



**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** ("Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **StarHawk Design & Services, LLC, dba TNT Pest Control Service**, a New Mexico corporation ("Contractor"), to be effective for all purposes April 10, 2024 ("Effective Date").

WHEREAS, the County Purchasing Officer determined in writing that the use of competitive sealed bidding was either not practical or not advantageous to County for procurement of the Services and County issued Request for Proposals No. 24-52 ("RFP") on February 1, 2024, requesting proposals for Gopher Control Services as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated February 21, 2024, ("Contractor's Response"); and

WHEREAS, based on the evaluation factors set out in the RFP, Contractor was the successful Offeror for the services listed in the RFP; and

WHEREAS, the County Council approved this Agreement at a public meeting held on April 9, 2024; and

WHEREAS, Contractor shall provide the Services, as described below, to County.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. SERVICES:

Contractor shall provide the following services for eradication of existing gophers and control of the gopher infestation on County owned and operated Parks & Recreation sites as identified in Exhibit B ("Services"). Contractor shall furnish all necessary skilled labor, materials, and equipment to provide Services. The Services provided shall be consistent with all safeguards and regulations applicable within Los Alamos County and the State of New Mexico and shall include, but not be limited to the following:

1. Initial Gopher Assessment

Within 10 business days of execution of this Agreement, Contractor shall conduct a thorough, initial assessment of the locations throughout County identified in Exhibit B, attached hereto and made a part hereof for all purposes. During the initial assessment Contractor shall identify the presence of gophers, species of gophers, level of gopher infestation, and onsite conditions that contribute to gopher infestation. Ongoing assessment of gopher control needs throughout the Term of this Agreement shall be addressed in the Gopher Control Plan schedule.

Contractor shall provide a written report to the County Project Manager, detailing the findings of the initial assessment, via email.

2. Gopher Control Plan

Prior to initiation of Services, and within fifteen (15) calendar days following the initial assessment, Contractor shall submit a written Gopher Control Plan, for the duration of the Term of this Agreement, to the Project Manager for County approval. The Gopher Control Plan shall consist of the following:

- a. A detailed plan for Contractor to address identified infestation, using mechanical traps, as quickly and effectively as possible, while safeguarding the welfare of all County residents, employees, and visitors, as well as any predators of gophers; Contractor's placement of traps shall be based on infestation level and as agreed upon in the plan.
- b. A detailed description of trapping methodology by site;
- c. A trapping and assessment schedule for each site (park, sports field, recreational area, cemetery, golf course and cultural site), as identified in Exhibit B. The schedule shall be mutually agreed upon by the Contractor and Project Manager; and
- d. Contractor's recommendations for adjustments to onsite practices that contribute to gopher infestation and to mitigate future infestations.

3. General

Upon County approval of the Gopher Control Plan, including the schedule, Contractor shall implement the plan. Contractor shall follow the County-approved Gopher Control Plan and schedule. Contractor shall provide mechanical traps and disposal of gophers in accordance all applicable laws and regulations. Once a site is deemed clear of gophers by Contractor, Contractor shall fill the holes and level the gopher mounds in order to mitigate trip and fall hazards.

4. Reporting

Contractor shall provide a monthly report to Project Manager, via email, containing details on quantity of traps placed and catch count by site. As part of the monthly report, Contractor shall email photos documenting the total gopher count and site location, with time stamp to Project Manager.

5. Structural Recommendations

Structural modifications for gopher control is the responsibility of County. However, during the Term of this Agreement, Contractor shall notify County Project Manager in writing of any structural modifications deemed necessary to abate infestation.

SECTION B. TERM: The term of this Agreement shall commence April 10, 2024, and shall continue through April 9, 2031, unless sooner terminated, as provided herein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) per year, which amount does not include applicable New Mexico gross receipts taxes ("NMGR"). Compensation shall be paid in accordance with the rate schedule set out in Exhibit A, attached hereto and made a part hereof for all purposes. Total compensation for the Term of this Agreement shall not exceed FIVE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$525,000.00) exclusive of NMGR.

- 2. Total Not-To-Exceed Compensation Amount.** The Parties understand that County can only utilize Contractor's Services, as specified herein, throughout the Term of this Agreement, in a manner that does not surpass the total not-to-exceed compensation amount for Services originally estimated by County and specified herein, unless approved by Amendment to this Agreement. Any increase to the not-to-exceed compensation amount provided herein must be authorized by an Amendment to this Agreement, which must be approved by County Council, if required by County Ordinance. It is the sole responsibility of Contractor to ensure that all work performed, inclusive of reimbursable expenses and optional or additional Services, does not exceed the current not-to-exceed amount of the Agreement or any subsequent Amendment. Any work performed under this Agreement by the Contractor where the costs exceed the then current not-to-exceed amount, inclusive of reimbursable costs and optional or additional Services, is not a just and lawful debt payable to Contractor
- 3. Monthly Invoices.** Contractor shall submit itemized monthly invoices for those months that Services are rendered as identified in the Gopher Control Plan, to County's Project Manager showing amount of compensation due, amount of any NMGRT, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

SECTION D. TAXES: Contractor shall be solely responsible for timely and correctly billing, collecting and remitting all NMGRT levied on the amounts payable under this Agreement.

