

**SIXTH AMENDED & RESTATED  
REGIONAL PLANNING AUTHORITY  
JOINT POWERS AGREEMENT**

This SIXTH AMENDED AND RESTATED REGIONAL PLANNING AUTHORITY JOINT POWERS AGREEMENT (the "Agreement") by and between the City of Santa Fe, New Mexico, a municipal corporation (the "City"), and the County of Santa Fe, New Mexico, a political subdivision of the State of New Mexico (the "County") is entered into as of this \_\_\_\_ day of \_\_\_\_, 2008, for the purpose of creating a Regional City/County Planning Authority ("RPA").

**RECITALS**

**WHEREAS:**

A. There is a widely recognized need for coordination between the City and the County on matters of joint interest, and

B. In accordance with the Joint Powers Agreements Act, NMSA 1978 §§11-1-1 through 11-1-7, (the "JPA Act"), the City and the County are public agencies and are authorized by law to enter into a Joint Powers Agreement (JPA); and

C. The City and the County adopted Resolutions (respectively, 1999-57 and 1999-70) calling for the formation of a Regional Planning Authority (RPA) to provide a forum for deliberation on matters of joint interest, more particularly, land use planning in the concurrent five mile extraterritorial jurisdiction; and

D. An RPA was formed in 2000 to investigate the status of planning in the Santa Fe area five miles from the corporate limits of the City of Santa Fe, and to assemble data and establish principals and policies to guide the development of a regional growth management plan for the area, incorporating existing planning for the urban area, the *Santa Fe Comprehensive Extraterritorial Plan*, traditional historic villages (Tesuque, Agua Fria and La Cienega) and for contemporary communities

(the *Community College District Plan* and the *Tres Arroyos Poinente Plan*) , and

E. In 2004, the RPA adopted the *Santa Fe Regional Growth Management Plan and Map*, and

F. Both the County and the City adopted, pursuant to the recommendation of the RPA, the 2004 *Santa Fe Regional Future Land Use and Growth Management Plan* and corresponding land use map (RPA Land Use Plan and Map), and,

G. The *RPA Land Use Plan and Map* is intended to serve as the basis for future zoning districts and growth management in the area designated by the *RPA Land Use Plan and Map*.

H. The RPA has now determined that many of the tasks originally set forth in its original agreement have been completed; and

I. The RPA wishes to continue its study of topics of joint interest and to recommend policy on these topics to the City and County governing bodies without regard to a specific boundary, and

J. The matters of joint interest the RPA wishes to study and recommend policy on include, but are not limited to: implementation of the *RPA Land Use Plan and Map*, annexation issues, mutually agreed upon zoning issues such as rural protection, family transfer development and buffer zones for highway corridors and traditional historic communities, coordination of city and county and RPA Capital Improvement Plans (ICIPs), affordable housing, management of water resources, integrated transportation and transit plans, infrastructure financing, waste management, energy, economic development, coordination of emergency and health services, public safety and pueblo relations.

K. The County adopted *Ordinance 2002-5*, and similarly, the City adopted *Resolution 2000-17*, establishing the RPA as the designated body for review and approval of the County Capital

Outlay Gross Receipts Tax funding for projects that the County undertakes on a joint basis with the City.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES THAT THEY SHALL CREATE A JOINT REGIONAL PLANNING AUTHORITY ACCORDING TO THE FOLLOWING TERMS:

**I. SCOPE OF AGREEMENT.**

A. **Authority.** It is the intention of the parties that this Agreement shall create a RPA pursuant to the authority granted to them by NMSA 1978 § 3-19-5 and § 4-57-3 and such other authority as they may have, whether statutory, constitutional or otherwise. Nothing herein shall be deemed or construed as an additional tier of development review authority for projects within the five mile area around the City. The RPA is hereby granted the authority to perform all acts necessary to fulfill the purposes of this Agreement.

B. **Definitions.**

1. **Regional.** Regional means the territory of both the City of Santa Fe and the County of Santa Fe, New Mexico where there are matters of joint interest among and between the parties.

