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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 7 Ordinance/Resolution# 12-107

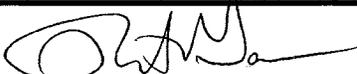
For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of January 3, 2012  
 (Adoption Date)

**TITLE: A RESOLUTION APPROVING THE FIRST AMENDED JOINT POWERS AGREEMENT TO ESTABLISH THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY AND TO PROVIDE FOR THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTER.**

**PURPOSE(S) OF ACTION:**

To approve the First Amended Joint Powers Agreement to establish the Animal Services Center of the Mesilla Valley.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Marcia B. Driggers	<b><u>Department/Section:</u></b> Legal/City Attorney	<b><u>Phone:</u></b> 541-2128
<b><u>City Manager Signature:</u></b> 		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

In August of 2008, the City of Las Cruces ("City") and the County of Doña Ana ("County") entered into a Joint Powers Agreement ("JPA") establishing the Animal Services Center of the Mesilla Valley ("Animal Services Center"). City and County staff have determined that several major language changes are needed – notably language relating to the Animal Services Center land and building to avoid reversion of the property to the City of Albuquerque, language clarifying the membership of the Animal Services Center Board and voting by ex-officio members, and language relating to financial contributions and budgeting.

The Animal Services Center Board has reviewed the proposed Amended JPA and recommended that it be approved by the City and the County. To be in effect, the First Amended JPA must be approved by the County Commission and the City Council, and the State of New Mexico Department of Finance and Administration. The County Commission unanimously approved the First Amended JPA at the County Commission meeting on Tuesday, December 13, 2011.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", First Amended Joint Powers Agreement establishing the Animal Services Center of the Mesilla Valley.
3. Attachment "A", First Amended Joint Powers Agreement in legislative format showing the most recent changes.

**SOURCE OF FUNDING:**

N/A	<b>Is this action already budgeted?</b>	
	Yes	<input type="checkbox"/>
	No	<input type="checkbox"/>
	See fund summary below	
If No, then check one below:		
<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
<b>Does this action create any revenue?</b>	Yes	<input type="checkbox"/>
	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.	
	No	<input checked="" type="checkbox"/>
		There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the First Amended Joint Powers Agreement to establish the Animal Services Center of the Mesilla Valley and to provide for the financing, operation and maintenance of the center.

(Continue on additional sheets as required)

2. Vote "No"; this will not approve the First Amended Joint Powers Agreement to establish the Animal Services Center of the Mesilla Valley. This action would allow deficiencies in the original Joint Powers Agreement to remain.
3. Vote to "Amend"; this could modify the terms of the First Amended Joint Powers Agreement, which has been approved by both the County Commission and Animal Services Center Board of Directors, and instruct staff to seek alternative direction, which would have to be approved by the Commission and the Board.
4. Vote to "Table"; this could postpone the resolution per the Council's discretion and provide further direction to staff.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 09-043.

**RESOLUTION NO. 12-107****A RESOLUTION APPROVING THE FIRST AMENDED JOINT POWERS AGREEMENT TO ESTABLISH THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY AND TO PROVIDE FOR THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTER.**

The City Council is informed that:

**WHEREAS**, in August of 2008, the City of Las Cruces ("City") and the County of Doña Ana ("County") entered into a Joint Powers Agreement ("JPA") establishing the Animal Services Center of the Mesilla Valley ("Animal Services Center"); and

**WHEREAS**, City and County staff have determined that several major language changes are needed – notably language relating to the Animal Services Center land and building to avoid reversion of the property to the City of Albuquerque, language clarifying the membership of the Animal Services Center Board and voting by ex-officio members, and language relating to financial contributions and budgeting; and

**WHEREAS**, the Animal Services Center Board has reviewed the proposed Amended JPA and recommended that it be approved by the City and the County; and

**WHEREAS**, to be in effect, the First Amended JPA must be approved by the County Commission and the City Council, and the State of New Mexico Department of Finance and Administration. The County Commission unanimously approved the First Amended JPA at the County Commission meeting on Tuesday, December 13, 2011.

**NOW, THEREFORE**, be it resolved by the governing body of the City of Las Cruces.

(I)

**THAT** the First Amended Joint Powers Agreement to Establish the Animal Services Center of the Mesilla Valley and to Provide for the Financing, Operation and



**FIRST AMENDED JOINT POWERS AGREEMENT TO ESTABLISH  
THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY  
AND TO PROVIDE FOR  
THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTER**

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THIS First Amended Joint Powers Agreement ("JPA") is entered into between the City of Las Cruces ("City"), a New Mexico home rule municipality, and the County of Doña Ana ("County"), a Class A New Mexico county, hereafter collectively referred to as the "Parties", on this \_\_\_\_ day of \_\_\_\_\_, 2011, and is effective as of the date of approval by the New Mexico Department of Finance and Administration.

**BACKGROUND**

1. The City owns the animal shelter real property and all improvements thereon located at 3551 Bataan Memorial West ("Facility"). The Facility had been operated for a number of years by a third party contractor, the Dona Ana County Humane Society ("DACHS"). The City and County have been the primary financial supporters of the Facility.

2. On January 29, 2008, the City and County entered into a Memorandum of Agreement ("MOA") to temporarily operate the Facility after DACHS notified the Parties that it would no longer operate the Facility. Efforts by the City and County to solicit a new animal shelter operator were unsuccessful.

3. The City and County determined that it was imperative that the Parties enter into a joint powers agreement, pursuant to the Joint Powers Agreements Act, NMSA § 11-1-1, et seq., to create an independent public agency to provide regional animal shelter services to be named the "**Animal Services Center of the Mesilla Valley**" ("Center") and to set out the general principles concerning responsibility for operation of the Center and the funding sources to pay for the costs of providing such services.

4. The Parties have created an independent public agency tasked to operate the Center. This public agency will consist of a Board of Directors ("Board") comprised of City and County elected officials or staff, a Chief Executive Officer ("Director") hired by the Board, and employees of the public agency hired by the Director to operate the Center and the Facility.

5. This JPA replaces any prior JPA's between the Parties concerning the Facility including the JPA between the Parties dated January 21, 1985 for the lease and use of the

proposed animal shelter, and the JPA between the Parties dated August 4, 2008 which JPA established the Center.

6. The 2008 JPA, which is amended herein, provided that the City would transfer ownership of the Facility to the Center. The City acquired ownership of the Facility and surrounding land in 1983 by Special Warranty Deed from the City of Albuquerque to the City of Las Cruces recorded with the Office of the Dona Ana County Clerk on June 10, 1983. The deed conveyed 15.1008 acres, more or less (the "Real Property"), to the City of Las Cruces. While researching land records to prepare the necessary ownership transfer documents, City staff discovered that the 1983 deed from the City of Albuquerque to the City of Las Cruces contained a reversionary clause that may be triggered if the City deeded the Facility to the Center. Therefore, to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque, the City will enter into a lease, license, or permitted use agreement with the Center for the Real Property located east of Rinconada Boulevard less any rights of way previously dedicated; and the City may enter into a lease, license, or permitted use agreement with the Center for the Real Property located west of Rinconada Boulevard less any rights of way previously dedicated. However, if the City of Albuquerque consents, the City will negotiate with the Center to transfer ownership of all or part of the Real Property to the Center.

