

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
OFFICE OF ARCHAEOLOGICAL STUDIES**

This Memorandum of Agreement (hereinafter "MOA") is made and entered into by and between Santa Fe County and the State of New Mexico, Department of Cultural Affairs, Office of Archaeological Studies hereinafter referred to as ("OAS").

WHEREAS, the Torcido Loop Paving and Design Design Project is 0.85 miles in length and is located approximately 4.24 miles west of Airport Road and the NM599 Intersection. This project will require a design to improve to the existing dirt road surface and drainage issues. The CR54 (Los Pinos Road) All Weather Crossing is located 1.73 miles west of the I-25 West Frontage Road and CR54 Intersection, just north of the Downs Race Track. This project will require designing a new All Weather Water Crossing to replace the existing low water crossing which is currently in constant maintenance during each rain event.

WHEREAS, the southern segment of the Torcido Loop Paving and Drainage Design Project intersects the northern boundary of a known archaeological site. NM Historic Preservation Division is requiring Santa Fe County to have this project site go through archaeological testing in areas where it is not clear whether there would be significant cultural deposits. This testing would ascertain whether cultural deposits exist.

WHEREAS, on May 15, 2013 Santa Fe County met with US Army Corps of Engineers (USACE) representative, Mr. Bill Oberle to review the existing conditions of the CR54 Los Pinos Road jobsite and to determine the level of effort required by this agency. USACE determined that Santa Fe County will need to provide and archaeological survey of this project area.

WHEREAS, the County wishes to enter into this MOU with OAS whereby the OAS will provide comprehensive archaeological assessments and investigation of the roadway modifications at Camino Torcido Loop and along CR54 Los Pinos Road;

WHEREAS, this agreement for the County's receipt of services from OAS is exempt from the Procurement Code pursuant to Section 13-1-98(A) NMSA 1978.

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

1. PURPOSE

The purpose of this MOA is to provide the County comprehensive archaeological investigations by OAS for the County's proposed undertakings located along Camino Torcido Loop and along Los Pinos Road (the "Project Areas").

2. SERVICES TO BE PROVIDED BY OAS

- A. *Archival and Archaeological Records Check*: Prior to initiating any field investigation, OAS staff will examine historical documents, title abstracts, maps, aerial imagery, and historical photographs for evidence of historic structures, features, facilities, and land use patterns. The Archeological Records Management Section (ARMS), New Mexico Cultural Resources Information System (NMCRIIS) files will be checked for known archaeological sites within or near the Project Area.
- B. *Phase 1 - Archaeological Pedestrian Inventory of Camino Torcido Loop*: OAS staff will perform a Class III pedestrian inventory of approximately 8,868 ft in length [includes both sides between right-of-way (ROW) fences] along Camino Torcido Loop (between its two intersections with Highway 56). The purpose of this inventory will be to identify previously unknown and undocumented cultural materials and to identify areas where the proposed undertakings might impact nearby manifestations.
- C. *Phase 2 - Archaeological Pedestrian Inventory at Los Pinos Road*: OAS staff will perform a Class III pedestrian inventory along approximately 5,300 ft length [includes both sides between right-of-way (ROW) fences] along Los Pinos Road where the road is intersected by drainage culverts. The purpose of this inventory will be to identify previously unknown and undocumented cultural materials and to identify areas where the proposed undertakings might impact nearby manifestations.
- D. *Phase 3 - Archaeological Testing, Analysis and Report*: The results of Phases 1, 2 and 3 (the archaeological and historical records search, together with the results of the pedestrian inventories) will determine the testing strategy in terms of the placement of hand-excavated 1-by-1-meter test pits. A testing plan will be generated for review by New Mexico Historic Preservation prior to the initiation of fieldwork. Archaeological testing in the Project Area (Camino Torcido Loop) will entail the hand excavation of no more than eight 1-by-1-meter test pits. The test pits will be placed in locations that have good potential for confirming or discounting the presence of archaeological deposits that might be expected based on the records search and survey results. Additional excavations will be placed based on the archaeologist's judgment in order to characterize the accessible portions of the full area of the proposed development. Before any excavation starts, utility companies will be notified to locate active lines and pipes. Santa Fe County shall commission an independent location of all on-site utilities to avoid any confusion regarding jurisdiction and responsibility for their protection.

