

April 11, 2012
Agenda
5:00 p.m. Public Hearing Meeting
Valencia County Commission Chambers
444 Luna Avenue
Los Lunas, NM 87031

Board of County Commissioners

Donald E Holliday, Chair District I'
Georgia Otero-Kirkham, Vice-Chair District II
Mary Andersen District I
Lawrence R. Romero District III
Ron Gentry District II'

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

Amended April 5, 2012, 2: 51 pm

SWEARING IN OF PARTICIPANTS

PUBLIC HEARING ITEM(S):

- 4) Discussion of Joint Power Agreement of Hospital with City of Belen: **County Commission**
- 5) Consideration of Application 545/484043(B) to Valencia County License Venture, LLC dba Valencia County Liquors, 2765 State Hwy 47, Los Lunas, New Mexico for a transfer of ownership of a liquor license from Carol Trujillo and the Estate of Daniel Trujillo dba El Rio Cantana – **County Clerk**
- 6) Appeal Request - Consideration to hear an appeal of a decision made by the Planning and Zoning Administrator to deny a Non-Conforming Use for the storage and sale of fill dirt and gravel products: T5N, R1E, Section 1; NMPM, Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002: **Jacobo Martinez**

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.

NEXT COMMISSION MEETING:

- ♦ April 18, 2012- Business Meeting @ 9:30A.M.
Valencia County Commission Board Room 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.

Please Silence All Electronic Devices – Thank You!

VALENCIA COUNTY BOARD OF COMMISSIONERS

PUBLIC HEARING MEETING

APRIL 11, 2012

PRESENT	
Donald E. Holliday, Chairman	
Georgia Otero Kirkham, Vice-Chair	
Lawrence R. Romero, Member	
Ron Gentry, Member	
Mary J. Andersen, Member	
Eric Zamora, County Manager	
Adren Nance & Dave Pato, County Attorneys	
Sally Perea, County Clerk	
Press and Public	

1) The Meeting was called to order by Chairman Holliday at 5:00 P.M.

2) Chairman Holliday led the Pledge of Allegiance.

3) Approval of Agenda

Commissioner Gentry requested that the agenda be amended by moving item (4) Discussion of Joint Power Agreement of Hospital with City of Belen to be heard after item (6) Appeal Request. Commissioner Gentry moved for approval. Seconded by Chairman Holliday. Motion carried unanimously.

SWEARING IN OF PARTICIPANTS

County Clerk Sally administered the oath to those individuals wishing to give testimony at tonight's Public Hearing Meeting.

PUBLIC HEARING ITEM(S):

4) Discussion of Joint Power Agreement of Hospital with City of Belen-Commission

City of Belen Mayor Rudy Jaramillo, Councilman Jareh Cordova, Belen City Manager Lucy Baca and City of Belen Attorneys John Salazar and Jennifer Stone came before the commission to present a Joint Powers Agreement passed and signed by the Belen City Council along with a copy of the feasibility study. Mayor Jaramillo said the city has invested to make this site available for a hospital site including the ponding on Westside of Interstate 25.

Councilor Cordova provided a presentation in three parts which included a brief history of Belen's involvement in the hospital project, an overview of the feasibility study as it was completed by Ameris and finally a discussion of the Joint Powers Agreement.

Chairman Holliday said he let the mayor know that the county's counsel had issues they wanted to discuss with the city's attorneys. He would rather counsel review the Joint Powers Agreement, see what they think and bring it back.

Commissioner Andersen said we all have a five page letter from our legal counsel with a lot of questions and it would be her suggestion that until those questions are answered to the satisfaction of our legal counsel, we not discuss this.

Commissioner Gentry's concern would be is they have times, dates and targets to get it moving and he agrees if they're going to do it that's what they need to do but he wants it made clear, who pays for what and the way he reads it, if they start this JPA the way it is, the county is going to be paying for the cost of starting and setting up the 501C3. Mayor Jaramillo said he would direct those questions to their counsel Jennifer Stone and John Salazar. Commissioner Gentry said the way he reads it, this is looking at a possible General Obligation Bond to pay for a hospital and we will finally become owners and operators of a hospital that has never been the concept from day one when they started this, it was going to be privately funded and they would subsidize the Mill Levy which was what the people voted for. What Commissioner Gentry is trying to define is that a balanced budget has to be prepared within the next four weeks and approved by DFA to appropriate funding which the Joint Powers Agreement calls for, that has to be understood in order to encumber those funds and place them in the budget. The JPA states that the county will be called upon to fund the cost of the setup for the 501C3 and their operational costs upfront which is the first thing that needs to be done. Isn't that true he asked?

Councilor Cordova stated for clarification, the JPA only requires the county to fund one aspect of this project and that's the formation of the non-profit. Beyond that there is no obligation on the part of the county or the City of Belen to fund the project.

Attorney for the City of Belen John Salazar stated the county does need to know what it's getting into if it gets into this Joint Powers Agreement and what it is committing to and believes the way it's written Valencia County will authorize the expenditure of county funds necessary for formation of the non-profit and for the performance of the duties assigned to the non-profit. The way the document is drafted, there is an additional county obligation and at this point he would point out to the commission, this is a proposed Joint Powers Agreement and the reason it's presented at a public hearing. The county is not being asked to take action on it tonight, but so the county can consider and react to the proposal that's being made by the City of Belen. In regards to Commissioner Gentry's question, the wording on the JPA is Valencia County shall authorize the expenditure of or otherwise provide county funds for the independent feasibility validation.

Commissioner Gentry went on to express his concerns on the issue of General Obligation Bonds, who was going to pay for setting up the bond, paying the bond attorneys and what the cost of the additional 10.35 acres would be which would also have to be included in the bond. The commissioners agreed that they would not approve a General Obligation Bond and would not make the taxpayers pay for any additional taxes. There has to be other options. The commission thanked Mayor Jaramillo, staff and their attorneys for all their hard work. (See Exhibit A)

5) Consideration of Application 545 / 484043(B) to Valencia County License Venture, LLC DBA Valencia County Liquors, 2765 State Hwy 47, Los Lunas, New Mexico for a Transfer of Ownership of a Liquor License from Carol Trujillo and the Estate of Daniel Trujillo DBA el Rio Cantina - County Clerk

County Clerk Sally Perea presented the above application for consideration of a transfer of a liquor license from Carol Trujillo and the estate Daniel Trujillo doing business as El Rio Cantina to Valencia County License Venture. The procedure as per statute is that within 45 days after receiving the application this request has to be heard by the commission at a public hearing. All the notices have been published in the local paper and notices have been sent to the individuals.

Chairman Holliday asked if there was anyone present in the audience wanting to speak in favor or against this request. No one spoke.

