



**August 7, 2013**  
**Agenda**  
**5:00 P.M. Business Meeting**  
**Valencia County Commission**  
**Chambers**  
**444 Luna Avenue**  
**Los Lunas, NM 87031**

Board of County Commissioners  
*Charles D. Eaton, Chair District IV*  
*Alicia Aguilar, Vice-Chair District II*  
*Mary Andersen District I*  
*Lawrence R. Romero District III*  
*Donald Holliday District V*

***Please silence all electronic devices.***

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

July 3, 2013.....Regular Business Meeting  
July 17, 2013.....Regular Business Meeting  
July 24, 2013.....Business / Workshop

A handwritten signature in black ink, likely belonging to a county official.

**PRESENTATION(S)**

- 5) Rio Grande Levee Study (Flood Plain) in Valencia County. ***Deb Foley / Sara Cobb***
- 6) Audit Status Update. ***Nick Telles***

**DISCUSSION (Non-Action) Item(s)**

- 7) Commissioners, Committees and Reports.
- 8) Detention: Medical Provider Update. ***Joe Chavez***

**ACTION ITEM(S)**

- 9) Consideration to award Contract No. VCB-FY14-001 Lock Box Services for County Treasurer. ***Mike Vinyard***
- 10) Consideration of the Findings of Facts and Conclusion of Law of an appeal heard by the County Commission to approve a Conditional Use Home Occupation to allow for the storing of equipment and parking for employees. T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; also known as 1021 n. Gabaldon Rd., Belen, NM 87002. ***Jacobo Martinez***
- 11) Consideration to approve Resolution 2013-\_\_\_\_\_ for financial hardship to NMDOT Cooperative Agreement SP-3-14(976). ***Kelly Bouska***
- 12) Consideration to approve Cooperative Agreement SB-7714(966)14 with New Mexico Department of Transportation. ***Kelly Bouska***

**FINANCIAL MATTERS:**

- 13) Approval of Financial/Payroll warrants. ***Nick Telles***

### **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 a full and complete opportunity to address the Commission.

### **EXECUTIVE SESSION:**

Pursuant to Section 10-15 1 (H) (2) (3) & (7), the following matters may be discussed in closed session: a. personnel: **Bruce Swingle(Chief Deputies)** b. pending or threatened litigation; c. real property; d. administrative adjudicatory proceedings; 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.

### **ACTION ITEM(S)**

14) Consideration to approve percentage increase for Chief Deputies. ***Bruce Swingle***

### **NEXT COMMISSION MEETING:**

- ♦ **August 21, 2013 – Business Meeting 5:00 P.M.**  
**Valencia County Commission Chambers 444 Luna Ave. LL, NM**

### **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 Courthouse, 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 at the old Valencia County Courthouse if a summary or other type of accessible format is needed.*

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# VALENCIA COUNTY BOARD OF COMMISSIONERS

## BUSINESS MEETING

JULY 3, 2013

<b>PRESENT</b>	
Charles Eaton, Chairman	
Alicia Aguilar, Vice-Chair	
Lawrence R. Romero, Member	
Donald E. Holliday, Member	
Mary J. Andersen, Member	
Bruce Swingle, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Peggy Carabajal, County Clerk	
Press and Public	

1) The meeting was called to order by Chairman Eaton at 5:02 P.M.

2) Jacobo Martinez led the Pledge of Allegiance.

*Commissioner Aguilar asked that a moment of silence be held for the 19 firemen that recently lost their lives in Arizona.*

3) Approval of Agenda

Commissioner Aguilar moved for approval. Seconded by Commissioner Romero. Motion carried unanimously.

4) Approval of Minutes: June 12, 2013-Public Hearing

Commissioner Holliday moved for approval. Seconded by Commissioner Romero. Motion carried unanimously.

June 13, 2013-Public Hearing

Commissioner Andersen moved for approval. Seconded by Commissioner Romero. Motion carried unanimously.

June 17, 2013- Business Meeting

Commissioner Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

### PRESENTATION(S)

5) NMAC 2013 RAP Award. *Bruce Swingle*

Mr. Swingle stated that at the recent New Mexico Association of Counties conference in Clovis, New Mexico Valencia County had received an award for completing year 5 in the NMAC Risk Awareness Program. Valencia County has been able to reduce multi-line claims by 19% and law enforcement liability claims by 12%. Mr. Swingle would like to thank Gerald Chavez from the I.T. department for running the RAP program for the county. Commissioner Andersen would like to thank all county employees for their efforts regarding safety matters.

6) Informational Presentation on Foreclosure Prevention. *Attorney General's Home Owner Preservation Program*

Debra Norman from United South Broadway Corporation in Albuquerque stated that currently there are 450 homeowners in Valencia County in the foreclosure process and another 500 homeowner's delinquent on their payments. Ms. Norman commented that most lenders offer several types of plans that allow homeowners to catch up on their payments. She mentioned that it is best to work with a housing councilor to know the best option and for which ones you may qualify for. The process can take anywhere from 3 months to a year to complete but the time and effort is worth it to save your house.

### DISCUSSION (NON-ACTION) ITEM(S):

7) Commissioners, Committees, and Reports

Mr. Swingle stated that today there had been some flooding in the El Cerro Mission/ Meadowlake area and that Public Works, Fire Service and Emergency Management are doing an excellent job of helping out in the cleanup efforts.

He said that he had recently met with the Administrators from Los Lunas, Belen, Bosque Farms and Peralta regarding the agreements currently in place regarding Animal Control

Services, the entities don't have a vested interest in reviewing the contracts or making any changes that the County would like to see made. The county accounts for about 50% of the animals at the shelter but is paying for about 84% of the costs of operating the shelter. The county would like the other entities to pay for their fair share of the costs, but the entities administrators have said that the governing bodies would not support any additional costs to them. The commissioners agreed that Mr. Swingle meet directly with the governing bodies and inform them of the counties position and to present the dollar figures to them.

Mr. Swingle reported that because of the time that has elapsed because of the protests that were filed regarding the Detention Center addition the cost of the project has increased. A few months ago the county had asked the contractor to de-scope the project because it was over the budget, during the de-scoping a lot of important electrical configurations were taken out that over time would need to be incorporated. Staff is recommending to the commission that none of the bids be accepted but that it opens for re-bid with the original scoping of the project. Mr. Swingle commented that he had heard from Senator Michael Sanchez and Senator Clemente Sanchez regarding an executive order from the Governor that they had been informed that Valencia County had lost the \$850,000 in capital outlay funding for this year because of the counties audit findings. The county has not received any information from the Governor, DFA, Taxation and Revenue nor anyone else. Mr. Swingle along with the commissioners agreed that major improvements had been made in correcting the audit findings. Commissioner Aguilar and Commissioner Andersen agreed that the County Manager invite the Governor to Valencia County so that this issue can be discussed. And if the Governor does not accept the invitation then set up an appointment to have the commissioners go to Santa-Fe.

Mr. Swingle also reported that they currently have 5 people working at the Conejo Transfer Station but 1 individual accepted another position within the county, but the county doesn't believe it to be practical to fill that vacant position because of the contract with Waste Management to take over the facility in the not too distant future. Mr. Swingle has discussed this issue with the Public Works director and the Solid Waste Coordinator and they have come up with the idea to close the station on Wednesday and Thursday, which are the stations least busiest days. The man hours at the station would be reduced from 184 to 136 per week.

Commissioner Andersen gave a brief summary regarding some resolutions that the New Mexico Association of Counties is considering taking to the legislator for approval. She asked her fellow commissioners to contact her and let her know their feelings regarding the proposed resolutions, so that she can take their opinions into consideration when it comes time to vote.

Commissioner Aguilar reported that on July 16 at 6:00 p.m. a Community Meeting will be held at the Meadowlake Community Center and representatives from several county departments will be in attendance. Deb Fowley with the Core of Engineers would like to be placed on the agenda for the July 17<sup>th</sup> meeting. Ms. Fowley would like to give a presentation on the flood plain levy studies. Commissioner Aguilar also mentioned that the contracts for the county attorneys expire in September. She would like to have the contract go out for RFP so all interested parties can submit a bid. She would like this item addressed and discussed to see what the commission wants to do regarding the contracts. This goes for all contracts that are close to expiring, they should be brought before the commission early on so the commission can discuss what they would like to do. Instead of running out of time and the various contracts be having to be renewed without discussion.

Jim Crawford and Peter Lupsha with the Tome/Adelino Agricultural Preservation, Cultural and Historic Community Plan: Citizens Advisory Group gave a brief report on the latest endeavors of the group.

#### **ACTION ITEM(S)**

##### **8) Consideration to hire a Grant Writer. *Commissioner Mary Andersen***

Commissioner Andersen would like to hire a grant writer/ grant manager that would write and keep track of all grants and make sure all money is being properly accounted for. Commissioner Andersen stated that this position with a salary of \$50,000 would more than pay for itself in a short period of time, with the money they would bring in for special projects within the county. Commissioner Aguilar stated that she does not disagree about the importance of a grant writer but she would like to see a county financial update first. Commissioner Aguilar mentioned that the county's audit may have an effect on the county receiving grant money.

Commissioner Andersen moved for approval that a grant writer be hired on contract with the conditions that the position could be eliminated if positive results are not seen. Seconded by Commissioner Holliday. Motion carried unanimously.

9) Consideration of a decision for an appeal of a decision made by the Planning and Zoning board to approve Conditional Use Home Occupation to allow for the storing of equipment and parking for employees. T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in book 365, page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; also known as 1021 N. Gabaldon Rd., Belen, NM 87002. Jacobo Martinez

Chairman Eaton suggested that this agenda item be deferred until after executive session.

*Chairman Eaton stepped out of the meeting.*

10) Consideration for approval of contract for Valencia County Juvenile Justice Board (VCJJB) Continuum Coordinator services for FY14. *Cynthia Ferrari/Joe Chavez*

Mr. Swingle stated that this contract would continue the contract already in place for Ms. Ferrari to continue providing coordinator services to the VCJJB.