2. **Implementation of Santa Fe Regional Future Land Use and Growth Management Plan and Map (RPA Land Use Plan and Map).** Implementation of the *RPA Land Use Plan and Map* means upholding the regional policies and principles of the *RPA Land Use Plan and Map*, including the preferred growth priority areas, the preferred development patterns, and the growth management recommendations of the *RPA Land Use Plan and Map*,

C. **Purposes.** The express purposes of the RPA shall be:

1. To resolve and recommend to the City and the County, and as applicable, to the Extraterritorial Land Use Authority, that the *Santa Fe Regional Future Land Use and Growth Management Plan and Map (RPA Land Use Plan and Map)*, is the basis for zoning districts in those areas to be annexed by the City designated as the “presumptive city limits” by the *Settlement Agreement and Mutual Release of Claims* (hereinafter, the 2008 Annexation Agreement), and for those areas in the County consistent with the *RPA Land Use Plan and Map*, designated as “El Centro” by the draft *Santa Fe County Growth Management Strategy*.

2. To update the *RPA Land Use Plan* from time to time as deemed necessary by the RPA.

3.. To recommend policy to the City and/or County on mutually agreed upon zoning issues that may arise from time to time, such as, but not limited to, rural protection, family transfer development, and buffer zones from highway corridors and traditional historic communities, . .

3. To review and approve *County Capital Outlay Gross Receipts Tax* funding for projects that the County undertakes on a joint basis with the City. The *Capital Improvements Plan Joint Regional Projects* shall be updated every five years and recommended projects shall be coordinated with City and County Capital Improvement Plans (ICIPs).

4. To convene on a monthly basis to discuss and develop policy recommendations to the City and the County on affordable housing, management of water resources, integrated transportation and transit plans, infrastructure financing, waste management, energy, economic development, coordination of emergency services, health services, public safety and pueblo relations.

D. **The RPA Land Use Plan.** The RPA shall be responsible for, among other things, creating and maintaining a RPA Land Use Plan and a detailed map.. Amendments to the *RPA Land*

*Use Plan and Map* shall require approval of the RPA. A process for developing amendments or updating the *RPA Land Use Plan and Map* may be developed by the RPA.

E. **Subsequent Actions by City and County.** The City's and the County's land use departments shall develop amendments or revisions, as applicable, to their respective land use codes to implement the *RPA Land Use Plan and Map*. The proposed amendments, and any other plans, resolutions, or agreements implementing the *RPA Land Use Plan and Map* . shall first be approved by the RPA

F. **Review and Approval of Funding of Joint Regional Projects Utilizing County Capital Outlay Gross Receipts Tax Revenues.** In accordance with *Santa Fe County Ordinance 2002-05*, at least half of all revenues generated from the *County Capital Outlay Gross Receipts Tax* shall be used for joint regional projects that benefit residents within the incorporated boundaries of the City of Santa Fe for so long as the tax is imposed, which is currently a 10 year period from 2003 to 2013. The RPA shall review and approve funding for such regional projects by approval of a five-year Capital Improvements Plan and an annual Capital Improvements Program.

1. The RPA considered and approved a *Capital Improvements Plan Joint Regional Projects (RCIP)* for fiscal years 2003 through 2008, and a *Capital Improvements Program* for fiscal year 2003. Subsequently, the RPA approved projects listed in the RCIP in fiscal years 2005, 2006, 2007, and 2008.

2. The RPA shall consider and approve an update to the *Capital Improvements Plan Joint Regional Projects (RCIP)* that shall prioritize, rank and recommend funding allocation for all joint capital outlay projects that are anticipated within the next five-year funding cycle and may be amended within a planning cycle as necessary. The update to the RCIP and yearly program shall consider and incorporate the City and County capital improvement programs (ICIPs).

3. Beginning with fiscal year 2003, the RPA also considered and approved a Capital Improvements Program on an annual basis in accordance with the County's regular fiscal cycle. The Capital Improvements Program prioritized and recommended funding allocation for those joint capital outlay projects to be planned, designed and/or constructed within the given fiscal cycle. The Program, as updated from time to time, may include initial and on-going joint projects, but must be identified within the five-year RCIP.

4. The RPA shall conduct at least one public hearing for both the RCIP and for the Capital Improvements Program and any updates or changes thereto. Public Hearings may be conducted concurrently.

5. Review and approval of the Capital Improvements Plan and the Capital Improvements Program and any updates thereto, shall be consistent with the provisions delineated in *Santa Fe County Ordinance 2002-05* and shall be also consistent with the adopted *RPA Land Use Plan* and any amendments thereto.