6) Appeal Request – Consideration to Hear an Appeal of a Decision Made by the Planning and Zoning Administrator to Deny a Non-Conforming Use for the Storage and Sale of Fill Dirt and Gravel Products; T5N, R1E, Section 1, NMPM, Map 96, a Portion of Tracts 67, 68 and Tract 46-C-2, Zoned RR-2, Filed in Book 300 Page 1093 of the Office of the Valencia County Clerk, Also Known as 1 Eddie Lane, Belen, NM 87002 – Jacobo Martinez.

County Planner Jacobo Martinez stated the case before the commission today has been heard in District Court for settlement. The court ordered that the defendant Mr. Robert Chavez shall have 120 days from the filing on the court's findings and conclusions to complete the zoning variance / change with Valencia County. So there was findings of fact and conclusion of law established by the court. On January 20, 2012 the Planning and Zoning Department received a request for a verification of a non-conforming use for the storage and sale of fill dirt and gravel products on the lot known as 1 Eddie Lane, Belen, NM 87002.

On February 14, 2012 the Planning and Zoning administrator denied the request for a verification of a non-conforming use. Upon reviewing the materials submitted by the applicant in support of his application for verification of non-conforming use and the Findings of Fact and Conclusions of Law issued by the District Court in relation to this matter, the Planning and Zoning Department determined that the applicant failed to present sufficient evidence that the proposed use has been in existence on the subject property for at least 10 years prior to the submission of the application for verification of non-conformity and on February 28, 2012 Mr. Chavez filed an appeal of that administrative decision.

Norman McDonald, Attorney for Mr. Chavez gave a history on this case in which a court proceeding in District Court was held. The business location comprises of 2.9 acres and the business sells gravel products, field dirt, crusher finds and there is no excavating, digging, mining of any sort, it is not a gravel pit. The business has been in existence at this location since 2000 prior to that Mr. Chavez had the gravel products located north of his home starting about 1995 and prior to that his business consisting of a laser leveling custom farm work and also sale of gravel products. He received his certification from the State Department Taxation and Revenue in 1988 under the name Chavez Laser Leveling. In 2000 Mr. Chavez retired from PNM and went full time into this business. There are only two employees at the site, father and daughter. Mr. Chavez was granted a business license

commencing in 1998 from Valencia County. This property as of today is being assessed and taxed by the county as commercial property. The county did not change its zoning map in 2007 at the time that Mr. Apodaca entered into this downsizing agreement so the property is shown on the map as RR-2, rural residential two acre minimum. Mr. Chavez has filed for a non-conforming use which is an administrative procedure to determine that the property is grandfathered in and the requirement is that it has to have been in existence for ten years prior to the application. The application was made January 2012 so it would have had to have been in existence January 2002 or before. The denial of the request by Mr. Jacobo Martinez's Office said they were not satisfied that the ten year requirement had been met because Judge Eichwald in his findings of fact stated that the business started in that location in 2004 and that matter is presently on appeal. Mr. McDonald presented sworn testimony from the lead plaintiff Earl Gleason verifying exactly what they stated was the case as far as meeting the ten year requirement and that information has been given to Mr. Martinez. Mr. McDonald is requesting that the commission overturn the decision by Mr. Martinez's office determining that this property does merit to be grandfathered as a non-conforming use having met the required time of ten years before application.

Commissioner Otero-Kirkham said the copy of the business license provided by Mr. McDonald says Ed Chavez Trucking and Laser Leveling and did Mr. Chavez ever get a license under his gravel company name?

When the license was first issued in 1998 that was the name of the business at that time. The business changed slightly, Mr. Chavez got out of laser leveling, but was always in field dirt and got more into gravel products. The business is owned by Ed Chavez as a sole proprietorship, it's not a corporation.

Commissioner Otero-Kirkham asked if there were other commercial businesses within the vicinity. Mr. McDonald said yes there is another commercial business where Mr. Gleason lives that have gravel products, have dump trucks and are also in the county.

Commissioner Otero-Kirkham asked if the entire area zoned RR-2. Mr. McDonald response was yes. Commissioner Otero-Kirkham said so you're saying Mr. Chavez should be granted this zone change because he was there for ten years. Mr. McDonald said it's not a zone change, technically approving the non-conforming use because it meets the ten year criteria to be grandfathered and in addition they have supplemented that with the position the county has taken through the county manager's office and the downsizing agreement on the issuing of the licenses annually and the assessing and taxing of the property as commercial annually. Recognition of the downsizing was confirmed by the county manager's office by a letter from Mr. Nance and a memo from Ruben Chavez.

Attorney James Sanchez representing the homeowners who live adjacent to the sand and gravel pit said Ms. Brower's property is right on the fence line of this gravel pit. Mr. Sanchez pointed out that this is not a correct grandfather procedure. This is not the proper procedure to consider what Mr. Chavez is trying to do in this rural residential zone. What he should be seeking is a zone change as that is exactly what the court had ordered, that he apply for a zone ordinance or a zone change. The form that was used in 2008 by Mr. Aranda when it was first denied for a request for a legal non-conformance is the same that was used now when Mr. Martinez also denied the request for non-conformance. This form asks if the present structure has been in use or existence for ten or more years prior to September 15, 2004. That is the date the county amended its zoning map and filed the new zoning code. This procedure was intended to grandfather uses that might have been affected by the change of the code. For example when the code was changed and new line was drawn, you may have had a business that all of sudden was non-conforming but it had been there ten years before the zoning maps were changed, therefore it would legally be non-forming. The question is, was this business in existence for ten years before September 15, 2004 and by looking at the zoning code which was adopted on September 15, 2004 under section 4.5.3c are the three issues which have to be met before you have a true grandfather situation. The first requirement is the nature and the extent of the use has to of existed for ten years from the adoption of this ordinance. You can't come before this commission and say I've been operating illegally for ten years, now they have some type of an adverse possession claim for a grandfather clause. That is not what grandfathering is or intended to be for and Mr. Sanchez feels it's improper for Mr. Chavez to have proceeded this way and is an improper application. The court found that this business started in 2004 and aerial photographs were submitted to the court and also presented to county showing that this business did not exist before 2004. Aerial photographs show exactly what existed on the date they were taken. Photos don't speak but also don't lie. Those photographs show that in fact this business did not exist before 2004.

Commissioner Otero-Kirkham asked if there was some kind of business in 1998. Mr. Sanchez said there was a laser leveling business, which is a business location for mailing but none of the work was done there and his tractors were stored there.

Commissioner Otero-Kirkham said wouldn't that have required a big tractor traveling down Eddie Lane as well? Mr. Sanchez said occasionally; maybe even once a day but not the use that it converted to in 2004.

Those individuals speaking against the appeal and not wanting to put Mr. Chavez out of business just simply want him to move his business to an appropriate location were: Mrs. Evelyn Castillo Brower of 12 Wagner Lane, Belen; Ms. Joan Oreolt, 1405 N. Mesa Road; Darla and Earl Gleason, 1211 N. Mesa Road and Richard Brower.

