



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 **RTDavis Artist, LLC**, a domestic limited liability company ("Artist"), to be effective for all purposes December 20, 2021 ("Effective Date").

WHEREAS, On August 31, 2011, Artist created, delivered, and installed "The Industrial Machine" ("Sculpture"), as shown in Exhibit "A", commissioned by County, to the Eco-Station Facility located at 3701 East Jemez Road; and

WHEREAS, the maintenance and repair for this Sculpture was not included in the County's prior contract for sculpture maintenance because of its unique nature and location; and

WHEREAS, the County and Artist wish to enter into a multiple-year contract for the maintenance and repair of this unique Sculpture ("Services"), which consists of gears, wheels and pulleys, lights, and a solar powered motor ("Components"); and

WHEREAS, procurement of the Services was made in accordance with small purchase procedures in Section 31-103 of the Los Alamos County Procurement Code; and

WHEREAS, Artist 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 Artist agree as follows:

SECTION A. SERVICES: Artist shall keep the Sculpture in good working order. Every three (3) years, or more frequently if needed and approved by County, starting within thirty (30) days of the Effective Date, Artist shall:

1. Inspect and maintain the Sculpture and Components;
2. Clean the Sculpture and the components, which shall include but not be limited to:
 - a. Repainting and/or replacing parts; and
 - b. Lubricate the moving components.
3. Contact the Art in Public Places (APP) Board staff liaison, prior to performing any services, to propose dates and times for services. The APP staff liaison shall coordinate with the County Environmental Services Department to ensure the proposed schedule is acceptable and shall contact the Artist to authorize work in writing via e-mail.

SECTION B. TERM: The term of this Agreement shall commence December 20, 2021 and shall continue through December 19, 2027, unless sooner terminated, as provided herein. At County's sole option the Agreement may be renewed 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 TEN THOUSAND DOLLARS (\$10,000.00), which amount does not include applicable New Mexico gross receipts taxes ("NMGRT"). Compensation shall be paid in accordance with the rate schedule below.

High-Lift Rental	Actual cost	Lowest rate the artist can obtain for a max. 2-day rental which shall not exceed \$2,500
Labor	\$60.00 / hour	Not to exceed \$1,440 per 3-year period without prior written consent from County
Parts	Actual cost	Not to exceed \$600 per 3-year period, without prior written consent from County
Supplies	Actual cost	Not to exceed \$250 per 3-year period, without prior written consent from County

2. **Invoices.** Upon completion of work, Artist shall submit itemized invoices, with narrative and photo documentation of the work completed, to County's APP staff liaison 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: The Artist 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 ARTIST, STAFF, AND PERSONNEL: This Agreement calls for the performance of services by Artist as an independent contractor. Artist is not an agent or employee of County and shall not be considered an employee of County for any purpose. Artist, 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 Artist nor any employee of Artist shall be entitled to any benefits or compensation other than the compensation specified herein. Artist shall have no authority to bind County to any agreement, contract, duty or obligation. Artist shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Artist 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 Artist 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: Artist agrees and represents that it has and shall maintain the personnel, experience and knowledge necessary to qualify him for the particular duties to be performed under this Agreement. Artist 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; Artist shall not use, sell, disclose, or obtain any other compensation for such works for hire. In addition,

Artist may not, with regard to all work, work product, deliverables or works for hire required by this Agreement, apply for, in his 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. Artist shall not use deliverables in any manner for any other purpose without the express written consent of County.

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

SECTION I. INSURANCE: Artist 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. Artist 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 Artist shall not provide any Services under this Agreement unless and until Artist has met the requirements of this Section. County requires Certificates of Insurance or other evidence acceptable to County that Artist 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 for Bodily Injury and Property Damage, including Contractual Liability, Personal injury, Products and Completed Operations. Artist shall obtain such insurance prior to engaging in work at the site.
2. **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Artist fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
3. **Automobile Liability Insurance for Artist and its Employees:** An amount at least equal to the minimum required by state law on any owned, and/or non-owned motor vehicles used in performing Services under this agreement.

SECTION J. RECORDS: Artist 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. Artist 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: Artist 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, Artist 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, Artist shall not discriminate against any employee or applicant for an employment position to be used in the

performance of the obligations of Artist 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: Artist 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 Artist's performance hereunder or breach hereof and the performance of Artist's employees, agents, representatives and subcontractors.

SECTION N. FORCE MAJEURE: Neither County nor Artist 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: Artist may not assign this Agreement or any privileges or obligations herein without the prior written consent of County.

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

SECTION Q. PROHIBITED INTERESTS: Artist 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. Artist 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 R. TERMINATION:

1. **Generally.** County may terminate this Agreement with or without cause upon ten (10) days prior written notice to Artist. Upon such termination, Artist shall be paid for Services actually completed to the satisfaction of County at the rate set out in Section C. Artist 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 Artist 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:
Art in Public Places Staff Liaison

Artist:
Robert Davis, Artist

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

36 Private Drive 1342
Española, NM 87532

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 Artist.

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

SECTION V. 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 enforceable; and (ii) all other provisions of this Agreement shall remain in effect.

SECTION W. CAMPAIGN CONTRIBUTION DISCLOSURE FORM: A Campaign Contribution Disclosure Form is attached as Exhibit "B." Artist must submit this form with this Agreement, if applicable.

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

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

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: _____
STEVEN LYNNE
COUNTY MANAGER **DATE**

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

RTDAVIS ARTIST, LLC

By: _____

ROBERT DAVIS
TITLE: _____

DATE

Exhibit "A"
AGR22-925

"Industrial Machine", by Robert Davis, Located at the Los Alamos County Eco Station



Exhibit "B"
CAMPAIGN CONTRIBUTION DISCLOSURE FORM
AGR22-925

Any prospective contractor seeking to enter into a contract with the Incorporated County of Los Alamos must file this form disclosing whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official during the two (2) years prior to the date on which prospective contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date prospective contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds TWO HUNDRED FIFTY DOLLARS (\$250.00) over the two (2) year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of:
(a) a prospective contractor, if the prospective contractor is a natural person; or
(b) an owner of a prospective contractor;.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable contributions made to the following - COUNTY COUNCILORS: Denise Derkacs; David Izraelevitz; David Reagor; James Robinson; Randal Ryti; Sara Scott; and Sean Williams.)

Contribution Made By:			
Relation to Prospective Artist:			
Name of Applicable Public Official:		Governor _____	
Contribution(s) Date(s)	Contribution Amount(s):	Nature of Contribution(s):	Purpose of Contribution(s):
	\$		
	\$		
	\$		
	\$		
	\$		

(Attach extra pages if necessary)

Signature Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250.00) WERE MADE to an applicable public official by me, a family member or representative.

Signature Date

Title (position)