



**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 **Renewance, Inc.**, an Illinois corporation ("Contractor"), collectively (the "Parties"), to be effective for all purposes December 18, 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. 25-13 ("RFP") on October 3, 2024, requesting proposals for the removal and proper disposition of one (1) NGK one (1) megawatt, six (6) megawatt-hour sodium sulfur battery system at the Los Alamos County Eco Station (the "Project"), located at 3701 East Jemez Road, Los Alamos, New Mexico 87544 ("Site"); and as described in the RFP; and

WHEREAS, Contractor timely responded to the RFP by submitting a response dated November 1, 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 Board of Public Utilities approved this Agreement at a public meeting held on December 4, 2024; and

WHEREAS, the County Council approved this Agreement at a public meeting held on December 17, 2024; and

WHEREAS, Contractor shall 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: Contractor shall remove, properly package, transport and dispose of all sodium sulfur battery modules contained in one (1) NGK one (1) megawatt, six (6) megawatt-hour sodium sulfur battery system at the Los Alamos County Eco Station, and provide the following services and deliverables:

1. **Project Initiation:** Contractor shall, within ten (10) business days from the Effective Date of this Agreement, schedule a kick-off meeting with County's designated Department of Public Utilities staff ("Project Team") at a date, time, and format to be agreed upon by both Parties.
 - a. As part of the kick-off meeting, the Parties shall, at a minimum:
 - i. Establish a mutually agreed upon Project Schedule to accomplish key tasks and durations for each task to complete the Project, with all tasks to be completed no later than June 30, 2025. Within ten (10) business days of the kick-off meeting, Contractor shall provide to the County Project Manager a written Project Plan and Schedule for County Project Manager approval. The

Project Plan and Schedule may be adjusted throughout the Project upon mutual written agreement of Parties.

- ii. Review the scope of work and identify any Project issues to be addressed in the course of the Project.
- iii. Establish communication protocols, meeting frequency, and meeting format, with meetings occurring either in-person or online in a virtual format.
- iv. Identify document format and data transfer methods between Contractor and Project Team related to the performance of the Agreement.

2. Contractor Services.

- a. Contractor shall provide all labor, tools, equipment, materials, and permitting needed to disassemble and remove the sodium sulfur battery modules from the system.
- b. Contractor is responsible for providing all electrical power needed to accomplish the project, external power source is required.
- c. Prior to initiation of the removal of the sodium sulfur battery modules, Contractor shall be responsible for testing and otherwise verifying that the battery system is in a safe condition for removal activities.
- d. Contractor shall perform the services related to the Project during normal operating hours of the Site, which are between 08:00 and 16:15 hours Mountain Time, seven (7) days per week, excluding holidays.
- e. Contractor shall properly package and transport the battery modules, to certified recycling or disposal center(s) for disposal, while complying with all applicable international, federal, state, and local requirements for the transportation of sodium sulfur batteries and for the disposal of sodium sulfur batteries.
- f. Contractor shall obtain from the certified recycling center(s) proof of transfer of the batteries to the recycling center.
- g. County will de-energize the utility service equipment connected to the battery system prior to initiation of work by Contractor.
- h. Any work involving disconnecting or switching off electrical service to a work area shall utilize LOCKOUT/TAGOUT identification practices.
- i. Safety shall be Contractor's main concern. Contractor shall comply with and enforce on Site all local, state, and federal laws governing safety, health, and sanitation. County may periodically inspect Contractor's compliance and enforcement of such laws. Contractor, not County, shall be responsible for any fines set forth for such violations of codes, Occupational Safety and Health Act (OSHA) standards, or any other governing agency having jurisdiction at the Site. Contractor shall provide all needed safeguards, safety devices and protective equipment. Contractor shall take all actions necessary to protect the life and health of its employees at the Site, protect the safety of County employees working in the area of the Site, protect the safety of the public, and protect the property of County in connection with the performance of the Services under this Agreement.

2. Deliverables.

- a. Contractor shall provide County with proof of proper disposal of the removed sodium sulfur battery modules in accordance with applicable rules and regulations for the disposal of hazardous waste and sodium sulfur batteries. Evidence of proper disposal of the batteries shall be provided within forty-five (45) days of the date of departure from County property. Contractor shall provide documentation of the inventory of materials removed and proof of proper disposal or disposition, detailing method and date of disposition, and location of disposition (facility name, location, contact information) signed by the receiving party and Contractor.

- b. Two (2) disposal options are available as identified in Exhibit A, Contractor shall attempt to provide disposition with the least costly option providing that the project including final invoicing shall be completed no later than June 30, 2025.

SECTION B. TERM: The term of this Agreement shall commence December 18, 2024 and shall continue through June 30, 2025, unless sooner terminated, as provided herein. At County's sole option, the **County Utilities Manager** may renew this Agreement for up to one (1) consecutive one-year period, 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 NINE HUNDRED FORTY-FIVE THOUSAND TWO HUNDRED FORTY AND NO/100 DOLLARS (\$945,240.00), 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.
2. **Invoices.** Contractor shall submit itemized invoices to County's Project Manager at the completion of the milestones, as identified in Exhibit A, showing amount of compensation due, amount of any NMGR, 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 NMGR 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, Automobile Liability Insurance, and Pollution Liability Insurance shall name County as an additional insured.

