

**MEMORANDUM OF UNDERSTANDING**

**Among and By  
The City of Santa Fe,  
City of Santa Fe Archaeological Review Committee,  
The New Mexico State Historic Preservation Officer,  
New Mexico Cultural Properties Review Committee,  
The Santa Fe Railyard Community Corporation,  
And  
The Trust for Public Land**

**Regarding Redevelopment of the Santa Fe Railyard, Santa Fe, New Mexico**

[1] WHEREAS, the City of Santa Fe (City) owns the Santa Fe Railyard (Railyard); and

[2] WHEREAS, the Railyard has been determined eligible for listing as an historic district in the National Register of Historic Places (NRHP), is adjacent to the Santa Fe and Don Gaspar National Register historic districts, and contains historic properties, which include historic and prehistoric archaeological deposits, that are listed in or eligible to be listed in the NRHP and/or listed on the State Register of Cultural Properties (SRCP); and

[3] WHEREAS, the redevelopment of the Railyard is an undertaking that will adversely affect historic properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) and/or constitutes a use of one or more cultural properties listed on the SRCP; and

[3] WHEREAS, the City, as a political subdivision of the State of New Mexico, is responsible for the execution of appropriate planning to preserve, protect and minimize harm to the historic and archaeological properties under its care and administration pursuant to the following acts and their implementing regulations: the Cultural Properties Act of 1969, as amended (§ 18-6-1 through 18-6-17, NMSA 1978; NMAC Title 4, Chapter 10, parts 3-11); the Cultural Properties Preservation Act of 1993 (§ 18-6A-1 through 18-6A-6, NMSA 1978; NMAC Title 4, Chapter 10, part 2), and the Prehistoric and Historic Sites Preservation Act of 1978, as amended (§ 18-8-1 through 18-8-8, NMSA 1978; NMAC Title 4, Chapter 10, part 12); and

[4] WHEREAS, the Historic Preservation Division (SHPO), a division of the Office of Cultural Affairs, is charged with responsibilities to preserve, protect and enhance the prehistoric, historic and cultural heritage of New Mexico for the benefit of present and future generations under both state and federal statutes and regulations: the Cultural Properties Act of 1969, as amended (§ 18-6-1 through 18-6-17, NMSA 1978; NMAC Title 4, Chapter 10, parts 3-11); the Cultural Properties Preservation Act of 1993 (§ 18-6A-1 through 18-6A-6, NMSA 1978; NMAC Title 4, Chapter 10, part 2), and the Prehistoric and Historic Sites Preservation Act of 1978, as amended (§ 18-8-1 through 18-8-8, NMSA 1978; NMAC Title 4, Chapter 10, part 12); and the National Historic Preservation Act, as amended, 16 U.S.C. 470f, 36 CFR Part 800; and

[5] WHEREAS, the Cultural Properties Review Committee (CPRC), has seven members, six of which are appointed by the governor and one statutory member, whose primary responsibilities are to take such actions to identify cultural properties and to advise on the protection and preservation of those properties within the State of New Mexico, as detailed in the Cultural Properties Act of 1969, as amended (§ 18-6-4 and 18-6-5, NMSA 1978); and

[6] WHEREAS, the City invited public participation in the creation of a master plan for the redevelopment of the Railyard by holding a series of community meetings and outreach efforts conducted between 1997 and 2002 and, as a result, has adopted the *Santa Fe Railyard Master Plan and Design Guidelines May 2002* (Master Plan) (attachment A to this agreement) for the redevelopment of the Railyard; and

[7] WHEREAS, it is anticipated that the City and/or private parties may seek assistance from the Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA) and/or other federal agencies for the Santa Fe Railyard redevelopment or may be required to seek federal approvals or permits that may constitute undertakings as defined by the NHPA and 36 CFR 800.16(y) and that these federal agencies may be required or may elect to comply with Section 106 for these undertakings by becoming federal signatories to a Programmatic Agreement (PA) based on this MOU and in accordance with stipulation XIV of this document; and

[8] WHEREAS, under 24 CFR Part 58, the City will assume Section 106 responsibilities from HUD for any HUD funding, and HUD is responsible for monitoring and providing technical assistance to the City for such compliance with Section 106; and

