

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY
AND SANTA FE PUBLIC SCHOOLS FOR
100 DAYS AND NIGHTS OF SUMMER**

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as the “Agreement”) is entered into on this 27th day of June 2012, by and between Santa Fe County (hereinafter referred to as the “County”), a New Mexico political subdivision, and the Santa Fe Public Schools, (hereinafter referred to as “SFPS,” a New Mexico Public School District.

RECITALS

WHEREAS, in the spirit of cooperation 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 the parties is in the interest of Santa Fe County and its residents who reside in Santa Fe County;

WHEREAS, pursuant to the §13-1-98(a) NMSA 1978, this memorandum of agreement is exempt from the New Mexico Procurement Code;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. SCOPE OF AGREEMENT:

SFPS shall perform the following services:

- A. Develop and send letters to fifty (50) off-premise alcohol retail establishments and ten (10) on-premise establishments to inform them of planned Mystery Shopper visits to monitor sales to intoxicated persons in Santa Fe County at least two weeks prior to initiation of visits.
- B. Inform Santa Fe County law enforcement officials of planned Mystery Shopper visits at least one week prior to initiation of visits.
- C. Hire and train 2-4 people to act as a pseudo-intoxicated person to conduct and observe Mystery Shopper visits to off-premise establishments by July 10, 2012.
- D. Organize and conduct Mystery Shopper visits to a minimum of fifty (50) off-premise alcohol licensees to monitor sales to intoxicated persons on two different occasions. Each set of visits will be completed within a one week period. The first set of visits will be completed by July 30, 2012. The second sets of visits will be completed by August 30, 2012. During each visit, one person shall play the role of an intoxicated person and one person will observe.

- E. Research best practices for conducting Mystery Shopper visits with on-premise establishments on July 15, 2012.
- F. Hire and train 2-4 people to act as pseudo-intoxicated person to conduct and observe Mystery Shopper visits to off-premise establishments by July 15, 2012.
- G. Train Mystery Shoppers and Project Coordinator to conduct visits to on-premise establishments by July 20, 2012.
- H. Organize and conduct Mystery Shopper visits to a minimum of ten (10) on-premise alcohol licensees to monitor sales to intoxicated persons on two different occasions. Each set of ten visits will be completed within one week period. The first set of visits will be completed by August 10, 2012. The second sets of visits will be completed by September 10, 2012. During each visit, one person shall play the role of an intoxicated person and one person will observe.
- I. Prepare a report of Mystery Shoppers visits for Santa Fe County DWI Program Staff. Once the report is accepted and finalized, the report will be sent to participating licensees, including local owners and managers, as well as corporate management when appropriate, by September 20, 2012.
- J. Publicize results of each set of Mystery Shopper visits through Press Releases to local media by September 30, 2012.

2. COMPENSATION, INVOICING, AND SET-OFF

- A. In consideration of its obligations under this Agreement, SFPS shall be compensated as follows:
 - 1) The total amount payable to the SFPS under this Agreement, inclusive of gross receipts tax shall not exceed **Sixteen Thousand Dollars and .00 Cents (\$16,000.00)**, inclusive of GRT. Any New Mexico gross receipts tax levied on the amounts payable under this Agreement shall be paid by the County to the Contractor.
 - 2) This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the County when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

- B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor 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. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
- C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor 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, 2013 unless terminated earlier pursuant to Section 3 (TERMINATION) or Section 14 (APPROPRIATIONS AND AUTHORIZATIONS).

4. TERMINATION

Each party shall have the right to terminate this Agreement upon written notice, in the event of the other party's (the "Breaching Party") material breach hereof which is not cured within thirty (30) days after notice specifying such breach. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. No party shall be relieved of liability to the other party for damages sustained because of any breach of the Agreement.

5. ASSIGNMENT

Neither party shall 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 other party.

6. NO THIRD-PARTY BENEFICIARIES

The SFPS and the County are the only parties to this Agreement. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third parties. This Agreement was not intended to and does not create any rights in any persons or party not a party to this Agreement. The parties shall cooperate fully in opposing any attempt by any third person or entity to claim any right, benefit, protection, release, or other consideration under this Agreement.

7. LIABILITY

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the Agreement. Each party shall be liable for its own actions in accordance with this Agreement. Neither party shall be responsible for liability incurred as a result of the other party's negligence, acts or omissions in connection with this Agreement. Any liability incurred by the County 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. NO WAIVER OF IMMUNITIES, DEFENSES OR PROTECTIONS

Nothing in this Agreement waives or alters any immunities, defenses or protections provided to the County, and their respective employees, agents, board members, commissioners or officers, under New Mexico or federal law.

9. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability applicable to the County and its respective employees, agents, board members, commissioners or at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*

10. DISPUTE RESOLUTION

Disputes on any matter relating to this Agreement shall be discussed and resolved by authorized representatives of each party who have the authority to bind the party that they represent. The parties shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute within a reasonable time period as determined by the representatives, the parties may pursue any other legal means for resolving disputes which may arise from or under this Agreement.

11. 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.

12. AMENDMENT

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

13. 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.

14. APPLICABLE LAW; VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties 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.

15. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are 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 by the Legislature in this or future fiscal years, this Agreement shall terminate upon written notice being given by the County to SFPS and the County shall have no duty to reimburse the SFPS for expenditures made in the performance of this Agreement incurred after written notice to the SFPS is provided by the County pursuant to this paragraph. 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 are available shall be accepted by the SFPS and shall be final and not subject to challenge by the SFPS.

16. REQUIRED APPROVALS

This Agreement will not be final or binding upon the SFPS until or unless approved by both parties.

17. FACSIMILE SIGNATURES

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

18. EQUAL OPPORTUNITY COMPLIANCE

Each party agrees to abide by all federal and state laws, rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, each party 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 a party is found not to be in compliance with these requirements during the life of this Agreement, that party 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 void, invalid or unenforceable, such provision shall be severed from the remainder of the Agreement and the remainder 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.

For SFPS: Santa Fe Public Schools
Attn: Shelley Mann-Lev
Santa Fe Underage Drinking Prev. Alliance
610 Alta Vista Street
Santa Fe, New Mexico 87501

For County: Katherine Miller
Santa Fe County Manager
102 Grant Avenue
Santa Fe, New Mexico 87501

21. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

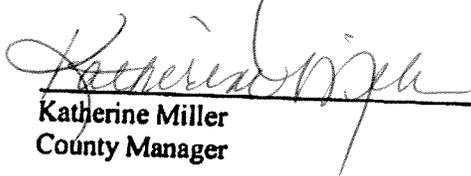
The SFPS and the County shall assure compliance with all applicable state and federal statutes and regulations in the performance of this Agreement.

22. FORCE MAJEURE

Neither party shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

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

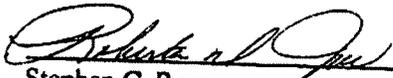
SANTA FE COUNTY:



Katherine Miller
County Manager

6.27.12
Date

APPROVED AS TO LEGAL FORM:



Stephen C. Ross
County Attorney

June 20, 2012
Date

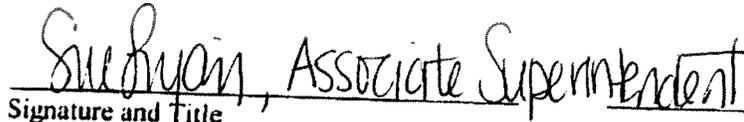
FINANCE DEPARTMENT:



Teresa C. Martinez
Finance Director

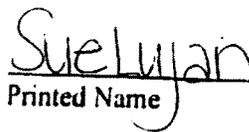
6/21/2012
Date

SANTA FE PUBLIC SCHOOLS:



Signature and Title Associate Superintendent

6.22.2012
Date



Printed Name

6.22.2012
Date

21. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

The SFPS and the County shall assure compliance with all applicable state and federal statutes and regulations in the performance of this Agreement.

22. FORCE MAJEURE

Neither party shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

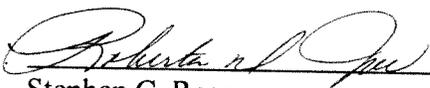
IN WITNESS WHEREOF the parties have duly executed this Memorandum of Agreement as of the dates written below.

SANTA FE COUNTY:

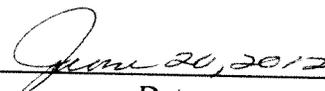
Katherine Miller
County Manager

Date

APPROVED AS TO LEGAL FORM:



Stephen C. Ross
County Attorney

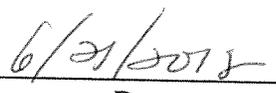


Date

FINANCE DEPARTMENT:



Teresa C. Martinez
Finance Director



Date

SANTA FE PUBLIC SCHOOLS:

Signature and Title

Date

Printed Name

Date