



City of Santa Fe, New Mexico

Memorandum



DATE: February 27, 2024

TO: Governing Body

VIA: Emily K. Oster, Finance Department Director EKO
Rich Brown, Community Development Director RB
Travis Dutton-Leyda, Chief Procurement Officer TDL
Chelsey Johnson, Arts and Culture Department Director CJ

FROM: Melissa Velasquez, Arts Services Coordinator MV

ITEM AND ISSUE:

Request for the Approval of First Amendment to extend agreement to a) Delivery and Installation Deadline – No later than December 31, 2025 and b) Contract Term Date – Contract shall terminate on March 31, 2026. Agreement was formerly executed in FY 21-22 and is contract for the Purchase of Public Art for Display of Artwork on City Property (Santa Fe Municipal Airport) with New Mexico Arts (State of New Mexico)

BACKGROUND AND SUMMARY:

As a function of Capital Improvement Projects, 2% of Bonds are applied to the purchase and installation of Public Art at bond location sites. Santa Fe Municipal Airport's Bond funding resides in State of NM purview and managed by their policies and procurement through New Mexico Arts. Selection and purchase of artwork managed by NM Arts. There is no cost to the City.

CONTRACT NUMBER:

The FY20 Munis contract number is 3202810

FUNDING SOURCE:

3502775/572979

ACTION REQUESTED:

Arts and Culture Department respectfully requests your review and approval.

FIRST AMENDMENT TO AIPP AGREEMENT

THIS AMENDMENT TO AGREEMENT (the “**Amendment**”) is made, by and between Hector Manuel Ortega DBA Ortega Sculpture (“Artist”), New Mexico Arts (“NMA”), a division of the N.M. Department of Cultural Affairs, and the City of Santa Fe (“Owner Agency”), collectively the “Parties”. The date of this Amendment shall be the date when it is executed by the parties, whichever signature occurs last.

RECITALS

A. The Parties entered into that certain Agreement with Addendum, fully executed on October 11, 2022 (the “**Agreement**”). All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Agreement. After this Amendment is executed by the Parties, all references to the Agreement shall include the Agreement as revised by this Amendment.

B. The Parties now desire to amend the Agreement due to construction delays on site, preventing safe/secure installation by Artist.

NOW, THEREFORE, in consideration of the foregoing, and of the conditions, terms, covenants and agreements set forth herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree that the Agreement is amended as follows:

AGREEMENT

1. The following dates in the Agreement are extended as set forth below:
 - a. Delivery and Installation Deadline – No later than December 31, 2025
 - b. Contract Term Date – Contract shall terminate on March 31, 2026
2. Full Force and Effect. All other terms of the Agreement not modified or changed by this Amendment are and hereby shall remain the same and in full force and effect between the parties.
3. Facsimile; Counterparts. Facsimile, scanned or photocopied signatures of or on behalf of any Party on this Amendment shall be effective for all purposes, including delivery, as an original. This Amendment may be executed in multiple originals which shall be deemed to be one document.
4. Each Party covenants to the other parties that they are authorized to execute this Agreement and bind said Party to this Amendment.

IN WITNESS of the foregoing provisions, the parties have executed and delivered this Agreement as of the date of this Amendment shall be the date when it is executed by the parties, whichever signature occurs last.

ARTIST

By: SEE NEXT PAGE Date: _____
Hector Manuel Ortega, Owner, Ortega Sculpture

OWNER AGENCY

By: John Blair Date: Mar 26, 2024
John Blair (Mar 26, 2024 10:24 MDT)
John Blair, City Manager, City of Santa Fe

By: [Signature] Date: Mar 26, 2024
Geralyn Cardenas (Mar 26, 2024 13:46 MDT)
Geralyn Cardenas, Interim City Clerk, City of Santa Fe

By: Patricia Feghali Date: Dec 19, 2023
Patricia Feghali (Dec 19, 2023 14:50 MST)
Patricia Feghali, Assistant City Attorney, City of Santa Fe

By: Emily K. Oster Date: Mar 5, 2024
Emily K. Oster, Finance Director, City of Santa Fe

NEW MEXICO ARTS

By: _____ Date: _____
Michelle Laflamme-Childs, Executive Director

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS

By: _____ Date: _____
Max DeAzevedo, General Counsel as to legal sufficiency

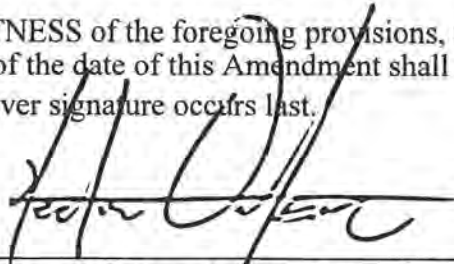
By: _____ Date: _____
Greg Geisler, ASD Director/CFO

By: _____ Date: _____
Debra Garcia y Griego, Cabinet Secretary

IN WITNESS of the foregoing provisions, the parties have executed and delivered this Agreement as of the date of this Amendment shall be the date when it is executed by the parties, whichever signature occurs last.

