

## Response to Adams + Crow Investigative Report Findings

By Harry Burgess

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### Introduction

I was asked to provide a response to the recent investigation performed by the Adams+Crow (A+C) law firm regarding the alleged improper use of public funds by the Regional Coalition of LANL Communities (RCLC), dated August 8, 2018. The following narrative constitutes such a response, yet in order to address the many issues relating to this matter, I will also incorporate certain responses to the concurrent special audit of the RCLC as performed by the Office of the State Auditor (OSA).

The A+C investigation was centered around five specific requests made by Councilors O'Leary and (former) Chrobocinski, and I plan to provide my perspective regarding each of these requests, however in doing so I will also attempt to address several misstatements/misunderstandings that were included in the August 8 report. My intent in doing so is to address and hopefully remove any misconceptions regarding any incorrectly reported actions of County officials, thereby allowing the focus to be on the activities that warrant attention and potentially any corrective actions.

### Historical Perspective

The RCLC was created through a Joint Powers Agreement (JPA), initially signed in May 2011. At the time of its creation, Los Alamos County (LAC) was the sole financial contributor and also provided staff to assist in the administrative needs of the new entity. Over time, the RCLC was able to obtain additional financial support from its member agencies and through federal grants. The majority of this funding has been used to employ the services of an executive director through a services contract, and the RCLC is now on its fifth such provider of executive director services.

In addition, the JPA designates LAC as the fiscal agent, however what duties are associated with this role are not defined. Experience has shown that this lack of definition has caused different individuals to assume different duties for LAC relative to such a role. The JPA also calls for the entity to develop a financial policy, and while the organization's minutes reflect that the RCLC members, including its Chair, have at times reminded themselves of this need, such a policy has never been developed. Although not required by the JPA, early in its history the RCLC also discussed hiring legal services and a draft RFP was even proposed (RCLC Agenda/Minutes dated 1/18/13 and 2/15/13) however no action was taken towards this end.

The RCLC did adopt a travel policy on September 21, 2012 (see RCLC minutes from this date), however as has been recently shown this travel policy was not in compliance with state law and has resulted in inappropriate payment to its members over time. Although it has been assumed that this policy was patterned after LAC's policy, the organization's minutes show that it was adopted from the North Central Regional Transit District (NCRTD), an organization that was considered to be analogous to the RCLC and for which many of the same entities were members.

As the RCLC aged, its member representatives changed with election cycles, resulting in differing foci over time. Similarly, the fact that many different entities acted as executive director resulted in different practices, skills, and areas of interest as the individuals in that role expressed their personalities. This somewhat inconsistent and constantly changing leadership resulted in a reliance upon LAC to provide such administrative services, to include soliciting for a new director, coordinating meetings and agendas, and any other actions which were necessary to keep the organization functioning.

#### Disputed Findings

The following are in no particular order yet are being highlighted as I find them to be mistaken and these issues have seen significant coverage in the media, incorrectly coloring the public's view of the events that have occurred. The "findings" referenced here are not word for word to those listed in either the A+C report nor the OSA Audit but serve to express several of the themes that are contained within these documents.

1. *County officials improperly advised the RCLC in its adoption of a Travel Policy that is in violation of state law.*

As A+C and the OSA both concluded, the Travel Policy adopted by the RCLC is inconsistent with state law. The State of NM has adopted guidelines for travel reimbursement that are applicable to most state and local governmental agencies, including RCLC, however as indicated in the A+C report this law does not apply to Los Alamos County (LAC) since it is a "Home Rule" municipality (A+C p.16). A+C notes that their review "does not contain documentation of County involvement assisting RCLC in creating the original travel policy" (A+C, p.16), yet they choose to spend considerable time comparing the RCLC travel policy to that of LAC (A+C, pp. 16-18), concluding that their similarities suggest that the County guided (or misguided) the RCLC's development of such a policy (A+C, P. 16).

When the RCLC travel policy was adopted, RCLC Chair David Coss stated that "the proposed policy follows the Regional Transit District policy" (RCLC Minutes 9/21/12). Chair Coss does continue to state that the proposed policy is similar to LAC's policy, however this resemblance is understandable given that the NCRTD's director is a former LAC manager. Given the clear language in the RCLC minutes at the time of the policy's adoption, I cannot accept that any similarities to LAC's Travel Policy constitute an effort to incorrectly advise the RCLC of its statutory obligations.