#### CONDITIONS

1. **Purposes** – The purpose of this JPA is to establish a mechanism for financing, operating and maintaining a regional animal shelter and related facilities. The purpose of the Center is to provide regional animal shelter services.

2. **Establishment** – The Parties hereby establish the Center to exercise in accordance with the JPA the powers common to each of the Parties. The Center shall be a public agency separate from the Parties.

3. **Service Area** – The service area of the Center shall be the City of Las Cruces and the unincorporated portions of the County of Doña Ana. The Board may change the Center's service area as it deems necessary.

4. **Real and Personal Property**

A. **Real Property** - Any of the Real Property and improvements located thereon leased, licensed, permitted or transferred to the Center will be used by the Center solely for the purpose of implementing this JPA and operating and maintaining the Facility and any additional facilities.

(1) The City shall enter into a lease, license, or permitted use agreement with the Center for the approximate 8.4 acres of the Real Property located east of Rinconada Boulevard and north of Bataan Memorial West. This tract has a street address of 3551 Bataan Memorial West and is improved. The existing Facility improvements consist of but are not limited to a building, a paved parking lot, and landscaping.

(2) The City may enter into a lease, license or permitted use agreement with the Center in the City's sole discretion for the approximate 4.0 acres of Real Property located west of Rinconada Boulevard and north of Bataan Memorial West. This tract is not improved.

(3) The City may transfer ownership of all or part of the Real Property to the Center if the City secures permission to do so from the City of Albuquerque.

(4) Any lease, license, or permitted use agreement of the Real Property will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council and the Center Board, and will contain language deemed necessary to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque.

(5) Any agreement transferring ownership of all or part of the Real Property to the Center will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council, the Center Board, and, if deemed necessary, the approval of the City of Albuquerque.

B. Personal Property – Ownership of any personal property located within any building on the Real Property that is not considered to be a fixture shall be transferred by the Parties to the Center and shall be used by the Center solely for the purpose of implementing this Joint Powers Agreement and operating and maintaining the Facility.

##### 5. Center Organization

A. Board – The Center shall be governed by the Board. The Board shall establish its own policies and procedures to carry out the purposes of this JPA.

B. Members – The Board shall consist of six (6) voting members, who shall be City and County elected officials or staff, and two (2) ex-officio members. Three (3) voting members shall be appointed by the Mayor with the advice and consent of the City Council, and three (3) voting members shall be appointed by the County Commission. The two (2) ex-officio members shall be the City Manager and the County Manager or their Management designees.

(1) The term of an elected official shall expire when his or her official term in office is completed. All members may be reappointed. City staff members, if any, are subject to the term limitations and other provisions of the City's Board Ordinance.

(2) Attendance is required for all Board meetings. A member shall be removed for failure to attend more than 25% of the regular meetings in any twelve (12) month period.

(3) A County appointed member may be removed for any other reason by a majority vote of the County Commission.

(4) A City appointed member may be removed for any other reason with five (5) affirmative votes of the City Council.

C. Voting and Quorum – A majority of the voting members shall constitute a quorum for the transaction of business. A majority vote of the quorum shall be required for the adoption of a resolution. In the event that the number of regular voting members in attendance at any meeting of the Board is insufficient to establish a quorum for the transaction of business, an ex-officio member in attendance at such meeting may act as an alternate member for their respective governmental body's regular voting member for the purpose of establishing a quorum, and may vote on matters before the Board at such meeting.

D. Meetings – Meetings shall be conducted in accordance with Robert's Rules of Order.

(1) Regular Meetings – The Board shall hold one regular meeting each month.

(2) Special Meetings – Special meetings of the Board may be called in accordance with the New Mexico Open Meetings Act.

(3) Notice of Meetings – All meetings of the Board shall be held in accordance with the New Mexico Open Meetings Act.

(4) Minutes – The Board shall keep minutes of all meetings and, as soon as possible after each meeting, shall forward a copy of the minutes to each member of the Board, including ex-officio members.

E. Director – The Center will be led by a Director who will be hired by the Board pursuant to an employment agreement. The Director will report to the Board. The Director's job performance will be evaluated by the Board at least yearly. The Director shall conduct the business of the Center, serve as personnel officer, budget officer, property custodian,

and shall generally aid and assist the Board in the exercise of its duties and responsibilities. Upon request, the Director will provide reports to the City and County on all matters relating to the operation of the Center.

F. Employees – The authority and direction of the Director will be implemented by employees hired by the Director to operate the Center.

G. Powers – The Board is authorized to exercise all powers common to each of the Parties with respect to the purposes of the Center, including but not limited to the following:

- (1) To make and enter into contracts.
- (2) To apply for and accept grants and contributions.
- (3) To employ or contract for the services of employees, consultants, and such other persons as it deems necessary, and under such terms and conditions as may be established by the Board in the agreements relating to such persons.
- (4) To make plans and conduct studies.
- (5) To acquire, construct, operate and maintain buildings, improvements and facilities.
- (6) To acquire and dispose of real property.
- (7) To establish a mission statement.
- (8) To sue and be sued in its own name.
- (9) To borrow money if approved by the governing bodies of the Parties and further subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of the State of New Mexico.
- (10) To set fees and charges.
- (11) To bill and collect fees and charges set by the Center and establish a procedure for the resolution of disputed fees and charges.
- (12) To adopt resolutions necessary to carry out the purposes of this JPA.
- (13) To obtain necessary public liability and property insurance coverage. Such coverage shall comply with the statutory requirements of the New Mexico Tort Claims Act and shall include coverage for civil rights claims.

(14) To create from time to time *ad hoc* committees and/or advisory boards of suitable membership, scope, and duration for the purpose of providing advice and recommendations on particular matters of interest to the Board.

H. Purchase and Ownership of Assets – All assets of the Center, whether real or personal property, including those assets that may be transferred to it by the City and the County but excluding the Real Property and improvements located thereon leased, licensed or permitted to the Center, shall be owned in the name of the Center.

I. Procurement and Payment for Costs and Procured Services – The Director shall work with the fiscal agent to accomplish procurement of all goods and services in compliance with the fiscal agent's procurement code and consistent with New Mexico law. Such procurement shall include all professional and technical services as well as operating costs such as supplies, services, workers' compensation, general liability and commercial insurance for the Facility and contents, and construction services deemed necessary for the operation of the Center.

J. Budgetary Reserve – Any annual revenue in excess of operating and maintenance and capital expenditures shall be used to create special reserve funds for capital acquisition or operating carryover as determined through the budget process.

6. Fiscal Agent

A. The City shall be the fiscal agent for the Center for the term of this JPA.

B. The duties of the fiscal agent shall be as follows:

(1) Bill and collect all financial contributions from both Parties as provided herein.

(2) Maintain separate accounting designated specifically for the Center revenue and operational accounts and related budgets.

(3) Make all revenue or budget transfers and all disbursements for the Center as directed by its Director or his or her designee consistent with the authority granted by the Board.

(4) Charge in its discretion monthly interest that accrues when Center operations result in a negative cash position based upon completely updated transaction processing.

(5) Not allow any department of the fiscal agent to charge against any account unless the department submits an invoice with supporting documentation approved by

the Center Director or Board, consistent with policies and procedures established by the Board and Director and the fiscal agent's procurement code and consistent with New Mexico law.

(6) Prepare financial reports for the Center on an annual basis and as may be requested by the Center's Board from time to time, and present the reports to the Center's Board for review and approval.