(See Exhibit B)

Those individuals speaking in favor of the appeal were; Jason Brousseau who is sure they could dig up records proving the ten years business at that time; Lorenzo Romero, 1210 N. Mesa Road; Chris Diaz, owner of Diaz Landscape; Ryan Gross of PG Enterprises; Ida Gardner; Patrick Castillo; Patricia Gardner and Joe Marques, 1412 Mesa Road.

PUBLIC COMMENT:

Those individuals making comments at tonight's Public Hearing Meeting were Valencia County residents Mike Wood, Jan Johnson, Mr. Carrillo, Mary Wood, Dr. Rudolpho Sanchez, Sue Moran and Clarke Metcalf.

NEXT COMMISSION MEETING:

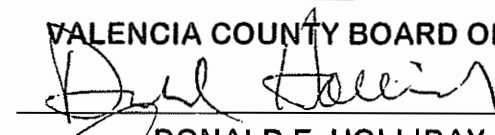
The next Business Meeting of the Valencia County Board of County Commission will be held on April 18, 2012 at 9:30 A.M. in the County Commission Room at the Valencia County Courthouse.

ADJOURNMENT:

Commissioner Gentry moved for adjournment. Seconded by Commissioner Andersen. Motion carried unanimously. TIME: 8:31 P.M.


NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the April 11, 2012 Public Hearing Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.

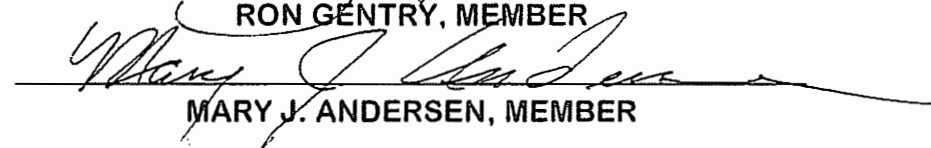
VALENCIA COUNTY BOARD OF COMMISSIONERS


DONALD E. HOLLIDAY, CHAIRMAN

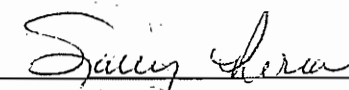

GEORGIA OTERO-KIRKHAM, VICE-CHAIR


LAWRENCE R. ROMERO, MEMBER


RON GENTRY, MEMBER


MARY J. ANDERSEN, MEMBER

ATTEST:


SALLY PEREA, COUNTY CLERK

May 2, 2012
DATE

VALENCIA COMMUNITY HOSPITAL

VALENCIA COUNTY / CITY OF BELEN
JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (the "**Agreement**") is made and entered into this ____ day of ____, 2012, which shall be the date of execution by the Secretary of the New Mexico Department of Finance and Administration (the "**Secretary**"), or his designee, (the "**Effective Date**") by and between Valencia County, a political subdivision of the State of New Mexico ("**Valencia County**") and the City of Belen, a New Mexico municipality ("**Belen**"), each a **Party**, and collectively the **Parties**, pursuant to the Joint Powers Agreements Act, § 11-1-1 through § 11-1-7, NMSA 1978 and subject to the approval of the Secretary.

RECITALS

WHEREAS, it has been determined that there is a need to provide appropriate and adequate hospital facilities for the sick of Valencia County, New Mexico, and

WHEREAS, the Board of County Commissioners of Valencia County (the "**County Commission**") has been working to accomplish the establishment of a hospital in Valencia County, and

WHEREAS, the citizens of Valencia County have demonstrated their support for a hospital in Valencia County, including at the November 7, 2006 General Election by the approval of the overwhelming majority of the voting qualified electors of Valencia County of a 2.75 mill levy on the net taxable value of property subject to taxation within the county (the "**Mill Levy**") to support the operation and maintenance of a hospital in Valencia County, and

WHEREAS, Valencia County has previously authorized the formation of a New Mexico non-profit corporation, Valencia Health Commons, and contracted with Valencia Health Commons to achieve the establishment of a hospital in Valencia County, and

WHEREAS, Valencia County has terminated its agreement with Valencia Health Commons, and

WHEREAS, following termination of its agreement with Valencia Health Commons, Valencia County has no present contractual obligations or other binding commitments for the establishment of a hospital in Valencia County, and

WHEREAS, Valencia County remains committed to the establishment of a hospital in Valencia County, and

(EXHIBIT A)

BOOK 073

PAGE 107

March 15, 2012 (11:45 am)

RDSAR JPA Belen-Valencia Hospital Project FINAL.doc

WHEREAS, Belen is also interested in and committed to the establishment of a hospital in Valencia County, and

WHEREAS, Belen is willing to participate in and contribute to the effort to establish a hospital in Valencia County, and has, in fact, authorized and had prepared, at its expense, a feasibility study (the "**Belen Feasibility Study**") indicating that a hospital is viable if located on a specific parcel of land made available by Belen (the "**Belen Site**") and Belen is willing to provide the Belen Feasibility Study to the non-profit entity to be formed pursuant to this Agreement for its review and independent verification and to thereafter make the Belen Site available for the construction of a hospital, and

WHEREAS, Valencia County and Belen wish to work cooperatively to achieve the establishment of a hospital in Valencia County, and

WHEREAS, Valencia County and Belen now wish to enter into a joint powers agreement in order to accomplish the establishment of a hospital in Valencia County on the Belen Site through the formation of a non-profit entity (the "**Valencia Community Hospital Non-Profit Organization**" or "**VCHNP**", as more specifically set forth herein) that will, through an independent consultant, provide validation of the Belen Feasibility Study and thereafter, following acceptance of the validation of the Belen Feasibility Study by Belen and Valencia County enter into a health care facilities contract with Valencia County for the transfer and distribution of mill levy proceeds for the hospital's operation and maintenance on the Belen Site, and

WHEREAS, Valencia County shall condition its entry into a health care facilities contract with VCHNP on the following: (1) VCHNP's engagement of an independent consultant, with the requisite qualifications, to independently analyze and evaluate the Belen Feasibility Study, including the stated facts, assumptions, analysis, projections and conclusions in the Belen Feasibility Study (the "**Independent Feasibility Validation**"); (2) VCHNP's subsequent provision, on or before July 31, 2012, to Valencia County and Belen of a written analysis and report containing the independent consultant's conclusion that the Independent Feasibility Validation demonstrates that a hospital at the Belen Site will be successful and sustainable (the "**Independent Feasibility Validation Report**"); (3) VCHNP's independent recommendation to Valencia County and Belen to proceed to develop a hospital at the Belen Site; and (4) the acceptance and approval of the Independent Feasibility Validation Report and of a positive recommendation from VCHNP to both Belen and Valencia County, and

WHEREAS, if VCHNP does not provide Belen and Valencia County with the Independent Feasibility Validation Report and its own favorable recommendation by July 31, 2012 and/or if the Independent Feasibility Validation Report does not validate that a hospital at the Belen Site will be feasible and/or VCHNP recommends that Valencia County and Belen not proceed to develop a hospital at the Belen Site and/or if Valencia County or Belen reasonably determine not to accept the Independent Feasibility Validation Report and/or a favorable VCHNP recommendation, neither Valencia County nor Belen

shall have any further obligations pursuant to this Agreement and either may withdraw from any further participation in this Agreement without further obligation.