ARTIST

12/05/2023

By: 
Hector Manuel Ortega, Owner, Ortega Sculpture

Date

OWNER AGENCY

By: _____
Geraldyn Cardenas, Interim City Clerk, City of Santa Fe

Date

By: **SEE PREVIOUS PAGE**
Patricia Feghali, Assistant City Attorney, City of Santa Fe

Date

By: _____
Emily K. Oster, Finance Director, City of Santa Fe

Date

NEW MEXICO ARTS

By: _____
Michelle Laflamme-Childs, Executive Director

Date

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS

By: _____
Max DeAzevedo, General Counsel as to legal sufficiency

Date

By: _____
Greg Geisler, ASD Director/CFO

Date

By: _____
Debra Garcia y Griego, Cabinet Secretary

Date

CXT#	23003.0	CXTS	\$37,000	AIPP PC	MD
FUND STREAM	50500—69800—A19D5001—548700—D3207/\$37,000 (GF 2019)				
VENDOR ID:	0000150128				

STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
NEW MEXICO ARTS DIVISION
ART IN PUBLIC PLACES PURCHASE CONTRACT

THIS AGREEMENT is made and entered into by and between New Mexico Arts (NMAD), a division of the New Mexico Department of Cultural Affairs (NMDCA), a political subdivision of the State of New Mexico (State); **City of Santa Fe**, hereinafter referred to as "Owner Agency"; and **Hector Manuel Ortega DBA Ortega Sculpture** hereinafter referred to as "Artist".

WHEREAS, the Art in Public Places Act, NMSA 1978, Section 13-4A-1 (1986), (the "Act") requires the allocation of one percent (1%) of certain legislative appropriations for capital expenditures to be set aside in a fund dedicated for the acquisition or commission of works of art to be used in, upon, or around public buildings;

WHEREAS, NMAD is authorized to administer the art in public places fund pursuant to the Act;

WHEREAS, the Owner Agency desires to acquire a work of art to be located at **Santa Fe Regional Airport, 121 Aviation Drive, Santa Fe, NM 87507**; and

WHEREAS, in conformity with NMAD's rules and the Act, the Owner Agency's Local Selection Committee selected a work by the Artist to purchase.

THEREFORE, NMAD, the Owner Agency, and the Artist, for consideration and under the conditions hereinafter set forth, agree as follows:

Article I. Scope of Services

1.0 Definitions.

- a) "Artwork" means the work of art designed and created by the Artist and selected by the Local Selection Committee for placement of **one (1) 15.5' x 5.5' x 4.5' fabricated Corten steel abstract sculpture entitled, "Blind Faith"** and includes any attached Work Base(s);
- b) "Work Base" is a component of the Artwork and means the foundation or pedestal and Plexiglas cover upon which the Artwork is mounted for displaying 3D Artwork, or frame and Plexiglas protective covering, and device/devices for hanging 2D Artwork, as required according to attached *Framing, Installation, and Plaque Guidelines*;
- c) "Work Site" means the specific area site within, upon, or around the public building in which the Artwork is to be permanently displayed, attached or installed, in this case the **Santa Fe Regional Airport, 121 Aviation Drive, Santa Fe, NM 87507**;
- d) "Owner Agency" is the agency that received the appropriation for the construction or renovation of the building that included funds designated for public art under the Act.

1.1 General Duties of Artist, Gallery, Owner Agency, and NMAD.

a) The **Artist** shall perform all services and furnish all supplies, material and equipment as necessary for the creation of the Artwork and the transportation of the Artwork and Work Base, to the Work Site and the secure installation of the Artwork and Work Base at the Work Site, except as otherwise agreed to in this Contract.

b) The **Artist** represents and warrants that the Artwork is solely the result of the artistic effort of and was authored by the Artist and is unique and original. If the Artwork is one in an edition (not exceeding a total of fifty (50) copies, including variations of size, color, shape, or any distinguishing elements of the Artwork) of prints, photographs, castings or fabrications, or has been previously reproduced and accepted for sale elsewhere, the Artist will notify NMAD and the Owner Agency of this and disclose the edition number of the piece within the edition in writing to NMAD and the Owner Agency as an addendum attached to this agreement before it is executed. The Artist further represents, covenants, and warrants that the Artist owns the copyright in the Artwork and that the Artwork does not infringe upon any copyright and is free and clear of any liens or claims from any source whatsoever.

c) The *Artist* shall pay for the services of a professional fine art conservator if NMAD deems such an expense is required and if the Artwork is: 1) an exterior work; 2) created with non-archival media; 3) exposed to adverse environmental conditions; or 4) comprised of media that may not be durable or has other maintenance concerns. The fine art conservator will determine the durability of the media and the required periodic maintenance. NMAD may terminate the agreement based upon the results of the conservator's report in accordance with Article 10, Termination.

d) The Owner Agency shall perform the following services in a satisfactory and proper manner as determined by NMAD, and is responsible and shall pay for the following:

1. Prepare the Work Site by ensuring safe and reasonable access for the Artist, so that the Artist can install the Artwork;
2. In consultation with NMAD, take reasonable precautions to secure the Work Site, if necessary, for and during the installation of the Artwork.

1.2 Delivery and Installation.

a) The *Artist* shall deliver and securely install the completed Artwork and Work Base at the Work Site no later than **December 31, 2023**.

b) The *Artist* will be responsible for framing and installation of Artwork unless otherwise noted in this Contract. The Artist shall ensure that the Artwork is installed with appropriate anti-theft measures and/or devices to protect the Artwork, as approved in advance by Owner Agency, whose approval shall not unreasonably be withheld.

c) The Artist shall provide and install a project identification plaque for the Artwork, as described in the attached and incorporated *Framing, Installation, and Plaque Guidelines*.

