

JPA.

ITEM # 07-0320

**FIRST AMENDED AND RESTATED JOINT POWERS AGREEMENT CONCERNING
 THE OPERATION OF THE SANTA FE REGIONAL EMERGENCY
 COMMUNICATIONS CENTER ("RECC") BETWEEN THE
 GOVERNING BODY OF THE CITY OF SANTA FE, NEW MEXICO
 AND THE
 BOARD OF COUNTY COMMISSIONERS
 OF SANTA FE COUNTY, NEW MEXICO**

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THIS FIRST AMENDED AND RESTATED JOINT POWERS AGREEMENT (hereinafter referred to as "the Agreement") is entered into by and between the City of Santa Fe, New Mexico (hereinafter referred to as "the City"), a municipal corporation organized and existing under the Laws of the State of New Mexico, and the Board of County Commissioners of Santa Fe County, New Mexico (hereinafter referred to as "the County"), a political subdivision of the State of New Mexico.

PURPOSE

The purpose of this First Amended and Restated Joint Powers Agreement is to further define the terms and conditions under which the parties will jointly operate, maintain and administer the Santa Fe Regional Emergency Communications Center (hereinafter referred to as "the RECC"), to further define the roles and responsibilities of the RECC to provide emergency telephone access for citizens of the City and County, obtain needed emergency services including fire, EMS and law enforcement, and provide emergency communications within the City and County.

RECITALS

WHEREAS, on or about November 5, 2001, the parties hereto entered into a Joint Powers Agreement to Operate the RECC;

WHEREAS, the RECC was established and, since 2001, has provided enhanced 911 communications within the City and County with corresponding improvements to emergency response, emergency medical care, fire, rescue and law enforcement services;

WHEREAS, on or about October 11, 2006, the Board of County Commissioners and the Governing Body of the City of Santa Fe executed a Joint Resolution (County Resolution No. 2006-164 and City Resolution No. 2006-125), wherein the County agreed, in the event the County's proposed Countywide Emergency Communications and Emergency Medical Gross Receipts Tax was approved by the voters, to be "... solely responsible for the costs of the day to day operation of the RECC ...", to become the fiscal agent for the RECC, and to employ RECC employees as County employees;

WHEREAS, the voters approved the Countywide Emergency Communications and Emergency Medical Gross Receipts Tax during the general election of 2006 and proceeds from that tax will be collected beginning July 1, 2007;

WHEREAS, the parties therefore desire to amend and restate the 2001 agreement to conform to the Joint Resolution, to correct the agreement to conform with amendments that have been made to the Enhanced 911 Act, and to set forth herein their covenants and agreements thereto.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT:

ARTICLE I
ESTABLISHMENT OF THE REGIONAL EMERGENCY COMMUNICATIONS CENTER ("RECC")

Pursuant to the New Mexico Enhanced 911 Act, NMSA 1978, Sections 63-9D-1 *et. seq.* (1989) (as amended) (hereinafter referred to as "the Act"), the Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7 (1961)(as amended), and the general authority possessed by City and County government, the RECC is established for the express purpose of exercising the powers conferred upon local governing bodies by the Act. Pursuant to this Agreement, the RECC shall continue to provide enhanced 911 emergency communications within the City of Santa Fe and the County of Santa Fe, and act as the vehicle through which the parties receive funding pursuant to the Act.

ARTICLE II
BOARD OF DIRECTORS

A. THE RECC BOARD. The RECC shall be governed by a Board of Directors consisting of members described in the next paragraph. The Board of Directors shall be known as the "Santa Fe Regional Emergency Communications Center Board" (hereinafter referred to as "the Board").

B. BOARD MEMBERS AND TERMS:

1. The Board shall consist of the following persons:
 - a. The Police Chief of the City of Santa Fe;
 - b. The Fire Chief of the City of Santa Fe;
 - c. The City Manager of the City of Santa Fe;
 - d. The Sheriff of the County of Santa Fe;
 - e. The Fire Chief of the County of Santa Fe;
 - f. The County Manager of the County of Santa Fe; and
 - g. One member representing the community at-large appointed by agreement of the City and County Managers.

2. The term of office of members of the Board of Directors shall coincide with that member's term of office or term of service with the respective party, except the member representing the community at-large shall serve at the pleasure and upon consensus of the City and County Managers.

3. A person appointed on a temporary or indeterminate basis to one of the positions specified in Article II(B)(1), subsections (a) through (f), shall serve as a member of the Board of Directors until the appointment terminates.

