



**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 **La Mesilla Arts LLC**, a New Mexico limited liability company ("Contractor"), to be effective for all purposes August 1, 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. 24-65 ("RFP") on March 17, 2024, requesting proposals for Management of Step Up Gallery at Mesa Public Library, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated April 9, 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 July 30, 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:

1. Contractor Services. Contractor shall provide management services for the Step Up Gallery at Mesa Public Library ("Gallery"), located on the north side of the 3rd floor of the Mesa Public Library as follows ("Services"):
 - a. Contractor shall establish a process for soliciting artists and for the development of exhibits ("Exhibits"), which shall include but is not limited to:
 - i. Use of the Gallery-specific website to collect applications to exhibit and to solicit additional exhibitors for both art Exhibits and educational Exhibits and to provide information to potential exhibitors about the gallery, including a description and a diagram of the Gallery's interior. Contractor shall maintain, update, and design the Gallery-specific website and cover all associated costs.
 - ii. Use of hard copy applications and information sheets which shall include the Gallery description and diagram, and shall be made available through the docent desk in the Gallery. Hard copy applications shall be accepted by Contractor by mail.

- iii. Develop a Call for Art (“CFA”) process to solicit art from possible exhibitors. Contractor shall develop and maintain lists of potential exhibitors.
 - iv. Solicit participation in group art shows for a portion of the Annual Exhibit Schedule.
- b. Contractor shall provide proper maintenance and upkeep of the Exhibit area, including Gallery walls and display furniture, and shall communicate major repair needs to the Library Manager or designee. Contractor shall coordinate with County staff (Library staff and Custodial staff) to ensure regular cleaning of the Exhibit area.
- c. Contractor shall develop the Annual Exhibit Schedule, scheduling eight (8) to ten (10) Exhibits in the Gallery each calendar year throughout the Term of this Agreement, including the Los Alamos Public Schools All Schools Student Art Show. Exhibits shall be scheduled as follows:
 - i. Contractor shall review all applications to exhibit by October 15th for each following calendar year and select Exhibits based on providing a variety of types of Exhibits including a variety of art medias, photographic, and educational Exhibits.
 - ii. A CFA group Exhibit may be scheduled. The CFA Exhibit may be based on a theme or focused on responses to a certain subset of possible exhibitors, including work of a variety of cultural or interest groups or those who are just entering the fields of art in need of practical experience;
 - iii. Contractor shall provide a preliminary list of recommended exhibitors with photographs of a representative body of the work or displays intended to exhibit to the Library Manager or designee for approval. Once approved, Contractor shall negotiate with recommended exhibitors to finalize a schedule of Exhibits that works to provide an exciting variety of Exhibits over the period of one (1) calendar year.
- d. Contractor shall make the Gallery available for the County Fair Indoor Exhibition annually, Contractor shall provide County access to the Gallery one (1) week before the County Fair & Rodeo and four (4) days after the conclusion of the County Fair & Rodeo.
- e. Once the Annual Exhibit Schedule has been approved by the Library Manager or designee, Contractor shall provide the final Annual Exhibit Schedule with all aspects of each show to the Library Manager or designee no later than December 1, each year throughout the Term of this Agreement. After December 1 of each year, any new Exhibits for the upcoming calendar year must be approved by the Library Manager or designee.
- f. Contractor shall maintain the Gallery calendar to prevent conflicts in installing and removing Exhibits, and scheduling receptions. The use of the Gallery is non-exclusive and may also be used for library activities and general study space.
- g. Contractor shall develop and utilize an Exhibitor’s Agreement, to assure exhibitor’s adherence to an agreed upon schedule prior to the publication of the final Annual Exhibit Schedule.
- h. Contractor shall ensure each accepted exhibitor application is complete and includes exhibitor’s signature on County’s release of liability forms. Contractor shall maintain signed County’s release of liability forms and provide to County upon request.

