

CITY OF SANTA FE
ART IN PUBLIC PLACES LOAN AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Thomas Osgood / Deeda Hull (the "Lender"). The date of this Agreement shall be the date when it is executed by the City.

1. SCOPE OF SERVICES

The Lender agrees to display free of charge the artwork described in Exhibit A of this agreement (the "Art") on City-owned property for the term of this Agreement. The Art shall be located at Entrada Park (the "Site").

2. STANDARD OF PERFORMANCE; LICENSES

A. The City shall give the Art the same care as it gives comparable property of its own. It is understood by the Lender and the City that all publicly displayed art is subject to gradual inherent deterioration and acts of vandalism for which neither party is responsible.

B. Upon installation of the Art on site the Lender and City shall complete a "Condition Report."

C. Evidence of damage while on City property will be reported in writing to the Lender immediately.

D. Restoration or repair is at the discretion of the City and will not be undertaken without the written authorization of the Lender.

E. Lender certifies that the Art is in such condition as to withstand ordinary strains of public display.

3. TRANSPORTATION AND INSTALLATION

A. Lender is responsible for the transportation of the Art to and from the Site.

B. Lender is responsible for installation and removal of the Art. All costs are the sole responsibility of the Lender

C. The City is responsible for coordinating the installation of the Art with the receiving City agency.

D. The Lender shall install the Art in a manner acceptable to the City.

4. INSURANCE

A. The City will maintain insurance for fire/theft/vandalism and declares that all consigned Art will be covered by said insurance only while installed on the Site, not for the Term of this Agreement. Reasonable efforts will be made to protect Art from accidental damage or breakage. If damage or loss occurs to the Art, the Lender agrees to accept retail value as established in Exhibit A. The Lender agrees not to seek any further or additional money, over and above the insurance company amount, from the City, including but not limited amounts for actual, incidental, special or punitive damages, loss of revenues, and damages from impairment of contract.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and terminate on October 30, 2025 unless sooner pursuant to Article 6 below.

6. TERMINATION AND RETURN OF ART

A. The Art shall remain on City property for the time specified in Article 5 of this Agreement, but may be withdrawn from the Site at any time by the Arts and Culture Department and this agreement terminates.

B. At the termination of this Agreement, the Lender shall remove the Art and all structures necessary for its display that were provided by the Lender.

C. If the legal ownership of the Art changes during the period of this Agreement, whether by death, sale, insolvency, gift or otherwise, the new owner may, prior to the return of the Art, be required to establish legal right to receive the Art by proof satisfactory to the City. The Art will be returned only to the Lender who is a party to this Agreement unless the City is notified to the contrary.

D. The Lender shall have the right to terminate this Agreement upon written notice.

E. The City's right to return the Art accrues absolutely at the termination of this Agreement. If the City, after making all reasonable efforts, is unable to return the Art within sixty (60) days after termination, then the City shall have the absolute right to remove the Art, place the Art in storage, to charge removal fees, storage fees and insurance costs and to have and enforce a lien for such fees and costs.

F. One (1) year after the termination date of the Agreement, if the Lender has failed to respond to written notice from the City, the City may proceed with abandonment proceedings as outlined in the Abandonment Cultural Properties Act, Sections 18-10-1 through 18-10-5 NMSA 1978.

G. The City shall issue a final "Condition Report" to be signed by the Lender upon removal of the Art as proof of the return of the Art to the Lender in good condition. If the signed report is not returned within fifteen (15) days of issue, the City will consider that the condition of the Art as noted and returned is acceptable to the Lender and any subsequent claims shall not be honored.

H. If the Art is offered as a gift and accepted by the City per the “City of Santa Fe Art in Public Places Program Policy and Procedures, a gift letter will be sent to the donor, at which time this Loan Agreement becomes null and void.

7. COPYRIGHT AND REPRODUCTION RIGHTS

A. The Lender expressly reserves every right available to the Lender, in common law or under the Federal Copyright Act.

B. The City shall not make any commercial use of the design of the Art without the Lender’s written consent.

C. The City may publish and distribute photographs of the Art as installed on site for noncommercial purposes.

D. The City is not responsible for third party copyright infringements. The Contractor is responsible for any and all necessary copyright registrations.