2. *Deputy County Manager Steven Lynne withheld information regarding audit requirements from RCLC in 2013.*

An item listed on the February 1, 2013 RCLC Executive Committee meeting agenda, under the "ED Office Update", includes "reviewing any state auditing requirements". The RCLC's February 15, 2013 regular meeting agenda lists a discussion item by its then-executive director Sapien, entitled "DOE Funding; Accounting Process and State Audit Requirements." Unfortunately, the minutes of this meeting are not included on the RCLC website and the focus of that discussion is unknown.

On the same day (February 15, 2013), Steven Lynne emailed the OSA asking to amend the LAC audit contract to engage the County's Auditor to perform a Tier 5 Agreed-upon Procedures (AUP) for the benefit of RCLC (email to Frank Valdez dated 2/15/2013). The OSA responds to this request on February

20, denying that request and instead stating that the RCLC is itself a local public body and therefore must engage such services themselves (OSA letter dated 2/20/2013).

There are no agendas nor minutes listed on the RCLC website between February and August 2013 so it is uncertain if this information was conveyed to the RCLC. The concurrence of the agenda items, Mr. Lynne's inquiry, and the OSA response, however, do suggest a link between these issues, and Mr. Lynne's inquiry is certainly focused upon acquiring the exact information necessary to the RCLC's operations. I find it difficult to conclude, as A+C does, that based upon the lack of available supporting information, such information was not provided to RCLC (A+C, p. 14). There were obviously several inquiries into / conversations regarding the RCLC's audit-related requirements during this time frame, and I believe it is more appropriate to conclude that these concurrent inquiries/conversations suggest a robust discussion of the related issues.

The OSA Special Audit does note that RCLC's budget was not substantial enough to even require agreed-upon-procedures (a lesser audit procedure explained in the next section) until the FY14 fiscal year (OSA, p.4). Based upon this knowledge, one can infer that those persons discussing the various "State Audit Requirements" had either forgotten about this issue or had personally moved on by the time that such actions were required, which would have been over sixteen months after the discussions noted above.

3. *Deputy County Manager Lynne incorrectly advised the RCLC of its obligations under the State Audit Act.*

Page 14 of the A+C report states:

"Contrary to the State Auditor's guidance in the State Auditor Letter, Deputy County Manager Steven Lynne *specifically advised* the RCLC Board during its August 11, 2017, Board Meeting that RCLC was not subject to the Audit Act."

The minutes of the RCLC meeting from that same date state:

"Mayor Gonzales – Is the RCLC subject to any audit regulations? Steve replied no. Due to the small size of the Coalition, a full audit by Los Alamos County is not required. The current audit role has a tiered approach."

In analyzing the statement in the minutes, one must first accept that minutes do not typically represent verbatim conversations. I would further propose that if the individual taking minutes is unfamiliar with the subject matter, the illustrated conversation may not capture the full context of what was discussed. What is represented, however, suggests a completely different conversation than the conclusion that A+C presents.

To explain, as indicated in #2 above, the OSA identified that RCLC was subject to Tier 5 AUP through their letter dated February 20, 2013. For an accountant (and Mr. Lynne has been a CPA for greater than 25 years), an "Audit" is a term of art. There is a distinct difference between AUP and an Audit – with a Tier 5 AUP being a lesser involved review of financial statements. Given this understanding, one can infer from the conversation represented in the minutes that rather than advising Chair Gonzales that an audit is not needed, Mr. Lynne is correctly restating the information provided in the 2013 OSA letter in which it states that RCLC is subject to a Tier 5 AUP. It is understandable that someone who is not an accountant would misunderstand this exchange, however the A+C statement that Mr. Lynne

*“specifically advised the RCLC Board...that it was not subject to the Audit Act”* appears to be a gross misrepresentation of the conversation as included in the minutes.

4. *County officials acted to recharacterize reimbursements made to RCLC in order to minimize the appearance of any improprieties.*

It has been noted that during the fall of 2017, RCLC Treasurer Roybal identified some concerns regarding the travel reimbursement practices of the Coalition. In the subsequent months, an inquiry into these practices identified actions that were inconsistent with RCLC policies, resulting in a February 1, 2018 email from Deputy County Manager Lynne to the RCLC board in which he stated that LAC practices appeared to have not followed the RCLC policies and that the LAC County Manager had initiated an internal review of the RCLC reimbursements. An email from myself to LAC CFO Perraglio, also dated February 1, 2018, requested such a review and established the parameters for this review.

Pursuant to my request, personnel within the LAC Finance department initiated a review of RCLC expenditures and provided a comprehensive accounting for the payments made on behalf of RCLC. It is important to note that at this time, the base assumption was that any discrepancies found would be due to the inappropriate application of LAC’s travel policy instead of RCLC’s. The subsequent report was focused on such a comparison, and the conclusions and recommendations were similarly provided in this context. No further action was taken by LAC with respect to these reimbursements, but instead the LAC Finance Department’s review was presented to the RCLC board at its February 26, 2018 meeting. The RCLC Board, at its March 16, 2018 meeting, then directed LAC to pursue the reimbursement of any improper expenditures, pursuant to the calculations presented in this LAC review.

