

# COUNTY OF LINCOLN

## New Mexico Emergency Meeting Board of County Commissioners

Preston Stone, Chair  
Dallas Draper, Vice Chair

Thomas F. Stewart, Member  
Elaine Allen, Member  
Lynn Willard, Member

### Minutes Friday, April 7, 2017

Minutes of the Emergency Meeting of the Lincoln County Commission held at 9:00 AM on April 7, 2017 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

Chair Stone called the Emergency Meeting of the Board of County Commissioners to order at 9:00 AM.

#### 2. Roll Call

##### Roll Call.

##### Roll Call.

**Present:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper (telephonically), Commissioner Willard.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

#### 3. Invocation

The invocation was presented by Chair Stone.

#### 4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

#### 5. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary;

**Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

#### 6. Discussion / possible action: Lincoln County's temporary resumption of operation and management of Lincoln County Detention Center due to Emerald Correctional Management, LLC's breach of contract and verbal notice on April 6, 2017 of its intent to terminate the County Detention Center Operations and Management Agreement as of April 7, 2017.

Nita Taylor, Manager informed she received notice yesterday, Thursday, April 6, 2017, from Warden Arthur Anderson that Emerald Correctional Management, LLC was terminating service to the Lincoln County Detention Center on Friday, April 7, 2017. Ms. Taylor stated Emerald had indicated they no longer had the financial resources to manage and operate the Lincoln County Detention Center (LCDC).

Ms. Taylor stated subsequently she and Alan Morel, County Attorney met telephonically with Hull Youngblood, Counsel for Emerald Corrections. Ms. Taylor stated Mr. Youngblood confirmed Emerald's financial inability to continue operating the Detention Center and informed Emerald was working with LaSalle Corrections to "reassign" Emerald's contractual agreement to LaSalle.

Ms. Taylor stated Attorney Morel informed Mr. Youngblood the existing contract does not provide for "assignment" to another provider and additionally any such agreement would require approval by the Board of County Commissioners.

Ms. Taylor stated of the budgeted \$3,433,300 for Fiscal Year 2016-2017 as of March 31, 2017 there was a fund balance of \$938,881. Ms. Taylor stated the County has since issued a payment to Emerald for \$235,728 for Detention Center operations during the month of March. Ms. Taylor stated the remaining balance of \$707,186 provides \$235,728 per month for operations for the final three months of the fiscal year.

Beverly Calaway, Treasurer provided a recap of the correction funds including a detail of revenues for the corrections fund in the current FY 2016-2017 budget. Ms. Calaway discussed sources of revenue for the fund including revenues received from the Bureau of Indian Affairs.

Attorney Morel stated Lincoln County had received only a "verbal" notice from Emerald and he requested a formal written notice. Attorney Morel stated he received an email stating Emerald was not terminating the agreement but rather attempting to assign the agreement to another entity. Attorney Morel stated he had limited knowledge about LaSalle Corrections and expressed belief any process for assignment of the current agreement would require a minimum of 30 days.

Attorney Morel reiterated Lincoln County received a one day notice of termination of operations, the current contract contains no provision for assignment to another facility, and Emerald Corrections was in default of their agreement with Lincoln County.

Attorney Morel stated belief the Board of Commissioners should provide notice of breach of contract to Emerald Corrections and temporarily assume operations including providing some type of process for employees to continue to receive salary and benefits. Attorney Morel stated in the short term Lincoln County could explore the option to enter into a short term "assignment" agreement with LaSalle Corrections to operate the facility until a formal Request for Proposals was issued. Attorney Morel stated Lincoln County could also transfer detainees and close the facility until operations could resume.

Commissioner Stewart informed he had learned Emerald Corrections had abandoned a facility in Hardin, Montana in a similar manner last year. Commissioner Stewart suggested the County assume employment of the employees and operation of the facility on a short term basis.

Commissioner Allen recommended the County maintain the existing employees at the current salary and benefit levels and enter into a short term "assignment" of operations with LaSalle Corrections.

Commissioner Willard questioned the cost of the monthly payroll for the detention center employees.

Ms. Taylor stated the annual payroll was \$1,082,544 which averaged approximately \$83,000 per month.

Commissioner Willard questioned if Emerald had any assets at the facility.

Attorney Morel stated belief all equipment including vehicles belonged to Lincoln County and Emerald had minimal assets on the premises. Attorney Morel stated he was concerned about and had notified Emerald Corrections they were not to remove any records from the facility.

Attorney Morel also expressed concern about Lincoln County directly employing current employees as Emerald had not officially notified the employees of termination. Attorney Morel stated the employees would likely be eligible for certain benefits such as unemployment and based on Federal Law entitled to Cobra coverage. Attorney Morel also expressed concern about current contracts which Emerald held with medical and mental health providers and the current accounts payable for vendor services. Attorney Morel expressed belief Lincoln County should maintain the current contracts and vendors noting Lincoln County could seek reimbursement for these costs through legal action to recover damages.

