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

THIS MEMORANDUM OF UNDERSTANDING (hereinafter the "Agreement") is entered into on this 19th day of December 2022, by and between Santa Fe County (hereinafter the "County"), a political subdivision of the state of New Mexico, and the City of Espanola (hereinafter the "City"), a municipality or local public body, 405 N. Paseo de Onate, Espanola, New Mexico 87532.

RECITALS

WHEREAS, in the spirit of cooperation, mutual respect and service to the residents of the 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 City through the Espanola Public Library, provides the 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 and services.

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

1. SCOPE OF UNDERSTANDING

The City, through the Espanola Public Library, shall perform the following services:

A. Promote reading, literacy, and the dissemination of information free of charge to the general public;
B. promote the appreciation of culture and the arts;
C. inform the community about library collections and services;
D. preserve and teach about the local history and the environment; and
E. cover issues of current local interest to County residents.

2. COMPENSATION

A. The City shall invoice the County for expenses incurred for the period of July 1, 2022, to June 30, 2023. The City shall not invoice the County in excess of $25,000.00 per fiscal year. The total compensation payable to the City for the initial term of this Agreement shall not exceed $25,000.00, inclusive of NM GRT.

B. All payments under this Agreement shall be on a reimbursement basis for operational costs incurred by the City's Espanola Public Library. The Espanola Public 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. The County will reimburse the City based on a review of the documentation.

C. Reimbursement by the County shall be made upon receipt of a detailed, certified invoice supporting operational costs incurred by the Espanola Public Library. Thirty business days shall be allowed for reimbursement 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 become effective upon the date of the last signature by the parties and shall terminate one year from such date, unless earlier terminated pursuant to Section 4 (Termination) or Section 14 ~~(Appropriations)~~ (Appropriations and Authorizations). The term of this Agreement may be extended in one-year increments by the County by notice to the City. A term extension shall be in the form an amendment to the Agreement. In no event shall the term of this Agreement exceed a total of four years.

4. TERMINATION

A. Termination of Agreement. This Agreement may be terminated by the County upon written notice to the other party at least 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's Espanola Public 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, 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. FACSIMILE or ELECTRONIC SIGNATURE

The parties hereto agree that a facsimile or electronic 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,, the City agrees to (i) maintain such books and records during the term of this Agreement and for a period of six 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, 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 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 noticed required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, returned receipt requested, posted prepaid as follows:

City: City of Espanola
Attention: Jordan Yutzy, City Manager
405 N. Paseo de Onate
Espanola, New Mexico 87532
Phone: (505) 747-6013

County: Community Services Department
Attention: Rachel O'Connor, Director
100 Catron Street
Santa Fe, NM 87501
Phone: (505) 992-9849

23. SURVIVAL

The provisions of following paragraphs shall survive termination of this Agreement: INDEMNIFICATION; RECORDS AND FINANCIAL AUDIT; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; APPLICABLE LAW, VENUE; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; and SURVIVAL.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date of last signature by the parties hereto.

SANTA FE COUNTY:

Gregory S. Shaffer
Santa Fe County Manager

12-19-2022
Date

Approved as to form:

Roberta D. Joe for J.Y.
Jeff Young
Santa Fe County Attorney

September 8, 2022
Date

Finance Division:

Yvonne S. Herrera
Finance Director

9/9/2022
Date

CITY OF ESPANOLA:

Jordan Yutzy
City of Espanola City Manager

8/19/22
Date

Approved as to form:

/s/ Charles Rennick	August 16, 2022
Charles Rennick City of Espanola City Attorney	Date
Paula Escudero Finance Director	8/10/22 Date