

JOINT POWERS AGREEMENT

THIS AGREEMENT made and entered pursuant to the Joint Powers Agreement Act, Section 11-1-1 et seq., NMSA 1978, as amended through 2007, by and between the TOWN OF SILVER CITY and GRANT COUNTY, both entities being political subdivisions of the State of New Mexico as defined in said Joint Powers Agreement Act.

WHEREAS, the two governmental entities which are parties to this Agreement are Grant County, New Mexico ("County") and the Town of Silver City, New Mexico ("Town"); and,

WHEREAS, for the purpose of approving the subdivision and platting of land, the jurisdiction of a county includes all territory not within the boundary of a municipality; and

WHEREAS, for the purpose of approving the subdivision and platting of land, the jurisdiction of a municipality having a population of less than twenty-five thousand persons includes all territory within three miles of the municipal boundary and not within the boundary of another municipality; and

WHEREAS, § 3-20 5 D., N.M.S.A. provides for concurrent jurisdiction over territory within the platting jurisdiction of both the county and municipality (i.e., the extraterritorial jurisdiction, hereinafter the "ETJ"); and

WHEREAS, there presently exists two parallel application and review processes maintained by the two respective governments, which the parties hereto have concluded are inefficient and do not serve the public interest; and

WHEREAS, in the year 1995, the governing bodies of Grant County and the Town of Silver City executed a "Cooperative Agreement For The Establishment Of A Grant County/Silver City Extraterritorial Jurisdiction Advisory Board" ("Advisory Board"), recognizing that "the economic interests and the general welfare of the people in the County and the Town are best served by consistent and comprehensible standards and regulations including a system of joint staff review for the three-mile zone"; and

WHEREAS, the Advisory Board and its successors have met over the years, with their efforts culminating in a report submitted to the governments of the Town and the County at a joint session attended by the Grant County Commission and the Town of Silver City; and

WHEREAS, the parties recognize that central to the recommendations of the Advisory Boards is an integrated application and review procedure, applying one set of design and technical standards; and

WHEREAS, the parties concur that adopting those recommendations, while at the same time reserving final approval to the respective governments, would be in the public interest; and

WHEREAS, the parties hereto agree to cooperate in all respects to reach the goals described herein;

IT IS, THEREFORE, AGREED:

1. **AUTHORIZATION.** This Agreement is entered into pursuant to the Joint Powers Agreement Act, Section 11-1-1 et seq., NMSA 1976, as amended through 2007.

2. **PURPOSES.**

- A. To create a single application for developers and others which would initiate a single procedure for the review and consideration of a request to subdivide land located within the ETJ.
- B. To employ a single and comprehensive set of design and technical standards for subdivision development within the ETJ, including, but not limited to standards for roads, water systems, development density, conservation, grading and drainage.
- C. To provide for an integrated staff for purposes of processing applications and subsequent review.
- D. To create a commission charged with governing the application and review process, and with making final recommendations to the County Commission and Town Council during a joint meeting of the two governing bodies.

3. **THE GRANT COUNTY/SILVER CITY EXTRATERRITORIAL SUBDIVISION COMMISSION.**

There is hereby created the GRANT COUNTY/SILVER CITY EXTRATERRITORIAL SUBDIVISION COMMISSION ("ETJ Commission").

A. Composition: The composition of the ETJ Commission shall consist of two members appointed by the Grant County Commission who shall also reside in the ETJ, two members appointed by the Town of Silver City Council, who shall be residents thereof, and one additional member, who shall be a Grant County resident

not living in any incorporated municipality within the County, and who shall be appointed by a simple majority of the ETJ Commission members that have been previously appointed by the County Commission and the Town Council. Each governmental unit shall appoint its allowed number of appointees, with each government providing a sufficient number of alternates so that the Commission will always be fully capable. No appointee shall be a currently elected official of a public body. All appointments of Commissioners and alternates shall be made within thirty (30) days of the execution of this Agreement.

B. Terms of office: Each ETJ Commissioner shall serve for two years, but may be removed for cause by the appointing entity. A removal of an ETJ Commissioner shall not infringe upon the right of representation by the constituent parties, and no meeting shall occur until a replacement ETJ Commissioner is appointed by the represented entity.

C. Vote: Each ETJ Commissioner shall have one vote which must be cast in person. Written and signed proxies shall be not permitted.

D. Meetings: Meetings of the ETJ Commission shall occur as often as deemed necessary, but in any case, shall convene within thirty (30) days of notification that an application for subdivision has been certified as complete and awaiting ETJ Commission action.

E. Alternates: Alternate members shall be permitted to attend the ETJ Commission meetings and to participate in discussion, but shall have no vote unless the primary ETJ Commissioner is absent.

