

# OFFICE OF THE STATE AUDITOR



**Regional Coalition of LANL Communities**

**Special audit**

**For the Period of July 1, 2014 through June 30, 2018**

## **Regional Coalition of LANL Communities**

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## **Regional Coalition of LANL Communities**

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### **OFFICIAL ROSTER**

#### **COALITION COUNCIL**

|  |                   |
|--|-------------------|
| Mayor Alan Webber and Former Mayor Javier Gonzales | City of Santa Fe  |
| Commissioner Barney Trujillo                       | Rio Arriba County |
| Commissioner Henry Roybal                          | Santa Fe County   |
| Councilor Chris Chandler                           | Los Alamos County |
| Representative Ron Lovato                          | Ohkay Owingeh     |
| Mayor Javier Sanchez and Former Mayor Alice Lucero | City of Espanola  |
| Commissioner Mark Gallegos                         | Taos County       |
| Councilor Darien Fernandez                         | Town of Taos      |
| Lt. Governor Ward Yeppa                            | Jemez Pueblo      |

#### **COALITION OFFICIALS**

|   |                    |
|---|--------------------|
| Andrea Romero Consulting, LLC and<br>Formerly JLH Media, Inc. | Executive Director |
|---|--------------------|

## **I. BACKGROUND**

On October 13, 2011, New Mexico Department of Finance and Administration approved a Joint Powers Agreement (JPA) authorizing the creation of the Regional Coalition of Los Alamos National Laboratories (LANL) Communities (hereafter “RCLC”).

The JPA provides that the purpose of the RCLC is to promote economic development, including new missions for the LANL; advocacy of long-term stable funding of LANL missions; promotion of new and diverse scientific endeavors at LANL focusing on employment and educational opportunities; support of business incubation and business development on non-federal lands; support of workforce development and training and promotion of awareness of LANL and its contribution toward and impact on the region. The RCLC was also formed to engage in promotion and coordination of environmental protection including clean-up activities and site maintenance; planning activities and prevention of future contamination; and evaluation of cleanup, planning, implementation and oversight for protection of workers and neighboring communities.

The JPA also provides that the RCLC will participate in regional planning and evaluate policy initiatives and legislation, to include participation in public comment, outreach initiatives and advocacy in state and federal legislative process and administrative proceedings.

The Regional Coalition is comprised of elected and tribal officials from the City of Española, County of Los Alamos, County of Rio Arriba, City of Santa Fe, County of Santa Fe, Pueblo of Jemez, Ohkay Owingeh Pueblo, Town of Taos, and the County of Taos.

The JPA provided that Los Alamos County, a member entity, would serve as the fiscal agent for the newly formed entity. On February 20, 2013, the Office of the State Auditor (OSA) notified the RCLC that the entity met the definition of a “special district” and that the entity was subject to the Audit Act under the monetary tier levels provided for “local public bodies.” The records indicate that RCLC acted in limited form with a budget of less than \$50,000 annually from its inception through June 30, 2014. Under the Audit Act, the entity did not become subject to audits through an agreed-upon procedures process until its budget exceeded statutory thresholds.

The entity began to receive sufficient public funds in FY2014 to require it to have annual audits under the Audit Act. Beginning in FY2014 (November 2013), the RCLC Board entered into a contract with JLH Media, Inc., a New Mexico consulting firm to provide Executive Director Services through November 2015.

Under the terms of the contract, the Executive Director’s services were subject to the Travel Policy adopted by the RCLC Board. In August 2015 (FY2016), the Executive Director applied and received a grant from the U.S. Department of Energy (DOE). The DOE Grant provided \$500,000 in funding for a five (5) year period (July 1, 2015 to June 30, 2020). Under the Grant, the RCLC receives \$100,000 each fiscal year.

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In March 2016 (FY2016) the RCLC Board advertised and selected a new company to provide Executive Director Services. Andrea Romero Consulting, LLC became the new contract Executive Director. Ms. Romero had been employed by JLH Media, Inc. the previous Executive Director.

Since FY2015, the Regional Coalition of LANL Communities has received \$100,000 annually in restricted funding from the DOE Grant, as well as approximately \$97,000 annually from its member entities. Its average budgeted expenditures are approximately \$189,500 for FY2015, FY2016, FY2017 and FY2018. Based on these amounts and the RCLC's formation as a JPA entity, the RCLC is subject to the Audit Act and should have submitted annual audits to the OSA for FY2015-2017.

On January 22, 2018, the ("OSA") received a letter from a member of the public alleging misuse of public funds by the RCLC. The OSA initiated the process set forth in the Audit Rule for investigation of complaints received. Subsequently, the OSA received another letter of concern that had been sent to the RCLC's Board Members, again alleging misuse of public funds.

In March 2018, Los Alamos County, the fiscal agent for the RCLC, provided the OSA with an internal audit report in response to the allegations sent to the RCLC Board. The internal audit report appeared to support some of the allegations contained in the complaint. The OSA conducted additional fact finding procedures to determine if the transactions were in compliance with relevant laws, regulations, policies, procedures, the New Mexico Procurement Code and agreements applicable to the RCLC and its member entities.

The OSA's fact-finding procedures led to the OSA designating the RCLC for a Special Audit. Under § 12-6-3(C) NMSA 1978 ("Audit Act"), the State Auditor, in addition to annual financial audits, "may cause the financial affairs and transactions of an agency to be audited in whole or in part." Additionally, under 2.2.2.15 NMAC ("Audit Rule"), the State Auditor may initiate a special audit regarding the financial affairs and transactions of an agency or local public body based on information it receives.

On March 12, 2018, the OSA formally designated RCLC for a special audit. The scope of work was agreed upon and set forth in the contract dated April 27, 2018.

The OSA notes that, in addition to this Special Audit, Los Alamos County entered into a contract with the Adams + Crow Law Firm, to "conduct an investigation into matters related to alleged administrative misconduct of County employees and County Officials, with respect to reimbursements and expenditures associated with the Regional Coalition of LANL Communities, and any additional matters related thereto."

## **II. EXECUTIVE SUMMARY**

The Internal Audit Report produced by Los Alamos County raised significant concerns of non-compliance by the RCLC with state law. That Report found that Andrea Romero Consulting, LLC had been reimbursed \$2,246.90 more than should have been allowed under the RCLC's adopted Travel Policy. In April 2018, the Andrea Romero Consulting, LLC reimbursed the Coalition for that amount. The report also found that two of the member representatives of the RCLC had not been properly reimbursed resulting in underpayments of \$411.54 and \$425.43.

The Scope of Work for this Special Audit provided that the OSA would review specific transactions to determine if they were compliant with relevant laws, regulations, policies, procedures, the New Mexico Procurement Code and agreements applicable to the RCLC. Additionally, the OSA considered the risks of potential fraud, waste or abuse and addresses the need for additional internal controls.