[9] WHEREAS, the City has consulted with the New Mexico State Historic Preservation Officer (SHPO) and the City of Santa Fe Archaeological Review Committee (ARC) pursuant to the above referenced preservation statutes and implementing regulations and have elected to develop and implement this Memorandum of Understanding (MOU or agreement, hereinafter); and

[10] WHEREAS, federally recognized tribes including Cochiti Pueblo, the Comanche Indian Tribe, the Hopi Tribal Council, Jemez Pueblo, Isleta Pueblo, Isleta del Sur Pueblo, the Jicarilla Apache Nation, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Navajo Nation Council, Nambe Pueblo, Picuris Pueblo, Pojoaque Pueblo, San Ildefonso Pueblo, San Juan Pueblo, Santa Clara Pueblo, Santo Domingo Pueblo, the Southern Ute Tribe, Taos Pueblo, Tesuque Pueblo, and the Ute Mountain Ute Tribe, that may have an interest in the Railyard redevelopment have been invited to consult on the project in anticipation of future federal funding; and

[11] WHEREAS, the character defining features of the Railyard are (1) its engineering features, including trackage, (2) the presence of an operating rail line, (3) the visual open corridor along the main rail line, (4) the inventory of railroad-related buildings and structures that are linear in form, modest in scale and constructed of simple utilitarian

materials, and (5) a southwest/northeast linear orientation that follows the rail line tracks and spurs; and

[12] WHEREAS, removal of remaining freight activities and realignment of the operational tracks is a necessary component of the Railyard redevelopment; and

[13] WHEREAS, a final plan for the realignment of the operational tracks is pending final survey of the parcels of land in the Railyard by Bohannon Huston, Inc. but has been planned to closely conform to the undated plan prepared for Santa Fe Southern Railway by Mountain States Contracting, 6813 W. Frier Drive, Glendale, Arizona 85302 (included as Attachment G of this agreement), and be similar to the plan shown in figures IV-20 through 24 of the Master Plan; and

[14] WHEREAS, the City needs to phase the redevelopment of the Railyard prior to the completion of all architectural and archaeological studies in the area of potential effect in order to responsibly meet its fiscal obligations to the citizens of Santa Fe; and

[15] WHEREAS, the Santa Fe Railyard Community Corporation (SFRCC), which will manage the redevelopment of the Railyard under contract to the City, has participated in development of this agreement, and has been invited to become a signatory to this agreement; and

[16] WHEREAS, The Trust for Public Land (TPL) holds a Conservation Easement on a portion of the Railyard (Attachment F to this agreement), will select a design for and may oversee and manage construction of the Railyard Park, Plaza and Alameda components of the Railyard redevelopment, has participated in development of this agreement, and has been invited to become a signatory to this agreement; and

[17] WHEREAS, the parties to this agreement acknowledge that the terms of the Conservation Easement account for the design of the Railyard Park, Plaza and Alameda, and, together with the Master Plan, shall be employed to govern the uses and purposes of the Railyard Park, Plaza and Alameda; and

[18] WHEREAS, illustrations, cross sections and plan views shown in Section VII of the Master Plan were developed as design examples and are not to be interpreted as specific design requirements.

NOW, THEREFORE, the City, SFRCC, TPL, SHPO and CPRC have reached a consensus in regard to the resolution of the effects of redevelopment on historic properties in the Railyard, and agree that the redevelopment shall proceed according to the following stipulations.

## Stipulations

The City shall ensure that the following stipulations are met as a condition of any grants or other funding agreements or authorizations to the City, the SFRCC, or to other current or subsequent parties to this agreement.

### I. Definitions

The following definitions apply throughout this document:

- a. "Area of Potential Effect" (APE) means the Railyard area as described in Chapter II, pages 4 through 7, of the *Santa Fe Railyard Master Plan and Design Guidelines*, as adopted by the City of Santa Fe, in February 2002 and finalized with printed amendments in May 2002.
- b. "Day" or "Days" means calendar days.
- c. "Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and material remains related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria.
- d. "Mission Revival" means the architectural style with identifying features that include Mission-shaped dormer or roof parapets; red tile roof coverings; widely overhanging eaves, open (usually) porch roofs supported by large, square piers, with (commonly) arches above; smooth, stucco wall faces, and additional variants and details as described in V. and L. McAlester, *A Field Guide to American Houses*, 1984: 409.
- e. "Open Space" means a ground area that permanently provides light and air, as well as satisfies, in whole or in part, visual, psychological, and recreational needs.
- f. "Parties" means all entities that are signatories to or concur in this agreement.
- g. "Pueblo Revival" means the architectural style with identifying features that include flat roofs surmounted by parapets; wall and roof parapets with irregular, rounded edges; projecting wooden roof beams (vigas) extending through walls; stucco wall surfaces that are usually earth-colored; and additional variants and details as described in V. and L. McAlester, *A Field Guide to American Houses*, 1984: 435.
- h. "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