1.3 Post-Installation Documentation.

Within thirty (30) days after the delivery and installation of the Artwork, the Artist shall furnish NMAD and Owner Agency with the following relating to the Artwork as completed:

- (1) a publication-ready JPEG of the Artwork with a minimum resolution of 350 ppi (pixels per inch) and a minimum size of 7 inches on the longest edge;
- (2) a JPEG of the Artwork *in situ* at the Work Site;
- (3) a complete written description of the Artwork;
- (4) written instructions for appropriate maintenance and preservation of the Artwork, including a maintenance schedule; and
- (5) a comprehensive list of all media used in the creation of the Artwork (ex: type of paint, gauge and type of metal, adhesive materials, clay body and firing, acrylic, oil, etc).

1.4 Final Acceptance.

a) The Artist shall advise NMAD, in writing, by furnishing NMAD and Owner Agency the Post-Installation Documentation outlined in Article 1.3, when all the Artwork has been delivered, installed, and accepted, and Artist services required under this Contract have been completed.

b) The Owner Agency shall notify the Artist and NMAD, in writing, using the "Notice of Acceptance" signature area on the NMAD Notice of Acceptance/Final Payment Invoice (NOA/FPI) form, of its final acceptance of the Artwork.

c) If the Owner Agency determines and notifies NMAD within ten (10) days of installation by the Artist that the Artist's services are incomplete or unsatisfactory, the Artist shall resolve the issues to the satisfaction of the Owner Agency and NMAD at no further cost to the Owner Agency or NMAD.

1.5 Risk of Loss.

The risk of loss or damage to the Artwork shall be borne by the Artist until acceptance by the Owner Agency, as indicated by the NMAD-signed (*NOA/FPI*) form. The Artist shall obtain and maintain a policy of insurance in an amount of not less than the purchase price of the Artwork to cover risk of damage or loss to the Artwork until final acceptance by the Owner Agency as required in Article 6 of this Agreement.

1.6 Title.

Title to the Artwork shall pass to the Owner Agency after installation and upon receipt by NMAD of the (*NOA/FPI*) form signed by the Owner Agency. If the Owner Agency fails, within thirty (30) days of installation of the Artwork by the Artist, to return to NMAD an executed (*NOA/FPI*) form, or to notify NMAD of Artist services that are unsatisfactory, title and ownership of the Artwork will automatically transfer to the Owner Agency.

a) The Owner Agency shall put in place insurance against loss or damage to the Artwork in an amount of not less than the purchase price of the Artwork upon transfer of ownership from Artist to the Owner Agency.

b) Title to the Artwork shall be owned by the Owner Agency, subject to applicable inventory requirements set forth by the State of New Mexico.

Article 2. Term.

The Contract shall terminate on **March 31, 2024**, unless terminated pursuant to Article 10 herein. Any and all obligations arising under Article 1, Sections 1.4, 1.6, 1.6a, and Articles 5, 7, 8 shall survive the termination of this Contract, and such survival shall specifically include any other terms and provisions of the Contract necessary to give full force and effect to said provisions.

Article 3. Compensation and Payment Schedule.

3.1 Fixed Fee.

NMAD shall pay the Artist a fixed fee of **thirty-seven thousand dollars and 00/100 cents (\$37,000.00)** including gross receipts tax and all applicable state and federal taxes, for the services performed under this Contract. Payment to the Artist shall be deducted from the allocation for the Art in Public Places program and shall constitute full compensation for all services, taxes, insurance, filing fees, engineering fees, professional conservator fees, materials, shipping or mailing charges, travel for the Artist or the Artist's subcontractors or employees to be furnished by the Artist under this Contract. NMAD shall pay Artist a single payment of the amount described in this paragraph upon receipt by NMAD after delivery and installation of the selected Artwork, the Project Plaque and any attached Work Base to Work Site and receipt of the *Post-Installation Documentation* by the Artist and the *-NOA/FPI* form *signed by the Owner Agency*, and NMAD. Prior to issuance of payment, an NMAD Coordinator may visit the Work Site to confirm the Artist's compliance with the attached and incorporated *Framing, Installation, and Plaque Guidelines*.

Article 4. Extension of Time.

NMAD shall grant a reasonable extension of time to the Artist in the event that there is a reasonable delay on the part of the Owner Agency in performing its obligations under this Contract, or if conditions beyond the Artist's control or other Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond a party's reasonable control will not be considered a breach of Contract provided that such obligations shall be suspended, with prior notice to and approval by NMAD, only for the duration of such conditions.

All requests by the Artist or the Owner Agency for time extensions shall be made in writing to NMAD at least eighty (80) days prior to the end of term described in Article 2. NMAD will review all written requests and notify the Owner Agency and the Artist of its decision within ten (10) days of receipt of the written request.

Artist shall not be entitled to additional payment in the event that the Work Site is not completed or otherwise suitable for installation when the Artist is scheduled to install the Artwork. Artist shall obtain confirmation from NMAD that the Work Site is ready for installing the Artwork prior to incurring shipping costs or other costs that are related to installation or placement of the Artwork. In the event of such delay, the parties shall extend the contract term in the length of the delay and NMAD shall approve a new installation schedule in consultation with the Owner Agency.

Article 5. Warranties.

5.1 Warranties of Title.

The Artist represents and warrants that the Artwork: (a) is solely the result of the artistic effort of the Artist; (b) is unique and original, except as otherwise disclosed in writing to NMAD and the Owner Agency; (c) is not a duplicate thereof and has not been accepted for sale elsewhere; (d) does not infringe upon any copyright; and (e) is free and clear of any liens or claims from any source whatsoever. The parties acknowledge and agree that these Warranties of Title shall not terminate and shall survive the termination of this Contract.

