



**INCORPORATED COUNTY OF LOS ALAMOS
SERVICES AGREEMENT**

This **SERVICES AGREEMENT** (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Sculpture Smart, LLC**, a New Mexico limited liability corporation ("Contractor"), to be effective for all purposes October 1, 2016.

WHEREAS, the County Purchasing Agent 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. 17-05 (the "RFP") on July 31, 2016, requesting proposals for Outdoor Sculpture Cleaning and Maintenance Services, as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated August 23, 2016 ("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 September 27, 2016; and

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

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

SECTION A. SERVICES: For each sculpture identified in Exhibit "A," attached hereto and made a part hereof for all purposes:

1. Contractor, shall twice per year (spring and fall) inspect and clean the surface of each sculpture, including fountains, for damage, indications of underlying structural damage, wear and tear, discoloration, cracks, chips, contaminants and mineral deposits present, evidence of vandalism, and the level of protective wax, lacquer and/or other protective coatings remaining on the sculpture.
 - a. If damage is found during the inspections and cleaning, Contractor will then document the current condition of the sculpture and note any damage, such as cracks, chips, discoloration, damage, decay, corrosion, vandalism, or other changes in the sculptures that need repair or attention to preserve the integrity and beauty of the sculpture.
 - b. This condition report shall recommend treatment and an estimated cost of restoration for any identified damage.
2. County has documented cleaning and maintenance protocols for the sculptures. Contractor shall update these existing documents and prepare additional cleaning and maintenance protocols for sculptures, as needed, for County review.

3. Contractor shall update the cleaning and maintenance protocols for the outdoor fountains including instructions and guidelines for cleaning algae and mineral deposits from the fountains, as needed, for County review.
4. Contractor shall provide trained, qualified, and experienced personnel, plus all necessary tools and supplies, to bi-annually (spring and fall) clean and seal the sculptures with an appropriate protective sealant, such as wax, lacquer, or other coatings, as described and required by the cleaning and maintenance protocols.
5. Contractor shall provide trained, qualified, and experienced personnel, plus all necessary tools and supplies, to clean and remove mineral deposits from the fountains prior to May 31 and October 31 of each year. Contractor shall coordinate its cleaning schedule with the County's plans to "winterize" the outdoor fountains (usually in October each year) and the County's plans to prepare the fountains for warm weather (usually in May each year).
6. Contractor shall maintain cleaning and maintenance records for each sculpture and fountain which will indicate the cleaning date, the materials used, the type of protective coatings applied, and the location of any damage, such as guano, scratches, vandalism, graffiti, surface deterioration, corrosion, and any other information that is relevant to the permanent record for each sculpture.
7. Upon County's request, Contractor shall perform needed repairs to the sculptures on a task-order basis.
8. In addition to the routine cleaning, maintenance, and other conservation Services described above, upon County's request, Contractor shall serve as an experienced sculpture consultant on a task-order basis and shall be paid an hourly rate for this service. The types of consulting services may be, but are not limited to:
 - a. Serve as an advisor to the Los Alamos Art in Public Places Board in regards to the appropriate placement of outdoor sculptures;
 - b. Work with artists to understand the care and maintenance protocols and incorporate the new sculptures into the sculpture maintenance protocols as they are added to the collection; and
 - c. Advise, instruct, and train County personnel regarding needed repairs/restoration for the sculptures.

SECTION B. TERM: The term of this Agreement shall commence October 1, 2016 and shall continue through September 30, 2020, with the option to renew for one (1) additional year at County's sole option under the same terms and conditions, 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 SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), including any possible extensions and 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 "B," attached hereto and made a part hereof for all purposes.
2. **Monthly Invoices.** Contractor shall submit itemized 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. All disputes related to performance and payment shall be governed by the County's Procurement Code, Chapter 31.

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 will 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 the 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 he has and will 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 exceeds 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 the 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 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 will 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) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) 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; TWO MILLION DOLLARS (\$2,000,000.00) 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. APPLICABLE LAW: 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. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern. Venue shall be in the First Judicial District Court of New Mexico in Los Alamos County, New Mexico.

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. INDEMNITY: Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation attorneys' fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof and the performance of Contractor's employees, agents, representatives and subcontractors.