- i. “Undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.
- j. “Use” means an adverse effect on a significant historic or prehistoric site or lands of that site, including but not limited to partial or complete physical alteration or destruction; isolation of the site from its historic setting; the introduction of physical, audible, visual or atmospheric elements that substantially impair the historic character or significance of the site or substantially diminish the aesthetic value of the site; or the acquisition or taking of a historic or prehistoric site resulting in or designed to result in such alteration, destruction, isolation or introduction of elements that may alter the site. Ordinary maintenance or repair, including code work, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; installation or upgrade of services, such as electricity and water, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; or emergency repair or stabilization of a significant site, shall not be considered a use within the scope of this definition.

## **II. Qualifications**

The City shall ensure that all architectural and archaeological studies are conducted under the supervision of personnel approved by the City according to guidelines established in Chapter 14 of City Ordinance 1987-40 and who meet professional standards under regulations developed by the Secretary of the Interior (Secretary); (attachment C to this agreement).

## **III. Identification of Historic Properties in the APE**

- a. In addition to the NR-eligible Santa Fe Railyard, the registered and eligible historic properties identified in the Master Plan, Chapter II, pages 10-11, are:
  - AT&SF Depot, 403 S. Guadalupe St., *Building A*, (SR 260, contributing resource) (SR 827, individually listed) (City of Santa Fe Landmark).
  - Gross Kelly Warehouse, *Building C* (SR 260, contributing resource) (City of Santa Fe Landmark).
  - Monte Vista Fuel and Feed, *Building 3, Baca Area* (NRHP eligible)
  - Nuckolls Packing Company, 236 Montezuma St., *Building D* (NRHP eligible).
  - Patton Building, 418 and 418 1/2 Montezuma St., *Building B* (NRHP eligible).

- Welders Supply Building, 1607 Paseo de Peralta, *Building E* (NRHP eligible).
- b. In order to establish baseline information, the City shall survey all buildings in the area of potential effect (APE) for the Railyard using the Historic & Cultural Properties Inventory (HCPI) system established by the SHPO within 90-days of its signing of this agreement.
  - c. The City shall resurvey all buildings in the APE for the Railyard within one year of the termination of this agreement on June 30, 2013 using the Historic & Cultural Properties Inventory (HCPI) system or variant of that system in use by SHPO at that time.
  - d. The parties shall identify archaeological sites through implementation of the testing plan presented in Chapter 6 of *Archaeological Resources of "La Otra Banda del Rio," City of Santa Fe Railroad Property*, by Cherie L. Scheick, Southwest Archaeological Consultants, Inc., Report No. SW 458b, January 14, 2003 (Attachment B of this agreement). For reasons of human health and safety, areas currently under environmental remediation for toxic waste contamination shall not require archaeological testing.
  - e. Because the Baca street development area, currently owned by TPL, was not included in Chapter 6 of *Archaeological Resources of "La Otra Banda del Rio," City of Santa Fe Railroad Property*, by Cherie L. Scheick, Southwest Archaeological Consultants, Inc., Report No. SW 458b, January 14, 2003 (Attachment B of this agreement) testing of the Baca Street Area will be implemented as below:
    1. The City will submit a report summarizing the results of archival research for the Baca Street Area to the City of Santa Fe Archaeological Review Committee (ARC) and SHPO for review and comment prior to implementation of the testing plan in the Baca Street Area. The period for ARC and SHPO review and comment shall be 30 days. Personnel conducting the archival research referenced above must be approved by the ARC and SHPO.
    2. The methods of excavation shall adhere to those outlined in the testing plan that is Attachment B.
    3. TPL shall not be responsible or liable for the preparation of said reports or the performance of any excavation on the Baca Street development area. The City shall provide to TPL a copy of any report prepared pertaining to the Baca street development area pursuant to this Agreement.
  - f. The City, in consultation with the ARC and SHPO, may amend the testing plan as necessary and these amendments shall be appended to Attachment B of this agreement. Should the City propose amendments to the testing plan,



the City shall consult with the ARC and SHPO regarding the proposed amendment. The ARC and SHPO must concur with the proposed amendment prior to the City's implementation of it. Disagreements regarding proposed amendments to the testing plan shall be resolved in accordance with Stipulation VIII of this agreement.