5.2 Warranties of Quality and Condition.

The Artist represents and warrants that: (a) the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects or qualities that will cause or accelerate deterioration of the Artwork; and (b) reasonable maintenance of the Artwork will not require procedures in excess of those described in the Artist's maintenance recommendations.

The warranties described in this Article 5.2 shall survive for five (5) years after the final acceptance of the Artwork, with periodic maintenance by the Owner Agency of the Artwork according to instructions provided by the Artist. The Owner Agency shall give written notice to NMAD of any breach of the Artist's warranty within one hundred twenty (120) days of the breach during the five-year period after final acceptance of the Artwork. The Artist shall, at the request of NMAD and the Owner Agency, and at no cost to the Owner or NMAD, cure reasonably and promptly any identified defect of the Artwork which is repairable by the Artist or a professional fine art conservator hired by the Artist. The Artist or a professional fine art conservator shall make such repairs consistent with accepted practices of professional fine art conservation (including, for example, repair by means of restoration, refurbishing or re-creation of part or all of the Artwork).

Article 6. Insurance.

Until such time that NMAD pays the Artist for the Artwork and title to the Work of Art passes to the Owner Agency, Artist shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the Owner Agency and NMAD as additional insureds:

a) Commercial General Liability insurance shall be written on an occurrence basis and be as broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe and the New Mexico Department of Cultural Affairs, including the New Mexico Arts Division, and their officials, officers, employees, and agents as additional insureds.

b) Artist shall provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Artist. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

Article 7. Reproduction Rights.

7.1 General.

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Artwork, except ownership and possession and any rights as may be limited by or granted in this Contract. The Artist grants to NMAD and the Owner Agency and their successors a perpetual, fully paid, without geographic limitation, and non-revocable, nonexclusive license to use images of the Artwork for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, books about the AIPP program, in whole or in part, and catalogues or other similar publications.

7.2 Artist Credit.

All reproductions by NMAD or the Owner Agency shall credit the Artist and include a copyright notice substantially in the following form: "©[Artist's name], installation date, date of publication, Funded through the Art in Public Places Program of New Mexico Arts, a division of the New Mexico Department of Cultural Affairs."

7.3 Artist Reproduction Credit.

The Artist shall include on or in any image or any other form of reproduction of the Artwork initiated or authorized by the Artist a credit to NMAD in the following form: "Artwork Funded by the Art in Public Places Program, New Mexico Arts Division, Department of Cultural Affairs."

Article 8. Artist's Rights.

8.1 General.

In all matters pertaining to the Artwork and its maintenance, including but not limited to the Articles in this Contract and the provisions of the New Mexico Fine Art in Public Building Act, Sections 13-4B-1 through 13-4B-3, and the federal Visual Artists' Rights Act of 1990 (VARA) shall apply as limited in this Contract.

8.2 Maintenance.

The Owner Agency recognizes that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. The Owner Agency shall reasonably assure that the Artwork is properly maintained and protected, in accordance with the Artist's maintenance schedule, instructions, and the requirements of this Contract.

8.3 Repairs and Restoration.

- a) NMAD shall have the right to determine, after consultation with the Owner Agency and a professional fine art conservator, when and if to repair or restore the Artwork. To the extent practicable, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations as recommended by a professional fine art conservator.
- b) If the repair or restoration is needed five years or more after payment under this contract, the Owner Agency may procure the Artist's services for repairs or restoration if permissible under New Mexico laws, including but not limited to the Procurement Code and State Use Act.
- c) NMAD may deaccession the Artwork if one or more of the following conditions exist: 1) the Artwork is damaged where repair is impractical or costs exceed the value of the Artwork; 2) the Artwork has faults that require repeated and excessive maintenance; 3) future site development requires the artwork be temporarily or permanently moved, relocated, or destroyed; 4) the Artwork endangers public safety; 5) public protest has continued unabated over a period of five years and a public hearing has not led to a solution.
- d) All repairs and restorations shall be made in accordance with accepted practices of professional fine art

conservation.

e). The Owner Agency must notify NMAD in writing if Artwork must be temporarily or permanently uninstalled, relocated, or destroyed one hundred eighty (180) days prior to action taking place.

8.4 Waiver of Rights due to Deaccession

In the future, and in the event the Owner Agency determines to deaccession the Artwork for any reason, including but not limited to an existing condition as outlined in Article 8.3.C., NMAD shall attempt to notify the Artist in writing by certified mail of recommended actions. Notwithstanding the provisions of Copyright Act of 1976, 17 U.S.C. 101 et seq., in the event the Owner Agency must destroy, modify, or develop the Work Site in such a way as to impact the Artwork, the Artist hereby agrees to waive all rights pursuant to the Copyright Act, including but not limited to the Artist's rights under the Visual Artist Rights Act, the Owner Agency, in consultation with NMAD, retain the right to determine, in their sole and absolute discretion without right of appeal, whether and to what extent the Artwork will be restored, repaired, removed, or destroyed.

Article 9. Artist as Independent Contractor.

The Artist, and his/her agents and employees, are independent contractors performing services for NMAD and are not employees of NMAD. The Artist, his/her agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of NMAD, as a result of this Contract.