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

AGREEMENT

1. Recitals. The Recitals set forth hereinabove are incorporated herein by reference and shall be considered part of this Agreement as if fully restated herein.

2. Purpose. The purpose of this Agreement is to set forth the understanding pursuant to which Valencia County and Belen, working cooperatively, will establish an acute care, sole provider hospital facility in Valencia County (the "**Valencia Community Hospital**"), which will, pursuant to NMSA 1978, § 4-48B-3(G) (2003):

a. Admit and treat patients without regard to race, sex, religion or national origin.

b. Include x-ray, laboratory services, and a pharmacy or drug room.

c. Have available adequate emergency equipment, personnel and procedures, including:

i. A standby emergency power system.

ii. At least one person capable and authorized to initiate immediate lifesaving measures.

iii. Facilities for emergency laboratory work, including, as a minimum, urinalysis, complete blood count, blood type and cross match.

iv. Diagnostic radiographic facilities.

d. Provide facilities, procedures and policies for prevention, control and reporting of communicable diseases, including one or more rooms for isolation of patients having or suspected of having communicable diseases.

e. Maintain adequate records, including, as a minimum, a daily census and a register of all births, deliveries, deaths, admissions, emergency room admissions, discharges, operations, outpatients, inpatients and narcotics.

f. Provide physical facilities, personnel, equipment and procedures that comply with the regulations promulgated by the public health division of the department of health (collectively, the "**Hospital Facility**").

3. Formation of Valencia Community Hospital Non-Profit Organization. Valencia County shall form Valencia Community Hospital Non-Profit Organization or

VCHNP as a non-profit organization pursuant to the provisions set forth below.

a. Membership of the VCHNP Board. Membership on the VCHNP Board shall consist of nine members, each to be initially appointed by majority vote of all of the members of the County Commission from a pool of qualified candidates, as hereinafter defined, with staggered terms of two years or less.

b. Qualifications of VCHNP Board Members. Candidates for service as a VCHNP Board Member must, at a minimum, reside in Valencia County and have obtained a high school diploma or its equivalent, with a college degree preferred. Desired qualifications of candidates for membership on the VCHNP Board include experience and demonstrated success in banking, finance, business, health care, manufacturing, legal, or other similar areas of experience. A person who satisfies the qualification requirements for the VCHNP Board shall be considered a **Qualified Candidate**. Qualified Candidates who currently serve or in the two years previous to an appointment to the VCHNP Board have served in a position to which they were elected for any municipality, county or the State of New Mexico and any persons employed by any service provider to the Valencia Community Hospital shall be disqualified from candidacy for membership on the VCHNP Board.

c. Valencia County Candidates for VCHNP Board Membership. The County Commission, by majority vote of all of the members of the County Commission, shall appoint five of the initial VCHNP Board Members from a list of Qualified Candidates submitted by members of the County Commission.

d. Belen Candidates for VCHNP Board Membership. The County Commission shall appoint four of the initial VCHNP Board Members from a list of Qualified Candidates submitted by Belen, with a minimum of eight names submitted.

e. Formation of Valencia Community Hospital Non-Profit Organization. Valencia County shall authorize and direct the nine initial VCHNP Board Members appointed by Valencia County as set forth above to form a New Mexico non-profit organization, and shall authorize the expenditure of County funds necessary for such formation and for the performance of the duties assigned to VCHNP in this Agreement. The articles of incorporation or other articles of organization or formation for VCHNP shall contain the following minimum requirements:

- i. The purpose of VCHNP is to own, maintain and operate the Valencia Community Hospital and consistent with that purpose, shall have the power to purchase, lease, or otherwise acquire the Belen Site and construct Valencia Community Hospital on the Belen Site, to enter into a health care facilities contract with Valencia County, to receive and disburse Mill Levy funds pursuant to a health care facilities contract, to accept grants, to lease or otherwise contract with any person, firm, organization, corporation, or state education institution named in Article 12, Section 11 of the Constitution of New Mexico upon such terms and conditions as the Board of VCHNP may

reasonably determine for the development, construction, equipping, operation and/or maintenance of Valencia Community Hospital on the Belen Site, and to otherwise take all steps necessary to develop, construct, equip, operate and maintain Valencia Community Hospital on the Belen Site, all consistent with the terms of this Joint Powers Agreement;

- ii. During their respective two-year terms, none of the members of the VCHNP Board shall be removed except for cause.
- iii. Any vacancies or open positions on the VCHNP Board will be filled by the VCHNP Board in a manner consistent with the qualifications and geographical requirements for each VCHNP Board position set forth in this Joint Powers Agreement;
- iv. The VCHNP Board shall report to the Valencia County Commission at least semiannually for the receipt and expenditures of funds received and disbursed for the construction and operation of the Valencia Community Hospital and shall be held to a strict accountability standard.
- v. The VCHNP Board shall prepare an annual accounting and report to the Valencia County Commission accounting for all public funds received or otherwise transferred to the Valencia Community Hospital, including Mill Levy funds, for the prior year and shall submit to the County Commission an annual budget explaining the planned use of all funds anticipated from whatever source for the succeeding year and such other reports as the County Commission shall reasonably request from time to time.

4. Independent Validation of the Belen Feasibility Study. Once formed, Valencia County shall direct VCHNP to have the Independent Feasibility Validation undertaken. Valencia County shall authorize the expenditure of or otherwise provide County funds for the performance and completion of the Independent Feasibility Validation. Valencia County shall further direct VCHNP to provide Valencia County and Belen with the Independent Feasibility Validation Report on or before July 31, 2012. Belen and Valencia County shall each review and accept or reject the Independent Feasibility Validation Report no later than August 30, 2012. A rejection of the Independent Feasibility Validation Report by either Belen or Valencia County must be evidence-based and reasonable.