Commissioner Andersen moved for approval. Seconded by Commissioner Holliday. Motion carried 4-0. Chairman Eaton was not present for the vote.

*Chairman Eaton returned to the meeting.*

11) Consideration for approval Contract # 2013-14-60028 NCNMEDD Non-Metro Area Agency on Aging Direct Purchase of Services Vendor Agreement. *Nick Telles*

Commissioner Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

12) Consideration for approval Contract# 2013-14-60028 NCNMEDD Non-Metro Agency on Aging Nutrition Service Incentive Agreement. *Nick Telles*

Commissioner Holliday moved for approval. Seconded by Commissioner Aguilar. Motion carried unanimously.

13) Consideration for approval Contract # 2013-14-60028 NCNMEDD Non-Metro Area Agency on Aging Senior Employment Program Agreement. *Nick Telles*.

Commissioner Anderson moved for approval. Seconded by Commissioner Aguilar. Motion carried unanimously.

#### **FINANCIAL MATTERS:**

14) Consideration of recommendations of gross receipts tax report and to provide staff with direction on re-directing general fund dollars that have been incorrectly deposited in the county indigent fund. *Nick Telles*

Mr. Telles stated that a research team went back through every month dating back to July 2005, which is the year that the calculation error started. What was discovered was that \$1.2 million of general fund dollars had been incorrectly deposited into the indigent fund. Mr. Telles also presented a report with the findings and recommendations from the research team.

Commissioner Andersen moved for approval of the suggested recommendations from the report. Seconded by Commissioner Aguilar. Motion carried unanimously.

15) Approval of Financial/Payroll warrants. *Nick Telles*

Commissioner Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

#### **PUBLIC COMMENT:**

Norbert Schuller- Mr. Schuller commented that he had 2 primary issues on his bucket list, the first being having a hospital built in Valencia County; the second is the financial well-being of Valencia County government. According to Mr. Schuller financial well-being is two-fold, correcting the findings from the last audit and obtaining more revenue. He would like to see it placed on the commission agenda where the county would enact a minimum tax assessment, not a minimum administrative fee, for each parcel of property in the county. Mr. Schuller would also like the county to have a workshop regarding the county's finances, and in the workshop maybe include Senator Sanchez and Representatives Fajardo and Baldonado.

#### **EXECUTIVE SESSION:**

Pursuant to Section 10-15-1 (H) (2) (3) & (7) the following matters may be discussed in closed session; a) Personnel: Nick Telles (Nanette Sanchez), Blue Collar Union Contract, FOP Contract b) Pending or threatened litigation c) real property d)

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administrative adjudicatory proceedings; Hawkes Conditional Use Permit other specific limited topics that are allowed or authorized under the stated statute. Attorney Nance stated that what was to be discussed is limited to what was presented on the agenda for executive session.

Commissioner Holliday moved to go into executive session. Seconded by Commissioner Romero. Roll call vote. Commissioner Andersen voted yes. Commissioner Romero voted yes. Commissioner Holliday voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion passed 5-0.

Commissioner Holliday moved to return to regular session. Seconded by Commissioner Romero. Roll call vote. Commissioner Holliday voted yes. Commissioner Aguilar voted yes. Commissioner Andersen voted yes. Commissioner Romero voted yes. Chairman Eaton voted yes. Motion passed 5-0.

Attorney Nance stated that the matters discussed in executive session were limited to those in the motion for closure. No final action was taken.

Commissioner Holliday moved for approval of the summary as stated by Attorney Nance. Seconded by Commissioner Andersen. Motion passed 4-1. Commissioner Aguilar voted no.

#### **ACTION ITEM(S)**

16) Consideration of a decision for an appeal of a decision made by the Planning and Zoning board to approve Conditional Use Home Occupation to allow for the storing of equipment and parking for employees. T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in book 365, page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; also known as 1021 N. Gabaldon Rd., Belen, NM 87002. *Jacobo Martinez*

Chairman Eaton moved for denial of the home occupation. Seconded by Commissioner Andersen. Motion failed 2-3. Commissioners Holliday, Aguilar and Romero voted no.

Commissioner Holliday moved for approval of the home occupation. Seconded by Commissioner Aguilar. Motion passed 3-2. Chairman Eaton and Commissioner Andersen voted no.

#### **NEXT COMMISSION MEETING:**

The next Regular Meeting of the Valencia County Board of County Commissioners will be held on July 17, 2013 at 5:00 P.M. Meeting in the County Commission Room at the Valencia County Courthouse.

#### **17) Adjournment**

Commissioner Aguilar moved for adjournment. Seconded by Commissioner Romero. Motion carried unanimously. **TIME: 8:09 P.M.**

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the July 3, 2013 Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

#### **VALENCIA COUNTY BOARD OF COMMISSIONERS**

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**CHARLES EATON, CHAIRMAN**

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**ALICIA AGUILAR, VICE-CHAIR**

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**LAWRENCE R. ROMERO, MEMBER**

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**DONALD E. HOLLIDAY, MEMBER**

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**MARY J. ANDERSEN, MEMBER**

**ATTEST:**

Minutes of July 3, 2013 Business Meeting

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**PEGGY CARABAJAL, COUNTY CLERK**

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**DATE**

**VALENCIA COUNTY BOARD OF COMMISSIONERS**  
**BUSINESS MEETING**  
**JULY 17, 2013**

<b>PRESENT</b>	
Charles Eaton, Chairman	
Alicia Aguilar, Vice-Chair	
Lawrence R. Romero, Member	
Donald E. Holliday, Member	
Mary J. Andersen, Member	
Bruce Swingle, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Peggy Carabajal, County Clerk	
Press and Public	

- 1) The meeting was called to order by Chairman Eaton at 5:00 P.M.
- 2) Sheriff Deputy Fred Torres led the Pledge of Allegiance.
- 3) Approval of Agenda  
Commissioner Holliday moved for approval. Seconded by Commissioner Romero. Motion carried unanimously.
- 4) Approval of Minutes: July 3, 2013-Business Meeting  
Commissioner Aguilar moved to table the minutes to have more detail regarding the attorney’s contract. Seconded by Commissioner Romero. Motion carried unanimously.

**PRESENTATION(S)**

5) Quarterly Update from the County Extension Office. *Laura Bittner*  
Ms. Bittner provided the following update. Anne-Marie Wilson held three Egg to Chick classes at St. Mary’s School in Belen. In May, 16 women completed the 12 week strength training program, Strong Women. Ann-Marie also conducted a summer school program at Dennis Chavez Elementary for children with disabilities. She also worked with the Belen summer recreation program helping the kids make a 4<sup>th</sup> of July gift to honor servicemen and women in our community. At the state conference the home economics bowl team placed 2<sup>nd</sup>. Ms. Bittner would like to encourage everyone to attend the upcoming Valencia County Community Expo and the Valencia County Fair. Ms. Bittner has been doing a Healthy Cuisine cooking program and in the last 4 months 97 residents have participated. The 8 week long Cooking with Kids program has 15 youth ages 6-14 participating in the program. The Foot in The Door job seeking/re-entry program has graduated another 35 participants. In April a walking class was started, they meet Friday mornings at 7:00 at the Airpark. The walking class has set goals to compete in a race in September and another one in October. In May the Extension Association Club held a district meeting and 45 individuals from 5 counties attended, Ms. Bittner was requested to give a presentation on the job seeking program. Also in May Ms. Bittner was asked to attend training in Albuquerque on developing home based food businesses, 90% of the participants were from Valencia County. Ms. Bittner also attended the Attorney General’s prescription abuse summit held in Albuquerque and she will be teaching a onetime class on responsible prescription drug disposal. The Ideas for Cooking & Nutrition (ICAN) Program continues to be a large reaching program, in the last 3 months the program graduated 635 youth and 72 adult participants. Ms. Bittner also reminded everyone that August 14<sup>th</sup> is Field Day at the Ag Science Center on Miller Road.  
Newt McCarty reported that they had recently participated with Isleta Pueblo in an Earth Day Celebration which involved over 200 youth learning about soil health and soil testing. They also planted seeds to grow throughout the summer. The Master Gardener program has also held multiple plant clinics. In May they also partnered up with multiple surrounding counties and had Quality Assurance training, which was held at Acoma Pueblo, 55 producers attended the training. Valencia County also hosted the 4-H district contest for the Northwest district, over 100 kids participated in the home economic contest and 88 participated in the shooting sports contests. Tomorrow night is the first night at the Science center for Bug Nights, participants start off in the classroom and learn about the bugs then they go out and find the bugs they studied.

**DISCUSSION (NON-ACTION) ITEM(S):****6) Commissioners, Committees and Reports.**

Commissioner Aguilar announced that Collen Armijo, a recent graduate of Belen High school, whose grandparents are Chris and Belinda Martinez won the NM Homecoming Queen Pageant and on Tuesday she will be competing in the National Homecoming Queen Pageant in Nashville.

County Manager Swingle stated that the community meeting held last night in Meadowlake was well attended and that subsequent meetings will be held to discuss some issues that were brought up at the initial meeting. The county has initiated a task force with Code Enforcement with members from the Assessors, Treasurer's, Animal Control, Code Enforcement, Planning and Zoning, Fire department, Sheriff's office, and the NM Environmental Dept. that will be looking at code enforcement violations, law enforcement issues, animal control issues, and tax issues in the community. Today the Task Force went out to Meadowlake and out of 1,400 properties they identified 129 abandoned homes/mobile homes. Mr. Swingle also commented that the counties current building use policy allows governmental entities to use our buildings at no charge but that we charge everyone else. There are several non-profit organizations that would like to use the buildings to conduct meetings. Mr. Swingle would like to start a revision of the policy to allow non-profits to be able to use our properties. The commissioners agreed that the facilities should be made more available and suggested that Mr. Swingle get with the attorneys to see how it can be made to happen.

**7) Minimum Property Tax. *Norbert Schueller***

Mr. Schueller would like the county to implement a minimum property tax to augment county revenues. 10% of the land in Valencia County is not paying any taxes. This would be a minimum property tax not a minimum administrative fee. He would like to see this item as an action item at an upcoming business meeting.