Article 10. Termination.

a) If any party violates any of the covenants, agreements or conditions material to the Contract, any of the other parties shall thereupon have the right to terminate this Contract by giving thirty (30) days written notice of termination to all other parties, specifying the grounds for termination, provided that the terminating party or parties makes reasonable attempts to reconcile the reason for termination prior to the notice of termination and that the defaulting party or parties shall have thirty (30) days from their receipt of the notice of default to cure such default or commence actions to cure the default within the thirty (30) day period when cure of the default is not possible within the thirty (30) days.

b) If the Owner Agency or NMAD terminate this Contract for the Artist's violation, the Artist shall be ineligible to apply for Art in Public Places selection for a period of three (3) years or more from the date of the Artist's receipt of the notice of termination.

c) NMAD may terminate this Contract effective on the date of notice of termination if funding from the Legislature becomes unavailable as determined in NMAD's discretion or if NMAD determines that the Artwork is too expensive to maintain after reviewing a conservator's report obtained under Subsection 1.1(c) of this Contract.

Article 11. Contract Administrator.

NMAD shall administer this Contract, including issuing payments to the Artist, except as otherwise agreed to in this contract.

Article 12. Non-Discrimination.

In carrying out the performance of the services designated, neither the Artist nor the Owner Agency shall discriminate as to race, creed, religion, sex, age, national origin or any physical, mental or sensory disability, and the Artist shall comply with the equality of employment opportunity provisions of New Mexico and federal law as presently existing or hereafter amended.

Article 13. ADA Compliance.

In performing any services required hereunder, the Artist shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (the "ADA"). The Artist's responsibility to defend and indemnify NMAD, as provided in this Contract, includes but is not limited to claims arising from the Artist's, or Artist's agents' or employees' acts or omissions in violation of the ADA.

Article 14. Compliance.

The Artist shall comply with federal, state and city statutes, ordinances and regulations that are applicable to the performance of the Artist's services under this Contract.

Article 15. Entire Agreement.

This writing embodies the entire Contract and understanding between the parties hereto, and there are no other contracts, agreements, and understandings, oral or written, with reference to the subject matter hereof that are not superseded hereby.

Article 16. Modification.

No alteration, change or modification of the terms of the Contract shall be valid unless made in writing and signed

by all parties hereto and approved by appropriate action of the Owner Agency and NMAD.

Article 17. Waiver.

No waiver of performance by any party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, and conditions of this Contract. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or an acceptance of defective performance.

Article 18. Governing Law and Venue.

This Contract, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of New Mexico. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G). By execution of this Agreement, Artist acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

Article 19. Indemnification.

The Artist shall defend, indemnify and hold harmless the Owner Agency, NMAD and the New Mexico Department of Cultural Affairs, from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Contract, caused by the negligent act or failure to act of the Artist, his officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Artist resulting in injury or damage to persons or property during the time when the Artist or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Contract. In the event that any action, suit or proceeding related to the services performed by the Artist or any officer, agent, employee, servant or subcontractor under this Contract is brought against the Artist, the Artist shall, as soon as practicable but no later than two (2) days after Artist receives notice thereof, notify the legal counsel of the Owner Agency and the New Mexico Department of Cultural Affairs.

Article 20. New Mexico Tort Claims Act

Any liability incurred by the Owner Agency, NMAD and/or the New Mexico Department of Cultural Affairs, in connection with this Contract 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 Owner Agency, NMAD and the New Mexico Department of Cultural Affairs, and their "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.

Article 21. Heirs and Assigns.

This Contract shall be binding upon and shall inure to the benefit of the Owner Agency, and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

Article 22. Written Notices.

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given upon the receipt thereof.
- b) For purposes of giving formal, written notice, the parties will use the following addresses:

<u>OWNER AGENCY</u>	<u>SITE CONTACT</u>	<u>ARTIST</u>	<u>NMAD</u>
Alan M. Webber Mayor City of Santa Fe P.O. Box 909 Santa Fe, NM 87504 (505) 955-6590 mavor@santafenm.gov	Rod Lambert Assistant Director Santa Fe Arts and Culture Department P.O. Box 990 Santa Fe, NM 87504 (505) 955-6705 rdlambert@santafenm.gov	Hector Manuel Ortega Ortega Sculpture 5634 N. 14 th Drive Phoenix, AZ 85013 (602) 421-2937 ortegasculpture@yahoo.com	Meredith Doborski Public Art Program Director New Mexico Arts 407 Galisteo Suite 270 Santa Fe NM 87501-2641 505-827-6490 Meredith.doborski@state.nm.us

- c) The Artist and Owner Agency Representative will provide NMAD with notice of any change in address within ten (10) days following that change. After the final payment in this Contract has been made, the Artist and Owner Agency will notify NMAD of any change in address within thirty (30) days following the change. Failure to notify NMAD of a change of address will waive the Artist's or Owner Agency's rights, respectively, that are described in this Contract, except for the Artist's copyright and reproduction rights.

Article 23. Conflict of Interest.

The Artist 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 of services required under this Contract. The Artist certifies it has not violated or caused any other person to violate any requirement of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, by entering this contract.

Article 24. Bribes, Gratuities, Kickbacks, Applicable Law.

The Procurement Code, NMSA 1978, Sections 13-1-28 through -199, imposes civil and criminal penalties for violation of the Code. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

Article 25. Records and Audits.

The Artist shall maintain, for three years, records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by NMAD, the Owner Agency, the Department of Finance and Administration, and the State Auditor. NMAD, the Department of Finance and Administration, the State Auditor, and the Owner Agency shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the rights of NMAD and the Owner Agency, respectively, to recover excessive or illegal payments.

