

**AMENDED JOINT POWERS AGREEMENT REORGANIZING  
THE ESTANCIA VALLEY SOLID WASTE AUTHORITY**

This joint powers agreement ("JPA" or "Agreement") is entered into by and between the **COUNTY OF TORRANCE**, a political subdivision of the State of New Mexico, the **VILLAGE OF ENCINO**, a municipal corporation of the State of New Mexico, the **TOWN OF ESTANCIA**, a municipal corporation of the State of New Mexico, the **CITY OF MORIARTY**, a municipal corporation of the State of New Mexico, the **TOWN OF MOUNTAINAIR**, a municipal corporation of the State of New Mexico, the **VILLAGE OF WILLARD**, a municipal corporation of the State of New Mexico, and the **TOWN OF VAUGHN**, a municipal corporation of the State of New Mexico, (collectively the "Parties" or individually a "Party") and is made pursuant to the Joint Powers Agreement Act (the "JPA Act"), NMSA 1978, §§ 11-1-1 et. seq.

**WHEREAS**, the JPA Act provides that any county and any municipality may enter into agreements to cooperate and assist each other in exercising and performing any power, authority, duty or function legally invested in them;

**WHEREAS**, the State of New Mexico, through its Environmental Improvement Board, has enacted Solid Waste Regulations 20.9.2 through 20.9.10 NMAC, imposing strict standards on local governments governing the collection and disposal of solid waste and long-range goals to reduce the volume of waste being deposited in solid waste landfills; and

**WHEREAS**, currently the COUNTY OF TORRANCE, VILLAGE OF ENCINO, TOWN OF ESTANCIA, CITY OF MORIARTY, TOWN OF MOUNTAINAIR, VILLAGE OF WILLARD, and TOWN OF VAUGHN jointly exercise the power to develop, operate and fund the ESTANCIA VALLEY SOLID WASTE AUTHORITY (the "Authority" or "EVSWA"), as permitted and allowed, and further desire to entire into this JPA to exercise the common power for the purpose of providing a regional solid waste management system pursuant to an existing joint powers agreement;

**WHEREAS**, currently the EVSWA is a regional solid waste management system comprised of a permitted regional landfill, multiple solid waste collection centers, multiple recycling centers and solid waste and recycling equipment;

**WHEREAS**, pursuant to the JPA Act, the Parties hereunder may appoint a board ("Board") to administer or execute the agreement;

**WHEREAS**, the Parties wish to continue the development, operation and funding of the EVSWA;

**WHEREAS**, the Parties wish to redefine control of the EVSWA's administration and performance, including financing the EVSWA, and to reconstitute the Board for the purpose of governing the EVSWA as set forth herein on behalf of the COUNTY OF TORRANCE, VILLAGE OF ENCINO, TOWN OF ESTANCIA, CITY OF MORIARTY, TOWN OF MOUNTAINAIR, VILLAGE OF WILLARD, and TOWN OF VAUGHN;

**WHEREAS**, the governing body of each of the Parties have pledged their respective financial support for the purpose of funding the acquisition of capital assets necessary for the development and funding the operation of a solid waste management system; and

**WHEREAS**, the governing body of each of the Parties has adopted a resolution approving the establishment of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the cooperation required between the Parties and the performance of the promises contained herein, the Parties mutually agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to establish the procedures and responsibilities for the joint and cooperative undertaking of the Parties in developing, operating and funding the EVSWA for the Parties' geographic areas and any surrounding area as they wish to include in accordance with applicable laws.
2. **NAME.** The solid waste management system established, developed, operated and financed by this agreement shall be known as the ESTANCIA VALLEY SOLID WASTE AUTHORITY or the EVSWA.
3. **POWERS AND DUTIES DELEGATED TO THE EVSWA.** The Parties hereby delegate to the EVSWA the powers and duties necessary to fulfill its purpose, including but not limited to the following:
  - a. To develop and implement a plan to acquire, construct, permit, and operate, or contract for components of a solid waste management system for the Parties;
  - b. To acquire, cause to be acquired and maintain, or contract for the necessary property, equipment and personnel for the solid waste management system;
  - c. To issue revenue bonds in an amount determined by the Board of the Authority based on the anticipated revenue and system needs;
  - d. To make application to appropriate state and federal agencies for financial assistance for the development and operation of the solid waste management system including but not limited to a permanent solid waste repository and appurtenant facilities;
  - e. To prepare and submit for approval on or before the last day of May of each year an Authority budget to the Department of Finance and Administration of the State of New Mexico; said budget to cover the subsequent twelve-month period commencing July one of each year;