Commissioner Aguilar suggested that the attorneys, the Treasurer and the Assessors first look at it and see how we can come up with a policy so that the county can get the revenue it deserves from these properties that aren't paying anything at all. Commissioner Andersen commented that a workshop should be held with the Assessors and Treasurers so they can all talk about it and understand it then come up with a consensus on how to move forward with it, because it certainly needs to be done.

**Board of County Commissioners convenes as Indigent Claims Board**

Commissioner Holliday moved to convene as Indigent Claims Board. Seconded by Commissioner Aguilar. Motioned carried unanimously.

**Consideration of Indigent Report; One report with 48 claims and 2 appeals. *Barbara Baker/Dan Zolnier***

Ms. Baker presented the Indigent Report from June 6 – June 28, 2013 and asked for approval in the amount of \$47,120.39.

Commissioner Aguilar moved for approval. Seconded by Commissioner Romero. Motion carried unanimously. (See Exhibit A)

Ms. Baker presented an Indigent Appeal for Oscar Arroyos in the amount of \$1,165.51 to be paid to UNM Health Sciences Center.

Commissioner Romero moved for approval. Seconded by Commissioner Aguilar. Motion carried unanimously. (See Exhibit B)

Ms. Baker presented an Inmate Appeal for Renee Armijo with an amount of \$6.36 to be paid to New Mexico Heart Institute and \$98.09 to be paid to Albuquerque New Mexico Physicians.

Commissioner Holliday moved for approval. Seconded by Commissioner Aguilar. Motion carried unanimously. (See Exhibit C)

**Board re-convenes as Board of County Commissioners**

Commissioner Holliday moved to re-convene as BOCC. Seconded by Commissioner Aguilar. Motion carried unanimously.

**ACTION ITEM(S)****8) Consideration to approve the Processing of Purchase Orders and Purchase Card Transactions. *Mike Vinyard***

Mr. Vinyard asked for approval for changes to the Procurement Policy regarding the mandatory issuance of purchase orders before a vendor is asked to deliver a service and also additions to the policy regarding the process for using the P-Card.

Commissioner Aguilar moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously. (See Exhibit D)

9) Consideration to approve Resolution 2013-28 endorsing the consideration, and use of the best value contracting for purchases when the use of such is found to be in the best interest of the County. *Mike Vinyard*

Commissioner Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

County Clerk Peggy Carabajal announced Resolution 2013-28. (See Exhibit E)

10) Consideration to take action on the County Attorney's Contract. *Commissioner Alicia Aguilar*

Commissioner Aguilar stated that the current attorneys have been the county attorneys for many, many years and she is not questioning their professionalism or ability to do their work. The current contract that is in place expires in September but it can be renewed on an annual basis for up to 3 years. Commissioner Aguilar would like to see the contract go out for RFP and at that time the scope of the attorney's duties can be discussed.

Purchasing Agent Mike Vinyard commented that the RFP process is a 90 day process so it would be passed the September date possibly into October. Commissioner Aguilar stated that she would think that any major contract should be brought before the commission for discussion before being automatically renewed.

Chairman Eaton commented that he was appreciative of the attorney services at this time but he agrees that they need to reevaluate some of the contracts and make sure that the services for the county are the best services that can be provided. He agreed to open the contract up for the RFP process so that other interested parties can apply. Chairman Eaton stated that current legal is more than welcome to apply as well.

Commissioner Aguilar moved for approval. Seconded by Commissioner Romero. Motion passes 3-2. Commissioner Holliday and Commissioner Andersen voted no.

11) Ratification of Agreement #14-690-16837 for VCJJB Continuum Board services for FY 14. *Bruce Swingle*

Commissioner Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously. (See Exhibit F)

12) Agreement between the County of Valencia and the City of Belen for the use of Mill Levy funds at the Belen site. *Commissioner Mary Andersen*

*Commissioner Andersen-* The agreement before us has been carefully crafted to protect the county and its tax payers. The agreement specifies the action that must be taken by the City of Belen in the next 6 months. If the actions which are specified are accomplished in a way that satisfies the state and the city agreement the county will then proceed to enter into a Health Care Facilities contract. The contract makes clear that the county will not be a party to any bonds nor have any financial responsibility for a completed facility other than the distribution of the mill levy funds. It also states that those funds may be used only for the operation of the facility and the care of its patients. It specifies that the funds may be distributed over a period of 6 or more years depending on the final collections. The provider that is selected shall provide the county with an annual balance sheet, personal and real property inventories, profit and loss statements, accounts receivable and accounts payable records and other financial records that deal with its operations. We've been a long time getting to this point and I'm confident that what we're doing this evening is an action that will protect the interests of the county and its \$20 million in expected taxpayer funds.

*Commissioner Romero-* It looks like we're set to have 2 hospitals, how can it be fair to all of Valencia County tax payers to have only 1 hospital covered and not the other. I would like to motion to have the mill levy divided 50/50 between Los Lunas and Belen to be fair to the taxpayers of the county.

*Attorney Pato-* The action listed on the agenda is for agreement between Belen and the county. If Commissioner Romero wants to incorporate that change into the contract where half for Los Lunas and half for Belen it can be accomplished in that context but I don't believe as a standalone it can be accomplished in that way because the public wasn't given adequate notice that it was to be considered that way.

*Commissioner Romero-* Can we table this?

*Commissioner Aguilar-* I'm for tabling this but I would like to enter for the record that we did receive letters from Bosque Farms, Peralta, Rio Communities and Los Lunas all signed by the mayors asking us to withhold action on this item. They feel that there needs to be further communication including them because of their constituents being very isolated and this commission is just taking action for one entity and they are not being heard. If we look at the contract on page 5 of 8 it refers to section 2.5 of this contract and

there is no 2.5. I don't believe we're ready to have this as an action; we should have it as a discussion. I would support a little more conversation and communication on what Commissioner Romero is proposing so that were all inclusive and we can all have a part of this. As it is right now I never saw the draft of this contract, I wasn't party to it. It came to us as an action item. But I can also state that a month ago what came before us was the operating agreement and the JPA with Belen, so I'm not sure what documents are out there and why the changes on this. I have not been a party to it as far as any discussions. I would second Commissioner Romero's motion to table.

*Commissioner Andersen-* The document that we are approving tonight is not to approve a health care facilities contract. What we're approving is the agreement to present to Belen the roadmap for being qualified to enter into a health care facilities contract.

*Chairman Eaton-* I've been studying this since the mill levy passed and at this time I'm prepared to represent my constituents in my district and I make a motion for approval of the agreement with the City of Belen.

*Commissioner Aguilar-* There is already a motion to table it.

*Chairman Eaton-* I call for a vote on tabling this item.

Motion fails 2-3. Commissioner Aguilar and Commissioner Romero voted yes. Chairman Eaton, Commissioner Andersen and Commissioner Holliday voted no.

*Chairman Eaton-* I've looked at proposals from individuals in Rio Communities, bringing petitions to this and previous commissions. Lobbying that they want a facility at the southern end of the county due to the distance of travel to Albuquerque and I've seen individuals slander Commissioner Andersen for her supposed inviting individual groups to visit sites in Los Lunas and those same individuals are now slandering this commission for looking at the Belen site when they were in favor of the southern end of the county and I just can't understand some of the situations that have occurred since the start of this mill levy. Some people have taken some outrageous positions on it and it has divided this county so much that the bottom line should be providing healthcare for this county. I've studied this many years as an individual and for the past 6 months as a commissioner. I've canvassed people within my commission district and people in Rio Communities area and they have indicated to me that they wished a facility would have been in the Rio Communities area but they favor a facility in the southern end of the county. I think that the argument that the people of the northern end of the county will not use a facility on the southern end of the county is an argument that is not a valid point. As long as we have a facility in this county we'll use it. I've seen people go to the E.R. in Albuquerque and sit for many, many hours. I think if we have a facility in this county that can provide a service to the people of Valencia County regardless if you live in the southern or northern end of the county if they provide that service they'll use it.

Chairman Eaton motioned for approval to enter into the agreement with the City of Belen. Seconded by Commissioner Andersen.

*Commissioner Aguilar-* I would like to state I'm not for Los Lunas or Belen but I do question the process and what is going on and I can mention that I find it very disturbing that on or about June 4<sup>th</sup> Commissioner Eaton met with the attorneys and asked that a hospital facilities contract be drafted but it be changed from a blank form to one that was specifically with the City of Belen. I can go on further to other conversations where Commissioner Eaton requested Belen's attorneys for a 3 way hospital contract in addition there was a call from Commissioner Andersen where she directed and met with the attorneys in Belen to get this contract drafted. All this done without all the other commissioners knowing or anyone else knowing. So now they come and bring it to us and say there is transparency. The votes are there for Belen and always have been.

*Chairman Eaton-* You have the same access to legal as we have to legal. So to say that we have any greater access to county legal.

*Commissioner Aguilar-* I didn't say that.

*Chairman Eaton-* Well that's the representation you're giving.

Chairman Eaton allowed discussion from the public.

*Bob Gostischa-* When the mill levy was brought up it was with the intention to have a hospital within the county of Valencia. And as a citizen from within the county I want to know why the money is being turned over to a municipality. That was not what was voted for and approved by the citizens of the county. For 6 years games have been played with our funds so either do them fairly or return the money to those individuals who have been paying the taxes and start all over again or come up with another way to pay for the operation of a hospital.

**Tom Mraz-** I think that the money should be given back, why is there a tax on something that doesn't even exist. When someone builds a hospital then come up with a mill levy to support it. The hospital should be in the center of the county, not at one end or the other.

**Eleanor Love -** Last month on a Saturday I fell and cut my hand badly and had no place to go. Had it been really bad I would have been in real trouble. We do need a hospital and this is a good place. You've been a long time figuring this out and I don't understand why we've had to wait so very long.

**Mike Wood-** The mill levy funds mean more services that's why Miller Architects would love to have them. If the commission decides to send the mill levy money to Belen it's going to be a real problem. We have an opportunity here in this county to have a hospital next to the freeway in Los Lunas with outreach programs and satellite facilities. I don't care where it is just so that it works, but it's not going to work in Belen. Miller Architects is a profit hospital they'll make it here. Let's put the mill levy money to who builds the hospital first like it was intended to be.