The Special Audit scope included a review of:

1. Detailed audit of all payments since March 1, 2015 paid to ANDREA ROMERO CONSULTING, LLC for compliance with duly adopted RCLC Board policies, contractual agreements between the parties and applicable procurement code.
2. Detailed audit of all payments for FY 2015, 2016, 2017 and 2018 for all payments of reimbursements to any Board member or member entity of the RCLC for compliance with duly adopted RCLC Board Policies, Joint Powers Agreements and applicable procurement codes.
3. Audit to determine whether ANDREA ROMERO CONSULTING, LLC or any Board member or entity received reimbursement for travel or per diem which represented a double reimbursement, including, but not limited to, whether ANDREA ROMERO CONSULTING, LLC was paid twice for travel with two staff members attending the same meeting or event; and whether any Board member or entity received reimbursement from the RCLC, in addition to any other entity.
4. Audit of the Request for Proposals No. 2016-01, the procurement process and all resulting contracts between RCLC and ANDREA ROMERO CONSULTING, LLC for compliance with the Joint Powers Agreement, duly adopted Board Policies and applicable procurement code.

The RCLC's fiscal agent, Los Alamos County, provided documentation of RCLC's expenditures and revenues for the conduct of the Special Audit. The OSA also obtained additional documentation from certain member entities and received further information as part of the complaints that were filed with the OSA's Special Investigation Division.

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The Special Audit makes a number of findings related to the RCLC's reimbursements paid to JLH Media, Inc. and Andrea Romero Consulting, LLC which violate the Per Diem and Mileage Act, § 10-1-1 et seq. NMSA 1978, as well as NMAC 2.42.2.1 regarding the payment of mileage and per diem to public officials. Additionally, the Special Audit makes findings regarding the RCLC's failure to follow its own Travel Policy and contract provisions between the RCLC and the respective contracted Executive Director with regard to reimbursements for guests, alcoholic beverages and recreational expenses.

Specifically, the RCLC Board approved reimbursements to both JLH Media, Inc and Andrea Romero Consulting, LLC for meals for board members while the Board member was in his or her home jurisdiction. The RCLC also approved improper reimbursement for alcoholic beverages and recreational items (baseball tickets). Hotel reimbursements do not comply with the Travel Policy and there is a lack of adequate documentation to support many expenditures, in the form of itemized receipts, again in violation of the published Travel Policy and state law. It also appears the Executive Director(s) may have been reimbursed for some expenses by both the RCLC and the Energy Communities Alliance (ECA), a third party entity.

During the course of the special audit, the OSA noted that reimbursements requested for mileage were duplicated by the contracted Executive Director and its staff. The individuals collected mileage for travel to and from the same location on the same day. The OSA identified twenty-eight (28) instances of duplicate mileage reimbursements totaling \$1,115.76.

The Special Audit makes several findings regarding the RCLC Board's oversight and compliance duties and responsibilities under the Joint Powers Agreement Act. Specifically, the RCLC Board failed to comply with the Joint Powers Agreement Act, the Joint Powers Agreement itself, and the Per Diem and Mileage Act, § 10-8-1 et seq. In addition, the RCLC failed to comply with the Audit Act, § 12-6-1 et seq. NMSA 1978, and the Audit Rule, NMAC § 2.2.2.1 et seq. despite being on notice from the State Auditor's Office as early as 2013 that it was required to do so. Finally, the RCLC issued 1099 statements which were incorrect and the RCLC budget contained accounting errors which may have been misleading to the Board.

The Special Audit also makes findings regarding the actions of the fiscal agent, Los Alamos County. The County pooled the RCLC funds in an account with Los Alamos County funds and certain funds were miscoded and paid by the wrong entity. The RCLC Board and Los Alamos County do not appear to have maintained full and adequate records of all expenditures.

The OSA has made recommendations for corrective actions and provided the RCLC Board with an opportunity for response.

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The following table summarizes the OSA's findings:

| <b><i>Finding No.</i></b> | <b><i>Finding Description</i></b>  |
|---------------------------|--|
| 2018-001                  | <i>Reimbursement for Board Members meals, alcoholic beverages or entertainment in violation of Per Diem and Mileage Act and NMAC 2.42.2.1</i>                                |
| 2018-002                  | <i>Reimbursements for guests, which is prohibited by both the Travel Policy Section VII and the Per Diem and Mileage Act</i>   |
| 2018-003                  | <i>Reimbursement for alcoholic beverages, entertainment and recreation and personal items in violation of the Travel Policy and State Law</i>                                |
| 2018-004                  | <i>Gross Receipts tax charged on reimbursements resulting in double taxation</i>   |
| 2018-005                  | <i>Duplicate billing of mileage by contractor</i>  |
| 2018-006                  | <i>RCLC Governing Board not exercising control over finances in accordance with the Joint Powers Agreement Act</i>   |
| 2018-007                  | <i>Travel expenditures in excess of board approved budget</i>  |
| 2018-008                  | <i>Potential non-compliance with DOE Grant specifically with regard to explicitly prohibited lobbying</i>  |
| 2018-009                  | <i>Potential violation of Executive Order 12674, Fourteen Principals of ethical Conduct for Federal employees' item 4 related to the solicitation or acceptance of gifts</i> |
| 2018-010                  | <i>Breach of Fiduciary Duty by the Fiscal Agent- Los Alamos County</i>   |
| 2018-011                  | <i>Failure to comply with State Audit Act</i>  |
| 2018-012                  | <i>Fiscal Agent combined RCLC monies with Los Alamos County's polled cash account resulting in a lack of transparency</i>  |
| 2018-013                  | <i>Miscoding of expenditures and using a polled cash account resulted in the RCLC paying for expenditures of Los Alamos County</i>   |
| 2018-014                  | <i>Improper reporting of contract labor</i>  |
| 2018-015                  | <i>Improper accounting for reimbursements, including the netting of reimbursements with expenditures</i>   |
| 2018-016                  | <i>Management could not provide all requested information</i>  |
| 2018-017                  | <i>Budget irregularities</i>   |
| 2018-018                  | <i>Expense reimbursements that may violate the Anti-donation clause of the New Mexico Constitution</i>   |

## SCOPE AND PROCEDURES

The scope of the Special Audit required the OSA to consider whether specific sampled transactions are compliant with relevant laws, regulations, policies, procedures, procurement code and agreements applicable to the agency. The OSA will consider the risks of potential fraud, waste or abuse and, at a minimum, the following:

1. Detailed audit of all payments since March 1, 2015 paid to ANDREA ROMERO CONSULTING, LLC for compliance with duly adopted RCLC Board policies, contractual agreements between the parties and applicable procurement code.



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2. Detailed audit of all payments for FY 2015, 2016, 2017 and 2018 for all payments of reimbursements to any Board member or member entity of the RCLC for compliance with duly adopted RCLC Board Policies, Joint Powers Agreements and applicable procurement codes.
3. Audit to determine whether ANDREA ROMERO CONSULTING, LLC or any Board member or entity received reimbursement for travel or per diem which represented a double reimbursement, including, but not limited to, whether ANDREA ROMERO CONSULTING, LLC was paid twice for travel with two staff members attending the same meeting or event; and whether any Board member or entity received reimbursement from the RCLC, in addition to any other entity.
4. Audit of the Request for Proposals No. 2016-01, the procurement process and all resulting contracts between RCLC and ANDREA ROMERO CONSULTING, LLC for compliance with the Joint Powers Agreement, duly adopted Board Policies and applicable procurement code.

This report was developed based on information from interviews, observations, and the OSA's review of selected documentation and records.