Hand excavation of the 1-by-1-meter test pits will be accomplished with shovel, pick, and trowel. Soil will be loosened and screened through 1/4" mesh hardware cloth. All artifacts will be recovered and bagged according to class or type (e.g. glass, ceramics, metal, or animal bone). Excavation will proceed in 10 cm levels until culturally sterile sediments are encountered or until a depth of 0.5 m is reached. Artifacts from each level within each test pit will be bagged separately. Stratigraphic layers will be documented

and described in terms of their physical characteristics, cultural materials and deposits, integrity and condition, and age and cultural affiliation. The hand test pits will provide baseline information for determining if cultural deposits are intact, significant, and worthy of additional investigation. The test pits will be located on a site map and will be backfilled when completed.

Following completion of the fieldwork, OAS will analyze and report its findings to the County. The test pit information will be compiled into written form and incorporated into a report format that includes sections on project history, location, and purpose, environmental setting, cultural-historical background, previous archaeological work and archival research, testing expectations, field methodology, excavation results, archival research results, conclusions, recommendations and references cited. The report will be professionally edited and graphics will be professionally rendered. Finished graphics may include a project vicinity map, site maps, historic maps, photographs and data displays. Digital and paper copies of required NMCRIS project summary and Laboratory of Anthropology site forms and graphics will be prepared for the Archeological Records Management (ARMS) Section, NMHPD. All report and form completion will meet applicable state laws and requirements.

A draft of the technical report will be submitted to the County for review and comment prior to submission to the NM HPD. OAS will address the County's comments and submit a revised draft to the NM HPD. After addressing HPD comments, a final version of the report will be submitted to the County. At this time, required forms and project documentation will be sent to ARMS for inclusion in NMCRIS files.

- E. *Phase 4 – Monitoring and Subsequent Investigations*: If archaeologically or historically important deposits are encountered in testing, monitoring of ground-disturbing activities or a data recovery phase may be required by regulatory authorities. Because costs for either of these subsequent requirements cannot be predicted until the results of survey and testing are completed, the need for either monitoring, data recovery or both will entail an amendment to the MOA. Data recovery excavations would expand investigations in areas where intact and buried cultural deposits older than 75 years were encountered within the Project Area.

3. COMPENSATION

- A. The County shall pay OAS for services at the amount specified in Exhibit A for Phases 1, 2, and 3, which by this reference is incorporated into this Agreement as if set forth fully herein. The compensation to be paid to OAS shall not exceed **\$54,482.23** (exclusive of NMGRT).
- B. The OAS shall invoice the County for services rendered upon receipt of the final report by the County. Within fifteen (15) days of the County's receipt of a detailed, written invoice, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual services for which payment is sought. OAS

acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services. Within thirty (30) days of the issuance of a written certification accepting the contractual services, the County shall tender payment for the accepted services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

- C. In the event OAS breaches this Agreement, the County may, without penalty, withhold any payments due OAS for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. WARRANTY

OAS warrants that all services will meet or surpass applicable standards for archaeological services as defined in the Scope of Services and permit stipulations issued by regulatory agencies. OAS does not warrant any specific outcome of consultations between the County and regulatory agencies, only that the OAS will provide accurate and complete data collection, documentation, and interpretation, and that the elements of the Scope of Services will be fully executed. Any deficiencies arising from OAS failure to satisfy the Scope of Services or permit stipulations will be corrected without additional compensation from the County. OAS is not liable for any liquidated damages resulting from delays in the historic preservation consultation process.

