

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE NEW MEXICO DEPARTMENT OF HEALTH**

THIS MEMORANDUM OF AGREEMENT (hereinafter, "Agreement") is entered on this the 26th day of September, 2017, by and between Santa Fe County (hereinafter referred to as "County"), a New Mexico political subdivision, and the New Mexico Department of Health, (hereinafter referred to as "NMDOH"), a state government entity located at 1190 S. St. Francis Dr., Santa Fe, New Mexico 87505.

RECITALS

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

WHEREAS, the NMDOH Women, Infant, Children (WIC) program is seeking a new location in order to better serve its clientele; and

WHEREAS, the County will be constructing the East Mountain Regional Health facility in the Town of Edgewood that will provide primary medical care, dental, behavioral health, and sub-specialty services with extended hours serving approximately 13,000 patients; and

WHEREAS, NMDOH seeks to partner with the County and contribute to this project by providing funding to establish WIC and Public Health offices in the East Mountain Region Health Facility; and

WHEREAS, the Parties agree the construction of the East Mountain Regional Health facility described by this Agreement is of mutual interest and benefit to the County and NMDOH.

NOW, THEREFORE, the Parties mutually agree as follows:

1. SCOPE OF UNDERSTANDING

NMDOH will provide the County with nine hundred ninety-six thousand four hundred and fifteen dollars (\$996,415.00), to plan, design and construct approximately 2,500 square feet of WIC and Public Health office space, including a shared classroom, within the East Mountain Regional Health Facility. The County shall ensure the 2,500 square feet of WIC and Public Health office space, including a shared classroom, within the East Mountain Regional Health Facility constructed with WIC funds shall be available for NMDOH use during the life of the healthcare facility.

2. COMPENSATION

During the term of this Agreement, the County shall invoice the NMDOH for expenses incurred by the County to plan, design and construct approximately 2,500 square feet of WIC and Public Health office space within the East Mountain Regional Health Facility in an amount not to exceed \$996,415.00 inclusive of NM gross receipts tax.

3. EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the date of last signature below and shall terminate no later than December 31, 2018, unless terminated earlier pursuant to Section 4 (Termination) or Section 12 (Appropriations and Authorizations).

4. TERMINATION

A. Termination of Agreement. This Agreement may be terminated by the County upon written notice to NMDOH 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.

C. Notwithstanding termination of this Agreement pursuant to Paragraphs 4(A) or 4(B), no party shall be relieved of liability to the other party for damages sustained because of the breach of the Agreement.

5. PERSONNEL

A. The County 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 NMDOH.

B. All services required hereunder will be performed by the County or its contractors and all personnel 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 County 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 NMDOH.

7. 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.

8. 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, as amended.

9. AMENDMENT

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

10. INTEGRATIONS 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.

11. APPLICABLE LAW; VENUE

This Agreement shall be construed in accordance with the laws of the State of New Mexico. NMDOH 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.

12. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorization being made by the Santa Fe County Board of County Commissioners, the United States Department of Agriculture, Federal Nutrition Service, 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 NMDOH or by NMDOH to County. Such termination shall be without penalty to the County or to NMDOH, and the County shall have no duty to reimburse NMDOH for expenditures made in the performance of this Agreement, unless required by the United States Department of Agriculture, Federal Nutrition Service as to funds appropriated and authorized by that agency. 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 NMDOH.

13. FACSIMILE SIGNATURES

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

14. 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.

15. PROHIBITED ACTIVITY

The County 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.

16. 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 County agrees 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 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 County 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.

17. 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.

18. EQUAL OPPORTUNITY COMPLIANCE

The County agrees to abide by all federal and state laws, rules, and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the County 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 County is found not to be in compliance with these requirements during the life of this Agreement, the County agrees to take appropriate steps to correct these deficiencies.

19. 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.

20. 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: Katherine Miller, County Manager
Santa Fe County
P. O. Box 276
Santa Fe, New Mexico 87501-0276

NMDOH: Lynn Gallagher, Cabinet Secretary
New Mexico Department of Health
1190 S St Francis Dr., N4100
Santa Fe, NM 87505

21. 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.



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

MEMORANDUM OF AGREEMENT
PAGES: 6

I Hereby Certify That This Instrument Was Filed for
Record On The 27TH Day Of September, 2017 at 11:04:35 AM
And Was Duly Recorded as Instrument # 1837305
Of The Records Of Santa Fe County

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

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

SANTA FE COUNTY

H. P. Roybal
Henry P. Roybal, Chairman

9/26/17
Date

ATTESTATION:

Geraldine Salazar
Geraldine Salazar, County Clerk

9-26-2017
Date



Approved as to Form:

Gregory S. Shaffer
Gregory S. Shaffer, County Attorney

9/21/2017
Date

Finance Department

Don N. Moya by *ED*
Don Moya, Finance Director

9/21/17
Date

NEW MEXICO DEPARTMENT OF HEALTH:

Lynn Gallagher
Lynn Gallagher, Cabinet Secretary

9/19/17
Date

Approved as to form:

Joey B. Wright
Joey B. Wright, Attorney

9/19/2017
Date

Finance Department

Roy McDonald
Roy McDonald, Chief Financial Officer

9/19/17
Date