

**MEMORANDUM OF AGREEMENT AMONG
THE NEW MEXICO DEPARTMENT OF PUBLIC SAFETY, SANTA FE COUNTY,
AND THE PUEBLO OF TESUQUE
CONCERNING TRIBAL FUNCTIONS PURSUANT TO THE
FEDERAL ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006,
P.L. 109-248**

INTRODUCTION

This Memorandum of Agreement ("MOA") is made by and among the New Mexico Department of Public Safety ("NMDPS"), Santa Fe County, and the Pueblo of Tesuque ("Pueblo") pursuant to Section 127 of the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248 ("Act"), which section authorizes tribal governments to enter into cooperative agreements with other jurisdictions regarding functions to be performed by tribal governments under the Act.

RECITALS

WHEREAS, the United States Congress enacted the Act, on or about July 27, 2006, with the stated purpose to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims; and

WHEREAS, Title I of the Act imposes several obligations on jurisdictions within the United States, including the obligation to maintain sex offender registries and to notify sex offenders of their obligation to register; and

WHEREAS, the Act includes federally recognized Indian tribes within the definition of "jurisdiction," but does not require a tribe to duplicate functions that are fully carried out by another jurisdiction, and provides that a tribe may enter into a cooperative agreement with

another jurisdiction that sets forth which of the tribe's functions are to be carried out by the tribe and which are to be carried out by the other jurisdiction; and

WHEREAS, the Pueblo has enacted its Sex Offender Registration Ordinance ("Ordinance"), adopted on May 27, 2014 by Tribal Council Resolution No. 20-0527-2014; and

WHEREAS, it is the mutual desire of the parties to work together to fulfill the Act's requirements regarding the registration of sex offenders, as defined in the Act, who reside, work, or go to school on tribally owned lands or on other lands within the exterior boundaries of the Pueblo, or who are convicted of a sex offense in the Pueblo's Tribal Court; and

WHEREAS, NMDPS is the agency of the executive branch of New Mexico state government charged with maintaining a central registry of sex offenders required to register pursuant to the Sex Offender Registry and Notification Act ("SORNA"), 1978 NMSA, 29-11A-1 *et seq.*, and that participates in the national sex offender registry administered by the United States Department of Justice; and

WHEREAS, the Santa Fe County Sheriff is the official who is charged with maintaining a county-wide registry of sex offenders who live, work, or go to school in Santa Fe County who are required to register pursuant to SORNA, and with forwarding registry information to NMDPS for inclusion in the state-wide and federal registry pursuant to SORNA; and

WHEREAS, the Pueblo is a federally recognized Indian tribe located within Santa Fe County, New Mexico, and is charged with several functions under the Act; and

WHEREAS, the Pueblo wishes to enter into this MOA with Santa Fe County and NMDPS to perform certain functions imposed on the Pueblo by the Act, and the County Sheriff and NMDPS are willing to perform such functions; and

WHEREAS, NMDPS and Santa Fe County shall meet their obligations under this MOA only to the extent required or permitted under New Mexico law; and

WHEREAS, the Pueblo shall meet its obligations under this MOA only to the extent required or permitted under Pueblo of Tesuque law or federal law; and

WHEREAS, continuous coordination, planning, and understanding among the parties are required to insure compliance with the Act.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms, conditions, and covenants hereinafter set forth, the parties agree as follows:

I. PURPOSE

The purpose of this MOA is to set forth which of the Pueblo's functions pursuant to the Act the Pueblo will perform, and which of those functions the Santa Fe County Sheriff and NMDPS will perform on the Pueblo's behalf.

II. FUNDING

Each party shall be responsible for its own costs of performance under this MOA. No property or equipment shall be acquired jointly under this MOA, and there shall be no disposition, division, or distribution required as to any property or equipment at termination of this MOA. Nothing in this MOA shall constitute an obligation upon the parties to expend funds in excess of those authorized and available to them for the purposes set out herein.

III. JURISDICTION AND SOVEREIGN IMMUNITY

A. Nothing in this MOA is intended, nor shall it be deemed, to change any existing governmental jurisdiction of the State of New Mexico, Santa Fe County or the Santa Fe County Sheriff, the Pueblo, or any of their respective agencies. Nothing in this MOA is intended, nor shall it be deemed, to be a concession by the State, Santa Fe County or the Santa Fe County

Sheriff, or the Pueblo as to any party's claims as to its jurisdiction, or an admission of the same, or a waiver of the right to challenge such claims upon termination of this MOA.

B. 1. The State of New Mexico, NMDPS (the "State"), Santa Fe County, and the Pueblo are each governmental entities, each with certain governmental powers over persons within their respective territorial jurisdictions. The State (and NMDPS and New Mexico State Police ("NMSP") as its instrumentalities), Santa Fe County and the Santa Fe County Sheriff, and the Pueblo are immune from suit to the extent permitted by law. Nothing in this MOA is intended, nor shall it be deemed, to waive or limit the sovereign immunity of any party.