5. Distribution of Mill Levy Proceeds to Valencia Community Hospital Pursuant to Health Care Facilities Contract. If Belen and Valencia County each accept the Independent Feasibility Validation Report, Valencia County shall promptly thereafter, pursuant to a separate written health care facilities contract between Valencia County and VCHNP d/b/a Valencia Community Hospital, make available the proceeds of the Mill Levy for the operation, equipping, and maintenance of the Valencia Community Hospital

in exchange for the agreement by VCHNP d/b/a Valencia Community Hospital to use the funds only for non-sectarian purposes and to make the Valencia Community Hospital available to provide services to the sick of Valencia County. Any health care facilities contract entered into between Valencia County and VCHNP shall, at a minimum, contain the following provisions:

a. VCHNP shall have exclusive jurisdiction and control of the development, operating, equipping, and maintaining the Hospital Facility;

b. VCHNP shall not discriminate in employment, granting of medical staff privileges, or availability of hospital facilities on account of race, sex, religion, or national origin;

c. VCHNP will make available to the sick of Valencia County the services set forth in Section 2. above;

d. VCHNP will undertake and assume all financial responsibility for the development, operation, equipping, and maintenance of the Hospital Facility, and may utilize Mill Levy Funds for that purpose, as well as any additional public funds available under New Mexico or federal law and any public or private grants that may be available;

e. The Mill Levy Funds shall not be transferred to VCHNP until VCHNP receives a certificate of substantial completion of the Hospital Facility, which must be no later than December 31, 2014, and Valencia County shall hold the Mill Levy Funds in a restricted account until such condition is met;

f. Upon transfer of the Mill Levy Funds to VCHNP, VCHNP shall use the Mill Levy Funds only for the purpose of operating, equipping and maintaining the Hospital Facility;

g. VCHNP's use of Mill Levy Funds for capital expenditures, construction costs or any other expenditure not related to operation, equipping and maintaining the Hospital Facility shall be deemed an impermissible use of Mill Levy Funds and grounds for termination of the health care facilities contract;

h. VCHNP will prepare a semiannual accounting and report to Valencia County, accounting for expenditure of Mill Levy Funds for the previous six months and an annual budget explaining the planned use of Mill Levy Funds for the succeeding year;

i. VCHNP will provide copies of audited financial statements detailing the financial condition of VCHNP on an annual basis, including an annual balance sheet, personal and real property inventories, profit and loss statements, accounts receivable, accounts payable records, and other financial records bearing on the operation of the Hospital Facility;

j. The health care facilities contract may be terminated without cause upon 180 days' notice after the first three years of the contract, but such termination provision shall not apply during any portion of the term in which VCHNP is obligated to make debt

service payments on revenue bonds that finance all or part of the Hospital Facility or equipment for the Hospital Facility.

6. Belen Contribution. Following execution of the health care facilities contract by Valencia County and VCHNP, Belen agrees to make available a building-ready land parcel for the location and construction of the Hospital Facility (the "**Belen Site**") at essentially no direct cost to Valencia County, either through a conveyance of the Belen Site from Belen to Valencia County or VCHNP subject to certain specified conditions pertaining to the construction and operation of a hospital on the Belen Site or on a long-term lease basis, the specific terms of which will be mutually determined by Valencia County or VCHNP and Belen prior to construction of the Hospital Facility. The Belen Site consists of 13.65 acres located near Interstate 25 (I-25) in the City of Belen Healthcare Hub just north of Camino del Llano and east of Christopher Road and more particularly described as follows:

Four tracts of land situated within Section 13, Township 5 North, 1 East of the New Mexico Principal Meridian in Valencia County, New Mexico, being portion of tracts 262A, 263A, 264A and 265A,

plus an additional 10.35 acres located north of and immediately adjacent thereto, which is under separate private ownership and is presently available for the Hospital Facility. The acquisition cost of the Belen Site was \$619,000.00. It has a substantially higher present value due, in large part, to subsequent on- and off-site infrastructure improvements. See Ex. A, attached hereto.

7. Financing / Bonds. VCHNP shall explore all financing options available to provide funds for the construction and equipping of the Valencia Community Hospital, including the issuance of general obligation and/or revenue bonds and shall select and engage such available funding sources, whether sole source or in combination, as will provide the maximum benefit at the lowest cost. Valencia County may, if necessary and appropriate, issue general obligation and/or revenue bonds for the construction and equipping of the Valencia Community Hospital, but is not obligated to do so under this Agreement. Belen may, if necessary and appropriate, issue general obligation and/or revenue bonds for the construction and equipping of the Valencia Community Hospital, but is not obligated to do so under this Agreement. In either event, the terms and conditions of the bond issue shall be determined before the bonds are issued. Following and based upon its exploration of funding options, VCHNP shall provide to both Valencia County and Belen a financing plan for the construction and equipping of the Valencia Community Hospital no later than December 31, 2012. In the event that VCHNP, Valencia County and Belen conclude that funding for construction and equipping of the Valencia Community Hospital is not available on reasonable terms and conditions, Valencia County and Belen shall terminate this Agreement without further obligation on the part of any Party. In the event that either Valencia County or Belen conclude that financing is not available on reasonable terms and conditions, that Party to the Agreement may terminate its participation in this Agreement and shall have no further obligation therewith.

8. Term. The term of this Agreement shall commence on the Effective Date and shall continue through December 31, 2014 (the "Initial Term") and as long thereafter as necessary to effectuate the purpose of this Agreement, except that either Party may, after expiration of the Initial Term, terminate this Agreement, without cause, upon six months written notice to the other Party. In the event that either Party elects to terminate this Agreement in order to withdraw from this Agreement (the "Withdrawing Party"), the Withdrawing Party shall take all action reasonably practicable to ensure that the withdrawal does not cause harm to the development and/or operation of the Valencia Community Hospital. In the event that either Party fails to fulfill its obligations, or any of them, (the "Defaulting Party") during the term of this Agreement, the other Party (the "Non-Defaulting Party") may give notice of such failure, and in the event the Defaulting Party fails to reasonably satisfy the Non-Defaulting Party of its intention and ability to cure the default within 30 days of receipt of the notice specifying the failure at issue, or within such additional time as may be reasonably required to cure the default, the Non-Defaulting Party may withdraw from this Agreement without further notice and without any continuing obligation to the Defaulting Party, except that the Non-Defaulting Party shall take all action reasonably practicable to ensure that the withdrawal does not cause harm to the development or operation of the Valencia Community Hospital.

9. Disposition of Property Acquired. Upon termination of this Agreement: (1) any and all equipment, furnishings, and other personal property acquired during the term of this Agreement shall belong to VCHNP and/or Valencia Community Hospital; (2) the building and all improvements located on the surface of the Belen Site shall belong to Valencia County and/or VCHNP d/b/a Valencia Community Hospital and remain on the Belen Site so long as the building and other surface improvements are used for the operation of a hospital; and (3) the Belen Site itself (surface and sub-surface) shall remain in the ownership of Belen, if a lease, or revert to Belen, if the fee title to the Belen Site was conveyed to Valencia County or VCHNP.

