certainly hope I know what the answer is but I know how badly these are needed but in that whole budget constraints and always trying to be efficient, do you feel like you've got what you felt we really needed in these or did you have to cut some corners or leave some things on the table?

CHIEF SPERLING: Mr. Chair, Commissioner Hamilton, no. We pretty much build the ambulances in accordance with what our needs are, and since this is funded out of our fire excise tax we do feel like we get what we need for the most efficient and practical price through this contract process.

COMMISSIONER HAMILTON: Good to hear. Thank you.

CHAIR ROYBAL: Thank you, Commissioner Hamilton. Thank you, Chief Sperling and Deputy County Manager Flores. Are there any other questions? We have a motion and a second? Okay, seeing no other questions.

**The motion passed by unanimous [5-0] voice vote.**

**III. B. 2. Request Authorization to Utilize the Design-Build Project Delivery Method for the East Mountain Regional Health Facility [Exhibit 2: Staff Report]**

MR. FLORES: Thank you, Mr. Chair. We have two back-to-back items that deal with this subject matter. So the first one is item III. B. 2, and we're requesting authorization from the Board to utilize a design-build project delivery method for the East Mountain health facility. The state procurement code, as well as the Santa Fe County purchasing regulations manual allow the County to look at delivery methods for projects. We have a traditional method, which is the design, bid, build process, which is normal for about 99 percent of our projects.

But in the event that a project, because of circumstances where time constraints for delivery, funding issues, capability of potential teams, suitability, etc. can be evaluated, those two guiding documents – the state purchasing code and the County's manual on procurement gives us an alternative method for project delivery which is the design-build method. So we cut out one of those steps to try to get a project that has circumstances around it into the ground and developed at a faster pace.

In a design-build process, the design and construction run somewhat parallel. We're able to get a project started and things implement and it's a very parallel, iterative process where we get things moving faster. And the reason we suggest those types of projects is time and money. There's some advantages to doing that process rather than a design, wait for the design to go out for bid, wait for the bid, then to go out to construction if budget's available. Here we establish certain parameters, design specs, and we move forward.

The East Mountain Regional Health Facility that we're all familiar with, and we've been bringing pieces together, as of today we have \$6 million dedicated to this project and that includes GO bond money, state severance tax money, USDA WIC

money, Department of Health money, and First Choice is bringing money to the table. So we have a pot of \$6 million on the table. The project in size and type of facility lends itself to a rather accelerated process for development than going through the traditional method. There are also some time constraints with the funding. The WIC funding that we just approved or the Board just approved last month, there's some certain timeframes that go along with that. One of them is coming up on December of this year.

So the code and the manual allow the Board to look at certain things and to make that when we do something like this, the maximum utilization of the funding sources, dates of completion, dates of occupancy, are all considered and today we're asking for the Board to approve concept authorization and approval to proceed with the procurement process for the East Mountain Regional Health Facility under the design-build project delivery method. And now that I've confused everybody, including myself I'll stand for questions.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair and thank you, Mr. Flores. Having had the opportunity of working on both types of projects, I guess the one thing I would also add is that the design-build concept allows the team as a whole to collectively work through both facets of the project which helps to expedite the actual design and construction itself as opposed to a separated design process, bidding process, for that design and then plan sets, if you will, that then get evaluated by potential contractors and bid. So it actually affords an entire team to get their mind and their skill sets around the project and affords working through some bugs, if you will, sooner rather than later, because there's always going to be things that we have to work through. But I think conceptually, it makes sense to expedite timing and I would even say quality because you're working as a team. Do you have any comment on that piece of it, Tony?

MR. FLORES: Mr. Chair, Commissioner Anaya, I think you've said exactly what we were looking for, because the approach is different not only from the County and the user's perspective but also the team under design-build, a construction contractor brings all the facilities, personnel to the table that we would otherwise have to go out and end up having to solicit and then have them try to get all back together on the same page. So bringing both teams together actually provides a more efficient process and hopefully, ultimately, efficiency equals time and staying within an approved budget.

COMMISSIONER ANAYA: Thank you and thank you, Mr. Chair, I don't have any other comments. I'd move for approval.

CHAIR ROYBAL: Okay, we have a motion. Do I hear a second?

COMMISSIONER HANSEN: I second.

CHAIR ROYBAL: Okay, we have a motion and a second. Under discussion, Commissioner Hamilton.

COMMISSIONER HAMILTON: So that all sounds really good and I have to be honest. I couldn't really think of anything that would raise an issue for me, with somewhat less experience than you guys have in terms of these kinds of projects, but I would think that the more complex a project is or when it has special or unique problems that would throw up, potential red flags, or things where – do you have – do

you see any potential pitfalls in this kind of approach for this, what seems to be a pretty straightforward project?

MR. FLORES: Mr. Chair, Commissioner Hamilton, there's always a concern about the project teams, right? So we're still going to have to go through a procurement process to engage a team of professionals, both construction professionals and design professionals. So there's always that potential for a difference of opinions, if you will, from the program. However, under this method when you go in for an RFP process and lump sum as a criteria when you get to a second phase, you're actually refining those potential pitfalls, and I think under the design-build process you have more control of one team rather than a set of different contracts with different professionals and everybody looking at each other to figure something out. In this case you have a team coming together as one individual contractor.

COMMISSIONER HAMILTON: Thank you.

CHAIR ROYBAL: Thank you, Commissioner Hamilton. Commissioner Hansen.

COMMISSIONER HANSEN: I'm wondering – I don't remember the square footage of this building.

MR. FLORES: Mr. Chair, Commissioner Hansen, it's approximately 22,000 square feet.

COMMISSIONER HANSEN: Okay. Since we're under such a tight deadline, do we have design-builders in the pipeline that we're ready to reach out to?

MR. FLORES: Mr. Chair, Commissioner Hansen, absolutely not. I need to have first the approval to be able to begin solicitation. So do have an idea of who could potentially put in a bid? Absolutely.

COMMISSIONER HANSEN: Okay. That's what I was –

MR. FLORES: But again, that's through a separate process.

COMMISSIONER HANSEN: And how long will that take?

MR. FLORES: Well, since Bill's not here, Mr. Chair, Commissioner Hansen, I'm going to tell you that I've worked with him to try to get a contract before the Board at the end of November.

COMMISSIONER HANSEN: Okay. So that's what we have to do to fulfill this December 31<sup>st</sup> is have the contract.

MR. FLORES: Mr. Chair, Commissioner Hansen, yes. That's about 90 percent of that requirement.

COMMISSIONER HANSEN: Okay. And what's the other 10 percent?

MR. FLORES: Spending money, Mr. Chair, Commissioner Hansen.

COMMISSIONER HANSEN: And how much do we have to spend?

MR. FLORES: Mr. Chair, Commissioner Hansen, again, I think we're getting a little bit out of the realm. I don't want to put too much information out there with the solicitation and tip our hand, but it's a significant amount of the original funding.

COMMISSIONER HANSEN: Okay. I just want to know how it all works. But thank you. I appreciate that.

CHAIR ROYBAL: We have a motion and a second. Anything else under discussion?

**The motion passed by unanimous [5-0] voice vote.**

**III. B. 3. Request Authorization to Utilize the Design-Build Project Delivery Method for the County Administration Offices Project [Exhibit 3: Staff Report]**

MR. FLORES: Thank you, Mr. Chair. I'll tee up the next item. As I prefaced my remarks, this is item III. B. 3, which we're requesting authorization from the Board of County Commissioners to utilize the same design-build project delivery method for our County administration office projects. I'm not going to go into the allowability of it under the procurement code or the purchasing manual but we are going to request the same type of method for this project. And just for some background, I also have Mr. Hogan from the Projects Division and our registered architect on board to answer any specific questions. We undertook some planning options for the new project back in 2013. As we know, it's going to be located on the site of the old judicial complex.

The efforts that have come to date have allowed staff to take a step back from that original or traditional process, so that contract was let under the traditional design-bid-build process. So staff has had a chance to take a step back, meet with the County Manager's Office of course and the purchasing director, and one of the things that we'd like to look at is if the Board authorizes us, or some of the reasons why the Board potentially could authorize this is we look at a timely project delivery method. We're a little behind right now in the schedule with the traditional method. We would be using the same type of thought where we'd have one contractor that's a contractor with all the additional professional services as one group rather an individual processes. We could look at the opportunity to gain and select multiple or different design options, the potential for a cost and scope control that we would establish on the onset rather than having it where we are subject to a design that goes out to a bid or subject to the bid and then I'm not sure where that lands. This has us going out in that team effort.

We also could look at reducing the opportunities for any late changes that would significantly bust the budget in the traditional method. If we hire a firm to go out and do a design, we take that design, we go out to bid, in that methodology, the low bid is the one that we look at and then we can only do certain things if it's within a certain budget parameter. So this approach actually allows the County to have a little bit more control of the process.

I think most importantly, looking at integrating the project – I hate that word but having a better look at the project and maybe a renewed or focused effort to look at how we move forward, associating sustainability and other features that were budget-driven the first time, maybe we can incorporate now under the design-build process that would give us the ability to select that team that actually can accomplish those goals for us.

So with that, Mr. Chair, unless Mark has any questions, we'll stand for questions and we are requesting authorization for concept approval to move forward with this method.

CHAIR ROYBAL: Okay, do we have any questions from the Board?  
Commissioner Hansen.

COMMISSIONER HANSEN: I just have a few questions after reading the

background summary. These might be a little more detailed than what you want to go into, but I just have some questions I wanted to ask. It says in here there would be two levels – it says in the background summary there will be two levels below-grade parking. I thought that we were having three levels. Or am I misremembering something else?

MARK HOGAN (Projects Division): Mr. Chair, Commissioner Hansen, it's always been two levels. We actually initially started off with one level anticipated below grade and then at the program approval the Commission added 60 spaces for fleet parking and so that pushed it to two levels below the grade as defined by the Grant Street location.

COMMISSIONER HANSEN: Okay. Great. And then it says – I thought maybe if you would expand a little bit. On page 3, on the bullet points, the process reduces opportunities for Santa Fe County to provide late input or changes requirements that can alter the scope of work and significantly influence the project budget. Just a little explanation.

MR. HOGAN: Sure. Mr. Chair, Commissioner Hansen, Mr. Flores touched on that earlier in that the process allows more seamless integration of ideas in the development of those. Since we will be letting the contract for both design and construction simultaneously, it gives us a more specific benchmark of where we're starting off and what our goals for the project are. Second it eliminates or certainly reduces the opportunity for ourselves to inject change into the process that could either delay it or affect the scope, which usually affects the budget. So it's really to provide better control within the County to keep on track as far as the scope of work goes.

COMMISSIONER HANSEN: I really appreciate, Deputy Manager Flores mentioning the sustainability and bringing more of that into the building, because as you know, that's incredibly important to me. So I appreciate hearing that. And then who will be the project manager? Under basic processes.

MR. HOGAN: Mr. Chair, Commissioner Hansen, we will have a subject matter expert in design-build that we'll retain as a consultant to help guide us through some of the specifics of the project, particularly looking for the right expertise in sustainability, things that will go into our initial selection. The Projects Division will be managing the project for the County and that will fall under my responsibility.

COMMISSIONER HANSEN: Okay. And under the list under E. 2, I didn't see the sustainability component listed on this list but I have read it earlier on, so does it need to be on this list? Are we still defining many of the things that we're going to want in the building. I don't have page numbers on this.

MR. FLORES: Commissioner Hansen, could you point me where –

COMMISSIONER HANSEN: On E #2, there was a list of other areas and expectations that should be addressed in the request for the proposal. It may include the following. And so I just didn't see sustainability components on that list.

MR. FLORES: So Mr. Chair, Commissioner Hansen, no. We have the ability to define the scope of the design-build process. That's where we come in and assert what the actual design parameters are. That's up to the County or the local public body, whoever is asking for it, to be able to insert that into the design requirements.

COMMISSIONER HANSEN: Okay. Thank you. I move to approve.

CHAIR ROYBAL: Thank you, Commissioner Hansen. We have a motion.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: We have a second, and under discussion, did you –

COMMISSIONER HAMILTON: Yes, I had just a follow-up question from Commissioner Hansen, because it just seemed like the things you've said, Mr. Flores, were really good, that we have the ability to have input on the design issues that we have and that in fact having design-build offers greater flexibility for ongoing interactions, and then the one point that Commissioner Hansen asked about, which was to reduce our inputs, seems contradictory to me. And so I just wondered –

MR. FLORES: For clarification, Mr. Chair, Commissioner Hamilton, Santa Fe County under this process has more at the table than if we let an A&E contract and had the consultant come back with a design solution. So I just want to clarify that. And I also do want to say that this site is different than the one we just approved. The one we just approved is a flat, vacant piece of land. This one has a little bit more complexities in it and will require a little bit more oversight on the project team's part as well as the selection of that eventual contractor.

COMMISSIONER HAMILTON: I'm glad to hear you say that. Thank you very much.

COMMISSIONER HANSEN: Thank you for the clarification. I have one more question.

CHAIR ROYBAL: Okay, so we have a follow-up question from Commissioner Hansen.

COMMISSIONER HANSEN: Will this design-build contract include redoing this building? Or will that be separate?

MR. FLORES: Mr. Chair, Commissioner Hansen, this project is a total project, so it will include the site up the street and this building.

COMMISSIONER HANSEN: Okay. Thank you.

CHAIR ROYBAL: Thank you, Deputy Manager Tony Flores. So do we have any other items under discussion? Nothing else? So we have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**III. C. Resolutions**

**1. Resolution No. 2017-106, a Resolution to Support the New Mexico Association of Counties' 2018 Legislative Priorities**

GERALDINE SALAZAR (County Clerk): Yes, Chair and Commissioners, the New Mexico Association of Counties has put together their 2018 NMAC legislative priorities. You have the resolution in front of you and the five priorities are: Forfeiture Act reform, protecting county funding of healthcare, tax reform, adoption of a Local Election Act, extending 2014 House Bill 16 Liquor Tax distribution sunset.

And for summaries, 1) Forfeiture Act reforms. Support legislation that would correct the unintended consequences of the 2015 amendments to the New Mexico Forfeiture Act to address federal equitable sharing, storage of abandoned property, and

expand local authority to seize and dispose of forfeiture property while preserving due process protections.

2) Protecting county funding of healthcare. Support the significant involvement of county policy makers and federal, state and local healthcare, human services and Medicaid planning, funding and service delivery decision making and oppose any measure that would further shift federal and state healthcare costs to county government.

3) Tax reform. Support legislation that protects county revenue and does not have a negative impact on county government. NMAC strongly believes that counties must be at the table for and fully participate in all tax reform efforts, strive to minimize tax policy that places counties and other local governments in conflict, and opposes any efforts that reduce the state's hold harmless distribution to counties or that reduces county GRT gross receipts tax authority.

4) Local Election Acts. Supports legislation that would enact the Local Election Act, aligning the date for local, non-partisan elections with taxation authority to the same day in the odd-numbered year.

Extend 2014 House Bill 16 liquor tax distribution sunset. Support legislation that would permanently increase the distribution percentage to local DWI grant funds.

Those are the five priorities. This is the resolution and so now it's for you to decide and pass if you would like to endorse this resolution.

CHAIR ROYBAL: Okay, do we have any questions from the Board?  
Commissioner Hansen.

COMMISSIONER HANSEN: I'm wondering if our County Manager Miller could speak about any of these items on this list and give us some information.

MS. MILLER: Mr. Chair, Commissioners, essentially what the Association of Counties is doing this year is slightly different than previous years. What they've done in the past is have a resolution for each one but this time they kind of took broad policy statements as the Clerk read, so those are the substance of their policy statements. And those came out of either a Tax Committee, which I am the chair of the Tax Committee. They have a Healthcare Committee and we have members of County staff that are on the Healthcare Committee. They have a variety of different groups that work on each one of these items, and then through the affiliate process or the task force or committee process, they bring forward recommended priorities for the next legislative session, and then they take those to the executive board and then the executive board takes them to the full board.

And so that's how they go through the process and they get vetted by all of the Counties having some input to try to make the policy statements applicable to all counties, as opposed to carved out for a particular type of county. So the statements are broad but they give the Association of Counties and the lobbyists direction on how they should approach pieces of legislation as they're introduced. And they like each county to verify whether or not through a resolution or some action whether the county supports that policy statement, and then that way they can say this is supported by all 33 counties, or this is supported by 30 of our 33 counties. So it gives them a sense of how much support they have from their membership to individual pieces of legislation and how to approach lobbying for or against individual pieces of legislation.

So that's kind of the general intent of it, and as Madam Clerk actually read off what those statements are. If you have specific questions – a lot of them have come out of – let's see. All of them have come out of previous legislation that has either been detrimental to counties or cause conflict for counties and this is their effort to try to get a policy position to go back and start working on legislative fixes. For instance to our gross receipts tax system, our overall tax system, to how we fund healthcare at the state level utilizing county funds. Also about the Local Election Act trying to have less elections and have one combined election. And then the liquor tax distribution, it has a sunset but it's to allow that portion that is dedicated to a specific initiative to continue beyond the sunset timeframe.

So that's kind of in general where these come from and what the Association is asking for when they're asking for the Board to approve a resolution supporting those priorities.

CHAIR ROYBAL: Thank you , Manager Miller.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Hamilton, and then I'll go to you, Commissioner Anaya.

COMMISSIONER ANAYA: Okay. Thank you.

COMMISSIONER HAMILTON: So as a bit of a follow-up to that, Manager Miller, are there any of these five topics that give you any concern that as we go through the legislative process, as we did earlier this year, we follow that process, and you guys keep us updated. We follow legislation that's important to us and discuss what our position ought to be. Do you see any potential conflicts with even any one of these things that might limit our ability to look at a more specific level when the time comes with regard to Santa Fe County in particular, and our interests?

MS. MILLER: Mr. Chair, Commissioner Hamilton, that's a very good question. I don't see that the Board approving a resolution supporting these particular priorities would in any way negate our ability to step up when there is – once you get a specific piece of legislation you may find it's not favorable to Santa Fe County but is favorable to another county. We have always, even if we've supported these resolutions been able to be at the table and say to the Association as well as to the legislators, while it might be something – let's just say tax reform. While it might be tax reform, there's tax reform in there that has a negative impact on Santa Fe County and maybe not, say, McKinley County, just arbitrarily picking one. And we would go in and say we need you to work on reducing that conflict where it's negative for us and beneficial to another county.

So in answer to your question, I don't think approving a resolution supporting these priorities in any way negates our ability to speak up if a specific piece of legislation is harmful, even if it was done with the intent of a support of the Association of Counties.

COMMISSIONER HAMILTON: Thanks.

CHAIR ROYBAL: Thank you for the question, Commissioner Hamilton. Thank you for the answer, Manager Miller. Okay, we're going to go to Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I was just going to ask Manager Miller if she supported all five of the recommendations.

MS. MILLER: Mr. Chair, Commissioner Anaya, yes. The County does, from my perspective, what we have been involved with these, we would recommend supporting these priorities. I will say with a caveat, for instance, the Forfeiture Act reform, whatever language that does get introduced we'd want to make sure that, for instance, our Sheriff is well represented at the table in thinking these are positive changes for the County. Same with the Local Election Act with the Clerk. But in general, as legislative priorities for the Association of Counties I think that the County should support them.

COMMISSIONER ANAYA: So, Mr. Chair, I'd move for approval of supporting the resolution with the caveat that as bills get drawn up that we evaluate those on a case by case basis to determine impacts to Santa Fe County.

CHAIR ROYBAL: Okay, we have a motion.

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: And we have a second.

**The motion passed by unanimous [5-0] voice vote.**

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, the other thing I wanted to add was in recent months we as a Commission have made some decisions based on taxation, based on our authority to do so and have done those decisions well within the realm of that responsibility. One of the items that's listed under healthcare has to do with the state coming up with a particular idea on how they feel a fix to healthcare should be done and then have passed on the imposition of that responsibility or tax to us. And that's really the corpus of that one item says and I think that goes across the board, that within our own individual responsibilities that we have as County government, we make those decisions based on input that we receive from constituents and our own collective will as a Commission but that we really do have heartache when the state would come up with a determination of what's good for us and then in effect, take away a taxation authority to cover some determination of how they're going to fix any part of our overall tax base. And that's where we really need to be cautious as local government officials to maintain what we are responsible for and that our gross receipts and other revenues don't get raided. So I just wanted to say that on the record. Thank you, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya.

CLERK SALAZAR: I'd like to add also that these are the legislative priorities for the New Mexico Association of Counties. Bills will be drafted and all will be involved in the bill analysis. So once they're put together then we will analyze them. County staff will. Clerks throughout the state, sheriffs, they will do a bill analysis. So those checks and balances will be there.

CHAIR ROYBAL: Thank you for that, Madam Clerk.

**III. C. 2. Resolution No. 2017-107, a Resolution Declaring the Intent of the Board of County Commissioners of Santa Fe County, New Mexico, to Consider for Adoption an Ordinance Authorizing the Issuance and Sale of Santa Fe County, New Mexico Gross Receipts Tax Refunding Revenue Bonds, Series 2017, In an Aggregate Principal Amount Not to Exceed \$29,000,000 for Purposes of Defraying the Costs of Defeasing, Refunding, Refinancing, Discharging, and Paying the Principal of and Accrued Interest on All or a Portion of the Callable Maturities of the County's Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2009, Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2010A, and Capital Outlay Gross Receipts Tax Revenue Bonds, Series 2010B, and Paying the Costs of Issuance of the Series 2017 Refunding Bonds; and Directing the Publication of a Notice of Meeting, Public Hearing, and Intent to Consider an Ordinance Authorizing the Series 2017 Refunding Bonds in a Newspaper of General Circulation within the County, as Required by Section 4-37-7 NMSA 1978 [Exhibit 4: Supplemental Material]**

GREG SHAFFER (County Attorney): Mr. Chair, Commissioners, I think that it might make sense if we start with the economics of the refunding and why it's something that we're considering, and then we can go into the nuts and bolts of the resolution. And we have someone here from RBC Capital Markets, the County's financial adviser who can go through again, the economics and why we would be considering a refunding.

MR. FLORES: And Mr. Chair, just additional information on the dais is the actual presentation that we'll be going through.

EVAN KIST: Mr. Chair, County Commissioners. My name is Evan Kist. I'm with RBC Capital Markets, the municipal advisor to the County. There's a brief handout that hopefully everyone has that lists some various information, briefly, very briefly, regarding the refunding but we can just go to page 3 of this presentation and I'll speak to the economics of the transaction the County Attorney was mentioning.

Given current market rates this refunding of the callable series, Series 2009A, 2010A and 2010B of the capital outlay gross receipts tax bonds produces net present value savings approximately of \$1.6 million to the County. Of course that can change as rates move up and down, but as of this number run and as of the numbers in your packet that's the present value savings that the County would realize by refunding the callable portion of these outstanding series bonds.

And I'd be happy to pause and answer any more questions.

CHAIR ROYBAL: Okay, is there any questions at this point or would you like to wait till the end.

COMMISSIONER HANSEN: I'll wait till the end.

CHAIR ROYBAL: Let's wait till the end. Were you going to go through

these individually?

MR. KIST: I can if there is interest.

CHAIR ROYBAL: Do you have any questions on the handout. I'm all right but Commissioner Moreno, did you have some questions?

COMMISSIONER MORENO: No. I'd like to hear the presentation.

MR. KIST: So the second page, the first actual page, first page is a disclaimer, just outlines the outstanding capital outlay gross receipts tax debt for the County for these three series that are being contemplated to be refunded. There's current \$26.6 million of callable maturities that could be refunded and they have various coupons, ranging from low threes to about five percent. Page 3 is some more of the specifics or bond statistics of the actual refunding. Again, the County could save as of this number run, \$1.6 million in a net present value basis or approximately six percent. Usually a kind of threshold or a minimum baseline for refunding is three percent.

On page 4 is just a graphical representation of the existing debt service on these three series of bonds. That's that blue line at the top, and then the red and green bars represent what would be the refunding debt service on the new outstanding refunding bonds. As you can tell it's below the blue line and so there would be basically average annual savings to the County of \$150,000, or again, this net present value savings number of \$1.6 million.

And then I won't go through the bullet points on this page but this is just an interest rate summary. It kind of gives you some market color of what's happening in the market and why it might be advantageous from an economical perspective to refund these bonds now. There are two additional Federal Reserve meetings before the end of the year and there's a high probability of market expectations that rates will rise or they will vote, the Reserve will vote to raise rates in December and that obviously would affect the refunding economics of this transaction.

So to jump backwards a little bit for the time schedule for this transaction, what we have proposed and worked with County staff on is the week of October 23<sup>rd</sup>, which is as we've done in the past, meet with rating agencies to present this refunding and all the great things that are going on in the County. We would look to post the offering document for this transaction November 7<sup>th</sup>. We would sell the bonds through a competitively bid process, which is standard, how the County has sold their bonds in the past and [inaudible] has just sold their GO new money in refunding bonds in August. At that time, that's when you would lock in the rates on this transaction and then you would close December 15<sup>th</sup>. And that's all to get in front of this Federal Reserve meeting that is on December 12<sup>th</sup> and 13<sup>th</sup>. And with that I'll pause and take questions.

CHAIR ROYBAL: Do we have any questions from any of the Commissioners? Commissioner Hansen.

COMMISSIONER HANSEN: Once again, you'll open it on October 23<sup>rd</sup> and close it on -

MR. KIST: It would be closed December 5<sup>th</sup>. Many people are already working on documentation regarding the transaction but kind of an important - one of the first important - aside from what happens today will be the week of October 23<sup>rd</sup> when we introduce this transaction and what's been going on recently in the County to the rating agencies so that they can rate your series of bonds, and then the County can go into

the public markets with that rating and rating report and then continue to market and sell the transaction.

COMMISSIONER HANSEN: Okay. And then they'll be done by December 5<sup>th</sup> before the next Federal Reserve meeting.

MR. KIST: Yes, that's correct.

COMMISSIONER HANSEN: Which is on December 12<sup>th</sup> and 13<sup>th</sup>. Okay, I just wanted to get those dates correctly.

MR. KIST: Thank you.

