

Gerard Saiz, Chair, District I □ Jhonathan Aragon, Vice-Chair, District V □
Troy Richardson, District II □ David A. Hyder, District III □ Joseph Bizzell, District IV
Danny Monette, County Manager

Board of



County Commissioners

December 28, 2021

Agenda

5:00 P.M.

Special Business Meeting

Valencia County Commission Chambers

444 Luna Ave.

Los Lunas, NM 87031

Please Silence all Electronic Devices

Masks required in all County Buildings

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

(December 15, 2021 Public Hearing/Business Meeting)

Sponsorship does not indicate endorsement of a given topic

PUBLIC COMMENT

Public comment is limited to 3 minutes per person. Please use the sign-up sheet outside the Chamber door.

ACTION ITEM(S)

- 5) Consideration of Resolution 2021-____ Establishing Work Hours and Holidays
- 6) Consideration of Resolution 2021-____ Parliamentary Procedures & Robert's Rules of Order.
- 7) Consideration of Resolution 2021-____ Public Participation Rules
- 8) Consideration of Resolution 2022-____ Manager's Authority
- 9) Consideration of MOU between Valencia County and Belen regarding Road Work/Paving in Exchange for Property. Presenter: **Public Works Director, Lina Benavidez**; Sponsor: **County Manager for Regular County Business**

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.

EXECUTIVE SESSION

Pursuant to Section 10-15-1 (H) the following matters may be discussed in closed session:

- a. pending or threatened litigation 10-15-1 (H) (7)
- b. other specific limited topics that are allowed or authorized under the stated statute;
- c. collective bargaining 10-15-1 (H) (5)
 - 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

NEXT COMMISSION MEETINGS

January 5, 2022 – Re-Organizational Meeting @ 5:00 P.M. via Facebook Live
Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

January 19, 2022 – Public Hearing/Business Meeting @ 5:00 P.M. via Facebook Live
Valencia County Commission Chambers, 444 Luna Ave., Los Lunas, NM 87031

ADJOURN



**VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION NO. 2021- ____**

ESTABLISHING EMPLOYEE WORK HOURS & PAID HOLIDAYS FOR 2022

WHEREAS, The Valencia County Commission met upon notice of a Special Business Meeting duly published on Tuesday, December 28, 2021 at 5:00 P.M. in the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031; and,

WHEREAS, New Mexico Constitution Article XX Section 19 provides that “[8] eight hours shall constitute a day's work in all cases of employment by and on behalf of the state or any county or municipality thereof;” and,

WHEREAS, the Board declares that a paid holiday is up to eight (8) hours paid compensation for time off in recognition of each designated holiday;” and,

WHEREAS, Section 10. 1 of the Valencia County Personnel Policy provides that “[t]he Board shall approve holidays at their discretion during the last meeting of December or the first meeting in January of each year, for the calendar year;” and,

WHEREAS, The Board of County Commissioners will establish regular employee working hours and paid holidays as follows:

WORKING HOURS:

Monday through Friday - 8:00 A.M. - 5:00 P.M. - five (5) days a week, with two (15) minute breaks every (4) hours, and one (1) hour for lunch break (Days and times for offices that require staggered shifts, part-time, emergency or personnel employed through grants, including the County Road Department, Sheriff's Department, Detention, Animal Control & Fire/Emergency Services may vary according to need and as approved by the Elected Official/ Department Head and the County Manager).

HOLIDAYS:

The Commission designated the following County Holidays and amendments are to be made only by the Board of County Commissioners.

HOLIDAY	DAY / DATE OBSERVED
New Year’s Day	Monday, January 3, 2022
Martin Luther King Jr.’s Birthday	Monday, January 17, 2022
Presidents Day	Monday, February 21, 2022
Spring Holiday	Friday, April 15, 2022
Memorial Day	Monday, May 30, 2022
Independence Day	Monday, July 4, 2022
Labor Day	Monday, September 5, 2022
Indigenous People’s Day	Monday, October 10, 2022
Veteran’s Day	Friday, November 11, 2022
Thanksgiving Day	Thursday, November 24, 2022
Thanksgiving Friday	Friday, November 25, 2022
Christmas Day	Monday, December 26, 2022
New Year’s Day	Monday, January 2, 2023

NOW, THEREFORE, BE IT RESOLVED, that the Valencia County Commissioners approve the above working hours and paid holidays.