**Clarke Metcalf -** Section 2 of the agreement calls for a sole provider hospital which means that you are totally ignoring the fact that there's going to be another hospital before that one in Los Lunas. I realize that Commissioner Andersen vitally feels that Belen should receive the mill levy money as to why she had never told us, and probably never will. This will leave us with no alternative but with deep suspicion of her motives. There has been no authoritative verification by anyone that the Belen hospital can be financially feasible in second place. Until Belen, the county and the taxpayers have seen proof that the proposed Christopher Rd. city hospital is viable in spite of appearing after the one in Los Lunas the promise of the mill levy transfer is a grave error. The fund is now over \$17 million, to throw that money away without public hearing or discussion is abuse of power.

**Jan Johnson-** The County needs healthcare not political fighting or character assassination. I see a situation where the effort has been pretty warped for many years. We are now at the point where Belen, in public, put the feasibility study out; they have gone through the motions and put it all out there for commissioners and the public to examine. I have not seen the Los Lunas hospital or Miller Architects do that. When I look at Miller Architects, and I come from a healthcare background, I see a building and a lot of investors in that project that are probably going to lose a lot of money and they're going to try to bring down some of the commissioners with them. I think Commissioner Andersen is one that always approaches something based on the facts. I think its a courageous position she is taking to determine that the credibility of the Belen hospital when she represents Los Lunas, that is moral courage. I would encourage the people from the other side not to resort to character assassination. Los Lunas did not come in with a feasibility study; there is a marketing message with a building. I don't personally care where it's built we just need a hospital and the people of this county deserve one. Let's get a hospital built.

**Alice Torwirt-** All commissioners received a letter from Miller Architects saying they are going to build a hospital here whether or not they get the mill levy money. It was in the newspaper, a nice big article explaining what their plans are. So anyone saying that they have not done their work doesn't know what they're talking about. We need a hospital here and we have a promise of having one. So let's get on with it and get a hospital built.

**Marty Callahan-** I was here in May and Commissioner Andersen you said, I'm not going to give any project that hasn't got their door open or ready for operation any of the money. All I'm asking is what happened between that time and now.

**Commissioner Andersen-** That is exactly what this agreement specifies there is no money until the building is built, licensed and ready for patients, not one dime.

**Marty Callahan-** Then why are you making the agreement to give them the mill levy?

**Commissioner Andersen-** The agreement has to be in place in order for it to meet the New Mexico Healthcare Act and the legalities that our legal team has asked us to do.

**Mary Wood-** The harm that is going to be imposed upon Valencia County residents by the Valencia County commissioners signing this hospital mill levy agreement with the City of Belen will freeze and tie up the mill levy money to Belen. Whereas, the mill levy was not intended to be set aside for one entity; but for the first hospital to receive a certificate of completion. This agreement with the county and Belen is based on a sole provider status. Which is false because of the proposed hospital to be built in Los Lunas. The hospital to be built in the county was never intended to be county backed by setting aside the mill levy funds for Belen. I live in Las Maravillas and will not drive south to a hospital.

**Commissioner Aguilar-** Who is the provider for this contract?

**Attorney Nance-** There is no provider for the contract. The contract says that if certain criterion is met that this commission will enter into a contract with the provider selected.

**Commissioner Aguilar-** So under the Hospital Funding Act we can only contract with a provider and not really with another political entity because we're just giving them the mill levy.

Minutes of July 17, 2013 Business Meeting

**Attorney Nance-** For a Healthcare Facilities contract that is true, but this is not a Healthcare Facilities contract.

**Commissioner Aguilar-** Do we need DFA approval on this?

**Attorney Nance-** It's not entitled a joint powers agreement. There can always be an argument that it's a joint powers or not, but it's not designed as a joint powers agreement.

**Commissioner Aguilar-** The other operating agreements or contracts were subject to DFA approval so now we are handing Belen millions of dollars and it's just based on three commissioners voting and it goes from there.

**Attorney Nance-** It wouldn't be handing Belen any money. It would be handing the provider money.

Chairman Eaton called for a vote on approval of the agreement. Chairman Eaton, Commissioner Andersen, and Commissioner Holliday voted yes. Commissioner Aguilar and Commissioner Romero voted no. Motion carried 3-2. (See Exhibit G,H)

#### **FINANCIAL MATTERS:**

**13) Approval of Financial/Payroll warrants. Nick Telles**

Commissioner Holliday moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously. (See Exhibit I,J,K,L,M)

#### **PUBLIC COMMENT:**

**Norbert Schueller-** Today marks a milestone of progress with the commission moving forward in a positive way on something that started in 2006, a hospital for the residents of Valencia County. Thanks to Commissioner Holliday for his service to the people of the county and good luck.

**Bob Gostischa-** Thank you to Commissioner Aguilar for organizing the community meeting in Meadowlake. It was a very productive and informational meeting. Thanks and well wishes to Commissioner Holliday for his service.

**Patrick Gutierrez-** President of American Federation of State, County, & Municipal Employees (AFSCME) Council 18. AFSCME represents over 10,000 employees in the state of N.M. including the detention center and blue collar employees of the county. Mr. Gutierrez is here to show support for a fair contract for the employees.

**Robert Gallegos-** Asking for a \$1.00 raise for laborers, heavy equipment operators, solid waste, animal control, truck drivers, and fleet mechanics. They are the lowest paid county employees in N.M. PERA and the cost of medical have gone up but the employee wages have stayed the same, it's hard to make ends meet.

**Joel Villarreal -** With the Central NM Labor Council. He believes that the reflection of how you treat your employees is a reflection on the vision for the county. Please give the employees a fair contract, they deserve it.

**Tom Mraz-** Thank you to Commissioner Aguilar for holding the Meadowlake community meeting. He understands that there are quite a few businesses in the county that owe quite a lot in taxes, why is this allowed to happen? Mr. Mraz stated that he had several public information requests on several judges and commissioners in the county and that they owed taxes as well. He believes that everyone needs to pay their fair share.

#### **EXECUTIVE SESSION:**

Pursuant to Section 10-15-1 (H) (2) (3) & (7) the following matters may be discussed in closed session; a) Personnel: Dorothy Lovato (Kathy Trevino) b) Pending or threatened litigation c) real property d) administrative adjudicatory proceedings: Blue Collar Union Contract other specific limited topics that are allowed or authorized under the stated statute.

Attorney Nance stated that what was to be discussed is limited to what was presented on the agenda.

Commissioner Holliday moved to go into Executive Session. Seconded by Commissioner Andersen. Roll call vote. Commissioner Anderson voted yes. Commissioner Romero voted yes. Commissioner Aguilar voted yes. Commissioner Holliday voted yes. Chairman Eaton voted yes. Motion passed 5-0.

Commissioner Holliday moved to return to regular session. Seconded by Commissioner Andersen. Motion carried 4-0. Commissioner Aguilar not present for vote. Attorney Nance stated that the matters discussed in executive session were limited to the items listed on the agenda. No final action was taken.

Minutes of July 17, 2013 Business Meeting

Commissioner Holliday moved for approval of the summary as stated by Attorney Nance. Seconded by Commissioner Romero. Roll call vote. Commissioner Andersen voted yes. Commissioner Romero voted yes. Commissioner Holliday voted yes. Commissioner Aguilar voted yes. Chairman Eaton voted yes. Motion passed 5-0.

**NEXT COMMISSION MEETING:**

The next Regular Meeting of the Valencia County Board of County Commission will be held on July 24, 2013 at 1:30 P.M. Meeting in the County Commission Room at the Valencia County Courthouse.

**11) Adjournment**

Commissioner Andersen moved for adjournment. Seconded by Commissioner Aguilar. Motion carried unanimously. **TIME: 7:34 P.M.**

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the July 17, 2013 Business Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
**CHARLES EATON, CHAIRMAN**

\_\_\_\_\_  
**ALICIA AGUILAR, VICE-CHAIR**

\_\_\_\_\_  
**LAWRENCE R. ROMERO, MEMBER**

\_\_\_\_\_  
**DONALD E. HOLLIDAY, MEMBER**

\_\_\_\_\_  
**MARY J. ANDERSEN, MEMBER**

**ATTEST:**

\_\_\_\_\_  
**PEGGY CARABAJAL, COUNTY CLERK**

\_\_\_\_\_  
**DATE**

# VALENCIA COUNTY BOARD OF COMMISSIONERS

## SPECIAL MEETING / WORKSHOP

JULY 24, 2013

<b>PRESENT</b>	
Charles Eaton, Chairman	
Alicia Aguilar, Vice-Chair	
Lawrence R. Romero, Member	
Mary J. Andersen, Member	
Donald E. Holliday, Member	Absent
Bruce Swingle, County Manager	
Adren Nance & Dave Pato, County Attorney	Mr. Nance Absent
Peggy Carabajal, County Clerk	
Press and Public	

- 1) The meeting was called to order by Chairman Eaton at 1:32 P.M.
- 2) Warden Chavez led the Pledge of Allegiance.

### DISCUSSION (NON-ACTION) ITEM(S)

3) Review and discussion of Infrastructure Capital Improvement Plan. *Jacobo Martinez*  
Mr. Martinez said that the county is looking at a list of public infrastructure projects that the county submits to the state on a yearly basis. The list has been unchanged for the last four years. It was discussed that it would be best to bring this list before the commission early this year so that it could be discussed what types of capital improvement projects would be necessary to move forward with. The ICIP is due at the end of September. The commission will need to vote on a resolution on September 18<sup>th</sup> in order to provide an updated ICIP to the state.

Valencia County resident Chris Tolendino commented that 2- 2 ½ years ago a petition was submitted requesting that Lemons Drive be paved, the petitioners were told at the time that it probably would be paved. There are some health issues, including asthma, with the people that live on the block and the dirt road has been there for the 35 years that Ms. Tolendino has lived there. It would help out the health issues if it was paved. A number of people had signed the petition then again last summer the residents called and wrote letters to no avail, nothing has happened. Commissioner Aguilar stated that they might need to redo the petition because when she came on board some of the documents are missing. And that when they resubmit it to her she will add it to her list and take a look at it but she has already received many requests from others whose streets are also very bad. And to keep in mind that she is the only commissioner whose funds were expended totally when the previous commissioner left, so she doesn't even have a dime for paving in her district.

