



November 9, 2016

**Agenda**

**5:00 P.M. Special Business Meeting**  
Valencia County Commission Chambers  
444 Luna Ave.  
Los Lunas, NM 87031

Board of County Commissioners

<i>Charles D. Eaton, Chair</i>	<i>District IV</i>
<i>Jhonathan Aragon, Vice-Chair</i>	<i>District V</i>
<i>Helen Y. Cole</i>	<i>District I</i>
<i>Alicia Aguilar</i>	<i>District II</i>
<i>David A. Hyder</i>	<i>District III</i>

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***Please Silence all Electronic Devices***

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda

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*Sponsorship does not indicate endorsement of a given topic*

**ACTION ITEM(S)**

- 4) Consideration to direct the County Clerk to begin the Canvass for 2016 General Election. Presenter: ***Peggy Carabajal***; Sponsor: ***County Manager for Regular County Business***.
- 5) Consideration of Agreement to transfer El Puerto Del Sol to the Town of Tome Land Grant. Presenter: ***Adrienne Kozacek***; Sponsor: ***Required by State Board of Finance***

**PUBLIC COMMENT**

Please sign up on the sheet located just outside the Commission Chambers. The Board will allow each member of the public wishing to address the Board an opportunity to address the board in conjunction with the Public Participation Resolution, Resolution No. 2016-37 adopted by the board **Limited to three (3) minutes per person**

**EXECUTIVE SESSION**

Pursuant to Section 10-15 1 (H) (2) (7) & (8), the following matters may be discussed in closed session: a. personnel; b. pending or threatened litigation/ administrative adjudicatory deliberations; ***Belen schools v. Valencia County*** c. real property; d. other specific limited topics that are allowed or authorized under the stated statute:

- Motion and roll call vote to go into Executive Session for the stated reasons
- Board meets in closed session
- Motion and vote to go back into regular session
- Summary of items discussed in closed session
- Motion and roll call vote that matters discussed in closed session were limited to those specified in motion for closure, and that no final action was taken, pursuant to the authority in §10-15-1 NMSA 1978.

*If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Administration Building, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office if a summary or other type of accessible format is needed.*

**NEXT COMMISSION MEETINGS**

**November 16, 2016-Business Meeting @ 5:00 P.M.**

**Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031**

**ADJOURN**

*If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Administration Building, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office if a summary or other type of accessible format is needed.*



**VALENCIA COUNTY  
Board of County Commissioners  
Agenda Request Form**



**Commission Sponsor: County Manager for Regular County Business**  
**Department Head: Peggy Carabajal, Valencia County Clerk**  
**Individual Making Request: Candace Teague, Bureau of Elections Administrator**  
**Presentation at Meeting on: November 9, 2016**  
**Date Submitted: Monday, October 31, 2016**  
**Title of Request: Consideration to direct the County Clerk to begin the Canvass for 2016 General Election**

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**Action Requested of Commission:**

Consideration of the Board of County Commission to direct the county clerk to begin the canvass of the 2016 General Election and to recess as the canvassing board to re-convene on Friday, November 18, 2016 at a Special Meeting to declare the results of the election.

**Information Background and Rationale:**

Statute 1-13-3 states the county canvassing board shall meet within three days after the election and proceed to canvass the returns of the election. Statute 1-13-12 states the county canvassing board shall complete the canvass of the returns and declare the results within ten days from the date of the election and immediately after completion of the canvass, shall also certify to the state canvassing board the number of votes cast for all candidates.

**What is the Financial Impact of this Request:**

None

**Legal:**

Pursuant to NMSA 1978, § 1-13-3 (1969), the County is statutorily obligated to commence the canvassing within three days after the election. The County Clerk has proposed to commence and continue the canvassing so the Board may satisfy its statutory obligation, and to have a special meeting November 16th to complete the canvass of the returns and declare the results, as required by NMSA 1978, § 1-13-13 (1969). David Pato.

**Finance:**

No financial impact. (Christina Card)

**Purchasing:**

Not Applicable – Agenda Item Does Not Include the Purchase Goods and/or Services

Michelle Romero

Procurement Complete as Described Below:



**VALENCIA COUNTY  
Board of County Commissioners  
Agenda Request Form**



Commission Sponsor: **Required per State Board of Finance**

Department Head: **Danny Monette**

Individual Making Request: **Adrienne Kozacek**

Presentation at Meeting on: **November 9, 2016**

Date Submitted: **November 3, 2016**

Title of Request: **Consideration to Approve Agreement Between Valencia County and Town of Tome Land Grant-Merced For Donation of El Puerto Del Sol**

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**Action Requested of Commission:**

Approve Agreement formalizing prior BOCC approval to donate land and statues commonly known as El Puerto Del Sol to the Town of Tome Land Grant.