(7) Strictly account for all receipts and disbursements made pursuant to this JPA in accordance with all applicable laws and regulations and with the fiscal agent's procurement code and consistent with New Mexico law.

(8) Account for all transactions on behalf of the Center including those related to fixed assets and provide for internal controls relating to the acquisition and disposal of fixed assets and proper recording of all liabilities.

(9) Provide all necessary accounting records sufficient to facilitate a "stand alone" financial statement. The Center's financial statements shall be audited by an independent CPA selected by the fiscal agent and all applicable reports shall be included in the annual audited financial statement referred to herein. Such audit shall be performed in accordance with government audit standards. The audit may be performed in conjunction with the fiscal agent's annual audit as required by the Office of the State Auditor.

C. Personnel Administration –

(1) The fiscal agent shall house all personnel files of Center employees. The Director shall be responsible for providing updated personnel documentation to the fiscal agent to maintain said files.

(2) The fiscal agent shall provide human resource in-processing and maintenance for Center employees' payroll system based upon the payroll data provided by the Director.

D. Limitations on Duties – The fiscal agent shall not be required to provide any services not described herein, including but not limited to:

(1) Training services.

(2) Benefits, programs or services specifically created for use by the fiscal agent's employees, other than administration of benefits provided through the Center's personnel policies.

(3) Legal services.

(4) Risk management services.

- (5) Employee assistance program.
- (6) Operation or maintenance services for the Center Facility or grounds.

E. Compensation – The fiscal agent shall be compensated for services rendered to the Center as set forth herein in the amount of \$86,000 per year base rate as of FY08-09. The base rate will be increased each year by the Consumer Price Index plus audit fees or other direct costs. Such compensation shall be considered an operation and maintenance expense of the Center and may be modified by resolution of the Board with the consent of the fiscal agent.

7. Financial Contributions of City and County

A. Contributions for Operating Budget -

(1) The Center shall, on an annual basis, submit a proposed operating budget to the City and to the County based on the Center's approved budget and any budget adjustments from the prior fiscal year, plus proposed increases/decreases for the new fiscal year. The Center shall also submit proposed capital improvements and special projects budgets when required by the Parties.

(2) The Board shall review and make recommendations regarding any proposed budget prior to the Center submitting the proposed budget to the Parties for consideration.

(3) The Center shall comply with all budgetary submission deadlines and procedures established by each of the Parties.

(4) Proposed budgets shall be cooperatively reviewed by City and County Staff, who shall provide budget development guidance and advice to the Center.

(5) The Center's budgets are subject to appropriation of sufficient funds by the City and County and shall be deemed approved upon approval of the City's and the County's budgets.

(6) The Parties intend to each pay for 50% of the Center's net operating budget; however, the Parties' respective financial contributions for the Center's net operating budget for a particular fiscal year will be whatever sum is approved in the City's and County's respective budgets for that expense.

(7) The Parties will re-evaluate every three (3) years from the effective date of this JPA whether a 50% allocation to each Party for the Center's net operating budget is

reasonable based on the total animals attributable to each Party as set forth below. The Parties may re-allocate the percentage of their financial contributions based on the re-evaluation.

(8) Starting January 1, 2012, the Center shall maintain records as to the total number of animals handled by the Center and where each animal came from (City or County); and then shall calculate the percentage of total animals attributed to the City and to animals attributed to the County. This calculation may be used by the Parties when they re-evaluate the operating budget contribution percentages as provided above. The animal head count report shall include animals brought to the Center by City or County animal control officers, by City or County residents, or held under court order. Animals that are abandoned at the Center without identification shall be evenly allocated between the Parties.

B. Contributions for Capital Improvements – The Parties may require that the Center develop and submit a capital improvements plan and budget, and may provide funding for capital improvements shown on the plan in the Parties' sole discretion.

C. Contributions for Special Projects — The Parties may require that the Center develop and submit a special projects plan and budget for projects not covered in the Center's operating budget or capital improvements budget, and may provide funding for special projects in the Parties' sole discretion.

D. Payment of Contributions –

(1) The fiscal agent shall pay to the Center on or before July 1 of the upcoming fiscal year twenty-two percent (22%) of the total financial contributions budgeted by the Parties for that fiscal year. The remaining budgeted financial contributions will be paid by the fiscal agent to the Center in eleven (11) equal payments due on or before August 15 and on the 15<sup>th</sup> day of each month thereafter for the remainder of that fiscal year.

(2) The fiscal agent shall monthly invoice each Party for its budgeted financial contribution for the upcoming month. Payment is due to the fiscal agent by each Party within thirty (30) days of receipt of the invoice.

8. Term and Termination

A. Term – The term of the JPA shall be perpetual. If any dispute arises concerning this JPA, the Parties agree to attempt to resolve such dispute in an amicable manner at the least possible expense. If such dispute cannot be resolved and either Party deems the dispute to be of major proportion, then the dispute shall be submitted for mediation in compliance with the New Mexico Mediation Procedures Act.

B. Mutual Termination of JPA –

(1) The JPA may be terminated by the mutual consent of the Parties.

(2) If the Center is mutually terminated where there is a successor public entity which will carry on all of the activities of the Center and assume all of its obligations, then all property, rights and assets of the Center shall be transferred to the successor public entity.

(3) If the Center is mutually terminated when there is no successor public entity which will carry on any of the activities of the Center or assume any of its obligations, then all property, rights and assets of the Center shall be equally divided between the Parties.

(4) If the Center is mutually terminated when there is a successor public entity which would undertake some, but not all, of the functions of the Center and assume some, but not all, of its obligations, then all property, rights and assets of the Center shall be allocated by the Board between the successor public entity and the Parties.

(5) In the event that the Center is mutually terminated under the circumstances falling within (3) and (4) above, all decisions of the Board with regard to the property, rights and assets to be transferred to the Parties or any successor public entity shall be final.

C. Unilateral Termination of JPA –

(1) If either Party unilaterally withdraws from the JPA without the consent of the other Party, then all of its rights under the JPA shall be transferred to the remaining Party and the JPA shall be deemed to be terminated. The Party unilaterally withdrawing shall have no claim to a division or partition of Center assets, or a right to use services of the Center.

(2) The failure of either Party to pay its monthly financial contributions within 90 days of billing shall be considered a unilateral withdrawal.

9. Miscellaneous Provisions

A. Headings – The headings of the various sections of this JPA are inserted only for convenience or reference, and are not intended nor shall they be construed to modify, define, limit or expand the intent of the Parties.

B. Entire Agreement – This JPA represents the entire agreement and understanding between the Parties.

C. Amendments – The Parties acknowledge and agree that this JPA may be amended in writing upon approval of the governing bodies of each Party and that any such amendments shall not become effective until signed by the Parties and approved by the New Mexico Department of Finance and Administration.

D. Effective Date – This JPA shall become effective upon execution by the Parties and approval by the New Mexico Department of Finance and Administration.

10. Tort Claims Act – By entering into this JPA, the Parties and their “public employees” as defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq., do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

EXECUTED in duplicate on the date first written above.