## **GENERAL OBSERVATIONS**

### **REIMBURSEMENTS PAID TO CONTRACTED EXECUTIVE DIRECTOR**

#### **Improper Variances between the RCLC Travel Policy and State Law**

The RCLC meets the definition of a local public body under the Audit Act, as well as the NMAC Regulations governing mileage and per diem. NMAC 2.42.2.7 defines a “local public body” to mean “every political subdivision of the state, whether created under general or special act including, but not limited to, counties, municipalities, drainage, conservancy, irrigation, school or other districts, that receives or expends public money from whatever source derived.” That section defines “public officers”, which include “all board, advisory board, committee and commission members elected or appointed to a board, advisory board, committee or commission specifically authorized by law or validly existing as an advisory committee pursuant to Section 9-1-9 NMSA 1978.”

Under Rule 2.42.2.8, “per diem rates shall be paid to public officers and employees only in accordance with the provisions of this section.”

The RCLC Board adopted a Travel Policy (in its Resolution 2012-03) which did not entirely comply with the Per Diem and Mileage Act. While the Board’s own Travel Policy may contain provisions that are more restrictive than the Administrative Rules, it cannot adopt a policy that provide more generous per diem and mileage rates for its public officers and employees.

Specifically, the Travel Policy contains provisions that exceed the allowable rates under the Administrative Rule by providing for an in-state per diem rate of \$50 per day, including taxes and gratuities. The maximum rate provided under state law, NMAC 2.42.2.9, is \$30 per day for in-state travel. The Travel Policy establishes an out-of-state per diem rate of \$60 per day, while the rate published in Rule 2.42.2.9 is \$45 per day. The Travel Policy provides that no receipts are required for these expenditures, while the Rule, in subsection (3) expressly provides that “the public officer or employee must submit receipts for the actual meal and lodging expenses incurred.”

NMAC 2.42.2.8(C)(3) also addresses the situation where Board members are serving in a dual capacity. That section provides:

Non-salaried public officers who also serve as public officers and employees of state agencies or local public bodies may receive mileage and per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem rates by

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employees or officers of local public bodies who also serve on boards or commissions, subject to this rule.

JLH Media, Inc. and Andrea Romero Consulting, LLC (ARC) served as the contracted Executive Directors of the RCLC pursuant to a contract, which provided for specific compensation. Section C of the contract provided that ARC would receive a flat fee of \$140,000 per fiscal year, plus reimbursable expenses to be paid in accordance with the RCLC's Travel Policy. The Contract in Subsection C (3) states:

Reimbursable Expenses: Reimbursement of travel cost shall be subject to the annual budget as approved by the Board and will be paid in accordance with the Regional Coalition's travel policy.

The contract does not provide for the contracted Executive Director to be reimbursed for any expenses outside those contained within the Travel Policy. The Travel Policy also provides that staff members are expected to use the most economical means available with reasonable consideration given to the time and distance involved.

The Travel Policy specifically prohibits certain types of expenses, including specifically gifts, entertainment and recreation expenses, alcoholic beverages, and expenses for spouses, guests or family members.

The internal audit performed by Los Alamos County and the special audit by the Office of the State Auditor found numerous expenditures for meals that included guests of the Executive Director, including meals with alcohol costing hundreds of dollars at restaurants in Washington, D.C. and Santa Fe. Some of these meals appear to have included employees of the DOE. The Executive Director was not entitled to reimbursement for these types of entertainment expenses, nor for any expenditures for alcoholic beverages, under her contract with the RCLC and the Travel Policy. The Executive Director was not authorized to bill for or be reimbursed for any meal expenses for third parties, including Board Members, entertainment expenses or expenses for alcohol. Additionally, it would be inappropriate for the RCLC to have reimbursed the Executive Director for any meals that may have been provided to DOE employees in violation of federal rules.

The internal audit identified expenditures for tickets to a baseball game which constitute prohibited entertainment or recreational expenses under the Travel Policy. The Executive Director was not entitled to reimbursement under the contract or Travel Policy for those expenditures.

The RCLC Board cannot reimburse its contract Executive Director for meals or expenses for its Board members when those members would not have been entitled to reimbursement themselves under the Mileage and Per Diem Act, or the NMAC Rule.

## **SCHEDULE OF FINDINGS AND RESPONSES**

**Finding 2018-001 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. for meals, alcoholic beverages or entertainment expenses for Board members who would not have been entitled to receive per diem and mileage themselves, in violation of the Per Diem and Mileage Act and NMAC 2.42.2.1 (Material Weakness)**

### **Condition**

The contracted Executive Director(s) were reimbursed \$ 780.22 for the following meals, alcoholic beverages or entertainment expenses on behalf of board members:

\$34.99 for “in-room entertainment”, and \$5.29 for “Honor Bar beverage” made by Board Member Peter Ives at the Hotel Palomar in Washington, D.C.

\$7.50 for Merlot at Antoine’s with Mayor Lucero and Andrew.

\$22.00 for a ticket to the Tony Hseih Venture Capitalist Seminar.

\$40.00 for tickets to a museum.

\$307.00 for major league baseball tickets.

\$286.78 at the Bull Ring Restaurant in Santa Fe. The billing detail for this dinner states that the guests were Board member Javier Gonzales and Harris Walker, NNSA. Board member Javier Gonzales was not entitled to receive per diem for a meal in his home jurisdiction of Santa Fe.

\$38.91 for a “meeting with Mayor Alice” at El Paragua Restaurant in Espanola. Alice Lucero was not entitled to receive per diem for a meal in her home jurisdiction of Espanola.

\$37.75 for “Lunch with Mayor Alice” at La Cocina Restaurant in Espanola.

### **Criteria**

NMAC 2.42.2.8 (C)(3) addresses public officers who serve in dual capacities. It states:

Non-salaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

**Finding 2018-001 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. for meals, alcoholic beverages or entertainment expenses for Board members who would not have been entitled to receive per diem and mileage themselves, in violation of the Per Diem and Mileage Act and NMAC 2.42.2.1 (Material Weakness) (Continued)**

**Cause**

The RCLC Board and its fiscal agent, Los Alamos County, appear to have been unaware of the prohibition on paying per diem for non-salaried public officers who serve in a dual capacity on two different boards when they attend a luncheon or dinner meeting that would not otherwise qualify for per diem because it is held in the officer's home jurisdiction.

**Effect**

The RCLC appears to have improperly reimbursed JLH Media, Inc. or ARC, LLC for meal expenses for public officers in their home jurisdictions.

**Recommendation**

The RCLC Board should ensure that it follows the requirements of NMAC 2.42.2.1 et seq. when providing mileage or per diem reimbursements to any of its Board members.

**Response**

The RCLC does not agree with portions of the listed conditions. Some Board members have indicated that they did not charge back for entertainment or alcohol but rather paid for those items directly themselves.

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2.

**Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness)**

**Condition**

The RCLC Board reimbursed both JLH Media, Inc. and Andrea Romero Consulting, LLC for meal and drink expenses for guests, totaling \$5,799.69, which include the following reimbursements:

\$6.98 for “coffee with Carlos @ Ohori’s”  
\$31.83 for Lunch with James Ross, Governors Cabinet  
\$25.62 for “Alex and me” @ Angelina’s Restaurant  
\$30.29 for lunch with Andrew @ Blue Window Bistro  
\$70.04 at La Fonda for Chris, Alex, Mark, and Oswald  
\$32.48 at Blue Corn with Marie Longseere  
\$25.89 for breakfast with Councilor Maestas  
\$86.31 at Gabriel’s Restaurant for Chris M, Davis Griscom, Sean M, and David Trujillo  
\$64.59 at Jinga Bar and Bistro for David Trujillo and Chris Madrid  
\$66.85 at Old Martina’s Hall for Tom, Andrew, and Chris  
\$24.56 lunch for Darien Cabral and Vangie  
\$31.73 at Angelina’s with Chris Madrid  
\$197.12 at Monafuku CCDC for RCLC Group  
\$6.96 lunch for Henry Roybal at El Parasol  
\$140.78 for “Xmas Lunch” at El Paragua Restaurant in Espanola  
\$144.87 at Bourbon House Restaurant in New Orleans  
\$162.70 at Antoine’s Restaurant in New Orleans  
\$322.48 for “dinner with NMED, LA county” in New Orleans  
\$32.90 for “lunch with Duncan Sill, REDI net”  
\$286.78 at the Bull Ring Restaurant in Santa Fe. The billing detail for this dinner states that the guests were Board member Javier Gonzales and Harris Walker, NNSA.  
\$1,850.95 at the Casa Luca Restaurant in Washington, D.C.  
\$396.26 for a meal for “EM and Board Members Dinner” at El Parasol Restaurant  
\$21.09 for a meal at the Santa Fe Bar and Grill with guest, Peter Woerhle  
\$30.50 for “lunch with Jeff of RDC/LANL MSC” at the Compound Restaurant in Santa Fe  
\$20.64 for “Lunch with Liddie @ RDC” at La Mesita Eatery  
\$38.75 for “lunch with Patrick Woerhle, LANS” at La Cocina Restaurant  
\$121.95 for “lunch for RCLC meeting” at Beestro Restaurant in Santa Fe  
\$33.09 for “lunch with Comm. Gallegos” at Capitol Grill  
\$33.19 for “lunch with Councilor Fernandez” at Gutiz  
\$38.91 for a “meeting with Mayor Alice” at El Paragua Restaurant in Espanola  
\$37.27 for “lunch with Brent Jaramillo, Econ Dev. Taos” at the Gorge Restaurant in Taos

**Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness) (Continued)**

\$11.21 for “Mtg w/Councilor Ives, Santa Fe” at the Sage Bakehouse in Santa Fe  
\$18.76 for “Mtg with Michele, Sen Udall’s staff” at Vinaigrette Restaurant in Santa Fe  
\$39.22 for “Meeting with Jeff, LANL-MSU” at La Cocinca Restaurant in Espanola  
\$31.19 for “Meeting with Patrick Woerhle” at Clafoutis in Santa Fe  
\$37.75 for “Lunch with Mayor Alice” at La Cocina Restaurant in Espanola  
\$18.56 for “Lunch with Dave Lyons” at Blue Window Bistro  
\$49.09 for “lunch with Patrick W, LANL” at Gabriel’s Restaurant in Pojoaque  
\$26.02 for “Dinner with Brian Crone, Rep. Lujan” at Paper Dosa Restaurant in Santa Fe  
\$35.59 for “lunch with Kathy Keith, LANL CPO” at La Posada Restaurant in Santa Fe  
\$29.03 for “lunch with Justin Greene, review of CPO” at La Posada Restaurant in Santa Fe  
\$796.25 for “RCLC/ECA group dinner” at Casa Luca Restaurant in Washington, D.C.  
\$131.07 for “RCLC group lunch” at Thunder Grill

**Criteria**

Section VIII of the Travel Policy states, “Prohibited expenses include, but are not limited to, the following:

- Personal items, including personal grooming items
- Beverages and snacks, hotel mini bar charges
- Gifts
- Entertainment and recreation expenses, including hotel movie and health club activities
- Golf outings, fitness events and other “recreational” activities
- Alcoholic Beverages
- Expenses for spouses, guests or family members

NMAC 2.42.2.1 et seq. does not contain any provisions that allow for payment of per diem rates to persons who are not public officers or employees.

**Cause**

The RCLC did not follow its own Travel Policy or the NMAC Rule with regard to reimbursements for meals for third party guests of the Executive Director.

**Effect**

The RCLC improperly expended public funds to pay for meals for individuals who are not public officers or employees.

**Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness) (Continued)**

**Recommendation**

The RCLC should follow the rules applicable to a local public body when paying any per diem reimbursements.

**Response**

The RCLC does not agree with portions of the listed conditions. Some charges are clearly for only one person indicating that the guest paid separately. In other cases, guests have indicated that they reimbursed the Executive Director directly in cash.

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2.



**Finding 2018-003 The RCLC Board approved reimbursements to JLH Media, Inc. or Andrea Romero Consulting, LLC for expenditures for alcoholic beverages, personal expenses and entertainment and recreation expenses, in violation of the Travel Policy and state law. (Material Weakness)**

**Condition**

The RCLC reimbursed JLH Media, Inc. or Andrea Romero Consulting, LLC for alcoholic beverages, personal expenses and entertainment and recreation expenses, totaling \$2,639.90.

\$286.78 for a meal at the Bull Ring Restaurant in Santa Fe that included ten (10) alcoholic beverages.

\$22.00 for a ticket to the Tony Hsieh Venture Capitalist Seminar.

\$10.81 for a mirror at Ross Dress for Less.

\$1,850.00 for a meal at Casa Luca in Washington, D.C. that included \$380.00 in charges for alcoholic beverages, including four (4) bottles of wine and ten (10) additional alcoholic beverages.

\$37.48 for charges at the Hilton Alexandria Hotel in Alexandria, VA for “Finn & Porter” and \$41.11 for “room service” for Board member Peter Ives.

\$64.72 for charges at the Hilton Alexandria Hotel in Alexandria, VA for “Finn & Porter” for Board member Javier Gonzales.

\$20.00 for a ticket to the Lensic Theater in Santa Fe.

\$307.00 for (12) tickets to a baseball game in Washington D.C.

**Criteria**

Section VIII of the Travel Policy states, “Prohibited expenses include, but are not limited to, the following:

- Personal items, including personal grooming items
- Beverages and snacks, hotel mini bar charges
- Gifts
- Entertainment and recreation expenses, including hotel movie and health club activities
- Golf outings, fitness events and other “recreational” activities
- Alcoholic Beverages
- Expenses for spouses, guests or family members

• The RCLC did not follow its own Travel Policy or the NMAC Rule with regard to reimbursements for meals for third party guests of the Executive Director.

**Effect**

The RCLC improperly expended public funds to pay for entertainment expenses and alcoholic beverages for both its own Board members as well as individuals who are not public officers or employees.

**Finding 2018-003 The RCLC Board approved reimbursements to JLH Media, Inc. or Andrea Romero Consulting, LLC for expenditures for alcoholic beverages, personal expenses and entertainment and recreation expenses, in violation of the Travel Policy and state law. (Material Weakness) (Continued)**

**Recommendation**

The RCLC should follow the rules applicable to a local public body when paying any per diem reimbursements.