- f. To provide for proper development, management, distribution and accounting of funds acquired for the development and operation of a solid waste management system;
- g. To select, enter into and terminate agreements for the services of director, attorney, appraisers, consultants and employees for the administration and management of the Authority;
- h. To authorize the director to employ, pay and terminate such personnel as is necessary for the proper administration, operation and maintenance of the Authority;
- i. To secure approved plans, specifications and bidding documents for various developments and operations, projects and phases; to advertise and open bids for purchases of equipment and construction of facilities and to award construction contracts;
- j. To provide for the proper supervision, construction and management of the systems and to appropriate warranties for bonds to ensure contract compliance and quality guarantees;
- k. To adopt a policy regarding fees, and to set rates and charges for use of the said system and found necessary for the adequate financial operation of the Authority;
- l. To negotiate and execute any and all agreements for and on behalf of the Parties to carry out the approved purposes as called for and provided herein;
- m. To provide for the proper receipt of and disbursement of funds of the Authority for its administration, maintenance and operation as provided by the Authority budget;
- n. To require that the functions of this Authority and administration of the solid waste management system comply with all federal, state and county laws and, specifically, that the Authority is managed and operated in accordance with the statutes and regulations administered by the New Mexico Environment Department;
- o. To make, adopt and amend by-laws, from time to time, for the Authority's proper operation so long as such by-laws are not in conflict with the terms of this Agreement. Copies of all such by-laws shall be delivered to each of the Parties hereto.
- p. To carry out such other duties and programs as the respective Parties may mutually delegate to the EVSWA from time to time.

4. BOARD. There is hereby re-affirmed and continued the Board of the EVSWA whose function shall be to exercise the powers delegated by this Agreement to carry out the purposes of this Agreement.
  - a. Board Members. The Board shall consist of seven (7) voting board members. One (1) member shall be appointed by the board of Commissioners of the County of Torrance; one (1) member shall be appointed by the governing body of the Village of Encino; one (1) member shall be appointed by the governing body of the Town of Estancia; one (1) member shall be appointed by the governing body of the City of Moriarty, one (1) member shall be appointed by the governing body of the Town of Mountainair; one (1) member shall be appointed by the governing body of the Village of Willard; and one (1) member shall be appointed by the governing body of the Town of Vaughn.
  - b. Term. The term of each member shall be for a period of two (2) years. Should a member be unable to fulfill the term of appointment, the governing body of the Party appointing said member shall appoint another member to complete the remainder of that term. However, the governing body of a Party may replace its members at any time.
    - i. Transition of Terms from Existing Agreement. The members currently appointed by the County of Torrance, Village of Encino, Town of Estancia, City of Moriarty, Town of Mountainair, Town of Vaughn, and Village of Willard pursuant to the joint powers agreement being amended by this Agreement may serve the remainder of their respective terms. These terms are currently staggered and shall remain so staggered under this Agreement. To maintain the staggering, at the expiration of any of these respective terms, a Party shall appoint a member pursuant to this Agreement.
  - c. Compensation. Each member will be entitled to receive mileage and per diem in accordance with the Department of Finance and Administration Rules 2.42.2 NMAC.
  - d. Executive Committee. The Board shall choose a Chairperson, Vice-Chairperson, Secretary and Treasurer. These officers shall constitute the Executive Committee of the Board.
  - e. Meetings. The Board shall meet at least once each month. The EVSWA shall, by motion adopt rules of procedure for the Board which must comply with the Statutes of the United States and the State of New Mexico.
  - f. Action of the Board. All actions of the Board shall be approved by majority vote of the Board. The chairperson of the Board shall have a vote, and no member shall abstain from voting unless there is a conflict of interest pursuant to New Mexico Law. A tie vote shall mean the motion is defeated or does not pass, since

the majority vote of the board is required to take any action. Pursuant to § 11-1-6 NMSA 1978, members serving on the Board shall not be individually liable for any actions, inactions, or omissions of the EVSWA, except for their intentional torts or illegal acts.

