

**MEMORANDUM OF UNDERSTANDING  
BETWEEN SANTA FE COUNTY  
AND THE CITY OF SANTA FE  
FOR THE DAY REPORTING PROGRAM**

**THIS MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as the “Agreement”) is entered into on this 1<sup>st</sup> day of December 2014, 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”).

**RECITALS**

**WHEREAS**, in the spirit of cooperation, mutual respect and service to the residents of the City of Santa Fe and 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**, the City and County collaborate to facilitate the County’s operation of the Day Reporting Program, an alternative to detention for juvenile offenders in the First Judicial District which offers prevention and intervention programs for children and youth who are neglected, delinquent, or who risk dropping out of school;

**WHEREAS**, costs and expenses required to operate the Day Reporting Program are defrayed through funding from the NM Children Youth and Families Department which are made available to the County through a grant from the City;

**WHEREAS**, the County is the recipient of funding from the City in the amount of \$75,000 to continue the operation of the Day Reporting Program for fiscal year 2015 and the purpose of this Agreement is to provide for the duties and obligations of the County and City with respect to the County’s operation of the Day Reporting Program.

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:**

**1. SCOPE OF UNDERSTANDING**

A. The City shall:

- a) Make available to the County seventy five thousand dollars (\$75,000) for expenditure in FY 2015 (June 30, 2014 – July 1, 2015), for the operation of the Day Reporting Program.
- b) Serve as the fiscal agent for the funding identified in this Agreement.
- c) Upon receipt of an invoice or statement from the County, reimburse the County for costs and expenses associated with the County’s operation of the Day Reporting Program. The City shall reimburse the County within thirty

- (30) days of the date of the City's receipt of an invoice or statement from the County.
- d) Provide wraparound services to participants in the Day Reporting Program. The minimum wraparound services to be provided shall be life skills training and counseling.
  - e) The City shall maintain a sufficient inventory of wraparound services such that wraparound/programming services are consistently available to Day Reporting participants every day of operation of the Day Reporting Program.
  - f) Provide any necessary transportation for Day Reporting Program participants if there are programs, wraparound services or any other educational activities that require participants to travel off-site away from the Day Reporting Program classroom.

B. The County shall:

- a) Operate and manage the Day Reporting Program Monday through Friday from 8:00 am to 5:00 pm, exclusive of County-recognized holidays, for a term of one (1) year at a County facility.
- b) Be responsible for procuring the services of County staff consisting of: 1) a Day Reporting Supervisor and 2) a Life Skills Worker to operate the Day Reporting Program. The Day Reporting Supervisor and the Life Skills Worker shall be responsible for operating the Day Reporting Program and on-site supervision of Day Reporting participants. County staff, Day Reporting Supervisor and the Life Skills Worker are not authorized to operate or conduct Day Reporting Program activities off-site from the Day Reporting location and County staff, Day Reporting Supervisor and the Life Skills Worker are not responsible for Day Reporting participants once they leave the Day Reporting Program location.
- c) The Day Reporting Program shall receive juvenile participants through written referrals issued by Juvenile Probation Officers or by order issued by the Childrens Court Division of the First Judicial District Court. The Day Reporting Program shall accept participants between the ages of 14 to 17, who are at high risk of delinquency, are pre-adjudicated and pre-identified as amenable to the Day Reporting Program based on their offense and past history of juvenile delinquency. The number of participants shall not exceed a total of 15 per day. The County will not accept a referral to the Day Reporting Program unless a written referral from a Juvenile Probation Officer or the Children's Court Division of the First Judicial District Court has been received by the Day Reporting Program by the day the referred individual reports to the Day Reporting Program. A participant's length of participation in the Day Reporting Program shall be from 3 to 90 days.
- d) Remove from the Day Reporting Program and remand to detention any Day Reporting Program participant who engages in physical violence toward Day Reporting Program staff or other participants, or displays other behavioral problems that indicate that the participant is not amenable to the services offered by the Day Reporting Program.

- e) Maintain demographic data on participants of the Day Reporting Program and on a monthly basis throughout the term of this Agreement, provide a written program status report to the City and the Children Youth and Families Department describing the activities and progress of the Day Reporting Program.
- f) Conduct background checks on all individuals including instructors or counselors who will be in direct contact with Day Reporting Program participants and who are present on the Day Reporting classroom or location for purposes of the Day Reporting Program.