CHAIR ROYBAL: Commissioner Moreno.

COMMISSIONER MORENO: Thank you, Mr. Chair. Rating, how does that work? what are the factors that go into a rating? Generally.

MS. MILLER: They pretty much look at the – the rating agencies look at our financial management policies. That's why having our reserve policy has been critical. That's a real plus for the County, our levels of reserves. They look at the local economy and demographics. They look at our management stability and policies and practices. They'll look at the length of time we've had certain policies in place, length of time we've – trends in our finances and the way we handle things. They look at overall management. They look at the Board. They look at, as I said, demographics. They look at the local economy. The last rating presentation with Standards & Poors we did really well and they pretty much said we are AA+, close to triple A. One of our biggest barriers is local economy and local economic development, that we're in Santa Fe not seen as a strong as the economy in a growth perspective as the Albuquerque metro area. They just don't see the same strength as they look at it. So that's one of the things that has kept us out of a triple A rating. And also median income, area median income, poverty levels – that type of thing that we don't have a lot of control over, but they do look at and put great weight on our own management and fiscal policies.

COMMISSIONER MORENO: Thank you.

CHAIR ROYBAL: Thank you, Manager Miller. Any other questions for the Board? Okay, County Attorney Greg Shaffer.

MR. SHAFFER: Mr. Chair, Commissioners, I would just emphasize, perhaps needlessly, that these are just refunding bonds, so this does not provide any funding for any new projects. You're just literally refunding existing outstanding debt. The resolution that's in front of you starts the process and allows us to meet the timeline that was just laid out in terms of passing an ordinance that would authorize the issuance of the bonds, authorize the marketing of the bonds, etc. So that's really what the resolution does is it declares the intent of the Board of County Commissioners to consider an ordinance at its meeting at the end of the month, which is a necessary part of this.

I would just highlight that in Section 4 the Board delegates the authority to myself and our bond counsel to put the initial draft of the ordinance in place and distribute it to the public through the County Clerk. Again, that doesn't mean that changes can't be made, but usually you have an ordinance in front of you. We don't have that; we're finalizing it, but the resolution would give us that authority so that we can publish notice that the Board's going to consider the adoption of the ordinance on October 30<sup>th</sup> and allow us to give the draft ordinance to the County Clerk as required by law. And with that I would stand for any questions.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Thank you, Attorney Shaffer. I'm going to go to Commissioner Anaya and then Commissioner Hansen.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I appreciate the explanation of the work and I'd move for approval.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: We have a motion and a second. Under discussion, did you have anything else, Commissioner Hansen?

COMMISSIONER HANSEN: No.

CHAIR ROYBAL: So we have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

#### IV. MATTERS OF PUBLIC CONCERN

CHAIR ROYBAL: Is there anybody here from the public that would like to address the Board? Please come forward, sir, and can you state your name for the record? And address.

MICHAEL COLLINS: Good afternoon, Chair and Commissioners. My name is Michael Collins. I live at 3 Old Santa Fe Way, District 4. What I was going to bring up you've probably all thought of with the recent shootings in Las Vegas and the numerous shootings around the country. I think it's time for us to take some action on a local level as well as the national level. The first thing that comes to mind is something to do with the bump stock, to regulate and outlaw the bump stocks or any kind of change to weapons that would make them automatic or machine guns.

At the time that the second amendment was approved there were muskets and it took about five minutes for each shot, maybe longer. So we're talking about a whole different world. People say that guns don't shoot people; people shoot people. You could say the same thing about automobiles. Automobiles don't kill people; people kill people. However, automobiles are required to be registered and ownership has to be reflected and change of ownership has to be reflected. I'm just asking that you consider regulations that would limit guns and limit magazines. Thank you very much for your time.

CHAIR ROYBAL: Thank you, Mr. Collins. Is there anybody else from the public that would like to address the Board. Commissioner Hansen, you had a comment?

COMMISSIONER HANSEN: Thank you, Mr. Collins. What I meant to do earlier and I'm wondering if we could do that now is if we could take a moment of silence and remember all the people that were killed in Las Vegas this last week and pray for their souls as they pass on from this world. So if we could have a moment of silence. Thank you.

CHAIR ROYBAL: Thank you, Commissioner Hansen, for bringing that up. I appreciate it. Is there anybody else from the public that would like to address the Board? Seeing nobody I will go ahead and close Matters of Public Concern.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, before we go to Manager Miller, I guess I have a logistical, legal question relative to the point that Mr. Collins brings up relative to any local entity or state entity for that matter taking a look at different mechanisms. Could we get – and I understand it could take some time, but could we get something from Legal that helps us understand what, if any role a local government can play relative to anything to do with firearms, some kind of synopsis from a federal perspective, a state perspective and a county and/or city perspective. I guess I would like to just better understand what parameters exist for entities within those various facets as it relates to the second amendment and/or any potential changes or ordinances or actions that a government might take.

MS. MILLER: Mr. Chair, Commissioner Anaya, we can certainly do that.

COMMISSIONER ANAYA: Thank you very much. Thank you, Mr.

Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya.

## **V. MATTERS FROM THE COUNTY MANAGER**

### **A. Miscellaneous Updates**

MS. MILLER: Mr. Chair, I just wanted to give the Commission an update from the last meeting. I had let you know that we were aware of concerns and complaints relative to the SLDC and implementation of the new code and I just wanted to kind of give you an update of what's been happening. First of all Growth Management staff has been undertaking intensive staff training and cross training to ensure that they have a clear understanding of the requirements in the SLDC. Where there's ambiguities we're making sure that we have a clear interpretation and that everybody's trained the same way on that.

Also so that they can all consistently interact with the public on the same question, so they're not getting different answers from different staff members. To do this we've had the Land Use offices closed on Monday, Wednesday and Friday mornings and will continue to do that through the month of October. It's posted on the doors, our website, and we sent out a press release to that effect. Also, if somebody does come in to the offices they can come into the Manager's Office if they happen to have been here and not realized it's closed and we will get somebody to come out of the training and make sure that they are able to turn in an application if that's what they came to do. But we are continuing the training so the office will continue to be closed Monday, Wednesday, Friday mornings through the month of October.

Additionally, I met with the homebuilders and I met with a group of stakeholders that are agents for developers and some developers. Got a lot of good feedback from them and so we are working through a plan to address some of the most critical concerns and those that have made it where the code is difficult to individual homeowners or property owners to work through on some onerous requirements if they have existing households or an existing lot with driveways and roadways. We're working on some proposed amendments to the code in that area that we would like to bring to you before the end of the calendar year and then have a series of other areas to focus on in the early part of next year.

So I just wanted to give you that update so if you get questions we are working through training and some changes to the code that will make it easier to work with, as well as making sure that we have a good, open dialogue with the stakeholders and get an understanding of their concerns and problems they are having with the code.

Also I wanted to give you an update. I had mentioned a couple of meetings back that we were working with the US Marshals to update their contract and their per diem rate and we're in the process of negotiating those, and also a contract with Tarrant County to house their inmates. They closed their facility and we've been working to negotiate some good rates for Tarrant County so that they have an alternative place to take their inmates and working on kind of a guaranteed number of inmates that they would house with us for a reduced per diem rate.

And with US Marshals we had a real good response to the rates that we submitted to them and it looks like they would be able to accommodate the rate that we requested. And we're in the process of working that out as well. So I just wanted to give you an update on those two contracts that would definitely be a benefit to offset a lot of our costs at the adult facility.

And then on the East Mountain Regional Health Center, we're working on a soft groundbreaking ceremony for Friday, November 3<sup>rd</sup> at 12:00, lunchtime, in Edgewood, and we'll be providing more information and invitations on that, and then also, I've just got one more update and this is one, also, I think Commissioner Anaya would be interested in since he was quite instrumental in getting us to pursue the FLAP grant. October 26<sup>th</sup>, we would be doing a groundbreaking or construction kickoff meeting for the FLAP project on October 26<sup>th</sup> at 2:30. And we'll send invitations and information to follow up on that one as well. And that's a pretty exciting project. So we'll be kicking that one off.

And I think those were all of my updates.

CHAIR ROYBAL: Okay. Thank you for those updates, Manager Miller.

**VII. B. Presentations**

**1. Recognition of Shelley Mann-Lev for Her Dedicated Service as the Director of the Santa Fe Prevention Alliance, and Prevention Coordinator for the Santa Fe Public Schools Office of Student Support Programs and Her Quest to Champion Initiatives to Better the Lives of Santa Fe County Youth**

MS. O'CONNOR: Good afternoon, Mr. Chair. Thank you for allowing us to come here this afternoon, my staff, sort of collectively, and recognize and say thank you to someone who has been an incredible gift to Santa Fe County, to the City of Santa Fe and to the larger New Mexico that she serves. I first met Shelley in 1992 where she was involved in Safe Kids. She has a lifetime legacy of work in public health and public safety across the state of New Mexico. She's been a partner to us in Santa Fe County in so many different ways – in the DWI program, in our Teen Court program and with our health program, and we are collectively sad to see her go in terms of her retirement but also happy to see her move on in a new phase in life in which we hope we continue to be a part.

Shelley has really been instrumental in impacting public policy, programming and prevention across the county and we are grateful, not just for the work that she's done but the tireless energy, commitment, stamina, endurance and grace that she has brought to her work and we would like to take a moment to thank her and recognize her on behalf of the Community Services Department. Thank you.

CHAIR ROYBAL: Thank you.

JENNIFER ROMERO (Teen Court): Mr. Chair, Commissioners, I would like to take this opportunity to thank Shelley Mann-Lev for the invaluable service that she has provided to our community. Her passion for youth and the overall wellbeing of our community has undoubtedly had a profound impact. I have worked alongside Shelley for the past ten years and her expertise and knowledge base still continues to amaze me. She has initiated many positive drug and alcohol efforts from community education and grass roots movements to state policy change. I know that although she is leaving her position with Santa Fe Public Schools she will continue to be a valuable resource and stand for initiatives that aren't always popular but always have our youth in mind. Shelley will be missed and it will take a team to fill her shoes. Thank you.

CHAIR ROYBAL: Thank you, Ms. Romero.

LUPE SANCHEZ (DWI Coordinator): I'd just like to say it's my pleasure to be here today recognizing Shelley and her numerous years of dedicated service to the youth of our county. When one thinks of prevention in Santa Fe the first name that comes to mind is Shelley's. Shelley has dedicated her professional career to improving and enhancing the lives our youth. Shelley is a strong advocate for our kids and her passion for our youth is evident in the numerous policy changes she has spearheaded and implemented over the years and a lot of those endeavors – they're too numerous to count what she's accomplished. So thank you. I would like to take this opportunity to personally thank you, Shelley. Five and a half years ago I came to the County and one of the first people I met was Shelley and that meeting has been memorial and your knowledge of prevention has been beneficial to me, because I had no knowledge of prevention when I came here. I didn't know really what prevention work was. And you have been the guiding force behind the prevention efforts in our DWI program and I think, like I said, you're the face of prevention in Santa Fe County and I think when someone needs guidance in that arena they go directly to you. So thank you.

CHAIR ROYBAL: Thank you, Mr. Sanchez.

MS. O'CONNOR: Mr. Chair, we'd just like to present Shelley with a small gift and ask her if she has a few words to say.

SHELLEY MANN-LEV: Chair of the County Commission, Commissioners, County Manager and my dear, dear, wonderful colleagues with the Santa Fe County Community Services Department. It's not often that I don't have anything to say. They know. I mostly want to say thank you. Thank you to the Commission for all that you've done. The support that the County has given to the work of the Santa Fe Prevention Alliance, Santa Fe Public Schools, to our community. It takes courage, leadership, vision, wisdom to do the right thing for our youth, for our families, for our community. I feel so honored to have been a part of this effort, which is, as you know, the Santa Fe Prevention Alliance is a collaborative effort and while Jennifer Romero didn't identify herself, she has been the chairperson for the last year and has made great

contributions to that work. And I guess what I feel most excited about is that the work will continue, that the knowledge is shared, that the commitment is shared and that I do have a deep trust and confidence in our community leaders at every level that the work will continue and it will continue to benefit all the people of Santa Fe County and the state of New Mexico, which we are privileged to be the capital of here in Santa Fe. So thank you. Thank you all for supporting this work and it's been a great honor.

CHAIR ROYBAL: Thank you, Shelley, and thank you everybody that spoke on her behalf today. I'd like to just say thank you for all your dedication and passion to our community and the youth of Santa Fe County. We really appreciate it. Commissioner Hansen.

COMMISSIONER HANSEN: Shelley, I hope that we will still see you around and that we won't lose your advocacy, because it's really important. I'm sorry to see you leaving this position but I know by your shaking your head that you will be around to help us on other things and that will be great. And I have enjoyed every issue that we have ever worked on together, so thank you for your support, your research, your dedication. I'm grateful. Thank you.

CHAIR ROYBAL: Thank you, Commissioner Hansen. Commissioner Hamilton.

COMMISSIONER HAMILTON: Shelley, there's a particular bumper sticker: Think globally; act locally. And maybe it's just me – that that has some meaning to me and I over the past few years have seen more and more instances or examples of just how important that is and I think you are really one of them. We are so lucky to have you and people like you doing so much for our community, acting at a local level. And those kind of holes are really hard to fill. So thank you for your service.

CHAIR ROYBAL: Thank you, Commissioner Hamilton. And before we leave, I would like to take a group photo, but I would like to ask for a round of applause for all your service.

[Photographs were taken.]

CHAIR ROYBAL: Manager Miller.

MS. MILLER: Mr. Chair, I was just going to suggest you do VII. A. 1 and 2 before we go into executive session. That way if the Clerk or any other elected officials have any comments we could do that before we go into executive session.

CHAIR ROYBAL: Sure. That's a good idea.

## **VII. DISCUSSION/INFORMATION ITEMS/PRESENTATIONS**

### **A. Matters from County Commissioners and Other Elected Officials**

#### **1. Elected Officials Issues and Comments**

CLERK SALAZAR: Yes, Chair Roybal, and thank you, Manager Miller. I'd like to mention that we're coming up with several elections. The Clerk's Office has been working on the primary and general in 2018 for a very long time already. We start right after the last general and primary. But we will be having six elections that we will be working, two February 2018 on Tuesday. On the same day they have consolidated the

Santa Fe Public Schools and the Santa Fe Community College. The Santa Fe Public Schools will have an election. It will be a property tax – to continue the property tax. So their question – I want to share with you their question. Shall the Santa Fe Public School District continue to impose a property tax of \$2 per each \$1,000 of net taxable value of property allocated to the Santa Fe Public Schools for the property tax years of 2018, 2019, 2020, 2021, 2022 and 2023? And there's a whole list of purposes for it.

The Santa Fe Community College, their election the same day as I mentioned earlier, they will consolidate, which helps us, rather than running those two individual elections with them. So the Community College, their question states – I'm going to read just a portion of it. Shall Santa Fe Community College District raise its existing tax levy of \$3 on each \$1,000 of net taxable value to a levy of \$3.35 on each \$1,000 of net taxable value each year on all taxable property with the Santa Fe Community College District?

So those two. In addition to that, the following month we have two other elections. Those can't be consolidated so we will be helping with the City of Santa Fe mayoral/municipal election and then the Edgewood municipal election. The Mayor has asked me if we would actually conduct that election, and so we will be doing that. But I am working out the cost for that with them. I have shared with them that they will pay any additional costs, then I will go ahead and allow my staff 8:00 to 5:00 to work with them but any overtime or other costs they will have to pay for.

So those are four, three separate, two consolidated, and then June 5, 2018 is the 2018 primary election and then November 6, 2018 is the 2018 general election. And those are the gubernatorial elections and we're full of elections. Thank you.

CHAIR ROYBAL: Thank you for that update, Madam Clerk. Any other elected officials? Seeing none, I'm going to go ahead and close item #VII. A. 1 and go on to VII. A. 2.

**VII. A. 2. Commissioner Issues and Comments**

CHAIR ROYBAL: Are there any Commissioners that have comments?  
Commissioner Hansen.

COMMISSIONER HANSEN: I just want to share with the public that on October 4<sup>th</sup> I had the pleasure of going with the Public Utilities from the City of Santa Fe and the Santa Fe River Commission, which I'm a member of, up into the Santa Fe Canyon Preserve to see the gates and inspect that area for the acequias, and it was a very informative event and we were so lucky. We started at 4:00. We ended at 6:00 and it started raining at 6:00. So it was really a beautiful trip and I have posted some pictures on my Facebook page.

Also, the weekend of October 13<sup>th</sup> and 14<sup>th</sup> I will be speaking at the Economics of Happiness Conference on how local government can keep economics happy. So I will be speaking on Saturday morning and then I want to share this with Commissioner Moreno. Commissioner Moreno and I had the pleasure of speaking yesterday and reading the proclamation that we passed on Indigenous Peoples Day and we had the good fortune to read that on the plaza during the dignitary event with many of our Native tribes and it was an honor to be able to read that proclamation and to share it with our community, and that Santa Fe County has taken the step to recognize the second Monday in October as

Indigenous Peoples Day. And if you'd like to say anything about the event, Commissioner Moreno.

COMMISSIONER MORENO: It was a very impressive event and I was very honored to be a part of it. The history of this country is painful in many respects but there come times when we can celebrate the successes that we have achieved and I think that for me that was one of the events that really lifted my soul and my perspectives. And it was a great opportunity to commune with people that we don't readily encounter in life. And so it was a very nice opportunity to bond.

COMMISSIONER HANSEN: It was also great to see that the Mayor had brought forth with the Chairman of the All Indian Pueblo Council had brought forth a proclamation to speak about the Entrada and the difficulties that have happened in this community for a dialogue to take place. The Archbishop of Santa Fe was also there to engage in that and I think those are really important discussions that need to take place for the healing in our community to happen. So with that, thank you very, very much.

CHAIR ROYBAL: Thank you, Commissioner Hansen and Commissioner Moreno. Any other comments or updates from the Board? Seeing none, we'll go ahead and close item #VII. A. 2.

## VI. MATTERS FROM THE COUNTY ATTORNEY

### A. **Executive Session: Threatened or Pending Litigation in which Santa Fe County is or may Become a Participant, as Allowed by Section 10-15-1(H)(7) NMSA 1978, Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights, as allowed by Section 10-15-1(H)(8) NMSA 1978, and Limited Personnel Matters, as Defined and as Allowed by Section 10-15-1(H)(2) NMSA 1978, Including the Following:**

1. **Rights-of-Way for County Roads**
2. ***Board of County Commissioners of Santa Fe County v. Gregory Fuess, State of New Mexico, County of Santa Fe, First Judicial District, No. D-101-CV-2015-01936***
3. **Executive Management Personnel**
4. **Potential Lawsuit Against the United States Department of Housing and Urban Development (HUD) Based Upon HUD'S 2012 Breach of the Annual Contributions Contract**

CHAIR ROYBAL: Attorney Shaffer, can you give us a summary of what we'll be going into executive session for?

MR. SHAFFER: Mr. Chair, Commissioners, the basis for the closed session and the specific items to be discussed are as follows: threatened or pending litigation in which Santa Fe County is or may become a participant, as allowed by Section 10-15-1(H)(7) NMSA 1978; discussion of the purchase, acquisition or disposal of real property or water rights, as allowed by Section 10-15-1(H)(8) NMSA 1978; and limited personnel matters, as defined and as allowed by Section 10-15-1(H)(2) NMSA 1978, including the following: rights-of-way for County roads; *Board of County Commissioners of Santa Fe County v. Gregory Fuess, State of New Mexico, County of*

Santa Fe, First Judicial District, No. D-101-CV-2015-01936; executive management personnel; and potential lawsuit against the United States Department of Housing and Urban Development (HUD) based upon HUD'S 2012 breach of the annual contributions contract.

CHAIR ROYBAL: Thank you, Attorney Shaffer. I'll take a motion to go into executive session for the items that were described by our County Attorney, Greg Shaffer.

COMMISSIONER HAMILTON: So moved.

CHAIR ROYBAL: So we have a motion.

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: And a second. Can we have a roll call please?

**The motion to go into executive session pursuant to NMSA Section 10-15-1-H (2, 7 and 8) to discuss the matters delineated above passed by unanimous roll call vote as follows:**

Commissioner Anaya	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Commissioner Moreno	Aye
Commissioner Roybal	Aye

CHAIR ROYBAL: So we're in executive session. We do have some more items that we need to come out for that are public hearings and we'll try and be as close to 5:00 as we can. Commissioner Anaya, you had another comment?

COMMISSIONER ANAYA: Yes. I got a briefing from the County Attorney, but could you please call me now that you go into session. I'll be on as long as I can.

CHAIR ROYBAL: Okay. We'll call you, sir. Thank you.

[The Commission met in executive session from 3:51 to 5:35.]

CHAIR ROYBAL: I'll entertain a motion to come out of executive session.

COMMISSIONER HAMILTON: I'll move that we come out of executive session confirming that the only thing that was discussed in executive session were those items that County Attorney Shaffer listed at the beginning and the people who were present at the session were the four Commissioners up here plus Commissioner Anaya by phone, the County Manager, the Assistant Manager, County Attorney Shaffer, County Assistant Brown and for the beginning of the session, Attorney Bruce Fredricks and Joseph Montoya.

CHAIR ROYBAL: Thank you, Commissioner Hamilton. So we have a motion. Do I hear a second?

COMMISSIONER HANSEN: So we have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

- VI. B. **Resolution No. 2017-108, a Resolution Authorizing the County Manager to Take All Actions Necessary or Appropriate to Join Santa Fe County as Plaintiff in an Action Against the United States Department of Housing and Urban Development (HUD) Based Upon HUD'S 2012 Breach of the Annual Contributions Contract [Exhibit 5: Resolution Text]**

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: Yes. I would like to move to approve a resolution authorizing the County Manager to take all actions necessary or appropriate to join Santa Fe County as plaintiff in an action against the United States Department of Housing and Urban Development, HUD, based on HUD'S 2012 Breach of the Annual Contributions Contract.

CHAIR ROYBAL: Okay. I have a motion. Do I hear a second?

COMMISSIONER HAMILTON: Second.

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: I have a motion and multiple seconds.

The motion passed by unanimous [5-0] voice vote.

### VIII. PUBLIC HEARINGS

#### A. Land Use Cases

1. **CASE # MIS 17-5222 Jerry West Reconsideration of a Condition. Jerry West, Applicant, Sommer, Karnes & Associates, LLP, Agent, Request the Reconsideration of a Condition Imposed by the Board of County Commissioners on a Lot Size Variance for Jerry West. The Variance Allowed the Division of 10.9 Acres into Two Lots and Was Conditioned that No Additional Dwellings (Beyond What Was Existing) Would Be Allowed on the Property. The Applicant is Requesting an Amendment to the Condition Imposed by the BCC to Allow 4 Dwelling Units on 5.963-Acre Lot. The Property is Located Within the San Marcos Community Overlay District at 2 Loma Oriente Road, Within Section 26, Township 15 North, Range 8 East (Commission District 5)**
2. **CASE # APP 17-5021 Appeal of Jerry West Variance. Santa Fe County, Appellant, is Appealing the Santa Fe County Planning Commission's Decision to Approve a Density Variance (Jerry West Variance Case # V17-5020) of Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District Overlay Rural Residential (SMCD RUR-R) Zoning District. The Planning Commission Approved a Variance to Exceed the Density Requirement of One Dwelling**

**Unit per Ten Acres by Allowing Four Dwelling Units on a 5.963-Acre Lot. The Property is Located Within the San Marcos Community Overlay District at 2 Loma Oriente Road, Within Section 26, Township 15 North, Range 8 East (Commission District 5)**

MR. SHAFFER: Mr. Chair, if I could, and I'm sorry to interrupt, but I think the first two cases on the public hearings both relate to the same property and arise out of the same basic materials facts, and so the recommendation from staff, and I believe that the applicant's attorney would agree with this is that we consolidate those two public hearings so that you only have one hearing and only hear the evidence one time related to both matters, and then the Board will be able to make a decision on both cases. Again, you would grant the change of condition, seemingly, and the variance, or you would deny the change of condition and deny the variance. I don't know that you would really mix and match as between those two, but that's a decision for the Board once you've heard all the evidence. But again, the cases arise out of the same facts and raise the same issue as to whether to allow additional density on the property.

CHAIR ROYBAL: Okay, thank you for that, Attorney Shaffer. I'm fine with going and putting the two together. Is there any objections from the rest of the Commissioners? Okay, seeing none, we'll go ahead and combine the two.

VICKI LUCERO (Building & Development Services Manager): Thank you, Mr. Chair, Commissioners. The applicant is the owner of the property as indicated by the warranty deed. Karl H. Sommer of Sommer, Karnes and Associates, LLP is authorized by the property owner to pursue this request for an amendment to a condition to allow four dwelling units on a 5.963-acre lot, as evidenced by a copy of the written authorization contained in the record.

On June 13, 2006, the Board of County Commissioners approved a request for a lot split to create a division of 10.9 acres into two lots. The BCC imposed a condition of approval on the property that no additional dwellings will be allowed on the property. There were two dwelling units on the property at that time.

On April 27, 2017, the applicant presented a variance to the Hearing Officer for Public Hearing. The Applicant requested a variance of Ordinance No. 2016-9, the SLDC, Chapter 9, Table 9-14-4, Dimensional Standards of the San Marcos Community District overlay Rural Residential zoning district. The applicant requested a variance to exceed the density requirement of one dwelling unit per ten acres by allowing four dwelling units on a 5.963-acre lot. The Applicant has submitted documentation which demonstrates that two dwellings existed prior to 1981 and therefore are consider legal non-conforming. These two dwellings were in place in 2006 when the applicant went to the board. The applicant was unable to provide documentation for the remaining other two dwelling units which were converted in to residences after 2006. The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the requests, found that the application is not well-taken and recommended that it should be denied, as memorialized in her findings of fact and conclusions of law in a written order.

On June 15, 2017, the Planning Commission approved the requested variance by a 5-2 vote and their final order is listed in Exhibit 10.