**Information Background and Rationale:**

On March 2, 2016 the Valencia County Board of County Commissioners unanimously approved in a public meeting to begin the process of transferring the 0.17 acre piece of land and permanent metal statues commonly known as El Puerto Del Sol.

Staff and legal prepared the required documents for submission to the State Board of Finance. The item is scheduled on the November 15, 2016 SBOF agenda. Upon review of the packet submitted, the SBOF requested clarification, corrections, and a signed agreement between Valencia County and the Town of Tome Land Grant. In order to provide this document in time for the Nov. 15<sup>th</sup> SBOF meeting, this agreement must be signed by both parties on Valencia County's November 9, 2016 Special Business Meeting.

Attached is the email in which the SBOF representative requested the agreement.

**What is the Financial Impact of this Request:**

None

**Legal:**

This amendment is required by the Board of Finance. (Adren Nance)

**Finance:**

N/A

**Purchasing:**

- Not Applicable – Agenda Item Does Not Include the Purchase Goods and/or Services  
 Procurement Complete as Described Below:



**AGREEMENT FOR THE DONATION OF THE EL PUERTO DEL SOL PARK FROM THE COUNTY OF VALENCIA TO THE TOWN OF TOMÉ LAND GRANT-MERCED**

**THIS AGREEMENT** is made by and between the **County of Valencia** ("County") and the Town of Tomé Land Grant-Merced ("Tomé").

**RECITALS:**

**WHEREAS**, the County of Valencia, a political subdivision of the State of New Mexico, organized and existing under and by virtue New Mexico law and specifically NMSA 1978, Section 4-32-1 (1852-53); and,

**WHEREAS**, the Town of Tomé Land Grant-Merced, is a political subdivision of the State of New Mexico pursuant to NMSA 1978, Sections 49-1-1 *Et Seq.*; and,

**WHEREAS**, the real property to be conveyed, referred to as the El Puerto Del Sol, is in the middle of the Town of Tomé Land Grant-Merced's real property as it was acquired by the County in 1995 pursuant to a "cultural corridors" public art project whereby statues were erected on the real property; and,

**WHEREAS**, El Puerto Del Sol Park and further described as follows:

A Tract of land being a portion of Block 38, Unit 58, of the Rio Del Oro Subdivision, situate within Tomé Grant and in Section 10, Township 6 North, Range 2 East, of the New Mexico Principal Meridian (projected), Valencia County, New Mexico, and being more particularly described as follows:

**BEGINNING** of the Northwesterly Corner of said Block 38, being the Northerly point on a Return Curve between La Entrada Road and Tomé Hill Road, said point lying on the Southerly Right-of-Way Line of Tomé Hill Road;  
**THENCE**, South 35°18'21" East, a Distance of 163.72 Feet to the True Point of Beginning of the herein described Tract of land, said point being a Curvature;  
**THENCE**, along a Curve to the Right, Radius = 27.24 Feet, Arc Length = 30.28 Feet, Angle of Deflection = 63°42'26", Chord Bearing North 64°17'29" East, a Distance of 28.75 Feet to a point of Curvature;  
**THENCE**, along a Curve to the Right, Radius = 45.71 Feet, Arc Length = 19.51 Feet, Angel of Deflection =24°27'23", Chord Bearing South 71°37'36" East, a

Distance of 19.37 Feet;  
THENCE, along a Curve to the Right, Radius = 64.31 Feet, Arc Length = 20.49 Feet, Angle of Deflection = 18°15'10", Chord Bearing South 50°16'20" East, a Distance of 20.40 Feet;  
THENCE, along a Curve to the Right, Radius = 89.69 Feet, Arc Length = 48.33 Feet, Angle of Deflection = 30°52'28", Chord Bearing South 25°42'31" East, a Distance of 47.75 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 64.31 Feet, Arc Length = 20.49 Feet, Angle of Deflection = 18°15'10", Chord Bearing South 01°08'42" East, a Distance of 20.40 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 45.71 Feet, Arc Length = 19.51 Feet, Angle of Deflection = 24°27'23", Chord Bearing South 20°12'35" West, a Distance of 19.37 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 27.24 Feet, Arc Length = 30.28 Feet, Angle of Deflection = 63°42'26", Chord Bearing South 64°17'29" West, a Distance of 28.75 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 45.71 Feet, Arc Length = 19.51 Feet, Angle of Deflection = 24°27'23", Chord Bearing North 71°37'36" West, a Distance of 19.37 Feet to a point of Curvature;  
THENCE, along a curve to the Right, Radius = 64.31 Feet, Arc Length = 20.49 Feet, Angle of Deflection = 18°15'10", Chord Bearing North 50°16'20" West, a Distance of 20.40 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 89.69 Feet, Arc Length = 48.33 Feet, Angle of Deflection = 30°52'28", Chord Bearing North 25°42'31 West, a Distance of 47.75 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 64.31 Feet, Arc length = 20.49 Feet, Angle of Deflection = 18°15'10", Chord Bearing North 01°08'42" West, a Distance of 20.40 Feet to a point of Curvature;  
THENCE, along a Curve to the Right, Radius = 45.71 Feet, Arc Length = 19.51 Feet, Angle of Deflection = 24°27'23" East, a Distance of 19.37 Feet to the True Point of Beginning.