10. Miscellaneous.

a. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the third day after mailing if mailed by certified mail, return receipt requested, (iii) the day of transmission, if sent by facsimile or telecopy during regular business hours or the day after transmission, if sent after regular business hours, provided that, in either event, the completed transmission is electronically verified, or (iv) the day of transmission, if sent electronically, if there is proof of receipt on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses, telecopy numbers, or e-mail addresses (or to such other address, telecopy number, or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Valencia County:	Office of the County Manager P.O. Box 1119/444 Luna Avenue Los Lunas, NM 87031 Fax: (505) 866-3355
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e-mail:

with a copy to the Valencia County Attorney at the address above;

If to Belen: Office of the City Manager
 100 South Main Street
 Belen, NM 87002
 Fax: (505) 864-8408
 e-mail:

with a copy to the City Attorney at the address above.

b. Assurances. Consistent with the terms and conditions hereof, each Party will execute and deliver such certificates and other documents and take such other action as any other Party may reasonably require in order to carry out the Agreement and the transactions contemplated hereby.

c. Severability. If any provision of the Agreement becomes or is found to be illegal or unenforceable for any reason, such provision may be modified to the extent necessary to make this Agreement legal and enforceable. If such provision cannot be so modified, it shall be severed from the Agreement and the remainder of the Agreement shall remain in full force and effect.

d. Amendment. The Agreement may be amended if, in the opinion of the Parties, an amendment would be desirable to advance the purpose of the Agreement. However, the Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties.

e. Assignment. The Agreement or any of the rights, duties, or obligations of the Parties hereunder, shall not be assigned by either Party without the express written consent and approval of the other Party.

f. Successors and Assigns. This Agreement binds and inures to the benefit of the parties and, subject to the restrictions on transfer herein set forth, their respective successors, assigns and personal representatives.

g. Complete Agreement. The Agreement and the exhibits attached hereto contain the entire understanding of the Parties with respect to the transactions contemplated hereby and supersede all prior arrangements or understandings with respect thereto. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein.

h. Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default

thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

i. Headings. Section or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

j. Governing Law. This Agreement is governed by and is to be construed in accordance with the law of the State of New Mexico.

k. Counterparts. This Agreement may be executed in one or more counterparts, including facsimile and/or electronic counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of signature by the Secretary of the Department of Finance and Administration, or his designee, as set forth below.

**VALENCIA COUNTY, a political
subdivision of the State of New Mexico**

By: _____ Date: _____
Donald J. Holliday, Chair
Board of County Commissioners, District 5

By: _____ Date: _____
Georgia Otero-Kirkham, Vice Chair
Board of County Commissioners, District 2

By: _____ Date: _____
Mary J. Andersen
Board of County Commissioners, District 1

By: _____ Date: _____
Lawrence R. Romero
Board of County Commissioners, District 3

By: _____ Date: _____
Ron Gentry
Board of County Commissioners, District 4

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____ Date: _____
Valencia County Attorney

**CITY OF BELEN, a New Mexico
municipality**

By: Rudy Jaramillo
Rudy Jaramillo, Mayor

Date: 4-2-12

By: Mary T. Aragon
Mary T. Aragon, Mayor Pro Tem

Date: 4-2-12

By: David J. Carter
David J. Carter, City Councilor

Date: 4-2-12

By: Jerah R. Cordova
Jerah R. Cordova, City Councilor

Date: 4/2/12^{LB}

By: Wayne Gallegos
Wayne Gallegos, City Councilor

Date: 4/2/12^{LB}

ATTEST:

By: Mary Lucy Baca
Mary Lucy Baca, City Manager, CMC

Date: 4/2/12

APPROVED AS TO LEGAL SUFFICIENCY:

By: John P. Day
Belen City Attorney

Date: 4/9/12

APPROVED:

**NEW MEXICO DEPARTMENT OF FINANCE
AND ADMINISTRATION**

By: _____
Thomas Clifford, Secretary

Date: _____

The City of Belen's
Healthcare Hub VALENCIA COMMUNITY HOSPITAL

LEGAL DESCRIPTION

The 13.65-acre hospital site is located near Interstate 25 (I-25) in the City of Belen's Healthcare Hub on the northeast side of the Camino Del Llano interchange along Christopher Road.

It has the following legal description:

Four tracts of land situated within Section 13, Township 5 North, 1 East of the New Mexico Principal Meridian in Valencia County, New Mexico, being portion of tracts 262A, 263A, 264A and 265A.

QUALITY COMMITMENT

Stretching 13.65 acres near an accessible interchange and airport, the City of Belen's proposed site is well-suited for a hospital, having a number of attributes that bolsters its ability to be developed quickly and cost effectively. The city has secured local support and commitments that allow for site expansion should expansion be needed.

The Healthcare Hub is an established and proven health commons (Addendum A). The hospital will be an added value benefit to the medical professionals currently working in the Healthcare Hub, where even today, there are plans underway for new medical-related facilities. The site readily incorporates clustered services, a vital component to the success of any medical facility. Industry clustering provides essential established resources, proven by the medical industry, as well as others, to be the key ingredient in sustainability.

The Healthcare Hub offers immediate access to all of the medical-related services available in Belen, including things like pharmacies, medical supplies and hospice, also while providing nearly \$23 million of direct infrastructure investment in recent years, available to support a hospital (Addendum B).

STRATEGIC PLANNING

- *The Healthcare Hub is a health commons.* It provides a diversity of medical and medical-related facilities, including the Belen Meadow Healthcare and Rehabilitation Center, the Presbyterian Urgent Care, as well as residential and educational facilities.
- *Camino del Llano is Belen's most active area of development.* Belen is developing most quickly on its west side, particularly near the Camino del Llano interchange and onto the west mesa. Not only has the city continued to see housing development in neighborhoods like Sunrise Bluffs and Jardin de Belen, the city, along with the New Mexico State Aviation Department and Federal Aviation Administration has invested approximately \$2.3 million in Belen Alexander Municipal Airport, annexing 1,400 acres into city limits, constructing a new pilot's lounge, establishing a fire department substation and completing two phases of a three-phase crosswind runway project with the United States Air Force.

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EXHIBIT A

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- *The Camino del Llano area is designated one of Belen's busiest activity centers.* In the City of Belen's Strategic Growth Plan adopted on February 8, 2010, the Mid-Region Council of Governments describes the Camino del Llano corridor as "the primary access from the interstate freeway to the airport and west mesa development, and the most direct entrance into the downtown area."
- *The city has invested more than \$11.1 million in infrastructure in the Healthcare Hub.* In the past four years, the city has spent millions of dollars in the immediate area, including water, sewer, drainage, lighting, pedestrian walkways, newly paved roadways and other accessibility improvements. Projects have included reconstruction and improvements to Christopher Road, which provides front-door access to the hospital from Camino del Llano.
- *Belen Consolidated Schools has medical curriculum and a career academy.* The district has invested \$8.3 million in higher education curriculum and a state-of-the-art facility, known as the Belen High School Career Academy, offering a nursing program that puts Belen's youth on track to graduate college and staff the hospital. Belen's nursing program involves a dual-credit collaboration with the University of New Mexico Valencia Campus. In May 2012, the Valencia Campus will graduate its first class of certified nurses.
- *Belen is a bedroom and retirement community suitable for medical facilities.* The Valencia County Comprehensive Plan (2005), the City of Belen Comprehensive Plan (2003), and the City of Belen Strategic Growth Plan (2010) designates the City of Belen as a bedroom and retirement community, evidenced by housing developments like Sunrise Bluffs, an 80-unit, seven-phase development, and the proposed 48-unit assisted living facility.
- *Belen is Valencia County's most centralized, accessible transportation hub.* The Healthcare Hub offers quick access to the interstate, railway and sky. According to the New Mexico Airport System Update (2009), Belen Alexander Municipal Airport is a gateway airport due to its proximate location to interstate travel, refueling and connecting travel. It also receives overflow from the Albuquerque International Sunport.