Article 26. Assignment.

The Artist 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 NMAD and the Owner Agency.

Article 27. Required Signatures.

This Contract will not be binding upon any parties hereto until all signatures required below have been obtained. Other than as to individuals, each signatory below represents that by signing this agreement that he or she has the authority to bind the entity for which he or she signs.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature below:

DEPARTMENT OF CULTURAL AFFAIRS:

Debra Garcia y Griego Digitally signed by Debra Garcia y Griego
Date: 2022.10.11 14:20:25 -06'00'

Date _____

Debra Garcia y Griego, Cabinet Secretary Dept. of Cultural Affairs

Digitally signed by Michelle Laflamme-Childs
Date: 2022.10.04 14:59:41 -06'00'

Date _____

Michelle Laflamme Childs, Executive Director, New Mexico Arts Division

Approved as to budgetary sufficiency:

Greg Geisler Digitally signed by Greg Geisler
Date: 2022.10.11 13:54:05 -06'00'

Date _____

Greg Geisler, ASD Director/CFO, Dept. of Cultural Affairs

Approved as to form:

Peter Ives Digitally signed by Peter Ives
Date: 2022.10.07 09:11:46 -06'00'

Date _____

Peter Ives, General Counsel, Dept. of Cultural Affairs

OWNER AGENCY:

Alan M. Webber, Mayor, City of Santa Fe

Date Sep 15, 2022

Attest:

Kristine Bustos Mihelcic, City Clerk, City of Santa Fe
GB MTG 09/14/2022

Date Sep 16, 2022

OWNER AGENCY LEGAL REPRESENTATIVE:

Marcos Martinez (Jun 13, 2022 11:44 MDT)

Marcos D. Martinez, Senior Assistant City Attorney, City of Santa Fe

Date Jun 13, 2022

Approved for Finances:

Emily K. Oster (Sep 15, 2022 16:04 MDT)

Emily Oster, Finance Director, City of Santa Fe

Date Sep 15, 2022

ARTIST:

SEE NEXT PAGE

Hector Manuel Ortega DBA Ortega Sculpture

Date _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature below:

DEPARTMENT OF CULTURAL AFFAIRS:

SEE PREVIOUS PAGE

Debra Garcia y Griego, Cabinet Secretary Dept. of Cultural Affairs

Date _____

SEE PREVIOUS PAGE

Michelle Laflamme Childs, Executive Director, New Mexico Arts Division

Date _____

Approved as to budgetary sufficiency:

SEE PREVIOUS PAGE

Greg Geisler, ASD Director/CFO, Dept. of Cultural Affairs

Date _____

Approved as to form:

SEE PREVIOUS PAGE

Peter Ives, General Counsel, Dept. of Cultural Affairs

Date _____

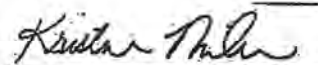
OWNER AGENCY:



Alan M. Webber, Mayor, City of Santa Fe

Date Sep 15, 2022

Attest:



Kristine Bustos Mihelcic, City Clerk, City of Santa Fe
GB MTG 09/14/2022

Date Sep 16, 2022

OWNER AGENCY LEGAL REPRESENTATIVE:



Marcos Martinez (Jun 13, 2022 11:44 MDT)

Marcos D. Martinez, Senior Assistant City Attorney, City of Santa Fe.

Date Jun 13, 2022

Date _____

Approved for Finances:

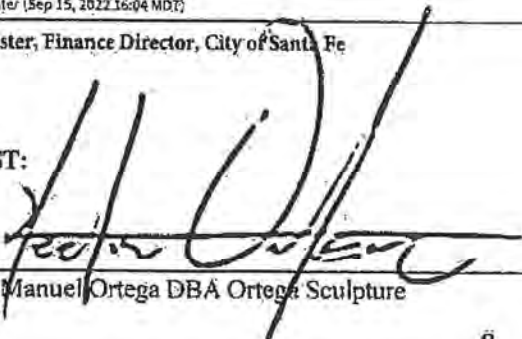


Emily K. Oster (Sep 15, 2022 16:04 MDT)

Emily Oster, Finance Director, City of Santa Fe

Date Sep 15, 2022

ARTIST:



Hector Manuel Ortega DBA Ortega Sculpture

Date SEPTEMBER 23, 2022

Framing, Installation, and Plaque Guidelines

All framing materials must be museum quality!

1. Mat type - 100% Cotton rag.
2. Mat color – white, off-white, gray, or black. Other colors must be approved by NMAD.
3. Mat size – not to be less than 2 inches all the way around. Other mat sizes or elimination of mat must be approved by NMAD.
4. Backing – Acid free, museum quality.
5. Mounting – Acid free, museum quality.
6. Frame material - simple profile, wood molding, 1.5" or larger on the face. Colors can be natural wood tones, black, or white. Other colors must be approved by NMAD.
7. Plexiglas protective covering required on all 2-D pieces. Glass on pastels.
8. Spacers when necessary, so that Plexiglas does not touch the artwork.
9. Security hangers must be used, no wire (i.e. T-Lock or T-Screw Security Hangers)
10. Weighted wood pedestal with secure bolted Plexiglas cover required on small 3-D works. Other pedestal materials must be approved by NMAD.
11. Pedestals shall be tall enough to bring the artwork to eye level.
12. Large scale and/or exterior sculptures do not require Plexiglas covering. "Large Scale" is determined by NMAD in consultation with Artist.
13. All artwork must be permanently installed at the site along with an identification plaque.
14. Pedestals must be painted either black or white. Other colors must be approved by NMAD.