- g. Non-voting Members of the Board. Governmental entities such as the National Forest Service, New Mexico State Parks Division, and other quasi-governmental entities such as sanitation districts and homeowners' associations located within the geographical boundaries of the Parties may request to have a non-voting representative sit on the Board. Upon approval by the voting members of the Board, such non-voting representative may sit on the Board and participate in discussions of the Board, but shall not have the power to vote, to make or second motions, to participate in closed sessions or to otherwise direct the procedure of the Board. Such an approved non-voting representative on the Board shall not be liable for any of the actions of the Board and shall not be eligible for any compensation from the Authority or any of the Parties to this JPA.
5. BUDGET AND FISCAL YEAR. The Authority shall, each year prior to the last day of May, prepare a budget for Authority finances for the ensuing fiscal year, said fiscal year to run from the 1st day of July of each year to the 30th day of June of the following year. The budget shall show in detail the revenue and expenses from the preceding year and in detail the anticipated revenue and expenses for the succeeding year and shall otherwise conform to the requirements placed on local government agencies by the New Mexico Department of Finance and Administration. Upon the approval of the Board of the Authority and the New Mexico Department of Finance and Administration, or such other state agency designated by law to approve local government budgets, the Authority budget shall take effect. The expenditures allowed in such approved budget shall control the year's spending program for the Authority. All spending shall be done in accordance with state law pertaining to disbursement of public funds.
6. MANAGEMENT. Within the constraints of this Agreement, the day to day control, management, supervision, operation, and regulation of the system, equipment, programs, personnel and facilities of the solid waste managements system shall be under the administration of the Authority. No new obligations may be delegated to the Authority by the Parties, or assumed by the Authority, without the approval of all Parties to this Agreement.
7. REPORTS. The Authority shall make a quarterly written report of its activities to the Parties signatory to this Agreement.
8. FINANCES AND CONTRIBUTIONS. For the duration of this agreement, each Party shall contribute its respective Environmental Services Gross Receipts Tax ("ESGRT") revenue to the Authority for the development and operation of the solid waste system.
  - a. The Parties may authorize and execute intercept agreements for their respective ESGRT revenues with third parties, such as the New Mexico Finance Authority

(“NMFA”), provided the purpose of said intercept agreements is to finance loans for the benefit of the Authority. Such ESGRT intercept agreements shall be deemed to satisfy a Party’s contribution as required under Section 8 above. Upon the termination of any such ESGRT existing intercept agreement, unless another intercept agreement is executed for the benefit of the Authority, a Party shall contribute its respective ESGRT revenue directly to the Authority.

- b. The Authority shall provide for and be responsible for any debts incurred for capital improvements with no additional recourse to the respective Parties other than as specified in this Agreement. It shall be the duty of the Authority to ensure that the equipment, facilities and capital improvements reasonably necessary for the normal and businesslike operation of the Authority are provided in a timely manner.
  - c. The Authority may generate funds generated by revenue bonds, loans, collection and tipping fees and such other revenues as may, from time to time, be identified by the Authority, except that the authority shall have no independent authority to levy and collect taxes separate and apart from the authority existing within the Parties.
  - d. Each Party’s respective contributions specified herein shall defray the costs of each Party’s use of the Authority’s services and facilities, thereby entitling each Party and its residents to reduced fees for said use.
  - e. The Authority is hereby designated as the operational manager of the solid waste management system and shall be responsible for any deficits incurred in the operation of the solid waste system in compliance with the law and sound fiscal practices. The Authority shall have the right of control over its own operational budget, subject to policy direction from the Board.
  - f. The Parties shall not be obligated or incur any liability for payment of deficits incurred by the Authority. Anticipated deficits shall be identified and included in the annual budget and necessary corrective action identified and implemented so as to make up any anticipated deficits in the same year in which they are incurred.
  - g. It is the intent of the Parties that the Authority become self-sufficient and that no Party be required to contribute funds from its respective budget or taxing authority other than its respective ESGRT or as otherwise specified herein.
9. RESERVE FUNDS. The Authority is authorized to acquire and maintain reserve funds for EVSWA operations.
10. REVENUE BOND ISSUES. The Authority may conduct the necessary studies, retain bond counsel, a financial advisor or underwriter, and perform such other tasks as are necessary to issue revenue bonds. The proceeds of this bond issue shall be used for, but

not limited to, the purchase or acquisition of capital assets necessary for the development and implementation of a solid waste management system.