- g. The City shall ensure that a State Land Excavation Permit has been obtained prior to implementation of the testing program.
- h. Because the City needs to phase development of the Railyard, if archaeological sites are not encountered during archaeological testing of certain project development tracts, the City shall prepare a preliminary report of the testing results in those project development tracts and submit it to ARC and SHPO for review and comment. The period for ARC and SHPO review and comment shall be 30 days. ARC and SHPO will review the preliminary report to ensure that the minimum requirements for testing have been met. If the requirements have been met, and no additional testing or other work is needed, ARC and SHPO will concur that no further archaeological investigation is needed for those project development tracts and recommend development proceed based on adherence to the procedures for post review discoveries as outlined in Stipulation VI below.
- i. The City shall prepare a final report that describes the archaeological work, background research, testing results, whether positive or negative, for ARC and SHPO review and comment. If archaeological sites are encountered, the City shall consult with ARC and SHPO to determine their NRHP eligibility. The ARC and SHPO shall have 30 days in which to perform its review and comment and/or consult on NRHP eligibility.
- j. If the City, ARC and SHPO are unable to reach a consensus agreement about the eligibility of any site(s), SHPO shall request a formal determination of eligibility from the Secretary pursuant to 36 CFR part 63.
- k. Archaeological sites shall be recorded on Laboratory of Anthropology site records in accordance with the current version of the New Mexico Cultural Resource Inventory System (NMCRIS) Users Guide.
- l. Any historic acequias encountered shall be recorded as individual sites on HCPI forms (acequia version), and shall incorporate information available from the Acequia Madre Ditch Association.
- m. Should design changes in the layout of the Railyard redevelopment plan require subsurface disturbance in areas not covered by the testing plan and/or amendments to the plan, the City shall consult on a case-by-case basis with the ARC and SHPO about the need for additional archaeological testing.

- n. If human remains are exposed during construction they will be subject to the unmarked burial provisions of the Cultural Properties Act (18-6-11.2 NMSA 1978) and the implementing regulation (4.10.11 NMAC, Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico). If human remains are found during testing, data recovery, or in discovery, SFRCC shall ensure that all disturbance is halted, the remains are protected and the Santa Fe Police Department, the City, ARC and the SHPO are notified immediately. If the remains can be left in place without further disturbance, they will be left in place. If they cannot be left in place, they will be removed in the manner provided in the Unmarked Human Burial statute and regulation.
- o. The Trust for Public Land and the City of Santa Fe shall record the Conservation Easement with the County of Santa Fe within 120 days of their signing of this agreement and shall provide the signatories with copies of the recorded instrument.

#### **IV. Tribal Consultation**

- a. Consultations should occur with Native American tribal governments as part of the early planning efforts for proposed projects that may affect archaeological and/or traditional cultural properties. Examples include: ground disturbing activities, demolitions, or substantial alterations to structures or buildings.
- b. Consultation with Native American tribes is required whenever federal funding under Section 106 of the NHPA, as amended, occurs.
- c. In addition to consultation regarding archaeological sites and human remains based on the Railyard research design and post review discovery provisions of this agreement (Stipulations V and VII, respectively) as soon as the archaeological testing described in Stipulation III (d - e) above has been completed, the City shall provide copies of the written report(s) to tribes, and shall inform them of the results of the testing program. The tribes shall be invited to identify any concerns that they have about historic properties and shall be afforded a period of 30 days in which to provide comment to the City and SHPO. If the tribe should require additional time to provide comment, the tribe shall notify the City in writing of the requirement, and the City shall make all reasonable efforts to accommodate the timeframe required by the tribe to provide comment.



## **V. Resolution of Effects to Historic Properties in the APE**

The parties agree that:

### **a. Trackage**

1. The City shall incorporate unused trackage into the design of the Railyard redevelopment.
2. If railroad operations cease in the future, the City shall retain the existing trackage in place.