8. CONFLICT OF INTEREST

The Lender 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 Agreement. The Lender further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

9. ASSIGNMENT

The Lender shall not assign or transfer any rights, privileges, obligations, or other interest under this Agreement, including any claims for money due, without the prior written consent of the City.

10. RELEASE

The Lender, upon entering into this Agreement, releases the City, its officers and

employees, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Lender agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Lender has express written authority to do so, and then only within the strict limits of that authority.

11. INDEMNIFICATION

The Lender shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments on account of any suit, judgment, execution, claim, action, or demand whatsoever arising from Lender's performance under this Agreement as well as the performance of Lender's employees, agents, representatives and subcontractors, including payments of all attorney's fees and costs.

12. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title, or interest in or for the benefit of any person other than the City and the Lender. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

13. APPLICABLE LAW; CHOICE OF LAW; VENUE

Lender shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Lender agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. AMENDMENT

This agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

16. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NON-DISCRIMINATION

During the term of this Agreement, the Lender shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by the Lender hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

18. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

19. IDENTIFICATION PLAQUE

The City shall be responsible for the selection, fabrication and installation of all associated temporary identification plaques. All identification plaques will credit the artist with the creation of the Art and the Lender with loaning the Art.

20. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

21. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

CITY OF SANTA FE
Arts and Culture Department
P.O. Box 909
Santa Fe, NM 87504-0909

LENDER
Thomas Osgood / Deeda Hull
302 Don Fernando Road
Santa Fe, NM 87505

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

John Blair

John Blair (Feb 10, 2023 15:46 MST)

JOHN W. BLAIR, CITY MANAGER

DATE: Feb 10, 2023

ATTEST:

Kristine Bustos Mihelcic

KRISTINE BUSTOS MIHELICIC,
CITY CLERK XIV

CITY ATTORNEY'S OFFICE:

Marcos Martinez

Marcos Martinez (Nov 17, 2022 11:32 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

Emily K. Oster

Emily K. Oster (Feb 10, 2023 15:41 MST)

EMILY OSTER,
FINANCE DIRECTOR

LENDER:

THOMAS OSGOOD / DEEDA HULL

Thomas Osgood

THOMAS OSGOOD, ARTIST

DATE: Dec 17, 2022

Deeda Hull

DEEDA HULL, ARTIST

DATE: Dec 17, 2022

EXHIBIT A
DESCRIPTION OF ART WORK ON LOAN

- 1) Title: Sentry
Price: \$45,000
Media: Fabricated steel
Dimensions: 66 x 60 x 37"



CONSIGNEE:
(THOMAS OSGOOD/DEEDA HULL)

By 

Deeda Hull Osgood

DATED: Dec 17, 2022

Exhibit B—Location

Entrada Park





City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203847

Contractor: Thomas Osgood/Deeda Hull

Description: Art on Loan located at Entrada Park

Contract ☒ Agreement ☐ Lease / Rent ☐ Amendment ☐

Term Start Date: Upon Approval

Term End Date: 06/30/2025

☐ Approved by Council

Date: 01/05/2023

Contract / Lease:

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

☐ Approved by Council

Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)

3. **Procurement History:** Exemption Approval NMSA 13-1-98 T

Andy Hopkins

Purchasing Officer Review:

01/05/2023 Feb 3, 2023

Date:

Comment & Exceptions: City Exemption # 16 applies

4. **Funding Source:** Service Contracts

Org / Object: 2132775.51310

Andy Hopkins

Andy Hopkins (Feb 3, 2023 11:05 MST)

Budget Officer Approval:

01/05/2023 Feb 3, 2023

Date: 01/05/2023

Comment & Exceptions: _____

Staff Contact who completed this form: Erminia Tapia Phone # 505-955-6707

Email: emtapia@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

ITT Representative (attesting that all information is reviewed)

