

**MEMORANDUM OF AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
THE CITY OF ESPANOLA**

**THIS MEMORANDUM OF AGREEMENT** (hereinafter, "Agreement") is entered on this the 8<sup>th</sup> day of August 2017, by and between Santa Fe County (hereinafter referred to as "County"), a New Mexico political subdivision, and the City of Espanola, (hereinafter referred to as the "City"), a municipality located at 405 N. Paseo de Oate, Espanola, New Mexico 87532.

**RECITALS**

**WHEREAS**, in the spirit of cooperation, mutual respect and service to the residents of the County and the City, this Agreement confirms the parties' commitment and mutual cooperation which recognizes that the partnering activities between government entities may produce community and constituency benefits beyond what might be produced independently; and

**WHEREAS**, this Agreement is exempt from the provisions of the Procurement Code, NMSA 1978, Section 13-1-98(A); and

**WHEREAS**, the City owns Valdez Park (the "Park") which provides annual recreational opportunities for 3,000 to 4,000 youth and residents from the City and the County; and

**WHEREAS**, the Park has playground equipment that is outdated and is in need of replacement; and

**WHEREAS**, the City owns Lucero Center (the "Center") which provides an indoor swimming pool and gymnasium which are the most used recreational City facilities; and

**WHEREAS**, the Center needs improvements to the walls and ceilings, replacement of the flooring, doors, and lighting and the resurfacing of the pool facility; and

**WHEREAS**, the Parties agree the improvements described by this Agreement are of mutual interest and benefit to the County and City and all funds will be expended to improve the Park and Center facilities.

**NOW, THEREFORE**, the Parties mutually agree as follows:

**1. SCOPE OF UNDERSTANDING**

The County will provide the City with funds in the amount of \$225,000.00, for the acquisition and installation of playground equipment at the Park and improvements to the Center.

**2. COMPENSATION**

A. During the term of this Agreement, the City shall invoice the County for expenses incurred by the City for the acquisition and installation of playground equipment at the Park in an amount not to exceed \$75,000.00, inclusive of NM gross receipts tax.

B. During the term of this Agreement the City shall invoice the County for expenses incurred by the City for the improvements to the Center in an amount not to exceed \$150,000.00, inclusive of NM gross receipts tax.

C. Payment by the County shall be made upon a receipt of a detailed and certified invoice from the City supporting the costs for improvements incurred by the City. Thirty days shall be allowed for payment after receipt of an invoice.

D. Payment under this Agreement shall not foreclose the right of the County to recover any excessive or illegal payment(s).

**3. EFFECTIVE DATE AND TERM**

This Agreement shall become effective upon the date of last signature by the Parties and shall terminate no later than June 30, 2018, unless earlier terminated pursuant to Section 4 (Termination) or Section 14 (Appropriations and Authorizations).

**4. TERMINATION**

A. Termination of Agreement. This Agreement may be termination by the County upon written notice to the City at least 30 days prior to the intended date of termination. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

B. Termination of Agreement for Cause. If a Party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if a Party violates any of the covenants, agreements, or stipulations of this Agreement, the non-breaching Party shall thereupon have the right to suspend or terminate this Agreement by giving written notice to the other Party of such termination and specifying the effective date thereof.

Notwithstanding the above, no party shall be relived of liability to the other party for damages sustained because of the breach of the Agreement.

**5. PERSONNEL**

A. The City represents that it has, or will secure at its own expense, all personnel required to perform all of the services required of it under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County.

B. All services required hereunder will be performed by the City and all personal

engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

**6. ASSIGNMENT**

The City shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

**7. SUBCONTRACTING**

The City shall not subcontract any portion of the duties, obligations or services to be performed under this Agreement without the prior written approval of the County.

**8. NO THIRD-PARTY BENEFICIARIES**

This Agreement was not intended to and does not create any rights in any persons or party not a party to this Agreement.

**9. RELEASE**

Final payment of the amounts due under the Agreement shall operate as a release of the County, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

**10. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omission in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act §41-4-1, et seq. NMSA 1978.