11. ADMINISTERING AGENCY. Pursuant to NMSA 1978, § 11-1-5, the Parties agree that the Board is the administering agency of this JPA. The administering agency shall comply with all related state and federal requirements pertaining to procurement, compensation, contractors, accounting, and record keeping. All contracts must be approved by the administering agency. The administering agency shall receive and disburse all funds secured by the Authority and shall provide strict accountability of all receipts and disbursements. The administering agency shall be solely responsible for fiscal, audit or other sanctions occasioned as a result of its own violations, negligence or alleged audit deficiencies applicable to the performance of this Agreement. Nothing in this Agreement shall be construed as a waiver of immunity of the Parties hereto or the governmental entities approving same.

- a. For the purpose of financing the necessary expenditures in carrying out the provisions of this Agreement, the administering agency shall have appropriate bank accounts to distinguish various solid waste funds and to comply with federal, state and local requirements, policies and law.
- b. In these accounts will be placed all revenues and receipts obtained and to be used for solid waste operation and improvements except as noted herein.
- c. All receipts belonging to the Authority shall be deposited intact in a bank account to the credit of the Authority fund, and no disbursements shall be made from this account by check issued by the administering agency unless proper vouchers have been submitted to the same where required by law and the services or goods have actually been approved by the Authority or its designated representatives for payment.
- d. The administering agency shall strictly account for the funds and the custody of the cash, and the bank checking account shall be under the direction of the administering agency.
- e. All revenues derived by the Authority shall be disbursed totally for solid waste management purposes.
- f. An audit of all funds, including income and expenses, shall be made annually.
- g. Any employee of the Authority who handles cash for the Authority shall be covered by a surety bond obtained through the Authority in such amount as determined by the Authority.

12. TERMINATION AND DISSOLUTION. The Parties may mutually agree to dissolve this agreement, provided that such dissolution would not violate the provisions of agreements with third parties or cause or constitute a breach of any contract with third parties. Upon

dissolution, any funds remaining and unobligated, including any reserve funds, and any property acquired by the Authority shall be divided among the Parties in the proportion to their total respective contributions to the Authority, whether such contributions occurred under this agreement or under the original agreement which established the Authority.

- a. Termination by a Party. Any Party may terminate its participation in this agreement at any time by giving at least a 360-day notice of such intent to terminate to the other Parties and the Board, provided that such a termination shall only be effective at the end of any fiscal year. A terminating Party's obligations, financial or otherwise, pursuant to agreements with third parties shall survive termination. Such a terminating Party shall be liable for any such obligations. In the event of termination by any Parties to this agreement, the remaining Parties may continue their participation and operation of the Authority under this agreement. A terminating Party shall release any and all claims to any property then owned or used by the EVSWA and to any and all claims to a refund to any contributions made to the EVSWA.

13. **PRIOR JOINT POWER AGREEMENTS.** The Authority as constituted under this agreement is the successor to the Torrance County Solid Waste Authority and the Estancia Valley Solid Waste Authority as established by prior joint power agreements. This agreement, while intended to memorialize these prior joint power agreements, shall supersede any and all prior agreements between the Parties with respect to the Torrance County Solid Waste Authority and Estancia Valley Solid Waste Authority and all such prior agreements, arrangements and understandings are hereby rescinded and rendered null and void hereafter. This Agreement contains the entire agreement between the Parties concerning the joint and cooperative establishment, management, and operation of this solid waste management system.

14. **PRIOR AGREEMENTS WITH THIRD PARTIES.** Valid agreements entered into with third parties by any of the Parties or the Authority as constituted under prior joint power agreements, shall remain in effect under this agreement and be valid and enforceable under the terms of those prior agreements against the Parties that are a party to any such prior agreement and against the Authority, as constituted under this agreement.

15. **LIABILITY.** Each of the Parties shall be solely responsible for fiscal or other sanctions, penalties or fines occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of this Agreement. Each Party shall be liable for its acts or failure to act in accordance with this Agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act.

16. **HEADINGS.** The section headings are for convenience of reference only and shall not otherwise affect the meaning hereof.


17. **GOVERNING LAW.** This Agreement shall be governed by and construed according to the law of the State of New Mexico.