Mr. Swingle commented that he would like to encourage the commission to consider adding \$400,000 for the DA's office, that amount augmented with the \$150,000 that we currently pay in rent will give us \$2 million to develop a site and construct a building for the DA's office. In regards to the I.T. department Mr. Swingle stated that item 2014-12 can be removed from the list and would like to add \$150,000 for additional Tyler applications for the Assessor and Treasurer's office. Also a request for \$250,000 for net application and storage and a Cisco network for disaster recovery.

Kelly Bouska, Director of Public Works commented that there are five or six items that she would like removed from the list pending further analysis. Anything dealing with Conejo, the Belen landfill or solid waste can be put on the back burner. Remove items 2014-10, 2014-11, 2014-13, 2014-21 and 2014-30. The road department is currently assessing every single road in the county, in every single district and that will be completed by the end of August. By then Ms. Bouska will be able to provide the commissioners county wide and per district what the different ratings of the roads are. Ms. Bouska also commented that there needs to be some sort of dollar amount per year for road improvements, currently the money we get for maintenance is fairly small as well as money that is from the state for individual paving projects. So any additional funding that we can get from the state would be greatly appreciated. Ms. Bouska requested that what is listed as number

five on the list, heavy equipment purchase, be moved to number one. As we cannot continue to improve our roads with the equipment that we currently have.

Commissioner Andersen commented that there is a \$3 million request for Manzano Expressway, and if Ms. Bouska knew what was covered because \$3 million is certainly not going to do that road. Ms. Bouska said that she's not sure but will get with Jacobo Martinez to see what was covered in that. Commissioner Aguilar mentioned that there was a grant that was received in Commissioner Romero or Eaton's district in regards to improvements to the Manzano Expressway and that they needed matching funds, so what was happening to that. Ms. Bouska believed that it was an 80/20 grant. The grant that was received was \$800,000 and our match would have been roughly \$160,000. However, after the engineering study was done the actual cost of the job was estimated at \$15 million. So we have decided to let it go. The positive thing is that we do have an entire set of engineering plans and study for the work to be done at some point in time.

Chairman Eaton commented that one road that he sees as a safety hazard is Meadowlake Road from Cypress Gardens to the intersection. Ms. Bouska replied that we have approved funding from the Mid-Region Council of Governments in the 2016-2017 time frame to do Meadowlake road from Hwy 47 to Manzano Expressway. With the problems that we've had due to the recent rain that roadway will take major restructuring and redesign for drainage and other issues. We know it's going to be an extensive project with widening the road and lighting. Residents have also requested a bike path to get people off of the roadway.

Fire Chief Steven Gonzales said that looking at the list items 2014-14 thru 2014-20 have been taken care of as far as renovations to the stations with the exception of some equipment that we may need to obtain to update the ISO rating with some of the fire stations. Item 2014-07 is one of the top priorities at this point. Chief Gonzales would like to add \$239,000 to look at paying off the loan for the E.S. staff units, so that we can start planning for future 24 hour coverage or possibly upgrading the units in the future. He also requested \$100,000 to replace three command units for the command staff here at the county, as some of the current ones have very high mileage. The improvements at the Jarales Fire Station are figured at roughly \$1.2 million, that's planning and construction. Chairman Eaton commented that is probably going to be a phased in project if that is the dollar figure. Planning and design is phase 1, then maybe use that plan and design to go after some FEMA funding as well. Then in subsequent years phase the rest of the project in. Commissioner Andersen verified with Chief Gonzales that items 2014-14 thru 2014-18 and 2014-20 could be taken off the list. Chief Gonzales said that for 2014-19 he is still trying to figure out what type of apparatus they want for an additional 1,000 gallons of water and what the figure amount would be for it. Chairman Eaton verified that the request that were made were for paying off the loans for the E.S. units, new command staff units, improvements to the Jarales fire station and acquiring an apparatus for the Manzano Vista station.

Jacobo Martinez commented that the comprehensive plan for Valencia County is a well written plan but executing that plan has been slow to none since it was first passed. The plan calls for activity centers; these are centers within the county that the county wants to develop more intensely to keep development off the valley floor. One of those activity centers does fall off Manzano Expressway along Meadowlake area. So he believes that improving infrastructure with those areas is an important thing to do.

The commission discussed item 2014-04, illegal dumping abatement equipment, and the great need the community has for it and that it should not wait until 2015 because we need it now. Commissioners also discussed the use of vouchers at the transfer station for community service; not for people just wanting to dump their own trash. The vouchers would be for minimal and restrictive use. For vouchers to be used the county policy would need to be changed so it would need to be brought up as an action item at another business meeting.

Commissioner Aguilar commented that she didn't exactly know what items 2014-24 and 2014-25 were on the list for but that on item 2014-24 Commissioner Aguilar would like \$200,000 for an outdoor recreation area behind the community center and maybe for making a walking trail from the community center to Meadowlake Road. For item 2015-25 put \$75,000 for some kitchen equipment and a little bit of paving around the center.

Commissioner Aguilar asked what exactly item 2014-09 was. Ms. Bouska received the item description from Mr. Telles as being the expansion of the Belen Senior Center,

renovation of the Fred Luna Senior center and various other upgrades. The commissioners said that work had already been done on those centers so the item was removed from the list.

Warden Chavez commented that the current expansion at the jail will do nothing but move the females from the old part of the jail to the new part. It will not stop any overcrowding. For the future we really need to think about a whole new jail or really expanding the current one. The inmate population is definitely not going to go down. Commissioner Andersen suggested that Warden Chavez put planning money into this year's ICIP so that they could start figuring stuff out. She also asked if there was a consultant that he could contact that could help in regards to the area of planning. Warden Chavez replied that the New Mexico Association of Counties would be a great resource, as this is an area that they really look at and have a lot of experience in. Mr. Swingle also commented that the National Institute of Corrections will come down for free; they would be projecting what the population will be in five to ten years and what the facility needs to look like to stay ahead of the growth. \$100,000-150,000 would be a ballpark figure to add to the list for planning. Commissioner Aguilar commented that if the county were to send the National Institute of Corrections a letter and make them aware of the issues, they already have the history and the assessment that was done at that time for the existing facility. The design was done for 96 beds but the mechanical and the kitchen and the pharmacy was designed for 200 beds. So if you take the existing facility order the pods, take the current design and flip it it would give you 200 beds. Commissioner Aguilar commented that she agreed with Commissioner Andersen to put planning money on the list now, then the following year do \$1.5-2 million then \$2 million so that were looking at a three year solution.

Commissioner Andersen asked Ms. Bouska why she had listed her equipment purchases spread out over five years. Ms. Bouska answered that it came down to a personnel issue, in the winter she plans to bring before the commission a staffing plan.

Commissioner Aguilar commented that she would like to be able to add some lighting to the ICIP. Ms. Bouska replied that she would like to do some lighting projects in conjunction with paving projects. So that we make sure that everything is designed appropriately so that we don't have to remove lighting on any road widening projects.

I.T. director Lawrence Esquibel mentioned that the one component that the county is missing is a generator for the building. A generator would be extremely helpful for the IT department. Mr. Swingle said that the generator that the county currently has is in storage and it is quite large. In order to install it it would require an update to the building's electrical system.

County Clerk Peggy Carabajal mentioned that the state owned warehouse that the voting machines are housed in has been having problems with the heating and cooling, which could cause damage to the machines. Ms. Carabajal commented that a vehicle with a tommy lift would be extremely helpful around election time as currently they have to rent a Budget truck to assist with the machine deliveries. Commissioner Aguilar stated that even though it is a state owned building where the voting machines are housed in that maybe the commission and the county manager could write a letter to see what the county can do to assist the state with the problems. Commissioner Andersen said that she would also call the Secretary of State and make sure she is aware of the issue.

## **ACTION ITEM(S)**

### **FINANCIAL MATTERS:**

#### **4) Consideration to approve Resolution 2013- 29 approving 4<sup>th</sup> Quarter Year-end Report for FY 12/13. *Nick Telles***

This is the report that finalizes everything that that happened last year. Mr. Telles commented that the cash balance for the year was \$2,005,000 and we had actually forecasted the ending cash balance to be \$136,000 last year. This was able to happen with budget cuts and cooperation from everyone with all county departments.

Commissioner Andersen moved for approval. Seconded by Commissioner Romero. Motion carried unanimously.

County Clerk Peggy Carabajal announced Resolution 2013-29.

Minutes of July 24, 2013 Special Meeting/ Workshop

**5) Consideration to approve Resolution 2013-30 approving Budget Adjustments. Nick Telles**

Commissioner Andersen moved for approval. Seconded by Commissioner Aguilar. Motion carried unanimously.

County Clerk Peggy Carabajal announced Resolution 2013-30.

**6) Consideration to approve Resolution 2013- 31 approving Fiscal Year 2013-2014 Final Budget. Nick Telles**

This resolution is to approve the budget for this year that were currently in, running from July 1<sup>st</sup> 2013 thru June 30<sup>th</sup> 2014.

Commissioner Romero moved for approval. Seconded by Commissioner Andersen. Motion carried unanimously.

County Clerk Peggy Carabajal announced Resolution 2013-31.

**PUBLIC COMMENT:**

There was no public comment.

**NEXT COMMISSION MEETING:**

The next Regular Meeting of the Valencia County Board of County Commission will be held on August 7, 2013 at 5:00 P.M. Meeting in the County Commission Room at the Valencia County Courthouse.