Title

Date



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Thomas Osgood/Deeda Hull

Procurement Title: Art on Loan - Osgood

Procurement Method: State Price Agreement ☐ Cooperative ☐ Sole Source ☐ Other ☐

Exempt ☒ Request For Proposal (RFP) ☐ Invitation To Bid (ITB) ☐ Contract under 60K ☐ Contract over 60K ☐

Department Requesting Arts and Culture Staff Name Erminia Tapia

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input type="checkbox"/>	<input type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input type="checkbox"/>	RFP
<input type="checkbox"/>	<input type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input type="checkbox"/>	ITB
<input type="checkbox"/>	<input type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input type="checkbox"/>	Contractors Exempt Letter
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input type="checkbox"/>	BAR
<input type="checkbox"/>	<input type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input type="checkbox"/>	<input type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Certificate of Insurance
<input type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input type="checkbox"/>	<input type="checkbox"/>	Other:

Erminia Tapia, Project Specialist 01/11/2023

Department Rep Printed Name (attesting that all information included)	Title	Date
	Contracts Supervisor	Feb 3, 2023

Purchasing Officer (attesting that all information is reviewed)	Title	Date
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ITT Representative (attesting that all information is reviewed)	Title	Date
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Include all other substantive documents and records of communication that pertain to the procurement and contract.

From: Thomas Osgood <thomasosgood@yahoo.com>
Sent: Friday, December 16, 2022 2:02 PM
To: LAURET, ROBERT D. <robertd@laurerfirm.com>
Subject: Insurance

AMERICAN HALLMARK INSURANCE COMPANY OF TEXAS
5420 LYNDON B JOHNSON FWY, STE 1100, DALLAS, TX 75240
COMMON POLICY DECLARATIONS
RENEWAL DECLARATION

POLICY NO: 44-CL-000602921-05/000

RENEWAL OF: 44-CL-000602921-04

NAMED INSURED AND MAILING ADDRESS

TOM OSGOOD
652 GALISTEO ST
SANTA FE, NM 87505

AGENCY AND MAILING ADDRESS 3080

CAPITOL INSURANCE SERVICES, LLC DBA ZIA
INSURANCE AGENCY
810 CALLE MEJIA STE 106
SANTA FE, NM 87501

POLICY PERIOD: FROM 01/22/2023 TO 01/22/2024 AT 12:01 AM STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE.

THE NAMED INSURED IS: Individual

BUSINESS DESCRIPTION: ARTIST - METAL
SCULPTURE

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED.

	PREMIUM
COMMERCIAL PROPERTY	\$ Not Covered
COMMERCIAL GENERAL LIABILITY	\$ 693
COMMERCIAL CRIME AND FIDELITY	\$ Not Covered
COMMERCIAL INLAND MARINE	\$ Not Covered
COMMERCIAL AUTO	\$ Not Covered
TOTAL PREMIUM	\$ 693
COMMERCIAL UMBRELLA	\$ Not Covered
POLICY PREMIUM	\$ 693.00

FORMS AND ENDORSEMENTS APPLICABLE TO ALL COVERAGE PARTS

See Forms Schedule

THESE DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS, AND SUPPLEMENTAL FORM DECLARATION(S), IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.



City of Santa Fe, New Mexico

Memorandum



DATE: January 4, 2023

TO: John Blair, City Manager

VIA: Emily Oster, Finance Department Director
JoAnn Lovato, Chief Procurement Officer
Richard D. Brown, Community Development Director
Pauline Kanako Kamiyama, Arts and Culture Department Director

Richard Brown

Pauline Kamiyama
Pauline Kamiyama (Jan 11, 2023 16:04 MST)

FROM: Robert Lambert, Arts and Culture Department Assistant Director

Robert Lambert
Robert Lambert (Jan 11, 2023 15:59 MST)

ITEM AND ISSUE:

For the Approval of Public Art on Loan Contract Agreement for the Display of Artwork on City Property at Entrada Park. (Robert Lambert, rdlambert@santafenm.gov, 955.6707).

