

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

This Agreement ("Agreement") is made and entered into by and between Santa Fe County ("County"), and the State of New Mexico, Department of Cultural Affairs ("DCA").

WHEREAS, the County is planning a fuels reduction program on the Ortiz Mountain Preserve (the "Project"), Santa Fe County, New Mexico; and

WHEREAS, the County will fund the planning and execution of the Project; and

WHEREAS, the Project by the County is an "undertaking" subject to the New Mexico Cultural Properties Act, NMSA 1978, § 18-6-1 to -17, as amended, (the "Act"), and its implementing regulations, NMAC § 4.10.7, 4.10.8, 4.10.11, 4.10.12, 4.10.14, 4.10.15, 4.10.16, and 4.10.17 (the "Regulations"); and

WHEREAS, the Office of Archaeological Studies ("OAS") is a division of DCA and provides archaeological services, including archaeological survey, excavation, monitoring, testing, laboratory analysis, human burial excavation and analysis, collection curation, research, and report writing and production, to state, federal, tribal, political subdivisions of the state, municipal and private clients on a cost reimbursable basis; and

WHEREAS, the County wishes to enter this Agreement under which the County will compensate DCA in return for OAS's archaeological services for the Project as described in this Agreement; and

WHEREAS, this Agreement between the County and DCA is exempt from the Procurement Code, NMSA 1978, § 13-1-98 (A).

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES as follows:

1. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to set forth OAS' duties with respect to the County's fulfillment of its obligations for an undertaking under the Cultural Properties Act and its Regulations. The services to be provided by OAS include an archaeological inventory prior to initiation of the Project.

2. SCOPE OF WORK

- B) OAS will not incur any expenses in excess of the amounts stated in Attachment 2 without prior approval of the County and amendment to this agreement. OAS reserves the right to substitute personnel and contractual service providers as long as substitutions do not increase total costs as stated in Attachment 2 and as approved by the County.
- C) The County shall reimburse OAS for the direct costs of services rendered, including personal services, travel, project-specific supplies and equipment, plus an overhead amount of 25% of direct costs. Direct costs and overhead are presented for each project phase and County priority in Attachment 2. Personal services rates are identified in Attachment 2, and other direct costs are specified in the cost estimate. The total not-to-exceed amount for this agreement is \$24,739.39 based on the direct costs of the services plus overhead. The County may add to this amount at any time during the term of this agreement by written amendment to this agreement.
- D) The OAS cost estimate for this Project is detailed in Attachment 2, based on the scope-of-work description in Attachment 1 and the County's priorities.
- E) The OAS shall invoice the County periodically for services rendered.
- F) Within 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 30 days of the issuance of a written certification accepting the contractual services, the County shall tender payment for accepted services. Should the County partially accept or reject services, OAS shall have 30 days to rectify such deficiencies in order to obtain the County's written certification.
- G) In the event the County fails to tender payment within 30 days of the written certification accepting the services, the County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.
- H) In the event OAS breaches any of the duties in paragraph three of this agreement or any other material term of 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. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

5) TERM OF THIS AGREEMENT

This Agreement shall be effective upon the date of last signature by the parties (the Effective Date). The initial term of this Agreement shall commence on the Effective Date and will terminate on June 30, 2020. The parties may extend the term of this Agreement by an instrument in writing executed by the parties.

6) REPRESENTATION

OAS agrees that it will provide services that meet or surpass applicable standards for archaeological services as defined in the scope of work and permit stipulations issued by regulatory agencies. OAS will provide accurate and complete data collection, documentation, and interpretation, and represents that the scope of work will be fully executed but does not assure a particular outcome from the consultations. Any deficiencies arising from OAS' failure

- 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.

11) AMENDMENTS OR MODIFICATIONS

This Agreement may be amended or modified by an instrument in writing and with the written consent from both parties.

12) BINDING EFFECT

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

13) DISPUTE RESOLUTION

The parties agree to use any and all methods of dispute resolution to resolve any conflicts arising under this Agreement. 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 30 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 then pursue available legal remedies including mediation. Any litigation regarding the enforcement, effect, or interpretation of the Agreement shall be brought in the State of New Mexico, First Judicial District Court.

14) NOTICES

Any notice required by this Agreement shall be given in writing to the persons designated below. Notice shall be effective when delivered personally to either 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
7 Old Cochiti Road
Santa Fe, NM 87507-1004

Office: (505) 476-4404, cell phone: (505) 660-2809, eric.blinman@state.nm.us

For the County:

As to legal sufficiency:


Anita Tellez, DCA Attorney

Date: 5/13/19

As to budgetary sufficiency:


Greg Geisler, Chief Financial Officer/ASD Director

Date: 5/13/19

ATTACHMENT 2
OAS Cost Estimates for Archaeological Services

Cost recovery rates (weighted hourly figures below) for OAS activities are based on per hour costs of wages, benefits, values of accrued leave, holidays, and required trainings for OAS State of New Mexico employees. Clients are only invoiced for hours worked directly on client projects and are not invoice for hours (such as sick or annual leave) not related to client projects.

NM Office of Archaeological Studies FY2019 Hourly Rates (3/21/19)

Person	Role	Weighted	FY 19 Wage	FY 19 Overtime Weighted	Weighted + Overhead
Ainsworth	Fauna/educator	26.520	19.329	30.660	33.15
Arany	Editor	52.530	24.902	64.990	65.66
Blinman	Principal investigator	84.037	38.680	84.037	105.05
Coan	Archaeologist/GIS	39.668	14.975	47.160	49.58
Cox	Crew chief/AM and radiocarbon	36.506	18.190	45.610	45.63
Etsitty	Archaeologist	35.435	15.879	43.380	44.29
Jaquith	Graphic artist	45.563	21.042	56.100	56.95
Martinez	Editor	49.623	21.359	60.310	62.03
Moga	Crew chief/Historic	39.933	18.190	49.040	49.92
Montoya	Crew chief/Ceramics	43.972	18.190	53.080	54.97
Powell	Finance	43.391	20.223	53.520	54.24
Stodder	Physical anthropologist	54.825	23.345	66.510	68.53
Toll, M	Educator/Botanist	53.519	22.790	64.920	66.90
Weahkee	Archaeologist/Lithics	35.465	15.651	43.300	44.33
Wening	Archaeologist/Groundstone	42.126	17.349	50.810	52.66

Vehicle costs: \$25.00 per day
 \$0.25 per mile

All other costs are charged to projects based actual costs or on State of New Mexico rates or policies. Hourly rates will be subject to adjustment based on fiscal year changes in State of New Mexico wages and benefit costs.