

**MEMORANDUM OF AGREEMENT  
BETWEEN SANTA FE COUNTY AND SANTA FE-POJOAQUE  
SOIL AND WATER CONSERVATION DISTRICT  
TO PROVIDE SOIL AND WATER CONSERVATION  
PROGRAMS AND DEMONSTRATIONS**

**THIS MEMORANDUM OF AGREEMENT** (hereinafter referred to as the “Agreement”) is entered into this 22<sup>nd</sup> day of February, 2017, by and between **Santa Fe County** (hereinafter referred to as the “County”), a New Mexico political subdivision, and the **Santa Fe-Pojoaque Soil and Water Conservation District** (hereinafter referred to as the “District”, a water conservation district and New Mexico political subdivision, whose principal address is 4001 Office Court Drive, Bldg. 1000, Suite 1001, Santa Fe, New Mexico 87507.

**WHEREAS**, in the spirit of cooperation, mutual respect and service to the residents of Santa Fe County, 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 in accordance with Section 13-1-98(A) NMSA 1978; and

**WHEREAS**, the Watershed Districts Act, NMSA 1978, Section 73-20-13 (E) contemplates that the District will receive and grant assistance and cooperate with the County in carrying out the provisions of the Watershed District Act; and

**WHEREAS**, the Soil and Water Conservation District Act, NMSA 1978, Section 73-20-44, authorizes the District to provide services relating to soil and water conservation described herein, and the County wishes to collaborate with the District so as to further their mutual interest in soil and water conservation, natural resource conservation, water efficiency and planning, and traditional agricultural and irrigation practice.

Now, therefore, it is mutually agreed between the parties:

**1. DUTIES OF THE PARTIES**

**A. The District shall:**

- 1) Provide technical assistance to cooperators (farmers and ranchers) within the County to develop, coordinate, and implement soil and water conservation programs, practices and demonstrations.
- 2) Coordinate with the Santa Fe County Public Works Department to promote environmentally efficient soil and water conservation practices through the planning process.
- 3) Inspect flood control dams which are sponsored by the Santa Fe-Pojoaque Soil and Water Conservation District throughout the Santa Cruz Watershed

Area and provide maintenance on the dams which provide flood control for residential areas, acequias, irrigated fields, County roads, and other properties and areas within the County.

- 4) Undertake annual inspections of the Santa Cruz Watershed flood control dams sponsored by the Santa Fe-Pojoaque Soil and Water Conservation District, prepare reports and submit the reports to the County.
- 5) Draft an annual Operating Plan for the Santa Fe-Pojoaque Soil and Water Conservation District.
- 6) Upon completion of the above services, the District shall submit two (2) reports annual reports to the County's Public Works Department and the County Manager. The first report shall be submitted on or before June 30, 2017, and the second report shall be submitted on or before June 30, 2018. Both reports shall include specific details regarding the completion of services provided to the County and within Santa Fe County in furtherance of the purposes of this Agreement.

**B. The County shall:**

- 1) Cooperate with the District as needed to facilitate the District's performance of services under this Agreement.
- 2) Upon the receipt of each annual report, pay the District an amount not to exceed eight thousand dollars (\$8,000.00), inclusive of New Mexico gross receipts tax, per report. The total amount payable to the District for the term of this Agreement shall not exceed sixteen thousand dollars (\$16,000.00), inclusive of New Mexico gross receipts tax.
  - a) No travel or per diem shall be paid by the County under this Agreement. All costs for travel, per diem, or living expenses for the District's staff shall be the sole responsibility of the District.
  - b) The District shall submit an invoice and written request for payment to the County upon completion of the first report due no later than June 30, 2017, and the second report due no later than June 30, 2018.
  - c) Upon the County's receipt of the report and a written request for payment, the County shall issue a written certification of complete or partial acceptance or rejection of the report and services for which payment is sought. Within thirty (30) days of the date of the County's receipt of the District's request for payment, the County shall pay the District a lump sum amount for the report and completed services.
  - d) In the event the District breaches this Agreement, the County may, without penalty, withhold any portion of a payment due to the District for the purpose of set-off until such time as the County determines the exact amount of damages if suffered as a result of the breach.

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

## **2. EFFECTIVE DATE AND TERM**

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate on June 30, 2018, unless earlier terminated pursuant to Section 3 (Termination) or Section 9 (Appropriations).

## **3. TERMINATION**

A. Termination of Agreement. This Agreement may be terminated by the County upon written notice to the other party at least thirty (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 relieved of liability to the other party for damages sustained because of any breach of the Agreement.

## **4. PERSONNEL**

A. The District 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 relationships with the County.

B. All services required hereunder will be performed by the District 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.

## **5. NO THIRD PARTY BENEFICIARIES**

Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims or interest upon a person not a party to this Agreement.

## **6. LIABILITY**

Each party shall be liable for its actions in accordance with this Agreement. Any liability incurred by the County or the District in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, et seq., as amended.

## **7. AMENDMENT**

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

## **8. INTEGRATION CLAUSE**

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

## **9. APPROPRIATIONS**

This Agreement is contingent upon sufficient appropriations and authorizations 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 authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the District. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the District for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any 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 the fulfillment of this Agreement shall be final and not subject to challenge by the District.

## **10. FACSIMILE SIGNATURES**

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

## **11. NEW MEXICO TORT CLAIMS ACT**

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

## **12. PROHIBITED ACTIVITY**

The District 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.

## **13. 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 District agrees to (i) maintain such books and records during the term of this Agreement and for a period of six (6) 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; and (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 County as part of the procurement process, the District 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 (6) years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

#### **14. PENALTIES FOR VIOLATION 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.

#### **15. EQUAL OPPORTUNITY COMPLIANCE**

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

#### **16. 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.

#### **17. 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 (3) business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

For District: Sigmund Silber, Secretary/Treasurer  
Santa Fe-Pojoaque Soil and Water Conservation District  
4001 Office Court Drive, Bldg. 1000, Suite 1001

Santa Fe, New Mexico 87507

For County: Santa Fe County Manager  
102 Grant Avenue  
P.O. Box 276  
Santa Fe, New Mexico 87504

**IN WITNESS WHEREOF** the parties set their hands:

**SANTA FE COUNTY:**

  
Katherine Miller  
Santa Fe County Manager

2-20-2017  
Date

**APPROVED AS TO LEGAL FORM**

  
Gregory S. Shaffer  
Santa Fe County Attorney

1-27-17  
Date

**FINANCE DEPARTMENT**

  
Don D. Moya  
Santa Fe County Finance Director

1-30-17  
Date

**SANTA FE-POJOAQUE SOIL AND WATER CONSERVATION DISTRICT:**

  
Signature

2/22/17  
Date

JOSÉ VIRELLA LÓPEZ  
Print Name

VZCO - CHAIRMAN  
Print Title