SECTION N. 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 O. NON-ASSIGNMENT: Contractor may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

SECTION P. 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 Q. 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 will 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 R. TERMINATION:

- 1. Generally.** County 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 the 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 S. 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:

Senior Management Analyst
Incorporated County of Los Alamos
1000 Central Avenue, Suite 310
Los Alamos, New Mexico 87544

Contractor:

Joseph W. Lindsay, Owner
Sculpture Smart, LLC
Post Office Box 24303
Santa Fe, New Mexico 87502

SECTION T. 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 County and Contractor.

SECTION U. 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. This Section acknowledges compliance with Chapter 81 of the Laws of 2006 of the State of New Mexico.

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

SHARON STOVER
COUNTY CLERK

BY: _____ **DATE**
HARRY BURGESS
COUNTY MANAGER

Approved as to form:

KATHRYN S. THWAITS
ACTING COUNTY ATTORNEY

**SCULPTURE SMART, LLC, A NEW MEXICO LIMITED
LIABILITY CORPORATION**

BY: _____ **DATE**
JOSEPH W. LINDSAY, OWNER

ATTACHMENT A

Exhibit "A"
AGR17-05
 Artist/Medium Description

	Title	Artist	Size	Description	Medium	Price/Value	Acquisition	Location
1	"Apache Harvest"	Craig Goseyun	5' 6" X 2' 3"	Sculpture - Apache maiden	Bronze	\$22,400.00	1993	Ashley Pond
2	"Brown Trout"	Joe Barrington	6' x 12' x 1'	sculpture - large fish	Rusted Steel	\$5,000.00	2000	Ashley Pond
3	"Corky"	Madeleine Vanderpool	5' x 4' x 2'	sculpture - colt	Bronze	\$20,000.00	1993	Ashley Pond
4	"Essence of Dance"	Bruce Niemi	12' x 6' x 6'	sculpture - abstract	Stainless Steel	\$20,400.00	1997	Library - Outside
5	"Flying Folds"	Kevin Box	10 ft high	sculpture - folded origami crane	Powder-coated Steel	\$96,000.00	2015	White Rock Branch Library -- outside
6	"Golondrina"	Michael Masse	36" x 12" x 30"	sculpture - female swimmer	Bronze	\$15,000.00	2001	Aquatic Center
7	"Grandmother's Joy"	Fritz White	5'6" x 20" x 36"	sculpture - woman and child	Bronze, Green Patina	\$20,500.00	1998	Senior Center - Outdoors
8	"Lucky"	Jim Agius	5' x 5' x 3'	Sculpture -- small elephant	Bronze	\$16,000.00	1998	Ashley Pond
9	"Nexus"	Lyle London - Art in Metal, USA, LLC	18' high	sculpture - abstract	Aluminum w/ a Chrome/Alusion Paint Coating (automobile grade paint)	\$60,400.00	2007	Los Alamos Golf Course
10	"Pollyanna"	Glenna Goodacre	5' x 2'	sculpture - young girl	Bronze	unknown	2003	Library - Outside

ATTACHMENT A

11	"Spirit Dance"	Sally Hepler	21" x 36" x 26"	sculpture - abstract	Bronze	unknown	2002	Ashley Pond
12	"Strange Trio"	Tom C. Hicks	25' x 20'	sculpture - three pieces	Rusted Steel	\$45,500.00	1993	Entrance to Overlook Park (WR)
13	"Touch the Sky"	Jane DeDecker	108" x 60" x 60"	sculpture	Bronze	\$44,000.00	2000	Ashley Pond
14	"Tranquility"	O. K. Harris		sculpture	Rusted Metal	\$5,525.00	2000	in Ashley Pond
15	"Who Me?"	Jinkie Hughes	28" x 36' x 24"	sculpture - penguin and egg	Bronze, Green Patina	\$6,400.00	1993.1	White Rock Municipal Complex
16	"Scales of Justice"	Troy Williams	8' x 15' x 2'	sculpture - scale with 12 life size people	Rusted Steel	\$70,000.00	2012	Justice Center -- north side
17	"Sculptural Barriers"	Stone Forest	3,500 lbs.	Green Granite (2) Boulders	Green Granite	\$2500 ea.	2008	Entrance to Sullivan Field
18	"Overdue"	Jane DeDecker	30" x 6' x 6'	Sculpture children in a wagon	Bronze	\$6,834.00	1996	Library - Outside
19	"J. Robert Oppenheimer"	Susanne Vertel		Lifesize Sculpture	Bronze	\$60,000.00	2010	Fuller Lodge - Outside
20	"General Leslie R. Groves"	Susanne Vertel		Lifesize Sculpture	Bronze	\$65,000.00	2011	Fuller Lodge - Outside
21	"High Spirits"	Archie Held	30" x 30" x 120"	Sculptural fountain	Bronze	\$42,000.00	2009	WR Fire Station – East Entrance
22	"Pedestal Fountain"	Hans Van de Bovenkamps	29"H x 23" W x 29" Diameter	Sculptural fountain	Copper and Stone	\$7,050.00	2001	Fuller Lodge – Rose Garden
23	"Maru Fountain"	Brian Cambria/Stone Forest	27" h x 48" Diameter	Sculptural fountain	Granite	\$6,425.00	2009	Skate Park at Mesa Public Library