### **b. Freight operations**

1. The City shall encourage the continued inclusion of freight cars among the rolling stock used by the operators of passenger excursion trains in the Railyard.
2. The City shall incorporate interpretative signage and/or displays relating to historic freight operations in the Railyard redevelopment.
3. The City shall encourage the use of freight cars for water collection or other activities in the Railyard redevelopment.

### **c. Architecture and urban open space design**

1. The City will adhere to the design guidelines in sections VI and VII of the Master Plan and to the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) when approving demolitions, new construction and alterations to existing buildings and structures in the Railyard.
2. Proposed alterations to City of Santa Fe Landmark buildings (specifically, the AT&SF Depot and the Gross Kelly Warehouse) and any proposed new construction immediately adjacent to them will be subject to the established City of Santa Fe Historic Design Review Board process and procedures. The HDRB may request comment and review from SHPO concurrent with its own review process.
3. The designs for all proposed work, both new construction and alterations to existing building, not including the Landmark Buildings referenced above, will be submitted to SHPO to determine whether they meet the guidelines and the Secretary's Standards. The SHPO shall have 30 days to provide its review and comment.
4. If the proposed demolitions, designs for new construction and/or alterations to existing buildings are found by the SHPO to be in variance to the Master Plan and/or the Secretary of the Interior's Standards, the City, SFRCC and TPL shall meet with the SHPO within 10 days of the SHPO's determination regarding measures to avoid, minimize or mitigate the resulting adverse effect(s).

5. The City will document in writing the resolution of the adverse effect(s) and provide copies to the other signatories.
6. Approval by the City and SHPO of the design selected by TPL for the Railyard Park, Plaza and Alameda is their concurrence that the design is the product of public participation by the citizens of Santa Fe and the design competition that was finalized on 20 May 2002, and meets the provisions outlined by the Master Plan and by this document for the protection and retention of the historic character and significance of the Railyard and the aesthetic values of the site.
7. If the City, SFRCC, TPL and the SHPO are unable to agree on measures to resolve the adverse effects, the City shall follow the procedures outlined in Stipulation VIII for dispute resolution.

d. Recordation Prior to Demolition of Existing Buildings and Structures

1. Prior to the demolition of the Patton Building, the City shall ensure that it is documented to a standard commensurate with Historic American Building Survey/Historic American Engineering Records HABS/HAER level 3 documentation, including a sketched plan, large format interior and exterior archival black and white photography and the production of an HCPI form.
2. SFRCC shall ensure that the agreed upon level of recordation is completed and may, at its discretion and in consultation with the City, erect photo-interpretive signage at or near the former location of the Patton Building.
3. The City shall ensure that copies of all HABS/HAER equivalent records are submitted to the Zimmerman Library, University of New Mexico.
4. In the event the Zimmerman Library is unable to accept the records, they shall be deposited with the New Mexico State Archive or an alternate local, publicly accessible archival repository acceptable to SHPO.

e. Archaeological Sites

1. When the consultations about NRHP eligibility described in Stipulation III(i) above have been completed, the City shall prepare an archaeological research design for the Railyard that shall provide recommendations about appropriate treatment measures, including avoidance through redesign, incorporation into project design, additional testing, or data recovery for potentially affected sites. The research design also will contain a map showing the areas found to contain NRHP-eligible archaeological sites and areas slated for ground disturbance that could adversely affect NRHP-eligible archaeological sites. If data recovery is proposed, the research design also will include discussion of research questions or topics proposed, data

