

MEMORANDUM OF AGREEMENT

**FOR PLACEMENT AND MAINTENANCE OF PERMANENT ELECTION
BALLOT DROP-BOXES IN THE CITY OF SANTA FE**

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into between the City of Santa Fe (City) and the County of Santa Fe, Santa Fe County Clerk (County). The date of this Agreement shall be the date of last signature by the parties hereto.

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of the County and the City, 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 according to NMSA, § 13-1-98 (A), NMSA 1978; and

WHEREAS, the City has opted into the regular local election, administered by the Santa Fe County Clerk, pursuant to NMSA 1978, 13-1-98(A); and

WHEREAS, NMSA 1978, § 1-6-9(E) allows for ballots to be returned in a secured container made available by the county clerk to receive voted mailed ballots for that election; and

WHEREAS, the County desires to use various sites which are owned or operated by the City in order to provide permanent election ballot drop-boxes for regular elections in within Santa Fe County; and

WHEREAS, pursuant to NMSA 1978, § 1-6-9(E), the location of the secured containers and the days and times the containers will be available to receive ballots are posted by the county clerk at least 90 days before a statewide election or 42 days before a special election; and

WHEREAS, pursuant to NMSA 1978, § 1-20-16, the location of a secured container is considered a polling place for purposes of electioneering too close to the polling place; and

WHEREAS, all secured containers shall be monitored by video surveillance cameras and the video recorded by that system shall be retained by the County as a record related to voting pursuant to NMSA 1978, § 1-12-69; and

WHEREAS, signage at the location of a secured container shall inform voters and those dropping off ballots at the location: (a) that it is a violation of law for any person who is not an immediate family member to collect and deliver a ballot for another person; (b) that electioneering

is prohibited within 100 feet of a secured container; and (c) of the dates and approximate time the ballots will be collected; and

WHEREAS, at least once a day, the County shall collect the ballots from the secured containers, register the date and time stamp on each official mailing envelope and identify the location of the secured container in the ballot register.;and

WHEREAS, it is in the interest the parties to ensure the security of the secured containers and comply with Section 1-6-9(E); and

WHEREAS, the City agrees not to charge any fee to the County for the placement of the permanent secured containers; and

WHEREAS, the County agrees to coordinate with the NM Secretary of State regarding the details of the: installation, maintenance, and repair of the permanent secured containers or ballot drop-boxes; and

WHEREAS, the City agrees to continue the maintenance and repair of its properties and sites that will serve as the “hosting” property for the permanent secured containers or ballot drop-boxes.

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

1. PURPOSE

The purpose of this MOA is to set forth the terms and conditions between the City and the County regarding the placement of permanent ballot drop-boxes at the locations listed in Section 3, below.

2. SCOPE OF AGREEMENT AND RESPONSIBILITIES OF THE PARTIES

The Santa Fe County Clerk shall:

- A. Coordinate with the NM Secretary of State regarding installation, maintenance, and repair of the secured containers, security cameras, safety barriers (as needed), and permanent infrastructure.
- B. Designate a staff person who is be responsible for any issues that arise related to the secured containers or ballot boxes and will provide reasonable notice to the City of installation, maintenance, and repair dates.
- C. At least once a day during an election, the Santa Fe County Clerk or a Deputy County Clerk, shall collect the ballots from the secured containers, register the date and time stamp on each official mailing envelope and identify the location the secured container in the ballot register (during election).
- D. Abide by the terms and conditions of this MOA as well as the City’s property policies, unless otherwise agreed to in this MOA.
- E. Allow only the Santa Fe County Clerk, her staff, or deputies to open the secured

containers.

- F. Comply with the Americans with Disabilities Act with respect to access to the secured containers or ballot boxes and allow for ballot drop-off by a voter from within their vehicle without having to exit such vehicle as required by the ADA.

The City shall:

- A. Provide use of site and properties within the City of Santa Fe for the installation, operation and maintenance of the secured containers or ballot boxes or other related equipment, on or before October 1, 2021.
- B. Alert the Santa Fe County Clerk of any issues related to the secured containers, as they become known to the City.
- C. Upon reasonable notice from the Santa Fe County Clerk allow the County or NM Secretary of State staff reasonable access to the secured containers or ballot boxes for installation, maintenance, repair, and ballot collection.
- D. Perform maintenance and repair of the hosting sites and properties, as needed.
- E. Allow the use of and connection to power and internet for the video surveillance of the secured containers as required by statute.
- F. Comply with the Americans with Disabilities Act with respect to access to the secured containers or ballot boxes and allow for ballot drop-off by a voter from within their vehicle, without having to exit such vehicle as required by the ADA.