C. DUTIES AND RESPONSIBILITIES.

1. The Board of Directors shall provide oversight and direction for the operations of the RECC and shall regularly advise the governing bodies of the City and County concerning the operations of the RECC.

2. The Board of Directors shall interview candidates for the Director of the RECC (hereinafter referred to as "the Director"), as provided in Article III of this Agreement and only those candidates recommended by the Board shall be considered for hire. The County Manager shall not have the authority to hire, fire or discipline the Director of the RECC without the recommendation of the Board of Directors. The Director shall be a County employee but shall report solely to the Board of Directors. The Board of Directors shall have general supervisory authority over the Director and shall have the right to recommend any necessary personnel decisions concerning the Director to the County Manager. The Board of Directors shall describe in writing the duties and responsibilities of the Director, shall conduct an annual performance review of the Director, and shall conduct other periodic reviews as needed.

3. The Board shall not have general supervisory authority or have authority to make any personnel decisions concerning other employees of the RECC.

4. The Board of Directors shall conduct periodic meetings with the Director and staff of the RECC to receive reports and provide guidance and direction.

5. The Board of Directors shall periodically review revenue and expenses of the RECC and shall propose to the County an annual operating budget for operation of the RECC which shall be submitted for approval to the County prior to March 1st of each year.

6. The Board of Directors shall review and approve any proposed capital expenditure for the RECC on an annual basis, which shall be submitted to the City and the County prior to March 1 of each year as a supplement to the proposed annual operating budget. Capital expenditures are assets over \$5,000 each item including delivery, installation, and other related costs of equipment, machinery, or vehicles with a life of longer than one year

7. The Board of Directors shall ensure that the proposed annual operating budget of the RECC is adhered to, and that the finances of the RECC are properly managed.

8. The Board of Directors shall approve standard operating procedures and policies as developed by the Director for operation of the RECC. Standard operating procedures shall not be valid unless first approved by the Board or, in the case of an emergency, adopted by the Director and ratified by the Board at the next meeting of the Board.

9. The Board of Directors shall review and approve quarterly reports prepared by the Director and shall submit copies of the approved report to the governing bodies of the City and County.

10. The Board of Directors shall create and appoint, by resolution, such committees as it deems necessary.

11. The Board of Directors shall adopt procedural rules of order for Board meetings and meetings of any committees.

12. The Board shall, through the Director, comply with requests to inspect public records pursuant to the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 *et seq.* (1974)(as amended).

13. The Board shall coordinate compliance with and take all requisite actions pursuant to the Enhanced 911 Act, NMSA 1978, Sections 63-9D-1 *et seq.* (1989)(as amended)

D. MEETINGS:

1. The Board of Directors shall, at least annually, adopt a resolution that specifies what notice for a public meeting of the Board is reasonable pursuant to the New Mexico Open Meetings Act, NMSA 1978, Sections 10-15-1 *et seq.* (1974)(as amended).

2. The Board of Directors shall annually elect one member to act as the Chair of the Board alternating yearly between a city and county representative and a fire and police representative. The Chair shall be entitled to vote.

3. Each Board member shall have one vote; proxy voting shall not be permitted.

4. A majority of the members of the Board of Directors shall constitute a quorum and a majority vote of members present shall decide any issue.

5. Members of the Board may attend a meeting by means of a conference telephone or other similar means of communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the Board who speaks during the meeting.

5. The Board shall meet regularly but no less than quarterly, upon the call of the Chair, or upon the call of a majority of the members of the Board of Directors.

6. The Board shall cause minutes of all meetings to be kept and shall provide copies of said meeting minutes to both the City and County Clerks for retention as public records.

E. LIMITATION. The Board shall not be involved in the day-to-day management of the RECC except as outlined above and shall only have such duties and responsibilities as have been expressly delegated by the City and County pursuant to this Agreement, along with such incidental powers as may be reasonably necessary to effectuate the purposes and intent of this Agreement.

F. INDEPENDENT COUNSEL. The Board shall be represented at all times by independent counsel, and not by the City Attorney or the County Attorney. The Board shall include the costs of such representation in its annual recommended budget.

