

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE CITY OF SANTA FE
REGARDING COLLECTION OF SOLID WASTE
AND RECYCLABLES
IN AREAS ANNEXED BY THE CITY OF SANTA FE**

This Memorandum of Agreement is entered into on this 1ST day of AUGUST, 2013, by and between Santa Fe County and the City of Santa Fe.

WHEREAS, Santa Fe County provides solid waste and recycling services through the County Transfer Stations and County residents may choose to enter to contracts with private solid waste collection service providers;

WHEREAS, effective January 1, 2014, the City of Santa Fe is annexing certain portions of former areas of Santa Fe County;

WHEREAS, the City of Santa Fe mandates curbside solid waste and recycling collection within City limits and has promulgated a Solid Waste Ordinance and rate schedule;

WHEREAS, Santa Fe County adopted Ordinance No. 2013-3 on May 28, 2013, creating mandatory curbside solid waste and recycling collection in the areas to be annexed in advance of the January 1, 2014, annexation;

WHEREAS, County Ordinance No. 2013-3 authorizes the County Manager to designate the curbside solid waste service provider;

WHEREAS, the County Manager wishes to designate the City of Santa Fe as the solid waste and recycling collection service provider in the areas to be annexed by the City;

WHEREAS, the City of Santa Fe wishes to be designated the solid waste and recycling collection service provider in the areas to be annexed; and

WHEREAS, it is in the best interest of the public served in the annexed areas that the City of Santa Fe assume the solid waste and recycling services in the newly annexed areas.

NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. AGREEMENT OF THE PARTIES:

A. Santa Fe County and the City of Santa Fe agree that the City of Santa Fe shall be designated as the sole provider of solid waste and recycling services in the areas to be annexed by the City as listed Exhibit A to County Ordinance No. 2013-3.

B. The City of Santa Fe may at its discretion contract or engage a third party to provide the solid waste and recycling services to the citizens in the affected areas.

C. The City of Santa Fe will perform all work required to establish accounts, collect payments, distribute refuse and recycling containers, create collection routes, collect refuse and recycling from all customers within the areas to be annexed by the City as listed in Ordinance No. 2013-3, and any and all other tasks necessary to become the sole solid waste service provider in the affected areas.

D. All County customers in the affected areas and who are subject to this MOA will be held to the same standards, provided the same service, and charged the same rates as existing City customers.

E. Santa Fe County will assist the City to the extent possible in the collection of delinquent payments.

2. TERM:

This Memorandum of Agreement shall become effective as of the date first set forth above and shall remain in effect until the affected areas are annexed by the City of Santa Fe at which time this Agreement will automatically terminate, unless earlier terminated pursuant to Article 3 below. The City of Santa Fe shall become the solid waste and recycling provider for the annexed areas on the date set forth above.

3. TERMINATION:

Termination for Cause. If the parties fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the parties violate any of the covenants, agreements or stipulations of this Agreement, the parties 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, the parties shall not be relieved of liability to the other party for damage sustained because of any breach of the Agreement.

4. LIABILITY: Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of the Agreement.

5. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than Santa Fe County and the City of Santa Fe. No

person shall claim any right, title or interest under this Agreement seek to enforce this Agreement as a third party beneficiary of this Agreement.

6. ASSIGNMENT

Neither the City nor the County shall assign or transfer any interest in this Agreement or assign any claims under this Agreement without the prior written approval of the other party.

7. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the parties for the performance of this Agreement. If sufficient appropriations and authorizations are not granted, this Agreement shall terminate upon written notice. The decision as to whether sufficient appropriations and authorizations are available shall be accepted by the parties and shall be final.

- 8. AMENDMENT:** This Agreement shall not be altered, changed, or amended except by an instrument executed in writing signed by all parties.

9. TORT CLAIMS ACT

By entering into this Memorandum of Agreement, neither party shall be responsible for liability incurred as a result of the other party's act or omissions in connection with this Memorandum of Agreement. Any liability incurred in connection with this Memorandum of Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. Santa Fe County and the City of Santa Fe and their "public employees", as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, or waive any defense and/or do not waive any limitation of liability pursuant to law. No provision of the Memorandum of Agreement modifies or waives any provision of the New Mexico Tort Claims Act, as amended.

10. DISPUTE RESOLUTION

In the event of any dispute between the parties regarding the enforcement, effect or interpretation of this Agreement, the parties shall attempt to informally resolve the dispute. If that is unsuccessful the parties shall resolve the dispute through mediation by a mediator mutually agreed upon by the parties with the parties sharing any costs equally.

11. SCOPE OF MEMORANDUM OF AGREEMENT

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

12. APPLICABLE LAW

This Memorandum of Agreement shall be governed by the ordinances of Santa Fe County and the City of Santa Fe, federal law, and the laws of the State of New Mexico. Santa Fe County is the proper venue for litigation associated with this Agreement.

SANTA FE COUNTY

Katherine Miller 8.1.13
Katherine Miller, Manager Date

Approved as to form:

Stephen C. Ross 7/26/13
Stephen C. Ross, County Attorney Date
Straub 7/10/13

CITY OF SANTA FE

Bryan K. Snyder 7.26-13
Bryan K. Snyder Date
City Manager

Approved as to form:

Geno Zamora for 7/12/13
Geno Zamora, City Attorney Date