C. The City and the County acknowledge and agree:

- a) A certified teacher will be provided by the Santa Fe Public Schools for the education component of the Day Reporting Program. The certified teacher will provide educational services to Day Reporting Program participants on a full time basis for one (1) year (academic year and summer school) from the date of the commencement of this Agreement. The teacher shall be a certified teacher and not a proctor or teacher's aide.

## **2. 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 one (1) year from the commencement date, unless terminated earlier pursuant to Section 3, Termination or Section 13, Appropriations.

## **3. TERMINATION**

A. Each party shall have the right to terminate this Agreement upon written notice, in the event of the other party's (the "Breaching Party") material breach hereof which is not cured within thirty (30) 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.

B. Termination for Convenience of County. The County may, in its discretion terminate this Agreement at any time for any reason by giving the City written notice of termination. The notice shall specify the effective date of termination, which shall not be less than thirty (30) days from the City's receipt of the notice. Such termination shall be without penalty to the County, and County shall have no duty to reimburse the City for expenditures made in the performance of this Agreement up to the date of termination.

## **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 City 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 not a party to this Agreement. 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.

## **6. LIABILITY**

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation of requirements applicable to the performance of the Agreement. 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 City or the County, and their respective employees, agents, board members, commissioners or officers, under the New Mexico Tort Claims Act, or other New Mexico or federal law.

## **8. NEW MEXICO TORT CLAIMS ACT**

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability applicable to the City and/or County and their respective employees, agents, board members, commissioners or at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, *et seq.*

## **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 such as mediation 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 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.

#### **13. APPROPRIATIONS AND AUTHORIZATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature in this or future fiscal years, this Agreement shall terminate upon written notice being given by the City to the County and the City shall have no duty to reimburse the County for expenditures made in the performance of this Agreement incurred after written notice to the County is provided by the City pursuant to this paragraph. The City are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the City. The City's decision as to whether sufficient appropriations are available shall be accepted by the County and shall be final and not subject to challenge by the County.

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 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 incurred after written notice to the City 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 City.

**14. 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.

**15. 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.

**16. 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 the City of Santa Fe:

Brian K. Snyder  
City Manager  
City of Santa Fe  
200 Lincoln Avenue  
PO Box 909  
Santa Fe, NM 87504-0909

For the County:

Katherine Miller  
Santa Fe County Manager  
102 Grant Ave.  
PO Box 276  
Santa Fe, NM 87504-0276

**17. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS; STRICT ACCOUNTABILITY FOR ALL RECEIPTS AND DISBURSEMENTS**

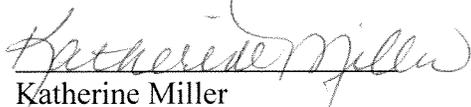
The City and the County shall assure compliance with all applicable state and federal statutes and regulations in the performance of this Agreement. Each party shall be strictly accountable for all receipts and disbursements under this Agreement.

**19. FORCE MAJEURE**

Neither the County nor the City 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.

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

**SANTA FE COUNTY:**

  
Katherine Miller  
County Manager

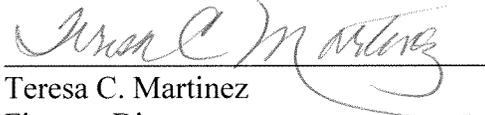
Date 12-1-20-14

Approved as to form

  
Gregory S. Shaffer  
Santa Fe County Attorney

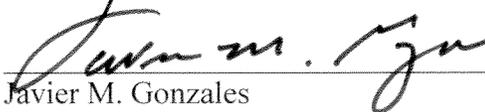
Date 11/20/14

Finance Department

  
Teresa C. Martinez  
Finance Director

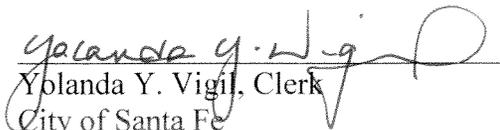
Date 11/20/2014

**CITY OF SANTA FE**

  
Javier M. Gonzales  
Mayor City of Santa Fe

Date 11/6/14

ATTEST:

  
Yolanda Y. Vigil, Clerk  
City of Santa Fe  
Cmtg 10/29/14

Date 11-6-14

Approved as to form

  
\_\_\_\_\_  
Kelley A. Brennan  
City Attorney  
City of Santa Fe

Date 9/23/14

Approved:

  
\_\_\_\_\_  
Teresita Garcia,  
Assistant Finance Director  
City of Santa Fe

Date 11/04/14