APPROVED, ADOPTED, AND PASSED on this 28th day of December 2021.

BOARD OF COUNTY COMMISSIONERS

Gerard Saiz, Chair, District I

Jhonathan Aragon, Vice-Chair, District V

Troy Richardson, District II

David A. Hyder, District III

Joseph Bizzell, District IV

Attest:

Mike Milam, County Clerk

Valencia County 2022 Calendar

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**VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION NO. 2021- ____**

PARLIAMENTARY PROCEDURES AND ROBERT’S RULES OF ORDER FOR 2022

WHEREAS, the Valencia County Commission met upon notice of a Special Business Meeting duly published on December 28, 2021 at 5:00 P.M. in the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031; and,

WHEREAS, the Board of County Commissioners will conduct their meetings using Robert’s Rules of Order (10th ed.) as a guide to parliamentary authority, except as modified by this document; and,

WHEREAS, the Board of County Commissioner has five elected Commissioners representing five districts, and collectively, set policy for Valencia County outside of incorporated areas; and,

WHEREAS, collectively, the Board of County Commissioners, through simple majority, elect a Chairperson and Vice-Chairperson from among themselves, whose terms last until the first meeting of the next year; and,

WHEREAS, individually, the Board of County Commissioners are equal in their authority to represent not only their district but the entire County; and,

WHEREAS, to give equal representation for all five members of the Commission is appropriate to adopt special rules modifying Robert’s Rules of Order.

NOW, THEREFORE BE IT RESOLVED, the Board of County Commissioners incorporates the above recitals, to be made a part of this resolution with the same force and effect as the remainder of this document.

BE IT FURTHER RESOLVED, that the Board of County Commissioners adopts the following “Special Rules” modifying Robert’s Rules of Order for the purpose of conducting business during the meetings of the Board:

1. The Chairperson may make motions and shall have the same voting rights, no less and no more, as any other member of the Board.

2. The Chairperson shall not have any administrative, procedural, contractual or similar authority different than any other member of the Board, except as provided by statute.
3. Should the Chairperson vacate the office of Chairperson, the Vice-Chairperson shall serve the remainder of the term, and a new Vice-Chairperson shall be selected by a simple majority of a quorum of the Board.
4. Members of the Board are required to obtain the floor (i.e., must be recognized by the Chairperson) before making motions or speaking.
5. Any and all motions need to have a second before a vote may be taken.
6. Items appearing on the agenda of meetings of the Board shall be those necessary for the proper consideration and management of County business, as determined by the County Manager. Additionally, the County Manager shall place any item necessary for the proper consideration and management of County business requested by any individual member of the Board of County Commissioners on the agenda for the meetings of the Board.
7. The Chairperson or his/her designee shall approve agenda final versions for publication.
8. This Resolution repeals and replaces Resolution 2021-08, including previous parliamentary procedure resolutions, and will remain in effect until repealed or replaced.

APPROVED, ADOPTED, AND PASSED on this 28th day of December 2021.

BOARD OF COUNTY COMMISSIONERS

Gerard Saiz, Chair, District I

Jhonathan Aragon, Vice-Chair, District V

Troy Richardson, District II

David A. Hyder, District III

Joseph Bizzell, District IV

Attest:

Mike Milam, County Clerk



**VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION NO. 2021-_____**

**PUBLIC PARTICIPATION AT VALENCIA COUNTY COMMISSION MEETINGS FOR
2022**

WHEREAS, the Valencia County Board of Commissioners met upon notice of a Special Business Meeting, duly published, at the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031 on Tuesday, December 28, 2021, at 5:00 PM as required by law; and,

WHEREAS, the Valencia County Commission recognizes that public access to the proceedings and decision-making processes of the meetings of the Board of County Commissioners is crucial to the functioning of democracy; and