I find it difficult to understand the assertions by A+C that such efforts were an attempt to recharacterize any expenditures or to correct any improprieties (A+C p.26). Instead, the staff in the Finance department did as I directed – performed an analysis of these expenditures and provided a report. Any actions after that were taken at the direction of the RCLC Board, in a publicly noticed and open meeting. While I accept that such actions taken were ultimately inappropriate given the now-identified improper RCLC travel policy, I do not accept that LAC staff were actively seeking to correct or minimize the extent of such improper reimbursements as part of the process of their review.

5. *Steven Lynne acted to alter the RCLC Travel Policy and the Executive Director’s contract in order to cover up prior mistakes within the reimbursement process.*

Speculation on this matter fails to recognize that several individuals - including the RCLC Treasurer and Executive Director - were discussing the emerging identification of problems with the RCLC reimbursement practices when the recommendations for change were made. It is important to note that the recommendations made by Mr. Lynne were never taken to the RCLC board, as would have been required for any change, and that therefore no actions were ever taken. Even if such recommendations had been considered (and/or approved) by the RCLC board, such action would not have erased the existing inappropriate reimbursements.

My review of the proposed changes highlights that several of the recommendations were focused on correcting identified internal inconsistencies within the existing documents. For example, the

problematic RCLC Travel Policy states in Section VII.a.1 that “no receipts are required” for meal expenses, whereas in Section IX.a states that “itemized receipts are required for lodging, meals, and other miscellaneous incidental costs.” One recommendation made by Mr. Lynne was to eliminate the requirement for receipts under section IX, a recommendation that makes sense if the RCLC wished to continue to reimburse on a per-diem basis (as provided in Section VII), as per-diem payments are by definition a flat rate that would not change even with the production of a receipt. From an operational perspective, allowing only per-diem reimbursement has the potential for eliminating many of the issues that have been identified in this saga, yet this potential correction was never considered by the board.

Similarly, within the existing ARC contract, there were noted “reimbursables” in Attachment A to the contract, yet these same “reimbursables” were illustrated as being provided within the firm’s compensation. By suggesting the removal of Attachment A, I understand that Mr. Lynne was attempting to correct this inconsistency, one which was specifically discussed by LAC staff regarding how to accommodate the varying reimbursement requests during its later review.

Assuming that either of these actions (as well as the others listed on pages 33-34 of the A+C report) constituted an attempt to “minimize the extent of improper reimbursements” (A+C, p.33) reveals a lack of consideration of the operational problems with the current policy and agreement which Mr. Lynne appears to have been attempting to correct. For these reasons I do not concur with A+C’s insinuation of improper intent with regard to the suggested changes that emerged at the time of the discovery of inappropriate expenditures. In fact, several of the actions recommended by Mr. Lynne as part of this exchange were ultimately incorporated into the newly approved Executive Director Services contract with CPLC (successor to ARC) as a means to prevent a recurrence of improper travel/reimbursement procedures going forward.

*6. The investigations found that over \$50,000 in improper reimbursements were made during the subject time frame.*

There are many different numbers represented in the two investigative documents (A+C and OSA), and given the relatively short time frame I was given for a response I have not been able to accurately address each expenditure, however I will attempt to provide commentary on several specific issues as they relate to the extent of any reported improper/over expenditures.

The OSA Special Audit summarizes the extent of improper reimbursements as being \$51,519.45 over a period of July 1, 2014 – June 30, 2018 (OSA finding #2018-18), however the Special Audit does not detail why each expenditure is considered improper, but broadly states that the listed expenditures may have violated the state’s Anti-Donation Clause.

One listed improper expenditure was a \$10,000 payment to Crescent Strategies for strategic planning, for which I did find that the minutes of the February 12, 2016 (mistakenly labeled February 12, 2015) RCLC Board meeting indicate approval of that exact amount, albeit the approval is for the services of David Abelson, LLC. David Abelson is the principal of Crescent Strategies and had previously performed services for the RCLC using that name. He apparently submitted his invoice on the Crescent Strategies letterhead – rather than the name specifically approved as part of the RCLC board action, and such action may have prompted the OSA’s decision to list this expenditure as improper. I recognize this inconsistency yet feel that it is an error that is not related to the issues at hand, and its inclusion in this total serves only to exaggerate the extent of any improprieties involved in the current discussion.