6. In addition, RPA resolution No. 2007-03 states that the Joint Regional GRT may be used to leverage or match state or federally funded projects.

## **II. TERM.**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE SECRETARY OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. This Agreement shall continue in effect until such time as it may be terminated by either of the parties hereto pursuant to paragraph III below.

## **III. TERMINATION.**

This Agreement may be terminated by either of the parties hereto, upon written notice delivered to the other party at least 120 days prior to the intended date of termination. By such termination, neither

party may nullify obligations incurred for performance or failure to perform prior to the date of termination.

#### **IV. REGIONAL PLANNING AUTHORITY**

A. **Members.** The City and the County shall each designate (by such process as they respectively select) four members of their respective governing bodies to serve as members on the RPA. The City and the County may also designate an alternate member who shall attend meetings in the absence of a member. Members who have been absent for three consecutive meetings shall be considered resigned and the alternate member may become the member or a new member may be appointed by the City or the County, as applicable. Every six months, a RPA chair shall be elected by the members of the RPA to preside over the RPA meetings for the following six month period and each successive chair being rotated between alternating County and City representatives. The chairperson of the RPA shall have the right to vote on all matters.

1. Any final recommendations on the RPA Land Use Plan pursuant to Section I. C. of this Agreement and any final recommendations on other plan amendments pursuant to Sections I B. 1, 2, and 3 of this Agreement must be approved by an affirmative vote of at least 3 members of the City's Governing Body and at least 3 County Commissioners.

2. Any vote pertaining to joint regional projects utilizing County Capital Outlay Gross Receipts Tax funds shall be approved by an affirmative vote of the majority of the RPA to include no less than at least two members of the City's Governing Body and at least two members of the County Commission.

B. **Meetings.** The meetings of the RPA shall be held at such locations as the RPA shall deem appropriate including but not limited to the City Council Chambers, County Commission Chambers and such other locations as may be conducive to visible and publicly accessible meetings.

At a minimum, the RPA shall meet once per month. Meetings shall be held in accordance with the County's Open Meeting Act procedures so long as, and to the extent that, said procedures do not conflict with this Agreement. Notice of the meetings shall be given in accordance with the County's open meetings resolution and procedures.

C. **Personnel.** The Director shall be appointed by the RPA. The Director's salary and any employment related benefits, together with salary and accompanying benefits of any additional staff necessary to carry out the objectives of the RPA, will be included in the RPA's annual budget and will be paid or provided for by the RPA. In addition, contract personnel may be hired as needed and the expense of any contracts entered into for the benefit of accomplishing the objectives of the RPA shall be included in the RPA's annual budget. The RPA shall be the exclusive authority regarding the selection and retention of RPA staff and contractors.

D. **Additional Powers.** The RPA shall have the authority to enter into contracts, approve appropriations and expenditures, (subject to approval of the RPA's annual budget and its appropriations by the City and the County), and to perform all acts necessary to fulfill the purposes of this Agreement. Nothing herein shall be deemed a grant to the RPA of any power expressly retained by the City or the County or any power which is non-delegable.

**V. APPROPRIATIONS AND COMPENSATION.**

A. **Appropriations.** All appropriations shall be made by procurements in accordance with the New Mexico Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199.

B. **Intention to Share Costs Equally.** It is the intention of the parties to attempt to equally divide the expenses required for execution of this Agreement in order to ensure that neither party is required to compensate the other at the end of any given fiscal year. In all cases there shall be a rebuttable presumption that neither party is entitled to compensation for its expenses incurred in

performing under this Agreement and that each side has expended an equal amount in performing under this Agreement. However, it is recognized that, for reasons of convenience, utility, need or ability, one of the parties to this Agreement may incur expenses for which it should in equity be reimbursed and may request reimbursement pursuant to this Agreement. The provisions in paragraph V(D) below shall serve as the basis for calculating any compensation due by one party to the other.

C. **Services to Be Delivered by Each Party.** The following services shall be performed by the respective parties in performing under this Agreement and shall be presumptively deemed of equivalent value.

1. The County shall: Act as fiscal agent, receive and invest RPA funds, pay or disburse RPA funds, and perform audits.

2. The County shall: Provide the meeting space for the meetings of the RPA, and retain contracts, minutes and all other public records of the RPA.