WHEREAS, the Valencia County Commission further recognizes that meetings held by the Commission to discuss public business, particularly when conducted with the public taxpayers' money, are the taxpayers' business; and

WHEREAS, the Valencia County Commission recognizes that, with limited exceptions, the Open Meetings Act generally prohibits a public body from conducting public business in secret or in closed meetings, and requires that such business be conducted by the public body acting as a whole at meetings open to all persons who wish to attend and listen; and

WHEREAS, Article 2 Section 17 of the New Mexico Constitution guarantees that “[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press;” and,

WHEREAS, the Board of County Commissioners welcomes public comment at its regular meetings in order to encourage freedom of speech in the County and as a valued tool to communicate with its constituents even though the Courts have held that the New Mexico Open Meetings Act “[] does not require the commissioners to allow the public to speak at its meetings, but instead, only requires them to allow the public to attend and listen.” See, Mesa v. White, 197 F.3d 1041, 1046 (10th Cir. 1999); and,

WHEREAS, the Board has traditionally reserved a public comment period as a designated public forum at a selected time during the Commission Meeting, a non-public forum held to manage the business of Valencia County Government; and,

WHEREAS, the Valencia County Commission must balance the desire to afford members of the public a full and complete opportunity to address the Commission with the Commission's need to conduct the people's business in an orderly and efficient manner; and,

WHEREAS, there is a need for the Commission to set content neutral rules for the public comment period that will allow individuals the ability to make their comments in a meeting environment that fosters respect for the time and views of all attendees, while also being narrowly tailored to promote orderly and efficient meetings of the Board.

NOW, THEREFORE, BE IT RESOLVED by the Valencia County Commission that each member of the public wishing to address the Commission shall be given an opportunity to address the Commission during the public comment period at regular meetings.

NOW THEREFORE, BE IT FURTHER RESOLVED that the Board of County Commissioners adopts the following rules for its public comment period:

- I. So that freedom of speech is unrestricted:
 - A. Anyone will be allowed an opportunity to speak during the public comment period at the beginning of the Board's regular Commission meeting.
 - B. Speakers may discuss any subject during the public comment period.
- II. In order to promote orderly efficient meetings respectful of everyone's time:
 - A. All individuals will be limited to a three (3) minute comment period.
 - B. No individual will be permitted to speak more than one (1) time; no rebuttals to the comments of others will be permitted.
 - C. The public comment period will be on the Commission's agenda just prior to Discussion Items.
 - D. Individuals desiring to speak during public comment must sign in on the public comment sign in sheet prior to the commencement of the public comment period (for in-person meetings). For virtual meetings, individuals desiring to make comment may submit comments via email that include the author's name and physical address to the County Manager's Office as per direction and deadline noted in the agenda.
 - E. Comments, applause and other interruptions from the audience are not allowed.
- III. In order to promote orderly meetings so that attendees feel safe and secure in their attendance:

- A. Threatening/abusive comments that disrupt the meeting will not be allowed.
- B. All speakers must address the Board of County Commissioners and speak from the podium.

NOW THEREFORE, BE IT FURTHER RESOLVED that this resolution does not in any way diminish the Chair’s authority to conduct meetings consistent with the rules and powers granted to the Chair by virtue of this Board’s adoption of Roberts Rules of Order or any special rules.

BE IT FURTHER RESOLVED that this Resolution repeals and replaces resolution 2021-09, including previous public participation resolutions, and will remain in effect until repealed or replaced.

BOARD OF COUNTY COMMISSIONERS

APPROVED, ADOPTED AND PASSED on this 28th day of December 2021.