The applicant's agent states, "At some point, existing structures on the property were converted into dwelling units resulting in a total of four dwelling units on the property. In 2017, the Planning Commission approved the applicant's request for a variance to allow for the four dwelling units on the property to remain. Subsequently, Land Use staff recognized the condition that was previously imposed by the BCC that limited the number of dwelling units, and concluded that since the condition was imposed by the BCC only the BCC can act to alter or remove the condition.

The applicant's agent requests that the BCC remove the Condition to allow the four dwelling units on the property to remain in place, as intended by the Planning Commission.

Staff recommendation: Staff recommends upholding the Santa Fe County Board of County Commission's 2006 decision. The BCC granted the variance requested allowing two dwellings on this property which still exceeded density with the condition that no additional dwelling would be allowed on the property. Staff recommends denial of the applicant's request for amendment to the condition to allow four dwelling units on the 5.963-acre lot. The applicant has not addressed the variance criteria. The BCC already granted a variance to allow this five-acre lot with two dwellings. The applicant stated to the Board at that time that there were only two dwellings on this property. Staff recommends that the two illegal dwelling units be converted to accessory structures by permanently removing the kitchens and showers and bathtubs.

It is at the discretion of the BCC to consider an amendment to the approved condition. The BCC may consider the information presented by staff and the applicant to allow four dwelling units on the 5.963-acre lot. If the BCC approves an amendment to the condition, staff recommends the following conditions be imposed. Mr. Chair, may I enter those conditions into the record?

[The conditions are as follows:]

1. The Applicant must obtain building permits for both dwelling units.
2. There shall be no expansion or addition to any of the dwelling units other than the primary dwelling unit.
3. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application.

MS. LUCERO: Thank you. Would you like me to read the caption on the next case?

CHAIR ROYBAL: Yes, please.

MS. LUCERO: Case # APP 17-5021 Jerry West Appeal. Santa Fe County, appellant, is appealing the Santa Fe County Planning Commission's decision to approve a density variance of Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District overlay Rural Residential zoning district. The Planning Commission approved a variance to exceed the density requirement of one dwelling unit per ten acres by allowing four dwelling units on a 5.963-acre lot. The property is located within the San Marcos Community Overlay District at 2 Loma Oriente Road within, Section 26, Township 15 North, Range 8 East, Commission District 5.

Mr. Chair, I believe that I've gone into the history of the application and the project, but just to kind of give an overview, as I mentioned before, the Planning Commission granted a variance to allow the applicant to have four dwelling units on their

property. The County Commission had previously granted a variance to split the property, which had a condition of approval that only two dwelling units would be allowed. Therefore, because the County Commission had already imposed that condition staff's position was that the Planning Commission did not have the authority to overturn a condition that was previously approved by the Board. Therefore we're appealing the Planning Commission's decision to grant the variance. I stand for any questions.

CHAIR ROYBAL: Thank you. Questions from the Board?

COMMISSIONER HANSEN: I'll ask questions after.

CHAIR ROYBAL: We're going to go ahead – if the applicant is here and they'd like to address the Commission as well.

KARL SOMMER: Mr. Chair, members of the Board and my mailing address is Post Office Box 2476, Santa Fe, New Mexico, 87504, and I'm here tonight on behalf of Meridel Rubenstein and Jerry West. Meridel is a teacher and couldn't be here tonight. Mr. Jerry West is seated here to my left and we have a presentation and there's people here from the community that will speak as well.

This is a unique case. In all my years of practicing before you all and in this community I get the rare opportunity to meet people who have made Santa Fe really what it is. This is one of those cases. I never knew Jerry and I didn't know Meridel till they walked in my office. I found these two books about them and they are artists and people who have been part of our community for a long, long time and maybe you're familiar with the books and maybe you're familiar with their work. I read through them and I realized this is the real deal. And I say that because generally in a case like this it doesn't really matter who you're dealing with. It matters what is the rule? How do we apply it? What's going on?

In a variance criteria, however, you have variance criteria that allow you to take into account a great deal more than what are just the facts. It's the totality of the circumstances that you get to look at and in this particular presentation and what I think you're going to hear from the community this is a unique situation. We're here because the Planning Commission granted to variance to remain on the property what is there. County Land Use staff recognized after the hearing was over that the plat contained a condition back from 2006 and said, well, the Planning Commission doesn't have the authority to override that. Only the Board of County Commissioners does, so Karl, would you please apply to remove that condition and in the meantime we'll appeal the variance criteria and we'll leave it up to the Board. That's why we're here tonight for your consideration of these circumstances, and I think that Mr. Shaffer is correct. It's all the same body of facts in both cases and at the end of the day, you all are going to have to decide whether or not under your code, under these circumstances it should remain the way it is.

In reading about this property and knowing about it, this property was homesteaded by Jerry's family back in the forties. It was 240 acres. His mother and father raised their kids there and this is the West family, a large family. They grew up and helped build the community that is there on State Road 14. And I think that one of the testaments to that is – just Karl Sommer speaking – this room is filled with people who support Jerry and Meridel, because precisely they helped build this.

The way this community evolved over time was almost out of what you read in

books. People helping each other on the weekend, building, making adobes, building their houses piece by piece, a bit at a time, kind of like the old barn-raising. But an added element is these structures are just beautifully hand-crafted. Aside from being a talented artist, Jerry and his brother and his family were talented builders. They built my hand, put up everything by hand. They are excellent craftsmen. And then did so over the course of 40 years, long before there was a County code, structures were going up on this property.

In addition to that, what made this property and this community really important was Jerry as an artist and Meridel as an artist invited artists from other places in the world to come live on the property, do their art, become a part of the community. Right next door to this property is a property owned by Laura Lewellen. You'll recognize that name from a local gallery. Her parents were artists. They moved to this property because of Jerry. Jerry split his property up. They developed there. They became part of the community. There are many, many artists who have come to Santa Fe, worked on Jerry's property and Meridel's property and moved out into the community. One of the structures we're dealing with I think was occupied by a gentleman who got his start who was also extremely talented and added to this community.

Now, I say these things knowing that all the unique contribution and all that community spirit and all building that doesn't save Jerry and Meridel from the law. You still have to look at the law. You have to look at the variance criteria and ask yourself, under these circumstances, under the totality of how this property developed, is a variance warranted? The Planning Commission said yes, it is, and I think you're going to hear why after a while.

I'd like to turn your attention to what is exactly the variance criteria they're looking at. And as you know your code doesn't tell you exactly how to decide a variance. It gives you fairly broad categories for you to determine what is appropriate. I'd like to go through those just briefly.

First of all, the first criterion is where the request is not contrary to the public interest. You all get to decide what is in the public interest and what is not in the public interest. Second, the criterion says where due to exceptional, extraordinary situation or conditions of the property the strict application would result in a peculiar and exceptional practical difficulty and exceptional undue hardship on the owner. You get to decide what those are because your code does not define those terms. And it's done so broadly so that you can take into account all of the facts and circumstances. And then finally, the spirit of the SLDC is observed and substantial justice is done. I'd like to talk about those three criteria for you when you analyze this case.

Meridel and Jerry live on this property and they were married for many, many years. They're divorced but they still own and live on this property and they do their artwork there, and they have two other units that other people who are often artists live and rent from them. The question in your first criterion is what is in the public interest. In this particular situation, this property developed over the course of four decades. Many structures put on this property without permits when permits weren't required. Two of the structures that were put on this property were converted to dwelling units so that other artists could live with them without permits. That is admitted and we understand that. But what is unique and what is in the public interest? And in this particular case a community has evolved and developed in this area and in part of Santa Fe and in many parts of Santa

Fe in a similar way. Is it in the public interest to allow that to continue?

I was asked earlier tonight, well, what do I think about this case? What do you think the Board is going to do? I don't know what the Board is going to do, I said, but I do believe this. I said that sometimes in unique cases the public interest is served and that violence is not done to the public interest when particular rules are not followed. This is one of those cases. This is a unique community helped to be developed by Jerry and his family, an extended group of people who had contributed to Santa Fe and its fame and its rich culture, and I think you're going to hear tonight from people who have known Jerry forever that that's true. It's not just Karl Sommer saying this is it.

So I ask you when you look at that criteria look at these circumstances. Is it in the public interest in this particular case to allow this to continue given its history, given what we're talking about? Of course I leave it to you all to make that decision. It is your decision. I believe that because of the unique circumstances and the unique contribution of this property, these people to this community, it is in the public interest. But you get to decide that.

The second criterion dealing with extraordinary and exceptional situation or conditions on the property the strict application would impose a hardship. In this particular circumstance what are we dealing with? We're dealing with two people. Jerry is 84. He's lived on this property and helped develop it since his parents bought it in the forties and his family was raised there. So what's unique about this property is that it developed over a long period of time, some without permits, some with permits. And the reason I think that's important is the manner in which this community developed was often without permits. And it was with friends. And it was often without licensed contractors. But when you look at these circumstances, these people have lived here. They didn't come to the property and speculate and do that. They find themselves where they grew up, where they live, and that is exceptional in this time. And they're passing these properties on to their children and that is a condition that is exceptional about this property that I think you consider under the circumstances.

And your final criterion is whether substantial justice is done and the spirit of the SLDC is adhered to. What is the spirit of the SLDC today? On this property today, because there are two legal dwelling units, the code would allow them one more accessory dwelling unit. So really under the code today we're dealing with the spirit of the SLDC is one extra unit. That's what we're talking about in terms of what the policy of the code would allow in this particular circumstance. So does this property meet that spirit give the circumstances? We submit to you that it does. And again, I go back to the idea that just because a particular rule is not followed does not mean that violence is being done to this community. I think this property, its unique development and its ownership by Jerry and Meridel and their contribution to the community is an enhancement to this community, and to change it in some way diminish their ability to continue as they have done for years and years would not be in keeping with the spirit and it would not do substantial justice.

Let me add to you how this came about. In 2011, after the division was done, Jerry applied for a permit to build a large storage facility for Meridel's art, because she's a photographer and it needs specific specifications to preserve her art. He pulled the permit, began construction, and then he moved away to Roswell for a year to be an artist

in residence down in their program. He came back and after a couple years, he said, well, I've got to start this up again and he had a gentleman helping him and he said, go get the permit renewed. He went to CID, he got the permit renewed for that structure. He didn't come to the County and get the permit renewed because as you all know, there's a two-step. You've got to get a development permit and then you go to CID.

Well, he started construction again with his friend, because he thought the permit had been renewed, and one of the code enforcement people was driving by and saw this construction and said, hey, where's your permit? He showed it to him. He says, well, you've got to come in and get it renewed at the County. Well, as part of that renewal process of the storage facility an inspection was done, and that's when staff went out and found out what was on the property.

So we're not here – and I say that to you because I don't want you to walk away from this case or look at this case that you're dealing with people who just don't care about the law. They're going to do whatever they're going to do. This came about really because the County issued a permit in 2011 and they didn't catch this. It wasn't hidden from it. I guess they didn't do an inspection in 2011 and see what was on the property. Because if they had we would have been here probably in 2011, talking to you. That's the genesis of this case. It wasn't like Jerry ran out in the night and was doing things on his property. That's not how this property developed. You're not dealing with people who have a disrespect for the law or a disregard for their community.

I'm going to end it there and answer any questions you might have and turn it over to whoever else might be speaking this evening, but I will end this with as you all are very familiar with this community. This room is not filled with people who you generally see opposing variances. It's filled with the opposite. People are here tonight in support and in your minutes you will see that Mr. Wait who is pretty well regarded in that community showed up at the Planning Commission and spoke in favor of keeping this the way it is. I'm not going to go through his testimony but it's there. With that I request on behalf of Jerry and Meridel that you remove the condition and that you grant the variance that he's requested for the reasons that I've talked about. And I'm not here saying you must do this or you must do that. We leave it to your discretion and we ask for your consideration. Thank you.

CHAIR ROYBAL: Thank you, Mr. Sommer. I think we're going to go ahead and go to the public comment and then we'll ask questions from the Commission afterwards. Can we get everybody to rise and be sworn in? How many people are here today and want to talk in favor or against this. Okay, so we have about six, seven. That's not too many so I'm just going to ask if we can try not to be repetitive. Maybe eight. So if we could try not to be repetitive and just keep it short but as much time as you need to go ahead and get your feelings out and what you want to say. So if we can have everybody stand up and get sworn in at one time

[Those wishing to speak were placed under oath.]

CHAIR ROYBAL: Okay, so if we can have our first speaker, and if you could state your name and address for the record.

[Duly sworn, Louise Baum testified as follows:]

LOUISE BAUM: Hi. My name is Louise Baum and I live at 54 San Marcos Road West, which is off of Route 14, just a couple miles down the road from

Jerry's place. I feel that Jerry and Meridel really are the spirit of Santa Fe. They really embody that and they really help it to exist and flourish. Jerry's been here a long time. He's been here since he was two years old. He's been here longer than most of us, than many of us. Jerry is really a chronicler, not only of his own life here but really of this place, and I think he's getting more and more recognized for how valuable that is. His paintings really are about the character of this place, about the characters of this place, honoring it, honoring the people who create this wonderful, amazing place of Santa Fe. And kind of crucial to that.

I also think in spite of Jerry having seen so many changes to this place he has always been so generous to newcomers and very inclusive. And really, Jerry's kind of like the glue of the community. He makes you feel at home, he makes you feel welcome. Him being an artist that's so involved with Santa Fe and knows sort of everything about it, the way it used to be, the way it is. It's really an invaluable resource. It makes you feel part of this place. I so much want Jerry to flourish and continue and the West to continue to flourish in that spot where they've been for so long. And Jerry and Meridel are both really dedicated artists and they're not rich. Jerry has never speculated or built houses to make lots of money and turn them over. He's built beautiful houses, but they're modest. They're small. The houses on this property are the opposite of McMansions. They're small, livable, important houses to the people who have been lucky enough to be in their atmosphere, which is a really wonderful, deep, artistic atmosphere, and it's so much a part of this place, and I just really request you to grant him the variance.

CHAIR ROYBAL: Thank you, Ms. Baum. Can we have our next speaker?

[Previously sworn, Lawrence Longacre testified as follows:]

LAWRENCE LONGACRE: Good evening, folks. My name is Lawrence Longacre. I live at 609 Calle de Marcos in Santa Fe. I was born in Cerrillos in 1933 and I have known Jerry since probably 1943 when we were students at Wood Gormley, and then Jerry and I were in the army together. We all know that Santa Fe is one of the great art colonies of the world and people responsible for some of that was Jerry's dad Hal who had a studio up on Canyon Road, and then Jerry himself has produced some magnificent works of art. So Jerry contributed to what Santa Fe County is today, through his buildings, his art, and just being a good, all-around good guy.

But the main point I would like to make is that in 1968 when George Gonzales, the father of the present mayor was elected mayor of Santa Fe he appointed me to the first every Santa Fe City/County Planning Commission, a post I had for four years. I was chairman of it and I heard many cases like this one. Then I went on and I got elected to the Santa Fe City Council in 1972, so I heard many more cases then. The point I'd like to make is that you folks are empowered to allow variances or to shift the law one way or another based on the merits of it and I know that it's possible. Not everything is chiseled in stone, like Frederico would have you believe. So it's within your power to allow Jerry to come out of this okay. And that's what I'm after for him too. I don't really know the ins and outs of it but I know that Jerry would never do anything to bring any harm to the citizens of the county. So I'm just asking you to take into account the power that you have. Thank you.

CHAIR ROYBAL: Thank you, Mr. Longacre. Can we have our next speaker, please?

[Previously sworn, Valley West testified as follows:]

VALLEY WEST: My name is Valley West. I'm Jerry West's daughter. I live at 3659 Spring River Road in Roswell, New Mexico. This is a property that I grew up on and I just think it's important that you know that it was an organic type of growth. My dad's a builder. He's an artist. He's a community organizer. It would do a great disservice for this variance not to be allowed. He doesn't have a lot of money. He lives on the property. He makes what he lives on is the meager rent that he collects on one of the extra buildings. I hope that you grant him this variance. I appreciate your listening.

CHAIR ROYBAL: Thank you, Ms. West. Can we have our next speaker, please?

[Previously sworn, Laura LewAllen testified as follows:]

LAURA LEWALLEN: Laura LewAllen. 2 Loma Oriente is my address and I am part of this community because my parents bought property from Jerry. Jerry and my father went to Highlands together and I, like Valley, grew up on this property. I've raised my son on this property and I can't think of it being any other way than it is now. I feel safe there. I feel at home there and it's just a very, very special place, and Jerry is a special person. He's become a father to me and I think it's very important that these types of situations are looked at for quality. Quality of people involved. Quality of buildings involved and I'm very proud of where I live and I'm proud of Jerry and our little community and I hope it doesn't have to change. Thank you.

CHAIR ROYBAL: Thank you, Ms. LewAllen. I had a question of our County Attorney. I didn't catch it until now but the speakers are coming up now, a couple of them didn't mention that they are under oath. Is that okay?

MR. SHAFFER: If they could just state that now and recognize that they were under oath when they spoke I think that would be fine.

CHAIR ROYBAL: So the individuals that did come up already to speak, if you could state your name and address and that your statements were under oath. Is that correct? Sorry I didn't catch that earlier but typically when you come up you state your name, your address and that you're under oath. So I missed that. It may have changed a little bit. Anybody that did speak if you could just get up and just say you made your comments under oath.

[Those that spoke, stated that they were under oath.]

CHAIR ROYBAL: So our next speakers that do come up if we could just make sure and make that statement when you say your name and address. Thank you. Next speaker.

[Previously sworn, Gayla Bechtol testified as follows:]

GAYLA BECHTOL: I'm Gayla Bechtol. I live at 1813 Hano Road in Santa Fe, New Mexico, and I am under oath. And I can't think of anything else to say that people haven't already said and I agree with all of them, the sweet comments. Jerry West was my first friend in Santa Fe when I moved her 26 years ago and took me to my first party and his daughter is one of my best friends. I was trying to imagine what could be contrary to the public interest by allowing these wonderfully build, beautifully crafted, modest adobe buildings to continue. I can't think of anything that's contrary to the public interest and contrary to that is as you've heard, a lovely community out there and I often wish I lived on the prairie and not in town. So, thank you.

CHAIR ROYBAL: Thank you, Ms. Bechtol. Can we have our next speaker, please?

[Previously sworn, Cynthia Gonzales testified as follows:]

CYNTHIA GONZALES: Hi. I'm Cynthia Gonzales and it's going to be a little odd because I actually don't live in Santa Fe any longer but I was born here and I lived here for many, many years and I've known Jerry since I was born. I'm 53 years old. I'm under oath and I live at 506 East Catalina in the City of Phoenix, Arizona. I have known Jerry my entire life. My father, Rudy Gonzales and Jerry have been building houses together. I grew up on that compound. There is nothing that is more important than having this compound remain part of Santa Fe. I came back here at least six or seven times a year. This is something that is absolutely crucial to why Santa Fe is the reason – why people come back. Why I will retire here. Why people move here. It's because of people like Jerry.

And you do, you absolutely as Mr. Longacre put it, you have the power to make sure that Santa Fe maintains a part of its history and this compound is absolutely a part of its history. It's modest. It's sweet. It's loving. It's a – I remember going to parties at this compound and as children, we grew up and the safety that was spoken of before, that's been going on for as long as I can remember. It's within your power to continue to let that be done. Thank you.

CHAIR ROYBAL: Thank you, Ms. Gonzales. Okay, did we have any other speakers? Okay, seeing that we don't have any other speakers I'm going to close the public comment and I'm going to go into questions from Commissioners. So I'm going to go to Commissioner Hansen first.

COMMISSIONER HANSEN: Thank you, everybody. So how many square feet are all the houses all together? I read all the material and I don't remember seeing the total square feet.

MR. SOMMER: These houses are each somewhere between 900 and 1,000 square feet. There's one that's fairly small called the Hogan and I think it's 800 square feet. And I'm guessing. When I say I'm guessing I asked Mr. West and I said is it 800 and 1,000 square feet, each one, yes.

COMMISSIONER HANSEN: Okay. We're talking about 4,000 square feet of living space.

MR. SOMMER: Of dwellings.

COMMISSIONER HANSEN: So the size of a rather large house.

MR. SOMMER: That's correct.

COMMISSIONER HANSEN: So, I have to say that my bias is that I really believe in the whole idea of a compound and that type of living space because that is part of what I grew up in in Santa Fe, coming here and living in that type of artists community. And even though there's some things that Planning Division didn't catch, like they didn't catch we needed to remove this condition, so I can see why in 2006 or 2011 they might have missed something else. Things happen like that. And so I can understand that there's been some exceptions here. And I personally want to remove the condition and grant the variance because I believe in this kind of community.

And part of the conditions that I know concern some of my other Commissioners is that you have maybe broken the law or built these houses and not followed the law

completely. And I can understand that, but I do think that this is an exception situation. And so I do agree with you, Mr. Sommer on that. Because it's an artists community and because that is what we're known for I think it is important that we allow this community to continue the way that it is.

There's also another basic reason that I support this is that I just attended a multi-family housing conference and the need for housing in this community is desperate. And so maybe it's only two more extra units, but then it's two more people contributing to our community. So that is another reason why I would move to remove the condition and grant the variance. But my real basic, basic feeling about this is that if we can't recognize our own humanity and our concern for genuine art and both Meridel Rubenstein who graduated from UNM way before I did and is an incredible artist and Jerry's also shown at the museum and I've seen his work over the years and respect it. This is what the fabric of Santa Fe is about is our artists communities. And this is a compound and this is how Santa Fe has lived for years and years. I lived on Garcia Street in a compound and I loved it. The Commons is another type of compound.

The Planning Commission also did put some conditions on Mr. West and one of them is you can't build any more houses. And you can't come back here and ask us again. That is really serious because people do feel that that's taking advantage. So those are important issues to consider. I'm happy to hear they're beautiful adobe houses and I think that's fantastic and if we were talking about 10,000 square feet in living space, then I would have some issues but the fact that it's 4,000 square feet, four bathrooms and that there's low water use and there's no gardens – is this all correct? There might be some plantings.

MR. SOMMER: It's not big landscaping. It's what you might imagine. There are maybe pots of flowers here and there. Little plantings. Not extensive landscaping and that sort of thing.

COMMISSIONER HANSEN: It's the prairie.

MR. SOMMER: That's right.

COMMISSIONER HANSEN: So what is your water budget?

MR. SOMMER: They share a well with the property next door that Jerry owned. I think it's on the Lewellen property, right? It's on the other property, on the other side. So it's a shared well situation. They have enough water both in the right and in the well there. They never run out of water and they have a shared well.

COMMISSIONER HANSEN: Okay. Those are important issues. Do you have enough water? Are you over watering? Anyhow, I think I've made my feelings known and I will allow my other Commissioners to make comments.

CHAIR ROYBAL: Thank you for your comments, Commissioner Hansen. I'm going to go to Commissioner Hamilton and then I'm going to go to Commissioner Moreno last. It's his district so I'd like to hear from him at the end. Commissioner Anaya, are you still on the phone?

COMMISSIONER ANAYA: I am, Mr. Chair.

CHAIR ROYBAL: I'll go to you after Commissioner Hamilton if you have some comments.

COMMISSIONER ANAYA: Okay. Thank you.

COMMISSIONER HAMILTON: So first of all, I want to say how

wonderful I think you all are. I don't think there's any question that this community is an incredible community that Mr. West and Meridel made wonderful contributions. That's to me just not at issue. I do have a question that's partly – and I think that the 2006 variance honored that and the intent of that variance with the conditions of no further building at that time were to grandfather everything in and assure that the community could survive as it was.

One question I want to ask is about the San Marcos Community Overlay. In the SLDC, these community overlays, somebody had to take particular effort, right? To develop this overlay and it's a community effort. So all you guys in the community did this overlay and asked all the restrictions. So the restrictions we're talking about, for which the variance was granted in 2006 were relevant to the San Marcos Community Overlay that you guys developed. I'm assuming that there are people in the audience who maybe participated in the community meetings, because there had to be all sorts of public community meetings to develop these criteria in the first place.

So I'd like you to actually address that and explain to me why it was put as a ten-acre limit in the first place. That was not something that Santa Fe County imposed on you. That's something that you as the community imposed on the SLDC. And then in 2006 everything that was existing was grandfathered in. So I completely appreciate the fact that maybe everybody in the audience thinks it's cool but there was a history of thought and of pre-planning that had to do with many principles including meeting the needs of the community, respecting the nature of the community. So part of what I'm looking forward to is that it's one thing if somebody in the community violated the conditions of the zoning and everybody wants that to be honored, but if there were a developer that came in and said, well, I want to put the same four buildings on five acres and the community should be fine with it.

So you see where I'm going. What I'd like to do is here from you. What were the inputs to developing this in the first place?

MR. SOMMER: Mr. Chair and Commissioner, I would address your point as you are exactly right. The community and this community particularly worked hard to develop standards and I think that Mr. Wait – you probably recognize his name as being one of the leaders out there in that effort and on an ongoing basis. He showed up at the Planning Commission and spoke in favor of the variance. Why is that? And that's the central question of what you're asking and I think it's particularly this. That while the San Marcos community has strived and worked hard and persuaded the County Commission to adopt an overlay it is not a one size fits every situation. And I think that this situation is highly unique.

I agree with you. The overlay has standards, ten-acre minimums. Those sorts of things. This particular property and this particular compound and this particular area doesn't meet that, never did meet that. Even when they adopted it, this didn't meet that. And so it's impossible to build into an overlay the exception, because it does damage to the general rule when you're doing an overlay.

So I would respond, Commissioner, just by saying, that's my explanation as to why are we here when that happened. Because this has always been a fairly unique situation. The property developed from the forties to the present day in a very different way than the general way. Getting to your point as to whether a developer could walk in

here tomorrow and say, hey, you did that there; I want the same criteria. Every variance that comes in front of you stands on its own, and it is a basic, fundamental premise that it is the facts and circumstances of every case that make it unique. You are not bound to grant anybody any variance based on this case as a matter of law.

So I hope that addressed the point that you were making in your question. That's my explanation for it and I think it's supported by the facts.

COMMISSIONER HAMILTON: Well, I frankly completely appreciate the fact that you can never make rules that fit all the circumstances. I suspect that some of the special circumstances for this area were known when the overlay was done.