- needs, field work and laboratory work proposed, including analysis, and other discussion to address the Secretary's Standards and Guidelines for Archaeological Documentation.
2. No ground disturbance will be allowed in any project development parcel that contains properties eligible for listing to the National Register under Criterion D until the appropriate treatment has been implemented.
  3. The City shall submit the research design to ARC and SHPO and any tribes that have identified religious or cultural concerns about the site(s) for comment. ARC, SHPO and tribes shall have 30 days to comment; the City shall prepare a revised research design, taking into account the comments of ARC, SHPO and tribes.
  4. The City shall ensure that a mitigation plan based on the revised Railyard research design is prepared whenever NRHP-eligible archeological sites may be adversely affected. The mitigation plan shall follow the recommendations in the Railyard research design and, if involving archaeological documentation, the Secretary's Standards and Guidelines for Archaeological Documentation.
  5. The City shall ensure that a State Land Excavation permit has been obtained prior to any data recovery. The City shall ensure that all excavation, analysis and reporting required by the State Land Excavation permit are completed within the permit timeframe.
  6. The City shall update and refine the research design to reflect the results of data recovery conducted in the Railyard within 6 months of the completion of each data recovery phase, but not more often than annually. The City shall submit the updated research design to the ARC and SHPO and any tribes that have identified religious or cultural concerns about the archaeological sites for review and comment. The ARC, SHPO and tribes shall have 30 days to provide comments on the updated research design.
  7. Should the City propose to amend the final Railyard research design or a mitigation plan, the City shall consult with the ARC, SHPO and tribes as in V(e)(6), above regarding the proposed amendment. The SHPO must concur with the proposed amendment prior to the City's implementation of it. Disagreements regarding amendment shall be resolved in accordance with Stipulation VIII of this agreement.

## **VI. Post Review Discoveries**

- a. Should any previously unknown archaeological sites be encountered during construction, the City and SFRCC shall ensure that construction is halted and steps are taken to protect the archaeological property. SFRCC shall immediately inform the City, the ARC and SHPO. The City, ARC and SHPO shall consult within 48 hours and determine if the property meets the National Register criteria and whether any actions beyond recordation of the discovered materials are warranted. The City shall ensure that any archaeological

discoveries are included in the updated research design required by Stipulation V(e)(6) above.

- b. If human remains are exposed during construction they will be subject to the unmarked burial provisions of the Cultural Properties Act (18-6-11.2 NMSA 1978) and the implementing regulation (4.10.11 NMAC, Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico). If human remains are found during testing, data recovery, or in discovery, SFRCC shall ensure that all disturbance is halted, the remains are protected and the Santa Fe Police Department, the City, the ARC and SHPO are notified immediately. If the remains can be left in place without further disturbance, they will be left in place. If they cannot be left in place, they will be removed in the manner provided in the Unmarked Human Burial statute and regulation. Disagreements regarding the treatment, including removal and disposition of human remains, shall be resolved pursuant to Stipulation VIII of this agreement.

## **VII. Emergency Situations**

Should an emergency situation occur that represents an imminent threat to public health or safety, or creates a hazardous condition, or is the result of a disaster or emergency declared by the President, the Governor of New Mexico, or the Mayor of the City of Santa Fe, the City shall immediately notify the ARC and SHPO of the condition which has initiated the situation and the measures taken to respond to the emergency or hazardous condition. Should the ARC and/or SHPO desire to provide technical assistance to the City, they shall submit comments within 5 days from notification, if the nature of the emergency or hazardous condition allows for such coordination.

## **VIII. Dispute Resolution**

- a. Should the ARC, SHPO or any signatory or consulting party object within 30 days after notification of any determination made by the City under the provisions of this agreement, the City shall consult with the objecting party to resolve the objection. This includes objections regarding the City's recommendations of the APE, eligibility, use and/or adverse effect, and treatment.
- b. Should the City and the objecting party be unable to reach agreement within 30 days, the City shall request the opinion of the CPRC. The City shall take into consideration the decision of the CPRC and use its best efforts to implement the decision, or parts of it, of the CPRC.

**IX. Term of this Agreement**

- a. This agreement shall expire on June 30, 2013, unless all the parties agree that there is a need to extend the term.
- b. On December 31, 2012, the City shall notify the other parties of the impending expiration of this agreement.

**X. Failure to Comply with this Memorandum of Understanding**

In the event the City cannot carry out the terms of this agreement, they will comply with the above referenced preservation statutes and implementing regulations with regard to individual undertakings that are part of the Railyard redevelopment.

**XI. Amendment**

Any signatory to this agreement may request that it be amended, whereupon the signatories shall consult to reach a consensus on the proposed amendment. Where no consensus can be reached, the agreement shall not be amended.

**XII. Termination**

- a. Any signatory to this agreement may terminate it by providing 60 days written notice to the other parties, explaining the reasons for termination. The signatories and concurring parties will consult during the period prior to termination to seek agreement on amendments or other actions to avoid termination.
- b. In the event of termination, any components of the Railyard redevelopment already underway shall be completed according to the terms of this agreement. Subsequent to termination, the City shall comply with applicable provisions of the New Mexico Cultural Properties Act, and shall consult with SHPO pursuant to the additional preservation statutes and regulations referenced above.

