AIPP PROJECT #: 05-0374		CONTRACT #: 16168.0
AGENCY ACCT.# 50-505	ACTIVITY/ACCT.#	LINE ITEM <u>548700</u>
CONTRACT AMT: \$1,300.00	PURCHASE ORDER #	PROJ. COOR: ng

# 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 the State of New Mexico, Department of Cultural Affairs/New Mexico Arts Division (hereafter, "NMAD"), acting through Veronica Gonzales, its Secretary; Santa Fe County, hereinafter referred to as "Owner Agency"; and David Vedoe 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 Nambe Community Center, 180 A SR 503, Nambe, NM 87506; 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 1. 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 one (1) 30" x 30" Mixed Media on Canvas of three pottery vessels with various spirits rising out of each vessel entitled "Venerating the Spirits", 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 or frame and Plexiglas protective covering, and device/devices for hanging 2D Artwork or securing a Plexiglas cover to a pedestal, upon which the Work of Art is mounted, 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 attached or installed, in this case the Nambe Community Center, 180 A SR 503, Nambe, NM 87506;
- 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, Owner Agency and NMAD.

- a) The Artist shall perform all services and furnish all supplies, material, and equipment as necessary for the transportation of the Artwork to the Work Site and the permanent and secure installation of the Artwork 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 the Artist and is unique and original, except as otherwise disclosed in writing to NMAD and the Owner Agency. If the Artwork is one in a series (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 series in writing to NMAD and the Owner Agency. The Artist

further warrants 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 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.
- c) 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. In collaboration with the Artist, install the Artwork and prepare the Work Site;
  - 2. Provide the Artist with reasonable access to the Work Site for the installation of the Artwork.
- 3. In consultation with NMAD, take reasonable precautions to secure the Work Site during the installation of the Artwork.

#### 1.2 Delivery and Installation.

- a) The Artist shall deliver and permanently and securely install the completed Artwork at the Work Site no later than May 30th, 2017.
- 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 permanent anti-theft measures and/or devices to protect the Artwork.
- 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 of the Artwork, the Artist shall furnish NMAD 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 <u>all</u> 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, using the NMAD <u>Final Payment Invoice NOA</u> form, when all 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 <u>Notice of Acceptance</u> 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 <u>Final Payment Invoice - NOA</u> form. The Artist shall <u>obtain and maintain a policy</u> of insurance for the purchase price of the Artwork to cover risk of damage or loss to the Artwork until final acceptance by the Owner Agency <u>as required in Article 6 of this Agreement</u>.

#### 1.6 Title.

Title to the Artwork shall pass to the Owner Agency after installation and upon receipt by NMAD of the Notice of Acceptance 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 Notice of Acceptance 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 provide insurance for the purchase price of the Artwork upon transfer of ownership from NMAD 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 July 30<sup>th</sup>, 2017, 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 one thousand and three hundred dollars (\$1,300.00), 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 a Final Payment Invoice - NOA form signed by the Artist, Owner Agency, and NMAD. Prior to issuance of payment, an NMAD Coordinator may visit 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 <u>Article 2</u>. 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.

#### 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 which 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 a period of five (5) years after the final acceptance of the Artwork, with periodic required maintenance by the Owner Agency, 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 a 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, and which repair is 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.

- a) Until such time that NMAD pays the Artist for the Finalist Presentation and title to the Work of Art passes to the Owner Agency, the Artist is responsible for maintaining insurance coverage for claims and losses for both personal injury and property damage arising from performance under this Contract.
- b) Auto Insurance. Artist shall hold automobile insurance with at least the minimum New Mexico State levels of coverage, twenty thousand dollars (\$20,000) for bodily injury or death of one person, fifty thousand dollars (\$50,000) per accident for bodily injury to or death of two or more people, and ten thousand dollars (\$10,000) per accident for property damage.
  - c) Worker Compensation. Artist shall obtain worker's compensation insurance as required by law.

#### 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 this Contract. The Artist grants to NMAD, the Owner Agency, and their successors a non-revocable license to use images of the Artwork for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, 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: "Collection of the New Mexico Arts Division Art in Public Places Program."

#### 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.

#### 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 de-accession 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) the Artwork endangers public safety; 4) 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 will give NMAD one hundred twenty (120) days' notice prior to any change in the property that will require removal or relocation of the Artwork.

#### 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 with in 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.

#### 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, Gallery 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. 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 20. 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:

#### **OWNER AGENCY**

Erik H. Aaboe
Project Development Director
102 Grant Avenue, Santa Fe,
NM 87501
eaaboe@santafecountynm.go

#### SITE\_CONTACT

Anna Bransford
Program Manager
Santa Fe County
Community Services
Department
2052 South Galistco st.
Santa Fe, NM 87505
abransford@santafecount
ynm.gov

# ARTIST David Vedoe P.O. Box 2573, Taos, NM,

87571 vedoe@laplaza.org

#### **NMAD**

Nicholas Henderson New Mexico Arts Bataan Memorial Bldg. 407 Galisteo Suite 270 Santa Fe NM 87501-2641 505-827-6490 505-827-6043/fax 800-879-4278/instate nicholas.henderson@state.nm.us

c) Until NMAD receives the <u>Final Payment Invoice - NOA</u> form with Artist's signature and the Owner-signed <u>Notice of Acceptance</u> form, the Artist and Owner Agency 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 21. 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 that 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 22. Bribes, Gratuities, Kickbacks, Applicable Law.

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, 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 23. 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 24. Employee Pay Equity Reporting

Artist agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If Artist has two hundred fifty (250) or more employees, Artist must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Artist also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should Artist not meet the size requirement for reporting at contract award but subsequently grows such that the Artist meets or exceeds the size requirement for reporting, Artist agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Artist also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Artist further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Artist will submit the required report, for each such subcontractor, within ninety (90) days of that subcontractor meeting or exceeding the

size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Artist shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Artist acknowledges that this subcontractor requirement applies even though Artist itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Artist has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

#### Article 25. 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 26. 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.

### Round 1 – Student 1: Daimon Sisneros

## Zacuanpapalotls

By Brenda Cárdenas

(in memory of José Antonio Burciaga, 1947-1996)

We are chameleons. We become chameleon.

—José Antonio Burciaga

We are space between—

the black-orange blur

of a million Monarchs

on their two-generation migration

south to fir-crowned Michoacán

where tree trunks will sprout feathers,

a forest of paper-thin wings.

Our Mexica cocooned

in the membranes de la Madre Tierra

say we are reborn zacuanpapalotls,

mariposas negras y anaranjadas

in whose sweep the dead whisper.

We are between—

the flicker of a chameleon's tail

that turns his desert-blue backbone

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

Veronica Conzales, Cabinet Secretary Dept. of Cultural Affairs  Loie Fecteau, Executive Director New Mexico Arts Division	Date 2/23-17 Date 1.17.19
Approved as to budgetary sufficiency:  Greg Geisler, ASD Director/CFO Dept. of Cultural Affairs	Date 1-20-17
Approved as to form:  Attorney, Deptl of Cultural Affairs	Date 2/22/17
OWNER AGENCY: Katherine Miller, County Manager	Date 1/12/17
OWNER AGENCY LEGAL REPRESENTATIVE (if required by Owner Agency):  Print name & title, then sign above	Date
ARTIST:  David Vedoe	Date 3014 27 2016