2. Any liability of NMDPS, NMSP, or Santa Fe County incurred in connection with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 42-4-1, *et seq.*, NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto, and it is not intended to modify, in any way, the parties' liabilities as governed by federal, state, tribal, or common law, the New Mexico Tort Claims Act, or any applicable consent to suit by the Pueblo. NMDPS, NMSP, Santa Fe County or the Santa Fe County Sheriff, and their "public employees," as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this MOA modifies or waives any provision of the New Mexico Tort Claims Act.

3. By entering into this MOA, the Pueblo does not waive or limit its sovereign immunity with respect to any claims by any third party beyond any applicable waivers included in Pueblo law, and does not waive any other defense(s) or limitation(s) of liability pursuant to applicable law.

C. This MOA is intended solely to meet the Pueblo's obligations under the Act, and neither this MOA nor the activities of NMDPS, Santa Fe County or the Santa Fe County Sheriff, or the Pueblo under this MOA shall be construed to affect the equitable or legal claims of the State, Santa Fe County or the Santa Fe County Sheriff, or the Pueblo in any present or future litigation or negotiation concerning the State's or County's jurisdictions or the Pueblo's jurisdiction or sovereign authority with respect to any particular lands.

IV. FUNCTIONS

A. Registration of Sex Offenders

1. Section 112 of the Act requires the Pueblo to maintain a jurisdiction-wide registry of sex offenders who live, work, or go to school on tribally owned lands or who have been convicted of a sex offense in the Pueblo's Tribal Court (hereinafter collectively referred to as "Pueblo sex offenders").

a. NMDPS agrees to accept and maintain registration information forwarded from the Pueblo's designated law enforcement agency.

b. The Santa Fe County Sheriff agrees to perform this function on behalf of the Pueblo for the Santa Fe-County-wide registry, as to Pueblo sex offenders who live, work, or go to school on tribally owned lands within Santa Fe County.

2. Section 114(b) of the Act requires the Pueblo to obtain, among other things, a sex offender's fingerprints, palm prints, and criminal history, DNA sample, and photograph, and requires the Pueblo to include this information in a jurisdiction-wide registry.

a. The Santa Fe County Sheriff agrees to obtain the required information from Pueblo sex offenders for inclusion in their registries and to forward this information to NMDPS for inclusion in the state-wide registry, all on behalf of the Pueblo.

3. Immediately upon registering a sex offender who resides, works, or goes to school within the exterior boundaries of the Pueblo, whether on tribally owned lands or on non-tribally owned lands, the Santa Fe County Sheriff shall notify the Governor of the Pueblo of the registrant's name, address, place of employment, or school.

B. Public Access to Sex Offender Information Through the Internet

Section 118 of the Act requires the Pueblo to make available on the Internet all information about each sex offender in the registry, with some exemptions. NMDPS agrees to:

- Allow the Pueblo, through its designated law enforcement agency, to access and utilize the NMDPS Internet Website to post and update certain registration information;
- Maintain all of the required registration information on the Internet Website in a manner as required by the laws of the State of New Mexico and provide copies of the registration documents to the Pueblo to confirm compliance as requested.
- Submit the registration information, including conviction information and fingerprints, to the national registry for posting to the National Sex Offender Public Website operated by the United States Department of Justice.
- Allow the Pueblo, through its designated law enforcement agency, to access and submit registration information, including conviction information and fingerprints, to the National Crime Information Center (NCIC) operated by the Federal Bureau of Investigation.

C. Community Notification

1. Section 121 of the Act requires the Pueblo, immediately after a sex offender registers or updates a registration, to provide the information in the registry to:

- The U.S. Attorney General;
- Appropriate law enforcement agencies, and each school and public housing agency in each area where the sex offender lives, works, or attends school;
- Each jurisdiction where the sex offender resides, is an employee, or is a student and each jurisdiction from or to which a change of residence, employment, or student status occurs;
- Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a);
- Social service agencies responsible for protecting children in the child welfare system; volunteer organizations in which contact with minors or other vulnerable individuals might occur; and
- Any entity that requests such notification.

2. The Santa Fe County Sheriff agrees, on behalf of the Pueblo, to provide the required registration information to the U.S. Attorney General; appropriate law enforcement agencies; schools and public housing agencies located on non-tribally owned land and located on land outside the exterior boundaries of the Pueblo; each jurisdiction where the sex offender resides, is an employee, or is a student on non-tribally owned land and land located outside the exterior boundaries of the Pueblo; and each jurisdiction from or to which a change of residence, employment, or student status occurs; any agency located on non-tribally owned land and located

on land outside the exterior boundaries of the Pueblo responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a); state social service agencies responsible for protecting children in the child welfare systems; volunteer organizations located on non-tribally owned land and located on land outside of the exterior boundaries of the Pueblo in which contact with minors or other vulnerable individuals might occur.