The other large item included in the \$51k number is an apparently miscoded payment to the Energy Communities Alliance in the amount of \$5,000 for annual dues. Both the RCLC and LAC are members of this organization, yet this specific payment was in reference to LAC dues and was inappropriately coded to draw from the RCLC account. This type of mistake, while not common, does occur and I find it understandable that staff could have entered the wrong account number for payment given that both entities made payment to the same organization. Once identified, the amount was reverted to the RCLC. Again, I find that this error is not representative of the focus of the current discussion.

The A+C report includes a total number of \$34,268.84, which is similar to what the OSA reports after the removal of the two aforementioned items, however it is unclear whether the two noted amounts represent the same time frame. More important to the discussion, however is that the relative scale of reported improper reimbursements is dependent upon how it is presented. Both reports appear to have labeled all reimbursements made under the inappropriate travel policy as improper and chose to report the total of all such expenditures. This choice serves to inflate the reported total above what may have been considered as proper if the RCLC had adopted a travel policy consistent with the State Travel Policy. Granted, not all reimbursements included in either the OSA or A+C report would be travel-related, my point is that the extent of any impropriety has not been fully defined.

And finally, at least one reimbursement reported in the A+C document - \$782.00, January 11, 2018 Delancy Street Dinner attended by Councilor Chandler (A+C p. 31) – has been identified as not having been reimbursed to ARC. I am aware of several additional such examples and the inclusion of these amounts again overstates the extent of improper reimbursements and suggests a more comprehensive review of payments may be necessary before any conclusions regarding the amounts of improper payments may be drawn.

### **Who approves?**

One of the most obvious means to have prevented any violations of policy or law is adequate review of any expenditures by the appropriate persons. There are two individuals to whom such responsibilities have been assigned formally – the RCLC treasurer as indicated in the organization's bylaws and the RCLC Executive Director as indicated in the associated contract for services. Both of these individuals have attempted to discount their responsibilities by suggesting they were relying upon LAC staff (Bosshardt and/or Lynne) for such review, however there is no documentation that either had the authority/ability to delegate their identified responsibilities.

The A+C report appropriately recognizes that the process whereby receipts were submitted to the County before they were forwarded to the RCLC treasurer *induced reliance* upon the County for the review of such requested reimbursements (A+C p.13). This is a significant issue central to the problems that have been identified, and the practice cannot be fully explained. I will address several factors that I believe contributed to the lack of this expected oversight by LAC in the following sections, as it appears that such practices evolved over time and took on different forms dependent upon who occupied each respective role.

### **What did happen?**

My goal - since these issues were first reported to me - has been to ascertain the underlying reasons that such violations occurred, to address any misconduct associated with these violations, and to

prevent such issues from recurring. The foregoing discussion, as previously mentioned, is no excuse for what did occur, however it is meant to limit the discussion to the areas where violations actually occurred. In addition, my comments below are intended to focus on LAC related issues (and are specifically oriented towards the inquiries that were identified for the A+C investigation).

There appear to be several potential contributors to the lack of recognition of an inappropriate travel policy and other reimbursements, including:

- 1) The travel policy was derived from that of another similar agency, inducing assumptions of adequacy
- 2) There was no legal review of the travel policy (or any others) as the RCLC has never employed its own counsel (and the various counselors for its member agencies have typically expressed ethical issues when asked to opine on an entity other than their own client)
- 3) The JPA identified the County as fiscal agent but no additional definition of duties/expectations was provided
- 4) The RCLC has no policy relating to non-travel reimbursements or other financial procedures
- 5) The only formal members of the RCLC are elected officials who typically do not perform similar administrative review or policy development within their own entities
- 6) There has been no specific training of RCLC Board members with respect to their duties
- 7) The focus of the RCLC and the work performed by the individual executive directors has evolved over time, resulting in an increased propensity for travel that exposed the organization to such issues
- 8) The contracted entities providing executive director services have predominately had histories focused on marketing or other services not directly related to governmental administration
- 9) The two LAC Deputy Managers assigned to assist the RCLC have each only worked for only one governmental entity within New Mexico – LAC - and therefore were familiar with the practices outlined in the adopted Travel Policy (as they were similar to LAC's travel policy) and not as familiar with the State Law nor how it differed from LAC practices
- 10) Many of the identified improper reimbursements (with the exception of alcohol and entertainment) would have been allowed if RCLC was following LAC policies

And, as I believe is most relevant:

- 11) Each party with responsibility for expenditures inaccurately assumed that another was performing a comprehensive review of these expenditures

There is no doubt that many of the practices of the RCLC with respect to reimbursements for travel, meals, and certain events violated state law. What is not apparent is whether the members of the RCLC, their staff, or Los Alamos County officials (elected or appointed) were aware of these violations and/or intentionally acted in defiance of state law.