**CITY OF LAS CRUCES**

By: \_\_\_\_\_  
Robert L. Garza, P.E.  
City Manager

**COUNTY OF DONA ANA**

By: \_\_\_\_\_  
Brian D. Haines  
County Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Harry S. (Pete) Connelly  
City Attorney

\_\_\_\_\_  
John W. Caldwell  
County Attorney

STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION

By: \_\_\_\_\_  
Richard E. May  
Cabinet Secretary Designate

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

APPROVED BY:

\_\_\_\_\_  
Office of the General Counsel

CLC Edits 11-01-11  
 DAC Edits 11-01-11  
 ASCMV Board Recommendations 11-16-11

**FIRST AMENDED JOINT POWERS AGREEMENT TO ESTABLISH  
 THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY  
 AND TO PROVIDE FOR  
 THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTER**

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THIS First Amended Joint Powers Agreement ("JPA") is entered into between the City of Las Cruces ("City"), a New Mexico home rule municipality, and the County of Doña Ana ("County"), a Class A New Mexico county, hereafter collectively referred to as the "Parties", on this \_\_\_\_ day of \_\_\_\_\_, 2011, and is effective as of the date of approval by the New Mexico Department of Finance and Administration.

**BACKGROUND**

1. The City owns the animal shelter real property and all improvements thereon located at 3551 Bataan Memorial West ("Facility"). The Facility had been operated for a number of years by a third party contractor, the Dona Ana County Humane Society ("DACHS"). The City and County have been the primary financial supporters of the Facility.

2. On January 29, 2008, the City and County entered into a Memorandum of Agreement ("MOA") to temporarily operate the Facility after DACHS notified the Parties that it would no longer operate the Facility. Efforts by the City and County to solicit a new animal shelter operator were unsuccessful.

3. The City and County determined that it was imperative that the Parties enter into a joint powers agreement, pursuant to the Joint Powers Agreements Act, NMSA § 11-1-1, et seq., to create an independent public agency to provide regional animal shelter services to be named the "Animal Services Center of the Mesilla Valley" ("Center") and to set out the general principles concerning responsibility for operation of the Center and the funding sources to pay for the costs of providing such services.

4. The Parties have created an independent public agency tasked to operate the Center. This public agency will consist of a Board of Directors ("Board") comprised of City and County elected officials or staff, a Chief Executive Officer ("Director") hired by the Board, and employees of the public agency hired by the Director to operate the Center and the Facility.

5. This JPA replaces any prior JPA's between the Parties concerning the Facility including the JPA between the ~~parties~~ Parties dated January 21, 1985 for the lease and use of the proposed animal shelter, and the JPA between the ~~parties~~ Parties dated August 4, 2008 which JPA established the Center.

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#### CONDITIONS

1. **Purposes** – The purpose of this JPA is to establish a mechanism for financing, operating and maintaining a regional animal shelter and related facilities. The purpose of the Center is to provide regional animal shelter services.

2. **Establishment** – The Parties hereby establish the Center to exercise in accordance with the JPA the powers common to each of the Parties. The Center shall be a public agency separate from the Parties.

3. **Service Area** – The service area of the Center shall be the City of Las Cruces and the unincorporated portions of the County of Dona Ana. The Board may change the Center's service area as it deems necessary.

4. **Real and Personal Property**

A. **Real Property** - Any of the Real Property and improvements located thereon leased, licensed, permitted or transferred to the Center will be used by the Center solely

for the purpose of implementing this JPA and operating and maintaining the Facility and any additional facilities.

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(4) Any lease, license, or permitted use agreement of the Real Property will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council and the Center Board, and will contain language deemed necessary to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque.

(5) Any agreement transferring ownership of all or part of the Real Property to the Center will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council, the Center Board, and, if deemed necessary, the approval of the City of Albuquerque.

B. Personal Property – Ownership of any personal property located within any building on the Real Property that is not considered to be a fixture shall be transferred by the Parties to the Center and shall be used by the Center solely for the purpose of implementing this Joint Powers Agreement and operating and maintaining the Facility.

##### 5. Center Organization

A. Board – The Center shall be governed by the Board. The Board shall establish its own policies and procedures to carry out the purposes of this JPA.

B. Members – The Board shall consist of six (6) voting members, who ~~will~~ shall be City and County elected officials or staff, and two (2) ex-officio members. Three (3) voting members shall be appointed by the Mayor with the advice and consent of the City

Council, and three (3) voting members shall be appointed by the County Commission. The two (2) ex-officio members shall be the City Manager and the County Manager or their Management designees.

(1) The term of an elected official shall expire when his or her official term in office is completed. All members may be reappointed. City staff members, if any, are subject to the term limitations and other provisions of the City's Board Ordinance.

(2) Attendance is required for all Board meetings. A member shall be removed for failure to attend more than 25% of the regular meetings in any twelve (12) month period.

(3) A County appointed member may be removed for any other reason by a majority vote of the County Commission.

(4) A City appointed member may be removed for any other reason with five (5) affirmative votes of the City Council.

C. Voting and Quorum – A majority of the voting members shall constitute a quorum for the transaction of business. A majority vote of the quorum shall be required for the adoption of a resolution. In the event that the number of regular voting members in attendance at any meeting of the Board is insufficient to establish a quorum for the transaction of business, an ex-officio member in attendance at such meeting may act as an alternate member for their respective governmental body's regular voting member for the purpose of establishing a quorum, and may vote on matters before the Board at such meeting.

D. Meetings – Meetings shall be conducted in accordance with Robert's Rules of Order.

(1) Regular Meetings – The Board shall hold one regular meeting each month.

(2) Special Meetings – Special meetings of the Board may be called in accordance with the New Mexico Open Meetings Act.

(3) Notice of Meetings – All meetings of the Board shall be held in accordance with the New Mexico Open Meetings Act.

(4) Minutes – The Board shall keep minutes of all meetings and, as soon as possible after each meeting, shall forward a copy of the minutes to each member of the Board, including ex-officio members.

E. Director – The Center will be led by a Director who will be hired by the Board pursuant to an employment agreement. The Director will report to the Board. The Director's job performance will be evaluated by the Board at least yearly. The Director shall conduct the business of the Center, serve as personnel officer, budget officer, property custodian, and shall generally aid and assist the Board in the exercise of its duties and responsibilities. Upon request, the Director will provide reports to the City and County on all matters relating to the operation of the Center.

F. Employees – The authority and direction of the Director will be implemented by employees hired by the Director to operate the Center.

G. Powers – The Board is authorized to exercise all powers common to each of the Parties with respect to the purposes of the Center, including but not limited to the following:

- (1) To make and enter into contracts.
- (2) To apply for and accept grants and contributions.
- (3) To employ or contract for the services of employees, consultants, and such other persons as it deems necessary, and under such terms and conditions as may be established by the Board in the agreements relating to such persons.
- (4) To make plans and conduct studies.
- (5) To acquire, construct, operate and maintain buildings, improvements and facilities.
- (6) To acquire and dispose of real property.
- (7) To establish a mission statement.
- (8) To sue and be sued in its own name.
- (9) To borrow money if approved by the governing bodies of the Parties and further subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of the State of New Mexico.
- (10) To set fees and charges.
- (11) To bill and collect fees and charges set by the Center and establish a procedure for the resolution of disputed fees and charges.
- (12) To adopt resolutions necessary to carry out the purposes of this JPA.

(13) To obtain necessary public liability and property insurance coverage. Such coverage shall comply with the statutory requirements of the New Mexico Tort Claims Act and shall include coverage for civil rights claims.