3. NUMBER AND LOCATION OF BALLOT BOXES TO BE ISSUED BY THE COUNTY

- A. One (1) at the Southside Library: 6599 Jaguar Dr., Santa Fe, NM 87505;
- B. One (1) at 119 S. Federal Pl., Santa Fe NM 87501;
- C. One (1) at the Santa Fe Rodeo Grounds, approximately 3237 Rodeo Rd., Santa Fe, NM 87505;
- D. Parties agree that locations are subject to change if site surveys determine that the chosen location is unworkable and any changes will be made in writing subject to Section 10, amending this MOA.

4. TERM

The term of this MOA shall commence on the date of last signature by the parties hereto and shall be perpetual, unless earlier terminated as provided in Section 5 below.

5. TERMINATION

This MOA may be terminated by either party upon written notice delivered to the other party at least 30 days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. A reasonable period of time will be provided to remove the secured containers upon notice of intent to terminate. Parties acknowledge that secured containers may not be removed within 120 days before an election pursuant to state law and any removal pursuant to termination of this MOA will occur after the then pending election, if termination is within 120 days of an election.

6. LIABILITY

Neither party shall be liable for any claims, actions, demands, suits or judgments arising from the other party's performance under this MOA or the performance of the other party's agents, officers, or employees. Both parties shall be liable only for claims, actions, demands, suits or judgments arising from its own performance under this MOA or the performances of its own agents, officers, or employees.

7. STATUS OF THE CITY AND THE COUNTY

The City and County are separate legal entities. The City's agents and employees are not employees or agents of the County. The County's agents and employees are not employees or agents of the City. No powers of the County or the City express or implied shall be granted to the other party excepting those specifically set forth herein.

8. NEW MEXICO TORT CLAIMS ACT

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this MOA. Any liability incurred in connection with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1972, Section 41-4-1, et seq., as amended. This MOA is not intended to modify in any way the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The City and the County and their respective "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense or limitation of liability pursuant to law. No provision of this MOA modifies or waives any provisions of the New Mexico Tort Claims Act.

9. NO THIRD PARTY BENEFICIARIES

By entering into this MOA, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the County. No person shall claim any right, title or interest under this MOA or seek to enforce this MOA as a third party beneficiary of this MOA.

10. AMENDMENT

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

11. ASSIGNMENT

Neither the City nor the County shall assign or transfer any interest in this MOA or assign any claims for money due or to become due under this MOA without the prior written approval of the other party.

13. NOTICES

Any notice required to be given under this MOA shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

To the City: City of Santa Fe
Attn: Kristine Bustos-Mihelcic, City Clerk/Community Engagement Director
P.O. Box 909
200 Lincoln Avenue
Santa Fe, New Mexico 87501

To the County: Santa Fe County
Attn: Katharine E. Clark, Santa Fe County Clerk
PO Box 1985
100 Catron St
Santa Fe, New Mexico 87501

14. APPLICABLE LAW

This MOA shall be governed by applicable City and County Ordinances and the laws of the State of New Mexico.

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

CITY OF SANTA FE:


ALAN WEBBER, MAYOR

DATE: Sep 14, 2021

SANTA FE COUNTY:

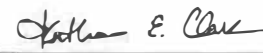

KATHERINE MILLER
SANTA FE COUNTY MANAGER

DATE: 9.17.2021

ATTEST:



Kristine Mihelcic (Sep 14, 2021 14:47 MDT)
KRISTINE BUSTOS-MIHELICIC,
CITY CLERK
GB MTG 09/08/2021

APPROVED AS TO FORM:


KC 09/14/21 3:33pm
KATHARINE CLARK,
SANTA FE COUNTY CLERK

CITY ATTORNEY'S OFFICE:


Marcos Martinez (Sep 14, 2021 14:44 MDT)
SENIOR ASSISTANT CITY ATTORNEY


9/15/2021 for:
GREGORY S. SHAFFER,
SANTA FE COUNTY ATTORNEY