3. Each party shall: Provide geographic information system data and documents, provide photocopies of plan documents, ordinances and resolutions generated by their respective staffs, provide legal counsel to the RPA at the RPA meetings, and designate a staff liaison to attend the RPA meetings and make recommendations on RPA proposals and actions.

4. RPA staff (not the City or the County staff) shall be responsible for: creating and distributing packets, information and agendas and supporting documents in advance of RPA meetings; performing all work required to meet the objectives of the RPA,; providing stenographers, administrative support, and legal notices, as required, for all RPA meetings and actions; and drafting and preparing such additional plans and other documents as may be requested or required by the RPA in the course of its work.

D. **Method of Calculating Compensation Due.** In the event that either party intends to

request compensation for any cost associated with the execution of this Agreement, the RPA must approve the cost prior to rendering the service or incurring the expense intended to be charged, in part or in whole, to the other party. Failure to get pre-approval from the RPA shall constitute a waiver of the party's right to request compensation.

E. **Bateman Act Compliance**. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made or given by the parties to perform under this Agreement. If sufficient appropriations and authorizations are not made or given by the parties, this Agreement may be terminated by either of the parties; or this Agreement may be amended in accordance with paragraph VII below. Either party's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.

#### **VI. LIABILITY.**

Each party shall be responsible for fiscal or other sanctions occasioned as a result of its own violation of any requirements applicable to performing under this Agreement. Nothing herein is intended to nor shall be deemed to waive the rights of the parties hereto to claim the privileges and immunities granted to them under NMSA 1978 § 11-1-6 or under the Tort Claims Act or any other applicable law or ordinance.

#### **VII. AMENDMENT.**

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto and approved by the Secretary of the New Mexico Department of Finance and Administration (DFA).

#### **VIII. NOTICES.**

Any notice required by this Agreement 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.

CITY: Attn: City Manager  
City of Santa Fe  
200 Lincoln Ave.  
P.O. Box 909  
Santa Fe, New Mexico 87504-0909

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

**IX. GOVERNING LAW.**

This Agreement shall be governed by, and construed in accordance with, the laws of New Mexico.

**X. STATUS OF AGREEMENT; JPA ACT.**

The parties acknowledge and agree that this Agreement constitutes an "agreement" as that term is used in the JPA Act.

**XI. ACCOUNTABILITY.**

During the term of this Agreement and for a period of three (3) years thereafter, each of the parties will maintain accurate and complete records of all disbursements made and monies received by each under this Agreement; and, upon receipt of a reasonable written request, each party shall make such records available to the other party and to the public, including any federal, state or local authority, during regular business hours.

**XII. DISTRIBUTION OF RESIDUAL PROPERTY.**

Upon termination of this Agreement the parties will distribute and dispose of all property acquired in connection with this Agreement. If any property is acquired in connection with this Agreement the division or distribution of which is not specifically provided for in this Agreement, then such property shall be distributed to the party that acquired it; or if the property was acquired by more than one party,

the property shall be distributed to each party in accordance with that party's pro rata share of acquisition and maintenance costs, if any, unless otherwise agreed by the parties.

**XIII. PUBLIC RECORDS.**

The parties intend that this Agreement be considered a “public record” for purposes of the Inspection of Public Records Act, NMSA 1978 §§14-2-1 through 14-2-12.

**XIV. CONFORMITY WITH JPA ACT.**

The parties intend that this Agreement conform in all respects with the JPA Act, and that this Agreement shall be construed and enforced in conformity with the JPA Act. In case of any inconsistency between this Agreement and the JPA Act, the provisions of the JPA Act shall control and this Agreement shall be deemed amended so that such controlling provisions of the JPA Act are incorporated into and made part of this Agreement, and any inconsistent provisions of this Agreement are deleted as and to the extent of the inconsistency.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SANTA FE

  

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DAVID COSS, MAYOR

ATTEST:

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YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

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FRANK D. KATZ, CITY ATTORNEY

SANTA FE COUNTY:

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JACK SULLIVAN, CHAIRMAN

ATTEST:

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VALERIE ESPINOZA, CITY CLERK

APPROVED AS TO FORM:

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STEPHEN ROSS, COUNTY ATTORNEY

**THIS Agreement HAS BEEN APPROVED BY:**

**State of New Mexico  
Department of Finance Administration**

By: \_\_\_\_\_

Date: \_\_\_\_\_