(14) To create from time to time *ad hoc* committees and/or advisory boards of suitable membership, scope, and duration for the purpose of providing advice and recommendations on particular matters of interest to the Board.

H. Purchase and Ownership of Assets – All assets of the Center, whether real or personal property, including those assets that may be transferred to it by the City and the County but excluding the Real Property and improvements located thereon leased, licensed or permitted to the Center, shall be owned in the name of the Center.

I. Procurement and Payment for Costs and Procured Services – The Director shall work with the fiscal agent to accomplish procurement of all goods and services in compliance with the fiscal agent's procurement code and consistent with New Mexico law. Such procurement shall include all professional and technical services as well as operating costs such as supplies, services, workers' compensation, general liability and commercial insurance for the Facility and contents, and construction services deemed necessary for the operation of the Center.

J. Budgetary Reserve – Any annual revenue in excess of operating and maintenance and capital expenditures shall be used to create special reserve funds for capital acquisition or operating carryover as determined through the budget process.

6. Fiscal Agent

A. The City shall be the fiscal agent for the Center for the term of this JPA.

B. The duties of the fiscal agent shall be as follows:

(1) Bill and collect all financial contributions from both Parties as provided herein.

(2) Maintain separate accounting designated specifically for the Center revenue and operational accounts and related budgets.

(3) Make all revenue or budget transfers and all disbursements for the Center as directed by its Director or his or her designee consistent with the authority granted by the Board.

(4) Charge in its discretion monthly interest that accrues when Center operations result in a negative cash position based upon completely updated transaction processing.

(5) Not allow any department of the fiscal agent to charge against any account unless the department submits an invoice with supporting documentation approved by the Center Director or Board, consistent with policies and procedures established by the Board and Director and the fiscal agent's procurement code and consistent with New Mexico law.

(6) Prepare financial reports for the Center on an annual basis and as may be requested by the Center's Board from time to time, and presenting the reports to the Center's Board for review and approval.

(7) Strictly account for all receipts and disbursements made pursuant to this JPA in accordance with all applicable laws and regulations and with the fiscal agent's procurement code and consistent with New Mexico law.

(8) Account for all transactions on behalf of the Center including those related to fixed assets and provide for internal controls relating to the acquisition and disposal of fixed assets and proper recording of all liabilities.

(9) Provide all necessary accounting records sufficient to facilitate a "stand alone" financial statement. The Center's financial statements shall be audited by an independent CPA selected by the fiscal agent and all applicable reports shall be included in the annual audited financial statement referred to herein. Such audit shall be performed in accordance with government audit standards. The audit may be performed in conjunction with the fiscal agent's annual audit as required by the Office of the State Auditor.

C. Personnel Administration –

(1) The fiscal agent shall house all personnel files of Center employees. The Director shall be responsible for providing updated personnel documentation to the fiscal agent to maintain said files.

(2) The fiscal agent shall provide human resource in-processing and maintenance for Center employees' payroll system based upon the payroll data provided by the Director.

D. Limitations on Duties – The fiscal agent shall not be required to provide any services not described herein, including but not limited to:

(1) Training services.

(2) Benefits, programs or services specifically created for use by the fiscal agent's employees, other than administration of benefits provided through the Center's personnel policies.

(3) Legal services.

(4) Risk management services.

(5) Employee assistance program.

(6) Operation or maintenance services for the Center Facility or grounds.

E. Compensation - The fiscal agent shall be compensated for services rendered to the Center as set forth herein in the amount of \$86,000 per year base rate as of FY08-09. The base rate will be increased each year by the Consumer Price Index plus audit fees or other direct costs. Such compensation shall be considered an operation and maintenance expense of the Center and may be modified by resolution of the Board with the consent of the fiscal agent.

7. Financial Contributions of City and County

~~A. FY08-09 The City and the County have continued their FY07-08 funding levels for FY08-09, being approximately \$215,330 and \$330,000 per year respectively. Both parties recognize that net operating costs (operating costs minus donations, program revenues, grants and other applicable revenues) may exceed the current joint funding level for FY08-09 of about \$545,000. Therefore, the parties intend to share net operating costs for FY09-10 and thereafter as follows:~~

A. Contributions for Operating Budget -

(1) The Center shall, on an annual basis, will submit to the Parties' designated budget analysts an initial proposed operating budget to the City and to the County based on its the Center's approved budget and any budget adjustments from the prior fiscal year, plus proposed increases/decreases for the new fiscal year. The Center shall also submit proposed capital improvements and special projects budgets when required by the Parties.

(2) The Board shall review and make recommendations regarding any proposed budget prior to the Center submitting the proposed budget to the Parties for consideration.

(3) The Center shall comply with all budgetary submission deadlines and procedures established by each of the Parties.

~~(24) The proposed budgets shall be cooperatively reviewed by City and County Staff, who shall City and the County will each provide budget development guidance and advice to the Center designate on or about January 2<sup>nd</sup> of each fiscal year a budget analyst to cooperatively review the Center's proposed initial operating budget and to make recommendations to the chief financial officer for each Party.~~

~~(3) The Center will revise its proposed initial operating budget to show the recommendations of the Parties' budget analysts and/or chief financial officers.~~

~~(4) The revised proposed operating budget will then be submitted by the Center to the Board for discussion purposes before submitting it to the Parties on or before March 1<sup>st</sup> of each fiscal year unless an extension to the March 1<sup>st</sup> submittal deadline is granted by both Parties.~~

~~(5) The Center's operating budgets are subject to appropriation of sufficient funds by the City and County and will shall be deemed approved with the upon approval of the City's and the County's budgets.~~

~~(6) The Parties intend to each pay for 50% of the Center's net operating budget as recommended by the Parties' budget analysts; however, the Parties' respective financial contributions for the Center's net operating budget for a particular fiscal year will be whatever sum is approved in the City's and County's respective budgets for that expense.~~

~~(7) The Parties will re-evaluate every three (3) years from the effective date of this JPA whether a 50% allocation to each Party for the ~~Contributions~~ B. Future Each party's share of the Center's net operating costs for FY09-10 and future fiscal years shall be budget is reasonable based on the assessment procedure total animals attributable to each Party as set forth below subject to. The Parties may re-allocate the budgetary approvals by percentage of their financial contributions based on the parties. On an annual basis on or before re-evaluation.~~

~~(8) Starting in January 1, 2012, the Center shall provide each party with a report of maintain records as to the total number of animals handled by the Center, and where received each animal came from (City or County), and time spent at the Center in hours or days for the prior calendar year; then); and then shall calculate the percentage of total animal days animals attributed to animals from the City and to animals attributed to from the County in the prior calendar year. This calculation shall may be used by the parties to allocate each party's~~

~~financial contribution for the Center's net operating expenses for the upcoming fiscal year subject to budgetary approvals. Said Parties when they re-evaluate the operating budget contribution percentages as provided above. The animal head count report shall include animals that may be brought to the Center by City or County animal control officers, by City or County residents, or held under court order. Animals that are abandoned at the Center without identification shall be evenly allocated between the City and the County Parties.~~

B. Contributions for Capital Improvements – The Parties may require that the Center develop and submit a capital improvements plan and budget, and may provide funding for capital improvements shown on the plan in the Parties' sole discretion.

C. Contributions for Special Projects – The Parties may require that the Center develop and submit a special projects plan and budget for projects not covered in the Center's operating budget or capital improvements budget, and may provide funding for special projects in the Parties' sole discretion.