Gerard Saiz, Chair, District I

Jhonathan Aragon, Vice-Chair, District V

Troy Richardson, District II

David A. Hyder, District III

Joseph Bizzell, District IV

Attest:

Mike Milam, County Clerk



**VALENCIA COUNTY
BOARD OF COUNTY COMMISSIONERS
RESOLUTION NO. 2021-_____**

**DELEGATION OF AUTHORITY TO COUNTY A MANAGER AND RECOGNITION
THAT THE COUNTY MANAGER IS THE LAWFUL CUSTODIAN OF COUNTY
BUILDINGS, FACILITIES AND PROPERTY FOR 2022**

WHEREAS, the Valencia County Board of Commissioners met upon notice of a Special Meeting, duly published, at the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031 on Tuesday, December 28, 2021, at 5:00 PM as required by law; and,

WHEREAS, the Board of County Commissioners of the County of Valencia exercises the powers of the County as a body politic and corporate pursuant to NMSA 1978, Section 4-38-1 (1884); and,

WHEREAS, the Board of County Commissioners is statutorily charged with examining and settling all accounts of receipts and expenses of the county and all accounts chargeable against the county pursuant to NMSA 1978, Section 4-38-16 (1876); and,

WHEREAS, the Board of County Commissioners is the body that is statutorily charged with making such orders concerning the property belonging to the county as it deems expedient pursuant to NMSA 1978, Section 4-38-13 (1876); and,

WHEREAS, the Board of County Commissioners is statutorily authorized to "employ and set the salary of a county manager to conduct the business of the county, to serve as personnel officer, fiscal director, budget officer, property custodian and to act generally as the administrative assistant to the board, aiding and assisting it in the exercise of its duties and responsibilities;" and,

WHEREAS, NMSA 1978, Section 13-1-125 (2019) exempts certain small purchases from the bidding requirements the Procurement Code so long as those purchase are made in compliance with regulations set forth by Valencia County; and,

WHEREAS, the Board of County Commissioners promulgated regulations which delineate the manner in which procurement of items of tangible personal property, services and construction are procured by the County.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of the County of Valencia:

1. The County Manager is expressly authorized to procure and execute contracts for *budgeted* items of tangible personal property, services and construction on behalf of Valencia County in the amount of Twenty Thousand Dollars (\$20,000) or less.
2. The Board of County Commissioners retains authority to enter into contracts for *budgeted* items of tangible personal property, services and construction on behalf of Valencia County in excess of Twenty Thousand Dollars (\$20,000).
3. The Board of County Commissioners retains the authority to enter into contracts, for *unbudgeted* items of tangible personal property, services and construction.
4. All procurements shall be made pursuant to the County's Purchasing Regulations and the New Mexico Procurement Code NMSA 1978 Sections 13-1-28 *et. seq.*, and the County's Certified Purchasing Officer must sign off on all contracts to confirm conformance with the Procurement Code.
5. The authority to enter into legal settlement agreements and/or pay insurance deductibles for amounts of Twenty-Five Thousand Dollars (\$25,000) or less is delegated to the County Manager. Any settlement agreement entered into pursuant to this resolution shall be presented to the Board at its next regular meeting after the date of execution by the County Manager.
6. The County Manager is granted the authority to effectuate pay increases, for non-bargaining unit employees, pursuant to the County's current salary study.
7. The Board of County Commissioners retains the authority to enter into legal settlement agreements in excess of the County Manager's Authority.
8. The County Manager may prepare and submit applications for grants, though the determination whether to execute a grant agreement rests solely within the discretion of the Board of County Commissioners.
9. The Board of County Commissioners retains the authority to enter into Memoranda of Understanding, Memoranda of Agreement and Joint Powers Agreements.
10. All Contracts, Memoranda of Understanding, Memoranda of Agreement and Joint Powers Agreements must be submitted to legal counsel for review.

BE IT FURTHER RESOLVED, that the County Manager is recognized as and declared to be a lawful custodian of Valencia County buildings, facilities and property pursuant to NMSA 1978, Section 30-20-13 (1981).

BE IT FURTHER RESOLVED, that this Resolution repeals and replaces Resolution 2021-10 and will remain in effect until it is repealed or replaced.

BOARD OF COUNTY COMMISSIONERS

APPROVED, ADOPTED AND PASSED on this 28th day of December 2021.