**Response**

The RCLC does not agree with portions of the listed conditions. Some Board members have indicated that they did not charge back for entertainment or alcohol but rather paid for those items directly themselves.

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2.

**Finding 2018-004 JLH Media, Inc. charged NM gross receipts tax on mileage and travel and per diem expenditures resulting in double taxation to the RCLC. (Significant deficiency)**

**Condition**

The invoices submitted by JLH Media, Inc. include charges for gross receipts taxes on reimbursements mileage and reimbursements totaling \$271.65.

**Criteria**

DFA 95-1 permits the reimbursement of mileage and actual receipts for expenditures up to \$30 per day (in state) and \$45 per day (out of state) excluding lodging. NM Gross Receipts tax is not calculated on reimbursements to the extent that it would equate to taxing an already imposed tax.

**Cause**

JLH Media, Inc. did not consider taxation regulations when compiling expenditures and mileage to be included in the monthly billing and the Fiscal Agent did not adequately review invoices prior to payment, indicating that neither party understands NM taxation regulations.

**Effect**

The contracted Executive Director claimed NM gross receipts tax on mileage and travel and per diem expenditures resulting in double taxation to the RCLC.

**Recommendation**

Invoices should be scrutinized for clerical or application errors prior to payment by the fiscal agent.

**Response**

The RCLC concurs with the recommendation and will be developing and implementing an agreement with the fiscal agent that specifies these duties.

Los Alamos County, as fiscal agent (LAC) concurs with the recommendation and will be developing and implementing an agreement with the RCLC that specifies these duties.

**Finding 2018-005 Duplicate billing of mileage by Contractor (Significant deficiency)**

**Condition**

During the course of the special audit, the OSA noted that reimbursements requested for mileage were duplicated by both Executive Directors and their staff. The individuals collected mileage for travel to and from the same location on the same day to attend the same meeting. The OSA identified twenty-eight (28) instances of duplicate mileage reimbursements totaling \$1,115.76.

**Criteria**

The Contact agreement for Executive Director Services provides that reimbursement of travel costs shall be in accordance with the RCLC's Travel Policy. The Travel Policy provides that "No specific mode of transportation is mandatory. However, staff members are expected to use the most economical means available with reasonable consideration given to the time and distance involved." The Travel Policy also provides for in-state travel to be approved by the Executive Director.

**Cause**

A lack of proper monitoring by the Executive Director prior to submission to the fiscal agent for processing of payment. Additionally, the Executive Director is responsible for approving the in-state travel for which her company requests reimbursement. There is a lack of internal controls in the Travel Policy which can allow a contract Executive Director to financially benefit from his or her own travel approvals.

**Effect**

The RCLC reimbursed what appear to be excessive, duplicate mileage charges by the Executive Director that do not appear to comply with the Travel Policy.

**Recommendation**

The Executive Director should not be allowed to approve in-state travel if the Executive Director will receive reimbursement for that travel under his or her contract. The Coalition should ensure that all expenditures related to the contract Executive Director be reviewed and authorized by someone other than the Executive Director.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that all expenditures related to the executive director contract be reviewed and authorized by someone other than the Executive Director.

**Finding 2018-006 The RCLC Governing Board not exercising control over finances in accordance with the Joint Powers Agreement Act, § 11-1-5(D), NMSA 1978 (Material Weakness)**

**Condition**

The RCLC Board approved reimbursement checks for travel and per diem expenditures that did not appear to be adequately reviewed against the RCLC's Travel Policy, the Per Diem and Mileage Act, and NMAC 2.42.2.1.

**Criteria**

The RCLC Board's responsibility for control over the Coalition's finances is set forth in the Joint Powers Agreement Act § 11-1-4(D) and Section 9 of the Joint Powers Agreement which formed the RCLC. Both the statute and the Agreement provide that the RCLC Board is "strictly accountable" for all receipts and disbursements of the entity.

**Cause**

The RCLC failed to follow the requirements of the Joint Powers Agreement Act, and the Agreement itself.

**Effect**

The RCLC improperly expended public funds in violation of state law.

**Recommendation**

In order to ensure that each party is fulfilling its statutory duties and fiduciary responsibilities to the RCLC, the Executive Director and Coalition Board should implement and formalize policies and procedures for the processing of transactions. Additionally, the Coalition Board should provide training to all members and contractors. Only payments reviewed in accordance with the policies and procedures and related laws and regulations should be approved by the Board's Treasurer prior to processing by the fiscal agent.

**Response**

The RCLC concurs with the recommendation and will be formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent. The RCLC Board will also provide training to all members and contractors. These updated policies and procedures will also be reflected in the upcoming fiscal agent agreement.

**Finding 2018-007 Travel expenditures in excess of board approved budget (Material Weakness)**

**Condition**

In fiscal years 2015 and 2018, the RCLC expended more than the approved \$10,000 annual budget for travel purposes separately for contract staff and board. The fiscal agent combines the travel into one line-item making it difficult to ascertain whether either or both exceed budgetary authority. The total amount for 2014-2015 was \$433.22 over the combined budgeted total of \$20,000. The total amount for 2017-2018 was \$1,012.04 over the combined budgeted total of \$20,000.

**Criteria**

The RCLC Travel Policy states that both the board and contract staff are separately authorized up to \$10,000 annually for travel purposes.

**Cause**

The Coalition's Board and fiscal agent did not perform adequate oversight and approval of expenditures. By combining the expenditure in one account it was impossible to verify compliance with the budget.

**Effect**

The RCLC reimbursed unauthorized expenditures totaling \$1,445.26. Non-compliance with the RCLC travel policy requirement not to exceed \$10,000 for travel purposes separately by the Contract staff and the Board resulting in unauthorized expenditures.

**Recommendation**

The Coalition's Board and fiscal agent should review appropriate travel policies and should perform regular and consistent oversight and approval of expenditures in relation to their adopted policies.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2. The recently adopted FY 2019 RCLC budget has been changed to assume that all board member travel is handled by the respective local governments directly. In addition, the new executive director services contract also assumes that the executive director's travel is handled directly by that vendor and not as a reimbursable expense. If there are any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC will ensure compliance with the requirements of NMAC 2.42.2. In addition, the RCLC will be formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent.

**Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness)**

**Condition**

The RCLC appears to be engaged in prohibited lobbying activities. The RCLC documentation provided contains a statement that the RCLC “has positioned itself as sole, consistent lobbying body for legacy waste cleanup dollars into LANL at the Congressional level.” Further, Statements contained in a letter dated February 22, 2018, from Executive Director Andrea Romero Consulting, LLC outline state and federal activities by the RCLC which appear to be lobbying, as follows:

*Following the House Tax and Revenue tabling of our Bill on March 3, 2017, we worked diligently in the interim session to ensure that we had the best technical capacity on our bill going into the 2018 session with the Legislative Finance Committee and Legislative Council.*

- *Gained supporters of GRT Legislation: North Central Regional Transit District, New Mexico Association of Counties, City of Espanola, City and County of Santa Fe, and the New Mexico Municipal League.*
- *Reworked strategy to move bill through Senate and pre-filed the bill to get a low number. Senate Bill 17*
- *Engaged with NNSA and House Armed Services on alternatives and discussion on our strategy to ensure this revenue is protected.*
- *Presented to NM’s Radioactive and Hazardous Waste Subcommittee on RCLC engagement on waste and cleanup, where legislators were alerted on the GRT losses on September 21, 2017 in ongoing outreach efforts.*
- *Served as an ‘expert’ to impact bill in relationship to the Laboratory through 30-day session. 2018 Legislative Session marked last chance for protection of this tax revenue stream to the State and local communities. Provided handouts, updated each committee hearing to ensure we addressed common questions and themes.*
- *January 26, 2018 – Passed through Senate Corporations and Transportation Committee*
- *February 1, 2018 – Passed through Senate Finance Committee*
- *February 3, 2018 – Defended on Senate Floor and passed 31-4*
- *February 12, 2018 – Passed through House Taxation and Revenue Committee and passed 10-5. Prepared testimony with NCRTD to serve as testimony provider.*
- *February 13, 2018 – Passed through House.*
- *Prepared letter of support for NM Governor Susana Martinez citing all communities and organizations in support of legislation in hope that she will sign the bill into law.*

**Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness) (Continued)**

**Criteria**

The Department of Energy Grant contains an explicit restriction on federal lobbying efforts. Paragraph 17 of the Grant Agreement states:

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913, Lobbying with appropriated moneys. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Section 18 U.S.C. 1913 provides:

**§1913. Lobbying with appropriated moneys**

*No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.*

**Cause**

The RCLC may have failed to abide by the terms of the DOE Grant when it “*Engaged with NNSA and House Armed Services on alternatives and discussion on our strategy to ensure this revenue is protected.*” In addition, the RCLC’s self-described state lobbying activities may have violated 18 U.S.C. 1913.



**Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness) (Continued)**

**Effect**

Possible non-compliance with the DOE grant agreement which could result in the claw back of approximately \$372,000.

**Recommendation**

The Coalition's Board and fiscal agent should ensure that it follows all lobbying restrictions with regard to any federal or state grant funds it receives.

**Response**

The RCLC disagrees with this finding. Only a minority fraction of RCLC's activities and expenditures relate to advocacy activities. There is clearly more than enough non-grant member contribution revenue to cover those costs, ensuring that restricted grant revenues are not utilized for prohibited lobbying activities.

RCLC agrees with the recommendation that the RCLC Board should ensure that it follows all lobbying restrictions with regard to any grants it receives. The RCLC's new executive director contract requires that invoices show the allocation of tasks and compensation due split between those that are DOE grant applicable and those that are not. The RCLC will also be contracting for third party accounting services that will provide for a segregated special revenue fund for grant activity accounting.

LAC disagrees with the recommendation as it related to LAC. As fiscal agent, LAC is not responsible for ensuring RCLC's compliance with lobbying restrictions nor for any portion of grant reporting.

The respective duties and obligations of the RCLC and LAC will be clarified in the new agreement to be entered into between them.

**Finding 2018-009 Potential violations of (Executive Order 12674) Fourteen Principles of ethical Conduct for Federal employees' item 4 related to the solicitation or acceptance of gifts. (Material Weakness)**

**Condition**

The RCLC paid for meals and entertainment of DOE employees. Although all of the participants could not be identified, the OSA was able to identify the participation of certain DOE employees.

**Criteria**

(Executive Order 12674) Fourteen Principles of Ethical Conduct for Federal Employees states:

4. Employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

**Cause**

Unknown cause however, the appearance is that the meals and entertainment may have been used to influence an official action.

**Effect**

Potential non-compliance with DOE's (Executive Order 12674) Fourteen Principles of ethical Conduct for Federal employees' item 4 related to the solicitation or acceptance of gifts.

**Recommendation**

The Coalition's Board should create a policy that prohibits any coalition staff from purchasing, gifts, meals or entertainment for federal employees.

**Response**

The RCLC disagrees with the finding. The criteria relates to the actions of federal employees and is not a standard that applies to the actions of the RCLC.

However, given the expected occasional interactions with federal employees, the RCLC concurs with the recommendation and will be changing its policies to prohibit RCLC Board, staff and contractors from purchasing gifts, meals or entertainment for federal employees.

**Finding 2018-010 Breach of Fiduciary Duty by the Fiscal Agent – Los Alamos County (Material Weakness)**

During the special audit, the OSA noted several emails where the Board treasurer or representative questioned specific expenditures but upon receiving a response from Los Alamos County, the fiscal agent, they allowed the reimbursement of those expenditures. In each of these questioned transactions, the response by the fiscal agent, Los Alamos County, appeared inadequate to sufficiently validate the legitimacy of the expenditures by New Mexico laws, regulations and statutes.

The Executive Director filed reimbursement claims that were improper under the Per Diem and Mileage Act, NMAC 2.42.2.1 et seq. and the Travel Policy. The fiscal agent, Los Alamos County, approved and/or facilitated the approval of improper expenditures without regard to New Mexico laws, regulations and statutes.

**Criteria**

The fiscal agent has a fiduciary duty to process receipts and expenditures. In addition, the fiscal agent should exercise due care in reviewing proposed expenditures and obtain proper approval from RCLC officers prior to payment. Also the County had no written procedures regarding processing of RCLC transactions.

**Cause**

Since there were no standard procedures, expenditures were made without prior written approval. The County did not seek approval subsequent to the expenditures by the contractor and/or board members. In addition, the subsequent approval was made by someone not familiar with the rules regarding travel and per diem.

**Effect**

The RCLC paid expenditures that were not eligible under state law or travel and per diem policies.

**Recommendation**

The Board should create and implement policies and procedures for expenditures that require approval of the board or authorized representative prior to payment. The policies should adhere to all applicable state laws and administrative rules.

**Response**

The RCLC concurs with the recommendation and will be formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent.

LAC disagrees with the finding. LAC's duties as fiscal agent are not defined, and this likely contributed to this situation. However, since they are not defined, it is not appropriate to presume

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what level of responsibility LAC had. This is especially true given the clear responsibility placed upon the Treasurer in the RCLC by-laws and upon the Executive Director in those contracts. LAC has always sought approval from the RCLC Treasurer prior to disbursements and always provided whatever information it had available, generally from the Executive Director, to the Treasurer.

LAC concurs with the recommendation.

## **Finding 2018-011 Failure to comply with State Audit Act (Material Weakness)**

### **Condition**

The funds of the RCLC were not subjected to the State Audit Act. Despite seeking and receiving an opinion by the NM Office of the State Auditor, the RCLC and its fiscal agent, Los Alamos County, made a decision based on advice from the County's auditor to classify the funds as an agency fund of Los Alamos County. Classifying the RCLC as an agency fund circumvents transparency in the use of public monies.

### **Criteria**

The Joint Powers Act Section 11-1-1 to 11-1-7, NMSA 1978, specifically, Section 11-1-5 C states:

“The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such powers of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.”

Additionally, on February 20, 2013, the OSA issued a letter of determination stating that the RCLC was a “special district”, further classified and subject to all regulations and laws of a “local public body”, including the Audit Act.

### **Cause**

A deliberate decision was made by the RCLC and/or its fiscal agent to avoid an audit of the RCLC funds.