### **Expertise**

When the RCLC was initially established, LAC staff were asked to assist in coordinating meetings, their agendas, and any general operational needs. Such duties included developing RFP's for executive director services, providing advice on a wide variety of administrative issues, and essentially acting as executive director whenever such services were not available. LAC staff did attend most RCLC Board

meetings, answered a variety of questions when asked, and did report on the balances within the RCLC account. This reporting of financials at board meetings has been characterized as another example of LAC's de facto fiduciary role, however the suggested correction (RCLC Treasurer making the report) would have still required LAC's provision of the same information to the Treasurer, given that as fiscal agent LAC produced such reported financial balances.

The RCLC is now on its fifth executive director services contract - in six years of existence - and therefore the Coalition has not benefitted from continuity nor longevity in its director-level staff. As stated previously, the various contractors and their employees who have served in this role have not possessed significant prior experience in governmental administration. This fact led to assumptions (and direct requests) that LAC staff assist in each executive director's familiarization with their roles.

Similarly, the board consists of elected officials from nine separate local governmental entities, including cities, counties, an incorporated county, and pueblos. Given that there are election cycles for each of these member agencies, the representatives from each entity have changed over time, giving rise to inconsistencies in oversight and a lack of longer term vision regarding the RCLC's practices and policies.

The A+C report states that "RCLC is subject to the same restrictions imposed upon the individual JPA members" (A+C, p. 4), however this is simply not true. Within the nine separate public bodies there are statutory municipalities (2) and counties (3), a home rule municipality, an incorporated county, and two pueblos. Not only does each differing organization have different rules to abide by, in situations where state law supersedes local authority, the locality still has the ability to be more restrictive than state law. The collaborative effort created by the JPA in this case is therefore a different animal from what many of its members may be familiar, and this fact appears to have been another contributor to the inefficient oversight of RCLC expenditures.

### **Looking in the mirror**

Important to Council's concern are the specific actions by LAC officials, and I will attempt to focus the discussion on such issues as follows. In order to do so I will address the five requests that initiated A+C's investigation and which are listed in their report.

1. *Los Alamos County memo "Regional Coalition of LANL Communities (RCLC) Review," dated February 21, 2018 identifies serious expense charge improprieties by the RCLC, which may include improper gifts of meals, sporting event tickets, and alcohol provided to officials of Los Alamos County and others. The investigation should determine the nature and extent of any improper items of value or prohibited items accepted by current or former elected or appointed officials of Los Alamos County.*

To address this request, one must first consider the role/capacity in which any LAC official was acting if they were in receipt of any meal, ticket, alcohol, or other gift. When an LAC official (elected or appointed) is acting in their official capacity, they are subject to LAC policies and procedures. They would also be subject to state (or federal) laws to the extent that they apply, yet certain state laws do differ for an incorporated County in relation to the other RCLC member entities. Their actions must also be considered in the appropriate context, an issue which I will elaborate on in subsequent paragraphs.

The LAC Travel Policy differs from the State's Travel Policy in a number of areas. Suffice it to say that the LAC policy is typically more liberal, both in activities eligible for reimbursement and in the applicable rates, yet both alcohol and entertainment are similarly prohibited from reimbursement. This more



liberal policy is allowable as LAC is designated as a “home rule municipality”, a fact which allows the organization to adopt its own policies inconsistent with certain state laws.

LAC also has in place a “Discretionary Expenses” policy which provides for:

“Reasonable expenses for meals or refreshments during meetings, either inside or outside of the County, when county business is discussed or conducted. Meetings may or may not be open to the general public. Expenses for meals shall be reimbursed at actual amounts (including tip).”

It is worth noting that the discretionary expenses policy also precludes alcohol and entertainment expenses.

It appears that this discretionary expense policy may be the source of much confusion for LAC officials when attending RCLC events, as anyone familiar with this LAC policy could fail to acknowledge that many of the identified meals that would have been appropriate under LAC rules were improper per RCLC policies. This statement refers both to the participants at events and to those reviewing receipts, and gets even more difficult when an LAC official, who is not an RCLC member, attends an RCLC event yet is being reimbursed by LAC.

In addition, for items not covered by our discretionary expense policy, one must define a gift and any limitations upon such gifts in order to analyze any impropriety. State law typically limits gifts for public employees, including meals and refreshments, to no more than \$100 (Chapter 10, Article 16), while LAC rules typically segregate gifts (benefits) from meals and apply a limit of \$50 (LAC Code, Section 30.1). The consideration herein would therefore be, absent any more restrictive RCLC policy, which standard should apply to LAC officials attending RCLC events. To analyze the request as stated, one must differentiate between the role of an event attendee/ potential recipient of a gift and the responsibility for managing RCLC funds.