Gerard Saiz, Chair, District I

Jhonathan Aragon, Vice-Chair, District V

Troy Richardson, District II

David A. Hyder, District III

Joseph Bizzell, District IV

Attest:

Mike Milam, County Clerk



VALENCIA COUNTY
Board of County Commissioners
Agenda Request Form



Department Head: County Manager, Danny Monette

Individual Making Request: Public Works Director, Lina Benavidez

Presentation at Meeting on: December 28, 2021

Date Submitted: December 20, 2021

Title of Request: Consideration of MOU between Valencia County and Belen regarding Road Work/Paving in Exchange for Property

Action Requested of Commission:

Consideration of MOU between Valencia County and the City of Belen for Property Transfer; Road Work; Paving of Parking Lot

Information Background and Rationale

The MOU provides for the donation of the Las Piedras property to the County for use by the County as a borrow pit in exchange for the County's paving of Greer Road located in Belen, and the parking lot on the South Side of Belen's Business Center.

What is the Financial Impact of this Request?

The Cost of the road work on Greer Road and the paving of the parking lot on the South Side of Belen's Business Center.

Legal:

This MOU sets forth the obligations of the County and Belen with respect to donation of certain real property for use by the County as a borrow pit, and the County's commitment to perform certain road work on Greer Road and the paving of a portion of Belen's Business Center parking lot. Belen will be responsible for securing approval of the State Board of Finance for the property transfer to the County. *(David Pato)*

Finance:

Valencia County currently budgets for the maintenance of County roads within our roads & streets budgets (Fund 402-620). Should this action require additional funding, a budget adjustment will be necessary. *(Loretta Trujillo)*

Purchasing:

Not Applicable – Agenda Item Does Not Include the Purchase Goods and/or Services
(Rustin Porter)

Procurement Complete as Described Below:

**Memorandum of Understanding
For the Transfer of the Las Piedras Property of the City of Belen
TO the Valencia County**

This Memorandum of Understanding (“MOU”) is intended to memorialize the understandings of the City of Belen (“the City”) and the Board of County Commissioners of Valencia County (the “County”) with regard to the transfer of the approximately fifty-eight (58) acre real property owned by the City located South of the City of Belen, commonly known as the “Las Piedras” (Legal Description Tract: Portions of Tract 106A, Tract 99D, & Tract 99E S: 36 T: 5 N R: 1E 58.19 acres MAP 105 2012 Rev.) (the “Las Piedras” Property) to the County.

1. **Background.**

A. The City desires to pave the Greer Road located in the City, the vast majority of which is unpaved, which is 0.55 miles or 2,925 feet in Belen, and pave the parking lot on the Southside of its Business Center located at 719 S Main St, Belen, NM 87002. The current works order on the areas with maps is attached hereto as Exhibit 1. (“Proposals for the Parcel”)

B. The City owns an approximately fifty-seven point sixty one (57.61) acres +/- of land located in Belen, New Mexico commonly known as Las Piedras (the “Las Piedras” Property). A current copy of the County records and map is attached hereto as Exhibit 2 and incorporated by reference.

C. Subject to the State Board of Finance’s approval of the conveyance, the City intends to transfer the Las Piedras property to the County by executing such documents as are necessary to accomplish this transfer; and

D. In exchange, the County shall (1) pave the Greer Road located in the City and (2) pave the parking lot on the Southside of its Business Center as stated in the Proposals for the “Las Piedras” Property.

2. **Authority of the Parties.**

The City is a political subdivision of the State of New Mexico and the City is authorized by law to acquire, lease and dispose of real property under N.M. Stat. Ann. § 3-54-1 (B) subject to approval from the New Mexico Board of Finance.

The County is a political subdivision of the State of New Mexico, and is authorized to accept or exchange or acquire real property under N.M. Stat. Ann. § 4-37-1.

3. **Due Diligence Review.**

A. Before submitting the MOU to the Board of Commissioners of Valencia County, the County inspected the Las Piedras Property and investigated uses of the property. The County has reviewed title to the Las Piedras Property and determined that it is acceptable.

B. the City has had opportunity to obtain fair market value of the County's proposed work in exchange for the Proposals for the Parcel. Based on its review, the City has determined such works are acceptable.