3. **The Pueblo** retains the obligation to provide registration information to schools and public housing agencies located on tribally owned lands; Pueblo of Tesuque Social Services; and any volunteer organizations located on tribally-owned lands through which contact with minors or other vulnerable individuals might occur.

D. Notification to Sex Offenders of Duty to Register

1. Section 117 of the Act requires an “appropriate official” to inform a sex offender of the Act’s registration requirements before the offender is released from custody, or if the offender is not in custody, immediately after sentencing. The official must inform the offender of the duties and explain those duties, require the offender to read and sign an acknowledgement form, and ensure that the offender is registered.

2. **The Pueblo** retains this obligation as to persons convicted of sex offenses under Pueblo of Tesuque law in the Pueblo’s Tribal Court.

E. Ensuring Compliance by Sex Offenders

1. Section 122 of the Act provides that if a sex offender fails to comply with the requirements of a registry, the jurisdiction must notify the U.S. Attorney General, revise the registry to reflect the failure to comply, and take any appropriate steps to ensure compliance.

2. **NMDPS and the Santa Fe County Sheriff** agree, on behalf of the Pueblo, to revise the registry to reflect the failure to comply. The updates to the registry shall appear on the NMDPS website upon their being provided to NMDPS by the **Santa Fe County Sheriff**.

3. **The Pueblo** retains the obligation to notify the U.S. Attorney General of the failure of a sex offender to comply with the requirements of the registry.

4. The parties will cooperate with one another to ensure compliance with the requirements of the Act by sex offenders who live, work, or reside within the exterior boundaries of the Pueblo, from verification of a person's registration information through apprehension of an offender who fails to register.

a. Any verification, apprehension, or other such activities (1) that are to occur within the exterior boundaries of the Pueblo on tribally owned lands, regardless of whether the offender is Indian, or (2) that occur within the exterior boundaries of the Pueblo, whether or not on tribally owned lands, and that regard an offender who is Indian, **NMDPS**, **NMSP**, and the **Santa Fe County Sheriff**, as applicable, shall coordinate those activities through the Chief of Police of the Pueblo of Tesuque Police Department, and shall provide reasonable prior notice to the Governor of the Pueblo.

b. For any verification, apprehension, or other activities that are to occur within the exterior boundaries of the Pueblo, but not on tribally owned lands, and that do not regard an offender who is Indian, **NMDPS**, **NMSP**, and the **Santa Fe County Sheriff** shall give reasonable prior notice to the Governor of the Pueblo and to the Chief of Police of the Pueblo of Tesuque Police Department that such activities are contemplated.

V. OTHER TERMS AND CONDITIONS

A. Withdrawal of a Party

Any party may withdraw from this MOA without cause by giving at least 90 calendar days' written notice to the other parties, except that withdrawal by the Pueblo, or NMDPS or Santa Fe County, shall constitute termination of this MOA.

B. Term

The term of this MOA shall be indefinite, it being mutually agreed that the MOA shall continue in effect until superseded by written amendment that explicitly replaces this MOA or until terminated pursuant to Section V(A) above.

C. Effective Date

This MOA shall be effective upon execution on behalf of NMDPS, Santa Fe County Sheriff, and the Pueblo.

D. Other Agreements

The parties agree to enter into such other agreements with one another as may be necessary to carry out the intent of this MOA and the responsibilities described herein.

E. Meetings

The parties agree to meet no less than annually to discuss matters relating to this MOA and any matters that arise out of the course of activities related to this MOA.

F. Delay or Omission

No delay or omission to exercise any right or duty under this MOA shall impair such right or duty nor shall it be construed to be a waiver of or acquiescence in any breach or default. The parties specifically and affirmatively agree not to construe the conduct, delays, or omissions of the others as altering in any way their own agreements as set forth in this MOA. Any waiver, allowance, or approval of any claimed breach or default under this MOA must be in writing; and because the language of this subsection is negotiated and intended by the parties to be binding,

they agree that they will not raise unwritten waiver or estoppel as affirmative defenses so as to limit or negate the clear language and intent of this subsection. All remedies at law or in equity available to the parties of this MOA shall be cumulative, not alternative.

