

**MEMORANDUM OF AGREEMENT
BETWEEN THE
REGENTS OF THE UNIVERSITY OF NEW MEXICO
AND THE
COUNTY OF SANTA FE, NEW MEXICO**

14th This **MEMORANDUM OF AGREEMENT** (hereinafter MOA) is entered into on this day of February, 2019, between the Regents of the University of New Mexico (hereinafter referred to as UNM), and Santa Fe County, a political subdivision of the State of New Mexico (hereinafter referred to as the "County").

RECITALS

WHEREAS, UNM is a state educational institution with a proven record of accomplishment in providing public education and public outreach services within the State of New Mexico; and

WHEREAS, as indicated in the Santa Fe County Sustainable Growth Management Plan, wildlife habitat information, wildlife migration and patterns, and the protection and restoration of natural areas is a priority for the County; and

WHEREAS, the County solicited interest in professional services consisting of the completion of a comprehensive survey of Pinyon Jay birds, their nesting colonies, and related research on property belonging to the County such as County Open Space properties; and

WHEREAS, UNM has unique capabilities and is willing to provide these services to the County and the County is willing to compensate UNM for these services on the term and conditions set forth in this MOA.

NOW, THEREFORE, it is agreed between the parties:

1.0 RESPONSIBILITIES OF THE PARTIES

- 1.1 UNM will perform the services described in Exhibit A and Exhibit B (UNM's proposed scope of services) to this MOA, which are incorporated into and made a part of this MOA by reference.
- 1.2 UNM will keep an accurate record of all services performed under this MOA and will make such records available to the County upon request.
- 1.3 UNM will maintain general liability coverage.

- 1.4 The County will fund the services to be performed and completed by UNM according to the schedule and the costs in Exhibit A. Compensation to UNM for the services performed will not exceed \$20,000.00, inclusive of any applicable tax. UNM will submit invoices in accordance with the completion of deliverables described in Exhibit A.
- 1.5 The County will grant UNM the access to County-owned properties where Contractor's survey and research are to occur.

2.0 LIABILITY

2.1 **Liability.** As between the parties, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from negligence of that party's employees. The liability of UNM and the County shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1 *et seq.* NMSA 1978.

3.0 TERM AND TERMINATION

3.1 This MOA shall become effective upon the date of last signature by the parties to this MOA (the Effective Date). The term of this MOA is from the Effective Date to December 31, 2019, unless earlier terminated as indicated below or by the County pursuant to 6.5 below. The term of this MOA may be extended by the mutual written agreement of the parties.

3.2 This MOA may be terminated by either of the parties hereto upon written notice delivered to the other party at least 30 days prior to intended date of termination. The written notice shall specify a date of termination. By such termination neither party may nullify any obligations incurred prior to the date of termination.

4.0 RIGHTS IN MATERIALS

4.1 The County will retain ownership of all reports and other written deliverables generated under this MOA, provided, however that UNM will retain the right to use, publish and disseminate such reports internally in furtherance of UNM's educational mission.

4.3 Neither party will use the names, trademarks or logos of the other party without the express written authorization from the owner.

5.0 PROPRIETARY INFORMATION

The parties do not anticipate the need to exchange proprietary or confidential information.

6.0 MISCELLANEOUS

6.1 **Entire Agreement.** This MOA represents the entire understanding between the parties and supersedes any prior agreements or understandings with respect to the subject matter of this MOA.

6.2 **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this MOA will not operate as or be construed as a waiver of any subsequent breach of this MOA.

6.3 **Modifications.** No changes, amendments or alterations to this MOA will be effective unless in writing and signed by both parties.

6.4 **Non-Assignability.** This MOA will not be assigned by either party, nor will the duties imposed upon either party by this MOA be delegated, subcontracted, or transferred by either party, in whole or in part, without the prior written consent of the other party.

6.5 **Appropriations and Authorizations.** Performance of the terms of this MOA is contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico and the Board of County Commissioners of Santa Fe County. If sufficient appropriations and authorization are not made, this MOA shall terminate immediately upon written notice being given by the County to UNM. The County's decision as to whether sufficient appropriations are available shall be accepted by UNM and shall be final.