SECTION E. STATUS OF CONTRACTOR, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and shall not be considered an employee of County for any purpose. Contractor, its agents, or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty, or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely, and reliable manner.

SECTION F. STANDARD OF PERFORMANCE: Contractor agrees and represents that it has and shall maintain the personnel, experience, and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described herein in accordance with a standard that meets the industry standard of care for performance of the Services.

SECTION G. DELIVERABLES AND USE OF DOCUMENTS: All deliverables required under this Agreement, including material, products, reports, policies, procedures, software improvements, databases, and any other products and processes, whether in written or electronic form, shall remain the exclusive property of and shall inure to the benefit of County as works for hire; Contractor shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition, Contractor may not, with regard to all work, work product, deliverables, or works for

hire required by this Agreement, apply for, in its name or otherwise, any copyright, patent, or other property right, and acknowledges that any such property right created or developed remains the exclusive right of County. Contractor shall not use deliverables in any manner for any other purpose without the express written consent of County.

SECTION H. EMPLOYEES AND SUB-CONTRACTORS: Contractor shall be solely responsible for payment of wages, salary, or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend, and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.

SECTION I. INSURANCE: Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay compensation for the Services, and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. County requires Certificates of Insurance, or other evidence acceptable to County, stating that Contractor has met its obligation to obtain and maintain insurance and to assure that subcontractors maintain like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

- 1. General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate.
- 2. Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
- 3. Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; ONE MILLION DOLLARS (\$1,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.

SECTION J. RECORDS: Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to County at any reasonable time upon request.

SECTION K. DUTY TO ABIDE: Contractor shall abide by all applicable federal, state, and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement.

SECTION L. NON-DISCRIMINATION: During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability, or veteran status.

SECTION M. CHOICE OF LAW: The interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

SECTION N. VENUE, FORUM NON-CONVENIENS, EXCLUSIVE STATE JURISDICTION: County and Contractor knowingly, voluntarily, intentionally, and irrevocably agree that any and all legal proceedings related to this Agreement, or to any rights or any relationship between the parties arising therefrom, shall be solely and exclusively initiated, filed, tried, and maintained in the First Judicial District Court of the State of New Mexico. County and Contractor each expressly and irrevocably waive any right otherwise provided by any applicable law to remove the matter to any other state or federal venue, consents to the jurisdiction of the First Judicial District Court of the State of New Mexico in any such legal proceeding, waives any objection it may have to the laying of the jurisdiction of any such legal proceeding. County and Contractor also agree that this term is a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this term with legal counsel.

SECTION O. WAIVER OF JURY TRIAL: In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement, County and Contractor KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVE ANY RIGHT TO A JURY TRIAL, and agree that a court shall determine and adjudicate all issues of law and fact with a jury trial being expressly waived. County and Contractor also agree that this waiver of a jury trial was a material inducement for each to enter this Agreement, and that both County and Contractor warrant and represent that each have had the opportunity to review this jury waiver with legal counsel.

SECTION P. INDEMNITY: Contractor shall indemnify, defend, and hold harmless County, its Council members, employees, agents, and representatives, from and against all liability, claims, demands, actions (legal or equitable), damages, losses, costs, or expenses, including attorney fees, of any kind or nature, to the extent that the liability, claims, demands, actions, damages, losses, costs, and expenses are caused by, or arise out of, the acts or omissions of the Contractor or Contractor's officers, employees, agents representatives, and subcontractors in the performance or breach of the Services under this Agreement.

SECTION Q. FORCE MAJEURE: Neither County nor Contractor 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.

SECTION R. NON-ASSIGNMENT: Contractor shall not assign this Agreement or any privileges or obligations herein, and shall not novate this Agreement to another without the prior written consent of the County Manager.

SECTION S. LICENSES: Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.

SECTION T. PROHIBITED INTERESTS: Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further agrees that it shall not employ any person having such an interest to perform services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept, or agree to accept, a gratuity or offer of employment contrary to Section 31-282 of the Los Alamos County Code.