5. NEW MEXICO TORT CLAIMS ACT

Neither of the parties 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, Sections 41-4-1, et seq., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law and the New Mexico Tort Claims Act. The parties and their "public employees" as defined in the New Mexico Tort Claims Act do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

6. TERMINATION

Either of the parties may terminate this Agreement by providing thirty (30) days notice to the other party of the receiving party's failure to comply with any provisions of this Agreement. By such

termination no party may nullify obligations already incurred, or the performance or failure to perform, prior to termination of the Agreement.

7. NON-APPROPRIATION CLAUSE

Nothing in this MOA shall be construed as obligating the County to provide the contributions herein if an appropriation is not made to support that obligation according to law, or to expend funds or to expend funds in the future in excess of appropriations allowed by law. The County's obligations pursuant to this MOA are therefore contingent upon the appropriation of funds. The County's decision concerning appropriations, including decisions concerning the sufficiency of appropriations, shall be final.

8. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

9. AMENDMENTS OR MODIFICATIONS TO MOA

This MOA may be amended or modified only by the written, mutual consent of each party.

10. BINDING EFFECT

This MOA shall be binding upon and inure to the benefit of each party and their respective representatives, successors and assigns.

11. DISPUTE RESOLUTION

The parties agree to use any and all methods of dispute resolution, up to and including mediation to resolve any conflicts arising under this Agreement, the expenses of which shall be shared equally. Disputes shall be first discussed by representatives of each party having such the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within thirty days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the dispute cannot be resolved. Either party may pursue available legal remedies. Any litigation regarding the enforcement, effect or interpretation of the Agreement shall be brought in the district court of the State of New Mexico, First Judicial District, Santa Fe, New Mexico.

12. NOTICES

Any notice required by this MOU shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three days after deposited, postage fully prepaid, registered or certified, in any official receptacle of the U.S. Postal Service.

For OAS: Eric Blinman, Director
Office of Archaeological Studies
407 Galisteo Street
Bataan Memorial Building
Santa Fe, NM 87501
(505) 827-6343

For the County: Chuck Vigil, Road Projects Manager
Projects, Facilities and Open Space Division
Public Works Department
Santa Fe County
PO Box 276
Santafe, NM 87504-0276
(505) 992-3018

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date written above.

SANTA FE COUNTY

By: Katherine Miller
Katherine Miller, Manager

Date: 6.19.13

APPROVED AS TO FORM:

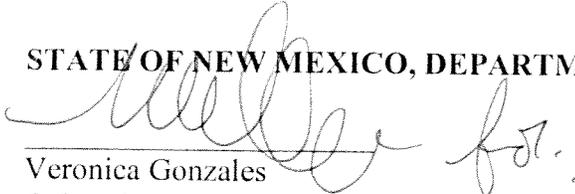
Stephen C. Ross
Stephen C. Ross, County Attorney
Finance Department

Date: June 12, 2013

Teresa M. Martinez
Teresa M. Martinez, Director

Date: 6/18/13

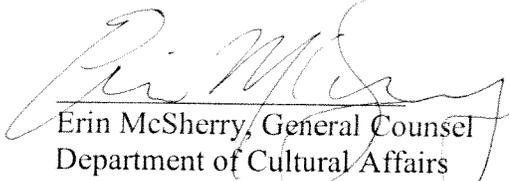
STATE OF NEW MEXICO, DEPARTMENT OF CULTURAL AFFAIRS


Veronica Gonzales
Cultural Affairs Secretary

Date: 6/27/13


Eric Blinman, Director
Office of Archaeological Studies
Department of Cultural Affairs

Date: 6/25/13


Erin McSherry, General Counsel
Department of Cultural Affairs

Date: 6/26/2013

EXHIBIT A – OAS COST ESTIMATES FOR PHASES 1, 2, 3 AND 4 (monitoring only)


Sheen L. Jupp / CFO

6/27/13

OAS 41.982 Torcido Loop Survey & Testing - Santa Fe County

Phase 1 - Survey of Torcido Loop (8868 ft long X 33 ft wide = 292,644 sq ft or 6.72 ac)