6.6 **Governing Law.** This MOA will be construed, interpreted, governed and enforced in accordance with the statutes, judicial decisions, and other laws of the State of New Mexico.

6.7 **Severability.** The invalidity or unenforceability of any term or provision of this MOA will in no way affect the validity or enforceability of any other term or provision to the extent permitted by law.

6.8 **Headings.** Headings and captions used in this MO are for convenience and ease of reference only and will not be used to construe, interpret, expand or limit the terms, conditions, or other provisions of this MOA.

6.9 **Relationship of parties.** The parties and their respective employees are at all times acting as independent contractors. UNM and its employees will not be considered employees of the County for any purpose, including, but not limited to, workers' compensation, insurance, bonding or any other benefits afforded to employees of the County. Neither party has any express or implied authority to assume or create any obligation or responsibility on behalf of or in the name of the other party.

6.10 **Third Parties.** Nothing in this MOA, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this MOA.

6.11 **Notices.** Any notice required or permitted to be given pursuant to the terms and provisions of this MOA will be in writing and will be sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

6.13 **Binding Effect.** This MOA is binding upon, and inures to the benefit of, the parties to this MOA and their respective successors and assigns.

6.14 **Counterparts.** This MOA may be executed in any number of counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

6.15 **Notices.** Any notice required or permitted to be given pursuant to the terms and provisions of this MOA will be in writing and will be sent by certified mail, return receipt requested, postage prepaid and addressed as follows:

To UNM: University of New Mexico
Office of Sponsored Projects, Main
MSC01 1247
1 University of New Mexico
Albuquerque, New Mexico 87131-0001

To County: Santa Fe County Growth Management Department
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276
Attn: Margaret Darr, Senior Planner

6.16 **Precedence.** In the event any inconsistencies arise between the terms of this MOA and the terms of any schedules, task orders, exhibits, attachments or other documents attached hereto, the terms contained in the body of this MOA shall prevail. Any additional terms or conditions proposed in a subsequent schedule, exhibit, task order, attachment or other document will not become a part of this MOA unless accepted in writing by the authorized representatives of the parties. No purchase order, invoice, or any pre-printed terms on the County's purchase order or invoice will modify the terms of this MOA.

SANTA FE COUNTY

 Date 2.14.19
Katherine Miller
Santa Fe County Manager

Finance Department

E. Shones
Stephanie S. Clarke
Finance Director

Date 2/12/19

Approved as to form

R. Bruce Fredrick
R. Bruce Fredrick
Santa Fe County Attorney

Date 1-30-19

REGENTS OF THE UNIVERSITY OF NEW MEXICO

By: Elizabeth Meyer Dated: 2-11-19

19-0191 uf

EXHIBIT A**SCOPE OF SERVICES AND COSTS**

Deliverables	Date	Costs
Conduct field surveys for nesting Pinyon Jays (Thornton Ranch, Lamy, Arroyo del Piedra, Little Tesuque Creek, Talaya Hill, Arroyo Hondo, San Pedro, Ortiz Mountains, Rio en Medio, Los Caminitos, Cerril- los Hills State Park, La Cieneguilla, El Penasco Blan- co, Madrid, Los Potreros)	March through May, 2019	\$7,500.00
Data entry and complete GIS maps	June through August, 2019	
E-mail progress report on field surveys to County	No later than August 1, 2019	
Report preparation	August to September, 2019	\$7,500.00
Deliver first draft report to County for review	No later than October 1, 2019	
Deliver final report and all deliverables to County (Final report and geodatabase of all areas searched, nest locations and colony boundaries)	No later than December 1, 2019	\$5,000.00
UNM indirect (facilities and administration) - 20%	see attached budget below	
Expenses: mileage, postage, photocopy, field supplies, etc.	see attached budget below	
	Total NTE	\$ 20,000.00

EXHIBIT B

Proposal to Conduct 2019 Surveys for Pinyon Jay Nesting Colonies on Santa Fe County Properties