ATTACHMENT A

24	"Canyon Watch"	Kent Ulberg	72"x35"x61"	Mountain Lion Sculpture	Bronze	\$42,300.00	2006	North Mesa/Barranca Roundabout
25	"The Clowns"	Susan Dailey	5'x12'	Wall Mural in Mosaic Tile	Ceramic and Stucco	\$55,000.00	2001	Mesa Public Library - Outside near Central Avenue
26	"Odetta"	K.R. "Cricket" Ernst	9' x 8' with 77" x 52" Side Panels	Cast Aluminum Gate	Cast Aluminum	\$15,000.00	2007	Mesa Public Library - Outside Steps
27	Lizard and Frogs	Richard Swenson	7' lizard ; 2' frog and 3' frog	Metal Sculptures	Recycled Metal Parts	\$6,000.00	2015	On the Water Tank at the WR Visitor's Center
28	"The Runaways"	Carrie Quade	varying sizes 14" to 22" with life size puppy on the ground	Rooftop Sculptures	Bronze	\$20,000.00	2013	Roof of the Los Alamos Animal Shelter
29-31	Wind Sculptures (3)	Lyman Whitaker	28', 21' and 16' high	Wind Sculptures	Copper and Stainless Steel	\$20,000.00	2014	White Rock Visitors' Center
32-37	Pottery Replicas (6)	San Ildefonso Artists	5 pots – various sizes 5' to 8' high; plate is 10' in diameter	5 concrete pot replicas plus one plate	Painted Concrete	\$60,000.00	2016	Hwy 4 Corridor in White Rock
38	"Solar Tree"	Eric Thelander	18' high by 12' diameter plus two tables and one bench	free standing solar powered tree	Painted Aluminum	\$102,600.00	2016	West Plaza of the Los Alamos Municipal Building
39	"Flower of Flight"	Greg Reiche	6' curved stones (2) with rusted steel and glass curtain hanging above	sculpture designed to interact with rain water	Stone, Welded Rusted Steel and Glass Squares	\$50,000.00	2015	Front Entry to the Los Alamos Nature Center

Exhibit "B"
COST SUMMARY SHEET
AGR17-05

COST CATEGORY	Year 1 10/1/16 to 9/30/17	Year 2 10/1/17 to 9/30/18	Year 3 10/1/18 to 9/30/19	Year 4 10/1/19 to 9/30/20	Year 5 10/1/20 to 9/30/21
Maintenance	\$7,600.00	\$7,800.00	\$8,000.00	\$8,200.00	\$8,400.00
Restoration (Upon County Approval)	\$5,000.00	\$5,400.00	\$5,600.00	\$5,600.00	\$5,600.00
Consultation (Section A(8))	\$75.00 per hour – not to exceed \$1,500.00	\$75.00 per hour – not to exceed \$1,500.00	\$80.00 per hour – not to exceed \$1,600.00	\$80.00 per hour - not to exceed \$1,600.00	\$80.00 per hour - not to exceed \$1,600.00
Total compensation per contract year	\$14,100.00	\$14,700.00	\$15,200.00	\$15,400.00	\$15,600.00