D. Payment of Contributions –

(1) The fiscal agent ~~will~~ shall pay to the Center on or before July 1 of the upcoming fiscal year twenty-two percent (22%) of the total financial contributions budgeted by the ~~parties~~ Parties for that fiscal year. The remaining budgeted financial contributions will be paid by the fiscal agent to the Center in eleven (11) equal payments due on or before August 15 and on the 15<sup>th</sup> day of each month thereafter for the remainder of that fiscal year.

(2) The fiscal agent shall monthly invoice each ~~party~~ Party for its budgeted financial contribution for the upcoming month. Payment is due to the fiscal agent by each ~~party~~ Party within thirty (30) days of receipt of the invoice.

8. Term, and Termination, and Unilateral Withdrawal

A. Term – The term of the JPA shall be perpetual. If any dispute arises concerning this JPA, the Parties agree to attempt to resolve such dispute in an amicable manner at the least possible expense. If such dispute cannot be resolved and either ~~party~~ Party deems the dispute to be of major proportion, then the dispute shall be submitted for mediation in compliance with the New Mexico Mediation Procedures Act.

B. Mutual Termination of JPA –

(1) The JPA may be terminated ~~only~~ by the mutual consent of the Parties.

(2) If the Center is mutually terminated where there is a successor public entity which will carry on all of the activities of the Center and assume all of its obligations, then all property, rights and assets of the Center shall be transferred to the successor public entity.

(3) If the Center is mutually terminated when there is no successor public entity which will carry on any of the activities of the Center or assume any of its obligations, then all property, rights and assets of the Center shall be equally divided between the Parties.

(4) If the Center is mutually terminated when there is a successor public entity which would undertake some, but not all, of the functions of the Center and assume some, but not all, of its obligations, then all property, rights and assets of the Center shall be allocated by the Board between the successor public entity and the Parties.

(5) In the event that the Center is mutually terminated under the circumstances falling within (3) and (4) above, all decisions of the Board with regard to the property, rights and assets to be transferred to the Parties or any successor public entity shall be final.

C. ~~Consequences for Unilateral Withdrawal~~ Termination of JPA -

(1) If either ~~party~~Party unilaterally withdraws from the JPA without the consent of the other ~~party~~Party, then all of its rights under the JPA shall be transferred to the remaining ~~party~~Party and the JPA shall be deemed to be terminated. The ~~party~~Party unilaterally withdrawing shall have no claim to a division or partition of Center assets, or a right to use services of the Center.

(2) The failure of either ~~party~~Party to pay its monthly financial contributions within 90 days of billing shall be considered a unilateral withdrawal.

9. Miscellaneous Provisions

A. Headings - The headings of the various sections of this JPA are inserted only for convenience or reference, and are not intended nor shall they be construed to modify, define, limit or expand the intent of the Parties.

B. Entire Agreement - This JPA represents the entire agreement and understanding between the Parties.

C. Amendments - The Parties acknowledge and agree that this JPA may be amended in writing upon approval of the governing bodies of each ~~party~~Party and that any such

amendments shall not become effective until signed by the Parties and approved by the New Mexico Department of Finance and Administration.

D. Effective Date – This JPA shall become effective upon execution by the Parties and approval by the New Mexico Department of Finance and Administration.

10. Tort Claims Act – By entering into this JPA, the Parties and their “public employees” as defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq., do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

~~Executed~~ EXECUTED in duplicate on the date first written above.

**CITY OF LAS CRUCES**

By:

\_\_\_\_\_  
Robert L. Garza, P.E.  
City Manager

**COUNTY OF DONA ANA**

By:

\_\_\_\_\_  
Brian D. Haines  
County Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Harry S. (Pete) Connelly  
City Attorney

\_\_\_\_\_  
John W. Caldwell  
County Attorney

**STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: \_\_\_\_\_  
Richard E. May  
Cabinet Secretary Designate

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

APPROVED BY:

\_\_\_\_\_  
Office of the General Counsel

**FIRST AMENDED JOINT POWERS AGREEMENT TO ESTABLISH  
THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY  
AND TO PROVIDE FOR  
THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTER**

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THIS First Amended Joint Powers Agreement ("JPA") is entered into between the City of Las Cruces ("City"), a New Mexico home rule municipality, and the County of Doña Ana ("County"), a Class A New Mexico county, hereafter collectively referred to as the "Parties", on this \_\_\_\_ day of \_\_\_\_\_, 2011, and is effective as of the date of approval by the New Mexico Department of Finance and Administration.

**BACKGROUND**

1. The City owns the animal shelter real property and all improvements thereon located at 3551 Bataan Memorial West ("Facility"). The Facility had been operated for a number of years by a third party contractor, the Dona Ana County Humane Society ("DACHS"). The City and County have been the primary financial supporters of the Facility.

2. On January 29, 2008, the City and County entered into a Memorandum of Agreement ("MOA") to temporarily operate the Facility after DACHS notified the Parties that it would no longer operate the Facility. Efforts by the City and County to solicit a new animal shelter operator were unsuccessful.

3. The City and County determined that it was imperative that the Parties enter into a joint powers agreement, pursuant to the Joint Powers Agreements Act, NMSA § 11-1-1, et seq., to create an independent public agency to provide regional animal shelter services to be named the "Animal Services Center of the Mesilla Valley" ("Center") and to set out the general principles concerning responsibility for operation of the Center and the funding sources to pay for the costs of providing such services.

4. The Parties have created an independent public agency tasked to operate the Center. This public agency will consist of a Board of Directors ("Board") comprised of City and County elected officials or staff, a Chief Executive Officer ("Director") hired by the Board, and employees of the public agency hired by the Director to operate the Center and the Facility.

5. This JPA replaces any prior JPA's between the Parties concerning the Facility including the JPA between the Parties dated January 21, 1985 for the lease and use of the

proposed animal shelter, and the JPA between the Parties dated August 4, 2008 which JPA established the Center.

6. The 2008 JPA, which is amended herein, provided that the City would transfer ownership of the Facility to the Center. The City acquired ownership of the Facility and surrounding land in 1983 by Special Warranty Deed from the City of Albuquerque to the City of Las Cruces recorded with the Office of the Dona Ana County Clerk on June 10, 1983. The deed conveyed 15.1008 acres, more or less (the "Real Property"), to the City of Las Cruces. While researching land records to prepare the necessary ownership transfer documents, City staff discovered that the 1983 deed from the City of Albuquerque to the City of Las Cruces contained a reversionary clause that may be triggered if the City deeded the Facility to the Center. Therefore, to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque, the City will enter into a lease, license, or permitted use agreement with the Center for the Real Property located east of Rinconada Boulevard less any rights of way previously dedicated; and the City may enter into a lease, license, or permitted use agreement with the Center for the Real Property located west of Rinconada Boulevard less any rights of way previously dedicated. However, if the City of Albuquerque consents, the City will negotiate with the Center to transfer ownership of all or part of the Real Property to the Center.

#### CONDITIONS

1. Purposes – The purpose of this JPA is to establish a mechanism for financing, operating and maintaining a regional animal shelter and related facilities. The purpose of the Center is to provide regional animal shelter services.

2. Establishment – The Parties hereby establish the Center to exercise in accordance with the JPA the powers common to each of the Parties. The Center shall be a public agency separate from the Parties.