- i. Contractor shall provide liaison and coordination services to effectively support Exhibit events.
- j. Contractor shall work with exhibitors to hang and take down Exhibits in accordance with Library policies and the Gallery hanging systems provided by County.
- k. Contractor shall coordinate with exhibitors if artist chooses to schedule receptions, reserve space for receptions, and coordinate event with library staff.
- l. Contractor shall coordinate with exhibitors if artist chooses to schedule talks, record them and post to social media.
- m. Sale of artwork displayed in an Exhibit will be solely between the artist and the buyer with no commission retained by the County or by the Contractor.
- n. Contractor shall provide marketing and advertising services for the Gallery and Exhibits as follows:
 - i. Market Exhibits through press releases, and by creating and distributing flyers and posters.
 - ii. Publicize each Exhibit to the Los Alamos County Public Relations and Library divisions, Los Alamos Daily Post (as described below), Santa Fe New Mexican (as described below), social media and a variety of other media.
 - iii. Advertise in Pasatiempo Magazine, of the Santa Fe New Mexican once per year or if partnering with Exhibitor(s) twice per year.
 - iv. Advertise in the Los Alamos Daily Post once per year, at the beginning of the season with the final Annual Exhibit Schedule. If an advertising partner is available, two advertisements shall be placed annually.
 - v. Contractor is responsible for mounting County provided posters (as described below in County Services) on foam core or lamination as may be required.
 - vi. Contractor shall in the initial year of this Agreement purchase a Sandwich Board Sign to advertise Exhibits in the Library's Entrance. Signage for the board shall be updated for each of the eight (8) to ten (10) shows annually throughout the Term of the Agreement.
 - vii. Contractor shall provide and maintain all social media accounts associated with the Gallery.
- o. Contractor shall adhere to all library policies, contained in the Los Alamos County Library System Policies. Policies may be found at the following link: https://losalamos.ent.sirsi.net/custom/web/content/Library_Policies.pdf
- p. Contractor shall timely respond to inquiries regarding the Gallery, which may include, but are not limited to, phone calls, letters, emails from school groups, interested artists, and other potential exhibitors of various cultural exhibits who have an interest in exhibiting in the Gallery.
- q. Contractor may provide a docent to be present during Exhibits and receptions.
- r. When appropriate and requested by County, Contractor shall work with library staff to plan programs and events based on gallery Exhibits.

- s. Contractor shall provide County with a report within thirty (30) days after each Exhibit which describes the Exhibit and includes photos, details about the receptions or artist talks held, marketing activities, and attendance statistics.
 - t. Contractor shall ensure the Gallery is maintained in good condition.
 - i. Contractor shall coordinate with designated County staff to ensure patching and painting of Gallery walls is performed as needed.
 - ii. The library may require use of the Gallery for library sponsored exhibits or events, as needed. Library sponsored exhibits must be included in the process of developing each year's annual schedule of exhibits prior to December 1, or the prior year.
2. County Services.
- a. County shall provide space in the Gallery for a docent desk for Contractor.
 - b. County shall provide storage space for Contractor in the closet labeled "Storage", located next to the kitchen on the upper level at Mesa Public Library.
 - c. County shall maintain the built-in hanging system installed by County in the Gallery. County may purchase additional pieces of hanging hardware, budget permitting.
 - d. County shall grant to Contractor, and Contractor shall accept from County a, non-exclusive, revocable, nontransferable, non-assignable License for the use and management of the stepupgallery.org website and use of the Step Up Gallery name, solely for Contractor's business purposes in fulfillment of the terms of this Agreement through the Term of this Agreement. Contractor's rights to use the Licensed may be revoked if Contractor does not comply with the terms of this Agreement. Ownership of the website and name shall remain with County.
 - e. Except as provided in Sections A(1)(b) and (t) above, County shall be responsible for the upkeep, maintenance and repair of the Gallery. Condition issues shall be reported to the Facilities division by the Library Manager.
 - f. County shall provide printing services for two 24"x36" posters, for each Exhibit designed by Contractor for use in the library lobby, and outside of the Gallery area.
 - g. County shall provide internet access for Contractor to use in performance of duties within Mesa Public Library facility.
 - h. Budget permitting, County shall provide furnishings for the Gallery space including those used for display. All furnishings shall remain the property of the County.

SECTION B. TERM: The term of this Agreement shall commence August 1, 2024, and shall continue through July 31, 2028, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed for three (3) additional one-year periods, unless sooner terminated, as provided therein.

SECTION C. COMPENSATION:

1. **Amount of Compensation.** County shall pay compensation for performance of the Services in an amount not to exceed THREE HUNDRED TWENTY-FOUR THOUSAND SEVEN HUNDRED FIFTY-THREE AND NO/100 DOLLARS (\$324,753.00), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). 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.

2. Monthly Invoices. Contractor shall submit monthly invoices 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/County Utilities 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:
Library Manager
Incorporated County of Los Alamos
2400 Central Avenue
Los Alamos, New Mexico 87544

Contractor:
Diane Stoffel
La Mesilla Arts LLC
79 County Road 126
Espanola, New Mexico 87532

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

LA MESILLA ARTS LLC, A NEW MEXICO LIMITED LIABILITY COMPANY

BY: _____
DIANE STOFFEL **DATE**
PRINCIPAL

BY: _____
KATHERINE KORKOS **DATE**
PRINCIPAL

**Exhibit A
Compensation Rate Schedule
AGR24-65**

| Description | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 |
|-------------------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Annual Fee Total | \$43,318.00 | \$43,509.00 | \$44,815.00 | \$46,159.00 | \$47,543.00 | \$48,970.00 | \$50,439.00 |

Total Not to Exceed Amount

\$324,753.00

The annual fee shall be invoiced as twelve (12) equal monthly amounts.