4. **State Board of Finance.**

The conveyance of the Las Piedras Property to the County is subject to approval by the State Board of Finance pursuant to § Section 13-6-2.1, NMSA 1978. Therefore, conveyance of the City's parcel is expressly conditioned upon that approval being granted by the State Board of Finance. The City shall submit the exchange to the State Board of Finance for approval, as soon as practicable. The County agrees to cooperate with the City in order for the City to obtain State Board of Finance approval. Without limiting the foregoing, the County and the City agrees that the City/County Manager or his/her designee will attend the meeting of the State Board of Finance at which the transfer is heard, in order to answer any questions that the Board of Finance Members may have.

5. **Conveyance of Las Piedras Property to the County.**

A. Simultaneously with the execution of this MOU, the City shall execute a quitclaim deed in the form attached hereto as Exhibit 3 conveying to the County any and all of the City's right, title and interest to the Las Piedras Property and all improvements thereon, and following such.

B. In consideration of the City's conveyances of the parcel described above, the County agrees to conduct all necessary works specified in the works orders attached as Exhibit 1 within 365 days from the date of approval from the Board of Finance.

C. Equivalency of Exchange Value. The City has determined that the costs of acquiring services identified in the Proposals for the Parcel will result in significant cost burden, over transferring the parcel identified in the MOU. As a consequence, the City and the County have therefore concluded that the Las Piedras Property to be conveyed is approximately equivalent in value to the County's offering services identified in the Proposals for the Parcel.

6. **Closing.**

A. CITY's Obligations at Closing. On the Closing Date, CITY shall deliver to the County all of the following:

(i) CITY Deed. A Quitclaim Deed in such form as will convey to the County title to the CITY's Las Piedras parcel identified in the Agreement, executed and acknowledged by the CITY.

B. County's Obligations at Closing. On the Closing Date, the County shall deliver to the City all of the following:

(i) Agreed Work Plan in the Proposals for the Parcel, executed and acknowledged by the County.

C. Other Documents. The City and County agree to execute and deliver to the other party all other documents expressly or implicitly contemplated by this Agreement to effectuate its intent.

D. Closing Date: The Closing date shall be the fifth (5th) business day following approval of the transfers of the City's parcel by the Board of Finance unless a later date is set by mutual agreement of the parties. The parties expressly agree that the County shall not record the quit claim deed until the County finishes its promised works identified in the Proposals for the Parcel subject to the City's review/inspection of the works in the Proposals for the Parcel. If the County fails to conduct the promised works within 365 days or days agreed by both parties, the County shall return the unrecorded quit claim deed to the City.

7. **As-Is.** Subject to the obligations of the County above, the City's Las Piedras Parcel is conveyed "as-is" without any representation or warranty whatsoever. Without limiting the foregoing, the parties make no representation as to the suitability of the Parcel for the intended use by the party to be conveyed the Parcel. As a material part of the consideration for this Agreement, each party agrees to accept the Parcel conveyed to it on an "as is" and "where is" basis, with all faults and to rely only on its own investigations to determine the condition and suitability of the Parcel it is acquiring under this Agreement.

8. **Possession.** As of the Closing Date, the CITY shall deliver quit claim deed as in Exhibit 3 to the County, and County shall deliver work plan as in Ex. 1 to the City. Upon finishing works specified in Proposal for Parcel after the City has opportunity to inspect the works as in Ex. 1, the County may record the quit claim deed, Ex. 3.

9. **Full Compensation.** Each party hereby agrees that the agreed transfer of the Las Piedras Property in exchange for the works specified in Proposals for the Parcel constitutes full compensation for its interests in the Parcel conveyed to the other party.

10. **Nonappropriation.**

A. In accordance with the New Mexico Constitution, including Article IX, Sections 11 and 12, if the performance of any of the City and the County's obligations under this Agreement, whether conditional or unconditional, require the expenditure of funds other than in the current fiscal year for the CITY/County, then the CITY/County's obligations to perform are contingent upon sufficient appropriations being made by the City Council or the County of Board of Commissioners subject to approval by the Department of Finance.