SECTION U. TERMINATION:

- 1. Generally.** The County Manager may terminate this Agreement with or without cause upon ten (10) days prior written notice to Contractor. Upon such termination, Contractor shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Contractor shall render a final report of the Services performed to the date of termination, and shall turn over to County originals of all materials prepared pursuant to this Agreement.
- 2. Funding.** This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.

SECTION V. NOTICE: Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or three (3) days after deposit in the United States Mail:

County:

Emmanuel Abeyta
Incorporated County of Los Alamos
101 Camino Entrada, Building 5
Los Alamos, New Mexico 87544

Contractor:

Jesse Trujillo
StarHawk Design & Services, LLC
dba TNT Pest Control Services
10200 Corrales Rd NW, Suite E5A
Albuquerque, NM 87114

With a copy to:

County Attorney's Office
1000 Central Avenue, Suite 340
Los Alamos, New Mexico 87544

SECTION W. INVALIDITY OF PRIOR AGREEMENTS: This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the services described herein, and expresses the entire agreement and understanding between the parties with reference to said services. It cannot be modified or changed by any oral promise made by any person, officer, or employee, nor shall any written modification of it be binding on County until approved in writing by both authorized representatives of County and Contractor. In the event of any conflict between the terms, conditions, and provisions of this Agreement, and the terms, conditions and provisions of any exhibits or attachments, the terms, conditions and provisions of this Agreement shall control and take precedence.

SECTION X. NO IMPLIED WAIVERS: The failure of County to enforce any provision of this Agreement is not a waiver by County of the provisions, or of the right thereafter, to enforce any provision(s).

SECTION Y. SEVERABILITY: If any provision of this Agreement is held to be unenforceable for any reason: (i) such provision shall be reformed only to the extent necessary to make the intent of the language and purpose of the Agreement enforceable; and (ii) all other provisions of this Agreement shall remain in effect so long as the substantive purpose of the Agreement is possible.

SECTION Z. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form was submitted as part of the Contractor's Response and is incorporated herein by reference for all purposes.

SECTION AA. LEGAL RECOGNITION OF ELECTRONIC SIGNATURES: Pursuant to NMSA 1978 § 14-16-7, this Agreement may be signed by electronic signature.

SECTION AB. DUPLICATE ORIGINAL DOCUMENTS: This document may be executed in two (2) counterparts, each of which shall be deemed an original.

SECTION AC. NEGOTIATED TERMS: This Agreement reflects negotiated terms between the parties, and each party has participated in the preparation of this Agreement with the opportunity to be represented by counsel, such that neither party shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

By: _____
ANNE W. LAURENT **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

STARHAWK DESIGN & SERVICES, LLC DBA TNT
PEST CONTROL SERVICES, A NEW MEXICO
CORPORATION

By: _____
JESSE TRUJILLO **DATE**
PRESIDENT

Exhibit A
 Compensation Rate Schedule
 AGR24-52

Frequency of Services shall be identified in the Gopher Control Plan and mutually agreed upon by the Contractor and County Project Manager.

COST CATEGORY	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Fee per site	\$41.95	\$41.95	\$41.95	\$41.95	\$41.95	\$41.95	\$41.95
Fee per trap set	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.00
Fee per gopher caught	\$19.88	\$19.88	\$19.88	\$19.88	\$19.88	\$19.88	\$19.88

**Exhibit B
Site List
AGR24-52 Gopher Control Services**

The following represents a comprehensive list of sites that may need gopher control services. Contractor's Services will be based strictly on infestation of the sites. If no infestation exists, Contractor shall not provide its Services to the site.

	Address	Maintained Acres
Los Alamos		
Ashley Pond *	2300 Trinity Dr.	3.2
Barranca Mesa Park **	95 Loma Del Escolar St.	5.4
Brewer Rodeo Arena (North Mesa Stables) *	740 North Mesa Rd.	3
Community Soccer Field **	1670 Nectar St.	2.4
East Park *	300 East Rd.	4.3
Los Alamos Golf Course**	4244 Diamond Drive	80
Mesa Public Library Park *	2400 Central Avenue	2.6
North Mesa Picnic Grounds *	280 North Mesa Rd.	7.2
North Mesa Sports Complex (Soccer, baseball and softball fields)**	555 North Mesa Rd.	18
North Mesa Recreational/Dog Park *	215 North Mesa Rd.	5
North Mesa Soccer Field **	900 North Mesa Rd.	2.7
Urban Park *	2070 North Rd.	8.98
Western Park *	1160 40th St.	4
White Rock		
Grand Canyon Park *	113 Shirlane Place	1.7
Overlook Park (Soccer, baseball and softball fields) **	580 Overlook Rd.	21
Pinon Park *	10 Sherwood Blvd.	3
Rover Park *	2070 North Rd.	6.2

Gopher Control Schedule

* As needed

** Monthly during active season