The request above therefore has different answers depending upon the perspective. From the perspective of RCLC, I believe the answer is yes that LAC officials received meals, tickets, and alcohol that were improperly reimbursed using RCLC funds. The most obvious issue of impropriety is in the receipt of reimbursement of the expenses, and the questioned reimbursements were not paid to LAC officials.

2. *The investigation should determine whether any current or former elected or appointed official of Los Alamos County double billed taxpayers by accepting meals paid for by RCLC while also claiming per diem reimbursement for meals expensed from the RCLC, Los Alamos County, or any other governmental funding source.*

A+C states quite clearly that they found no evidence of such double reimbursement (pp.31-32) and even implies that LAC may have not been reimbursed for certain eligible expenses by RCLC. Given that my review affirmed that LAC officials were typically reimbursed by LAC, and then LAC sought reimbursement from any other relevant agency, I have nothing further to add regarding this request.

3. *The investigation should determine whether any current or former elected or appointed official acting on behalf of Los Alamos County as Treasurer of the RCLC or otherwise signed approval of improper expenses incurred by RCLC.*

Pursuant to the A+C report, Councilor Kristin Henderson did approve “minor improprieties such as violations of the Per Diem Act limits by a few dollars, and for board meeting meal purchases” (p.32), and from my perspective this impropriety was related to the preceding discussion regarding the difference between LAC, RCLC and State policies. In relation to both Mr. Bosshardt’s or Mr. Lynne’s “approval” of improper expenditures, A+C again states that their practices inferred approval, but the language presented does not state this directly, and instead acknowledges their submission to the RCLC treasurer for his/her approval. The prior discussion regarding formal authority is relevant here, however I have noted and accept that Bosshardt/Lynne’s actions led others to rely upon them for review of RCLC expenditures pursuant to RCLC policies – and that such parameters were not applied. I find that a further note regarding the choice of words used by Jacqueline Salazar when forwarding RCLC reimbursement requests to the LAC finance department is not relevant nor is it representative of any intentional impropriety.

4. *It appears from the original audit, from emails sent by elected and appointed Los Alamos County officials, and from media reports that several members of the Los Alamos County Council and County Staff were intimately aware of the severity and extent of the allegations of impropriety at the RCLC, yet these improprieties have not been disclosed to the full County Council or the public by these officials by either publishing the audit report, by report of the Council RCLC Liaison, by report of the Council Chair, or by report of the County Manager; although ample opportunities to do so have come and gone. The communications that have been forwarded to the full County Council by officials in emails have been misleading or incomplete. The full County Council and the citizens of Los Alamos County should not have to learn about this situation piecemeal, through the media. The investigation should consider whether the communications of Los Alamos County officials in this matter have been intentionally misleading with the purpose of concealing misconduct.*

A+C’s response to this request is to twice state that there was no evidence nor indication that any County Official intentionally attempted to conceal misconduct (A+C, p.33). For perspective, I believe that not all information on the relevant issues was known at the time of the first media stories regarding this subject, and these stories were fueled by somewhat speculative information provided by outside groups. I further recall that both the Council liaison and appointed officials that were knowledgeable of the circumstances were intending to allow the RCLC to discuss the issue before reporting it to others – an act which is reasonable given the lack of clarity at the time but one which is subject to challenge by others with related responsibility such as the elected representatives of the RCLC funding agencies. For whatever reason, and in the absence of any evidence regarding this request, A+C chose to use this request to propose that other actions by LAC staff were improper (i.e. proposed changes to the travel policy and executive director agreement, county financial review “recharacterizing” expenses – A+C, pp. 33-34), yet they again fail to draw any conclusions regarding these actions. I have previously addressed my perspective on these allegations in the initial sections of this document and therefore will not repeat such discussion here.

5. *Finally, the investigation should conduct a review to determine if Los Alamos County internal controls are sufficient to safeguard against similar improprieties or misconduct involving elected or appointed officials of Los Alamos County in cases where Los Alamos County provides funding to groups other than RCLC.*

This is an interesting and very appropriate request, and I personally believe it is central to diagnosing what went wrong with respect to the RCLC reimbursements. LAC has recently received three awards from the Governmental Finance Officers Association (GFOA) – for its Budget, CAFR, and PAFR from the prior fiscal year. LAC has received similar awards for over 25 consecutive years (excluding the PAFR which is a relatively new document but one which has received such awards for all three years that it has been produced). Based upon these reviews and coupled with our annual audits which typically express few or no findings, I would normally answer yes to the inquiry noted above. This experience has altered my perception, however, and the following will discuss what I have gained from such a review.