MR. SOMMER: Absolutely.

COMMISSIONER HAMILTON: Those exceptions could have been put in the overlay. Given the strong community support for this compound and knowing that the variance was requested in 2006 and it was given with conditions, there was so much community support, those buildings weren't there in 2006 –

MR. SOMMER: They were there. Every building we're talking about was there.

COMMISSIONER HAMILTON: My understanding was the two that were granted the variance in 2006 were there and the other two were not.

MR. SOMMER: No, they were there. All the buildings were there. What happened was that two of the buildings which had bathrooms in them had a kitchen added to them. So every building we're talking about, and perhaps I didn't develop this very well in my presentation. These buildings were built over many years and in 2006 every one of these buildings is shown on that plat. They were labeled house or dwelling, studio, studio. And I suspect that either they were or they were mislabeled, but they were all there in 2006. It wasn't like they went out and build these then. And even those buildings in 2006 had developed over decades.

COMMISSIONER HAMILTON: That I understand. And now I understand this. Thank you.

MR. SOMMER: Thank you very much.

CHAIR ROYBAL: Thank you, Commissioner Hamilton. Commissioner Anaya, are you on the line? Did you have questions?

COMMISSIONER ANAYA: I am Mr. Chair, I probably have more comment than questions. But I think I'm going to start by addressing what Commissioner Hamilton was going with her comments. The buildings were there but the buildings were not dwelling units as defined by County code. Right, Mr. Sommer?

MR. SOMMER: Commissioner Anaya, that is correct.

COMMISSIONER ANAYA: So as I'm listening, the comments you were making were frankly making me a little frustrating because you were trying to take it in a different circle. The reality is in 2006 the Commission granted a specific approval variance with specific conditions. Correct?

MR. SOMMER: That is correct, Commissioner.

COMMISSIONER ANAYA: And the applicant knowingly, intentionally, went against those conditions. Correct?

MR. SOMMER: I don't think that is correct, Commissioner, simply because I think that the understanding that Mr. West had wasn't that specific about the

condition. I'm not going to brush it off on anybody else but the surveyor is the one that handled that division through the process, but he did, there's no doubt he did add a kitchen to each one of these two studios and he obviously did that with purpose. I don't think he did it with the idea that he was violating a specific condition that was on the plat. I don't think he was that aware of what was on that plat.

COMMISSIONER ANAYA: And what would you say to the five Commissioners that granted that variance, as the representative for the applicant? What would you say if we looked at the minutes of that particular meeting when it was granted, what would you say to that Commission if they were sitting in the audience?

MR. SOMMER: About tonight's presentation?

COMMISSIONER ANAYA: Yes, about tonight's presentation and sequence of events that are proceeding now to a request for another variance in 2017. What would you say to them? What would the applicant say? He could say it or you could say it.

MR. SOMMER: I think that basically what I would say is I would try to reiterate to the Commission that the way this property developed over time, Mr. West just continued to allow people to live on his property and made these places more livable for those folks over time. Not with the intention of saying to hell with the County Commission, but that's what happened. That is what happened in this particular case and that's what I would tell the Board of County Commissioners. It was not a conscious disregard for the Commission or a disrespect for the community.

COMMISSIONER ANAYA: So I appreciate that response and I want to quantify more remarks that I'm going to make with a premise that in the seven years that I've been on this Commission I have been a staunch advocate – So Mr. Chair, I've been a staunch advocate on this Commission for the last seven years for families and individuals that have been trying to split their properties to give to their children and to sustain some of the very same things that are being suggested here today. I've been front and center of helping families and individuals in every district of Santa Fe County to do exactly some of the variances that we're considering tonight.

And what is frustrating to me when I listen to some of the comments is there have been families – and I don't have any problem saying it on the record tonight – like the Montano family that was in that community, in that neighborhood, trying to do exactly the same thing, to sustain property for their children and to have that property where they can have their compound and live and not interrupt or bother anybody. And it's frustrating when I hear the reference to the artisan community or the reference to this particular property where in fact, many of the same people spoke against the Montano family, because those additional units were going to increase traffic. And those additional units were going to increase the need for public safety. And those additional units were going to tear away, not enhance the fabric of the community.

So as I hear the comments and the situation, I say, well, what is it? What is the recipe to be able to be considered part of the community to where a variance is acceptable in one case but on another case where maybe somebody doesn't have maybe the financial capability to build as beautiful a small home as is built in these compounds, maybe they could only afford a smaller mobile home, but yet there's a different standard and a different placeholder.

So I find myself troubled, troubled, when there's people that don't have the financial wherewithal to have representation as good as Mr. Sommer to get up and represent their case wherein their need and their presence in the community has been just as long or longer and generational, but they don't have the ability to get an approval or the variance. I say all these things intentionally, without stating what my vote will be on this item in advance, I say them intentionally on the record in hopes that everyone listening in, whether they're listening in on the computer or the radio or in that meeting themselves, would all take into consideration that there are circumstances that warrant variances but that we should be consistent and fair and equitable across the board.

And although many of those same individuals, and I bring up the Montano family again, maybe they weren't as popular and as recognized and endowed as the West family, who I respect, frankly. I respect the West family. But there is a precedent. There is a precedent that we need to be paying attention to and thinking about as we move into decisions like this, and we need to remember that precedent and remember that same consideration and thoughtfulness and Commissioner Hansen was representing in her remarks, when it's other people that may not be as fortunate or endowed or as well spoken or well known or well liked as the people like Mr. West are.

And so I say that to the West family with the ultimate respect but I can frankly tell you there's a different bar that is used for different people in different communities and it's wrong. And I'm concerned about it. And I'm concerned that if there's one property that's a beautiful compound and that has the artisan wherewithal to continue as a compound, it's okay, but if it's someone else down the road who maybe doesn't have that capability, or aren't as endowed as them that they wouldn't be given that same opportunity. Or that maybe they don't have the money to hire an attorney for legal representation.

So Mr. Chair, I apologize to you and everyone listening if I sound a little frustrated by let me tell you, I have fought tooth and nail for seven years to give everyone the same opportunity for variances for exactly the same type of purpose, but it's been piecemeal on which were approved and not approved and frankly, it really came down to economics and the endowment of who you knew and who you could get to come to a meeting. And so I just put those comments out there. I'm going to listen to the Commissioner from District 5 and his perspective, and then I'll render my vote when I render it. But I appreciate the opportunity to make comment and I hope that you were able to hear me, Mr. Chair. Thank you.

CHAIR ROYBAL: Thank you for your comments, Commissioner Anaya, and yes, we were able to hear you. So I'm going to go ahead and go to Commissioner Moreno.

COMMISSIONER MORENO: Thank you, Mr. Chair. Mr. Sommer, I'm stuck on this sentence in the summary of the Planning Commission's report. The applicant's agent states, at some point existing structures on the property were converted into dwellings resulting in a total of four dwelling units on the property. Do you know what that point in time was?

MR. SOMMER: I don't personally know, and in answer to that question, Commissioner Moreno. I believe what happened was in 2006 the plat showed the two dwelling units that were pre-code and these two studios and both those studios had in

them varying states of probably bathrooms, and I don't know when kitchens were added from 2006 to the present. I just don't know when that was and I've asked Mr. West about that and frankly, there were various people that lived on the property that he accommodated so that they could live there over time.

In 2011 I don't know if kitchens were there or not. I don't think in 2011 an inspection was done. So I believe that it occurred probably between that time and 2011. That's what basically I believe, and I don't think there's any more specific information we could find.

COMMISSIONER MORENO: So what was the event that caused the inquiry that led to this case?

MR. SOMMER: Mr. West was building with his renewed permit from CID and a code enforcement person was driving by and saw the construction on the storage facility that he was building and stopped and said, hey, do you all have a permit? And he gave him the permit that was renewed from CID and the code enforcement person said you have to come in and get the renewal from the Land Use Office as well. So they came in, immediately asked to renew it. As part of that normal process staff does a site inspection. That's what gave rise to that.

COMMISSIONER MORENO: Okay. So it was an accident that led to this case. If the CID inspector hadn't driven that way –

MR. SOMMER: It wasn't CID. It was a County code enforcement inspector. Yes. I'm sorry about that.

COMMISSIONER MORENO: Okay.

MR. SOMMER: Yes. It was by accident.

COMMISSIONER MORENO: Okay.

MR. SOMMER: And when I say it was by accident, he wasn't discovered like, Hah! Caught you! It was like show me your permit, and the gentleman that was working with him had gone to CID to get that, and that's what he believed he needed.

COMMISSIONER MORENO: Okay, well, here's my thinking here. This is a unique situation. I'm very sympathetic with the comments from my colleague Commissioner Anaya. When families want to stay together they try everything they can to do that. And this is not a standard community but it's a compound where like-minded people can be friendly with each other and live in a community of their own choosing. And I support that as well. But there's a limit as there are in life and I think Commissioner Hansen has set the bar: no more houses. In the interest of this unique situation, I'm going to support the lifting the variance that way but I also want to add an additional plug for more families that can live in the conditions that they want to live in and not where they have to live. Everybody should live like that. So I'm going to support the removal of the condition and I think I'll stop there. Thanks.

COMMISSIONER HANSEN: I'll second it.

RACHEL BROWN (Deputy County Attorney): Mr. Chair, before you vote on that can I just ask for clarification as to whether you're granting the variance?

COMMISSIONER MORENO: Okay. I move to grant the variance for this petition.

MS. LUCERO: Mr. Chair, Commissioner Moreno, does that include the conditions that were recommended by staff and imposed by the Planning Commission?

COMMISSIONER MORENO: Yes.

COMMISSIONER HANSEN: I'll second that.

CHAIR ROYBAL: So you're seconding also. So under discussion, is there any other comment from Commissioners? Commissioner Hamilton.

COMMISSIONER HAMILTON: I want to say for the record that while I feel tremendous sympathy for what's being requested, I feel like it's frankly unfair to have an area that's a special overlay where if you guys want things a certain way go through your public process, the community process of having this area carved out as an exception. Lots of overlay districts do that. So we were presented with a set of rules to follow that had all sorts of reasons. Commissioner Anaya brings up a very good point. There are places all over the county where there are certain rules set for density and therefore because of water considerations or preserving the nature of the area that took months and years to develop with public meetings and what not. And then families want – Commissioner Moreno just suggested that everybody should live in the condition they want to live in. And that's great as an overarching aspiration but it has nothing to do with when you actually have to make rules for particular area, and they're all supposed to be done in the community interest.

So here we have a special overlay district that we've been asked to then uphold for you guys except for when you don't want it with no particular reasons that actually follow guidelines for variances because there was a variance granted, however many – eleven years ago. It's hard to do subtraction quickly. And then the conditions weren't followed. So I'm kind of at a loss to know what to do when I fully appreciate what you're asking for and why you're asking for it and the nature of community, but then there are all these other situations where it sets a precedent that I just don't understand how to follow. I don't know how to address Commissioner Anaya's very strong point about other people that maybe just didn't bring as many people into the audience to speak. And what people do for a living – frankly, everybody, every person in the county is valuable, whether you're an artist or you're a garbage collector. It just to me that is not the value of what you contribute to the community and that should not – the level of respect I have for what you do, Mr. West, is not the measure of what the decision has to be.

CHAIR ROYBAL: Thank you, Commissioner Hamilton.

COMMISSIONER HANSEN: Mr. Chair.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Let me go to Commissioner Hansen and then I'll go to you, Commissioner Anaya.

COMMISSIONER HANSEN: Didn't we just recently approve the San Marcos overlay?

COMMISSIONER HAMILTON: I have to admit, I don't know the date of when it was approved.

MS. MILLER: I think what you approved with the community organization.

COMMISSIONER HANSEN: Okay, the community plan. So one of the things I want to say about the overlay and the community plan is that these buildings have been there and when those things were approved.

COMMISSIONER HAMILTON: And they were not grandfathered into the plan. So my point is they were grandfathered in the 2006 variance. They were considered legal non-conforming because of the time they were there. But in 2006, the variance was granted. The plan was made subsequently. If there was a desire to let this compound be a standalone outside of the ten-acre lot size it should have been memorialized in the plan. They had every opportunity to do that. Because that's the process by which community desires are imposed appropriately on the SLDC. That's a wonderful process. It's important that we have that. So that's what I'm asking is why was it when –

COMMISSIONER HANSEN: I can't answer that question.

COMMISSIONER HAMILTON: I know. And on the surface of it it looks like those conversions were done and then are asking for permission after the fact.

COMMISSIONER HANSEN: But the buildings were already there.

COMMISSIONER HAMILTON: The buildings were there, and given the community support, when the kitchens, when the conversion was done, that's when they should have come in to ask those conditions to be removed. Because of the level of support and the argument that it doesn't go against the nature and spirit of an existing overlay, that's all fine in the process.

CHAIR ROYBAL: Okay. Thank you, Commissioner Hamilton.  
Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, thank you. Thank you very much. I want to just restate a few things and I want to say first and foremost that this day and these minutes will be reflected and remembered and reiterated for meetings to come and for issues to come. And I just hope and pray, frankly, that regardless if there was 50 people at a meeting speaking in favor of a matter or a variance or an individual or a family, or whether it was the applicants standing alone by themselves, that we take that same premise of family and humility and a compound in the interest of helping the family and we employ it and utilize it for the next year while I'm there in the hopes that for the next Commission and Commissions to come that there's always frankly that analysis and careful, thoughtful, caring, compassion for those that don't have the endowment and the resources that this particular applicant has. And I hope and pray that in my vote and my vote is going to fall to put in a position of helping more people, not in a position of hamstringing people and families. And I just hope and pray that this Commission and future Commissions will continue, because there's no plan that is a catchall for any community or any overlay. There are always going to be circumstances that warrant consideration and possible change from that plan of action. And I'll leave it at that, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya, and I'd like to echo a lot of the comments that were made by Commissioner Anaya and Commissioner Hamilton in regards to making sure that we're fair across the board to any individuals that come in for a variance and that we take into consideration what they're asking for and their needs for their family. And with that being said, I will support Commissioner Moreno. This is his district and I will support his decision. So we have a motion and a second.

MS. LUCERO: Mr. Chair. Excuse me. If I could just get one more point of clarification. Does the motion for approval of the variance include removal of the previously imposed condition by the Board to allow only two dwelling units?

COMMISSIONER MORENO: Yes.

MS. LUCERO: Thank you.

CHAIR ROYBAL: Okay, does the second also reflect that?

COMMISSIONER HANSEN: Yes.

CHAIR ROYBAL: Okay. So we have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

- VIII. A. 3. **CASE # S 17-5270 Sivage Homes Reconsideration of Condition and Plat Amendment. Sivage Homes (Applicant), Design Enginuity (Oralynn Guerrerortiz), Agent, request reconsideration of a Condition imposed by the Board of County Commissioners to require shared driveways and a Plat Amendment of the previously approved Los Santeros at Las Campanas, which is now known as Las Melodias de Las Campanas to eliminate platted shared driveways. The property is located within the Las Campanas Subdivision at 2, 4, 10 and 12 Avenida Malagueña, within the Las Campanas Planned Development District, within Section 15, Township 17 North, Range 8 East (Commission District 2) [Exhibit 6: Faust Letter]**

MS. LUCERO: Mr. Chair, I'll be presenting this case as well. On February 8, 2000 the BCC granted final plat and development plan approval of the Los Santeros at Las Campanas Subdivision phase in accordance with the approved master plan consisting of 68 lots and a master plat for 126 lots on 128 acres. The request also included a variance of the minimum road standards. The following variances were approved by the BCC subject to conditions of approval.

The first variance was that the road grades of between four and five percent at eight intersections, and the second one is in regards to spacing between points of ingress and egress. The BCC imposed a number of conditions of approval on the subdivision including a condition requiring shared driveways.

The applicants now request for the BCC to eliminate the previously imposed condition regarding the shared driveways. The condition states: Provide shared driveways in order to mitigate the variance for separation between points of ingress and egress.

The applicant purchased a portion of the Los Santeros Subdivision known as Las Melodias, phase 2, and staff approve the 11-lot subdivision plat administratively showing the shared driveways and drainage easements along several contiguous property boundaries. The applicant states, there is no road safety justification for a shared driveway and the use or shared driveways restricts lot development which does not meet the owners' desires for home development. There are several homes already constructed in this development that did not use the designated shared driveway locations.

The purpose of the road design standards is to provide safe and efficient access to

property and safety for both vehicular and pedestrian traffic. The variance granted by the BCC in 200 was in regards to the code requirements for spacing between points of ingress and egress. In granting the variance, staff recommended a condition of shared driveways in order to qualify as a minimum easing of code requirements. The applicant agreed to the conditions of approval.

Permits for homes on nine of the lots have been issued. Three of the nine homes comply with the conditions of shared driveways. The other six are out of compliance with the condition. The applicant submitted the previous plat that was sufficient to prove that the applicant had a single legal lot of record. However, that plat did not show the requirement for shared driveways and therefore staff issued the permits with separate driveways.

Recommendation. Staff recommends denial of the applicant's request for removal of the previously imposed condition imposed by the Board of County Commissioners to require shared driveways and a plat amendment of the previously approved Los Santeros at Las Campanas, which is now known as Las Melodias de Las Campanas to eliminate the platted shared driveways. At the discretion of the BCC to consider the request to reconsider the condition imposed to require shared driveways the BCC may consider the information presented by staff and the applicant to remove the condition of shared driveways.

If the BCC approves reconsideration of the condition, staff recommends the following condition be imposed, that a new plat of survey for lots located at 2, 4, 10 and 12 Avenida Malagueña showing the new driveway locations must be submitted and approved by staff. I stand for questions.

COMMISSIONER HANSEN: Are there any questions from the Board?  
Commissioner Hamilton.

COMMISSIONER HAMILTON: So in the original granting of variance and the conditions that were put that we're being requested to remove this morning, right? The conditions and the guidelines surround those have to do with public safety, with driving, with the number of access points to the road. So was there like a traffic study or was there any – from County staff, professional opinions on what the basis for the necessity for those shared driveways were, were to minimize the ingress-egress points?

MS. LUCERO: Madam Chair, Commissioner Hamilton, when the subdivision was approved back in 200 it was under the jurisdiction of the Extraterritorial Zoning Ordinance and Subdivision Regulations. And at that time the separations of driveways was mainly for commercial development so there wasn't a clear distinction of what's required as far as residential separation. So the applicants requested a variance at that time. The separation for non-residential is based on number of accidents by spacing, traffic generated on the road just to make sure – the more people you have existing and entering onto a road the higher the risk of accidents happening is. So that's what it was based on. But it's not clear that those standards were applicable to residential development at that time.

COMMISSIONER HAMILTON: So what's the basis for suggesting that they be retained now? If there's a safety basis, we've been asked for other cases for variances having to do with slope of the road that have to do with access of emergency

equipment. Is there a reason that the staff is recommending now that those same – the continuation of shared driveways to minimize ingress and egress points?

MS. LUCERO: Commissioner Hamilton, the SLDC does not address spacing between access points for residential development but there are a couple of design standards the applicant would need to comply with and staff has some concerns and is not quite certain that these can be met and one is that – I believe the applicant said that the design speed of the internal road is 15 miles per hour. So there's a code requirement for a sight distance of a minimum of 80 feet, which I scaled it off and it's close as to whether or not the applicant meets that requirement. The other design standard is that there's a requirement for a minimum of 100 feet from the return radius of the intersection. Based on my review it doesn't look like that spacing can be met but I'll defer to the applicant. I didn't have scale drawings so I was reviewing it based on –

COMMISSIONER HAMILTON: No, that's addressing my question. So then the other question is, in reading the materials, there's nine properties in question where six of them were presented with absolutely no indication to people that there was this requirement. Can you speak to that a little bit? To the actual circumstances of how that development took place? Because I got the impression that some of these lots were developed and that information just was not presented. And so it was not followed and it's once again, like, we want to do it however we're going to do it and then we're going to ask for the variance.

MS. LUCERO: Mr. Chair, Commissioner Hamilton –

COMMISSIONER HAMILTON: Do you understand – I'm asking the question to find out what the real situation is. Not to be snarky. And I apologize if it came off that way. That's not my intent.

MS. LUCERO: Commissioner Hamilton, the County has issued nine permits – permits for homes on nine of the lots within that subdivision phase. Three of the nine lots, three of the nine permits that were issued did comply with that requirement. The other six that were issued, the permits that were submitted showed the plat for the entire tract before the subdivision occurred, which was enough to prove legal lot of record as part of the application. That's one of the requirements and that did show a legal lot of record, a large tract, and so it didn't show shared driveways on to any lots. So staff issued the permits, not knowing that there was the requirement for shared driveways.

COMMISSIONER HAMILTON: I understand. Okay. Maybe that answers my question but it would be nice if we could get some information about how or under what circumstances or basically why that occurred.

MS. LUCERO: Mr. Chair, Commissioner Hamilton, as part of the submittal it was just the review that was conducted by staff. The applicant had all the required submittals. Staff wasn't aware that there was an additional plat that superseded the larger parcel and that's what we based our decision off of.

COMMISSIONER HAMILTON: Maybe as other information comes out maybe we can come back to it because I'm trying to ascertain the entire circumstance of what the steps were that led to having these properties permitted and developed with individual driveways when somebody knew that there was the requirement for shared driveways. I'm just wondering what maybe the timing or the sequence or special conditions or whatever might be contributing.

MS. LUCERO: Mr. Chair, Commissioner Hamilton, as I mentioned earlier, the code did not specifically state that there were separation requirements for residential driveways, so as part of the review process, that wasn't a consideration as part of the review process. When we looked to see if it complied with the code there was nothing in there saying that there were points of ingress and egress, separation points between the ingress and egress.

COMMISSIONER HAMILTON: So you're explaining to me why you guys didn't think it was there. I'm wondering why the developer, who should have known – who knew the previous requirements, what led to that change. So I don't think you can answer the question, necessarily.

CHAIR ROYBAL: Okay, is there any other questions for staff. The applicant, would you like to –

ORALYNN GUERRERORTIZ: Hi. I'm Oralynn Guerrerotiz with Design Enigunity.

[Duly sworn, Oralynn Guerrerotiz testified as follows:]

MS. GUERRERORTIZ: My mailing address is P.O. Box 2758, Santa Fe, New Mexico. I'm going to start with my presentation and then I will try to address some of the questions that you've raised, Commissioner Hamilton.

COMMISSIONER HAMILTON: That's great. Thank you.

MS. GUERRERORTIZ: First, a quick overview. This is a picture of Las Campanas, Las Campanas Drive going around, Paseo Aragon, kind of a very central round road, and this project is right in this area.

COMMISSIONER HANSEN: How many lots all together?

MS. GUERRERORTIZ: Eleven lots.

COMMISSIONER HANSEN: Okay.

MS. GUERRERORTIZ: There were four shared driveway easements affecting eight lots originally. These lots have been developed. This one has been developed. I'll show you a map showing the aerial currently. We're asking to get rid of this one and this one. So two out of the four, although as this points out, pointing in the same direction, these homes were supposed to have shared driveways; they don't. There's a driveway here and a driveway here. This home, they would like to build the driveway off the garage and so they don't want to share this one, and this home, it was supposed to have a shared driveway and there's actually a separation between the lot line and the driveway that was constructed. So these are what's out there today.

Just for your information, I am a professional engineer and so I do look at this from a traffic safety issue. I think there's three real bases for the reason that we're requesting this. One is that there is no safety basis for requiring shared driveways in this case. It does significantly restrict lot development. People generally, especially in areas where they have incredible viewsheds, they set up their home or they lay out their home designs based on the views that they're trying to catch. They don't want to have to have a garage in a certain location if it doesn't really work with their viewshed ideas. And I'll go further. I'll say that the original requirement, this original condition had absolutely no code basis. And I'll try to prove that.

First of all, at the time in 2000, the EZ Subdivision regs kicked you over to the County code, and the County code had driveway spacing requirements for speeds of 25

or greater. And I'll defer to anybody who wants to speak up and say otherwise, but I've actually presented this information to staff already and so they've had opportunity to look at this. The road, because of those 90 degree bends, these significant bends here, you can't get up to 25 miles per hour on this road. This road was always designed for a 15 mile per hour speed limit. So given that the code had a requirement for driveway spacing of 200 feet, if the speed limit was going to 25 or greater, that makes sense. There's no requirement in the codes for less than 25 miles per hour.

So my point is there's not a safety concern when people go slow when somebody's pulling out of a driveway. You can have driveways fairly close together in those conditions. The code does also kick you over to the state regulations, and the state has no driveway spacing regulations on local roads, and that's coming out of the regulations for driveway and median openings on non-access-control highways. DOT Standard written in 89 and in effect in 2000.

If we look at current code, the SLDC, there is no spacing requirement for driveways currently. The only requirement is that you have an 80-foot sight distance, and there's no problem with 80-foot sight distance on these lots. So a house here can see 80 feet easily. And so a house designed here can actually see 80 feet, so it's not a problem. The other requirement is for 100 feet from a turn radius, the turn radius is kind of what the curve is on an intersection, 100 feet is right about here. So they don't want any driveways within 100 feet. This is a lot line. I would say this house couldn't have a driveway, theoretically if you applied that rule. But anyway, that one's already in and similarly, this driveway is already in. This driveway, if they had done a shared driveway, it actually did do a shared driveway, it would create two within 100 feet. So it's against the code, or an additional one against the code, and again, if we had done a shared driveway, if they had done a shared driveway here then you would have gotten two within 100 feet and it would have been against that code violation.

That's current code and actually that also existed back in 2000, that line. And then under state regulations, states only under the current regulations, the DOT only regulates driveways on state roads, they do not regulate driveway spacing on County roads or private roads, which is this case.

So what do we have, really? We've got 11 homes in a very quiet neighborhood, very calm dead-end road with very little traffic. I think in 2000 the code was misapplied. Staff assumed that the road speed was 25 miles per hour and therefore they applied the 200-foot separation and said you've got a problem, therefore you need to go ahead and share driveways. I get this. I was actually here at that time. I'm probably responsible for this oversight. I'm sorry about that, but I was the engineer of record for the County at that time and I think I blew it. I don't know. I was the person reading reports. I didn't necessarily – I'm not going to make excuses.