Name	Task	Units	Rate	Total
Tatum	Fieldwork (walk)	3	\$33.85	\$101.54
Wening	Fieldwork (walk)	3	\$30.74	\$92.23
Tatum	Fieldwork (doc 1 site)	2	\$33.85	\$67.69
Wening	Field work (doc 1 site)	2	\$30.74	\$61.49
Tatum	Report	24	\$33.85	\$812.33
Wening	Report	24	\$30.74	\$737.83
Wening	Site Form & NIAF	24	\$30.74	\$737.83
Badner	GIS	16	\$37.55	\$600.80
NMCRIS	NMCRIS Registration	1	\$75.00	\$75.00
	Travel (Vehicle days)	1	\$25.00	\$25.00
	Travel (Mileage)	15	\$0.25	\$3.75
Powell	Financial	4	\$31.62	\$126.49
Yount	Office Admin	4	\$27.93	\$111.71
Dello-Russo	PI	32	\$54.00	\$1,727.90
Arany	Report Editing	16	\$37.17	\$594.74
Turner	Report Graphics	16	\$37.92	\$606.77
	Printing	12	\$20.00	\$240.00
Subtotal				\$6,723.10
Overhead (@ 25 percent)				\$1,680.77
Total for Phase 1				\$8,403.87

Phase 2 - Survey of Los Pinos Road (5300 ft long X 33 ft wide = 174,900 sq ft or 4.0 Ac)

Name	Task	Units	Rate	Total
Tatum	Fieldwork (walk)	2	\$33.85	\$67.69
Wening	Fieldwork (walk)	2	\$30.74	\$61.49
Tatum	Fieldwork (doc 1 site)	0	\$33.85	\$0.00
Wening	Field work (doc 1 site)	0	\$30.74	\$0.00
Tatum	Report	16	\$33.85	\$541.55
Wening	Report	16	\$30.74	\$491.89
Wening	Site Form & NIAF	16	\$30.74	\$491.89
Badner	GIS	16	\$37.55	\$600.80
NMCRIS	NMCRIS Registration	1	\$50.00	\$50.00
	Travel (Vehicle days)	1	\$25.00	\$25.00
	Travel (Mileage)	20	\$0.25	\$5.00
Powell	Financial	3	\$31.62	\$94.87
Yount	Office Admin	3	\$27.93	\$83.78
Dello-Russo	PI	21	\$54.00	\$1,133.94
Arany	Report Editing	10	\$37.17	\$371.71
Turner	Report Graphics	10	\$37.92	\$379.23
	Printing	12	\$20.00	\$240.00
Subtotal				\$4,638.83
Overhead (@ 25 percent)				\$1,159.71
Total for Phase 2				\$5,798.54

41.982 Torcido Loop Survey & Testing - Santa Fe County

Phase 3 - Test Excavations at Torcido Loop (8 X 1-by-1-m hand-excavated units; documentation; N = 300 artifacts; technical report)