**11) Adjournment**

Commissioner Aguilar moved for adjournment. Seconded by Commissioner Andersen. Motion carried unanimously. **TIME: 3:48 P.M.**

**NOTE:** All proposals, documents, items, etc., pertaining to items on the agenda of the July 24, 2013 Business Meeting/Workshop (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
**CHARLES EATON, CHAIRMAN**

\_\_\_\_\_  
**ALICIA AGUILAR, VICE-CHAIR**

\_\_\_\_\_  
**LAWRENCE R. ROMERO, MEMBER**

\_\_\_\_\_  
**DONALD E. HOLLIDAY, MEMBER**

\_\_\_\_\_  
**MARY J. ANDERSEN, MEMBER**

**ATTEST:**

\_\_\_\_\_  
**PEGGY CARABAJAL, COUNTY CLERK**

\_\_\_\_\_  
**DATE**

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



<b>Department Head:</b>	<b>Michael Vinyard</b>
<b>Individual Making Request:</b>	<b>Michael Vinyard</b>
<b>Presentation at Meeting on:</b>	<b>August 7, 2013</b>
<b>Date Submitted:</b>	<b>July 31, 2013</b>
<b>Title of Request:</b>	<b>Consideration to Award Contract No. VCB-FY14-001 Lockbox Services for County Treasurer</b>

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**Action Requested of Commission:** Contingent upon receipt of acceptable bids on August 2, 2013, approve the award of above-referenced contract.

**Information Background and Rationale:** The County Treasurer requires bank conducted Lockbox Services for the timely and efficient processing of tax payments received once the volume of incoming payments exceeds their capability to process same in-house. This contract satisfies that need. A formal procurement (Invitation for Bids #VCB-FY14-001) was conducted to provide the legal basis for the award.

**What is the Financial Impact of this Request?** This is a budgeted item.

**Legal:**

Pursuant to NMSA 1978, Section 13-1-108 (1987), the Board of County Commissioners is statutorily required to award with reasonable promptness by written notice to the lowest responsible bidder a contract solicited by competitive sealed bids. David Pato.

**Finance:**

There are available funds in the budget to cover the cost of this agenda request. Nick Telles.

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



**Department Head: Jacobo Martinez**

**Individual Making Request: Jacob Martinez**

**Presentation at Meeting on: August 7, 2013**

**Date Submitted: July 26, 2013**

**Title of Request: FOF/COL of an Appeal of a P&Z Decision to approve a Conditional Use Home Occupation**

**Action Requested of Commission:**

Consideration of the Findings of Facts and Conclusions of Law of an appeal heard by the County Commission to approve a Conditional Use Home Occupation to allow for the storing of equipment and parking for employees.

**Legal Description:**

T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd., Belen, NM 87002.

**Information Background and Rationale**

Decision

IT IS THEREFORE ORDERED that the P&Z Commission's decision to approve a request for a Conditional Use Home Occupation within a Rural Residential-2 Zone for the property described as T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd., Belen, NM 87002 is hereby affirmed. have merit.

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

**Legal:**

The Board voted to affirm the Planning and Zoning Commission's approval of the conditional use home occupation for the above-referenced property. Consequently, the Board is obligated by its zoning ordinance to issue findings of fact and conclusions of law with a statement of the factual and legal basis for the Order. See Valencia County Zoning Ordinance, Section 154.077(L) ("Upon issuing a final decision, the Commission shall promptly prepare a written decision that includes an order granting or denying the requested relief and a statement of the factual and legal basis for the order, file the written decision with the County Clerk, and serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on all those with standing and those who have requested the service, in accordance with NMSA § 39-3-1.1(B), as the same may be from time to time amended."). The proposed findings and conclusions provide a factual and legal basis for the Board's approval of the conditional use home occupation based on the record developed at the public hearing. David Pato.

**Finance:**

No Financial impact from this appeal. *(Nick Telles)*

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF VALENCIA COUNTY

In the Matter of Andrew Ulibarri's Appeal of the  
Planning & Zoning Commission's Decision to  
Approve a Request for a Home Occupation  
within a Rural Residential-2 Zone, Valencia  
County, New Mexico

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION**

**THIS MATTER** came before the Board of County Commissioners of Valencia County ("the Board") on July 3, 2013, pursuant to Andrew Ulibarri's Appeal of the Planning & Zoning (P&Z) Commission's Decision to Approve a request for a Conditional Use Home Occupation within a Rural Residential-2 (RR-2) Zone on the property commonly described as T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd., Belen, NM 87002.

The Board, having considered the documents in the record before it, testimony of staff, applicants and members of the public, and argument by the parties and their legal representatives, **FINDS:**

**Findings of Fact**

1. Notice of the regularly scheduled meeting of the Board of Commissioners of Valencia County, New Mexico (the "Board") on June 12, 2013, at which the final hearing of the Appeal of the P&Z Commission Decision was published according to New Mexico Statutes and the Valencia County Interim Comprehensive Zoning Ordinance, Ordinance 2004-05, as amended ("Zoning Ordinance").
  2. The property for which the Conditional Use Home Occupation is requested has a Rural Residential-2 (RR-2) zoning designation.
  3. The purpose of the RR-2 District is to accommodate rural residential development at an anticipated magnitude or density level that does not require more than a very basic level of services, such as single local-road access, individual domestic wells and septic tank sewage-disposal systems, and rural fire protection.
  4. Ultimate density limitations in the RR District are determined by prevailing lot sizes, community character, compatibility with existing uses in the district, limitations of domestic water sources, soil conditions and groundwater tables for subsurface sewage disposal, and area designations identified in the Valencia County comprehensive plan.
  5. Opportunities for small-scale or intensive farm activities compatible with low density rural residential uses are encouraged in the RR Districts.
  6. The property for which the Conditional Use Home Occupation is requested is 2.00 acres.
  7. The applicant has built a 2,000 square foot storage barn on the property.
  8. Applicants applied for a Conditional Use Home Occupation located in a RR-2 zone.
  9. The Planning and Zoning Administrator has received a copy of a registered septic system permit granted to the subject property dated 2009.
-

10. The Planning and Zoning Commission held a public hearing on the Conditional Use Application on April 24, 2013 and voted 4-0 to approve the Conditional Use Home Occupation.
  - a. The proposed use would not substantially alter the character of the surrounding area.
  - b. The proposed use does not employ more than two employees on site.
  - c. The proposed use stores heavy equipment used for agricultural activities and fits with the character of the surrounding community and within the Rural Residential-2 zoning designation.
  - d. The proposed use stores heavy equipment used for agricultural activities and does not generate noise, vibration, glare, fumes, odor, electrical interference or other disturbance beyond what normally occurs in the applicable zoning district.
  - e. The proposed use stores heavy equipment used for agricultural activities and does not generate traffic or parking beyond what normally occurs in the applicable zoning district.
11. Appellant submitted a timely appeal on May 10, 2013, challenging the P&Z Commission's approval of the request for the Conditional Use Home Occupation to allow for the parking of equipment and parking for employees on the property described as T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd., Belen, NM 87002.
12. Absent objection from either the Appellant or Appellee, and after consideration of the factors detailed in Section 154.062(E)(2) of the Zoning Ordinance, the Board of County Commissioners held a de novo hearing on the appeal of the P&Z decision to conditionally approve the facility on June 12, 2013.
13. The Applicant testified that he is the owner of the subject property and that he intends to utilize the property for a portion of his business operation.
14. The Applicant testified that the nature of his business was moving dirt, demolishing buildings and hauling debris of demolition to solid waste facilities.
15. The Applicant testified that all work related to demolition and/or hauling debris of demolition was completed offsite.
16. The Applicant testified that the equipment used for this work was parked on the subject property.
17. The Applicant testified that he currently employs ten employees.
18. The Applicant testified that the employees meet at the subject property at approximately 7:30 a.m., to pick up the equipment, leave the subject property to complete their assigned tasks, then return the equipment to the property in the early evening.
19. The Applicant further testified that a home office is used on the subject property to radio his employees and dispatch them to other jobs throughout the day.

20. The Applicant testified that he and his wife provide the dispatch service for the business from his home.
21. The Applicant testified that the equipment is also used to maintain farmland he owns adjacent to the subject property.
22. The Applicant testified that there is a railroad track just west of his property that generates significant noise.
23. The Applicant's attorney testified that there were six (6) other business on Gabaldon Road.
24. The Applicant's attorney testified that the Applicant has erected a propanol fence to screen the heavy equipment.
25. Robert Serna, a community resident, testified that Mr. Hawks and his family keep a clean place.
26. Vaughn Hendrin, a community resident, testified that the quality of life around the neighborhood has not been impacted by virtue of Mr. Hawkes' operation of the home occupation.
27. Jimmy Thompson, a community resident, testified that the quality of life around the neighborhood has not been impacted by virtue of Mr. Hawkes' operation of the home occupation.
28. Dick Burson, a community business owner, testified that he owns a business north of the subject property and runs heavy equipment up and down Gabaldon Rd.
29. Marvin McDonald, a community resident, testified that he doesn't hear any more noise than what had normally occurred previously to the Hawks moving in.
30. Terry Fox, a community business owner, testified that he owns a business north of the subject property and runs heavy equipment up and down Gabaldon Rd.
31. Helen Corf, a bus driver for Belen Schools, testified that she drives buses up and down Gabaldon Rd. daily.
32. Robert Campbell, a community resident, testified that the quality of life around the neighborhood has not been impacted by virtue of Mr. Hawkes' operation of the home occupation.
33. Shawn Golobly, a community resident, testified that the quality of life around the neighborhood has not been impacted by virtue of Mr. Hawkes' operation of the home occupation.
34. The findings made by the Board are each independent reasons for the decision of the Board in denying the appeal request.

### **Conclusions of Law**

The following conclusions of law are cumulative, but are severable and independent of each other.

- A. The County is a zoning authority with the power to regulate and restrict use of land. NMSA 1978, § 3-21-1 (1995).