SITE READINESS

The hospital site has adequate infrastructure to serve the demands of a hospital.

Wet Utility Infrastructure: The property is serviced by redundant water infrastructure, such as two eight-inch water lines stubbed to the property and fed from the west end of the property along Christopher Road. Christopher Road is fed through an 18-inch water main line on Camino del Llano that is fed by three nearby municipal water wells. An additional eight-inch water line along the east end of the property is fed directly from a municipal water well located 150 feet south of the property, providing proper fire protection and low-cost water loop interconnects to exceed the hospital's demands. An eight-inch sewer line is also stubbed out to the property followed by 10-inch sewer line along Camino del Llano to the 1.2-million gallon per day (MGD) treatment plant that meets all New Mexico Environment Department and United States Environmental Protection Agency (EPA) standards and has the capacity for the hospital while providing for other area development.

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Dry Utility Infrastructure: High-speed Qwest fiber optics are located curbside at the property and capable of handling the critical, cutting-edge technology, providing advanced information technology (IT) communication capability, in addition to phone lines. Comcast broadband is located within 50 feet of the property. Public Service Company of New Mexico (PNM) provides three-phase power to the property that is adequate to provide for the electrical demands of the hospital. New Mexico Gas Company provides natural gas at the property. Traffic signal infrastructure is installed on the corner of Christopher Road and Camino del Llano that will reduce the cost of installation, if needed for safety due to increased traffic.

The abundance of both wet and dry utility infrastructure will substantially reduce the cost of constructing a hospital on the proposed site. Through its research, the city has found that this site is the most ready and most cost effective.

SITE ACCESSIBILITY

The hospital site is within the established Healthcare Hub, just one block east of I-25 off Exit 191, where it intersects with Camino del Llano.

Camino del Llano, one of Belen's five major arterial roads, is the middle of three I-25 interstate exits in Belen and one of only two major interstate access points to the west side of I-25 in all of Valencia County. The interchange directly serves both Belen's city limits and unincorporated areas of Valencia County.

Camino del Llano provides access to Valencia County's only public airport, located less than three minutes from the hospital site. Valencia County's only joint city/county fire department substation is located less than three minutes away. Within two minutes of the hospital site are two lodging facilities, including Holiday Inn Express.

The centralized corridor linking the west mesa, Main Street and the downtown builds on the potential for regional medical care, specialized support service industry infill (Exhibit B) and helipad development, on-site or at Belen Alexander Municipal Airport. The hospital site is also accessible using the Rio Metro Regional Transit District shuttle service, stopping at several locations along Camino del Llano, as well as at the New Mexico Rail Runner Express, only four minutes away.

According to the City of Belen Strategic Growth Plan (2010), the site is located in the most centralized activity center for Valencia County and the State of New Mexico. Area business and medical facilities are among the busiest in all of Valencia County.

CONCLUSION

Belen's mayor and the Belen City Council look forward to working with the Valencia County Commission to build a hospital that will give Valencia County residents the medical care they need.

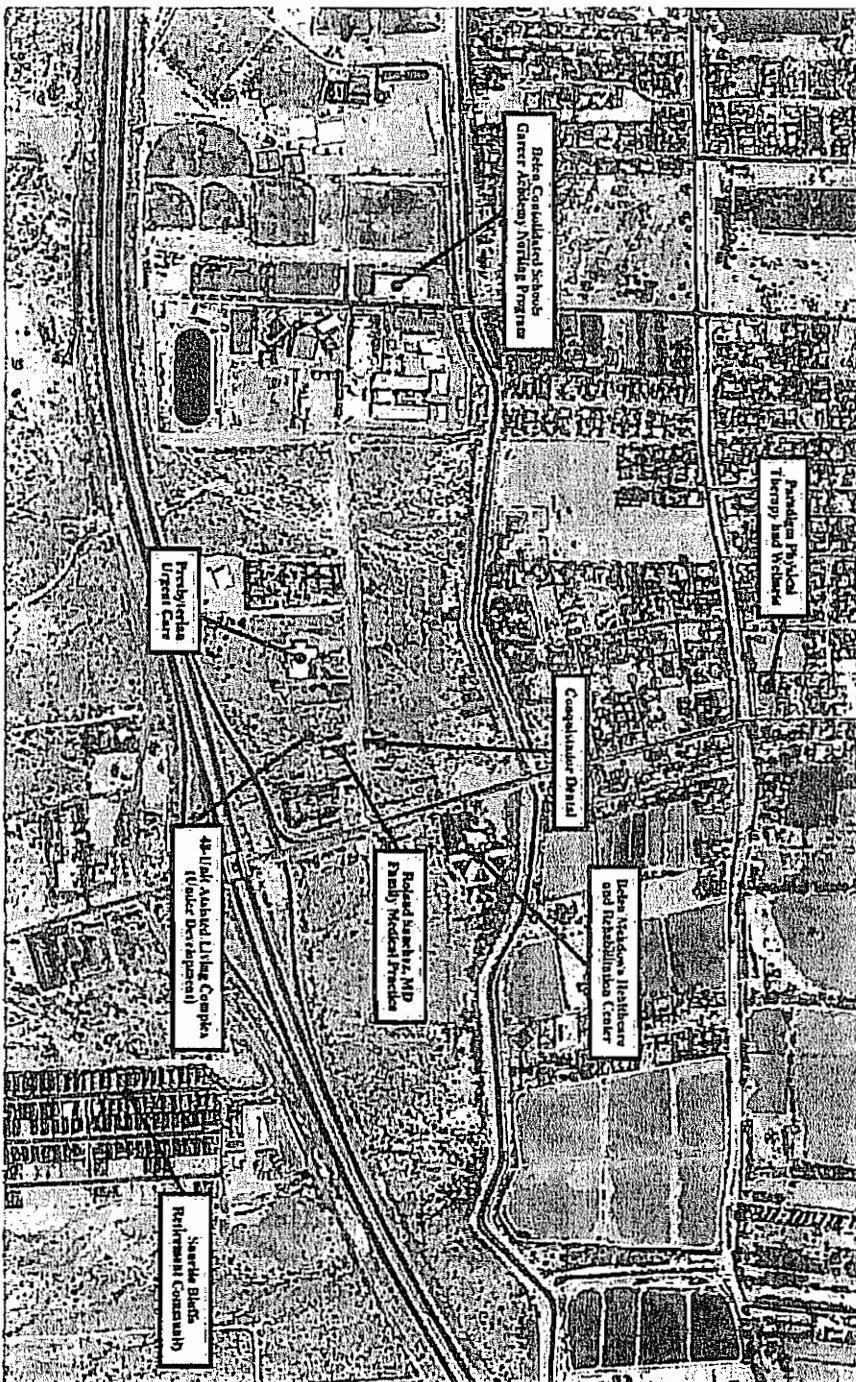
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The City of Belen's
Healthcare Hub