**WHEREAS**, NMSA 1978, Section 13-6-2.1 (2011) provides that "[e]xcept as provided in Section 13-6-3 NMSA 1978, for state agencies, any sale, trade or lease for a period of more than five years of real property belonging to a state agency, local public body or school district or any sale, trade or lease of such real property for a consideration of more than twenty-five thousand dollars (\$25,000) shall not be valid unless it is approved prior to its effective date by the state board of finance; and,

**WHEREAS**, the County Assessor has valued the park at \$25,085; and,

**WHEREAS**, the NMSA 1978, Section 4-47-2 (1961) provides that "Boards of county commissioners within the state of New Mexico are hereby authorized to sell, transfer and convey

to any city, town or village located within such county, or to any agency or department or commission of the state of New Mexico, operating facilities within such county, such public buildings and lands on which such buildings are located, or such other lands, lots and additions belonging to the said county, whenever the same are no longer deemed necessary for county purposes, without appraisal, at private sale, for such sum as the said county commissioners may in their judgment determine.

**WHEREAS**, Article 10 Section 14 of the New Mexico Constitution, referred to as the anti-donation clause, which provides that state or municipality shall not make any donation to association or public corporation is inapplicable to donations by state or one of its governmental agencies to another such agency, See, City of Gallup v. New Mexico State Park and Recreation Commission, 86 N.M. 745, 527 P.2d 786 (1974).

**WHEREAS**, at its meeting on March 2, 2016 the Board of County Commissioners determined that Tomé Land Grant is the appropriate governmental entity to own the real property and maintain the artwork thereon. Accordingly, the Board directed that the property be donated and transferred as it serves no purpose for County Government; and,

**WHEREAS**, in order to effectuate the transfer this donation agreement is required; and,

**THE COUNTY AND TOMÉ AGREE FOLLOWS:**

1. **Donation of Property.** The County intends to transfer El Puerto Del Sol Park to Tomé so that Tomé may maintain the park on behalf of the inhabitants of the Land Grant and The County.
2. **Incorporation of Recitals.** The above recitals are incorporated by reference, as if the same were fully set forth herein.
3. **Closing.**
  - a. **Date and Time of Closing.** The closing of the Real Property shall occur as soon as is reasonably possible after the execution of this Agreement. The exact time and place of closing shall be determined by the mutual agreement of Tomé and County.
  - b. **Prorations and Closing Costs.** The County shall pay all taxes and assessments for the property, if any, for 2016 and all prior years. Taxes and assessments for 2016 shall be prorated to the closing date. Any costs associated with the survey(s) and the issuance of the title insurance commitment(s) and the title insurance policy(ies) shall be paid by Tomé if requested by Tomé.
  - c. **Possession.** Possession of El Puerto Del Sol Park shall be delivered to Tomé at closing in the form of a quitclaim deed.
4. **Tests.** Tomé has the right for sixty (60) days after the effective date of this Agreement, at its own expense, to undertake an environmental audit, a professional wetlands delineation,

professional floodplain analysis, survey, grading and soil tests (collectively "Tests") on the Real Property it is to receive. The County shall, upon the execution of this Agreement, promptly furnish to Tomé, any and all documents or reports which each party has in its possession which cover all or any portion of the Real Property to be conveyed with regard to any previous Tests. The County shall allow Tomé and its representatives and agents reasonable access onto the Real Property to conduct such Tests. Tomé shall have sixty (60) days after the date of this Agreement to notify the County, in writing, that a licensed professional has reviewed the results of the Tests and has determined and concluded either that the Real Property to be received is not conducive or suitable for Tomé's intended uses based upon the Tests. If the Real Property is found not to be suitable for Tomé's intended use of the Real Property, Tomé will furnish the County with a certified copy of the professional's determination and copies of any relevant tests and conclusion that the Real Property is unsuitable. In the event Tomé notifies the County of the above within such sixty (60) day period, Tomé shall have ten (10) days from the date of notice of the test results to declare this Agreement null and void and then the parties shall have no further obligations under this Agreement.:

5. **Contingencies.** This agreement is contingent upon approval by the New Mexico Board of Finance.
6. **Execution of Agreement.** This agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
7. **Specific Performance & Jurisdiction.** The County and Tomé hereby consent to exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from this Agreement which cannot be resolved informally and each Party waives any objection to the personal jurisdiction of the Courts of the State of New Mexico. It is expressly agreed by the parties that the venue for litigation of any issue, claim, or all other judicial matters arising or resulting from this Agreement shall be in the Valencia County District Court. Any recovery pursuant to this Agreement by either party against the other shall be limited to "specific performance". Under no circumstances shall either party be liable for expenses, costs or attorney fees.
8. **Third Party Beneficiary.** This Agreement does not create any rights as a third party beneficiary in any person or entity nor authorize any person or entity not a party to this Agreement to maintain a suit against either party.
9. **Binding Effect.** Upon the execution of this agreement, the agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.



10. **Waiver.** No consent or waiver, express or implied by any party to the breach or default by any other party in the performance of his or her obligations under this agreement shall be deemed or construed to be a consent or waiver to any other breach or default.
11. **Notice.** Any notice required or permitted to be given under this agreement shall be in writing and shall be hand delivered or mailed to Tomé or Valencia County, as the case may be, postage pre-paid and by certified mail, return receipt requested, at their respective addresses show below (or at such other address as Tomé or the County may specify to the other party in writing from time to time):

Valencia County:

Valencia County Manager  
P.O. Box 1119  
Los Lunas, NM 87031

Tomé:

Town of Tomé Land Grant President  
P. O. Box 55  
Tomé, NM 87060

12. **Risk of Loss.** In the event of damage or destruction of all or part of the property prior to the time of closing, then Grantor Party shall be obligated to repair the same before the closing date. In the event that any such damage is not repaired prior to the closing date, Grantee Party may either (i) terminate this agreement, whereupon neither party shall have any further claim against the other by reason of this agreement, or (ii) receive all insurance proceeds collected or collectible by Grantor Party by reason of such damage or destruction and proceed with a closing pursuant to this agreement without abatement to the purchase price. Grantor Party agrees to maintain, until closing, fire and casualty insurance policies on the insurable improvements on the property, if any, in an amount of not less than the fair market value of those improvements.
13. **Severability.** In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.
14. **New Mexico Tort Claims Act and Privileges & Immunities:**
- a. This Agreement is not intended to and does not establish any waiver of immunity from liability for alleged tortuous conduct or any other matter of any officer, agent, or employee of Tomé or the County apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. (1976) (hereinafter, as heretofore and hereafter (i) amended and (ii) construed and applied by the appellate courts of the

State of New Mexico, the "Act"). All privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to "governmental entities" and to "public employees," each as defined in the Act, shall apply to the same extent while engaged in the performance of any of their respective functions and duties hereunder.

- b. By entering into this Agreement, each party agrees that it shall be responsible for liability arising from death or personal injury or damage to property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitation of the Act. This Section is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' respective liabilities as governed by common law or the Act. The parties and their respective "public employees," as defined in the Act, do not waive (i) sovereign immunity or (ii) any defense or limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the Act.

**15. Headings.** The headings of the sections of this Agreement are inserted only for convenience or reference and are not intended or to be construed to modify, define, limit or expand the intent of the Parties.

**16. Further Assurances.** Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this agreement.

**17. Entire Agreement.** This instrument constitutes the entire agreement between the parties and there are no agreements, understandings, warranties or representations regarding this transaction between the parties except as set forth or provided for in this instrument. All prior agreements, understandings and writings are merged into this agreement except as may be provided herein. This agreement may not be amended except by a written instrument signed by the party to be charged or bound by the amendment and approved by the New Mexico Board of Finance pursuant to NMSA 1978 § 13-6-2.1 (2011) .

**18. Amendments.** The Valencia County Manager is authorized to make any and all changes required to effectuate this agreement.

**WITNESSETH,** the parties have made and executed this instrument effective upon the approval of all parties and the New Mexico Bard of Finance.

**COUNTY OF VALENCIA  
BOARD OF COUNTY COMMISSIONERS**

**APPROVED, ADOPTED, AND PASSED** on this 9<sup>TH</sup> day of November, 2016.

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Charles D. Eaton  
Chair, District IV

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Jhonathan Aragon  
Vice-Chair, District V

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Helen Y. Cole  
Commissioner, District I

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Alicia Aguilar  
Commissioner, District II

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David A. Hyder  
Commissioner, District III

Attest:

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Peggy Carabajal, County Clerk

**TOWN OF TOMÉ LAND GRANT-MERCED**

\_\_\_\_\_  
, President

\_\_\_\_\_  
Date

**NEW MEXICO BOARD OF FINANCE**

APPROVED ON \_\_\_\_\_