

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

This Memorandum of Agreement (hereinafter "Agreement") is entered on this 6th day of August 2013, by and between Santa Fe County (hereinafter referred to as "County"), a New Mexico political subdivision, and SANTA FE-POJOAQUE SOIL AND WATER CONSERVATION DISTRICT (hereinafter referred to as "the District"), a water conservation district and political subdivision of the State formed pursuant to NMSA 1978, Section 73-20-1 et seq., (Soil and Water and Watershed Conservation Districts Act), and whose principal address is 4001 Office Court Drive, Bldg. 1000 Ste. 1001, Santa Fe, New Mexico 87505.

RECITALS

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 recognize that the partnering activities between government entities of similar purposes may produce community and constituency benefits beyond what might be produced independently;

WHEREAS, the Soil and Water and Watershed Conservation District Act, NMSA 1978, Section 73-20-13(E) contemplates that Counties and Soil and Water Conservation Districts will collaborate and cooperate for the benefit of residents of the County;

WHEREAS, this Agreement is exempt from the provision of the Procurement Code in accordance with NMSA 1978, Section 13-1-98(A);

WHEREAS, Santa Fe County is working in collaboration with the Santa Fe-Pojoaque Soil and Water Conservation District to further their mutual interest in soil and water conservation.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES as follows:

1. SCOPE OF WORK

The District shall:

- A. Provide technical assistance to cooperators (farmer and ranchers) within the County to develop, coordinate and implement soil and water conservation programs, practices and demonstrations.
- B. Coordinate with the County's Land Use Department to promote environmentally efficient soil and water conservation practices through the planning process.

- C. Inspect flood control dams throughout the Santa Cruz Irrigation District and provide maintenance on the dams which provide flood control for residential areas, acequias, County roads and other property.
- D. Inspect the Santa Cruz Watershed, prepare reports and submit the reports to Santa Fe County.
- E. Draft an annual Operating Plan which shall include a Water Conservation Plan for the Santa Fe - Pojoaque Soil and Water Conservation District.
- F. Upon completion of the above services, and no later than June 1, 2014, the District shall submit a report to the Land Use Department and the County Manager's Office which shall include specific details on the services provided to the County pursuant to this Agreement.

2. COMPENSATION

- A. In consideration of its obligations under this Agreement the District shall be compensated five thousand dollars (\$5,000), inclusive of applicable gross receipts tax, upon completion of services. No travel or per diem shall be paid by the County under this Agreement. All costs of 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 Article 1, "SCOPE OF WORK." Upon the County's receipt of the written request, the County shall use a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought and the District shall be paid a lump sum amount for those services.

The District acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services.

- C. In the event the District breaches this Agreement, the County may, without penalty, withhold any payments due the District for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. 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 June 30, 2014, unless earlier terminated pursuant to Section 4. "TERMINATION," of this Agreement.

4. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The nonbreaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective thirty (30) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within thirty (30) days, the breaching party shall have a reasonable time to cure the breach, provided that, within thirty (30) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the District written notice of termination. The notice shall specify the effective date of termination, which shall not be less than fifteen (15) days from the District's receipt of the notice. The County shall pay the District for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

5. PERSONNEL

- A. All work performed under this Agreement shall be performed by the District or under its supervision.
- B. The District represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of nor have any contractual relationships with the County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

6. 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.

7. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions 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.

8. AMENDMENT

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

9. 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.

10. APPLICABLE LAW; VENUE

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

11. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and/or, 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.

12. FASCIMILE SIGNATURES

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

13. 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, §§ 41-4-1, et seq.

14. DISPUTE RESOLUTION

In the event of any dispute between the parties regarding the enforcement, effect, or interpretation of this Agreement, the parties shall first resort to mediation before a neutral mediator, mutually agreed to by both parties.

15. 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.

16. ACCOUNTABILITY

During the term of this Agreement and for a period of three (3) years thereafter, each of the parties will maintain accurate and complete records of all disbursements made and monies received by each under this Agreement; and, upon receipt of reasonable written request, each shall make such records available to the other party and to the public, including any federal, state or local authority during regular business hours.

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 business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

For District: Carlos Ortiz, Treasurer
Santa Fe-Pojoaque Soil and Water Conservation District
4001 Office Court Dr #1001

Santa Fe, NM 87507

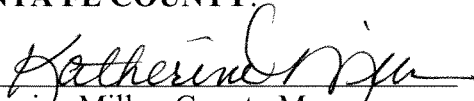
For County: Katherine Miller
Santa Fe County Manager
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87504

and,

Agnes Leyba-Cruz, Project Specialist
Santa Fe County Public Works Department
4250 Airport Rd
Santa Fe, NM 87507

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the dates written below.

SANTA FE COUNTY:


Katherine Miller, County Manager Date: 8.6.13

APPROVED AS TO LEGAL FORM:


Stephen C. Ross, County Attorney Date: August 2, 2013

FINANCE DEPARTMENT:


Theresa C. Martinez, Director Date: 8/3/13

SANTA FE-POJOAQUE SOIL AND WATER CONSERVATION DISTRICT


(signature and title) Date: 8/5/13