ARTICLE III
ORGANIZATION OF THE RECC

A. THE DIRECTOR.

1. The Director shall be responsible for the day-to-day operation and management of the RECC.

2. The Board of Directors shall recommend to the County employment of the Director, who shall be an exempt employee of the County. The Director shall report solely to the Board of Directors. The Board of Directors shall have supervisory authority over the Director and shall have the sole right to recommend any necessary personnel decisions concerning the Director to the County. The Board of Directors shall describe in writing the duties and responsibilities of the Director, and shall conduct an annual performance review of the Director and conduct other periodic reviews as needed.

3. The duties of the Director shall include the following:

- a. The Director shall plan, direct, operate and manage the RECC.
- b. The Director shall have general supervisory authority over employees assigned to the RECC.
- c. The Director shall recommend to the County, consistent with the County's personnel rules and any applicable collective bargaining agreement, the hiring, firing and disciplining of all employees assigned to the RECC.

d. The Director shall assign, train, schedule and supervise employees assigned to the RECC.

e. The Director shall serve as the liaison between the RECC and the City, County and agencies utilizing the RECC, concerning the operation, management and funding of the RECC.

f. The Director shall report to the Board on matters related to operation, management and funding of the RECC, including the annual operating budget and proposed capital improvements associated with the operation of the RECC.

g. The Director shall prepare a recommended annual operating budget for the RECC and shall present it to the Board for approval prior to submission to the County.

h. The Director may delegate and perform the preceding tasks, other tasks assigned by the Board, and such other tasks and functions as may be reasonably necessary to implement this Agreement.

B. RECC EMPLOYEES/TRANSITION TO COUNTY EMPLOYMENT.

1. Upon the effective date of this Agreement, RECC employees shall become employees of the County, subject to the personnel rules and applicable collective bargaining agreements of the County, and subject to the policies and standard operating procedures of the RECC.

2. In order to facilitate the orderly transition to County employment, the parties agree that RECC employees shall receive the employee's hourly rate or salary immediately preceding the transition to County employment. After becoming County employees, employees of the RECC shall receive the County's normal benefit package, including participation in the Public Employees Retirement Association retirement plan, State of New Mexico health plans, term life insurance plans, sick leave and vacation pursuant to the County's then-current personnel rules and any applicable collective bargaining agreement, and other incidental benefits provided by the County.

3. Accrued annual leave and sick leave balances of RECC employees shall be carried forward upon County employment. Funds held by the City as Fiscal Agent for the RECC as security for the sick leave and vacation balances shall be transferred to the County. After the employees become County employees, employees assigned to the RECC shall accrue annual leave and sick leave as provided in the County's personnel rules, any applicable collective bargaining agreement, and based on their total years of service for the RECC.

ARTICLE IV
FINANCIAL MATTERS

A. RESPONSIBILITIES OF THE FISCAL AGENT. Santa Fe County shall act as the Fiscal Agent for the RECC and shall collect all revenues accruing to the RECC and shall

make all disbursements for the RECC. The County shall periodically cause financial reports to be created pertaining to the operations of the RECC, and shall ensure an annual audit is accomplished. So long as the County is Fiscal Agent of the RECC, it shall be strictly accountable for all receipts and disbursements of the RECC, and shall maintain appropriate records thereafter as prescribed by law.

B. FINANCIAL RESPONSIBILITIES OF CITY AND COUNTY.

1. The County shall provide all funds needed for day-to-day operation of the RECC.

2. The City and the County shall equally provide funds for needed capital expenditures.

3. The RECC shall be housed in space provided by the County.

4. All funds received by the parties to support operations of the RECC or to support capital expenditures shall be provided to the County, including funds provided by the State of New Mexico or the federal government, and any and all such other funding or grant agencies, and disbursements from the Enhanced 911 Fund. Such funds shall become the property of Santa Fe County but shall be expended by the County solely to support operation of the RECC; neither party shall be entitled to a credit, offset, deduction or other compensation for said funds regardless of who solicited, applied for, sought or obtained said funding.

5. The County shall acquire public liability insurance in such amounts and with coverage appropriate to the risks inherent in the RECC's operations, including specifically all risks for which immunity has been waived pursuant to the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 *et seq.* (1976)(as amended).

6. Any funds being held by the City of Santa Fe, as fiscal agent for the RECC, shall be transferred to the County, as fiscal agent for the RECC, as soon as practicable after the effective date of this Agreement.

C. NATIONAL CRIME INFORMATION CENTER. The National Crime Information Center (NCIC) functions of the RECC may be contracted to the New Mexico Department of Public Safety.

D. MULTIPLE STREET ADDRESS GUIDE. The RECC shall be responsible for maintaining, updating and providing the necessary information to the telephone company as needed to maintain an accurate Street Address Guide for both the City and County.