As previously mentioned, I believe that those with the formal duty to manage RCLC funds failed to act responsibly with respect to reviewing RCLC expenditures. As I have also acknowledged, I believe that the evolution of the RCLC induced a reliance by its Board Members and Staff upon LAC to monitor such expenditures. Unfortunately, a combination of similar reverse expectations coupled with a lack of understanding of non-home-rule limitations caused my two Deputy Directors to miss their opportunity to prevent these issues. Had any one of these three positions – RCLC Treasurer, RCLC Executive Director, or LAC Deputy Manager – performed as I anticipated these issues would not have arisen. It is an unfortunate perfect storm of inaction that led to the situation at hand.

From an internal control perspective, I have determined that the expenditure of RCLC funds did not follow normal LAC processes, and that fact likely accounts for the vast difference between our typically stellar financial accounting procedures and what happened in this instance. There are a number of review points for most LAC expenditures, with department heads being the normal approving authority. Our finance staff do typically review expenditures with an eye towards LAC policy – with specific attention to travel. For external groups such as RCLC, their policies are largely unknown by our Finance staff and therefore the reliance for appropriateness was placed upon the “approving” department head – in this case one of two Deputy County Managers. Based upon my review, I believe that the combination of unfamiliarity with another agency’s policies coupled with the authority of a Deputy County Manager’s involvement resulted in an acceptance of payment for items that normally would have been flagged within the LAC Finance Department.

A single example is difficult to rely upon for such an analysis, so by way of comparison I also considered what other fiscal agent relationships we operate at present. Except for one other example, the majority of any relationships in which LAC would be deemed “fiscal agent” are those in which we have a direct involvement – JJAB, Senior Center, LEDA – and they are more comparable to pass-through grants than fiscal agent relationships. The one other relevant example would be LAC’s fiscal agency for the Energy Communities Alliance (ECA), which is a federally-funded, nationally-focused 501c(3) for which an LAC representative has always held the position of Treasurer.

My investigation of LAC practices related to ECA mirror many of the same concerns as with RCLC. That is not to say that I found anything out of order, but our practices do involve a similar reliance upon the organization’s executive director and treasurer which creates concern that a related event could occur. ECA also operates via a different set of policies and procedures, the Treasurer is the designated approver of expenditures, the individual approving the expenditures is senior in our organization, and generally our staff provide “banking” services without internal review. These facts caused me to already speak with ECA staff and advise them to find an alternate fiscal agent and/or procure such services on

the open market, and I know that such a change is scheduled for discussion on their next board agenda scheduled for September 11.

### **Conclusion**

The problems that are illustrated above are the result of failures at several levels, within numerous organizations, and involving a variety of people over time. Prevention of similar events will require the establishment and communication of clear RCLC policies, education of those responsible for their enforcement, and diligence in the supervision of any related actions. I understand that RCLC has already addressed several of the concerns through the changes it has made to its new Executive Director agreement, and is considering hiring its own accountant for processing receipts and expenditures, however it should also follow up on prior discussions regarding the hiring of legal counsel, adopting financial policies, updating the original JPA, and pursuing an MOU to define the role of its fiscal agent. Any pursuit of reimbursement for the improper expenditures is under the purview of the RCLC board, and I will defer to their consideration of this subject.

Throughout my review I found myself attempting to separate the media stories from what evidence is available, and there are many areas where the public perception may presently differ from the issues that I discovered. One such example has been the focus on alcohol purchased with public funds. The documentation for reimbursement requests that were within LAC's possession (and upon which any approvals were based) contained only one receipt indicating the purchase of alcohol. This one approval was definitely a mistake borne by all parties involved, however as such it is not indicative of the typical actions of LAC personnel who reviewed the numerous reimbursement requests. The fact that it has dominated numerous news articles heightens public perception of any improprieties, however my efforts towards the production of this response have attempted to focus on the available evidence rather than any conjecture.

The LAC financial review performed in February of this year has already offered several recommendations that would act to prevent a recurrence of many concerns previously expressed (Perraglio, February 21, 2018). This report, however, is primarily focused on LAC concerns, and while there are likely other factors that need RCLC's attention, my comments will focus on corrective actions to protect LAC from becoming involved in a similar situation in the future.