Addendum A



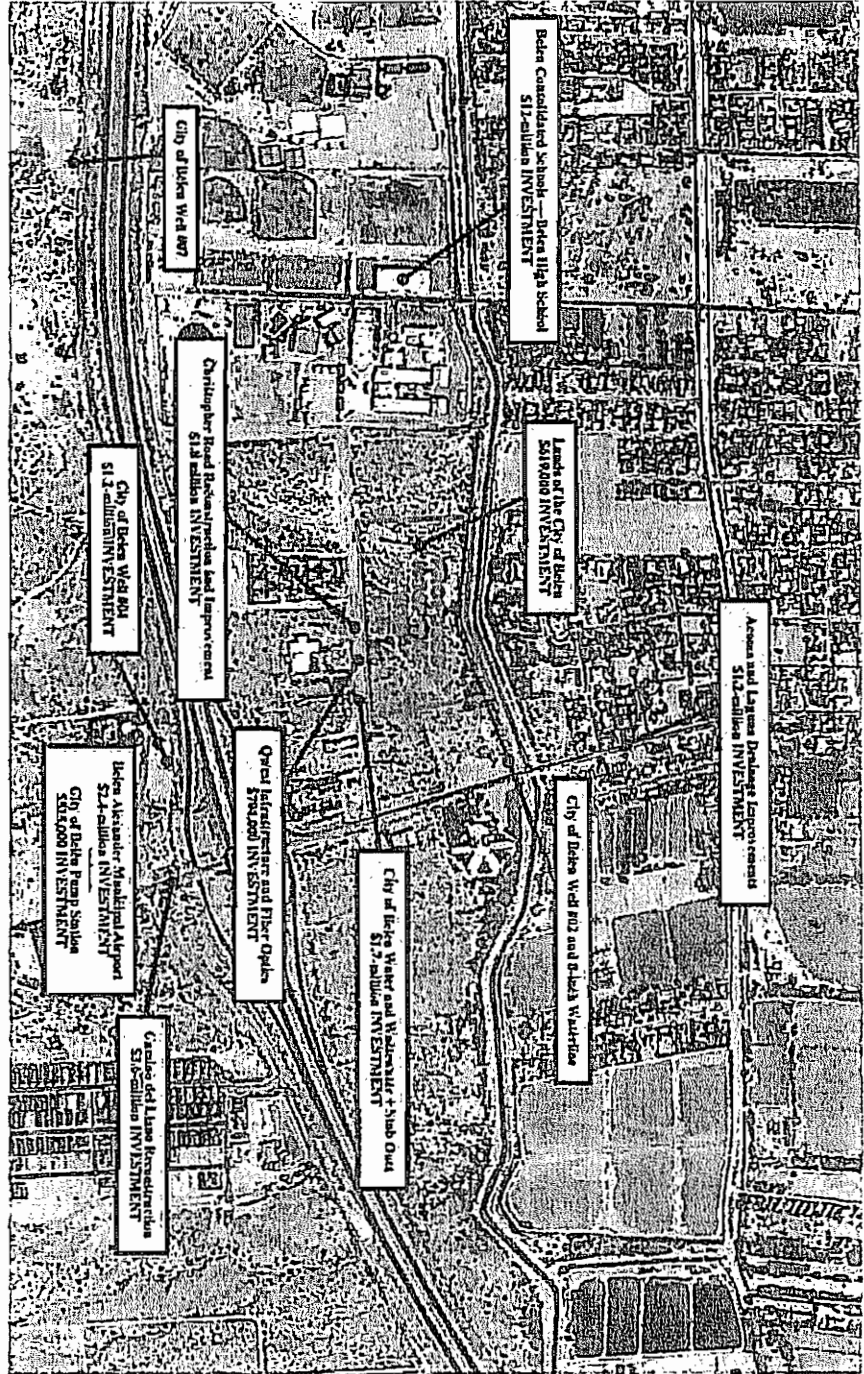
MEDICAL-RELATED FACILITIES TO SUPPORT A HOSPITAL

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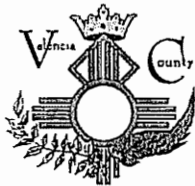
EXHIBIT A
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The City of Belen's
Healthcare Hub

Addendum B



INFRASTRUCTURE AND INVESTMENT TO SUPPORT A HOSPITAL



VALENCIA COUNTY
Board of County Commissioners

AGENDA REQUEST FORM

Presenter: Jacobo Martinez

Individual Making Request: Edward Chavez

Presentation at Meeting on: April 11, 2012

Date Submitted: April 2, 2012

Title of Request: Title: Appeal Request

Request:

Consideration to hear an appeal of a decision made by the Planning and Zoning Administrator to deny a Non-Conforming Use for the storage and sale of fill dirt and gravel products.

Legal Description:

T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002.

Information Background and Rationale

The applicants are in front of the board to appeal a decision made by the Planning and Zoning Administrator to deny a verification of a non-conforming use for the storage and sale of fill dirt and gravel products.

The case before you today has been heard in District Court for settlement. The court ordered that the " *Defendant (Mr. Edward Chavez) shall have 120 days from the filing on the Court's Findings and Conclusions to complete the zoning variance/change with Valencia County.* "

On January 20, 2012, the Planning and Zoning Department received a request for a verification of a non-conforming use for the storage and sale of fill dirt and gravel products on the lot defined as T5N, R1E, Section 1; NMPM; Map: 96; a portion of Tracts 67, 68 and Tract 46-C-2; Zoned RR-2; Filed in Book 300, Page 1093, of the office of the Valencia County Clerk, Also known as 1 Eddie Lane, Belen, NM 87002 (See Exhibit A).

On February 14, 2012, the Planning and Zoning administrator denied the request for a verification of a non-conforming use. Upon reviewing the materials submitted by the Applicant in support of his application for verification of non-conforming use and the Findings of Fact and Conclusions of Law issued by the District Court in relation to this matter, the Planning and Zoning Department determines that Applicant failed to present sufficient evidence that the proposed use has been in existence on the subject property for at least 10 years prior to the submission of the application for verification of non-conformity (See Exhibit B).

On February 28, 2012, Mr. Chavez filed an appeal of the Type A administrative decision (See Exhibit C). According to 154.075(F), "Any decision of the Department may be appealed by any person with standing to the Commission if an appeal is filed within 15 days for the date of the decision..."

(EXHIBIT B)