### **Effect**

The lack of oversight of public monies through the Audit Act led to improper payments from public funds and non-compliance with laws, regulations, statutes and agreements which may result in criminal violations.

### **Recommendation**

Beginning with the fiscal year ending June 30, 2018, the Coalition should immediately become compliant with the State Audit Act and have all financial statements audited by an approved auditor on the OSA website.

### **Response**

The RCLC concurs with the recommendation and will become compliant with the State Audit Act.

LAC disagrees with the finding. LAC does not have authority to contract for audit services on behalf of the RCLC and has no decisions making authority regarding the RCLC's choices in this matter. The decision to account for the receipts and disbursements of the RCLC in an Agency Fund of LAC is the correct accounting treatment for LAC's accounting records as fiscal agent.

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There were no efforts by LAC to circumvent transparency in the use of public money as is demonstrated by LAC's regular reporting of fiscal activity to the RCLC board.

LAC concurs with the recommendation and will assist RCLC to become compliant with the State Audit Act.

The respective duties and obligations of the RCLC and LAC will be clarified in the new agreement to be entered into between them.

**Finding 2018-012 Fiscal Agent combined RCLC monies with Los Alamos County's pooled cash account resulting in a lack of transparency (Material Weakness)**

**Condition**

The cash of the RCLC and Los Alamos County was being accounted for in one bank account making it difficult to distinguish between the expenditures of each entity.

**Cause**

The fiscal agent uses a pooled cash account for all transactions of Los Alamos County including those of the RCLC.

**Effect**

The inability to identify discrepancies and to reconcile the individual funds included in pooled cash. Additionally, it does not appear that the RCLC or Los Alamos County have properly reconciled cash accounts.

**Recommendation**

It is recommended that the RCLC, through its fiscal agent, create a separate bank account and a special revenue fund to track the assets, liabilities, equity, revenues and expenditures of the RCLC.

**Response**

The RCLC concurs with the recommendation and will be creating a separate bank account. The RCLC will also be contracting for third party accounting services that will provide for a segregated special revenue fund for grant activity accounting.

LAC disagrees with the finding. The use of a one bank account and a pooled cash account does not make it difficult to distinguish between the expenditures of each entity because RCLC transactions are segregated into a separate fund. Similarly LAC has no difficulty distinguishing between the transactions of its own separate funds.

However, LAC concurs with the recommendation to create a separate bank account in order to simplify the interactions with the anticipated third party accountant.

**Finding 2018-013 A miscoding of expenditures and using a pooled cash account, resulted in the RCLC paying for expenditures of Los Alamos County (Material Weakness)**

**Condition**

On June, 29, 2017, the Regional Coalition of LANL Communities issued a check for \$5,000 to the ECA Annual Membership. Upon the OSA's inspection of this check, it appeared that the ECA conference dues were billed to Los Alamos County. Further investigation revealed that the invoice did belong to Los Alamos County, however, the expenditure was coded to RCLC and paid out of RCLC funds. The improper payment was not identified through the reconciliation of the pooled cash account and went undetected until the special audit. It was noted that the Coalition did recoup the \$5,000 from Los Alamos County in June 2018.

**Cause**

The fiscal agent uses a pooled cash account for all transactions including those of the RCLC. The fiscal agent utilizes the same chart of accounts with only slight variation.

**Effect**

The RCLC paid for expenditures that were not intended for the RCLC. As a result there is a misappropriation of Coalition cash assets and the financial reports presented to the board may not be accurate.

**Recommendation**

Together the Coalition and the fiscal agent should brainstorm ways to rectify the lack of controls and monitoring while minimizing the impact to the Coalition vendors who receive payment. It would be advisable to create a separate bank account and a special revenue fund to track the assets, liabilities, equity, revenues and expenditures of the RCLC.

**Response**

The RCLC concurs with the recommendation and will be creating a separate bank account. The RCLC will also be contracting for third party accounting services.

The miscoding of a single check was a clerical error unrelated to the pooled account. However, LAC concurs with the recommendation to create a separate bank account in order to simplify the interactions with the anticipated third party accountant.



### **Finding 2018-014 Improper reporting of contract labor (Material Weakness)**

#### **Condition**

The taxable earnings of contractors were not properly reported on form 1099. In calendar year 2016, Andrea Romero Consulting, LLC was paid a total of \$121,467.95 however the 1099 was issued for \$113,721.66, a difference of \$7,746.29. Additionally, Crescent Strategies, LLC had been paid a total of \$10,000 and no 1099 was issued. It was noted that subsequent to the internal audit report, corrected 1099's for 2016 were issued to Andrea Romero Consulting, LLC and Crescent Strategies, LLC in the correct amounts.

#### **Criteria**

Internal Revenue Service Code states that all earnings are subject to tax. For a contractor, all payments are reported on form 1099 and are subject to federal, state and self-employment tax on the net income of the contractor.

#### **Cause**

The Coalition, through its fiscal agent, did not properly accumulate all payments to the contractor in each calendar year.

#### **Effect**

The Coalition has not complied with IRS requirements nor the State of New Mexico's taxation requirements. The Coalition issued incorrect 1099's which were used in the reconciliation of annual federal and state taxes.

#### **Recommendation**

The Coalition will need to evaluate the potential consequences with the IRS and NM Taxation and Revenue Department and find ways to rectify the noncompliance while minimizing the impact to the Coalition. Further analysis of 1099 forms and contractor payments is required for all contractors paid more than \$600 in each calendar year. At a minimum, the Coalition should analyze 1099's from inception of the RCLC to current and make every effort to correct 1099 forms and related reporting. The Coalition and its fiscal agent staff responsible for the issuance of public monies should receive additional training with regard to IRS regulations related to contractors/vendors.

#### **Response**

The RCLC and LAC concurs that 1099 forms should be correct. LAC as fiscal agent making disbursements for the RCLC will conduct a review of all RCLC vendor information to ensure the 1099 forms are correct.

**Finding 2018-015 Improper accounting for reimbursements, including the netting of reimbursements with expenditures. (Significant deficiency)**

**Condition**

During the course of the special audit, the OSA noted that some of the reimbursement claim forms had a credit amount applied to them. Further research revealed that these were reimbursements for travel expenditures provided by the ECA. These credits reduced the amount of the total reimbursement but did not accurately report the reimbursement as a contra-revenue but instead netted the reimbursement against expenditures.

**Criteria**

Generally accepted accounting principles and grant accounting do not provide for the netting of reimbursements with expenditures as it creates misstatements in both revenues and expenditures for the period.

**Cause**

The Executive Director filed the reimbursement claim with the refund reflected but the fiscal agent did not properly apply U.S. GAAP when processing the reimbursement perhaps as a result of no Board approved fiscal policies or procedures.

**Effect**

The Coalition's financial statements may be misstated. Additionally there may be a violation of U.S. GAAP and of grant accounting. Netting of reimbursements with expenditures does not allow for proper follow-up of reimbursements due to the RCLC and creates an environment ripe for fraud, waste and abuse.

**Recommendation**

The Coalition should comply with U.S. GAAP and grant accounting to ensure proper reporting and tracking of reimbursements due to the RCLC.

**Response**

The RCLC concurs with the recommendation and will be contracting for third party accounting services that specifies compliance with U.S. GAAP, grant accounting and tracking of reimbursements due to the RCLC.

