

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
RIO ARriba COUNTY**

THIS MEMORANDUM OF AGREEMENT (hereinafter, "Agreement") is entered on this the 19 day of June 2018, by and between Santa Fe County (hereinafter referred to as "County"), a New Mexico political subdivision, and Rio Arriba County, (hereinafter referred to as "RAC"), a New Mexico-political subdivision, located at 149 State Rd. 162, Tierra Amarilla, NM 87575.

RECITALS

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of the County and the RAC, 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, RAC maintains RAC Roads 94 and 97 which have bridge crossings that provides access to residents in both the County and RAC; and

WHEREAS, RAC has determined that the bridges require replacement; and

WHEREAS, the Parties agree the improvements described by this Agreement is of mutual interest and benefit to the County and RAC and all funds will be expended to improve RAC-owned property.

NOW, THEREFORE, the Parties mutually agree as follows:

1. SCOPE OF UNDERSTANDING

The County will provide RAC with Fifty Thousand Dollar (\$50,000.00), for materials related to the installation of bridges located on Rio Arriba County Roads 94 and 97.

2. COMPENSATION

A. During the term of this Agreement, RAC shall invoice the County for expenses incurred by RAC for the materials related to the installation of bridges located on RAC Roads 94 and 97 in amount not to exceed fifty thousand dollars (\$50,000.00).

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

C. Payment under this Agreement shall not foreclose the right of the County to recover any excess 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 December 31, 2018, unless 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 other party 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. RAC 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 RAC 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

RAC 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. 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. RELEASE

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

9. 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.

10. AMENDMENT

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

11. 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.

12. APPLICABLE LAW; VENUE

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

13. 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 RAC. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse RAC 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 RAC

14. FACSIMILE SIGNATURES

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

15. 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.

16. PROHIBITED ACTIVITY

RAC 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.

17. 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 date (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, RAC 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 date (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, RAC 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 form 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.

18. 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.

19. EQUAL OPPORTUNITY COMPLIANCE

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

20. INVALID TERM OR CONDITION

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

21. 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

RAC: Tomas Campos, County Manager
Rio Arriba County
149 State Rd. 162
Tierra Amarilla, NM 87575

22. 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 written below.

SANTA FE COUNTY


Katherine Miller, County Manager

6/9/18
Date

Approved as to Form:


Bruce R. Frederlok, County Attorney
R. Bruce
Finance Department

6/13/18
Date


Stephanie Schardin Clarke, Finance Director

6/15/18
Date

RIO ARRIBA COUNTY


Tomas Campos, County Manager

5/30/18
Date

Approved as to form:


Adan Trujillo, County Attorney

5/30/18
Date

Finance Department


Christine Montafio, Finance Director

5.31.18
Date