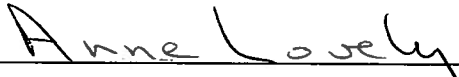
**XIII. Periodic Review**

Within two years after execution of this agreement, or no later than July 15, 2006, and every three years thereafter the City shall convene a meeting among the parties to review the progress of Railyard redevelopment and compliance with this agreement.

**XIV. Substitution of this MOU and Participation in a Programmatic Agreement by Federal Agencies**

If at any time a federal agency funds, assists, authorizes, approves, or otherwise proposes an action that meets the definition of an undertaking pursuant to the NHPA and 36 CFR 800.16(y) for the Railyard redevelopment or a component thereof during the life of this agreement, the federal agency may choose to meet its Section 106 obligations for that undertaking by requesting that this MOU be substituted with a Programmatic Agreement based on this MOU.

APPROVED AS TO FORM:

  
\_\_\_\_\_  
BRUCE THOMPSON, CITY ATTORNEY



Execution and implementation of this agreement and the implementation of its terms evidences that the City has afforded the SHPO an opportunity to comment on the effects of the redevelopment of the Railyard on historic and archaeological properties as defined herein, and that the City has taken into account the effects of the undertaking and/or use on these historic and archaeological properties.

**New Mexico State Historic Preservation Officer**

By: Katherine Slick  
Katherine Slick, SHPO

Date: 8/27/04

**New Mexico Cultural Properties Review Committee**

By: Estevan Rael-Gálvez  
Estevan Rael-Gálvez, Chairman

Date: 8/30/04

**Santa Fe Railyard Community Corporation**

By: Lleta Scoggins  
Lleta Scoggins, Executive Director

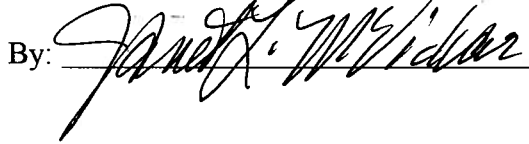
Date: 8/30/04

**The Trust for Public Land**

By:   
Sarae Leuckel, Regional Counsel

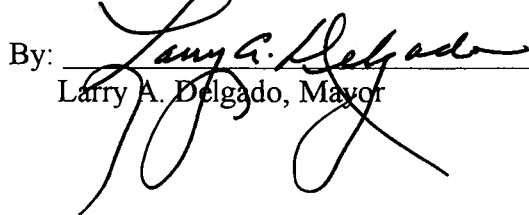
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**City of Santa Fe Archaeological Review Committee**

By: 

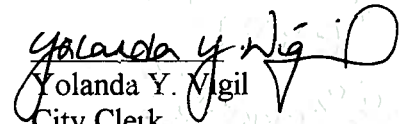
Date: 9/1/04

**City of Santa Fe**

By:   
Larry A. Delgado, Mayor

Date: 9.10.04

ATTEST:

  
Yolanda Y. Vigil  
City Clerk  
Attest. 9/8/04

## **List of Attachments**

Attachment A – Santa Fe Railyard Master Plan and Design Guidelines

Attachment B – Archaeology Testing Plan

Attachment C – City Ordinance 1987-40

Attachment D – Existing buildings and structures identified for demolition in the Master Plan:

- Wholesale Builders Supply Complex; demolition is recommended (but not including the small pueblo style building in the complex that is identified as Welders' Supply.
- Shed; demolition allowed but not required.
- Teen Warehouse 21; demolition is recommended.
- Ortiz Body Shop Complex; demolition is recommended.
- Patton Building; demolition is recommended.

Attachment E – Conservation Easement

Attachment F – Mountain States Engineering proposed realignment of the operation tracks for Santa Fe Southern.

**AMENDMENT No. 1 TO THE  
MEMORANDUM OF UNDERSTANDING**

THIS AMENDMENT No. 1 (the "Amendment") to the MEMORANDUM OF UNDERSTANDING, is dated September 10, 2004 (the "Agreement"), between the City of Santa Fe (the "City") and City of Santa Fe Archaeological Review Committee, The New Mexico State Historic Preservation Officer, New Mexico Cultural Properties Review Committee, The Santa Fe Railyard Community Corporation, and The Trust for Public Land.