**Finding 2018-016 Management Could Not Provide All Requested Information (Material Weakness)**

**Condition**

The Coalition and its fiscal agent did not provide the OSA investigators with all supporting documentation related to transactions for the period July 1, 2014 through June 30, 2018. One example is the lack of a contract for professional services of \$10,000.

**Criteria**

Section 14-3-13 NMSA 1978 requires the Coalition to carefully preserve and protect public records.

**Cause**

It is unknown why the Coalition and its fiscal agent did not provide all supporting documentation.

**Effect**

The Coalition's Board or its fiscal agent did not provide all supporting documentation requiring the OSA to obtain documents through other means and resulting in a concern that there may be other documents that were not provided or that there may be an underlying reason for not providing the documentation. Missing records can be indicators of more serious issues including fraud.

**Recommendation**

The Coalition and its fiscal agent should have a filing system that enables them to locate supporting documentation for all Coalition transactions.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that supporting documentation for all transaction is properly maintained.

LAC provided all documentation that was provided to it by the Executive Director to the OSA. LAC concurs with the recommendation and will be developing and implementing an agreement with the RCLC that specifies what documentation must be received prior to authorized disbursements occurring.

**Finding 2018-017 Budget irregularities (Significant deficiency)**

**Condition**

During the course of the OSA's special audit, it was noted that the budget did not foot correctly and presented a misleading projection regarding unrestricted fund balance to the board. Additionally, the budget includes a statement that the DOE grant will be used for RCLC operating expenses but not for travel. If there is a violation of the grant agreement, then there would not be sufficient funding to cover operating expenditures, not including travel.

**Criteria**

Good accounting practices indicate that financial data should be clerically accurate. Additionally, the statement on the budget indicates that it is the Boards intent to not utilize the DOE grant funding for travel.

**Cause**

A lack of proper oversight by the Board and fiscal agent with regard to budgeting.

**Effect**

The Coalition's budget is not accurate and may be misleading for the board.

**Recommendation**

The Coalition should prepare its budget and ensure that it is clerically accurate and that the RCLC has appropriate funding for all costs associated with the RCLC.

**Response**

The RCLC concurs with the recommendation and will be contracting for third party accounting services that specifies preparation of a budget that is clerically accurate and has appropriate funding for all costs associated with the RCLC.

**2018-018 Failure to comply with the State Constitutions Anti-Donation of Public Monies Act Article IX (Material Weakness)**

**Condition**

The OSA's special audit revealed many expenditures paid by the RCLC to governing board members, the Executive Director(s) and third parties totaling \$51,519.45 in improper expenditure payments from July 1, 2014 through June 30, 2018.

|                                |                  |
|--------------------------------|------------------|
| JLH Media                      | 4,793.42         |
| Andrea Romero Consulting, Inc. | 26,862.18        |
| Alice Lucero                   | 2,324.08         |
| City of Santa Fe               | 1,872.81         |
| Crescent Strategies            | 10,000.00        |
| ECA Annual Conference          | 5,000.00         |
| Los Alamos County Credit Card  | 666.96           |
|                                | <u>51,519.45</u> |

**Criteria**

Article IX, Section 14 of the New Mexico Constitution (the Anti-Donation Clause) prohibits any donation to or in aid of any person, association or public or a private corporation.

**Cause**

The Executive Director Firms submitted, to the fiscal agent, previously paid invoices and receipts for reimbursement by the RCLC. Many of these reimbursement requests did not have prior approval by the Board so the fiscal agent would obtain, after the fact, approval to pay the reimbursement via email correspondence with a Board member. The Board members may not have had adequate time to review the reimbursements against the RCLC policies and procedures, NMAC 2.42.2.1, and applicable laws and regulations.

**Effect**

The improper payments may have constituted an unwarranted donation of public funds to private individuals in violation of the Anti-Donation Clause.

**Recommendation**

The Coalition should require review and approval of all invoices prior to the processing of payments by the fiscal agent. Additionally, the Coalition should follow federal and state laws, regulations and agreements with regard to expenditures.

**Response**

The RCLC concurs with the recommendation and will be changing its policies and procedures to ensure that appropriate reviews and approval of invoices for compliance with all applicable

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regulations occur prior to authorizing the fiscal agent to make payments. The RCLC board will be developing and adopting financial policies that clearly delineate the roles and responsibilities of the RCLC board, the Treasurer, the executive director, the third party accountant, and the fiscal agent as it relates to the fiscal transactional business of the RCLC.

### **EXIT CONFERENCE**

On July 30, 2018 the OSA held an exit conference with the following individuals to discuss the results of the consulting service engagement and the findings.

#### **Regional Coalition of LANL Communities**

|   |                   |
|---|-------------------|
| Harry Burgess, County Manager                 | Los Alamos County |
| Steven Lynne, Deputy County Manager           | Los Alamos County |
| Helen Perraglio, CPA, Chief Financial Officer | Los Alamos County |
| David Griego, Senior Management Analyst       | Los Alamos County |
| Commissioner Henry Roybal, RCLC Chair         | Santa Fe County   |
| Councilor Morrie Pongratz, RCLC Secretary     | Los Alamos County |

#### **Office of the State Auditor**

C. Jack Emmons, CPA, CFE, Deputy State Auditor  
Bob Parker, Chief Governmental Accountability Officer & General Counsel  
Melissa Santistevan, CPA, CFE, CGMA, CICA, Director of Special Investigations



Wayne Johnson  
State Auditor

C. Jack Emmons, CPA, CFE  
Deputy State Auditor

## **State of New Mexico**

### **OFFICE OF THE STATE AUDITOR**

August 7, 2018

Governing Board  
Regional Coalition of LANL Communities  
c/o Los Alamos County Manager  
1000 Central Avenue Suite 300  
Los Alamos, NM 87544

Dear Coalition Directors:

The Office of the State Auditor performed a special audit of certain accounting and financial records maintained by the Regional Coalition of LANL Communities (the "Coalition") for the period of July 1, 2014 through June 30, 2018. The purpose of the special audit was to determine if certain transactions issued by the Coalition were compliant with relevant laws, regulations, policies and procedures, procurement code and agreements applicable to the agency. In the course of the special audit, additional findings were uncovered which are set forth in the audit report. The Office entered into a contract with the Coalition for the conduct of the Special Audit. The special audit was conducted in accordance with Standards for Consulting Services established by the American Institute of Certified Public Accountants.

Coalition management is responsible for maintaining the accounting records and for establishing and maintaining effective internal control over compliance with applicable laws, regulations, and procurement policies of the Coalition. The Special Audit was limited in its scope. Had the OSA performed additional procedures, other matters might have come to our attention that would have been reported to you. The OSA may, in addition to this Special Audit, refer matters found to the Coalition's independent public accountant to be reviewed as a part of the Coalition's 2018 annual audit.

This report is intended to identify violations of state and local law, and provide recommendations to the Coalition to correct the existing violations found, as well as provide recommendations to prevent future violations and lack of adequate controls. If the Coalition wishes to discuss the report and recommendations in further detail, please do not hesitate to contact our office at (505) 476-3800.

Sincerely,

C. Jack Emmons, CPA, CFE  
Deputy State Auditor

**2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507**  
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