Name	Task	Units	Rate	Total
Tatum	Write test & monitor plan	40	\$33.85	\$1,353.88
Wening	Write test & monitor plan	40	\$30.74	\$1,229.72
Dello-Russo	Review test/monit plan	20	\$54.00	\$1,079.94
Jaquith	Graphics	8	\$32.13	\$257.02
Badner	GIS	8	\$37.06	\$296.50
Tatum	Fieldwork (excavation)	60	\$33.85	\$2,030.82
Wening	Fieldwork (excavation)	60	\$30.74	\$1,844.58
Montoya	Fieldwork (excavation)	60	\$30.11	\$1,806.48
Moga	Fieldwork (excavation)	60	\$29.46	\$1,767.54
Dello-Russo	PI (admin)	24	\$54.00	\$1,295.93
Etsitty	Lab (clean, bag, process)	24	\$24.57	\$589.75
Foster	Lab (clean, bag, process)	24	\$23.86	\$572.62
Weahkee	Lithic analysis (rough sort)	8	\$19.41	\$155.28
Moore	Lithic analysis (100)	16	\$38.29	\$612.56
Montoya	Ceramic analysis (rough)	12	\$30.11	\$361.30
Wilson	Ceramic analysis (100)	24	\$35.10	\$842.40
Akins	Faunal analysis (46)	16	\$34.34	\$549.44
Etsitty	Macrobot (flotation)	8	\$24.57	\$196.58
McBride	Macrobot analysis (4)	24	\$44.82	\$1,075.70
Moga	Historic analysis (50)	24	\$29.46	\$707.02
Tatum	Write testing report	80	\$33.85	\$2,707.76
Wening	Write testing report	80	\$30.74	\$2,459.44
Moga	Site & NIAF forms	16	\$29.46	\$471.34
Dello-Russo	PI review testing report	40	\$54.00	\$2,159.88
Powell	Financial	30	\$31.62	\$948.66
Yount	Office Admin	28	\$27.93	\$781.96
Arany	Report edit	24	\$37.17	\$892.10
Turner	Report graphics	24	\$37.92	\$910.15
	Printing	12	\$20.00	\$240.00
	Curation	1	\$485.00	\$485.00
	Radiocarbon	2	\$595.00	\$1,190.00
	Travel (Vehicle days)	8	\$25.00	\$200.00
	Travel (Mileage)	250	\$0.25	\$62.50
	NMCRIS Registration	1	\$90.00	\$90.00
Subtotal				\$32,223.85
Overhead (@ 25 percent)				\$8,055.96
Total for Phase 3				\$40,279.82

41.982 Torcido Loop Survey & Testing - Santa Fe County

Phase 4 - Monitoring at Torcido Loop near Nelson mounds or or other; N = 50 artifacts

Name	Task	Units	Rate	Total
Tatum	Fieldwork (monitor)	24	\$33.85	\$812.33
Wening	Fieldwork (assist monitor when required)	24	\$30.74	\$737.83
Badner	GIS	8	\$37.55	\$300.40
Etsitty	Lab (clean, bag, process)	4	\$24.57	\$98.29
Foster	Lab (clean, bag, process)	4	\$23.86	\$95.44
Weahkee	Lithic analysis (rough sort)	2	\$19.41	\$38.82
Moore	Lithic analysis (16)	3	\$38.29	\$114.86
Montoya	Ceramic analysis (rough)	2	\$30.11	\$60.22
Wilson	Ceramic analysis (16)	4	\$35.10	\$140.40
Akins	Faunal analysis (9)	3	\$34.34	\$103.02
Etsitty	Macrobot (flotation)	2	\$24.57	\$49.15
McBride	Macrobot analysis (1)	4	\$44.82	\$179.28
Moga	Historic analysis (8)	4	\$29.46	\$117.84
Tatum	Report	24	\$33.85	\$812.33
Wening	Report	24	\$30.74	\$737.83
Dello-Russo	Review report	8	\$54.00	\$431.98
Wening	Site Form & NIAF	16	\$30.74	\$491.89
	Curation	0.25	\$458.00	\$114.50
NMCRIS	NMCRIS Registration	1	\$20.00	\$20.00
	Travel (Vehicle days)	3	\$25.00	\$75.00
	Travel (Mileage)	45	\$0.25	\$11.25
Powell	Financial	4	\$31.62	\$126.49
Yount	Office Admin	4	\$27.93	\$111.71
Dello-Russo	PI (proj admin)	8	\$54.00	\$431.98
Arany	Report Editing	8	\$37.17	\$297.37
Turner	Report Graphics	8	\$37.92	\$303.38
	Printing	12	\$10.00	\$120.00
	Radiocarbon	1	\$595.00	\$595.00
Subtotal				\$7,528.56
Overhead (@ 25 percent)				\$1,882.14
Total for Phase 4				\$9,410.70

Phase 1 \$8,403.87

Phase 2 \$5,798.54

Phase 3 \$40,279.82

Phase 4 (will require amendment to MOA) \$9,410.70

