

ARTS SERVICES CONTRACT
New Mexico Arts, a Division of the Department of Cultural Affairs

ITEM # 18-1075

THIS AGREEMENT (hereinafter "Contract" or "Agreement") is made and entered into by and between the state of New Mexico, Department of Cultural Affairs, New Mexico Arts division, hereinafter referred to as the "Agency," and City of Santa Fe, hereinafter known as the "Contractor."

I. State Funds. Contractor hereby accepts the terms of this arts services contract (hereinafter known as the "Contract") for the amount of **\$6,150.00** from Agency (the "State Funds"). The State Funds shall fund the programs and services listed on the "Schedule of Programs and Services" that is incorporated herein, to further the purposes of the Agency as set forth in NMSA 1978, §§ 18-5-1 to -7 (1965, as amended through 2004).

II. Term. Contract period shall extend from the date of the Agency's approval of this Contract or July 1, 2018, whichever date is later, to May 31, 2019.

III. Contractor Role and Responsibilities. Contractor understands and agrees that acceptance of this arts services contract creates a legal duty on the part of the Contractor to use the State Funds in accordance with the terms of the Contract and to comply with all its provisions and conditions.

A. Matching Funds.

Contractor shall provide matching funds in the amount of at least **\$3,075.00**, of which at least **\$1,537.50** must be in cash. Contractor is not permitted to use funds paid directly from the National Endowment for the Arts or other federal agencies to Contractor as a cash match.

B. Art Services.

Contractor shall complete, according to the terms of this Contract, the programs and services in the attached Schedule of Programs and Services (the "Programs and Services").

C. Thank You Letters to Governor and New Mexico Legislators.

Contractor should: 1) send a thank you letter, no later than November 10, 2018, to the Governor and the Contractor's local state senator(s) and representative(s); and 2) send a copy of each letter to Agency for placement in Contractor's file.

D. Subcontracting. Contractor may subcontract with performers, administrators, technical support, and other individuals and/or organizations needed to implement the Programs and Services. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency.

E. New Mexico Arts Acknowledgment.

Contractor shall include the following acknowledgment of support, word for word, in any visual publicity for the Programs and Services ("Visual Publicity"). "Visual Publicity" includes all printed and electronic programs, posters, playbills, announcements, and releases to the news media, etc. Contractors in the Arts Trails Category should use the Arts Trails logo first, then the New Mexico Arts logo as space allows:

"This project is supported in part by New Mexico Arts, a division of the Department of Cultural Affairs, and by the National Endowment for the Arts."

In addition, Contractor should use the New Mexico Arts logo (if applicable) and the National Endowment for the Arts logo (if applicable) in all Visual Publicity as space allows.

For oral publicity for the Programs and Services, such as radio or announcements at events, Contractor should use the following statement, word for word. "Oral Publicity" includes radio spots, announcements at events, etc.

"This project is supported in part by an award from New Mexico Arts, a division of the Department of Cultural Affairs, and by the National Endowment for the Arts. Art works."

For television publicity of the Programs and Services, the above statement shall be read and the New Mexico Arts and National Endowment for the Arts logos displayed.

If Contractor makes a good faith effort to include the credit lines as stipulated above in all Visual and Oral Publicity, and the entity with whom Contractor placed an advertisement fails to include the credit lines, Agency will not consider Contractor to have violated of this Contract.

F. Limitations on the Use of State Funds.

1. Contractor shall expend the funds provided by the Contract only for the Programs and Services and as described in the Contractor's budget attached to this Contract ("Budget") and subsequently approved by the Agency.
2. Contractor shall expend State Funds and/or such matching funds as are required during the Contract Term, defined in Section II, above. **CONTRACTOR SHALL NOT SUBMIT ANY REQUESTS FOR REIMBURSEMENT TO AGENCY BEFORE AGENCY APPROVES THE CONTRACT OR BEFORE JULY 1, 2018, WHICHEVER OCCURS LATER.**
3. Contractor shall not use State Funds for the excluded items listed in the Arts Services Guidelines, which can be found at www.nmarts.org/grants and which include the following: investment or contingency funding; direct aid to individuals; projects that will take place outside of the Term or outside of New Mexico; projects that have the primary purpose of course credit; parties, receptions, fund raising, or other social activities; deficit reduction; negotiated indirect cost rates; permanent acquisitions (including works of art, buildings, land, or capital outlay); scholarships or fellowships; cash prizes or awards; or projects sponsored by other divisions, foundations, employees, or contractors of the Department of Cultural Affairs or members of the New Mexico Arts Commission. In addition, Contractor shall not use State Funds to fund activities that are already funded by New Mexico Arts through another organization.
4. **Misapplied State Funds.** Contractor shall reimburse the Agency for any misapplied State Funds. Misapplied State Funds are State Funds used for programs and services that are not Programs and Services. Contractor shall reimburse the Agency for all misapplied State Funds within thirty (30) days of receipt of official notification letter from Agency. In addition, Agency reserves the right to seek additional relief for damages and any other remedies available at law or in equity.