F. ETJ Commissioner Conduct: No member of the ETJ Commission shall act in such a way as to frustrate the purposes described herein, including but not limited to the failure to attend meetings or to address the business of the ETJ Commission. If the ETJ Commission shall determine that the member(s) appointed by a signatory has failed to attend two consecutive regular or special meetings of the ETJ Commission, or a combination thereof, the ETJ Commission shall give written notice to the signatory demanding replacement of the member and setting for the reasons therefore. The affected signatory shall appoint a new member, within 30 days of the service of such notice to appoint a new member.

G. Rules of Procedure: The ETJ Commission shall adopt rules of procedure for efficient and fair processing of applications and the internal governance of the ETJ Commission, except that the ETJ Commission shall be subject to the State of New Mexico's Open Meetings Act and Inspection of Public Records Act. Certain principles reflecting fair substantive and procedural due process discussed below in paragraphs 6 and 7 of this Agreement shall be integrated into any rules adopted by the ETJ Commission. There shall be a secretary to the ETJ Commission who shall keep minutes of public meetings and act as the repository of public documents.

H. Quorum: A quorum to conduct business shall be five ETJ Commissioners or a combination of ETJ Commissioners and alternates.

I. Conflict of Interest: Any ETJ Commissioner or alternate who shall have any financial or familial interest in any property under consideration by the ETJ Commission shall immediately disclose such interest, and shall recuse him/herself from any discussion, deliberation, or vote on the matter. Familial interest means that the applicant is an immediate family member of the ETJ Commissioner.

4. POWERS AND DUTIES OF THE ETJ COMMISSION.

A. The County Director of Planning shall be the ETJ Commission Administrator, who shall receive applications and be the point-of-contact between the applicant and the ETJ Commission, and to perform any other duty assigned to him/her by the ETJ Commission.

B. To develop and publish a unified application which will be satisfactory to enable a review and process for approval/disapproval of a request for permission to subdivide land. To this end, the Town and the County will provide such staff as the ETJ Commission deems necessary to accomplish such task, which shall meet as necessary and shall cooperate in all matters.

C. To employ a unified, comprehensive series of design and technical standards which will apply to the broad range of anticipated applications for the subdivision of land located within the ETJ. These standards shall include, but not be limited to, roadways, water distribution systems, sewer systems, utility easements, development densities, grading and drainage requirements, conservation measures, and other standards as outlined in a final ETJ Ordinance approved by both the County and the Town. The initial design and technical

standards to be employed in the consideration of subdivisions of land pursuant to this Agreement shall be set of joint Grant County/Silver City Extraterritorial Jurisdiction Subdivision Regulations approved by both the County and the Town, which shall take the form of an ordinance passed by each governmental body.

D. To conduct public hearings, to remand issues to staff for further information, to enter upon properties under consideration for subdivision with the consent of the property owner(s), and to request staff reports on the issues presented in an application.

E. To make recommendations to the County and Town regarding applications, the process and procedures for the ETJ Commission, and other issues related to subdivisions.

F. To reject applications for incompleteness or for willful misrepresentation.

G. To formally vote on matters brought before it, and to communicate in writing to the County and Town the recommendations of the ETJ Commission. To that end, the ETJ Commission shall authorize a written dissent which would reflect the opinion of the minority in the case of a split decision.

H. To issue annual public reports on the activities conducted by the ETJ Commission.

5. AMENDMENTS.

This Joint Powers Agreement can be amended only by the concurrence of the two governmental entities, which shall take the form of an ordinance by each.

6. GENERAL RULES OF PROCEDURE.

A. After an application is deemed complete by the ETJ Commission Administrator, it shall be forwarded to the Secretary of the ETJ Commission who shall notify the ETJ Commission of its receipt thereof. After proper notice and a timely public hearing, the ETJ Commission will either remand the application back to staff for additional information, or proceed to deliberation on the application. The decision shall be in writing, issued within five (5) business days from the date of hearing, and a minority opinion attached if appropriate. Within five (5) business days, the recommendation will be forwarded to the applicant and the County and Town. Thereafter, the County and Town shall conduct a joint public hearing, deliberate, and issue a final decision. For a subdivision application to gain final approval, both the County and Town must vote in favor. Should the

County and Town have opposite decisions, the County and Town shall attempt to resolve the dispute within 30 days. The County and Town may then report satisfaction with any repair or maintain the difference and remand the application to the ETJ Commission for compliance with standards identified in dissenting party's decision as non-compliant. Upon the finality of the proceeding either approving or disapproving the application, an aggrieved person may appeal directly to the Sixth Judicial District Court.

7. PUBLIC HEARINGS. All public hearings shall be conducted subject to the following:

A. When the ETJ Commission Administrator determines that an application is complete, a public hearing shall be scheduled which shall occur within thirty (30) days, except that failure to hold the hearing within such period shall not be considered a de facto approval.

