

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

This Memorandum of Agreement entered into on this 24 day of May, 2012, by and between **Santa Fe County**, a political subdivision of the State of New Mexico ("County") and the **Santa Fe Public Schools**, a New Mexico political subdivision and State of New Mexico public school district (hereinafter "SFPS").

RECITALS

WHEREAS, Santa Fe County and SFPS are interested in providing a safe and nurturing environment for children to help improve academic performance during the summer months after the regular academic year;

WHEREAS, the County has funding to assist SFPS with its literacy programs consisting of reading programs, literacy instruction and math curriculum;

WHEREAS, the SFPS summer programs also include enrichment activities such as field trips, the arts, health, wellness and physical education;

WHEREAS, the County's interest in the academic success of the children of Santa Fe County is served by the SFPS summer program.

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

1. Scope of Duties of the Parties

A. SFPS shall:

a. Provide intensive academic support for elementary students in half-day programs focused on literacy development. The curricular foundation for this academic program will be *Treasures/Tesoros* Reading Program and *Triumphs* Reading Intervention Program. Student will be provided four (4) hours of literacy instruction to build reading foundations, phonemic awareness, phonics, vocabulary, English fluency and comprehension.

b. Conduct weekly assessments and unit tests to determine student progress. A comprehensive progress report will be completed at the end of the summer program and will be provided to the students' new teacher in fall 2012.

c. Provide summer programs to youth of Santa Fe County beginning June 4, 2012 and concluding August 1, 2012. The daily hours will be Monday through Friday from 7:30 a.m. to 3:15 p.m.

d. As part of the summer program, serve 100 children entering grades 3 through 6.

e. Focus on literacy and math instruction by licensed SFPS teachers in the mornings Monday through Thursday, enrichment in the afternoon and field trips on Friday. The enrichment program will focus on the arts, science, health, wellness and physical education.

f. Provide literacy and math curriculum that will focus on skills needed to succeed at the next grade level with special attention given to the need of children learning the English language. SFPS' goal is a minimum of 0.25 years of growth in both reading and math as measured by a pre and post test administered to each student the beginning and end of the summer program.

g. Provide breakfast and lunch to students at no cost to the students through the SFPS nutrition department.

h. Acquire the assistance of community partners to provide enrichment opportunities to students at no cost to the students to provide programs in the arts, physical education, cooking and gardening.

i. Conduct the summer program with the funding assistance of parents whose children attend the summer program. SFPS will charge \$120.00 for the 4-week summer program. This funding will help pay for the costs of the recreational aides, materials and field trips. Children who are in the Adelante program will not be charged any fee to attend the program.

2. The County shall:

a. Provide to SFPS an amount of funding not-to-exceed twenty thousand dollars (\$20,000.00) inclusive of any gross receipts tax, to conduct the summer program described above. The funding will be paid to SFPS within 15 days of the Effective Date of this Agreement. The funds are designated to cover the costs of SFPS' personnel, director of the summer program, teachers, supplies and the recreational aides for the summer program. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

3. TERM

The term of this Agreement shall be on the date of execution by the parties (the Effective Date) and shall terminate on August 1, 2012, unless terminated earlier pursuant to Section 4.

4. 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.

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 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.

8. NO WAIVER OF IMMUNITIES, DEFENSES OR PROTECTIONS

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

9. 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.

10. AMENDMENT

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

11. 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.

12. APPLICABLE LAW; VENUE

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

13. 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 SFPS. Such termination shall be without penalty to the County, 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 and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the SFPS.

14. REQUIRED APPROVALS

This Agreement will not be final or binding upon the SFPS until or unless approved by the Superintendent of the Santa Fe Public Schools and Santa Fe County.

15. FACSIMILE SIGNATURES

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

16. 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.

17. 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.

18. 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 Santa Fe Public Schools:

Bobbi Gutierrez, Superintendent
Copy to: Ed Gorman, Afterschool Director
Santa Fe Public Schools
610 Alta Vista Street
Santa Fe, New Mexico

For County:

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

19. 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.

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

SFPS 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. SFPS shall maintain all records of its expenditures for the summer 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. SFPS shall make such records and information available at their respective offices for inspection by the County 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 SFPS 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 SFPS' completion of the summer literacy program and no later than September 30, 2012, SFPS 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.

21. FORCE MAJEURE


Neither the County nor the SFPS 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.

22. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing.

IN WITNESS WHEREOF, the parties set their hands.

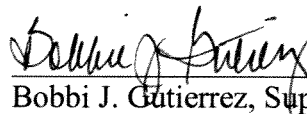
SANTA FE COUNTY:

 Date: 5.14.12
Katherine Miller
Santa Fe County Manager

Finance Department

 Date: 5/14/12
Teresa Martinez, Director


SANTA FE PUBLIC SCHOOLS:

 Date: 5-24-12
Bobbi J. Gutierrez, Superintendent

ATTEST:

_____ Date: _____

APPROVED AS TO FORM:

 Date: 5/8/12
Stephen C. Ross
Santa Fe County Attorney