Anyway, under the current code, if they came in today you wouldn't required them to do shared driveways. So I want to speak to a couple more issues. I don't agree to the condition. The condition is stating that we have to define where those driveways are going to be on the future lots and I really – I think that as long as people meet current code, that's all we should have to do. And they have to prove that they can do the 80-foot sight distances and those kinds of requirements, but I don't think that I should, or we should now try to decide where somebody's driveway is going to be. Let them design

their home. Let them understand what the rules are, but I don't agree to the existing condition that the staff is trying to apply if this project gets approved.

CHAIR ROYBAL: Oralynn, could she ask one question?

MS. GUERRERORTIZ: Certainly.

COMMISSIONER HAMILTON: So you're suggesting, and maybe I just read it differently, that – Vicki, is this what was intended that this condition that the lots, the plats with the location of the driveway be submitted now, long before they're developed? So in other words that they commit now to where those driveways are going to be? Is that the intent of what that condition is? Maybe I didn't look at it carefully enough and maybe I wasn't thinking of it in terms of when – that's not the way I read it.

MS. LUCERO: Mr. Chair, Commissioner Hamilton, that's the way that the condition is worded. Being that some of the lots are already existing, the main point of it is to actually vacate the driveway easements on those four lots that are the subject of the application.

COMMISSIONER HAMILTON: So these four lots, are some of these developed? Or are these four, 2, 4, 10 and 12, are all those empty lots right now?

MS. GUERRERORTIZ: Well, this driveway's not put in yet. We're having that discussion on this one and this lot hasn't been developed. So we've got two driveways that have not been defined yet.

COMMISSIONER HAMILTON: And two that have been.

MS. GUERRERORTIZ: Two out of the four.

COMMISSIONER HAMILTON: Okay. Thank you. We can come back to that when it's appropriate.

MS. GUERRERORTIZ: Okay, and now I'm really sorry that I'm in this position, because I hate to be in that position, but the point that you brought up, Commissioner Hamilton, was really questioning: Why are we here? Why did we get these other homes that were approved without the shared driveway easement?

COMMISSIONER HAMILTON: But you can understand why I asked that.

MS. GUERRERORTIZ: And I still don't know. Because when I apply for a building permit, I can't bring in the permit for Las Campanas showing a big lot. I have to bring in the plat that shows exactly the lot I am trying to get a building permit on. That's the County's rules. And there's only one plat for that and that plat shows shared driveway easements. So either staff failed to check that box and make sure that that was taken care of, that they actually provided the proof of legal lot, or, at least in one case, in one file I looked at, the application did have that plat, did show the shared driveway easements, and the project was approved with the driveway that was not in that shared driveway easement, so staff failed to understand what the requirement was, failed to understand what a shared driveway easement was, and failed to apply it.

I only looked at one file but staff can come and tell me that I'm wrong but I can pull it out and show it to you. But the bottom line is, if I go in for a plat, or if I go in for a lot in Oshara, to pull a building permit, I don't show them the big piece showing the property when it was at Greer Enterprises used to own. I've got to show them the legal lot for the house that I want a building permit on. And there's only one plat for that and that one showed the shared driveway easements. So I think – I don't know why it happened –

but it was definitely staff error involved that we ended up getting homes built where they weren't following the shared driveway easement.

When I asked my client why, he said I was not involved during the process when the bigger project got approved, the Los Santeros project. He was only involved in the smaller project, and he didn't understand that he had to do this. He said the very first permit he came in for it wasn't even raised up. He showed them the shared driveway easements with the plats that existed and there wasn't a question raised. And so he continued along building – Sivage Homes continued to build multiple homes that never paid attention to that. And when I asked him about it, he said, well, I thought that was something that we were allowed to do. If I wanted to use it, that allowed the neighbors basically to drive on each other's property, but there was not a requirement that we had to do it, and it also had advantages for drainage reason. It was a shared drainage and a shared access easement or a shared driveway easement. And by the way, we do want to vacate these easements but we don't want to vacate the drainage easement part of it. We only want to vacate the shared driveway easement.

So I think that's all I have to say and I'll stand for any questions. Thank you.

CHAIR ROYBAL: Do we have any questions from the Commission?  
Commissioner Hansen.

COMMISSIONER HANSEN: Kind of the same manner that  
Commissioner Hamilton was speaking, so we have how many houses with single access driveways? Nine? Or three?

MS. GUERRERORTIZ: Yes. Every house that's out there today has a single access driveway right now. And there's nine homes.

COMMISSIONER HANSEN: So nine homes already have single access?

MS. GUERRERORTIZ: Right. They didn't – yes, that's correct.

COMMISSIONER HANSEN: And they're not sharing a driveway.

MS. GUERRERORTIZ: No one is sharing a driveway currently.

COMMISSIONER HANSEN: And how many empty lots do you have?

MS. GUERRERORTIZ: We have two, and we haven't built the driveway for a third house.

COMMISSIONER HANSEN: Okay. So we're talking about three lots that you want to have a single driveway on, and we're talking about designing that when you build the house?

MS. GUERRERORTIZ: Yes.

COMMISSIONER HANSEN: Am I correctly stating that?

MS. GUERRERORTIZ: Yes. That's correct.

COMMISSIONER HANSEN: I'm just being clear.

CHAIR ROYBAL: Thank you for your questions or comments from the Board? Commissioner Anaya, are you still on the line?

COMMISSIONER ANAYA: I am, Mr. Chair. I don't have any questions right now.

CHAIR ROYBAL: Okay. This is a public hearing so I want to see if there's anybody from the public to address the Board in support or opposition of this request.

COMMISSIONER HAMILTON: There's one letter, I think we got this. I

don't know if have to read that into the record.

CHAIR ROYBAL: I'm going to go ahead and read it into the record. We have one comment. Okay, seeing that, I'm going to go ahead and close public comment. There's not anybody here today to speak for or against. What's the pleasure of the Board? Commissioner Hansen.

COMMISSIONER HANSEN: I move to approve the variance and allow for that they are able to design the driveway when they design the house.

COMMISSIONER ANAYA: Second.

CHAIR ROYBAL: So we have a motion with staff recommendations and a second.

COMMISSIONER HAMILTON: Wait.

COMMISSIONER HANSEN: Without staff recommendation.

COMMISSIONER HAMILTON: Can I make a friendly suggestion, because I agree, except that I think one thing the County does want is for the new plats accurate, once the driveways are placed with them accurately showing the driveway. I would like to at least request that.

COMMISSIONER HANSEN: That the driveways are part of the plat?

MS. LUCERO: Mr. Chair, Commissioner Hamilton, so the main point of our condition was to – right now, the plat as recorded shows that there are shared driveways. The applicant is requesting to vacate those shared driveways for those four particular lots. So that's what we would request is that the plat would be re-recorded to eliminate those shared driveways on those four parcels.

COMMISSIONER HAMILTON: And that's why I just wanted to make sure we captured that, but I would agree not to have to show where a driveway would be before the – in an empty lot not developed.

CHAIR ROYBAL: Okay, so does your motion and second include those?

COMMISSIONER HANSEN: It does. I'm sorry to be unclear.

CHAIR ROYBAL: So we have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

- VIII. A. 4. CASE # S 17-5260 Las Campanas Holdings, Inc. (Estancias Unit III) Preliminary and Final Plat and Development Time Extension.  
(TABLED)

**VIII. CONCLUDING BUSINESS**

**A. Announcements**

CHAIR ROYBAL: Do we have any announcements from staff?

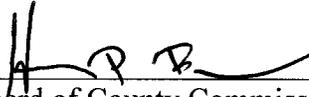
MS. MILLER: Mr. Chair, just want to announce that we have special closed sessions next Monday and Tuesday and that has been noticed. So I just wanted to remind you of that. We will be at the capitol in closed session on October 16<sup>th</sup> and October 17<sup>th</sup>.

CHAIR ROYBAL: Any other announcements?

**B. Adjournment**

Upon motion by Commissioner Hamilton and second by Commissioner Hansen, and with no further business to come before this body, Chair Roybal declared this meeting adjourned at 7:50 p.m.

Approved by:

  
Board of County Commissioners  
Henry Roybal, Chair

ATTEST TO:

  
GERALDINE SALAZAR  
SANTA FE COUNTY CLERK



Respectfully submitted:

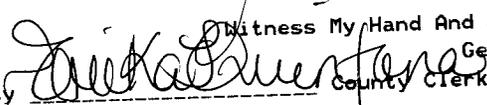
  
Karen Farrell, Wordswork  
453 Cerrillos Road  
Santa Fe, NM 87501

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

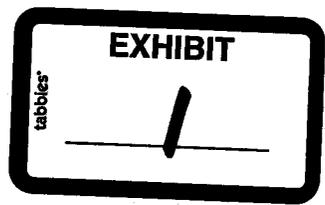
BCC MINUTES  
PAGES: 108

I Hereby Certify That This Instrument Was Filed for  
Record On The 15TH Day Of November, 2017 at 10:46:29 AM  
And Was Duly Recorded as Instrument # 1841420  
Of The Records Of Santa Fe County



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

REC CLERK RECORDED 11/15/2017



THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY

RESOLUTION NO. 2017-

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**A RESOLUTION  
APPROVING LEASE AGREEMENT NO. 2018-0119-PW BETWEEN SANTA FE  
COUNTY AND SANTA FE RECOVERY CENTER, INC. FOR THE OPERATION  
OF A DETOXIFICATION AND SOBERING CENTER  
AT 2052 GALISTEO STREET, SANTA FE, NM**

---

**WHEREAS**, Santa Fe County ("County") owns certain premises located at 2052 Galisteo Street, Santa Fe, NM (the "Premises"); and

**WHEREAS**, the County previously leased approximately 6,439 sq. ft. of office space and related facilities at the Premises to Christus St. Vincent Regional Medical Center ("Christus St. Vincent") for the operation of a detoxification and sobering center; and

**WHEREAS**, in May 2017, Christus St. Vincent informed the County that it would cease operation of the detoxification and sobering center and assign its agreement with the County to the Santa Fe Recovery Center, Inc., a nonprofit corporation whose mission is to work with individuals to sustain lifelong recovery from alcoholism, addiction, and related mental health issues, by providing culturally relevant, evidence-based, treatment and education in partnership with other community organizations; and

**WHEREAS**, Christus St. Vincent also terminated its lease agreement with the County concerning the Premises; and

**WHEREAS**, on June 13, 2017, the County approved the assignment of the service agreement from Christus St. Vincent to Santa Fe Recovery Center, Inc. to facilitate Santa Fe Recovery Center, Inc.'s continued operation of an enhanced detoxification and sobering center that benefits the City of Santa Fe as well as Santa Fe County and the community; and

**WHEREAS**, the County wishes to lease approximately 5,070 sq. ft. of office space and related facilities at the Premises to Santa Fe Recovery Center, Inc. for the Center's operation and maintenance of an enhanced detoxification and sobering center for the period of November 22, 2017 to June 30, 2018, during which time the County intends to complete a competitive solicitation for a provider of this valuable and beneficial community service; and

**WHEREAS**, Lease Agreement No. 2018-0119-PW (Exhibit A, attached) contains terms and conditions that are agreeable to the County and Santa Fe Recovery Center, Inc.

SFC CLERK RECORDED 11/15/2017

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners (BCC) of the County as follows:

1. Lease Agreement No. 2018-0119-PW is hereby approved, and the Chair of the BCC is hereby directed and authorized to execute the Lease on behalf of the County.
2. Pursuant to Section 13-6-2.1 NMSA 1978, County staff is hereby authorized and directed to submit Lease Agreement No. 2018-0119-PW to the State Board of Finance for approval. Lease Agreement No. 2018-0119-PW shall not be effective until approved by the State Board of Finance.
3. The County Manager is hereby authorized to negotiate and execute on behalf of the County such changes or amendments to Lease Agreement No. 2018-0119-PW as may be required by the State Board of Finance.

**PASSED, APPROVED, AND ADOPTED THIS 10<sup>TH</sup> DAY OF OCTOBER, 2017.**

**THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY**

\_\_\_\_\_  
Henry P. Roybal, Chair  
Board of County Commissioners of Santa Fe County

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar, Santa Fe County Clerk

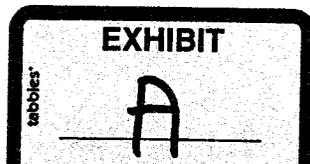
Approved as to form:

  
\_\_\_\_\_  
Gregory S. Shaffer, County Attorney

SFC CLERK RECORDED 11/15/2017

LEASE AGREEMENT BETWEEN  
SANTA FE COUNTY AND SANTA FE RECOVERY CENTER, INC.  
FOR LEASE OF PREMISES AT 2052 SOUTH GALISTEO STREET,  
SANTA FE, NEW MEXICO

SFC CLERK RECORDED 11/15/2017



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**LEASE AGREEMENT**

**THIS AGREEMENT (“Agreement”)** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (“**Execution Date**”) by and between **Santa Fe County**, a political subdivision of the State of New Mexico hereinafter referred to as “**County**”, and **Santa Fe Recovery Center, Inc.** a New Mexico nonprofit corporation, hereinafter referred to as the “**Lessee.**” County and Lessee are referred to individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

**WHEREAS**, the County owns real property and improvements located at 2052 South Galisteo Street, Santa Fe, New Mexico 87505 (“**Property**”); and

**WHEREAS**, in 2013 Santa Fe County and Christus St. Vincent Regional Medical Center (“Christus St. Vincent”) entered into Lease Agreement No. 2014-0027-PW/GG to provide for Christus St. Vincent’s lease of a County-owned facility to operate and maintain a sobering center (the “Sobering Center”). The Sobering Center was operated in 4,374 square feet of office, exam and detox treatment space at 2052 South Galisteo Street, a County-owned facility; and

**WHEREAS**, Christus St. Vincent’s Sobering Center was governed by the terms and conditions in Professional Services Agreement No. 2016-0150-DWI/BT (the Service Agreement) the term of which expired June 30, 2017; and

**WHEREAS**, the term of Lease Agreement No. 2014-0027-PW/GG is due to expire November 1, 2017, however prior to the expiration of the Lease Agreement, Christus St. Vincent has notified the County that, effective August 24, 2017, Christus St. Vincent will discontinue its operation and maintenance of the Sobering Center and has identified another entity, the Santa Fe Recovery Center, Inc., as an entity who is willing and qualified to assume the operation and maintenance of a detoxification center in the same facility at 2052 South Galisteo Street; and

**WHEREAS**, due to the necessity of sobering and detoxification services to serve and benefit the community and the County and Christus St. Vincent’s desire to not suffer a lapse in this important community service, on June 13, 2017, the County approved the assignment of the Service Agreement by Christus St. Vincent to Santa Fe Recovery Center, Inc. (Amendment No. 1 to Agreement No. 2016-0150-DWI/BT); and

**WHEREAS**, effective July 1, 2017, sobering and detoxification services will be assumed and continued at the County-owned facility by Santa Fe Recovery Center, Inc., a non-profit corporation whose mission is to work with individuals to sustain lifelong recovery from alcoholism, addiction, and related mental health issues, by providing culturally relevant, evidence-based, treatment and education in partnership with other community organizations. Santa Fe Recovery Center’s services will include assessment, screening treatment, counseling, navigation and other supportive and wrap around services for individuals in need of such services ; and

**WHEREAS**, Santa Fe Recovery Center, Inc. agreed to be bound by all the terms and conditions in the Service Agreement, as amended, and will honor and perform all obligations under the Service Agreement; and

WHEREAS, the term of the Service Agreement with Santa Fe Recovery Center, Inc. has been extended to June 30, 2018, to provide for sufficient time for the County to procure this essential public service through a competitive solicitation; and

WHEREAS, the County and Santa Fe Recovery Center, Inc. wish to continue to provide the detoxification and sobering services in the same County-owned property located at 2052 South Galisteo Street and as more specifically provided in this Lease Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. **Premises:** The Premises consist of approximately 5,070 square feet of office, exam, treatment space, and other improvements depicted on **Exhibit A**, including associated parking. Lessee has inspected the Premises and knows the extent and condition thereof and accepts same in its present condition, subject to and including all defects, latent and/or patent.

2. **Term:** The Term of this Agreement shall commence on November 22, 2017, and terminate June 30, 2018. This Lease Agreement shall not be effective until approved by the State Board of Finance.

3. **Right to Terminate:** Either Party may terminate this Agreement by providing a 90 day's prior written notice to the other Party.

4. **Rent:**

a. During the Term of this Agreement and in consideration of this Lease, Lessee shall pay the County \$7,182.50 per month. Lessee will meet its rental obligations through monthly cash payment.

b. Lessee shall, no later than the end of each month during the Term of this Agreement, submit to the County the payment of \$7,182.50.

Lessee's statement shall be submitted to:

Attn: Director  
Santa Fe County Community Services Director  
Santa Fe County  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, NM 87504

5. **Maintenance:** In addition to rent, Lessee shall pay to the County \$300.00 each month during the Term of this Agreement for County's maintenance of the Premises as provided herein. Such charge must be paid in cash no later than the 10<sup>th</sup> of each month.

6. **Purpose:**

a. **In General** - This Agreement is made for the purpose of setting forth the terms and conditions upon which the Lessee will lease, occupy and use the Premises to maintain and

operate a detoxification and sobering center as provided for in Professional Service Agreement No. 2016-0150-DWI/BT. Lessee shall not use or permit the Premises to be used for any other purpose without the prior written consent of the County, which may be granted or withheld at the County's sole discretion.

b. **No Nuisance** - Lessee shall not do or permit any act or thing to be done upon the Premises that will obstruct or interfere with the rights of County or any others, or injure or create a nuisance. Lessee shall not cause, maintain, or permit any nuisance or waste on or about the Premises, or allow the Premises to be used for any unlawful purpose. Within 72 hours of receiving written notice from County that a nuisance exists, Lessee shall abate or otherwise cause the nuisance to be abated. If Lessee has not taken corrective action within 72 hours, then County may enter and abate the nuisance at the sole cost of Lessee without any liability whatsoever to County. Lessee shall not allow any offensive matter, refuse or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, to remain on the Premises or within a distance of 50 feet thereof, and shall prevent any accumulation thereof from occurring.

7. **Alterations**: Lessee shall make no modifications, improvements or additions (Construction) to the Premises without the prior written consent of the County, which may be granted or withheld at the County's sole discretion. All approved Construction shall be done at Lessee's sole cost and shall comply with the terms and conditions of all federal, state and local rules, regulations, codes, and laws (Applicable Laws) that govern such Construction. Lessee's contractor(s) shall also submit to County a Certificate of Insurance as evidence of General Liability and Workers' Compensation Insurance Coverage. Such coverage limits shall be subject to approval by the County and such certificate shall name the County as an additional insured.

8. **Repair and Maintenance**:

a. **Lessee** - During the Term of this Agreement, and any extension thereof, Lessee shall, at its sole cost, repair and maintain the Premises and its furniture, fixtures and equipment (FF&E) in a clean, sanitary and safe condition and in compliance with the terms, covenants and conditions of this Agreement and all Applicable Laws. Lessee shall be responsible for those items which are of a permanent nature to the Premises, including every part and appurtenance thereof, including without limitation, the exterior and interior of all doors, door checks, windows, glass, walls, ceilings, floors, carpets, fixtures, interior plumbing, lighting painting, sewage facilities within or connected to the Premises and interior electrical systems.

b. **Failure by Lessee to Repair and Maintain** - Repair and maintenance shall be to the sole satisfaction of County, and if Lessee fails to fulfill any duty imposed under this Section (Repair and Maintenance) within a reasonable period of time, County may, but is not required to, perform those duties at Lessee's sole cost. Lessee shall promptly cooperate with County if County undertakes to perform any such duties. No action by County taken pursuant to this Section (Failure by Lessee to Repair and Maintain) shall constitute a waiver of any of Lessee's obligations under this Section (Repair and Maintenance). Lessee's obligations under this Section (Repair and Maintenance) shall survive the expiration or termination of this Agreement.

c. **County (if applicable)** - During the Term of this Agreement, and any extension thereof, County shall, at its sole cost, repair and maintain the roof, Premises exterior, exterior plumbing, HVAC system (including periodic changing of air conditioning filters), and common areas of the Premises (if applicable) in a clean, sanitary and safe

condition and in compliance with the terms, covenants and conditions of this Agreement and all Applicable Laws. Common areas are the parking lot and sidewalk at 2052 South Galisteo Street, Santa Fe.

d. **Damage and Vandalism** - To the extent that Lessee's employees, agents, volunteers, authorized agents and invitees cause damage to the Premises and/or grounds, Lessee shall be responsible for such damage subject to Section 8.b. above (Failure by Lessee to Repair and Maintain).

9. **Janitorial**: Lessee shall be responsible for janitorial services for the Premises.

10. **Utilities and Services; Modification of Utilities**: Lessee shall pay, during the Term of this Agreement, for all utilities used by Lessee in connection with its activities or operations on the Premises. The term "utilities" for the purposes of this Agreement shall include, without limitation, gas, electricity, water, sewer, telephone service, and trash and refuse disposal services. Lessee shall not modify any utilities on the Premises without the prior written consent of the County, which may be granted or withheld at the County's sole discretion.

11. **Taxes and Assessments**: Lessee shall pay all applicable taxes, fees, charges, and assessments levied by any governmental agency upon any interest acquired by Lessee under this Agreement. Lessee is aware that certain possessory interest may be created by entering into this Agreement and that such interests will be subject to the payment of property taxes levied on such interest.

12. **Lessee's Furniture, Fixtures and Equipment**:

a. **In General** - Lessee may install its own FF&E in the Premises, at its sole cost. In addition to Lessee's obligations under the Section titled Surrender of Premises, at the expiration or termination of this Agreement, Lessee shall remove its FF&E, and repair any damage to the Premises as a result of removal, at its sole cost.

b. **Abandonment of FF&E** - Any FF&E belonging to Lessee and left on the Premises longer than 30 days after County gives Lessee written notice to remove such property from the Premises may be treated by County as abandoned. The County may, at Lessee's sole cost, repair any damage to the Premises as a result of removal of FF&E deemed abandoned by Lessee. The costs charged to Lessee may include, without limitation, consideration for the additional time Lessee's FF&E remained on the Premises beyond the termination dated and disallowed County's full utilization of the Premises.

13. **Signs**: Lessee, at its sole cost, shall have the right to affix and install on the Premises, reasonable signs to identify the Premises, and such signs shall comply with all Applicable Laws, including any County Ordinances, and shall be approved by the County prior to installation. Any damage to the Premises occasioned by the installation and maintenance of any such signs, and the cost of removal or obliteration thereof upon the expiration or termination of this Agreement, shall be paid by Lessee.

14. **Damage and Destruction**: If the Premises shall be damaged or destroyed by fire or casualty, not the fault of Lessee or any person in or about the Premises with the express or implied consent of the Lessee, the damaged Premises shall be repaired by the County with the use of available insurance proceeds, or Lessee may, at its option, terminate this Agreement. In the event that the County elects to repair the damaged Premises, this Agreement shall continue in full force and effect except that

certain obligations of Lessee may be subject to Force Majeure as provided in the Section titled Force Majeure.

15. **Condemnation**: If all or any part of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Agreement shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Party shall have the right to terminate this Agreement as to the balance of the Premises by notice to the other Party within 30 days after such date. However, a condition to the exercise by Lessee of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature, in Lessee's reasonable judgment, as substantially to handicap, impede or impair Lessee's use of the balance of the Premises. In the event of any taking, whole or partial, 100% of the proceeds shall belong to County.

16. **Right of Inspection**: County shall have the right to enter upon the Premises at all reasonable times to inspect the Premises and Lessee's operations thereon. County reserves all rights in and with respect to the Premises, not inconsistent with Lessee's use of the Premises as provided in the Section titled Purpose, including without limitation the right of County to enter upon the Premises for the purpose of installing, using, maintaining, renewing, and replacing such underground oil, gas, water, sewer, and other pipelines, and such underground or aboveground telephone, telegraph, and electric power conduits or lines as County may deem desirable in connection with the development or use of the Premises. County will compensate Lessee for damage to Lessee's FF&E caused by the exercise of the rights reserved in this Section.

17. **Hazardous Materials**: Hazardous materials, as used in the Agreement, shall be defined as stated in **Exhibit B**, attached hereto.

a. **No Hazardous Materials** - Lessee shall not permit any Hazardous Materials to be stored or brought onto the Premises without the prior written consent of the County, which may be granted or withheld in the County's sole discretion. If Lessee spills any Hazardous Materials anywhere on the Premises, Lessee shall cleanup said spill, at its sole cost, and to the sole satisfaction of County.

b. **Clean Up of Hazardous Materials** - If any governmental authority or court, which has jurisdiction, demands that a cleanup plan be prepared and/or that a cleanup be undertaken because of any deposit, spill, discharge, or other release of any Hazardous Materials at, on, or from the Premises at any time during Lessee's occupancy of the Premises, or which arises at any time as a result of any uses or occupancy of the Premises by Lessee, then Lessee shall, at its sole cost, prepare and submit the required plans and all related bonds and other financial assurances and carry out all such cleanup plans in a timely manner.

c. **Failure by Lessee to Clean Up** - Lessee shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Materials that is requested by County. If Lessee fails to fulfill any duty imposed under the Section titled Survival of Indemnification Obligations within a reasonable period of time, County may, but is not required to, perform those duties at Lessee's sole cost. Lessee shall promptly cooperate with County if County undertakes to perform any such duties. No action by County taken pursuant to the Section titled Failure by Lessee to Clean Up shall constitute a waiver of Lessee's obligations under the Section titled Hazardous Materials. Lessee obligations under the Section titled Indemnification shall survive the expiration or termination of this Agreement.

d. **Receipt of Notice of Violation** - If Lessee becomes aware of or receives notice or other communications concerning any actual, alleged, suspected, or threatened violation of

any Environmental Requirements, or liability of Lessee in connection with the Premises or past or present activities of any person thereon, then Lessee shall deliver to County within 10 days of receipt of such notice or communication by Lessee, a written description of said violation, liability, correcting information, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not create any obligation on the part of County to defend or otherwise respond to any such notification.