- B. The Board of County Commissioners is the body that exercises the powers of a county as a body politic and corporate. NMSA 1978, § 4-38-1 (1876).
- C. The Board takes notice that the Zoning Ordinance was adopted according to New Mexico statutory authority and duly recorded in the records of the Clerk of Valencia County.
- D. The Board has discretion in making zoning decisions. *See Singleterry v. City of Albuquerque*, 96 N.M. 468, 471, 632 P2d 345, 348 (1981).
- E. Section 154.062 (C) (1) (c) of the Valencia County Zoning Ordinance details the requirements for standing, which is required to appeal a decision of the Planning and Zoning Commission.
- F. Section 154.062 (C)(1)(c) requires that the appellant be “entitled by this chapter to notice of hearing prior to decision appealed; or is aggrieved or has interests adversely affected by the decision.”
- G. Appellant Andrew Ulibarri has standing to appeal the decision of the Planning and Zoning Commission as the appellant meets the criteria detailed in Section 154.062(C)(1)(c).
- H. The home occupation meets the standards and limitations of a home occupation as delineated in the Valencia County Zoning Ordinance.
- I. The business is operated by a resident of the property on which the business is located, as required by Section 154.168(A)(1) of the Valencia County Zoning Ordinance.
- J. Although testimony was presented that employees pick up their equipment at site of the proposed conditional home use occupation, are dispatched from, and return equipment to the proposed site of the conditional home use occupation, the business nonetheless employs on site no more than two full or part-time employees other than the applicant for the purposes of Section 154.168(A)(2) of the Valencia County Zoning Ordinance, as the work performed onsite consists only of the dispatching of equipment to various offsite jobsites.
- K. As the only portion of the work being performed onsite pertains to the dispatching of equipment, the home occupation is operated substantially in the dwelling or in other buildings normally associated with uses permitted in the zone in the rural residential zone, as provided by Section 154.168(A)(3) of the Valencia County Zoning Ordinance.
- L. The overwhelming weight of testimony at the public hearing supports a determination that the home occupation does not unreasonably interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located, as provided by Section 154.168(A)(4) of the Valencia County Zoning Ordinance.
- M. There will be only one home occupation permitted in connection with this property, as provided by Section 154.168(A)(5) of the Valencia County Zoning Ordinance.
- O. The approval of the home occupation will not be used to permit construction of any structure that would not otherwise be allowed in the rural residential zone in which this home occupation is established, nor will this home occupation be used as justification for a zone change, as provided by Section 154.168(A)(6) of the Valencia County Zoning Ordinance.
- P. The total area used for outdoor storage does not exceed the allowable parcel coverage in the zone in which the home occupation is established, as provided by Section 154.168(A)(7) of the Valencia County Zoning Ordinance.
- Q. There is no visible evidence of the conduct of the home occupation from any road or adjacent property, other than permitted signs, as required by Section 154.168(A)(8) of the Valencia County Zoning Ordinance.

R. The outdoor storage and outdoor work areas are effectively screened by vegetation or by a sight obscuring fence, as provided by Section 154.168(A)(8) of the Valencia County Zoning Ordinance.

S. The home occupation does not generate noise, vibration, glare, fumes, odor, electrical interference or other disturbance beyond what normally occurs in the rural residential district, a district which encourages small-scale or intensive farm activities compatible with low density rural residential uses, as provided by Section 154.168(A)(9) of the Valencia County Zoning Ordinance.

T. The applicant has provided evidence of New Mexico Environmental Department review and approval of the liquid waste disposal system for the home occupation, as required by Section 154.168(A)(9) of the Valencia County Zoning Ordinance.

T. Off-street parking spaces are provided for clients or patrons, as required by Section 154.168(A)(11) of the Valencia County Zoning Ordinance.

T. The home use occupation is consistent with the goals and policies of the Valencia County Comprehensive plan, as required by Section 154.057(B)(2).

W. Land Use and Housing Development Goal A of the Comprehensive Plan encourages the County to "guide development in a manner that balances the patterns of urban development with the rural character and natural resources of the County."

X. Economic Development Goal P of the Comprehensive Plan encourages the County to "strengthen the economic base of the County, expand employment opportunities, and improve local workforce skills and abilities."

Y. Approval of this home use occupation advances both Goal A and Goal P of the County's Comprehensive Plan.

Y. The proposed change is additionally appropriate considering the surrounding land uses, density and pattern of development in the area, as required by Section 154.061 (C) (2) of the Valencia County Zoning Ordinance.

U. The proposed use does not substantially alter the character of the surrounding area any more than the existing permissive uses in the zone or in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district, as provided by Section 154.057(B)(4).

#### **Decision**

**IT IS THEREFORE ORDERED** that the P&Z Commission's decision to approve a request for a Conditional Use Home Occupation within a Rural Residential-2 Zone for the property described as T5N, R2E, Section 8, NMPM, Tract 34-B-2-A, Zoned RR-2; Filed in Book 365, Page 12390, of the office of the Valencia County Clerk; Lands of Ignacio Baca; Also known as 1021 N. Gabaldon Rd., Belen, NM 87002 is hereby affirmed.

**BOARD OF COUNTY COMMISSIONERS OF VALENCIA COUNTY**  
P.O. Box 1119 / 444 Luna Ave  
Los Lunas, NM 87031

\_\_\_\_\_  
Charles E. Eaton, Chair

\_\_\_\_\_  
Alicia Aguilar, Vice-Chair

\_\_\_\_\_  
Mary J. Andersen, Commissioner

\_\_\_\_\_  
Lawrence R. Romero, Commissioner

\_\_\_\_\_  
Donald Holliday, Commissioner

ATTEST BY:

\_\_\_\_\_  
Sally Perea, County Clerk  
Date: \_\_\_\_\_

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**VALENCIA COUNTY**  
**Board of County Commissioners**

**Agenda Request Form**

**Department Head:** Kelly Bouska, Public Works Director  
**Individual Making Request:** Kelly Bouska, Public Works Director  
**Presentation at Meeting on:** August 7, 2013  
**Date Submitted:** July 29, 2013  
**Title of Request:** Consideration of Resolution# 2013- \_\_\_\_ Financial Hardship to NMDOT for SP-3-14(976)

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**Action Requested of Commission:**

Consideration of Resolution 2013# \_\_\_\_\_ for financial hardship to NMDOT Cooperative Agreement SP-3-14(976)

**Information Background and Rationale**

The Special Projects (SP) program, administered by the NM Department of Transportation (NMDOT), has been used to supplement county funds to improve county roadways. These funds are awarded contingent on their being a match from the requesting body. NMDOT has awarded Valencia County a total of \$114,525 for FY 2014 (75% of what was requested) with the anticipation that Valencia County will match with an amount of \$38,175 (25% of what was requested).

NMDOT developed the Financial Hardship program to allow entities to request that their share of the funding be waived. Applying for this Financial Hardship will allow Valencia County to receive an additional \$38,175 from NMDOT to offset its matching money. In order to apply for this program, the County must adopt a resolution, which will then be reviewed by New Mexico Department of Finance Administration (NM DFA) for their consideration for the Financial Hardship.

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

There is a positive financial impact from this request in that the County will not need to contribute 25% of the total cost, which totals \$38,175, enabling the County to complete more road projects with available funding.

**Legal:**

The County has the common law duty to exercise ordinary care to protect the general public from foreseeable harm on its roadways. See Lerma, 117 N.M. at 784, 877 P.2d at 1087. The New Mexico DOT pursuant to 18.27.3.1 NMAC (Recompiled from NMAC 27.3.1) provides for hardship funding to allow the county to make necessary improvements to its roadway(s) thus helping it to meet its common law obligation. Although funding is provided, the County is obligated to pay for any costs beyond the DOT estimated project costs. (Adren Nance)

**Finance:**

This would free up funding in the general fund that would be available for other county needs. As the finance department acts as fiscal agent for this grant would the county get credit for that as an in kind contribution? (Nick Telles)

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**VALENCIA COUNTY  
BOARD OF COUNTY COMMISSIONERS  
RESOLUTION NO. 2013-**

**PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND (LGRF) HARDSHIP  
MATCH WAIVER PROGRAM ADMINISTERED BY THE NEW MEXICO  
DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the Valencia County Board of Commissioners met upon notice of a regular meeting duly published at the Valencia County Administration Building, 444 Luna Avenue, Los Lunas, New Mexico 87031 on Wednesday, August 7, 2013, at 5:00 P.M. as required by law; and

**WHEREAS**, the County of Valencia and the New Mexico Department of Transportation have entered into a joint and coordinated effort for Cooperative Funds; and,

**WHEREAS**, the total cost of the project will be \$152,700.00, to be funded in proportional share by the parties hereto as follows,

- A. New Mexico Department of Transportation's share shall be 75% or \$114,525.00
- B. County of Valencia proportional matching share shall be 25% or \$38,175.00

**TOTAL PROJECT COST IS \$152,700.00**

Valencia County shall pay all costs, which exceed the total amount of \$152,700.00

**WHEREAS**, 18.27.3.1 NMAC allows Public Entities who are expecting financial hardship to apply for a Match Waiver of all or part of the above mentioned Public Entity match; and

**WHEREAS**, the County of Valencia has limited tax base, which limits the funding meeting the proportional matching share; and, a fund exists in the NMDOT appropriation by the New Mexico State Legislature for Public Entities in need of "Hardship" match money and the County of Valencia request participation in this match Waiver Program in the amount of \$38,175.00

**NOW THEREOF**, be it resolved in official session that the Board of County Commissioners of Valencia County determines, resolves and orders as follows:

That the project for this Cooperative Agreement is adopted and has a priority standing.

Hardship Resolution FY 14  
Control No. HW2-L300074  
SP-3-14(976)

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The agreement terminates on December 31, 2014 and the County of Valencia incorporates all agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, and agreements and understandings have been merged into the written agreement.