BACKGROUND AND SUMMARY:

The City of Santa Fe Arts and Culture Department operates an Art on Loan Program that places privately owned art sculptures on City properties for beautification of the community. These contracts are typically for a two-year period and often renewed for extension, the termination period for this contract would conclude on June 30, 2025. Insurance. There is no cost to the City.

PROCUREMENT METHOD:

State Procurement Exemption 13-1-98 T, City Procurement Exemption #16 - works of art for museums or for display in public buildings or places;

CONTRACT NUMBER:

The FY23 Munis contract number is 3203847.

FUNDING SOURCE:

3502775/572979

ACTION REQUESTED:

Arts and Culture Department respectfully requests your review and approval.

From: [LOVATO, JOANN D.](#)
To: [TAPIA, ERMINIA M.](#)
Subject: RE: Art on Loan Exemption
Date: Thursday, January 5, 2023 2:30:26 PM
Attachments: [image002.png](#)
[image003.png](#)
[image001.png](#)

Hi Erminia,

13-1-98 T is still a valid exemption, but the memo says it expired 6/30/21. Can you please remove this? In addition to citing state exemption "t", also cite City exemption #16.

PROCUREMENT METHOD:

State Procurement Exemption: 13-1-98 T (State Agency) - works of art for museums or for display in public buildings or places; which expires on July 30, 2021.

Thank you.

JoAnn D. Lovato
Contracts Supervisor
c: (505) 469-6045



From: TAPIA, ERMINIA M. <emtapia@santafenm.gov>
Sent: Thursday, January 5, 2023 1:37 PM
To: LOVATO, JOANN D. <jdlovato@santafenm.gov>
Subject: Art on Loan Exemption

Good Afternoon JoAnn,

Attached is a memo that we are running by you for approval of exemption, we have not done one of these contracts in years so not sure if there are any changes to the exemption approvals. Please let me know if you have any questions.

Erminia M. Tapia
Project Specialist
Arts & Culture Department

201 West Marcy Street (inside the Santa Fe Community Convention Center)
PO Box 909
Santa Fe, NM 87504-0909
505.955.6707 tel/505.955.6671 fax












23-0040 Thomas Osgood and Deeda Hull

Final Audit Report

2023-02-14

Created:	2023-02-08
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAApQnbcNbnxLz6jufgXY9SiMtWlpxvDeW

"23-0040 Thomas Osgood and Deeda Hull" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)
2023-02-08 - 5:09:36 PM GMT- IP address: 63.232.20.2
-  Document emailed to ekoster@santafenm.gov for signature
2023-02-08 - 5:11:07 PM GMT
-  Email viewed by ekoster@santafenm.gov
2023-02-10 - 10:38:45 PM GMT- IP address: 104.47.65.254
-  Signer ekoster@santafenm.gov entered name at signing as Emily K. Oster
2023-02-10 - 10:41:04 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Emily K. Oster (ekoster@santafenm.gov)
Signature Date: 2023-02-10 - 10:41:06 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to jwblair@santafenm.gov for signature
2023-02-10 - 10:41:07 PM GMT
-  Email viewed by jwblair@santafenm.gov
2023-02-10 - 10:45:21 PM GMT- IP address: 216.207.130.218
-  Signer jwblair@santafenm.gov entered name at signing as John Blair
2023-02-10 - 10:46:54 PM GMT- IP address: 216.207.130.218
-  Document e-signed by John Blair (jwblair@santafenm.gov)
Signature Date: 2023-02-10 - 10:46:56 PM GMT - Time Source: server- IP address: 216.207.130.218
-  Document emailed to Kristine Mihelcic (kmmihelcic@santafenm.gov) for signature
2023-02-10 - 10:46:57 PM GMT
-  Email viewed by Kristine Mihelcic (kmmihelcic@santafenm.gov)
2023-02-14 - 11:15:09 PM GMT- IP address: 104.47.65.254



Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)

Signature Date: 2023-02-14 - 11:15:18 PM GMT - Time Source: server- IP address: 63.232.20.2



Agreement completed.

2023-02-14 - 11:15:18 PM GMT



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