**18. Indemnification:**

a. **In General** - Lessee shall indemnify and defend, upon request of the County, County, its governing board, commission, elected and appointed officials, employees, and agents, and each of them (collectively "Indemnified Parties"), against any and all actions, lawsuits, proceedings, losses, costs, expenses, claims, fines, liabilities, fees (including, but not limited to, reasonable attorneys' fees, costs of County staff time, investigation, expert and consultant fees and costs), and damages, including liability for personal injuries or death or property damage, regardless of where located, including property of County, and workers' compensation claims or suits arising from or connected with any services performed under this Agreement on behalf of Lessee by any person or entity ("Claims"), arising out of or in any way connected with the acts or omissions of Lessee, its employees, agents, independent contractors, or invitees ("Lessee Acts"), unless the Claim is due to the sole default, act or failure to act, negligence, or willful misconduct of the Indemnified Parties.

b. **Environmental** - In addition, Lessee shall indemnify and defend, upon request of County, the Indemnified Parties against any and all Claims arising out of or in any way connected with any deposit, spill, discharge, or other release of any Hazardous Materials at any time during Lessee's occupancy of the Premises, or which arises at any time as a result of any uses at, on, or from the Premises or the occupancy of the Premises by Lessee, or as a result of Lessee's failure to provide any or all information, make any or all of its submissions, and take any or all steps required by any governmental authority or court which has jurisdiction or by any Environmental Requirements. "Environmental Requirements" and "Hazardous Materials," as used in this Agreement shall have the meaning provided in **Exhibit B**.

c. **Survival of Indemnification Obligations** - Lessee's obligations under this Section (Indemnification) shall survive the expiration or termination of this Agreement.

**19. Release and Waiver:** Lessee releases County and Indemnified Parties from all Claims, and waives all Claims against County, that it may have as of the Execution Date, or may have in the future, relating to this Agreement and any acts or omissions of County or the Indemnified Parties, unless the Claim is due to the sole default, act or failure to act, negligence, or willful misconduct of County or the Indemnified Parties.

**20. Lessee Maintenance of Insurance:** In order to protect County and the Indemnified Parties against Claims resulting from Lessee Acts, Lessee shall secure and maintain insurance as described below. Lessee shall not perform any work under this Agreement until Lessee has obtained all insurance required and the required certificates of insurance required by this Agreement, and all required endorsements have been filed with the County's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of these insurance requirements. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request by County, Lessee shall supply proof that such person is an authorized representative thereof, and is

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authorized to bind the named underwriter and company to the coverage, limits, and termination provisions shown thereon. Lessee shall promptly deliver a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term of this Agreement or as otherwise specified herein. Such certificates and endorsements shall be delivered to the County's authorized insurance representative prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Lessee shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Lessee or County as an additional insured.

a. **Workers' Compensation and Employer's Liability Insurance Requirements.**

1) **Workers' Compensation Insurance - Lessee Employees.** If Lessee has employees who may perform any services pursuant to this Agreement, Lessee shall submit written proof that Lessee is insured against liability for workers' compensation.

2) **Employer's Liability Insurance.** Lessee shall also maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.

b. **Liability Insurance Requirements.**

1) **In General.** Lessee shall maintain in full force and effect, at all times during the Term of this Agreement, the following insurance:

(a) **Commercial General Liability Insurance,** including without limitation Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Lessee's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Lessee shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) **Automobile Liability Insurance,** against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

(c) **Professional Liability (Errors and Omissions) Insurance,** for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits, which shall not be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

2) **Additional Insureds.** The Commercial General Liability and Automobile liability Insurance required in Section (Liability Insurance Requirements) shall include an endorsement naming the County and the Indemnified Parties as additional insureds for liability arising out of this Agreement and any operations related thereto.

- 3) **Self-Insurance**. Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved by the County, which may be granted or withheld at the County sole discretion.
- 4) **Claims-Made**. If any of the insurance coverages required under this Agreement is written on a claims-made basis, Lessee, at Lessee's option, shall either (i) maintain said coverage for at least three years following the termination of this Agreement with coverage extending back to the Execution Date; (ii) purchase an extended reporting period of not less than three years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
- c. **Fire and Casualty Insurance** - The County shall maintain on the building and the Premises that are the subject of this Agreement, in amounts as the County deems appropriate.
- d. **Cancellation of Insurance** - The above-stated insurance coverages required to be maintained by Lessee shall be maintained until the completion of all of Lessee's obligations under this Agreement. Each insurance policy supplied by Lessee must be endorsed to provide that the coverage shall not be suspended, voided, cancelled, or reduced in coverage or in limits except after 10 days written notice in the case of non-payment of premiums, or 30 days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Lessee shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
- e. **Insurance Company Rating** - All insurance shall be issued by a company or companies admitted to do business in New Mexico and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-VII. Any exception to these requirements must be approved in writing by the County, which may be granted or withheld at the County's sole discretion.
- f. **Lessee Self-Insured** - If Lessee is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Lessee shall provide coverage equivalent to the insurance coverages and endorsements required above. County will not accept such coverage unless the County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Lessee is equivalent to the above-required coverages.
- g. **Primary Insurance** - All insurance afforded by Lessee pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against County.
- h. **No Limitations by Policy Limits** - Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Lessee for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage, or to preclude County from taking such other actions as are available to it under any other provision of this Agreement or otherwise under Applicable Laws.
- i. **Failure to Maintain Insurance** - Failure by Lessee to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of

this Agreement by Lessee. County, at its sole option, may terminate this Agreement and obtain damages from Lessee resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Lessee, County shall deduct from sums due to Lessee any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Lessee pursuant to this Agreement is insufficient to reimburse County for the premiums and any associated costs, Lessee shall reimburse County for the premiums and pay for all costs associated with the purchase of said insurance within 10 days of demand by County. Any failure by County to take this alternative action shall not relieve Lessee of its obligation to obtain and maintain the insurance coverages required by this Agreement.

21. **Liens and Encumbrances:** Lessee shall keep the Premises free from any liens and encumbrances arising out of any work performed, material furnished, or obligations incurred by Lessee, or from any other cause. If a lien or encumbrances is recorded against the Premises, and Lessee fails to remove the lien or encumbrance or post a bond to remove same within 15 days after its filing, County shall give a 15-day notice to Lessee, requiring Lessee to remove or bond around the lien or encumbrance within the 15-day period. If Lessee fails to do so within the 15-day period, County, at its sole discretion after expiration of the 15-day period, may obtain a bond, with all costs of the bond to be reimbursed by Lessee to County.

22. **Breach by Lessee:** In the event of the breach by Lessee of any term, covenant, or condition, Lessee shall have 30 days after written notice has been given to Lessee by County to cure, except for breach of the nuisance provisions in the Section titled No Nuisance, which allows 72 hours to cure. If Lessee fails to cure within the stated time periods, County may exercise its remedies under the Section below titled Remedies of County.

a. **Remedies of County** - In the event of a breach by Lessee, the County shall have the right to terminate Lessee's right to possession of the Premises, by giving written notice of termination to Lessee, and thereby terminating this Agreement

b. **Remedies Not Exclusive** - No right or remedy herein conferred upon or reserved to County is intended to be exclusive of any other right or remedy herein or by law, provided that each shall be cumulative and in addition to every other right or remedy given herein or now, or hereafter existing at law or in equity or by statute.

c. **County Right to Cure** - In addition to County's remedies upon Lessee's breach, upon 10 days prior written notice to Lessee by County, County may cure any breach by Lessee and, if necessary, may enter upon the Premises for such purpose. In such event, the cost of cure, plus interest at the maximum legal rate from the date due until paid, shall become immediately due and payable by Lessee.

23. **No Waiver of Breach:** The waiver by County of any term, covenant, or condition contained in this Agreement must be in writing and shall not be deemed to be a waiver of any subsequent breach of the Term, covenant or condition contained in this Agreement, and no custom or practice that may arise between the Parties during the course of this Agreement shall be construed to waive or lessen the right of County to the performance by Lessee in strict accordance with the terms of this Agreement.

**24. Force Majeure:**

**a. Definition** - Neither Party shall be held responsible or be deemed to be in default under this Agreement for any delay in performance or failure to perform any of its obligations, if such delay or failure is the result of causes beyond the control and without negligence of the Party. Such causes include, without limitation, acts of nature, strikes, lockouts, riots, insurrections, civil disturbances or uprisings, sabotage, embargoes, blockages, acts of war or terrorism, acts or failure to act by any governmental or regulatory body (whether civil or military, domestic or foreign), governmental regulations superimposed after the fact, communication line failures, power failures, fires, explosions, floods, accidents, epidemics, earthquakes, or other natural or man-made disasters (Force Majeure). Lack of funds shall not be a Force Majeure event.

**b. Consequences** - The Party affected by a Force Majeure event, upon giving prompt notice to the other Party, shall be excused from performance to the extent of such prevention, restriction, or interference, on a day-to-day basis until the Force Majeure event is removed, and the other Party shall likewise be excused from performance of its obligation which relate to the performance so prevented, restricted, or interfered with. The affected Party shall use its best efforts to avoid or remove the causes of nonperformance and to minimize the consequences thereof, and both Parties shall resume performance when the Force Majeure event is removed.

**25. Quiet Possession:** Lessee, in keeping and performing the terms, covenants and conditions herein contained on the part of Lessee to be kept and performed, shall at all times during the Term of this Agreement peaceably and quietly have, hold, and enjoy the Premises.

**26. Assignment and Subletting:**

**a. No Assignment or Subletting** - Lessee shall not sublease, assign, transfer, mortgage, or otherwise convey this Agreement, or any of its rights and interests hereunder, including its leasehold rights and interests granted by this Agreement, without the prior written consent of the County.

**b. Failure to Obtain Consent** - If Lessee shall sublease, assign, transfer, or otherwise convey any interest in this Agreement, or attempt to do so in violation of the foregoing provision, then in addition to any and all other rights and remedies available to it, County may, at its option by written notice to Lessee, either declare such sublease, assignment, transfer, or other conveyance void or terminate this Agreement and all rights and interests of Lessee and all other persons hereunder.

**c. No Waiver or Limitation on Consent** - Any consent to any sublease, assignment, transfer, or conveyance shall not be deemed or construed as consent to any different or subsequent sublease, assignment, transfer, or conveyance. This clause shall not be construed to limit any right or remedy which County may become titled to as a matter of law or become titled to by reason of Lessee's actions or failures to act.

**d. Lessee in Compliance** - As a condition of County's consent to any conveyance of this Agreement, Lessee must be in compliance with all terms, covenants, and conditions of this Agreement, including without limitation the payment of all monies due to County.

**27. Surrender of Premises:** On the last day of the Term, or sooner termination of this Agreement, Lessee shall peaceably and quietly leave, surrender, and yield up to County the Premises in as good a condition and state of repair as it existed on the Execution Date, wear and tear excepted.

By the expiration or termination date of this Agreement, Lessee shall have paid all utility bills and contacted the appropriate utility companies to have the utility services properly discontinued or transferred. Lessee shall immediately notify the County if Lessee surrenders the Premises and disconnects or transfers utilities before June 28, 2018.

28. **Notices:** All notices herein provided to be given, or which may be given, by either Party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

To Lessee: Santa Fe Recovery Center, Inc.  
Attn: Chief Executive Officer  
4100 Lucia Lane  
Santa Fe, NM 87507

To County: Santa Fe County  
Attn.: DWI Program Manager  
P.O. Box 276  
Santa Fe, NM 87504

Santa Fe County  
Attn: Director  
Santa Fe County Community Services Department  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, NM 87504

With a copy to: Santa Fe County  
Attn. Public Works, Real Property Specialist  
P.O. Box 276  
Santa Fe, NM 87504

The address to which the notices shall be mailed to either Party may be changed by written notice given by such Party to the other, but nothing shall preclude the giving of any such notice by personal service.

29. **Miscellaneous Provisions:**

a. **Negation of Partnership** - County shall not become or be deemed a partner or joint venturer with Lessee or associate in any relationship with Lessee. Lessee shall not for any purpose be considered an agent, officer, or employee of County.

b. **Conflict of Interest** - All Parties agree that they are unaware of any financial or economic interest of any public officer or employee of the County or of Lessee relating to this Agreement that would cause or give the appearance of a conflict of interest. It is further understood and agreed that if such a financial interest does exist as of the Execution Date, either Party may immediately terminate this Agreement by giving written notice to the other Party.

c. **Nondiscrimination** -

(i) Lessee, in the use of the Premises and in the activities or operations conducted by Lessee under this Agreement, shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, religion, ancestry, sex, or national origin in any manner prohibited by federal, state, or local laws or policies. Lessee shall not discriminate nor allow discrimination, either directly or indirectly, in hiring or employing persons to work at the Premises.

(ii) Lessee shall include the language in subsection c.(i) above in any agreement by which Lessee assigns or transfers any interest in the Premises or this Agreement, or grants a right or privilege to any person, firm, or corporation to use the Premises or to render services to the public on the Premises.

**d. Incorporation of Prior Agreements** - This Agreement contains all agreements of the Parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective.

**e. Remedies not Exclusive** - The use by either Party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive such Party of, or limit the application of, any other remedy provided by law, at equity, or otherwise.

**f. Severability** - If any part, term, portion, or provision of this Agreement is decided finally to be in conflict with any law of the United States or the State of New Mexico, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first instance.

**g. Governing Law; Venue** - The Parties agree that the provisions of this Agreement shall be construed pursuant to the laws of the State of New Mexico. If either Lessee or County initiates an action to enforce the terms of this Agreement or declare rights hereunder, including actions on any bonds and/or surety agreements, the venue thereof shall be the state courts of the First Judicial District, Santa Fe County, State of New Mexico, it being understood that this Agreement is entered into, and will be performed, within Santa Fe County.

**h. Compliance with Laws** - Lessee shall, at its sole cost, promptly comply with all Applicable Laws, including Environmental Requirements, which may in any way apply to the use, operation, repair, maintenance, occupation of, or operations or construction on, the Premises.

**i. Successors** - Subject to the Section titled Assignment and Subletting, all terms, covenants, and conditions of this Agreement shall extend to, be binding upon, and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

**j. No Third Party Beneficiaries** - This Agreement is made for the sole benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns, and no other persons shall have any right of action hereon.

**k. Covenants and Conditions** - Each provision of this Agreement performable by Lessee shall be deemed both a covenant and a condition.

**l. Modification** - This Agreement may be modified or amended only by a written amendment signed by the Parties.

**m. Authorization** - Each individual executing this Agreement on behalf of either Party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of that Party, and that this Agreement is binding upon both Parties in accordance with its terms.

n. **Recitals** - Each of the recitals is incorporated in this Agreement by reference as if fully set forth in this Agreement at length, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

o. **Captions** - Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

p. **Exhibits** - All exhibits attached to this Agreement are incorporated into this Agreement by reference.

q. **Time of Essence** - Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary, and essential part of this Agreement.

r. **Appropriations and Authorizations.** This Lease Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Lease Agreement shall terminate upon written notice by the County to the Lessee. Such termination shall be without penalty to the County. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Lessee or in any way or forum, including a lawsuit

s. **New Mexico Board of Finance.** This Lease Agreement is not effective until approved by the State Board of Finance.

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement as of the date of last signature by the Parties and signature by the State Board of Finance.

**SANTA FE COUNTY**

\_\_\_\_\_  
Henry P. Roybal, Chair  
Santa Fe County Board of County Commissioners

**ATTESTATION:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

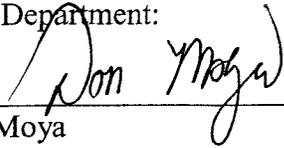
\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
Gregory S. Shaffer  
Santa Fe County Attorney

9/26/17  
\_\_\_\_\_  
Date

Finance Department:

  
\_\_\_\_\_  
Don D. Moya  
Finance Director

9-27-17  
Date

LESSEE - Santa Fe Recovery Center, Inc.

  
\_\_\_\_\_  
Sylvia Barela, CEO

9/27/17  
Date

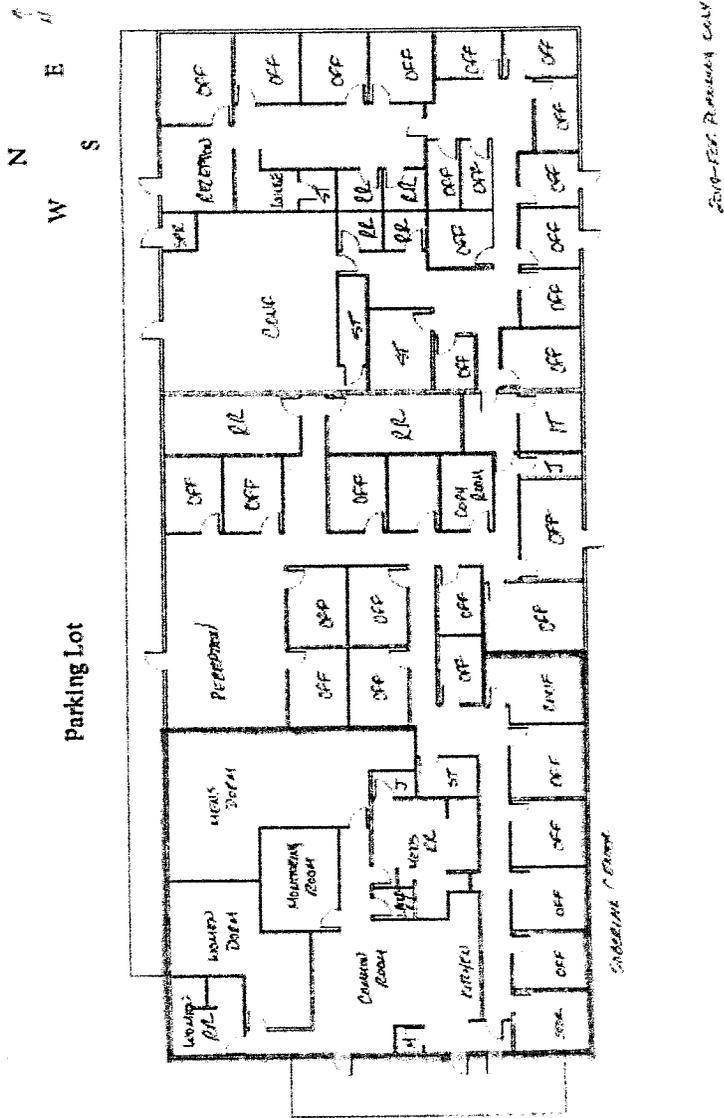
Approved:

\_\_\_\_\_  
State Board of Finance

\_\_\_\_\_  
Date

SFC CLERK RECORDED 11/15/2017

EXHIBIT A - Premises



**EXHIBIT B - Environmental terms**

**Definition of Environmental Terms**

For the purpose of this Agreement, the following terms and words shall have the meaning given below:

1. **Environmental Requirements.** All applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items of any governmental agency, department, commission, board, bureau, or instrumentality of the United States of America, State of New Mexico, or its political or municipal subdivisions including Santa Fe County, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human life or the environment.

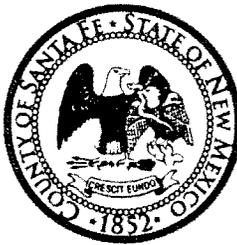
2. **Hazardous Materials.** All flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous waste, toxic substances or related materials, petroleum products, and any substances declared to be hazardous or toxic under any present or future Environmental Requirements or which requires investigation or remediation under any present or future federal, state, or local law, statute, regulation, environmental requirement, order, or rule.

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**Henry P. Roybal**  
Commissioner, District 1

**Anna Hansen**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Ed Moreno**  
Commissioner, District 4

**Ed Moreno**  
Commissioner, District 5

**Katherine Miller**  
County Manager

DATE: October 10, 2017

TO: Board of County Commission

FROM: Bill Taylor, CPO, Procurement Manager  
Tony Flores, Deputy County Manager

VIA: Katherine Miller, County Manager

RE: Request Authorization from the Board of County Commissioners to Utilize the Design Build Project Delivery Method for the East Mountain Health Facility.

**ISSUE:**

Pursuant to NMSA 1978, 13-1-119.1 Public works project deliver system; design and build projects authorized June 14, 2013. *Determination required; contents.* The design-build project delivery method is only authorized if the County's "central purchasing office makes a determination in writing that it is appropriate and in the best interest of the . . . local public body to use the system on a specific project. The determination shall be issued only after the . . . central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

- (1) the extent to which the project requirements have been or can be adequately defined;
- (2) time constraints for delivery of the project;
- (3) the capability and experience of potential teams with the design and build process;
- (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
- (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process."

Additionally Resolution 2006-60, Santa Fe County Purchasing Regulations Policy Manual, Section 34(C), provides the following direction:

C. Written Determination. The County department(s) or office shall submit a written recommendation to the Purchasing Manager for review. The primary factors that should be addressed in the memo include:

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505-995-2740 www.santafecountynm.gov

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1. A summary of the project, to include a description of project, goals and requirements, estimated design/engineering costs, estimated construction costs, an estimated project schedule, and identification of County staff included on the design-build team who will formulate, evaluate, and administer Request for Proposals.

2. A description of the funding source and amount. The funding for the design and construction must be fully in place or reasonably expected to be in place for the immediate completion of the design-build project. If not in place or reasonable expected to be in place to complete the design-build project without delay, the design should be procured separately under a bid when funds are in place.

3. A summary of why would it be in the best interest of the County to use design-build and the reasons for the potential benefits, such as significant time savings, higher quality realized through designs tailored to contractor capability, design and builder work together to enhance each capabilities and methods, and/or combined expertise of contractor with designer to maximize potential benefits, less impact on the public with the use of expedited construction processes, unusual or unique requirements that could be effectively addressed by design-build, specialty skills needed for design or construction, reduction of total costs, and best value solution with value engineering.

4. A summary of potential risks or problems due to using design-build for specific project and mitigation solutions, including a statement concerning the capability of the County (with a consultant, as applicable) to effectively administer and manage the design-build project. [sic], and who will ultimately be responsible.

5. If approved by the Purchasing Manager, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County Commissioners for concept approval to proceed with the procurement process under design-build.

**BACKGROUND/SUMMARY:**

The population of southern Santa Fe County (County) is approximately 40,000. Of the total population, approximately 10,000 are living below 200% of the federal poverty level. About 5,000 are on Medicaid or other public insurance programs, and 5,000 are uninsured. The New Mexico Department of Health indicates the area has an underserved population of 26,718 and is short by 7.634 providers.

The current population-to-provider ratio is 18,343:1. The scarcity of healthcare services is a real dilemma for families. A community survey in 2014 found the need for urgent care, after-hours access and emergency care ranked highest of all needs in the area. Transportation is a barrier as there is no public transportation system to help people get to city centers for x-rays or medical/dental appointments.

To address the lack of providers in the Estancia Valley, the County plans to design and construct the East Mountain Regional Health Facility (Facility), which will be located within the Town of Edgewood on State Trust Land. The Facility will provide primary medical, dental, and behavioral health services with subspecialties and extended hours to service approximately 13,000 patients of southern Santa Fe County and residents of Torrance and Bernalillo Counties.

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505-995-2740 [www.santafecountynm.gov](http://www.santafecountynm.gov)

The Facility will replace the present clinic in Edgewood that is currently housed in a portable building and is in dire need of replacement.

The Facility has multiple funding sources: County – '16 GOB (\$3,000,000), the State of New Mexico (\$242,000), the New Mexico Department of Health – WIC (\$996,415.00), the Town of Edgewood (\$35,000), First Choice Community Health Care – HRSA Grant (\$1,000,000) and First Choice Community Health Care – Capital Fund (\$726,585) for a total project budget of **\$6,000,000**. The multiple funding sources have a myriad of life cycles with a portion of the WIC funding expiring on December 31, 2017.

In order to complete the Facility to insure maximum utilization of the funding sources while recognizing the required dates for expending funds, the County has assembled a project team that will manage the construction of the Facility including the required grant reporting requirements.

**RECOMMENDATION**

The Purchasing Division and the County Manager's Office are requesting approval and authorization to proceed with the procurement process under the design-build project delivery method.

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**EXHIBITS**

A – §13-1-119.1 NMSA 1978

B – § 34 Design and Build Projects, Santa Fe County Procurement Procedures

**13-1-119.1. Public works project delivery system; design and build projects authorized.**

A. Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project. The determination shall be issued only after the state purchasing agent or a central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

- (1) the extent to which the project requirements have been or can be adequately defined;
- (2) time constraints for delivery of the project;
- (3) the capability and experience of potential teams with the design and build process;
- (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
- (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

B. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.

C. Except as provided in Subsections F and G of this section, for each proposed state or local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:

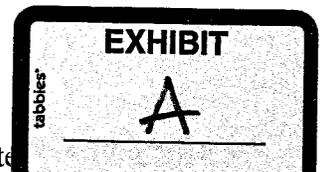
(1) during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated, and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and

(2) during phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.

D. Except as provided in Subsections F and G of this section, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.

E. A state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.

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F. The requirements of Subsections C and D of this section do not apply to a design and build project delivery system and the services procured for the project if:

(1) the maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and

(2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.

G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

**History:** 1978 Comp., § 13-1-119.1, enacted by Laws 1997, ch. 171, § 5; 1999, ch. 220, § 2; 2003, ch. 222, § 1; 2013, ch. 146, § 1.

**34. DESIGN BUILD PROJECTS, REQUEST FOR PROPOSALS:**

**A. Applicability.** An alternative for construction of projects, except for road and highway construction or reconstruction projects is available through the design-build delivery method. The objective of design-build contracting is to complete construction projects more efficiently than conventional design-bid-build, however, a benefit-oriented evaluation should be used to assess if design-build is appropriate.

**B. Practical or Advantageous.** When the Chief Procurement Officer determines pursuant to this Section that the design-build delivery method is either practical or advantageous to the County, the procurement may be effected by competitive design-build proposals. The process is intended to be fair, uniform, clear and effective for the delivery of a quality project on time and within budget.