B. If the City or the County determines that it does not have sufficient appropriations to perform its obligations under this Agreement in the upcoming fiscal year, then the City or the County, as applicable, may terminate this Agreement by giving thirty (30) days prior written notice to the other of the event of non-appropriation. Such termination shall not nullify either party's

obligation to pay for such work as has been performed prior to such notice termination unless otherwise modified in writing by the parties. Each party's decision as to whether sufficient authorizations and appropriations are or have been made in any fiscal year shall be final.

11. **Miscellaneous.**

A. Time is of the essence of this Agreement. The term "days" shall mean calendar days unless otherwise stated. If the date or expiration of a time period set for performance under this Agreement falls on a Saturday, Sunday or federally recognized holiday the time for performance shall be extended to the next day that is not a Saturday, Sunday or federally recognized holiday. The individuals executing this MOU on behalf of the City and the County acknowledge that they are duly authorized to execute this MOU on behalf of their respective principals. All parties hereby acknowledge that they have read and understood this MOU and its attachments. This MOU shall not become effective until executed by each party. Therefore, the parties to this MOU shall begin their respective duties only after the last party has signed and dated this MOU.

B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

C. This Agreement constitutes the entire Agreement between the parties hereto with respect to the Parcel and there are no agreements, understandings, warranties, or representations between them except as set forth herein.

D. This Agreement is expressly conditioned upon approval being granted by the State Board of Finance. The City shall submit this Agreement to the State Board of Finance for approval as soon as is practicable. The parties agree to cooperate in executing such amendments as may be required in order for the City to obtain State Board of Finance approval. In the event such approval is not granted, this Agreement shall be null and void without penalty to either party.

E. This Agreement cannot be amended except in a writing executed by the City and County and approved by the State Board of Finance. Any verbal agreement will be void. In the event modifications to this Agreement are required as a condition of approval by the State Board of Finance, the parties agree to cooperate in effectuating such modifications.

F. Headings in this Agreement are for convenience only and are not substantive terms or intended to provide an interpretation of the terms of this Agreement. The recitals set forth above are incorporated herein as substantive provisions in this Agreement.

G. This Agreement is made solely for the benefit of the City and the County, their successors and assigns, and no other person shall have any right, benefit or interest under or because of this Agreement, except as otherwise specifically provided for in this Agreement.

H. This Agreement may be executed in counterparts that together will be one agreement.

12. Claims.

In the event of a lawsuit against the City and the County arising out of the transfers set forth in this MOU, or arising out of this MOU, the City and the County will:

A. Provide mutual assistance and defense to each other, to include, but not be limited to, making personnel and documentary evidence available for interview or inspection, providing security or unit video, providing technical support, providing access to physical facilities, providing testimony, and otherwise providing any reasonable assistance requested by the other party to this MOU necessary to defend against any asserted claims relating to this MOU; and

B. The City will be responsible for defending all claims against the City and its personnel operating under this MOU, and the County will be responsible for defending all claims against the County and its employees operating under this MOU.

13. Entire Agreement.

This MOU and the exhibits attached hereto represent the entire understandings between the parties and supersede any prior agreements or understandings with respect to the subject matter of this MOU.

14. Notices. Notices given pursuant to this MOU shall be sufficient if actually received and sent by certified or registered mail, postage fully prepaid to:

To City:

Andrew E. Salas

100 S Main St,
Belen, NM 87002
Belen City Manager
andrew.salas@belen-nm.gov
(505) 337-9089

To County:

Danny Monette
1209 HWY 314, PO Box 1119
Los Lunas, New Mexico 87031
Valencia County Manager

Either party reserves the right to designate in writing to the other party any change of name, change of person, or address to which the notices shall be sent.

[signatures on following page]

City of Belen

By: _____ Date: _____

[NAME]

As representative and agent of the City Council

City Clerk, Dorothy Flores

City Attorney, Y. Jun Roh

The Board of Commissioners of Valencia County

By: _____ Date: _____

[NAME]

As representative and agent of the Board of
For

County Clerk

County Attorney, David M. Pato