

MEMORANDUM OF AGREEMENT ITEM # 19-0222
BETWEEN SANTA FE COUNTY AND
THE CITY OF SANTA FE FOR THE
PUBLIC SAFETY RADIO COMMUNICATIONS SYSTEM SOLUTIONS PROJECT

THIS MEMORANDUM OF AGREEMENT (MOA) is entered on this 3 day of April, 2019, between Santa Fe County (hereinafter the "County"), a political subdivision of the state of New Mexico, and the City of Santa Fe, (hereinafter the "City").

RECITALS

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of the County, this MOA confirms the parties' commitment and mutual cooperation which recognizes that the partnering activities between government entities may produce community and constituency benefits beyond what might be produced independently; and

WHEREAS, this MOA is exempt from the provisions of the Procurement Code in accordance with to Section 13-1-98 (A), NMSA 1978; and

WHEREAS, in November 2001, the County and City (collectively the Parties) entered into a Joint Powers Agreement (JPA) for the purpose of defining the terms and conditions of operating, administering, and maintaining a Joint Enhanced 911 Regional Communications Center (RECC); and

WHEREAS, the City is securing services of a PSR Consultant to conduct a IV & V assessment of the PSR project. This consultant will represent the City in all technical discussions regarding the major PSR component specifications; and

WHEREAS, the Project 25 (P25) is a suite of standards for digital mobile radio communications designed for use by public safety organizations in North America. P25 radios are a direct replacement for analog UHF radios but P25 radios have the capability to transfer data as well as voice, allowing for a more natural implementation of encryption or messaging. P25 radios are commonly implemented by dispatch organizations, such as police, fire, ambulance and emergency rescue service, using vehicle-mounted radios combined with walkie-talkie handheld use; and

WHEREAS, the City has completed the specifications for the project to upgrade their existing 15 Channel Repeater Site (Prime Site); and

WHEREAS, the Parties have agreed to undertake the County and City of Santa Fe Public Safety Radio Communications System Solutions Project (Project) which includes the P25 and Prime Site components by participating in cost sharing of the Project infrastructure and/or services with the County serving as fiscal agent for the Project; and

SFC CLERK RECORDED 04/04/2019

WHEREAS, the Parties agree the project components described in this MOA are of mutual interest and benefit to the County and City.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF WORK

A. The Project will be implemented under one procurement completed by the County as follows:

1) Acquisition of the P25 Core and 13 Motorola P25 Dispatch Consoles which will be located at the RECC and funded 50/50 per the JPA which established and authorized the RECC.

2) Acquisition of the 15-channel Motorola P25 Site Equipment which will be located at the City of Santa Fe's prime site location and will be funded 100% by the City.

B. In accordance with applicable state law and County ordinance, the County will use a procurement method deemed to be in the best interest of the County and the Project.

2. COMPENSATION

A. The total cost of the Project shall not exceed **\$1,743,999.99** as follows:

1) RECC P25 Core and 13 Motorola P25 Dispatch Consoles - \$1,173,658.00 (to be split 50/50 between County and City - \$586,829.00 each)

2) City 15-channel Motorola P25 Site Equipment - \$570,340.07
(to be paid 100% by City)

B. During the term of this Agreement, the County shall invoice the City for expenses incurred by the County for the Project.

3. EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the date of last signature by the parties and will terminate December 31, 2019, unless earlier terminated pursuant to Section 4 (Termination) or Section 13 (Appropriations and Authorizations) below.

4. TERMINATION

A. Termination of Agreement. This Agreement may be terminated by the County or the City upon written notice to the other party at least 30 days prior to the intended date of termination. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

B. Termination of Agreement for Cause. If a party fails to fulfill in a timely and proper manner its obligations under this MOA, or if a party violates any of the covenants, agreements, or stipulations of this MOA, the non-breaching party shall thereupon have the right to suspend or terminate this MOA by giving written notice to the other party such termination and specifying the effective date thereof.

Notwithstanding the above, no party shall be relived of liability to the other party for damages sustained because of the breach of this MOA.

5. PERSONNEL

- A. The Parties represent that they have, or will secure at their own expense, all personnel required to perform all of the services required of it under this MOA.
- B. All services required hereunder will be performed by the County via contracted services and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

6. ASSIGNMENT

The Parties shall not assign or transfer any interest in this MOA or assign any claims for money due or to become due under this MOA without prior written approval of both Parties.

7. NO THIRD-PARTY BENEFICIARIES

This MOA was not intended to and does not create any rights in any persons or party not a party to this Agreement.

8. RELEASE

Respective final payment by the Parties of the amounts due under this MOA shall operate as a release of the City and County, their officers and employees, and the City and Santa Fe County from all liabilities, claims and obligations whatsoever arising from or under this MOA.

9. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omission in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act §41-4-1, et seq., NMSA 1978.

10. AMENDMENT

This MOA shall not be altered, changed or amended except by an instrument in writing executed by the parties hereto.

11. INTEGRATION CLAUSE

This Agreement incorporates all covenants and understandings the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this MOA. No prior covenants or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOA.

12. APPLICABLE LAW; VENUE

The activities or services under this MOA shall be performed and completed in accordance with the laws of the State of New Mexico. The City and the County agree that exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

13. APPROPRIATIONS AND AUTHORIZATIONS

This MOA is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners, the City of Santa Fe and, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made, this MOA shall terminate immediately upon written notice being given by the City and County. Such termination shall be without penalty to the City and County, and the City and County shall have no duty to reimburse the City or County for expenditures made in the performance of this MOA. The City and County are expressly not committed to expenditure of funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the City and County. The City and County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this MOA shall be final and not subject to challenge by the City or County.

14. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

15. NEW MEXICO TORT CLAIMS ACT

No provisions of this MOA modifies or waives any sovereign immunity or limitation of liability enjoyed by the County of its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, §41-4-1, et seq.

16. PROHIBITED ACTIVITY

The County and the City are prohibited from using funds provided herein or using personnel employed for the administration of this Agreement, for political activities, sectarian or religious activities, lobbying or political patronage.

17. RECORDS AND FINANCIAL AUDIT

- A. To the extent its books and records relate to (i) its performance of this MOA or any subcontract entered into pursuant to it or (ii) cost or pricing data in this MOA, agrees to (i) maintain such books and records during the term of this MOA and for a period of six years from the date of final payment under this Agreement; (ii) allow the County or

its designee to audit such books and records at reasonable notice; (iii) to keep such books and records in accordance with generally accepted accounting principles ("GAAP").

- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data in this MOA, also agrees to require any subcontractor the Parties may hire to perform its obligations under this MOA to (i) maintain such books and records during the term of this MOA and for a period of six years from the date of final payment under any subcontract; (ii) allow the County or its designee to audit such books and records in accordance with GAAP.

18. PENALTIES FOR VIOLATIONS OF LAW

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

19. EQUAL OPPORTUNITY COMPLIANCE

The County and City agrees to abide by all federal and state laws, rules, and regulations, pertaining to equal employment opportunity. In accordance with such laws, the City assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity be excluded from employment with or participation in, be denied the benefits of, or otherwise subjected to discrimination under any activity performed under this MOA. If is found not to be in compliance with these requirements during the life of this Agreement, agrees to take appropriate steps to correct these deficiencies.

20. INVALID TERM OR CONDITION

If any term or condition of this Agreement shall be valid or unenforceable, the reminder of this Agreement shall not be affected and shall be valid and enforceable.

21. NOTICES

Any notice required by this MOA shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

COUNTY: Attn: County Manager
Santa Fe County
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276


CITY: Attn: City Manager
City of Santa Fe
200 Lincoln Avenue
Santa Fe, New Mexico 87504-0276

22. SURVIVAL

The provisions of the following paragraphs shall survive the termination of this MOA:
RECORDS AND FINANCIAL AUDIT; RELEASE; APPLICABLE LAW VENUE; NO THIRD
PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF the parties have duly executed this MOA as of the last date of
signature by the parties hereto.

SANTA FE COUNTY:



Anna T. Hamilton Chair,
Santa Fe County Board of County Commissioners



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

MEMORANDUM OF AGREEMENT
PAGES: 7

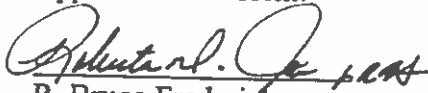
Hereby Certify That This Instrument Was Filed for
Record On The 4TH Day Of April, 2019 at 11:16:24 AM
And Was Duly Recorded as Instrument # 1882827
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Deputy  County Clerk, Santa Fe, NM
Geraldine Salazar

ATTESTATION:


Geraldine Salazar
Santa Fe Clerk
Date: 4-3-2019

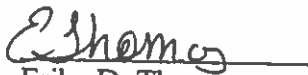
Approved as to form:


R. Bruce Frederick
Santa Fe County Attorney

Date: 4-1-19

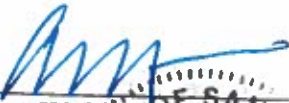


Finance Department:


Erika D. Thomas
Interim Finance Director


Date: 4-1-19

CITY OF SANTA FE


Alan Webber, Mayor


Date: 3/29/19

Attest:


Yolanda Vigil
City Clerk

Date: 3-29-19

Approved as to form:


Erin K. McSherry, City Attorney

Date: 3/1/19

Approved:


Mary McCoy, Finance Director

Date: 3/29/19

Business Unit/Line Item:

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