G. Notice

Notice shall be deemed to have been given under this MOA when it is deposited in the United States mail, postage prepaid, and addressed or faxed to:

NMDPS

Bureau Chief
Law Enforcement Records Bureau
State of New Mexico
Department of Public Safety
P.O. Box 1628
4491 Cerillos Road
Santa Fe, NM 87504-1628
Telephone: (505) 827-9297
Fax: (505) 827-3399
Regina.chacon@state.nm.us

NMSP

Chief (or his designee), New Mexico State Police
NM State Police Espanola District 7
1410 Paseo De Oate
Espanola, NM 87532
Telephone: (505) 753-2277
Fax: (505) 819-9636
Roman.jimenez@state.nm.us

Santa Fe County Sheriff

Sheriff
35 Camino Justicia
Santa Fe, NM 87508
Public Safety Complex
Telephone: (505) 986-2455

With a Copy to:

Detective Amber L. Marez

35 Camino Justicia
Santa Fe, NM 87503
Telephone: (505) 986-2490
Fax: (505) 986-2498
amarez@santafecounty.nm.gov

Pueblo of Tesuque Chief of Police

Memorandum of Agreement Among the NM Dep't of Public Safety,
Santa Fe County, and the Pueblo of Tesuque Concerning Tribal Functions
Pursuant to the Federal Adam Walsh Child Protection and Safety Act of 2006
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Route 42, Box 360-T
Santa Fe, NM 87506

H. Disputes

1. If a party believes that any other party has violated this MOA, it shall contact the designated representative of the other party to informally discuss the issue. The parties shall attempt in good faith to resolve the question and, if no agreement is reached, shall participate in mediation by a mutually agreeable third party.

2. In the event of an irresolvable material violation of this MOA, the parties shall be relieved of their obligations hereunder and this MOA shall terminate, provided that such termination shall not take effect for a period of time, not to exceed 90 calendar days, to allow the parties time to ensure that the registration responsibilities required by the Ordinance will be met through other means.

I. Entire Agreement; Modification

This MOA, including without limitation its introductory recitals, constitutes the final and entire agreement among the parties as to the matters set forth herein, and there is no agreement or promise on the part of any party to do or omit to do any act or thing not herein mentioned. This MOA is intended as a complete and exclusive statement of the terms and conditions of the parties' agreement and may not be amended, changed, modified, or altered except by written amendment executed by each of the parties.

J. Headings

The section and subsection headings of this MOA are inserted only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the parties.

K. Cooperation; Reasonableness; Consent; Good Faith

The parties agree that active and ongoing communication and cooperation are necessary to accomplish the purposes of this MOA. Each party agrees to cooperate fully with the others and to act reasonably and in good faith and in a timely manner in all activities hereunder so that each of them may obtain the benefits contemplated hereunder and for which they have negotiated. No party shall unreasonably deny, withhold, or delay any consent or approval required or contemplated for any action or transaction proposed to be taken or made herein. The parties agree to consult with and assist the others in good faith and without delay as to all matters that require their cooperation.

L. Tribally Owned Lands; Exterior Boundaries of the Pueblo

For purposes of this MOA, the term "tribally owned lands" shall include all lands owned by the Pueblo or held in trust for it by the United States, whether such lands were acquired or placed in trust before or after the effective date of this MOA. The term "exterior boundaries of the Pueblo" shall refer to boundaries of the Pueblo of Tesuque grant and the Pueblo of Tesuque Reservation.

M. Liability and Indemnity


Each party will be fully responsible for the actions of its own officers, agents, and employees. By agreeing to and signing this Agreement, the parties hereby waive all claims against one another for compensation for any loss, damage, or personal injury or death based or arising from the actions taken by the parties pursuant to this Agreement.

N. Line of Duty.

Any service performed pursuant to this MOA by any officer, agent, or employee of the parties constitutes services rendered in the line of duty in such office, agency, or employment.

IN WITNESS WHEREOF, the parties have caused this MOA to be executed as of the date of execution by the last party to sign.

New Mexico Department of Public Safety



SECRETARY
New Mexico Department of Public Safety
By his designee Regina Chacon

Date: 11.20.17

Santa Fe County



Katherine Miller, Santa Fe County Manager

Date: 11.13.2017



Robert A. Garcia, Santa Fe County Sheriff

Date: 11-8-17

Approved as to form



Santa Fe County Attorney

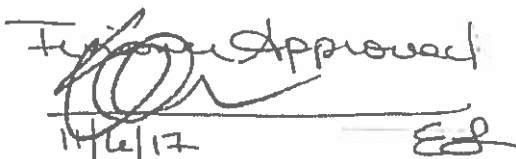
Date: 11-1-17

Pueblo of Tesuque



Governor

Date: 11/2/18



Executive Director

IN WITNESS WHEREOF, the parties have caused this MOA to be executed as of the date of execution by the last party to sign.

New Mexico Department of Public Safety

SECRETARY
New Mexico Department of Public Safety
By his designee Regina Chacon

Date: _____

Santa Fe County

Katherine Miller, Santa Fe County Manager

Date: _____

Robert A. Garcia, Santa Fe County Sheriff

Date: _____

Approved as to form

Santa Fe County Attorney

Date: _____

Pueblo of Tesuque

Governor

Date: 1/12/18