In order to prevent a recurrence of the various issues noted below, there are several recommendations that I propose for consideration, as follows:

- LAC Council should consider how its participation on external boards exposes the county to liability, develop a policy that defines what is appropriate activity relating to such external board participation, and train its officers and employees to that policy.
- Any fiscal agent relationship that LAC enters into should include an associated agreement that details what services/expectations are entailed.
- All current fiscal agent roles should be reviewed for appropriateness and consideration should be made as to whether to continue with these relationships.
- Finance department personnel must be reminded and retrained to insure that all expenditures processed by the department receive the same level of review. In the event that an external agency is involved which possesses alternate policies and/or procedures, then LAC should confirm through an MOU or similar agreement what its review process will entail, and should

consider whether LAC can accommodate any differences in practice that such alternate policies would require.

- Any personnel, whether elected or appointed, that act in a fiduciary role for an external agency should recuse themselves from the related LAC review process.
- LAC staff should never be placed in a position of providing services to another entity for which there is no direct supervisory relationship.

As has been described by both the A+C and OSA reports (and elaborated upon in this document), there were a number of areas where either the lack of policy or the presence of inappropriate policies resulted in actions that were not in compliance with state law. There were similarly individuals in positions of authority who chose not to apply the existing policies, when doing so would have greatly reduced the overall level of inappropriate expenditures. And finally, there was no periodic, independent review of the financial activity of the RCLC, which if such had been performed I anticipate that the majority of any resultant improprieties would have been identified and corrected much earlier in the organization's development.

The structure and history of the RCLC also appears to have contributed to the lack of oversight of this organization, and while not an acceptable excuse my focus has been to identify the issues that contributed to any failures. In 2013 the issue of Audits/AUP appears to have been a topic of discussion. Part of that conversation identified that LAC could not provide such services, but instead RCLC should have obtained these services independent of LAC. Why RCLC chose not to pursue this route is not apparent when reviewing the organization's minutes, and therefore it is not possible to explain why nothing occurred. The need for legal services and financial policies were identified prior to the conversation regarding Audits/AUP, yet no action was taken on these items either. Whether the Board anticipated that the executive director would pursue these issues (or if LAC would as has been the more recent suggestion) is unknown, yet it appears that these issues became lost as the RCLC experienced turnover amongst both staff and Board members.

Whether or not LAC continues as fiscal agent for the RCLC is a conversation that both the Council and RCLC Board should approach. As I stated earlier, I am already considering LAC's role as fiscal agent for ECA and anticipate that removal of this responsibility is appropriate. Beyond any specific fiscal agent relationships, this review has also caused me to consider how LAC's participation in other collective organizations could expose LAC elected or appointed officials to similar liabilities. It is not uncommon for LAC to participate in such organizations, either as board members or in supporting roles, and while such participation often supports broad LAC goals, I believe that a review of our authorities/actions with respect to such participation is warranted. This review should then inform any necessary policy adoption that could address our exposure, and once adopted such a policy would need to be presented to any future LAC officials involved in external organizations as a part of their duties.

We must not lose sight of the benefits of collaboration, and I am not recommending that we simply withdraw from such relationships. It is notable to consider how other organizations are structured, and upon what established practices we may rely to insure that their operations do not negatively affect our own. My perspective on this matter is that overall, we rely upon the governing board of the organization and/or their executive director to insure compliance with any laws, regulations, or policies that exist today. It is inconceivable that LAC will be able to monitor not only its own operations, but also that of every entity with which we participate, as suggested by A+C (A+C, p. 35). We must, however,

consider if the organizations with which we collaborate have in place the necessary structure and controls to insure regulatory compliance, including the necessity of periodic external review of each entity's actions to insure such conformance.

I anticipate specific interest in regard to LAC employees, and what consequences they may face for their involvement in the actions surrounding these events. As I have described previously, there were failures on many levels, some of which were the result of unclear authorities and expectations, yet at the same time there were opportunities for action which could have prevented many missteps. I will not disclose any specific personnel/corrective actions in this forum, however please know that the actions of each of the appointed personnel noted as having a role in this affair have been appropriately addressed and that I do not anticipate a recurrence of these issues from LAC personnel. It is also worth noting that many of the personnel (both elected and appointed, and including RCLC and LAC representatives) who may have had a role in the highlighted issues are no longer with either entity - and are beyond any authority that I may possess to address their actions.

With respect to any LAC officials' actions, I have stated previously that I have not discovered any evidence of persons attempting to mislead or obscure their actions and I do not believe that the misunderstandings regarding the RCLC Travel Policy resulted from intentional efforts to do wrong. I anticipate that my comments illustrating the differences in perspective (and thereby accountability) for certain improprieties may require deliberation, and I will be available to explain my thoughts on this matter (or any others identified in this response) as necessary.