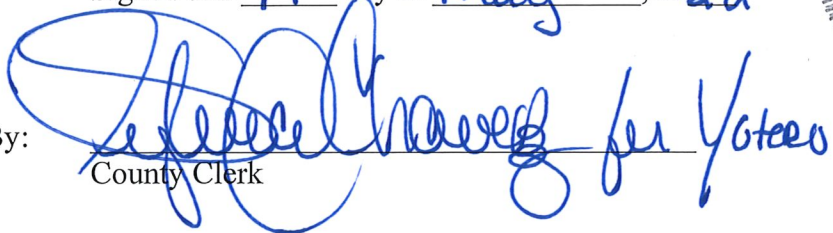
18. STATUTORY AUTHORITY. The Estancia Valley Solid Waste Authority established under this Agreement is authorized NMSA 1978, §§ 11-1-1 et. seq.
19. DEPARTMENT OF FINANCE AND ADMINISTRATION APPROVAL. This Agreement shall be of no force and effect until approved in writing by the Department of Finance and Administration for the State of New Mexico
20. AMENDMENTS. Any amendments to this agreement shall be effective only upon the mutual execution of an amending document and approval by the New Mexico Department of Finance and Administration.
21. EXECUTION IN COUNTERPARTS. This Agreement and any subsequent amendments may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
22. EFFECTIVE DATE AND TERM. This Agreement shall become effective upon execution of this Agreement by all parties and approval by the Department of Finance and Administration of the State of New Mexico, and shall continue in effect indefinitely.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on behalf of the Parties hereto, to be effective as of the day and year first above written.

**TORRANCE COUNTY, NEW MEXICO**

By:   
Chair of the Torrance County Commission

Signed this 19 day of May, 2022

Attest By:   
County Clerk



VILLAGE OF ENCINO, NEW MEXICO

*Boyd Herrington*

By:

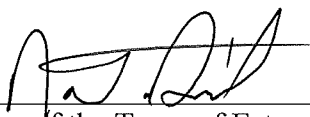
\_\_\_\_\_  
Mayor of the Village of Encino

Signed this 26th day of May, 2022.

Attest By:

*Alysha Garcia*  
\_\_\_\_\_  
Village Clerk

**TOWN OF ESTANCIA, NEW MEXICO**

By:   
Mayor of the Town of Estancia

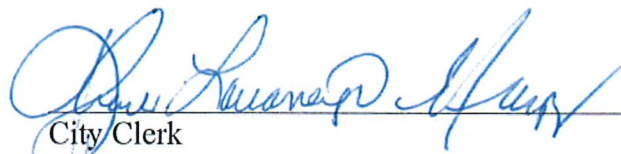
Signed this 18<sup>th</sup> day of May, 2022

Attest By:   
Town Clerk

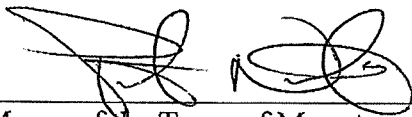
**CITY OF MORIARTY, NEW MEXICO**

By:   
Mayor of the City of Moriarty

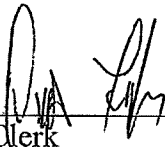
Signed this 19<sup>th</sup> day of May, 2022.

Attest By:   
City Clerk

**TOWN OF MOUNTAINAIR, NEW MEXICO**

By:   
\_\_\_\_\_  
Mayor of the Town of Mountainair

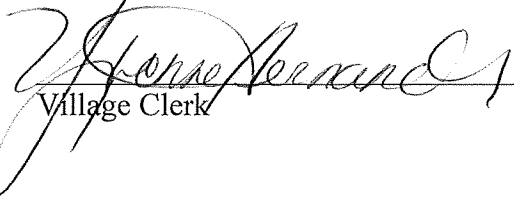
Signed this 27 day of May, 2022.

Attest By:   
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Town Clerk

**VILLAGE OF WILLARD, NEW MEXICO**

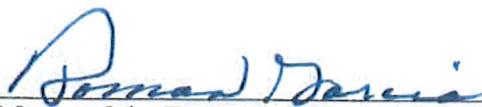
By:   
Mayor of the Village of Willard

Signed this 19 day of May, 2022.

Attest By:   
Village Clerk

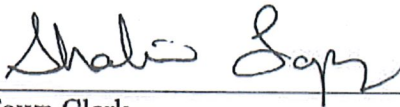
**TOWN OF VAUGHN, NEW MEXICO**

By:

  
\_\_\_\_\_  
Mayor of the Town of Vaughn

Signed this 21 day of May, 2022

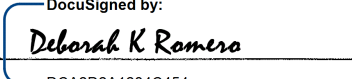
Attest By:

  
\_\_\_\_\_  
Town Clerk



Approved:

**DEPARTMENT OF FINANCE AND ADMINISTRATION**

By:   
Date: 5/31/2022