1. **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) 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.
4. **Pollution Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) aggregate. Pollution Liability Insurance shall provide coverage for Services provided during the term of this Agreement and for a period of at least five (5) years thereafter.

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; provided, however, that the Party failing to perform shall (i) as soon as possible, inform the other Party of the occurrence of the circumstances preventing or delaying the performance of its obligations, and describe at a reasonable level of detail the circumstances causing such delay, and (ii) exert reasonable efforts to eliminate, cure, or overcome any of such causes and to resume performance of its Services with all possible speed. In such event, the non-performing Party may be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay.

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 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 Utilities 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: Unless otherwise provided in this Agreement, any notices required under this Agreement shall be made in writing. Notices shall be sent via 1) hand-delivery; 2) registered or certified mail; 3) a nationally recognized overnight courier service; or 4) electronic mail (with copy by mail or courier). All notices shall be sent to each party at the addresses set out in this section or any address later provided by such party in writing, with postage prepaid by the sender, and shall be deemed delivered upon hand delivery, verified proof of delivery by courier, or three (3) days after deposit in the United States Mail.

County:

Deputy Utilities Manager Electric Production
Incorporated County of Los Alamos
1000 Central Avenue, Suite 130
Los Alamos, New Mexico 87544
E-mail: ben.olbrich@lacnm.us

Contractor:

Thomas Newhall, Chief Operating Officer
Renewance, Inc.
1900 E Golf Road, Suite 950
Schaumburg, Illinois 60173

With a copy to:

County Attorney's Office
1000 Central Avenue, Suite 340

Los Alamos, New Mexico 87544

E-mail: ~attorney@lacnm.us

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.

SECTION AD. CONFIDENTIAL INFORMATION: Any confidential information of one party that is provided to the other party during the term of this Agreement shall be kept confidential and shall not be made available to any individual or organization in accordance with the Confidential Information Disclosure Statement in Exhibit B. The Confidential Information Disclosure Statement shall be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.

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: _____ **DATE**
PHILO S. SHELTON, III P.E.
UTILITIES MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

RENEWANCE, INC, AN ILLINOIS CORPORATION

BY: _____ **DATE**
THOMAS NEWHALL
CHIEF OPERATING OFFICER

**Exhibit A
Compensation Rate Schedule
AGR25-13**

Key Tasks – Domestic Disposition of Sodium Sulfur Battery Modules	Price
Project management, Onsite labor, Per diem (Hotels, meals, Rental Cars).	\$ 42,026.00
Equipment rental (Telehandlers, Manlift), Tools & Battery packaging materials.	\$ 22,136.00
Battery Transportation. 5 trucks, Class 4.3, Fully regulated hazardous material with hazmat endorsement on CDL	\$ 45,078.00
Recycling of battery modules <u>20 modules at 3400 kg (7480 Pounds)</u>	\$ 792,000.00
Subtotal	\$ 901,240.00
*Additional sodium sulfur battery cell weight contingency.	\$44,000.00
Total Not-to-Exceed Amount	\$945,240.00

Key Tasks – Recycling of Sodium Sulfur Battery Modules in Japan	Price
Project management, Onsite labor, Per diem (Hotels, meals, Rental Cars).	\$ 51,476.00
Equipment rental (Telehandlers, Manlift), Tools & Battery packaging materials.	\$ 29,636.00
Battery Transportation (Road transportation to Port of Long Beach & Ocean transport to port in Japan) 5 trucks, Class 4.3, Fully regulated hazardous material with hazmat endorsement on CDL	\$ 89,790.00
Recycling of battery modules <u>20 modules at 3400 kg (7480 Pounds)</u>	\$ 371,667.00
Subtotal	\$ 542,569.00
*Additional sodium sulfur battery cell weight contingency.	\$44,000.00
Total Not-to-Exceed Amount	\$586,569.00

*There are two versions of the sodium sulfur battery modules – one with 320 cells and another with 352 cells. The RFP indicated that there are 320 cells in each module so Contractor provided pricing based on a weight of 3400 kg/7480 lbs per module based on Contractors prior experience with these battery module systems. If the module weight is greater than 7480 lbs then there will be an additional charge of \$5/lb for the additional weight.

Contractor and County shall pursue the recycling of sodium sulfur battery modules in Japan until under the assumption that the project can be completed by the June 30, 2025 completion date. Should it become apparent that this option is not achievable within the required completion timeline, Contractor shall pursue the Domestic disposition option with final completion and billing occurring no later than June 30, 2025.

The following payment milestones shall apply to the Project:

Milestone	Milestone Payment
Acceptance by County of the Project Schedule following Project Initiation Meeting	15%
Battery modules removed from site	75%
Batteries recycled/disposed of and Final Documentation Submitted (No later than June 30, 2025)	10%