**RECITALS**

A. The parties hereto entered into the Agreement on September 10, 2004 which sets forth among other terms provisions pertaining to archaeological investigations on the real property known as the Santa Fe Railyard and recordation requirements for the conservation easement to be placed across the Santa Fe Railyard property.

B. The parties have determined that it is prudent and necessary to amend the Agreement to clarify and modify a portion of the terms thereof and have agreed to enter into this Amendment for such purpose.

C. The terms of the Agreement allow for the amendment of its terms and the parties desire to enter into this Amendment in accordance therewith.

NOW THEREFORE, pursuant to Article XI of the Agreement, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. **Identification of Historic Properties in the APE:**

a. Article III, paragraphs "h" and "i" of the Agreement are amended so that

Article III, paragraphs "h" and "i" read as follows:

“h. The City may prepare a preliminary report of the testing results, submit it to ARC and SHPO for review and comment. The preliminary report shall include eligibility and effect determinations. The period for ARC and SHPO review and comment shall be 30 days. ARC and SHPO will review the preliminary report to ensure that the minimum requirements for testing have been met. If the requirements have been met, and no additional testing, data recovery or other work is needed, ARC and SHPO will concur that no further archaeological investigation is needed and recommend development proceed based on adherence to the procedures for post review discoveries as outlined in Stipulation VI below.”

“i. The City shall prepare a final report on the testing that describes the archaeological work, background research, testing results, eligibility and effect determinations, and general recommendations for treatment for ARC and SHPO review and comment. If archaeological sites are encountered, the City shall consult with ARC and SHPO to determine their NRHP eligibility. The ARC and SHPO shall have 30 days in which to perform its review and comment and/or consult on NRHP eligibility.”

b. Article III, sub-paragraph “o” of the Agreement is amended so that the words “120 days” are replaced with the words “240 days”.

c. Article V, sub-paragraphs “2” and “5” of paragraph “e” of the Agreement are amended so that Article V, sub-paragraphs “2” and “5” of paragraph “e” reads as follows:

“2. No ground disturbance of archaeological sites eligible for listing to the National Register shall be allowed by the City until all field work identified in the approved mitigation plan has been completed. The City shall notify ARC and SHPO when all field work has been completed and shall submit documentation for ARC and SHPO to confirm that the field portion of the approved mitigation plan at the site or group of sites has been completed. Upon written confirmation by ARC and SHPO, construction may proceed.”

“5. The City shall ensure that a State Land Excavation permit has been obtained prior to performing any data recovery. The City shall ensure that all excavation, analysis and reporting required by the ARC and State Land Excavation permit are completed within the established timeframe.”

## **2. Agreement in Full Force:**

Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Memorandum of Understanding as of the dates set forth below.

City of Santa Fe:

By: M. P. Lujan  
Mike P. Lujan, City Manager

Date: 4-28-05

Attest:

Yolanda Y. Vigil  
Yolanda Y. Vigil, City Clerk

Approved as to Form:

Bruce Thompson  
Bruce Thompson, City Attorney

New Mexico State Historic Preservation Officer

By: Katherine Slick Date: 16 March 2005  
Katherine Slick, SHPO

New Mexico Cultural Properties Review Committee


By: Estevan Rael-Gálvez Date: 3-16-05  
Estevan Rael-Gálvez, Chairman

Santa Fe Railyard Community Corporation

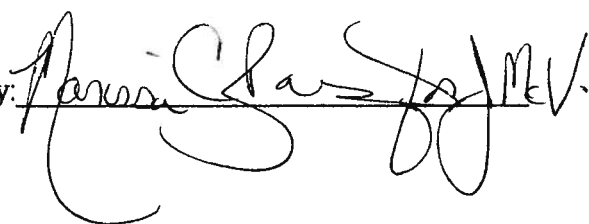
By: Leta Scoggins Date: 3-23-05  
Leta Scoggins, Executive Director



The Trust for Public Land

By:  Date: 3-16-05  
Sarae T. Leuckel, Regional Counsel

City of Santa Fe Archaeological Review Committee Date: 3.23.05

By: 

Irene/Agreement/Amendment - MOU-SF Railyard