**C. Written Determination.** The County department(s) or office shall submit a written recommendation to the Chief Procurement Officer for review. The primary factors that should be addressed in the memo include:

1. A summary of the project, to include a description of project, goals and requirements, estimated design/engineering costs, estimated construction costs, an estimated project schedule, and identification of County staff included on the design-build team who will formulate, evaluate, and administer Request for Proposals.

2. A description of the funding source and amount. The funding for the design and construction must be fully in place or reasonably expected to be in place for the immediate completion of the design-build project. If not in place or reasonable expected to be in place to complete the design-build project without delay, the design should be procured separately under a bid when funds are in place.

3. A summary of why would it be in the best interest of the County to use design-build and the reasons for the potential benefits, such as significant time savings, higher quality realized through designs tailored to contractor capability, design and builder work together to enhance each capabilities and methods, and/or combined expertise of contractor with designer to maximize potential benefits, less impact on the public with the use of expedited construction processes, unusual or unique requirements that could be effectively addressed by design-build, specialty skills needed for design or construction, reduction of total costs, and best value solution with value engineering.

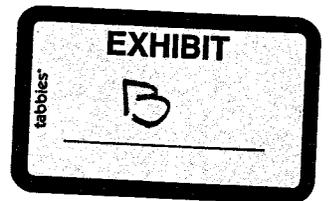
4. A summary of potential risks or problems due to using design-build for specific project and mitigation solutions, including a statement concerning the capability of the County (with a consultant, as applicable) to effectively administer and manage the design-build project., and who will ultimately be responsible.

5. If approved by the Chief Procurement Officer, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County Commissioners for concept approval to proceed with the procurement process under design-build.

**D. Basic Process.**

1. The following is recommended as a basic process in initiating and planning a design build project. Often it can be expected that there is more upfront time and effort required to clearly define the project expectations than in a design-bid-build process, although time savings may be seen in the overall project.

- a. Identify the goal;
- b. Assign the project manager;



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c. Assemble project team, including consultant if advisable;  
d. Develop project requirements, including project scope, project goals, quality expectations, final project expectations, technical requirements, contract development, decision-making process, project schedule, clean and complete definition of project and technical areas, and provide equal platform of information for proponents to be able to prepare competitive proposals

**E. Determinations prior to Requests for Proposals.**

1. The County project team should determine what will be done by County staff, and what tasks are included in the Requests for Proposals, including but not limited to the following:

- a. Environmental studies
- b. Public participations through public hearings and other input
- c. Interagency agreements
- d. Utility agreements/relocations
- e. Right-of-way acquisition
- f. Handling and resolution of hazardous materials
- g. Cultural and archeological resource site investigation
- h. Endangered species investigations
- i. Permit requirements
- j. Determine risks and clarify mitigation and responsibility
- k. Surveys
- l. Mapping
- m. Hydraulic analysis
- n. Geotechnical investigations

2. Other areas and expectations that should be addressed in the Request for Proposals may include the following:

- a. Legal description of site
- b. Maximum Available Construction Costs (MACC)
- c. Aesthetic considerations and compatibility with existing facilities
- d. Site development requirements
- e. Special codes, regulations, ordinances or statutes
- f. Utilities, parking and landscaping requirements
- g. Future expansion requirements
- i. Special materials
- j. Space requirements
- k. Special equipment and systems requirements
- l. Construction administration
- m. Labor disputes
- n. Weather conditions
- o. Inflation
- p. Schedule requirements
- q. Incremental acceptance of work
- r. Performance guarantees/warranties
- s. Design reviews/approvals
- t. Liability for design
- u. Site conditions
- v. Contract changes
- w. Liquidated damages

- x. Ownership during phases
- y. Payment methodology
- z. Incentives and disincentives
- aa. Bonding requirements
- bb. Errors and omissions insurance
- cc. Guaranteed completion date
- dd. Warranties
- ee. Determination of criteria for completion of contract

### 3. Request for Proposals.

a. The County project team shall prepare a Request for Proposals setting forth the scope of the project that should include, but is not limited to: (i) the size, type and desired design requirements of the building and site; and (ii) performance specifications covering the quality of materials, equipment, and workmanship, durability, life cycle costs, preliminary plans or building layouts, or any other information deemed necessary to adequately and clearly describe the County needs.

b. The performance specifications and plans shall be reviewed and approved by a registered engineer or architect professional licensed by the State of New Mexico, which may be a County employee or outside provider. This review shall ensure the validity of technical areas and that the information in the Request for Proposals and provide for a fair and complete Request for Proposals process. If an outside provider contracts for review services, the design/engineering professional or the related firm shall not later submit a proposal in any capacity.

**F. Applicable Section for Request for Proposals.** The procedures for Competitive Sealed Proposals for Procurement of Professional Services shall apply to design-build solicitations, unless the procedures specified are clearly not applicable to the design-build process.

#### **G. Step One of the Request for Proposals.**

1. Step one may include programming and schematic design including recommended or required building systems, elevations, areas, floor plans and cross section in limited detail for further development by proponents.

2. The Request for Proposals issued under this Step One of the Request for Proposals process are referred to as the Request for Qualifications. The Request for Proposals issued under Step One shall include:

- a. the project scope and requirements
- b. submittal requirements from proponents
- c. composition of selection committee, with statement that the County retains the option to change committee members, if necessary
- d. description of step two and/or interviews in process
- e. evaluation criteria for each step of the process (step one, step two, interviews, and best and final offers, as applicable)
- f. mandatory pre-proposal meeting requirement
- g. number of firms that will be short listed as detailed in the request for proposals
- h. estimated procurement and approval schedule
- i. any and all further steps in the selection process

- j. An independent outside consultant or other qualified outside representative(s) may serve on the selection committee.

**H. Submittal Requirements.** The submittal requirements shall include:

1. Request for information on the qualifications of proponent as to capability, capacity, availability, and experience;
2. A description of similar contracts with counties and municipalities;
3. A preliminary proposed work plan;
4. A preliminary proposed project schedule with key tasks, key staff and their professional licenses who will be assigned to this project;
5. A proposed contractor and similar information and qualifications, certification to meet all insurance and bonding requirements/certification of no debarment, disqualification, default, or early termination from contract in the last 5 years;
6. A certification of no commercial bankruptcy in the last 5 years of any member or subcontractor of the entity;
7. Information on all settled adverse claims, disputes or lawsuits with an owner of a project;
8. A description of OSHA violations, workers' compensation claims, or safety claims;
9. A description of any state licensing violations; and
10. Any additional information deemed necessary by the County.

**I. Mandatory Pre-Proposal Meeting.** A Request for Proposals may include a mandatory pre-proposal meeting to explain the project and provide information about the procurement process. The County will attempt to respond to all questions and provide necessary information at the meeting; however, the County may require questions or comments to be submitted in writing before the County responds in the form of addenda or if a response requires the County to conduct additional inquiry or research. Non-attendance at a mandatory pre-proposal meeting will be cause for an offeror's proposal to be deemed non-responsive. An attendee at a mandatory pre-proposal meeting may not represent more than one potential offeror.

**J. Receipt of the Step One Proposals.** Step One proposals are received as formal sealed proposals at the Purchasing Office.

**K. Evaluation under Step One of Request for Proposals.** All responsive submittals shall be evaluated based on the evaluation criteria. This step evaluates experience, technical competence, capability to perform, past performance and other criteria set forth in the Step One Request for Proposals. The top rated firms shall be short-listed based on the totals of the ratings of the committee.

**L. Step Two of the Request for Proposals.**

1. The short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling as a formal sealed proposal to the Purchasing Office. If at least 3 firms do not submit responsive proposals, the short-list may be composed of the number of responsive proposals received.
2. Cost shall be at least 60% of the evaluation criteria. Cost may be based on life cycle cost if so stated and explained in the Requests for Proposals for a period of time determined by the Purchasing Director but not exceeding the expected asset life of the project.
3. Other evaluation criteria may include technical expertise, skilled labor force availability, safety record, time schedule. Additional evaluation criteria information requirements may be included at the discretion of the County.

4. For a complex project or a project in which more detailed proposals are requested, a stipend may be paid to cover costs of the preparation of this phase. The amount shall be determined in advance, although a stipend is not required and is at the sole option of the County.

5. Interviews may be conducted, but are not required and are at the sole option of the County.

6. Based on evaluation of Step Two proposals, new information may be issued by the County and Best and Final Offers may be submitted. The Best and Final Offers shall be evaluated based on the evaluation criteria for step two, unless specified in writing to the top listed proponents.

7. All information received shall be deemed to be confidential to the evaluation committee and County administration until a recommendation is made to the first review committee prior to County consideration.

**M. Evaluation Under Step Two of Request for Proposals.** All submittals shall be evaluated unless a given submittal is determined to be non-responsive. The qualifications, quality of proposed design and technical submittals, quality of construction approach, demonstrated response to program requirements, management plan for constructing the project, cost, schedule and other factors and criteria shall be evaluated as set forth in the Request for Proposals. Final contract negotiations shall proceed with the top rated firm. A single contract will be issued for design services and construction services. If negotiations are successful, the top rated firm based on the totals of the ratings of the committee shall be recommended to the applicable committees and Board of County Commissioners. If negotiations with the top rated firm are not successful, as determined at any time by the County in its sole discretion, the County may terminate such negotiations and initiate contract negotiations with the next top rated firm in order of ranking.

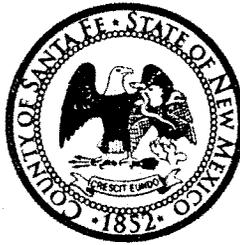
**N. Construction Inspection.** A separate contract with a fully independent licensed architect or engineer to provide construction inspection services is advisable, but not required.

**O. Other Services.** Finance services, maintenance services, operation services, and other related services may be included, but must be clearly stated in the Request for Proposals. Such services could be included as an optional component, such that a basic design-build contract could be awarded or a contract including other services. The Request for Proposal must be very clear as to the evaluation process and criteria and how optional services would be evaluated and considered as part of the contract awarded.

**Henry P. Roybal**  
Commissioner, District 1

**Anna Hansen**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Ed Moreno**  
Commissioner, District 5

**Katherine Miller**  
County Manager

DATE: October 10, 2017

TO: Board of County Commission

FROM: Mark Hogan, Projects Division Director  
Bill Taylor, CPO, Procurement Manager  
Tony Flores, Deputy County Manager

VIA: Katherine Miller, County Manager

RE: Request Authorization to Utilize the Design Build Project Delivery Method for the County Administration Offices Project

**ISSUE:**

Pursuant to NMSA 1978, 13-1-119.1 Public works project delivery system; design and build projects authorized June 14, 2013. *Determination required; contents.* The design-build project delivery method is only authorized if the County's "central purchasing office makes a determination in writing that it is appropriate and in the best interest of the . . . local public body to use the system on a specific project. The determination shall be issued only after the . . . central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

- (1) the extent to which the project requirements have been or can be adequately defined;
- (2) time constraints for delivery of the project;
- (3) the capability and experience of potential teams with the design and build process;
- (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
- (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process."

Additionally Resolution 2006-60, Santa Fe County Purchasing Regulations Policy Manual, Section 34(C), provides the following direction:

C. Written Determination. The County department(s) or office shall submit a written recommendation to the Purchasing Manager for review. The primary factors that should be addressed in the memo include:

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

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1. A summary of the project, to include a description of project, goals and requirements, estimated design/engineering costs, estimated construction costs, an estimated project schedule, and identification of County staff included on the design-build team who will formulate, evaluate, and administer Request for Proposals.

2. A description of the funding source and amount. The funding for the design and construction must be fully in place or reasonably expected to be in place for the immediate completion of the design-build project. If not in place or reasonable expected to be in place to complete the design-build project without delay, the design should be procured separately under a bid when funds are in place.

3. A summary of why would it be in the best interest of the County to use design-build and the reasons for the potential benefits, such as significant time savings, higher quality realized through designs tailored to contractor capability, design and builder work together to enhance each capabilities and methods, and/or combined expertise of contractor with designer to maximize potential benefits, less impact on the public with the use of expedited construction processes, unusual or unique requirements that could be effectively addressed by design-build, specialty skills needed for design or construction, reduction of total costs, and best value solution with value engineering.

4. A summary of potential risks or problems due to using design-build for specific project and mitigation solutions, including a statement concerning the capability of the County (with a consultant, as applicable) to effectively administer and manage the design-build project. [sic], and who will ultimately be responsible.

5. If approved by the Purchasing Manager, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County Commissioners for concept approval to proceed with the procurement process under design-build.

**BACKGROUND/SUMMARY:**

Santa Fe County initiated the process of planning and constructing a new administrative office building in 2013 on the site of the former 1<sup>st</sup> Judicial Court after the Court moved into a new facility on Sandoval Street and Montezuma Ave. The County has taken care to complete due diligence in an incremental and progressive process to insure the decision to build on the site is practical, efficient and provides opportunity to meet the needs of the County and its constituents.

The planning process has included building and site investigations to identify and remediate as required any environmental, geotechnical and archeological issues that may influence the construction of a multi-story building with two levels of below grade parking. The County also initiated a feasibility study that included a program of County requirements and a forecast of probable construction cost.

In 2016 the County contracted Spears Horn Architects to update and confirm program requirements and initiate the design of the required facilities. In August of this year, Spears Horn completed the Schematic Design phase of the project and has updated the project cost projections to approximately \$31,385,000 for the new building on Grant and \$5,445,000 for the renovations and restoration at the existing County Admin Building at 102 Grant. Total project costs including construction, taxes and soft costs are projected to be approximately \$47,000,000. Budget for the project comes from Capital Outlay GRT, Hold Harmless GRT as well as Revenue Bonds against Hold Harmless GRT future receipts depending upon the timing of cash needs.

The Public Works Department and Projects Division has conducted a benefit oriented evaluation to assess if Design-Build is an appropriate method for the delivery of the new Santa Fe County Administrative Offices Building to be located on Grant Ave. and Catron Street. Please let this memo serve as written recommendation from our Division for implementing a Design-Build method for the remaining design and construction of this project.

Based upon the evaluation, Projects Division staff has requested a determination from the County's Chief Procurement Manager and County Manager to change the project delivery method from the traditional Design/Bid/Build method to a Design-Build method to realize the important benefits as follows:

- *More expeditious project delivery*
- *Allow A&E and Contractor selection in one solicitation*
- *Designer and builder work together to enhance the expertise in specialized requirements of the project to maximize benefits to the County.*
- *Santa Fe County gains the opportunity to consider multiple design solutions as part of the selection Process*
- *Design and Construction team take on cost and scope control from the onset*
- *The process reduces opportunities for Santa Fe County to provide late input or change requirements that can alter the scope of work and significantly influence the project budget*
- *Reinvigorate the Project with additional ideas and focus on priorities of the County*
- *Now is the ideal time in project development to consider Design -Build and optimize the work product schematically developed by the A&E team*

In addition, the County is interested in modifying the scope of work to include more Sustainability Features which were previously limited by budget concerns in the original scope. Since the County assigned additional financial resources to employ more sustainable technology throughout this project, it is our opinion that converting to a Design-Build process will give the County the ability to select the Design and Construction team that can best demonstrate those specific areas of expertise.

As required, the Projects Division submitted a request to the Purchasing Division who reviewed the request as outlined in 2006-60, Santa Fe County Purchasing Regulations Policy Manual, §34(C) and the County's Chief Procurement Officer has determined that the request meets the requirements set forth in both NMSA 1978, 13-1-119.1 and Resolution 2006-60, County Purchasing Regulations Manual and that it would be in the best interest of Santa Fe County to utilize the design and build delivery method for the design and construction of the new County Administration Building.

Further, the merits of this project delivery method will cultivate multiple design solutions needed and provide for a more efficient construction delivery that will meet the expectations of the County, its stakeholders and the Community

**RECOMMENDATION**

The Projects Division is requesting recommending concept approval and authorization to proceed with an alternate procurement process under the design-build project delivery method for the County Administration Offices project.

**EXHIBITS**

A – §13-1-119.1 NMSA 1978

B – Resolution 2006-60 §34 Design and Build Projects, Santa Fe County Procurement Procedures

**13-1-119.1. Public works project delivery system; design and build projects authorized.**

A. Except for road and highway construction or reconstruction projects, a design and build project delivery system may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use the system on a specific project. The determination shall be issued only after the state purchasing agent or a central purchasing office has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design and build process:

- (1) the extent to which the project requirements have been or can be adequately defined;
- (2) time constraints for delivery of the project;
- (3) the capability and experience of potential teams with the design and build process;
- (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs and quality; and
- (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

B. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer or architect and a contractor properly licensed in New Mexico for the type of work required.

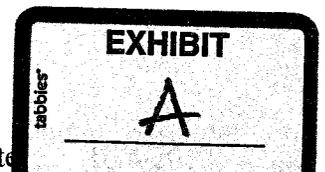
C. Except as provided in Subsections F and G of this section, for each proposed state or local public works design and build project, a two-phase procedure for awarding design and build contracts shall be adopted and shall include at a minimum the following:

- (1) during phase one, and prior to solicitation, documents shall be prepared for a request for qualifications by a registered engineer or architect, either in-house or selected in accordance with Sections 13-1-120 through 13-1-124 NMSA 1978, and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, the composition of the selection committee and a description of the phase-two requirements and subsequent management needed to bring the project to completion. Design and build qualifications of responding firms shall be evaluated, and a maximum of five firms shall be short-listed in accordance with technical and qualifications-based criteria; and
- (2) during phase two, the short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling. Unsuccessful firms may be paid a stipend to cover proposal expenses. After evaluation of these submissions, selection shall be made and the contract awarded to the highest-ranked firm.

D. Except as provided in Subsections F and G of this section, to ensure fair, uniform, clear and effective procedures that will strive for the delivery of a quality project on time and within budget, the secretary, in conjunction with the appropriate and affected professional associations and contractors, shall promulgate rules applicable to all using agencies, which shall be followed by all using agencies when procuring a design and build project delivery system.

E. A state agency shall make the decision on a design and build project delivery system for a state public works project, and a local public body shall make that decision for a local public works project. A state agency shall not make the decision on a design and build project delivery system for a local public works project.

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F. The requirements of Subsections C and D of this section do not apply to a design and build project delivery system and the services procured for the project if:

(1) the maximum allowable construction cost of the project is four hundred thousand dollars (\$400,000) or less; and

(2) the only requirement for architects, engineers, landscape architects or surveyors is limited to either site improvements or adaption for a pre-engineered building or system.

G. The procurement of a design and build project delivery system qualifying for exemptions pursuant to Subsection F of this section, including the services of any architect, engineer, landscape architect, construction manager or surveyor needed for the project, shall be accomplished by competitive sealed bids pursuant to Sections 13-1-102 through 13-1-110 NMSA 1978.

**History:** 1978 Comp., § 13-1-119.1, enacted by Laws 1997, ch. 171, § 5; 1999, ch. 220, § 2; 2003, ch. 222, § 1; 2013, ch. 146, § 1.

**34. DESIGN BUILD PROJECTS, REQUEST FOR PROPOSALS:**

**A. Applicability.** An alternative for construction of projects, except for road and highway construction or reconstruction projects is available through the design-build delivery method. The objective of design-build contracting is to complete construction projects more efficiently than conventional design-bid-build, however, a benefit-oriented evaluation should be used to assess if design-build is appropriate.

**B. Practical or Advantageous.** When the Chief Procurement Officer determines pursuant to this Section that the design-build delivery method is either practical or advantageous to the County, the procurement may be effected by competitive design-build proposals. The process is intended to be fair, uniform, clear and effective for the delivery of a quality project on time and within budget.

**C. Written Determination.** The County department(s) or office shall submit a written recommendation to the Chief Procurement Officer for review. The primary factors that should be addressed in the memo include:

1. A summary of the project, to include a description of project, goals and requirements, estimated design/engineering costs, estimated construction costs, an estimated project schedule, and identification of County staff included on the design-build team who will formulate, evaluate, and administer Request for Proposals.

2. A description of the funding source and amount. The funding for the design and construction must be fully in place or reasonably expected to be in place for the immediate completion of the design-build project. If not in place or reasonable expected to be in place to complete the design-build project without delay, the design should be procured separately under a bid when funds are in place.

3. A summary of why would it be in the best interest of the County to use design-build and the reasons for the potential benefits, such as significant time savings, higher quality realized through designs tailored to contractor capability, design and builder work together to enhance each capabilities and methods, and/or combined expertise of contractor with designer to maximize potential benefits, less impact on the public with the use of expedited construction processes, unusual or unique requirements that could be effectively addressed by design-build, specialty skills needed for design or construction, reduction of total costs, and best value solution with value engineering.

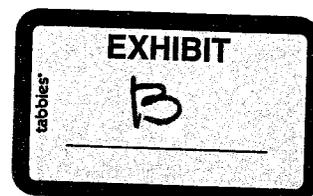
4. A summary of potential risks or problems due to using design-build for specific project and mitigation solutions, including a statement concerning the capability of the County (with a consultant, as applicable) to effectively administer and manage the design-build project., and who will ultimately be responsible.

5. If approved by the Chief Procurement Officer, the recommendation shall be reviewed by the County Manager. If approved by the County Manager, the proposed use of design-build shall be submitted to the Board of County Commissioners for concept approval to proceed with the procurement process under design-build.

**D. Basic Process.**

1. The following is recommended as a basic process in initiating and planning a design build project. Often it can be expected that there is more upfront time and effort required to clearly define the project expectations than in a design-bid-build process, although time savings may be seen in the overall project.

- a. Identify the goal;
- b. Assign the project manager;



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c. Assemble project team, including consultant if advisable;  
d. Develop project requirements, including project scope, project goals, quality expectations, final project expectations, technical requirements, contract development, decision-making process, project schedule, clear and complete definition of project and technical areas, and provide equal platform of information for proponents to be able to prepare competitive proposals

**E. Determinations prior to Requests for Proposals.**

1. The County project team should determine what will be done by County staff, and what tasks are included in the Requests for Proposals, including but not limited to the following:

- a. Environmental studies
- b. Public participations through public hearings and other input
- c. Interagency agreements
- d. Utility agreements/relocations
- e. Right-of-way acquisition
- f. Handling and resolution of hazardous materials
- g. Cultural and archeological resource site investigation
- h. Endangered species investigations
- i. Permit requirements
- j. Determine risks and clarify mitigation and responsibility
- k. Surveys
- l. Mapping
- m. Hydraulic analysis
- n. Geotechnical investigations

2. Other areas and expectations that should be addressed in the Request for Proposals may include the following:

- a. Legal description of site
- b. Maximum Available Construction Costs (MACC)
- c. Aesthetic considerations and compatibility with existing facilities
- d. Site development requirements
- e. Special codes, regulations, ordinances or statutes
- f. Utilities, parking and landscaping requirements
- g. Future expansion requirements
- i. Special materials
- j. Space requirements
- k. Special equipment and systems requirements
- l. Construction administration
- m. Labor disputes
- n. Weather conditions
- o. Inflation
- p. Schedule requirements
- q. Incremental acceptance of work
- r. Performance guarantees/warranties
- s. Design reviews/approvals
- t. Liability for design
- u. Site conditions
- v. Contract changes
- w. Liquidated damages

- x. Ownership during phases
- y. Payment methodology
- z. Incentives and disincentives
- aa. Bonding requirements
- bb. Errors and omissions insurance
- cc. Guaranteed completion date
- dd. Warranties
- ee. Determination of criteria for completion of contract

3. Request for Proposals.

a. The County project team shall prepare a Request for Proposals setting forth the scope of the project that should include, but is not limited to: (i) the size, type and desired design requirements of the building and site; and (ii) performance specifications covering the quality of materials, equipment, and workmanship, durability, life cycle costs, preliminary plans or building layouts, or any other information deemed necessary to adequately and clearly describe the County needs.

b. The performance specifications and plans shall be reviewed and approved by a registered engineer or architect professional licensed by the State of New Mexico, which may be a County employee or outside provider. This review shall ensure the validity of technical areas and that the information in the Request for Proposals and provide for a fair and complete Request for Proposals process. If an outside provider contracts for review services, the design/engineering professional or the related firm shall not later submit a proposal in any capacity.

**F. Applicable Section for Request for Proposals.** The procedures for Competitive Sealed Proposals for Procurement of Professional Services shall apply to design-build solicitations, unless the procedures specified are clearly not applicable to the design-build process.

**G. Step One of the Request for Proposals.**

1. Step one may include programming and schematic design including recommended or required building systems, elevations, areas, floor plans and cross section in limited detail for further development by proponents.

2. The Request for Proposals issued under this Step One of the Request for Proposals process are referred to as the Request for Qualifications. The Request for Proposals issued under Step One shall include:

- a. the project scope and requirements
- b. submittal requirements from proponents
- c. composition of selection committee, with statement that the County retains the option to change committee members, if necessary
- d. description of step two and/or interviews in process
- e. evaluation criteria for each step of the process (step one, step two, interviews, and best and final offers, as applicable)
- f. mandatory pre-proposal meeting requirement
- g. number of firms that will be short listed as detailed in the request for proposals
- h. estimated procurement and approval schedule
- i. any and all further steps in the selection process

- j. An independent outside consultant or other qualified outside representative(s) may serve on the selection committee.

**H. Submittal Requirements.** The submittal requirements shall include:

1. Request for information on the qualifications of proponent as to capability, capacity, availability, and experience;
2. A description of similar contracts with counties and municipalities;
3. A preliminary proposed work plan;
4. A preliminary proposed project schedule with key tasks, key staff and their professional licenses who will be assigned to this project;
5. A proposed contractor and similar information and qualifications, certification to meet all insurance and bonding requirements/certification of no debarment, disqualification, default, or early termination from contract in the last 5 years;
6. A certification of no commercial bankruptcy in the last 5 years of any member or subcontractor of the entity;
7. Information on all settled adverse claims, disputes or lawsuits with an owner of a project;
8. A description of OSHA violations, workers' compensation claims, or safety claims;
9. A description of any state licensing violations; and
10. Any additional information deemed necessary by the County.