Samples of mats, frames, pedestals and plaques can be viewed at New Mexico Arts office (407 Galisteo, suite 270, Santa Fe, NM). Please call to schedule an appointment (505-827-6490, In State 800-879-4278).

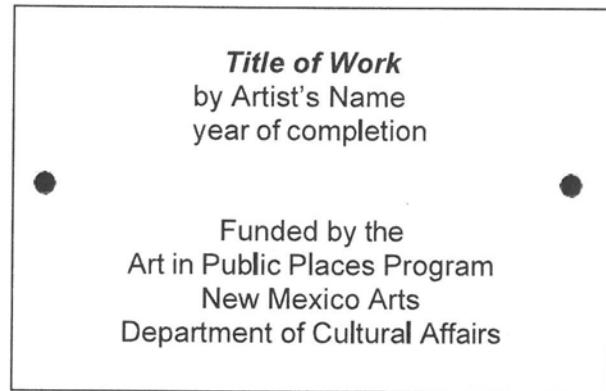
The following guidelines are used for NMAD Art in Public Places Program to maintain plaque quality and style consistency. It is permissible for the font size to be changed to best fit the size of the plaque. (Drawings are not to scale!)

SAMPLE

- 14 pt Bold Italic Arial Font or Times New Roman
- 14 pt Plain Arial Font or Times New Roman
- 14 pt Plain Arial Font or Times New Roman

May or may not have 2 drilled holes for mounting depending on plaque style

- 12 pt Plain Arial Font or Times New Roman
- 12 pt Plain Arial Font or Times New Roman
- 12 pt Plain Arial Font or Times New Roman
- 12 pt Plain Arial Font or Times New Roman



.....

Interior Pieces

Material and Finish: Metal 3" x 5" plate with brushed silver or brass finish and black lettering on wooden base (black or natural wood) no larger than 5" x 7"

.....

Exterior Pieces

Material and Finish: Metal plate with black finish and silver lettering
Plaque Size: 4" x 6" or 5" x 7"

.....

Please adjust font size to best fit plaque dimensions

VARIATIONS: We understand that because of the nature of the artwork and/or site, plaque variations may be desirable. For example, a tile artist might choose to create a custom tile plaque to integrate into the work. For a large stainless steel exterior sculpture, an artist might wish to use a stainless-steel plaque that is larger than the standard size. We encourage you to think creatively. However, the Artist must consult with New Mexico Arts before executing a custom plaque (505-827-6490, In State 800-879-4278).



Blind Faith



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: State of New Mexico Department of Cultural Affairs

Procurement Title: Airport purchase: Hector Manuel Ortega DBA Ortega Sculpture

Procurement Method: State Price Agreement Cooperative Sole Source Other

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

(RFP) Department Request Arts and Culture Staff Name Pauline Kanako Kamiyama

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

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

Pauline Kanako Kamiyama Director 6/21/22

Department Rep Printed Name (attesting that all information included) Title Date

JoAnn Levato Contracts Supervisor Jun 22, 2022

Purchasing Officer (attesting that all information is reviewed) Title Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.



City of Santa Fe, New Mexico

Memorandum



DATE: June 21, 2022

TO: Governing Body

VIA: Alexis Lotero, Interim Finance Department Director
 Fran Dunaway, Chief Procurement Officer
 Rich Brown, Community Development Director
 Pauline Kanako Kamiyama, Arts and Culture Department Director

FROM: Robert Lambert, Arts and Culture Department Assistant Director

ITEM AND ISSUE:

For the Approval of New Mexico State Purchase Contract for the Purchase of Public Art for Display of Artwork on City Property (Santa Fe Municipal Airport) with New Mexico Arts (State of New Mexico) in the Amount of \$37,000 (Robert Lambert, Assistant Director, rdlambert@santafenm.gov, 955.6707).

BACKGROUND AND SUMMARY:

As a function of Capital Improvement Projects, 2% of Bonds are applied to the purchase and installation of Public Art at bond location sites. Santa Fe Municipal Airport's Bond funding resides in State of NM purview and managed by their policies and procurement through New Mexico Arts. Selection and purchase of artwork managed by NM Arts. There is no cost to the City..

PROCUREMENT METHOD:

- works of art for museums or for display in

State Procurement Exemption: 13-1-98 T (State Agency)
 public buildings or places

CONTRACT NUMBER:

The FY23 Munis contract number is 3202810.

FUNDING SOURCE:

3502775/572979

ACTION REQUESTED:

Arts and Culture Department respectfully requests your review and approval.