3. Service Area – The service area of the Center shall be the City of Las Cruces and the unincorporated portions of the County of Doña Ana. The Board may change the Center's service area as it deems necessary.

4. Real and Personal Property

A. Real Property - Any of the Real Property and improvements located thereon leased, licensed, permitted or transferred to the Center will be used by the Center solely for the purpose of implementing this JPA and operating and maintaining the Facility and any additional facilities.

(1) The City shall enter into a lease, license, or permitted use agreement with the Center for the approximate 8.4 acres of the Real Property located east of Rinconada Boulevard and north of Bataan Memorial West. This tract has a street address of 3551 Bataan Memorial West and is improved. The existing Facility improvements consist of but are not limited to a building, a paved parking lot, and landscaping.

(2) The City may enter into a lease, license or permitted use agreement with the Center in the City's sole discretion for the approximate 4.0 acres of Real Property located west of Rinconada Boulevard and north of Bataan Memorial West. This tract is not improved.

(3) The City may transfer ownership of all or part of the Real Property to the Center if the City secures permission to do so from the City of Albuquerque.

(4) Any lease, license, or permitted use agreement of the Real Property will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council and the Center Board, and will contain language deemed necessary to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque.

(5) Any agreement transferring ownership of all or part of the Real Property to the Center will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council, the Center Board, and, if deemed necessary, the approval of the City of Albuquerque.

B. Personal Property – Ownership of any personal property located within any building on the Real Property that is not considered to be a fixture shall be transferred by the Parties to the Center and shall be used by the Center solely for the purpose of implementing this Joint Powers Agreement and operating and maintaining the Facility.

##### 5. Center Organization

A. Board – The Center shall be governed by the Board. The Board shall establish its own policies and procedures to carry out the purposes of this JPA.

B. Members – The Board shall consist of six (6) voting members, who shall be City and County elected officials or staff, and two (2) ex-officio members. Three (3) voting members shall be appointed by the Mayor with the advice and consent of the City Council, and three (3) voting members shall be appointed by the County Commission. The two (2) ex-officio members shall be the City Manager and the County Manager or their Management designees.

(1) The term of an elected official shall expire when his or her official term in office is completed. All members may be reappointed. City staff members, if any, are subject to the term limitations and other provisions of the City's Board Ordinance.

(2) Attendance is required for all Board meetings. A member shall be removed for failure to attend more than 25% of the regular meetings in any twelve (12) month period.

(3) A County appointed member may be removed for any other reason by a majority vote of the County Commission.

(4) A City appointed member may be removed for any other reason with five (5) affirmative votes of the City Council.

C. Voting and Quorum – A majority of the voting members shall constitute a quorum for the transaction of business. A majority vote of the quorum shall be required for the adoption of a resolution. In the event that the number of regular voting members in attendance at any meeting of the Board is insufficient to establish a quorum for the transaction of business, an ex-officio member in attendance at such meeting may act as an alternate member for their respective governmental body's regular voting member for the purpose of establishing a quorum, and may vote on matters before the Board at such meeting.

D. Meetings – Meetings shall be conducted in accordance with Robert's Rules of Order.

(1) Regular Meetings – The Board shall hold one regular meeting each month.

(2) Special Meetings – Special meetings of the Board may be called in accordance with the New Mexico Open Meetings Act.

(3) Notice of Meetings – All meetings of the Board shall be held in accordance with the New Mexico Open Meetings Act.

(4) Minutes – The Board shall keep minutes of all meetings and, as soon as possible after each meeting, shall forward a copy of the minutes to each member of the Board, including ex-officio members.

E. Director – The Center will be led by a Director who will be hired by the Board pursuant to an employment agreement. The Director will report to the Board. The Director's job performance will be evaluated by the Board at least yearly. The Director shall conduct the business of the Center, serve as personnel officer, budget officer, property custodian,

and shall generally aid and assist the Board in the exercise of its duties and responsibilities. Upon request, the Director will provide reports to the City and County on all matters relating to the operation of the Center.

F. Employees – The authority and direction of the Director will be implemented by employees hired by the Director to operate the Center.

G. Powers – The Board is authorized to exercise all powers common to each of the Parties with respect to the purposes of the Center, including but not limited to the following:

- (1) To make and enter into contracts.
- (2) To apply for and accept grants and contributions.
- (3) To employ or contract for the services of employees, consultants, and such other persons as it deems necessary, and under such terms and conditions as may be established by the Board in the agreements relating to such persons.
- (4) To make plans and conduct studies.
- (5) To acquire, construct, operate and maintain buildings, improvements and facilities.
- (6) To acquire and dispose of real property.
- (7) To establish a mission statement.
- (8) To sue and be sued in its own name.
- (9) To borrow money if approved by the governing bodies of the Parties and further subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of the State of New Mexico.
- (10) To set fees and charges.
- (11) To bill and collect fees and charges set by the Center and establish a procedure for the resolution of disputed fees and charges.
- (12) To adopt resolutions necessary to carry out the purposes of this JPA.
- (13) To obtain necessary public liability and property insurance coverage. Such coverage shall comply with the statutory requirements of the New Mexico Tort Claims Act and shall include coverage for civil rights claims.

(14) To create from time to time *ad hoc* committees and/or advisory boards of suitable membership, scope, and duration for the purpose of providing advice and recommendations on particular matters of interest to the Board.

H. Purchase and Ownership of Assets – All assets of the Center, whether real or personal property, including those assets that may be transferred to it by the City and the County but excluding the Real Property and improvements located thereon leased, licensed or permitted to the Center, shall be owned in the name of the Center.

I. Procurement and Payment for Costs and Procured Services – The Director shall work with the fiscal agent to accomplish procurement of all goods and services in compliance with the fiscal agent's procurement code and consistent with New Mexico law. Such procurement shall include all professional and technical services as well as operating costs such as supplies, services, workers' compensation, general liability and commercial insurance for the Facility and contents, and construction services deemed necessary for the operation of the Center.

J. Budgetary Reserve – Any annual revenue in excess of operating and maintenance and capital expenditures shall be used to create special reserve funds for capital acquisition or operating carryover as determined through the budget process.

6. Fiscal Agent

A. The City shall be the fiscal agent for the Center for the term of this JPA.

B. The duties of the fiscal agent shall be as follows:

(1) Bill and collect all financial contributions from both Parties as provided herein.

(2) Maintain separate accounting designated specifically for the Center revenue and operational accounts and related budgets.

(3) Make all revenue or budget transfers and all disbursements for the Center as directed by its Director or his or her designee consistent with the authority granted by the Board.

(4) Charge in its discretion monthly interest that accrues when Center operations result in a negative cash position based upon completely updated transaction processing.

(5) Not allow any department of the fiscal agent to charge against any account unless the department submits an invoice with supporting documentation approved by

the Center Director or Board, consistent with policies and procedures established by the Board and Director and the fiscal agent's procurement code and consistent with New Mexico law.

(6) Prepare financial reports for the Center on an annual basis and as may be requested by the Center's Board from time to time, and present the reports to the Center's Board for review and approval.

(7) Strictly account for all receipts and disbursements made pursuant to this JPA in accordance with all applicable laws and regulations and with the fiscal agent's procurement code and consistent with New Mexico law.

(8) Account for all transactions on behalf of the Center including those related to fixed assets and provide for internal controls relating to the acquisition and disposal of fixed assets and proper recording of all liabilities.