**11. AMENDMENT**

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

**12. INTEGRATION CLAUSE**

This Agreement incorporates all covenants and understandings the Parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this Agreement. No prior covenants or understandings, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**13. APPLICABLE LAW; VENUE**

This Agreement shall construed in accordance with the laws of the State of New Mexico. The City and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

**14. APPROPRIATIONS AND AUTHORIZATIONS**

This Agreement is contingent upon sufficient appropriations and authorization being made by the Santa Fe County Board of County Commissioners and if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice being given by County to the City. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the City for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for fulfillment of this Agreement shall be final and not subject to challenge by the City

**15. FACSIMILE SIGNATURES**

The Parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

**16. NEW MEXICO TORT CLAIMS ACT**

No provisions of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County of its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, §41-4-1, et seq.

**17. PROHIBITED ACTIVITY**

The City is prohibited from using funds provided herein or personnel employed in the administration of this Agreement for political activities, sectarian or religious activities, lobbying or political patronage.

**18. RECORDS AND FINANCIAL AUDIT**

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the City agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years form the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; (iii) to keep such books and records in accordance with generally accepted accounting

principles ("GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the City also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this subcontract; (ii) allow the County or its designee to audit such books and records in accordance with GAAP.

#### **19. PENALTIES FOR VIOLATIONS OF LAW**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

#### **20. EQUAL OPPORTUNITY COMPLIANCE**

The City agrees to abide by all federal and state laws, rules, and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the City assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or otherwise subjected to discrimination under any activity performed under this Agreement. If the City is found not to be in compliance with these requirements during the life of this Agreement, the City agrees to take appropriate steps to correct these deficiencies.

#### **21. INVALID TERM OR CONDITION**

If any term or condition of this Agreement shall be held invalid or unenforceable, the reminder of this Agreement shall not be affected and shall be valid and enforceable.

#### **22. NOTICES**

Any notice required by this Agreement shall be given in writing to the Parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

COUNTY: Attn: Santa Fe County Manager  
Santa Fe County  
102 Grant Avenue  
P. O. Box 276  
Santa Fe, New Mexico 87501-0276

CITY: Attn: Manager, City of Espanola  
City of Espanola  
405 N. Paseo de Onate  
Espanola, New Mexico 87532

23. SURVIVAL

The provisions of the following paragraphs shall survive the termination of this Agreement: RECORDS AND FINANCIAL AUDIT; RELEASE; APPLICABLE LAW VENUE; NO THIRD PARTY BENEFICIARIES; SURVIVAL.

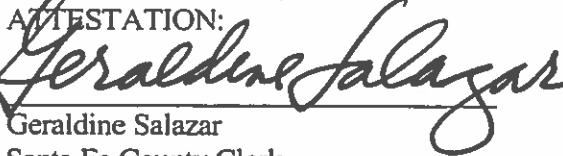
IN WITNESS WHEREOF the Parties have duly executed this Agreement as of the date of last signature below.

SANTA FE COUNTY



Henry P. Roybal, Chair  
Santa Fe County Board of County Commissioners

ATTESTATION:



Geraldine Salazar  
Santa Fe County Clerk

8-23-2017  
Date



Approved as to form

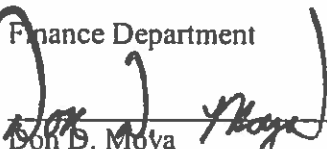


Gregory S. Shaffer  
County Attorney

5-1-17

Date

Finance Department



Don D. Moya  
Finance Director

8-2-17

Date

CITY OF ESPAÑOLA

  
Alice A. Lucero, Mayor, City of Española

DATE: 8/8/17

ATTEST:

  
Anna Squires, City Clerk

DATE: 8/8/17

Approved as to form

  
Frank Coppler, City of Española Legal Counsel

DATE: 8/8/17

Finance Department

  
Jessica Ortiz  
Finance Department

DATE: 8/8/17

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

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I Hereby Certify That This Instrument Was Filed for  
Record On The 23RD Day Of August, 2017 at 02:41:39 PM  
And Was Duly Recorded as Instrument # 1834452  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Geraldine Salazar  
Deputy  County Clerk, Santa Fe, NM