Kristine Johnson, Natural Heritage New Mexico, UNM Biology Department

Introduction

Pinyon Jays (*Gymnorhinus cyanocephalus*) are year-round residents in piñon-juniper (*Pinus edulis*, *P. monophylla*, *Juniperus* spp.) habitats across the southwestern US. The Pinyon Jay has a mutualistic relationship with piñon pines. The trees provide mast crops of highly nutritional seeds that sustain Pinyon Jays over winter, support successful nesting, and influence their population viability (Marzluff and Balda 1992). Following mast years, Pinyon Jay nesting and fledging success are higher than in non-mast years (Ligon 1978, Marzluff and Balda 1992), and adult survivorship is highest after moderate cone crops (Marzluff and Balda 1992). In turn, Pinyon Jays serve as the primary long-distance seed disperser for piñon trees within the bird's range. In a piñon mast year, a flock of Pinyon Jays can potentially harvest and cache millions of seeds (Ligon 1978). They transport piñon seeds to caching areas kilometers from the source woodland and cache them in sites favorable for germination (Ligon 1978). Due to its unique mutualism with piñon trees, declining woodland conditions negatively impact Pinyon Jay populations and nesting behavior (Johnson et al. 2017), and the Pinyon Jay can thus serve as an indicator of piñon-juniper woodland conditions.

Pinyon Jays are highly social. They flock in winter and nest colonially, sometimes cooperatively, on traditional nesting grounds (Marzluff and Balda 1992). Home ranges are large, typically 3500 ha (8,645 ac) or more. Unlike territorial birds, their nests are spatially clumped, and a nesting colony can cover 35 ha (86 ac) or more (Johnson et al. 2014, 2015). A flock of Pinyon Jays thus requires thousands of hectares of habitat for its home range and tens of hectares for each nesting colony.

Breeding Bird Survey data indicate that Pinyon Jay populations have declined significantly range-wide over 50 years (Sauer et al. 2017). Due to concerns about the species' status, New Mexico Avian Conservation Partners lists Pinyon Jay as a Species Conservation 1, meaning it is among the birds of highest conservation concern in the state. It is also classified as a US Fish and Wildlife Service (USFWS) Bird of Conservation Concern (USFWS 2008), New Mexico Species of Greatest Conservation Need (New Mexico Department of Game and Fish 2017), and New Mexico Bureau of Land Management (BLM) Sensitive Species (USDI BLM 2008). It is listed as vulnerable on the IUCN Red List (IUCN 2018).

Recent, climate-related impacts to piñon-juniper woodlands include large-scale mortality of piñon pines (Breshears et al. 2005, 2008), significant reductions in canopy cover (Clifford et al. 2011), and declines in piñon cone production (Redmond et al. 2012, Zlotin and Parmenter 2008).

Climate models predict distributional changes of piñon-juniper habitat (Cole et al. 2008) and massive, widespread piñon and juniper mortality across the southwestern US (McDowell et al. 2016). These patterns and predictions have raised concern over the future of the Pinyon Jay and other wildlife of piñon-juniper ecosystems.

Piñon-juniper habitats are the dominant habitat type of Santa Fe County open space properties. As the Pinyon Jay is a central, sensitive wildlife species of these habitats, and because it is an indicator for the health of piñon-juniper ecosystems, Santa Fe County has requested a survey of Pinyon Jay nesting colonies on its properties. Results of the initial survey and follow-on research will provide important information for management of these woodlands.

Methods

We will survey for nesting Pinyon Jay colonies during the Pinyon Jay nesting season, March – May 2019. We will begin surveys at Thornton Ranch (and its immediate vicinity, including BLM land and the Galisteo Basin Preserve), followed by remaining Santa Fe County open space properties with appropriate habitat. Previous Pinyon Jay detections, cone crops in fall 2018, and suitability of nesting habitat will be considered in determining priorities for survey sites. Time and funding permitting, we will search for colonies in other areas of appropriate habitat in the county. Following are Santa Fe County open space properties with piñon-juniper habitat:

1. Thornton Ranch
2. Lamy
3. Arroyo de la Piedra
4. Little Tesuque Creek
5. Talaya Hill
6. Arroyo Hondo
7. San Pedro
8. Ortiz Mountains
9. Rio en Medio
10. Los Caminitos
11. Cerrillos Hills State Park
12. La Cieneguilla
13. El Penasco Blanco
14. Madrid
15. Los Potreros

To conduct surveys, we will drive roads and, where necessary, walk trails within the targeted areas, focusing on areas of suitable nesting habitat and sites where Pinyon Jays have been detected previously. We will listen and watch for Pinyon Jays and follow them to nesting areas.