G. Invoices and Reports. Contractor must complete and submit invoices and reports on forms furnished by Agency to the Agency office in order to obtain State Funds.

1. **Interim Invoices and Reports.** Contractor may submit partial invoices during the Contract Term ("Interim Invoices"), but shall submit no more than four Interim Invoices total. Contractor shall submit a brief narrative report with each Interim Invoice.
2. **Final Invoice and Reports.** **Contractor must submit a Final Invoice and a Final Report when the Contractor completes the Programs and Services on or before June 15, 2019.** Contractor must request at least twenty percent (20%) of the total State Funds in its Final Invoice. **If the Contractor does not submit the Final Invoice and Final Report by June 15, 2019, the Agency shall not reimburse Contractor any additional State Funds and Contractor may be ineligible for funding the following year**
3. Contractor shall make ALL invoices on a reimbursement basis and shall submit invoices in accordance with applicable invoice form instructions. Agency will not pay requests made with incomplete Invoice or Final Reports.

H. Accounting and Records.

1. Contractor shall maintain its records and accounts consistent with generally accepted accounting principles and shall provide for such fiscal control and fund accounting procedures as are necessary to assure proper disbursing of, and accounting for, State Funds.
 - a) Contractor certifies that accounts and supporting documentation (canceled checks, receipts, vouchers, original invoices, sales slips, cash register tapes, etc.) relating to project expenditures shall be adequate to permit an accurate and expeditious audit. An audit may be made at any time by Agency, its Fiscal Agent, or any applicable agency of the United States Government.
 - b) Contractor shall maintain all records and accounts for not less than three (3) years. Agency and its agents and employees, as well as the State Auditor, shall have the right, at any and all times during regular business hours and with reasonable advance notice, to examine and inspect all of Contractor's records and accounts for the purpose of investigating and verifying the accuracy of any statement provided to Agency. Records required pursuant to this Contract shall be produced by Contractor at a state office location in Santa Fe as designated by the Agency. In addition, the Agency shall have the right to audit billings both before and after payment. Furthermore, payment under this Contract shall not foreclose the right of the Agency to recover excessive and/or illegal payments.
2. Contractor shall maintain and keep intact records to demonstrate that matching and cost sharing contributions are at least the amount indicated in the attached Estimated Revised Budget, or any revision thereof which is approved by Agency. Contractor shall also secure and maintain written proof of both the value and type of "in-kind" contributions.
3. Audits. In accordance with the federal Office of Management and Budget Circular A-133, any organization that expends \$500,000 or more in total federal awards during its fiscal year is required to complete an audit within nine (9) months of the end of the audit period. If this applies to Contractor, Contractor must forward the independent audit to the Agency within thirty (30) days of completion.

I. Charitable Organizations and Solicitations Act.

Contractor represents that it has registered to the extent required by law with the State of New Mexico Attorney General's Office in compliance with the Charitable Organizations and Solicitations Act, NMSA 1978, §§ 57-22-1 to -11 (1983, as amended through 1999).

J. Assurances as to Compliance with Labor Standards under the National Foundation on the Arts and the Humanities Act of 1965.

In consideration of this Contract, made under 20 U.S.C. § 954 of the National Foundation on the Arts and Humanities Act of 1965 ("Act") and in order to satisfy the condition expressed in Section 954(m) of the Act so as to be eligible to receive the Contract funds, the undersigned does hereby make its contractually binding promise to the Secretary of Labor that:

1. All professional performers and related or supporting professional personnel (other than laborers or mechanics with respect to whom labor standards are prescribed in Subsection (n) of the said Act) employed on projects or productions which are financed in whole or in part under this section shall be paid, without subsequent deduction or rebate on any account, not less than the minimum compensation as determined in 29 CFR 505.3(a) to be the prevailing minimum compensation for persons employed on similar activities; and

2. No part of any project or production which is financed in whole or in part under the Act shall be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employee engaged in such project or production, including particularly, no work which is prohibited for safety or sanitary reasons by any of the contracts with labor organizations listed in 29 CFR 505.3(a).
3. Contractor further agrees to keep the records and permit the inspections provided by 29 CFR 505.5(b). This Agreement shall be enforced by the Secretary of Labor through any appropriate action at law or in equity in any court of competent jurisdiction.