B. Public notice shall be given of the public hearing at least fifteen days prior. Notice shall be by publication for two consecutive days in a newspaper of general distribution within Grant County.

C. The ETJ Commission will decide, by consensus, upon a presiding officer who shall conduct the hearing according to the rules and regulations of the ETJ Commission. As subsequent applications are submitted, there will be a rotation of presiding officers so that no presiding officer shall serve two consecutive appointments.

D. The hearing shall be open to the public and all persons interested in the outcome of the application shall be given an opportunity to present evidence and arguments, and ask questions of those who testify. The ETJ Commission may impose reasonable limitations on the number of witnesses heard and the nature and length of their testimony. The hearing shall be recorded, and a copy of the recording shall be made available upon reasonable request.

E. The applicant or his official representative shall be present at the public hearing. If the applicant appears through a representative, he/she shall submit a signed writing indicating such formal representation prior to the hearing. An un-excused failure of an applicant to be present at the public hearing in person, or through a representative, shall be considered an abandonment of the application.

F. Testimony shall be given under oath or affirmation, and the proponent of evidence or testimony shall

state his or her name, address, and interest in the matter.

G. Knowing or willful submission by the applicant or his representative(s) of false or misleading testimony or evidence may result in a rejection of the application.

H. The application and any attachments thereto, staff reports, and evidence provided at the public hearing shall constitute the record for consideration by the ETJ Commission. There shall be no ex parte communications between an applicant and/or his representative with any ETJ Commissioner or alternate.

8. **COMPENSATION.** ETJ Commission members and their alternates shall serve without compensation. Staff provided by the County and Town shall remain employees of their respective governments, and shall earn no additional compensation for duties performed for the ETJ Commission.

9. **LEGAL STAFF.** The County shall provide legal staff to the ETJ Commission through the ETJ Commission Administrator. However, independent counsel may be retained as needed, as determined by both the County and the Town. If it is determined that independent counsel is necessary, the choice of independent counsel shall be made upon the agreement of both governmental bodies. The costs of legal representation shall be borne equally by the signatories herein.

10. **ENFORCEMENT.** The authority and method of enforcing the joint Grant County/Silver City Extraterritorial Jurisdiction Regulations referenced in section 4.C. above shall be outlined in the ordinance containing such Regulations.

11. **TERM AND TERMINATION.** The initial term of this Joint Powers Agreement shall be FIVE (5) years. This Joint Powers Agreement may be terminated by the Chairman of the Grant County Commission, or by the Mayor of the Town of Silver City for any reason, upon ninety (90) days notice, or sooner upon mutual agreement of the parties. Thereafter, pending applications will be processed to conclusion, but no new applications will be accepted. The powers and authorities of each governmental entity will be independently revived.

Termination of this Agreement shall not abrogate or impair any letters of credit or other development guarantee agreements, which shall be effective for their full term, and shall be maintained by either the Town or the County, as may be appropriate.

12. **STRICT ACCOUNTABILITY.** Each party shall be strictly accountable for all receipts and disbursements made by the ETJ Commission.

13. **PROPERTY.** It is not anticipated that any property will be owned by the ETJ Commission, and therefore, it is not necessary to provide for the disposition, division or distribution of any property acquired as a result of the joint exercise of powers contemplated under this Agreement.

14. **RETURN OF SURPLUS PROPERTY.** Upon completion of the Agreement's purpose and the termination of this Agreement, any surplus money on hand that has been accumulated by the ETJ Commission shall be return to Grant County and the Town of Silver City in the same proportion to the contributions made.

15. **SEVERABILITY.** The sections, subsections, paragraphs and sentences are severable, and if any phrase, clause, sentence, section, or subsection of this Agreement be declared unconstitutional, illegal, or unenforceable by a court of competent jurisdiction, such unconstitutionality, illegality, or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs and sentences of the Agreement, since the same would have been entered into by the parties without such invalid portion.

16. **EFFECTIVE DATE.** This Agreement shall become effective when executed in the manner provided by the laws of the respective signatories, and subject to the approval of the New Mexico State Department of Finance and Administration, pursuant to Section 11-1-3 NMSA 1978.

17. **VENUE.** Venue for any suit brought upon or pursuant to this Agreement shall lie in the Sixth Judicial Court, Grant County, New Mexico.

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IN WITNESS WHEREOF, the foregoing Joint Powers Agreement is hereby executed by the undersigned, the Mayor of the Town of Silver City, and the Chairman of the Grant County Commission, both of which signatures were authorized by resolutions passed by the Town Council of the Town of Silver City and the Board of County Commissioners, Grant County.

Dated this 16th day of December, 2008.

James R. Marshall
Mayor, for and on behalf of the Town of Silver City

James Hansen
Chairman, for and on behalf of the County of Grant

Approved by the New Mexico Department of
Finance and Administration

RBV

12/16/08
Date