**NOW THEREFORE**, be it further resolved by the Board of County Commissioners of the County of Valencia to enter into Cooperative Agreement Project Number SP-3-14 (976), Control Number HW2-L300074 with the New Mexico Department of Transportation for LGRF Project for year 2013 – 2014 to Design with Road improvements to various county arterial with pavement rehabilitation and misc. construction within the control of the County of Valencia in Valencia County, New Mexico

**PASSED, APPROVED, AND ADOPTED**, on this 7<sup>th</sup> day of August 2013.

\_\_\_\_\_  
Charles D. Eaton, Chair  
Commissioner, District IV

\_\_\_\_\_  
Alicia Aguilar, Vice Chair  
Commissioner District II

\_\_\_\_\_  
Mary Andersen, Commissioner  
Commissioner District I

\_\_\_\_\_  
Lawrence Romero, Commissioner  
Commissioner, District III

\_\_\_\_\_  
Donald Holliday  
Commissioner District V

Attest:

\_\_\_\_\_  
Peggy Carabajal, County Clerk

Hardship Resolution FY 14  
Control No. HW2-L300074  
SP-3-14(976)

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**VALENCIA COUNTY**  
**Board of County Commissioners**

**Agenda Request Form**

**Department Head: Kelly Bouska, Public Works Director**  
**Individual Making Request: Kelly Bouska, Public Works Director**  
**Presentation at Meeting on: August 7, 2013**  
**Date Submitted: July 29, 2013**  
**Title of Request: Consideration of 2012-13 SB 7714 (966)14**

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**Action Requested of Commission:**

Consideration of Cooperative Agreement with New Mexico Department of Transportation

**Information Background and Rationale**

The School Bus Program (SB) program has been used to supplement county funds to improve county roadways and it's administered and approved by the NM Department of Transportation. The County has received a total of \$226,044. The State share of 75% (\$169,533) and the County Share of 25% (\$56,511)

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

There is a positive financial impact from this request. The County must however, contribute 25% of the total cost which totals \$56,511

**Legal:**

The Agreement with the NM Department of Transportation requires that the County, among other requirements, utilize specific language in any contract as well as act as the lead agency in performing the agreement. It is important to mention that the agreement requires that the County have its matching portion funds budgeted prior to executing this agreement. If the funds are not budgeted the agreement approval should be postponed until they are. Lastly, the agreement provides that the County is responsible for paying back funds to the DOT for any material breach of by the County. (Adren Nance)

**Finance:**

The total amount for the SB program has been budgeted. (*Nick Telles*)

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Contract No. \_\_\_\_\_  
Vendor No. 0000054407  
Project No. SB-7714(966)14  
Control No. HW2- L300075

**COOPERATIVE AGREEMENT**

**THIS COOPERATIVE AGREEMENT** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (“Department”) and the **County of Valencia**, (“Public Entity”).

In consideration of the covenants contained herein and pursuant to Sections 67-3-28 and 67-3-28.2 NMSA 1978 and Commission Policy No. 44-12, THE PARTIES AGREE AS FOLLOWS:

**SECTION ONE – PURPOSE:**

The purpose of this Agreement is to provide Local Government Road Funds to **Public Entity** for the **Design w/ School bus route improvements to county wide roads w/ pavement rehabilitation and misc. construction**, Project No. **SB-7714(966)14**, Control No. **HW2- L300075**. The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement shall specify and delineate the rights and duties of the Parties hereto.

**SECTION TWO -- PROJECT FUNDING BY PARTIES:**

- 1. The estimated total cost for the Project is **Two hundred twenty six thousand forty four dollars (\$226,044.00)** to be funded in proportional share by the parties hereto as follows:
  - a. **DEPARTMENT's** share shall be **75%** **\$169,533.00**  
**Design w/ School bus route improvements to county wide roads w/ pavement rehabilitation and misc. construction**
  - b. The **Public Entity** required proportional matching  
Share shall be **25%** **\$56,511.00**  
For purpose stated above

c. **Total Project Cost**

**\$226,044.00**

2. The **Public Entity** shall pay all Project costs, which exceed the total amount of **Two hundred twenty six thousand forty four dollars (\$226,044.00)**.

**SECTION THREE – THE PUBLIC ENTITY SHALL:**

1. Act in the capacity of lead agency for the purpose as described in Section One.
2. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) days of execution of this Agreement, or as otherwise agreed to in writing by the Parties.
3. Be solely responsible for all local matching funds identified in Section Two. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
4. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section One and the Project estimate approved by the District Engineer.
5. In the event a contractor is hired for the Project, require the contractor to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.
6. Require contractors that the Public Entity hires to perform services to defend, indemnify and hold harmless the Department from and against all suits, actions or claims of any character brought because of injury, including death or damages arising out of contractors' construction or maintenance activities pursuant to this agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.
7. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:

- a. Utility Certification,
  - b. Drainage and storm drain design,
  - c. Geotechnical design,
  - d. Pavement design,
  - e. Environmental and archaeological clearances Certification,
  - f. Right of-way acquisition Certification,
  - g. Hazardous substance/waste site(s) contamination,
  - h. Railroad Certification,
  - i. Intelligent Transportation System (ITS) Certification
8. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
9. Obtain all required written agreements or permits, when applicable, from all public and private entities.
10. Allow the Department to inspect the Project to determine that the Project is being constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, shall result in termination, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
11. Complete the project within 18 months of the "Notice to Proceed."
12. Agree that the Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed within one year from the effective date of this agreement.
13. Within thirty (30) days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund projects, by submitting the **"Project Certification of Design, Construction, and Cost," form**, which is attached as Exhibit A.

14. Within thirty (30) days of completion, furnish the Department an “**AS BUILT Summary of Costs and Quantities**” form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in “**Project Certification of Design, Construction, and Cost**” form.
15. Failure to provide the “**Project Certification of Design, Construction, and Cost**” form and an “**AS BUILT Summary of Costs and Quantities**” report within thirty (30) days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.
16. Maintain all facilities constructed or reconstructed with funds provided by this Agreement.

#### **SECTION FOUR – THE DEPARTMENT SHALL:**

Pay project funds as identified in Section Two, Paragraph 1a, to the Public Entity in a single lump sum payment after:

1. Receipt of a Notice of Award and Notice to Proceed and,
2. Verification of available Local Government Road Funds and Public Entity’s local matching funds identified in Section Two, Paragraph 1b.

#### **SECTION FIVE – BOTH PARTIES AGREE:**

1. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department shall be accounted for and disposed of by the Public Entity as directed by the Department.
2. That no money in the Local Government Road Fund shall be used by the Department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to NMSA 1978 Section 67-3-28.2, to meet the match required.
3. That the provisions of the Local Government Road Fund Project Handbook (Current Edition and any amendments thereto, are incorporated herein by reference and shall control the contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments thereto.

**SECTION SIX – THIRD PARTY BENEFICIARY CLAUSE:**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to a person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**SECTION SEVEN – PROJECT RESPONSIBILITY:**

The improvements proposed in Section One of this Agreement shall not be under the jurisdiction and control of the Department.

**SECTION EIGHT – JURISDICTION:**

By reason of the Department's participation in the funding of this Project, the Department is not incorporating this Project into the state highway system, nor is the Department assuming any maintenance or user responsibility of liability for participation on this project.

**SECTION NINE – NEW MEXICO TORT CLAIMS ACT:**

Each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (Section 41-4-1, et seq., NMSA 1978). This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

The Public Entity and its "employees" as defined in the New Mexico Tort Claims Act, and the Department and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION TEN – EQUAL OPPORTUNITY COMPLIANCE:**

The Public Entity agrees to abide by all applicable Federal and State Laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Public Entity agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Public Entity is found to be not in compliance with these requirements during the life of this Agreement, the Public Entity agrees to take appropriate steps to correct these deficiencies.

**SECTION ELEVEN –LEGAL COMPLIANCE**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including , but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace, including laws and regulations hereafter enacted. The Public Entity shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

**SECTION TWELVE – PUBLIC ENTITY'S PRIOR COSTS:**

Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and will not be included in the amount to be disbursed as agreed upon.

**SECTION THIRTEEN – ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:**

There shall be strict accountability for all receipts and disbursements relating hereto. The Public Entity shall maintain all records and documents relative to the Project for a minimum of three years after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines

that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation shall be reimbursed to the Department within thirty days.

**SECTION FOURTEEN – DEPARTMENT'S AUTHORIZATION OF EXPENDITURES:**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, for performance of this Agreement. The Department is expressly not committed to expenditure of any funds until such time as they are budgeted, appropriated by the legislature, and approved for expenditure. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

**SECTION FIFTEEN – UNEXPENDED, UNENCUMBERED PROJECT BALANCES:**

Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this project shall revert to the Department. These balances, if any, shall be reimbursed to the Department within thirty- (30) days of project completion or expiration of this Agreement, whichever occurs first.

**SECTION SIXTEEN – TERMS OF THIS AGREEMENT:**

This Agreement constitutes the entire Agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement. Performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**SECTION SEVENTEEN – TERM:**

This Agreement becomes effective upon signature of all Parties. This Agreement terminates on December 31, 2014.

**SECTION EIGHTEEN – TERMINATION:**

1. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing 30 days written notice.
2. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed within one year from the effective date of this agreement.
3. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the [Public Entity].
4. Neither party shall have any obligation after said date of termination, except as stated in Sections Five, Seven and Eight. The Public Entity agrees to reimburse to the Department all unexpended Department funds disbursed in accordance with this Agreement.

**SECTION NINETEEN – SCOPE OF AGREEMENT:**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**SECTION TWENTY – 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.

**SECTION TWENTY-ONE – APPLICABLE LAW:**

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1(G) NMSA 1978.

**SECTION TWENTY-TWO – AMENDMENT:**

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the Parties have set their hands and seals this day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

County of Valencia

By: See Attached \_\_\_\_\_ Date: \_\_\_\_\_  
Name and Title

ATTESTED

By: See Attached \_\_\_\_\_ Date: \_\_\_\_\_  
Name and Title

**APPROVED, ADOPTED AND PASSED** on this 7<sup>th</sup> day of August, 2013.

**VALENCIA COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Charles D. Eaton, Chairman District IV

\_\_\_\_\_  
Alicia Aguilar, Vice Chair, District II

\_\_\_\_\_  
Mary Andersen, Commissioner, District I

\_\_\_\_\_  
Lawrence Romero, Commissioner District III

\_\_\_\_\_  
Donald E Holliday, Commissioner, District V

ATTEST:

\_\_\_\_\_  
Peggy Carbajal, County Clerk

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**END**

**OF**

**AGENDA**

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