(9) Provide all necessary accounting records sufficient to facilitate a "stand alone" financial statement. The Center's financial statements shall be audited by an independent CPA selected by the fiscal agent and all applicable reports shall be included in the annual audited financial statement referred to herein. Such audit shall be performed in accordance with government audit standards. The audit may be performed in conjunction with the fiscal agent's annual audit as required by the Office of the State Auditor.

C. Personnel Administration -

(1) The fiscal agent shall house all personnel files of Center employees. The Director shall be responsible for providing updated personnel documentation to the fiscal agent to maintain said files.

(2) The fiscal agent shall provide human resource in-processing and maintenance for Center employees' payroll system based upon the payroll data provided by the Director.

D. Limitations on Duties - The fiscal agent shall not be required to provide any services not described herein, including but not limited to:

(1) Training services.

(2) Benefits, programs or services specifically created for use by the fiscal agent's employees, other than administration of benefits provided through the Center's personnel policies.

(3) Legal services.

(4) Risk management services.

- (5) Employee assistance program.
- (6) Operation or maintenance services for the Center Facility or grounds.

E. Compensation - The fiscal agent shall be compensated for services rendered to the Center as set forth herein in the amount of \$86,000 per year base rate as of FY08-09. The base rate will be increased each year by the Consumer Price Index plus audit fees or other direct costs. Such compensation shall be considered an operation and maintenance expense of the Center and may be modified by resolution of the Board with the consent of the fiscal agent.

7. Financial Contributions of City and County

A. Contributions for Operating Budget -

(1) The Center shall, on an annual basis, submit a proposed operating budget to the City and to the County based on the Center's approved budget and any budget adjustments from the prior fiscal year, plus proposed increases/decreases for the new fiscal year. The Center shall also submit proposed capital improvements and special projects budgets when required by the Parties.

(2) The Board shall review and make recommendations regarding any proposed budget prior to the Center submitting the proposed budget to the Parties for consideration.

(3) The Center shall comply with all budgetary submission deadlines and procedures established by each of the Parties.

(4) Proposed budgets shall be cooperatively reviewed by City and County Staff, who shall provide budget development guidance and advice to the Center.

(5) The Center's budgets are subject to appropriation of sufficient funds by the City and County and shall be deemed approved upon approval of the City's and the County's budgets.

(6) The Parties intend to each pay for 50% of the Center's net operating budget; however, the Parties' respective financial contributions for the Center's net operating budget for a particular fiscal year will be whatever sum is approved in the City's and County's respective budgets for that expense.

(7) The Parties will re-evaluate every three (3) years from the effective date of this JPA whether a 50% allocation to each Party for the Center's net operating budget is

reasonable based on the total animals attributable to each Party as set forth below. The Parties may re-allocate the percentage of their financial contributions based on the re-evaluation.

(8) Starting January 1, 2012, the Center shall maintain records as to the total number of animals handled by the Center and where each animal came from (City or County); and then shall calculate the percentage of total animals attributed to the City and to animals attributed to the County. This calculation may be used by the Parties when they re-evaluate the operating budget contribution percentages as provided above. The animal head count report shall include animals brought to the Center by City or County animal control officers, by City or County residents, or held under court order. Animals that are abandoned at the Center without identification shall be evenly allocated between the Parties.

B. Contributions for Capital Improvements – The Parties may require that the Center develop and submit a capital improvements plan and budget, and may provide funding for capital improvements shown on the plan in the Parties' sole discretion.

C. Contributions for Special Projects — The Parties may require that the Center develop and submit a special projects plan and budget for projects not covered in the Center's operating budget or capital improvements budget, and may provide funding for special projects in the Parties' sole discretion.

D. Payment of Contributions –

(1) The fiscal agent shall pay to the Center on or before July 1 of the upcoming fiscal year twenty-two percent (22%) of the total financial contributions budgeted by the Parties for that fiscal year. The remaining budgeted financial contributions will be paid by the fiscal agent to the Center in eleven (11) equal payments due on or before August 15 and on the 15<sup>th</sup> day of each month thereafter for the remainder of that fiscal year.

(2) The fiscal agent shall monthly invoice each Party for its budgeted financial contribution for the upcoming month. Payment is due to the fiscal agent by each Party within thirty (30) days of receipt of the invoice.

8. Term and Termination

A. Term – The term of the JPA shall be perpetual. If any dispute arises concerning this JPA, the Parties agree to attempt to resolve such dispute in an amicable manner at the least possible expense. If such dispute cannot be resolved and either Party deems the dispute to be of major proportion, then the dispute shall be submitted for mediation in compliance with the New Mexico Mediation Procedures Act.

B. Mutual Termination of JPA –

(1) The JPA may be terminated by the mutual consent of the Parties.

(2) If the Center is mutually terminated where there is a successor public entity which will carry on all of the activities of the Center and assume all of its obligations, then all property, rights and assets of the Center shall be transferred to the successor public entity.

(3) If the Center is mutually terminated when there is no successor public entity which will carry on any of the activities of the Center or assume any of its obligations, then all property, rights and assets of the Center shall be equally divided between the Parties.

(4) If the Center is mutually terminated when there is a successor public entity which would undertake some, but not all, of the functions of the Center and assume some, but not all, of its obligations, then all property, rights and assets of the Center shall be allocated by the Board between the successor public entity and the Parties.

(5) In the event that the Center is mutually terminated under the circumstances falling within (3) and (4) above, all decisions of the Board with regard to the property, rights and assets to be transferred to the Parties or any successor public entity shall be final.

C. Unilateral Termination of JPA –

(1) If either Party unilaterally withdraws from the JPA without the consent of the other Party, then all of its rights under the JPA shall be transferred to the remaining Party and the JPA shall be deemed to be terminated. The Party unilaterally withdrawing shall have no claim to a division or partition of Center assets, or a right to use services of the Center.

(2) The failure of either Party to pay its monthly financial contributions within 90 days of billing shall be considered a unilateral withdrawal.

9. **Miscellaneous Provisions**

A. **Headings** – The headings of the various sections of this JPA are inserted only for convenience or reference, and are not intended nor shall they be construed to modify, define, limit or expand the intent of the Parties.

B. **Entire Agreement** – This JPA represents the entire agreement and understanding between the Parties.

C. **Amendments** – The Parties acknowledge and agree that this JPA may be amended in writing upon approval of the governing bodies of each Party and that any such amendments shall not become effective until signed by the Parties and approved by the New Mexico Department of Finance and Administration.

D. **Effective Date** – This JPA shall become effective upon execution by the Parties and approval by the New Mexico Department of Finance and Administration.

10. **Tort Claims Act** – By entering into this JPA, the Parties and their “public employees” as defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq., do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

EXECUTED in duplicate on the date first written above.

**CITY OF LAS CRUCES**

By: \_\_\_\_\_  
Robert L. Garza, P.E.  
City Manager

**COUNTY OF DONA ANA**

By: \_\_\_\_\_  
Brian D. Haines  
County Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Harry S. (Pete) Connelly  
City Attorney

\_\_\_\_\_  
John W. Caldwell  
County Attorney

**STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION**

By: \_\_\_\_\_  
Richard E. May  
Cabinet Secretary Designate

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

APPROVED BY:

\_\_\_\_\_  
Office of the General Counsel

8.28