

**MEMORANDUM OF AGREEMENT
BETWEEN THE MORIARTY SCHOOL DISTRICT
AND SANTA FE COUNTY**

This Memorandum of Agreement entered into on this 21 day of June, 2012, by and between **Santa Fe County**, a political subdivision of the State of New Mexico (“County”) and the **Moriarty School District**, a New Mexico political subdivision (hereinafter “**Moriarty School District**”).

RECITALS

WHEREAS, the Moriarty School District conducts a summer recreational program that benefits the youth of Santa Fe County;

WHEREAS, the County wishes to assist the Moriarty School District by providing funding for the summer recreational program that will benefit the youth of Santa Fe County.

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

1. SCOPE OF DUTIES OF THE PARTIES

A. Moriarty School District shall:

- a) Conduct a summer recreational program to youth of Santa Fe County to begin June 4, 2012 and end July 27, 2012.
- b) Conduct a summer recreational program that serves the ages of kindergarten to sixth grade.
- c) Operating hours will be from 6:45 am to 6:00 pm, Monday through Friday.
- d) Breakfast, lunch and snack will be provided for participants in the summer recreational program.
- e) The summer recreational program shall include hands-on activities, science experiments, academic enrichment, and field trips. The theme for this summer is “Around the World Adventure” where children will explore a different country every week and will become immersed in that country.

B. The County shall:

- a) Provide to Moriarty School District an amount of funding not-to-exceed twenty thousand dollars (\$15,500.00) inclusive of any gross receipts tax, to conduct the summer recreational program described above. The County shall provide a lump sum of \$15,500 to the Moriarty School District within 15 business days from the effective date of this Agreement. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

2. TERM

The term of this Agreement shall be on the date of execution by the parties (the Effective Date) and shall terminate on September 30, 2012 unless terminated earlier pursuant to Section 3. The summer recreational program shall conclude July 27, 2012.

3. TERMINATION

Each party shall have the right to terminate this Agreement upon written notice, in the event of the other party's material breach hereof which is not cured within ten (10) 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.

4. 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.

5. NO THIRD-PARTY BENEFICIARIES

The Moriarty School District 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.

6. LIABILITY

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 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.

7. NO WAIVER OF IMMUNITIES, DEFENSES OR PROTECTIONS

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

8. 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.

9. AMENDMENT

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

10. 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.

11. APPLICABLE LAW; VENUE

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

12. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are 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 Moriarty School District. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Moriarty School District for expenditures made in the performance of this Agreement incurred after written notice to the Moriarty School District 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 and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Moriarty School District.

13. REQUIRED APPROVALS This Agreement will not be final or binding upon the Moriarty School District until or unless approved by the superintendent of the Moriarty School District and Santa Fe County.

14. FASCIMILE SIGNATURES

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

15. 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.

16. 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.

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 Moriarty Schools District:

For County:

Katherine Miller, Manager
Santa Fe County
ATTN: Lisa Roybal
102 Grant Avenue
Santa Fe, NM 87504

18. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

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

19. RECORDS, AUDITS, INSPECTIONS AND FINAL RECORDS UPON COMPLETION OF SUMMER PROGRAM

Moriarty School District shall maintain detailed books, documents, accounting records and other evidence pertaining to the services and costs incurred in conducting the summer

program identified in Paragraph 1.A of this Agreement. Moriarty School District shall maintain all records of its expenditures for the summer recreational program in a method consistent with generally accepted accounting principles and procedures and shall be maintained so that the County or its fiscal agent can audit such books and records. Moriarty School District shall make such records and information available at their respective offices for inspection by the Count or its fiscal agent at all reasonable times during the Agreement period, including before and after payment and for three (3) years from the date of payment to Moriarty School District under this Agreement.

The County has the right to inspect at reasonable times, any facility or location where summer program activities described in Paragraph 1.A above are conducted.

Upon Moriarty School District completion of the summer recreational program and no later than September 30, 2012, it shall submit to the County a detailed, certified description or report of all services, activities conducted and completed and all expenditures made pursuant to this Agreement. The report shall describe the recreational activities provided, the participants and their place of residency.

20. FORCE MAJEURE

Neither the County nor the Moriarty School District 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.

21. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing signed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties set their hands.

SANTA FE COUNTY:

Katherine Miller Date: 6/19/12
Katherine Miller, Manager

Finance Department

Teresa Martinez Date: 6/17/12
Teresa Martinez, Director

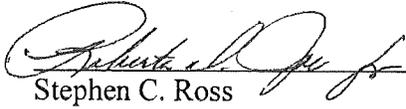
Approved as to form:

MORIARTY SCHOOL DISTRICT:

Dr. Karen Bond Date: 6/21/12
Superintendent

ATTEST:

_____ Date: _____



Stephen C. Ross
Santa Fe County Attorney

Date: 6/13/12