**I. Mandatory Pre-Proposal Meeting.** A Request for Proposals may include a mandatory pre-proposal meeting to explain the project and provide information about the procurement process. The County will attempt to respond to all questions and provide necessary information at the meeting; however, the County may require questions or comments to be submitted in writing before the County responds in the form of addenda or if a response requires the County to conduct additional inquiry or research. Non-attendance at a mandatory pre-proposal meeting will be cause for an offeror's proposal to be deemed non-responsive. An attendee at a mandatory pre-proposal meeting may not represent more than one potential offeror.

**J. Receipt of the Step One Proposals.** Step One proposals are received as formal sealed proposals at the Purchasing Office.

**K. Evaluation under Step One of Request for Proposals.** All responsive submittals shall be evaluated based on the evaluation criteria. This step evaluates experience, technical competence, capability to perform, past performance and other criteria set forth in the Step One Request for Proposals. The top rated firms shall be short-listed based on the totals of the ratings of the committee.

**L. Step Two of the Request for Proposals.**

1. The short-listed firms shall be invited to submit detailed specific technical concepts or solutions, costs and scheduling as a formal sealed proposal to the Purchasing Office. If at least 3 firms do not submit responsive proposals, the short-list may be composed of the number of responsive proposals received.
2. Cost shall be at least 60% of the evaluation criteria. Cost may be based on life cycle cost if so stated and explained in the Requests for Proposals for a period of time determined by the Purchasing Director but not exceeding the expected asset life of the project.
3. Other evaluation criteria may include technical expertise, skilled labor force availability, safety record, time schedule. Additional evaluation criteria information requirements may be included at the discretion of the County.

4. For a complex project or a project in which more detailed proposals are requested, a stipend may be paid to cover costs of the preparation of this phase. The amount shall be determined in advance, although a stipend is not required and is at the sole option of the County.

5. Interviews may be conducted, but are not required and are at the sole option of the County.

6. Based on evaluation of Step Two proposals, new information may be issued by the County and Best and Final Offers may be submitted. The Best and Final Offers shall be evaluated based on the evaluation criteria for step two, unless specified in writing to the top listed proponents.

7. All information received shall be deemed to be confidential to the evaluation committee and County administration until a recommendation is made to the first review committee prior to County consideration.

**M. Evaluation Under Step Two of Request for Proposals.** All submittals shall be evaluated unless a given submittal is determined to be non-responsive. The qualifications, quality of proposed design and technical submittals, quality of construction approach, demonstrated response to program requirements, management plan for constructing the project, cost, schedule and other factors and criteria shall be evaluated as set forth in the Request for Proposals. Final contract negotiations shall proceed with the top rated firm. A single contract will be issued for design services and construction services. If negotiations are successful, the top rated firm based on the totals of the ratings of the committee shall be recommended to the applicable committees and Board of County Commissioners. If negotiations with the top rated firm are not successful, as determined at any time by the County in its sole discretion, the County may terminate such negotiations and initiate contract negotiations with the next top rated firm in order of ranking.

**N. Construction Inspection.** A separate contract with a fully independent licensed architect or engineer to provide construction inspection services is advisable, but not required.

**O. Other Services.** Finance services, maintenance services, operation services, and other related services may be included, but must be clearly stated in the Request for Proposals. Such services could be included as an optional component, such that a basic design-build contract could be awarded or a contract including other services. The Request for Proposal must be very clear as to the evaluation process and criteria and how optional services would be evaluated and considered as part of the contract awarded.

Santa Fe County, New Mexico  
Board of County  
Commissioners

Capital Outlay GRT Refunding Analysis

October 10, 2017

STRICTLY PRIVATE AND CONFIDENTIAL



RBC Capital Markets

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EXHIBIT

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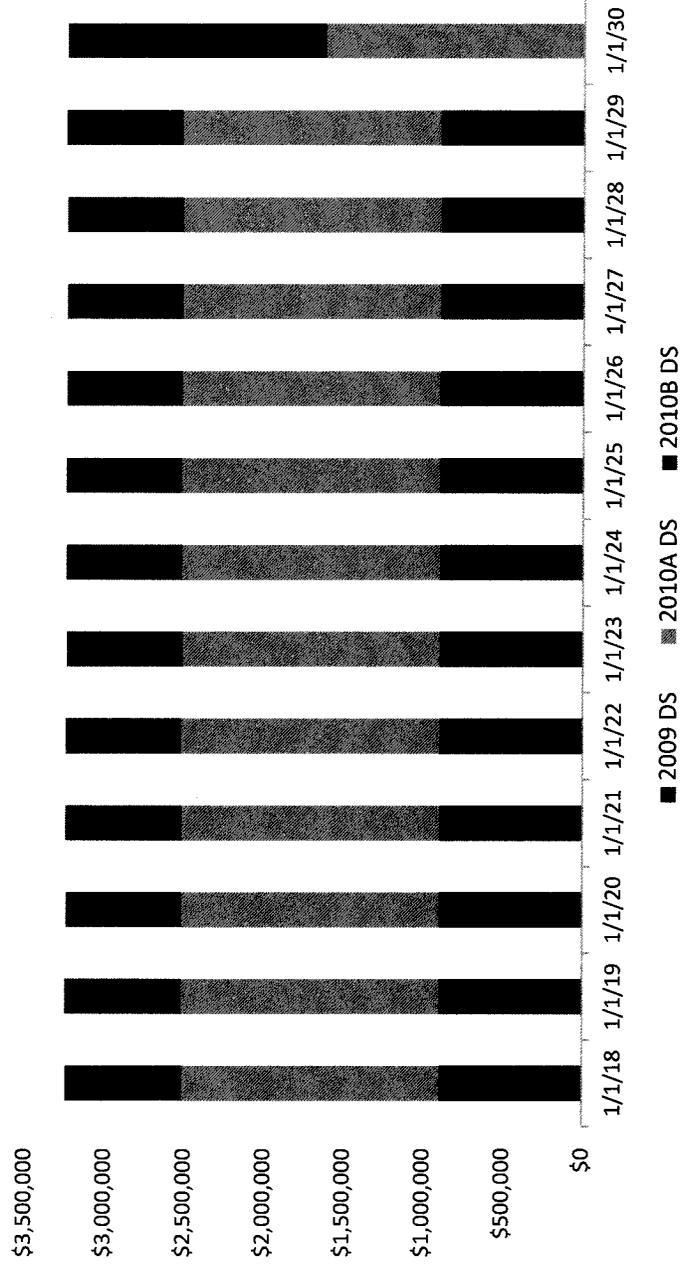
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## Outstanding Capital Outlay GRT Debt (as of July 1, 2017)

Issue	Bond Type	Amount Outstanding	Callable Amount Outstanding	Call Date	Coupons	Final Maturity
Series 2009	COGRT	8,460,000	7,320,000	6/1/19	3.125% - 5.000%	2029
Series 2010A	COGRT	15,740,000	12,880,000	6/1/20	3.000% - 5.000%	2030
Series 2010B	COGRT	7,740,000	6,450,000	6/1/20	3.000% - 4.250%	2030
<b>Total Capital Outlay GRT Bonds</b>		<b>\$ 31,940,000</b>	<b>\$ 26,650,000</b>			

### Outstanding Debt Service for Capital Outlay GRT Bonds



# Combined Refunding (All Callable Maturities for Series 2009, 2010A & Series 2010B COGRT Bonds)

## Summary of Refunding Results

Dated Date	12/17/17
Arbitrage yield	2.399%
Escrow yield	1.489%
Value of Negative Arbitrage	\$ 531,889.40

Bond Par Amount	\$ 28,660,000.00
True Interest Cost	2.47%
Net Interest Cost	2.48%
Average Coupon	2.417%
Average Life (yrs)	7.80

Par amount of refunded bonds	\$ 26,650,000.00
Average coupon of refunded bonds	4.22%
Average life of refunded bonds	8.17

PV of prior debt to 12/17/2017 @ 2.399407%	\$ 30,251,536.98
Net PV Savings	\$ 1,600,402.84
Percentage savings of refunded bonds	6.01%

## Refunding Efficiency

Date	Savings		
	Prior Debt Service	Refunding Debt Service	Present Value
6/1/18	\$ 567,859	\$ 500,840	\$ 67,019
6/1/19	1,135,719	985,132	150,587
6/1/20	1,750,719	1,600,884	149,835
6/1/21	3,246,119	3,098,242	147,877
6/1/22	3,245,419	3,097,884	147,535
6/1/23	3,241,188	3,092,484	148,704
6/1/24	3,244,925	3,092,172	152,754
6/1/25	3,245,975	3,092,156	153,820
6/1/26	3,242,025	3,091,135	150,890
6/1/27	3,243,075	3,090,431	152,644
6/1/28	3,242,475	3,090,336	152,139
6/1/29	3,247,475	3,094,358	153,117
6/1/30	3,242,175	3,134,240	107,935
	<b>\$ 35,895,147</b>	<b>\$ 34,060,290</b>	<b>\$ 1,834,857</b>

PV of savings from cash flow \$ 1,591,536.98  
 Plus: Refunding funds on hand 8,865.86

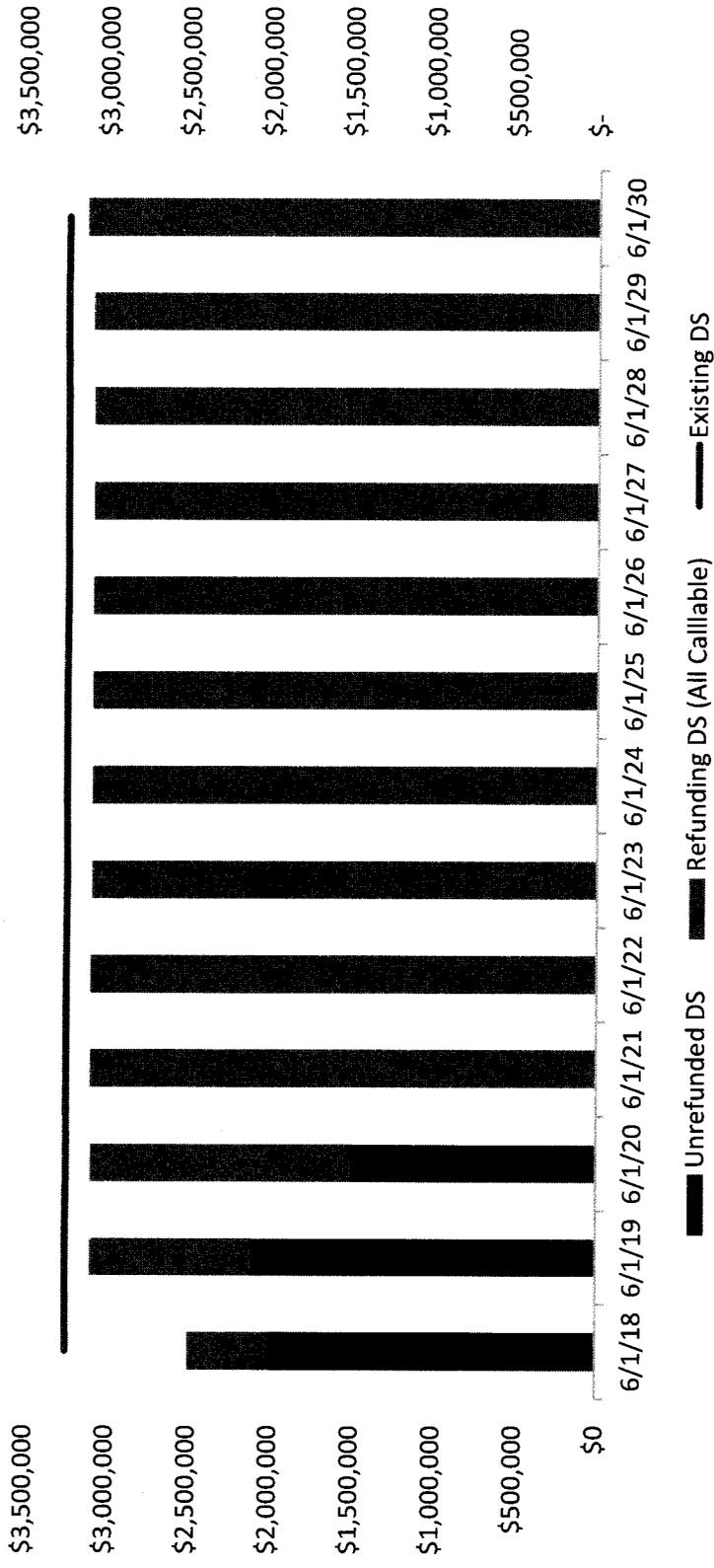
**Net PV Savings \$ 1,600,402.84**  
**Net PV Savings % 6.01%**

## Summary of Bonds Refunded - All Callable Debt

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
Serial	6/1/20	Various	\$ 615,000	Various	100
Serial	6/1/21	Various	2,135,000	Various	100
Serial	6/1/22	Various	2,230,000	Various	100
Serial	6/1/23	Various	2,320,000	Various	100
Serial	6/1/24	Various	2,425,000	Various	100
Serial	6/1/25	Various	2,535,000	Various	100
Serial	6/1/26	Various	2,645,000	Various	100
Serial	6/1/27	Various	2,765,000	Various	100
Serial	6/1/28	Various	2,875,000	Various	100
Serial	6/1/29	Various	2,995,000	Various	100
Serial	6/1/30	Various	3,110,000	Various	100
			<b>\$ 26,650,000</b>		

Debt Service for Capital Outlay GRT Bonds – Before and After Refunding (All Callable Bonds)

Existing Debt Service vs. Refunding Debt Service  
(All Callable)



## Interest Rate Market Summary

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- Tax exempt municipal rates hit near historical lows in mid-2016
- After the November presidential election interest rates spiked close to 75 bps in response to the election results
- Interest rates have trended lower since January, however rates have spiked recently in part to Federal Reserve announcements
- The Federal Reserve meets two more times in 2017, November 2<sup>nd</sup> and December 14<sup>th</sup>
  - The Federal Reserve is expected to raise rates in December
  - In statements released by the Federal Reserve it is expected that there will be 3 rate increases in 2018
  - The Federal Reserve is also expected to begin reducing the size of its balance sheet by selling US Treasuries, purchased during QE3, which could lead to higher interest rates
- Congress is expected to take action on tax reform in the next few months
  - Tax reform can lead to higher municipal bond rates since lower effective tax rates require higher rates on tax-exempt debt to have the same impact on the tax-equivalent rate of return
- The US economy continues its strong growth with gains in both jobs and wealth levels which can lead to a rise in inflation which can impact interest rates

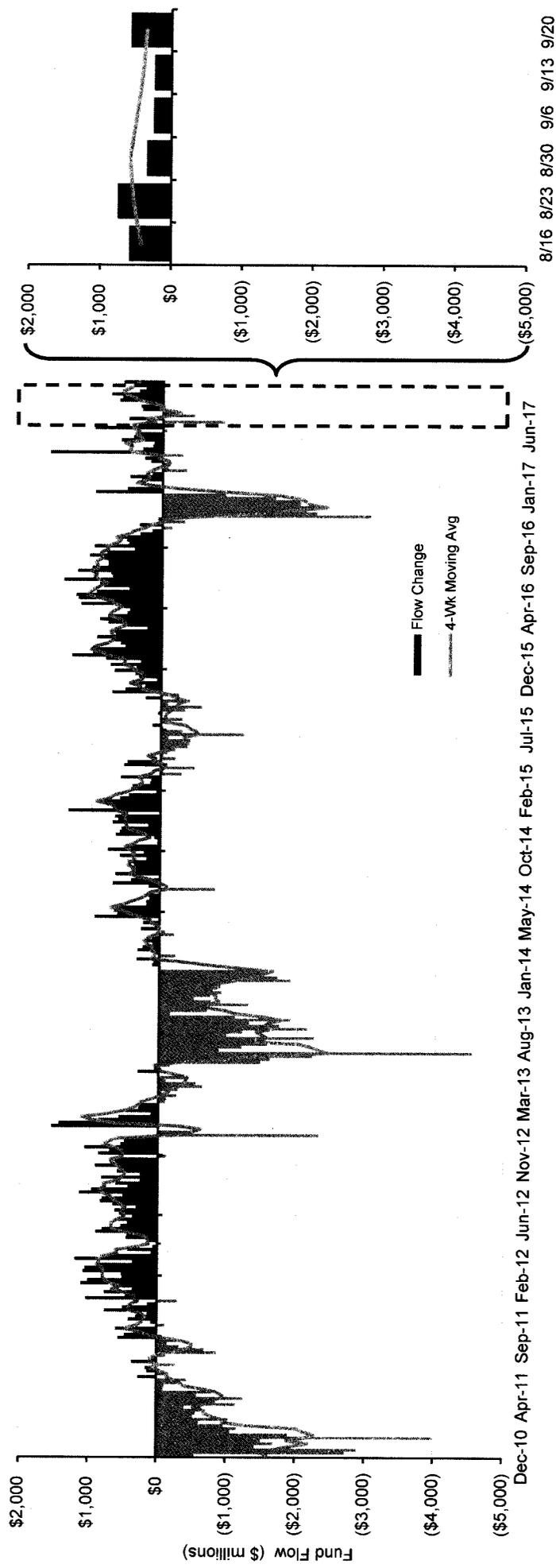
## Municipal Market Fund Flows

Municipal bond funds see inflows

According to data from Lipper, for the week ended September 20<sup>th</sup>, 2017, weekly municipal bond funds reported \$574 million of inflows, up from the previous week's \$241 million of inflows

- Long-term muni bond funds experienced inflows, gaining \$225 million in the latest week, after inflows of \$290 million in the previous week
- Four week moving average is currently positive at \$353 million, down from last week's number of \$397 million

### Lipper Municipal Fund Flows

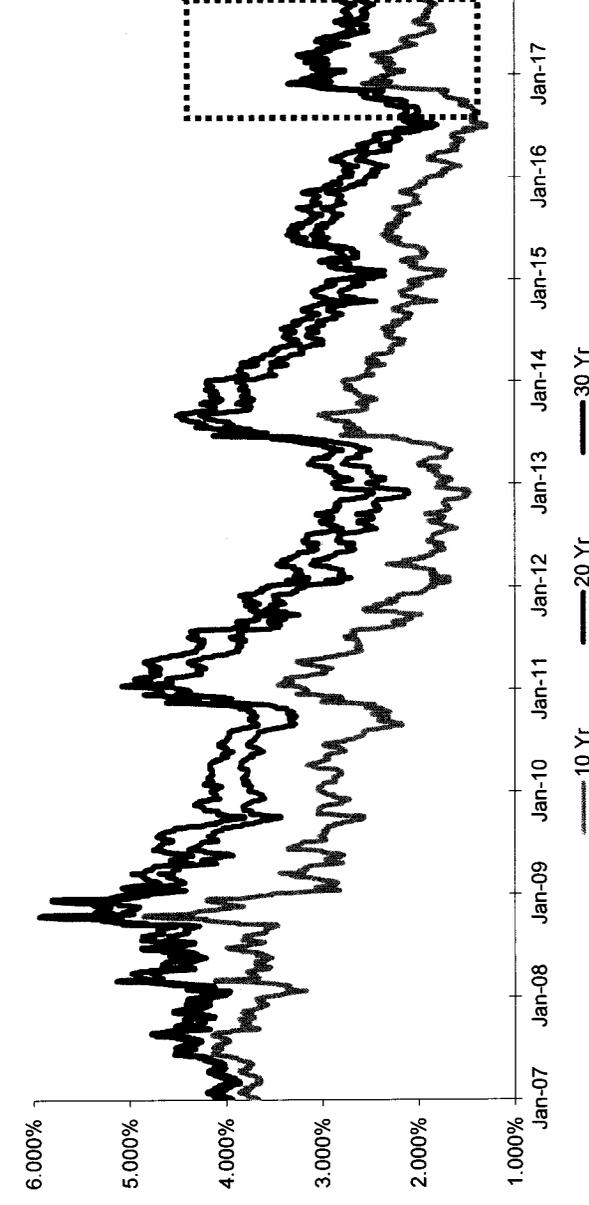


Period ended September 20, 2017

## Current Municipal Market Conditions: "AAA" MMD

After closing at 2.76% the previous week, the 30-year "AAA" MMD increased by 2 bps from September 15 – September 22, closing at the current rate of 2.78%

"AAA" MMD January 1, 2007 to Present



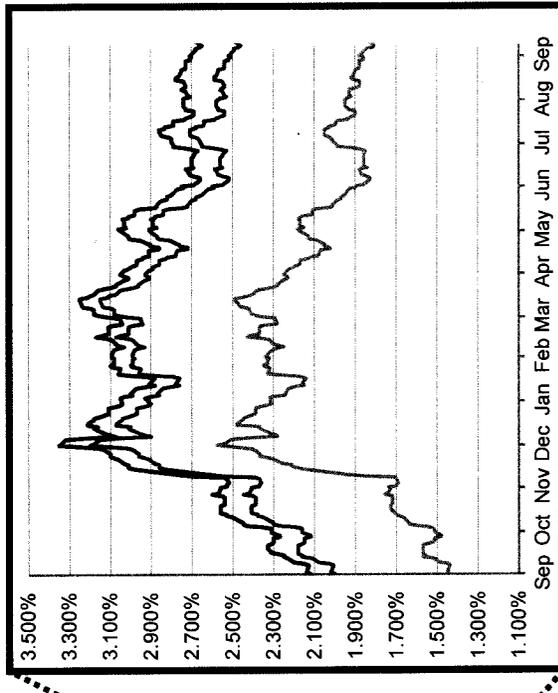
January 1, 2007 to Present

	10 Year	20 Year	30 Year
Maximum	4.860%	5.740%	5.940%
Minimum	1.290%	1.800%	1.930%
Current	1.920%	2.580%	2.780%

Shift in 30-year "AAA" MMD

	2010	2011	2012	2013	2014	2015	2016
Shift	0.520%	-1.130%	-0.740%	1.330%	-1.340%	-0.010%	0.270%

Shift in "AAA" MMD Since September 2016



September 1, 2016 to Present

	10 Year	20 Year	30 Year
Maximum	2.580%	3.200%	3.350%
Minimum	1.440%	2.000%	2.120%
Average	2.039%	2.697%	2.838%

Source: TMS, Thomson Reuters  
10, 20, and 30 year "AAA" MMD shown to represent different average lives of municipal transactions  
Rates as of September 22, 2017

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY  
RESOLUTION NO. 2017 - \_\_\_\_\_**

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A RESOLUTION AUTHORIZING THE COUNTY MANAGER TO TAKE ALL ACTIONS NECESSARY OR APPROPRIATE TO JOIN SANTA FE COUNTY AS PLAINTIFF IN AN ACTION AGAINST THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) BASED ON HUD’S 2012 BREACH OF THE ANNUAL CONTRIBUTIONS CONTRACT

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**WHEREAS**, in 2013 over 300 public housing agencies (“PHAs”) and two public housing trade associations brought a breach of contract action against HUD in the United States Court of Federal Claims (“Lawsuit #1”); and

**WHEREAS**, plaintiffs in Lawsuit #1 alleged that HUD breached the annual contributions contract (“ACC”) with each PHA by failing to reduce operating subsidy payments on a pro rata basis, as expressly required by HUD regulations; and

**WHEREAS**, plaintiffs in Lawsuit #1 requested an aggregate amount of \$135,836,467.00 in compensatory damages as well as costs and expenses in bringing the action; and

**WHEREAS**, the Court of Federal Claims granted the plaintiffs’ motion for partial summary judgment against HUD on the issue of liability in *Public Housing Authorities Directors Association et al. v. United States*, 130 Fed.Cl 522 (2017); and

**WHEREAS**, in *Clearwater Housing Authority et al. v. United States*, 2017 WL 2544891 (2017), the Court of Federal Claims rendered final judgment against HUD in the aggregate amount of \$136,654,144.00 pursuant to a stipulation between plaintiffs and HUD in Lawsuit #1; and

**WHEREAS**, although all PHAs in the country were adversely impacted by HUD’s erroneous distribution of the 2012 operating subsidy, not all PHA’s participated in Lawsuit #1, including Santa Fe County (“County”), and the damages awarded in Lawsuit #1 only applied to the plaintiffs in that case; and

**WHEREAS**, PHAs that did not participate in Lawsuit #1 now have the opportunity to participate in a second lawsuit (“Lawsuit #2”), which will be based on the same fundamental breach of contract by HUD as in Lawsuit #1, except that the amount of damages will be different because of the different plaintiffs involved; and

**WHEREAS**, the same law firm that represented plaintiffs in Lawsuit #1 will represent the new plaintiffs in Lawsuit #2; and

**WHEREAS**, because of HUD's 2012 breach of the ACC, the County Housing Authority received substantially less operating subsidy than it should have in 2012; and

**WHEREAS**, the cost to the County of participating as a plaintiff in Lawsuit #2 is \$1,000.00; and

**WHEREAS**, to assure that the Housing Authority receives the County's full entitlement of federal money, and to maximize the benefit to County residents who require public housing assistance, the County should participate in Lawsuit #2.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners that the County Manager is hereby authorized and directed to take whatever actions she deems necessary or appropriate, including executing an agreement of representation and paying a \$1000.00 participation fee, to join the County as a plaintiff in an action to be filed in the United States Federal Court of Claims against HUD based on HUD's 2012 breach of the ACCs.

**PASSED, APPROVED, AND ADOPTED THIS 26<sup>th</sup> DAY OF SEPTEMBER, 2017.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Henry P. Roybal, Chair

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, Santa Fe County Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Gregory S. Shaffer, Santa Fe County Attorney

Date: \_\_\_\_\_



October 4, 2017

Santa Fe County

To whom it may concern:

I received notice on Case # MIS 17-5270 about Sivage Homes request on separating shared driveways on Avenida Malaguena in Los Santeros at Las Campanas. I am the owner of Lots 25 & 27 just next door and also own and live a few homes down at #54 Paseo Aragon. I am writing in support of granting approval to Sivage Homes in this request. I do not feel that it will have any impact on the neighborhood or the subdivision or our enjoyment thereof.

Thank you,

A handwritten signature in black ink, appearing to read "Eric A. Faust". The signature is stylized and includes a long horizontal line extending to the right.

Eric A. Faust  
505-780-1159

SFC CLERK RECORDED 11/15/2017