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ARTICLE V
TERM OF AGREEMENT

A. TERM. This Agreement shall become effective on July 1, 2007 so long as the Agreement has been previously approved and executed by the parties hereto and approved by the Secretary of the Department of Finance and Administration. If this Agreement has not been approved and executed by the parties hereto and approved by the Secretary of the Department of Finance and Administration as of July 1, 2007, this Agreement shall become effective when approved and executed by the parties hereto and approved by the Secretary of the New Mexico Department of Finance and Administration. This Agreement shall have perpetual existence unless terminated as hereinafter provided.

B. TERMINATION. This Agreement may be terminated by either party upon delivery of a written notice to the other party at least 180 days prior to the intended date of termination. By such termination, neither party may nullify or avoid any obligations required to have been performed prior to termination.

C. LIABILITY. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions 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, NMSA 1978, Sections 41-4-1 *et seq.* (1976), as amended, and the express immunity granted pursuant to NMSA 1978, Section 63-9D-10 (1989)(as amended).

D. AMENDMENT. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto, which shall not become effective until approved by the Secretary of the Department of Finance and Administration.

E. APPROPRIATIONS. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the governing bodies of the City and County for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice being given by one party to the other at least 180 days prior to the intended date of termination. Either party's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.

F. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New Mexico.

G. STATUS OF AGREEMENT; JOINT POWERS AGREEMENTS ACT. The parties acknowledge and agree that this Agreement constitutes an agreement as that term is used in the New Mexico Joint Powers Agreements Act, NMSA 1978, Sections 11-1-1 through 11-1-7 (1961)(as amended) .

H. INSPECTION OF FINANCIAL DOCUMENTS. During the term of this Agreement and for a period of three years thereafter the parties shall maintain accurate and

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complete records of all receipts and disbursements under this Agreement and, upon receipt of reasonable written request, each shall make such records available to the other party and to the public, including any federal, state or local authority during regular business hours.

I. DISTRIBUTION OF RESIDUAL PROPERTY. At the end of the term of this Agreement, the parties hereto shall distribute and dispose of all property acquired in connection with this Agreement. Such property shall be distributed to the party that acquired it or, if the property was acquired by more than one party or purchased with funds provided by a third party, the property shall be distributed to each party *pro rata* based on the proportion of each party's total contribution to the RECC since the inception of the first Joint Powers Agreement in 2001.

J. CONFORMITY WITH JOINT POWERS AGREEMENTS ACT. The parties intend that this Agreement conform in all respects with the Joint Powers Agreements Act, and that this Agreement shall be construed and enforced in conformity with that Act. In case of any inconsistency between this Agreement and the Joint Powers Agreements Act, the provisions of that Act shall control and this Agreement shall be deemed amended.

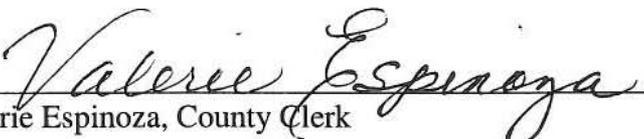
K. ALTERNATIVE DISPUTE RESOLUTION. The parties agree that in the event the terms and conditions of this Agreement are disputed, including but not limited to all financial calculations, expenditures, bills and related matters, the parties will attempt to resolve the dispute through mediation. Notwithstanding the foregoing, the decision of either party to terminate the Agreement under Article V, Section B, or the decision of either party as to whether sufficient appropriations are available and its effect on the other party under Article V, Section E, shall not be subject to mediation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the dates documented below.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNT**

By:  _____
Virginia Vigil, Chair

ATTEST:

 _____
Valerie Espinoza, County Clerk

Approved as to form:

 _____
Stephen C. Ross, County Attorney

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THE GOVERNING BODY OF THE CITY OF SANTA FE

By: David Coss
David Coss, Mayor

ATTEST:

Yolanda I. Vigil
Yolanda I. Vigil, City Clerk
certified 5/9/07

Approved as to form:

Frank Katz
Frank Katz, City Attorney

Approved:

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION

By: Katherine B. Miller

Date: 6-29-07

6/29/07

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

JOINT POWERS AGREEMENT
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I Hereby Certify That This Instrument Was Filed for
Record On The 5TH Day Of July, A.D., 2007 at 10:00
And Was Duly Recorded as Instrument # 1490394
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy Valerie Espinoza
County Clerk, Santa Fe, NM