IV. Copyright

While Contractor shall own the copyright to works resulting from activities funded under this Contract, Contractor grants the State of New Mexico, Agency, and the federal government a non-exclusive license to use and reproduce any material provided by contractor or obtained by Agency subject to this Agreement, including copyrighted material, of such works for government purposes, without payment.

V. Termination

- A. **Agency Termination.** Agency may terminate this Contract, in whole or in part, at its discretion and at any time, effective ten (10) days after Contractor's receipt of the notice. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to Contractor if Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement, or other crime due to misuse of state funds or due to Agency lack of funds described in the Appropriations paragraph herein. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE ANY OF THE PARTIES OTHER LEGAL RIGHTS AND REMEDIES DERIVED FROM CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.
- B. **Contractor Termination.** Contractor may terminate this Contract with thirty (30) days' notice to Agency.
- C. **Parties' Responsibilities upon Termination.** Contractor shall submit an invoice for completed work within thirty (30) days of receiving or sending the notice of termination. Except as otherwise allowed or provided under this Agreement, Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination. Regardless who the terminating party may be, Contractor shall complete work promised that is scheduled before the date of termination. In other words, a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement.

VI. Miscellaneous Provisions

A. **Amendment.**

This Contract may be amended only by a written amendment, signed by both parties. Minor changes to the Programs and Services or the Budget, such as date changes within a month or performers' name changes do not require an amendment, but the Contractor must still submit them to the New Mexico Arts Division for approval in order to receive reimbursements. Changes to the type of programs

included in the Programs and Services are not minor changes and they do require written amendments, signed by both parties.

B. Status of Contractor.

Contractor and its agents and employees are independent contractors performing arts services for New Mexico Arts and are not employees of New Mexico Arts or the State of New Mexico. Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Contract. If applicable, Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

C. Assignment.

Contractor shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the prior written approval of the Agency.

D. Independent Contractor.

Contractor does not have the authority to bind the State of New Mexico.

E. Conflict of Interest.

Contractor warrants 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 or services required under the Agreement. Contractor certifies that it has followed the requirements of the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 to -18 (1967, as amended through 2011), regarding contracting with a public officer or state employee or former state employee.

F. Penalties

The Procurement Code, NMSA 1978, §§ 13-1-28 to -199 (1984, as amended through 2017), imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

G. Liability

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 to -30 (1976, as amended through 2015).

Contractor or any officer, agent, employee, servant, or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant, or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

H. New Mexico Employees Health Coverage.

1. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2017, if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.

2. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwmxico.state.nm.us/>.

I. Merger

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

J. Authority

If Contractor is not a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

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SCHEDULE OF PROGRAMS & SERVICES

*A blank copy of this form is on the New Mexico Arts website
for use if Contractor needs to propose a revised schedule during contract period.
<http://www.nmarts.org/grantee-documents-and-forms.html>*

Contractor must notify its New Mexico Arts Program Coordinator in writing at any time there is a significant change or deletion in programming dates for which Contractor plans to spend FY19 contract funds.

Contractor shall list below or on a separate page its schedule of programming, only for those programs and services for which Contractor will be using New Mexico Arts funding during the Contract term. Contractor shall include proposed services, programs, and/or exhibitions, and all dates and locations for such services, programs, and/or exhibitions. Tentative dates should be listed as such.

THEMED EXHIBIT SERIES now in its 10th year at Community Gallery, 201 West Marcy Street, Santa Fe as follows:

Exquisite Corpse: The Community Gallery's 10 Year Anniversary (October 19, 2018 through January 17, 2019) A retrospective exhibit including featuring artwork from 174 New Mexico artists who have participated in themed exhibits in the Community Gallery since October. Artists are assigned a body section (head, torso, legs) to create a component piece that will be displayed randomly with sections created by other artists to complete a series of 58 corpses.