There was general discussion of the advantages to reimburse vendors for services in order to maintain services.

Commissioner Draper questioned if Lincoln County had notified the State Attorney General of the situation. Commissioner Draper also questioned the status of any licensing requirements.

Attorney Morel stated he confirmed LaSalle Corrections was not currently licensed in the State New Mexico and this was another factor which would necessitate some time to develop any type of assignment of the current contract.

Attorney Morel stated while no notice was sent to the Attorney General prior to this meeting as Emerald Corrections had not yet provided a written notice of termination. Attorney Morel noted the requirement to notify the Attorney General in the event it was necessary to call an Emergency Meeting and stated those notification requirements were met.

Ms. Taylor stated Warden Anderson had informed her he was confident he and his team could continue operations until the situation was resolved.

Punkin Schlarb, Finance Director expressed belief the County could obtain additional vendors to continue food service for the inmates and could also seek assistance from State Purchasing to develop an Request for Proposal for ongoing operations.

Robert Shepperd, Sheriff stated the Sheriff's Department was short staffed but would provide any support requested. Sheriff Shepperd also reminded operation of the Detention Center required LCDC staff to transport in-state prisoners from other counties to Lincoln County on an almost daily basis. Sheriff Shepperd also commented on the facility being short staffed at this time.

There was additional discussion regarding efforts to provide assurance to the employees while respecting rights related to their employment with Emerald.

Attorney Morel discussed the option to reduce the number of detainees in the facility by termination of contracts such as the one with the Bureau of Indian Affairs but noted this would result in a loss of revenue for operations.

Ms. Taylor stated she had researched options other counties had utilized in this situation noting the most efficient process appeared to be the assignment of the contract to a different provider, assumption of accounts payable, and assumption of employee salary and benefits.

Attorney Morel noted LaSalle had not had time to conduct any due diligence and estimated a minimum of thirty days to develop the process. Attorney Morel recommended issuance of a formal Request for Proposals as soon as possible.

Chair Stone questioned how the reassignment process was viewed under the State Procurement Code.

Attorney Morel noted all such jail contracts with independent contractors required review by the State Board of Finance but noted the State as yet had not approved the current contract despite multiple requests from Lincoln County.

**Motion:** Take action to assure current Emerald employees Lincoln County will assume responsibility for salary and benefits under the proper legal mechanism, issue RFP immediately, hold Emerald in default, research possible assignment of contract to LaSalle, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Willard concurred with recommendations but objected to assignment to LaSalle.

Commissioner Stewart clarified the direction was to research possible assignment.

Chair Stone questioned if the County Manager was comfortable assuming responsibility for the employees.

Attorney Morel discussed the need for Lincoln County to issue employment documents but noted the employees were not yet formally terminated. Attorney Morel stated while Lincoln County needed to assume responsibility for the employees any actions should not impair the Detention Center employee rights to unemployment and Cobra benefits.

Commissioner Willard questioned the status of liability insurance for the facility.

Attorney Morel reported he and the Manager contacted the New Mexico Association of County regarding liability insurance and received assurance of coverage minimally until the next NMAC Insurance Pool Board Meeting. Attorney Morel noted the associated cost for the insurance was as yet undetermined.

District Attorney John Sugg stated he learned of the situation this morning and acknowledged the District Attorney's office had a significant concern related to assuring the detainees were secure and receiving proper care.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**Motion:** Certify this County Commission Meeting as an Emergency Meeting called due to current conditions involving the Lincoln County Detention Center which may require additional Emergency Meetings, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chris Linton, resident of Carrizozo questioned whether Lincoln County had contingency plans in place to address any scenario at the Lincoln County Detention Center and asked what assurances local residents would receive concerning the situation at LCDC.

Sheriff Shepperd stated there were standard plans in place for a response to any emergency situation which might arise at the Detention Center and further discussions would occur to address management issues.

Attorney Morel assured the public that operations were currently continuing without interruption, detainees were cared for and safe, and the community was not at risk. Attorney Morel stated the Board of County Commissioners and the public would receive timely information on any events related to the situation.

#### 7. Next Meeting

Regular Commission Meeting - April 18, 2017

#### 8. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 10:14 AM.

County of Lincoln  
Board of Commissioners

  
Preston Stone, Chair

  
Dallas Draper, Vice Chair

Elaine Allen  
Elaine Allen, Member

Thomas F. Stewart  
Thomas F Stewart, Member

F Lynn Willard  
F Lynn Willard, Member

ATTEST:

Rhonda Burrows  
Rhonda Burrows, County Clerk

April 18, 2017  
Date Approved