To confirm the existence of a nesting colony, we will observe the Pinyon Jays for breeding behaviors such as begging, rattle calls, courtship feeding, courtship chasing, carrying sticks, construction, and incubation. We will search any apparent nesting colony area for old nests after nesting is complete. We will note Pinyon Jay locations and behaviors and record GPS coordinates of all nests. We will construct polygons bounding all colony sites. All location data will be entered into a geodatabase. Amount of invoices per deliverable are listed for each deliverable date.

Schedule, Deliverables, and Invoices

March-May 2019: Field surveys for nesting Pinyon Jays

June-August 2019: Data entry and GIS maps made

1 August 2019: Informal emailed progress report on field surveys \$7500

August-September 2019: Report preparation

1 October 2019: Draft report delivered for review \$7500

1 December 2019: Final products delivered, including: \$5000

1. Final report,
2. Geodatabase of all areas searched, nest locations, and colony boundaries

Literature Cited

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**Santa Fe County Pinyon Jay
Surveys**

Note: FY 20 salaries are 2%
increase over FY 19, except for
PI & part-times

Personnel	FY 19 Base	No. Months	FY 19 total	FY 20 Base	No. Months	FY 20 total	Total
Faculty - Pl. K. Johnson	20118	1.00	1677	20018	0.5	834	2511
Staff - Res. Sci. I, J. Smith	40957	0.75	2560	41776	0.5	1741	4300
Staff - Unit Admin I, R. Keeshen	59862	0.20	998				998

	Hrly Rate	No. Hours		
Part-time -Field Tech, N. Petersen	16	240	3840	3840
Part-time - System Admin	18	20	350	350

Benefits	FY 19 rate		FY20 rate		
Faculty	0.018	30	0.018	15	45
Staff	0.355	1263	0.360	627	1890
Part-time	0.220	922	0.220	0	922

Travel				
Mileage 2400 mi.@ 0.70/mi.	0.70	2400		1680

Materials and supplies

Field supplies				66
Copying				50
Postage				15

Total Direct				16666
F&A @ 20%				3333
Total				20000

2019 Santa Fe County Pinyon Jay Surveys Budget Justification

Personnel

Faculty:

1. PI (Johnson) FY 19: (1 mo. @ 1677/mo.). FY 20: (0.5 mo. @ 1677/mo.) – manage project, conduct field work, and produce final report.

Staff:

2. Research Scientist I (Smith) FY 19: (0.75 mo. @ 3413/mo.). FY 20: (0.5 mo. @ 3481/mo.) – conduct field work and GIS, assist with report production.
3. Unit Administrator I (Keeshen) FY 19: (0.20 mo. @ 4989/mo.) – manage contract and edit final report.

Staff Part-time:

4. Field Technician, part-time (Petersen) FY 19: (240 h @ 16/h) – conduct field work, enter field data.
5. System Administrator FY 19: (20 h @ 18/h) – manage program network and software.

6. Benefit rates:

FY 19 – 1.8% faculty, 35.5% staff, 22% part-time staff.

FY 20 – 1.8% faculty, 36% staff, 22% part-time staff.

Travel

1. Mileage: 2400 miles @ 0.7/mi. (UNM vehicle service-center rate).

Office

1. Postage - mailing of final reports – \$15
2. Photocopy - two copies of final report @ \$25/copy = \$50
3. Field supplies - rite-in-rain notebooks for field data collection (2 @ \$5.50 = \$11), flagging (\$20), AA batteries (\$35).

F&A – 20% in state government rate.