Happy Little Clouds: New Mexico Skyscapes (March through May 2019) An exhibition featuring one of New Mexico's most valued aesthetic resources, our beautiful skies. Approximately 30 artists in a variety of 2D and 3D media will respond to a call for work featuring clouds.

COMMUNITY POP-UP SERIES now in its 4th year at the Community Gallery, 201 W. Marcy Street, Santa Fe.

The Collection: Artwork from the College of Santa Fe Archive (August 3 through October 18, 2018) Never before seen artworks from the collection of the College of Santa Fe including photography, ceramics, monotypes and more.

Youth Art Exhibit (January through February, 2019) The first annual youth arts exhibit program that selects one local youth arts non-profit organization to install an exhibit featuring the artwork resulting from their programming schedules.

WORKSHOPS/PROGRAMS: in the 10th year, up to 10 free community programs featuring local organizations and artists will be presented in conjunction themed exhibits, enhancing educational opportunities and engagement. Through— *May, 31* 2019 at the Community Gallery, 201 W. Marcy Street, Santa Fe.

FY19 BUDGET DETAIL

Please round figures to the nearest dollar.

INCOME	Cash Income	NM Arts	In-Kind
A. Revenue - Earned Income			
1 Admissions			
2 Contracted Services Revenue			
3 Other Revenue	\$5,100		
B. Support			
1 Corporate Support			
2 Foundation Support			
3 Other Private Support			
4 Government Support			
Federal non-NEA			
National Endowment for the Arts			
State/Regional, not NM Arts			
Local			
C. Applicant Cash	\$100,499		
D. Subtotal Cash Income	\$105,599		\$0
E. New Mexico Arts Amount Requested		\$6,150	
F. Total Income	\$111,749		

EXPENSES	Expenses	NMA Share	In-Kind
	do not include NMA		total = INK income above
A. Personnel			
1 Administrative Salaries & Benefits	\$43,790	\$3,075	
2 Artistic Salaries & Benefits	\$43,789	\$3,075	
B. Contracted Fees & Services			
1 Administrative			
2 Artistic	\$6,150		
C. Travel			
D. Marketing & Public Relations	\$6,550		
E. Remaining Operating Expenses			
1 Rent/Mortgage (NMA cannot be mortgage)			
2 Materials/Supplies	\$750		
3 Remaining Expenses (phone, postage, etc.)	\$4,620		
F. Total Each Column	\$105,649	\$6,150	\$0
G. Total Cash Expenses	\$111,799		

Signature Page for New Mexico Arts – Arts Services Contract

This form may be typed or handwritten, except for signatures. Signatures in blue ink are preferred.

For the Contractor:

Organization Name City of Santa Fe dba City of Santa Fe Arts Commiss

Mailing Address (include zip) PO Box 909, Santa Fe, NM 87504

Physical Address (include zip) 201 W. Marcy St. Santa Fe, NM 87501

Organization Phone 505.955.6707 Fax: N/A

Website Address(if any) Santa Fe Arts Commission. org

Contractor Project Director (PD) Information – administrator for contract & primary contact person

PD Signature [Signature] Date July 11, 2018

Project Director Name & Title (please print) Debra Garcia y Griego, Director

PD Mailing Address (include zip) PO Box 909, Santa Fe, NM 87504

PD Phone 505.955.6707 Fax: N/A

PD E-mail Address degarcia@santafenm.gov

Contractor Authorizing Official (AO) Information – authorized representative of governing body; *must be different from project director.*

AO Signature [Signature] for EL Date 8/15/18

AO Name & Title (please print) Erik J. Litzenberg, City Manager

AO Mailing Address (include zip) PO Box 909, Santa Fe, NM 87504

AO Phone 505.955.3111 Fax: N/A

AO E-mail Address e.j.litzenberg@ci.santa-fe.nm.us

For Department of Cultural Affairs:

[Signature]

Loie Fecteau
Executive Director, New Mexico Arts
As authorized by Cabinet Secretary Veronica N. Gonzales

9.11.18
Date

[Signature]

Linda Underwood, Operations Director/Fiscal Officer,
Budgetary Sufficiency

9/11/18
Date

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK *aw*

APPROVED AS TO FORM:

MDM *2/6*
CITY ATTORNEY

APPROVED:

Manu McG
FINANCE DIRECTOR *or*

51105-490280

REVENUE UNIT/LINE ITEM