MEMORANDUM OF UNDERSTANDING BETWEEN SANTA FE COUNTY AND THE CITY OF SANTA FE

ITEM # 11-1142

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as the "Agreement") is entered into on this 16th day of December 2011, by and between Santa Fe County (hereinafter referred to as the "County"), a New Mexico political subdivision, and the City of Santa Fe (hereinafter referred to as the "City"), a New Mexico "municipality" or "local public body", located at 200 Lincoln Avenue, Santa Fe, New Mexico 87504-0909.

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

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

WHEREAS, the City through the Southside Library, provides Santa Fe County with programs that promote reading and literacy, and is committed to improving opportunities for community members to enhance their cultural and leisure activities; and

WHEREAS, the County desires to assist the City to provide library programs.

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

1. SCOPE OF UNDERSTANDING

The City, through the Southside Library, shall perform the following services:

- promote reading, literacy, and the dissemination of information free of charge to the general public;
- promote the appreciation of culture and the arts;
- inform the community about Library collections and services;
- preserve and teach about the local history and the environment; and
- cover issues of current local interest to County residents.

2. COMPENSATION

A. The total compensation to be paid under this Agreement shall not exceed $20,000.00.

B. All payments under this Agreement shall be on a reimbursement basis for operational costs incurred by the Southside Library. Prior to cost reimbursement, the

Southside Library shall submit to the County a fund requisition with documentation in support of each budgetary category and operational expense. Such documentation shall include the original or certified copies of invoices, vouchers, budgetary and other restrictions of expenses established by this Agreement.

C. Payment by the County shall be made upon receipt of a detailed, certified invoice supporting operational costs incurred by the Southside Library. Thirty (30) business days shall be allowed for payment after receipt of the invoice.

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

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, 2012, unless earlier terminated pursuant to Section 4 (TERMINATION) or Section 14 (Appropriations).

4. 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.

5. PERSONNEL

A. The City 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 City of Santa Fe Southside Library 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.

6. ASSIGNMENT

The City 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. SUBCONTRACTING

The City shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the County.

8. 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.

9. RELEASE

Final payment of the amounts due under this 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.

10. 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.

11. AMENDMENT

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

12. 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.

13. APPLICABLE LAW; VENUE

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

14. APPROPRIATIONS AND AUTHORIZATIONS

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

15. FASCIMILE SIGNATURES

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

16. 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.

17. PROHIBITED ACTIVITY

The City 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.

18. 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 City 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 City 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.

19. 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.

20. EQUAL OPPORTUNITY COMPLIANCE

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

21. 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.

22. 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 City of Santa Fe:	Robert Romero, City Manager City of Santa Fe 200 Lincoln Avenue Santa Fe, New Mexico 87504-0909 Phone: 505-955-6848
For County:	Community Services Department/Community Projects Division ATTN: Laura Epler 901 W. Alameda, Suite 20C Santa Fe, NM 87501 Phone: 505-670-5333

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

SANTA FE COUNTY:

Katherine Miller, County Manager

APPROVED AS TO LEGAL FORM:

12/1/11

Stephen C. Ross, County Attorney

FINANCE DEPARTMENT:

Teresa Martinez, Finance Director

CITY OF SANTA FE:

Robert Romero, City Manager 11-21-11

Attest:

Yolanda Y. Vigil, City Clerk

Approved as to form:

Geno Zamora, City Attorney 11/10/11

Approved:

Dr. Melville L. Morgan, Finance Director 11/14/11

21716.491010

FEDERAL TAX ID NUMBER

85-6000168