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3202810

Contractor: New Mexico Arts, State of NM Dept. of Cultural Affairs (Hector Manuel Ortega)

Description: Public Art Purchase for Airport Expansion Project (State CIP Bond Funding)

Contract Agreement Lease / Rent Amendment

Term Start Date: upon execution Term End Date: 3/31/2024

Approved by Council Date: _____

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)
As a function of Capital Improvement Projects, 2% of Bonds are applied to the purchase and installation of Public Art at bond location sites. Santa Fe Municipal Airport's Bond funding resides in State of NM purview and managed by their policies and procurement through New Mexico Arts. purchase of artwork managed by NM Arts. There is no cost to the City. State of NM Public Arts Purchase Program- Funded through Bond Initiatives

3. Procurement History: _____

ToAnn Levato

ToAnn Levato (Jun 22, 2022 11:05 MD)

Purchasing Officer Review: _____

Comment & Exceptions: Art for public display. 13-1-98 T

Jun 22, 2022

Date: _____

4. Funding Source: NO cost to the City, maintenance budget Org / Object: 3502775/572979

Andy Hopkins

Andy Hopkins (Jun 24, 2022 10:58 MD)

Budget Officer Approval: _____

Comment & Exceptions: _____

Jun 23, 2022

Date: _____

Staff Contact who completed this form: _____ Phone # _____

Email: _____

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



City of Santa Fe

Summary of Contract, Agreement, Amendment & Lease

All applicable fields to be completed by department (complete 1.b only if you are processing an amendment):

1.a Munis Contract: 3202810 Procurement # (RFP/ITB# If any): _____

Contractor: New Mexico Arts, State of NM Dept. of Cultural Affairs (Hector Manuel Ortega)

Procurement Method/Vehicle: Small Purchase RFP ITB Sole Source GSA Cooperative Exempt SWPA/Existing

Description/Title: Public Art Purchase for Airport Expansion Project (State CIP Bond Funding)

Contract: Agreement: Lease/Rent: Amendment:

Term Start Date: upon execution Term End Date: March 31, 2026 Total Contract Amount: _____

Approved by Council (If over the City Manager's approval threshold, you must go through GB) _____

Contract / Lease: _____

1.b Amendment #: _____ to the Original Contract/Lease # _____

Increase/(Decrease) Amount \$: _____

Extend Expiration Date to: _____

Approved by Council (If the original went through GB, all amendments must go through GB regardless of the amendment reason) Date: _____

Amendment is for: _____

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

As a function of Capital Improvement Projects, 2% of Bonds are applied to the purchase and installation of Public Art at bond location sites. Santa Fe Municipal Airport's Bond funding resides in State of NM purview and managed by their policies and procurement through New Mexico Arts.

Selection and purchase of artwork managed by NM Arts. There is no cost to the City.

3. Procurement History: _____

Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: _____

4. Funding Source: NO Cost to City- maintenance budget Org / Object: 3359980-572970

Andy Hopkins

Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

5. Grant History (if applicable): _____

Grants Administrator Approval: _____ Date _____

Staff Contact who Completed This Form: Melissa Velasquez Phone #: 6707

To be recorded by City Clerk: _____ Email: mrvelasquez@santafenm.gov

Clerk # _____

Date of Execution: _____

ITT Representative (attesting that all information is reviewed)

Title

Date










AIPP ORTEGA with New Signature Page Amendment 1 w SOC and Memo

Final Audit Report

2024-03-05

Created:	2024-03-05
By:	Kristy Miera (kamiera@santafenm.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXxPANeR8Us3Mkpi2dh6Bp_B9AFAwwYyD


"AIPP ORTEGA with New Signature Page Amendment 1 w SOC and Memo" History

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-  Document emailed to ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov) for signature
2024-03-05 - 4:52:32 PM GMT
-  Email viewed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
2024-03-05 - 5:45:01 PM GMT
-  Document e-signed by ajhopkins@santafenm.gov ajhopkins@santafenm.gov (ajhopkins@santafenm.gov)
Signature Date: 2024-03-05 - 5:45:23 PM GMT - Time Source: server
-  Document emailed to JoAnn Lovato (jdlovato@santafenm.gov) and Travis Dutton-Leyda (tkduttonleyda@santafenm.gov) for signature. One of them to sign
2024-03-05 - 5:45:27 PM GMT
-  Email viewed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
2024-03-05 - 6:40:35 PM GMT
-  Document e-signed by Travis Dutton-Leyda (tkduttonleyda@santafenm.gov)
Signature Date: 2024-03-05 - 6:41:31 PM GMT - Time Source: server
-  Document emailed to EMILY OSTER (ekoster@santafenm.gov) for signature
2024-03-05 - 6:41:35 PM GMT
-  Email viewed by EMILY OSTER (ekoster@santafenm.gov)
2024-03-05 - 6:59:26 PM GMT



 Document e-signed by EMILY OSTER (ekoster@santafenm.gov)

Signature Date: 2024-03-05 - 6:59:54 PM GMT - Time Source: server

 Agreement completed.

2024-03-05 - 6:59:54 PM GMT



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Acrobat Sign







24-0251 NM Department of Cultural Affairs, NM Arts Division - Ortega Sculpture reduced

Final Audit Report

2024-03-26

Created:	2024-03-26
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQJmFAOQDBTtiCi7QlalnznR-vZHIF4t

"24-0251 NM Department of Cultural Affairs, NM Arts Division - Ortega Sculpture reduced" History

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-  Email viewed by jwblair@santafenm.gov
2024-03-26 - 4:24:17 PM GMT- IP address: 104.47.65.254
-  Signer jwblair@santafenm.gov entered name at signing as John Blair
2024-03-26 - 4:24:43 PM GMT- IP address: 63.232.20.2
-  Document e-signed by John Blair (jwblair@santafenm.gov)
Signature Date: 2024-03-26 - 4:24:45 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Geralyn Cardenas (gfcardenas@santafenm.gov) for signature
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-  Email viewed by Geralyn Cardenas (gfcardenas@santafenm.gov)
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-  Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)
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2024-03-26 - 7:46:29 PM GMT