

CULTURAL CENTER
LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into by and between the City of Gallup, NM, a New Mexico Municipal Corporation, whose address is P.O. Box 1270. Gallup. New Mexico 87305-1270, hereinafter referred to as CITY and Southwest Indian Foundation, a New Mexico nonprofit corporation, whose address is P.O. Box 307. Gallup, New Mexico 87305-0307, hereinafter referred to as SWIF.

WHEREAS, the City of Gallup is the owner of the property located at 218 E. Highway 66 commonly known as the Cultural Center and desires to continue to utilize the building public purposes; and

WHEREAS, The Southwest Indian Foundation has managed and operated the Cultural Center on behalf of the City for several years by way of a lease agreement; and

WHEREAS, the parties are desirous of continuing that agreement through a new lease agreement that meets the current needs of the parties;

It is hereby agreed as follows:

1. **DEMISE OF PROPERTY.** CITY hereby leases to SWIF, and SWIF hereby leases from CITY, that certain building commonly known as the Cultural Center on the property located at 218 East Historic Highway 66, Gallup, New Mexico. The property has been improved with a building and parking lots located on the east and west sides of the building. The parking lot on the west side of the building is included in the lease, the parking lot on the east side of the building is not. SWIF has inspected the same and, by the execution of this Lease, accepts the same in its present condition. SWIF and the CITY both understand that the west parking lot will be used as a free public parking lot and that appropriate space will be provided for tour bus parking.

2. **TERM.** The term of this Lease shall begin on July 1, 2019, and unless terminated or extended shall end on June 30, 2024.

3. **RENT.** During the term of this Lease, Lessee shall pay Lessor Five Thousand Dollars (\$5,000.00) per month, which is the fair market rental value of the leased premises. Lessee may meet its rental obligations through;

a. managing the building a day-to-day basis and keeping the first floor, including the restrooms and waiting room area, open to the public for a minimum of fifty (50) hours each week. Managing the building includes maintaining Native American exhibits and all security necessary to safely house artifacts; maintaining the theater area; maintaining the waiting area so that the building can serve as a terminal for Amtrak, Gallup Express, and tribal transportation systems; and providing an information kiosk for local transportation services and tourist information, attractions, and activities.

- b. Operate the building as a community center by providing it as a venue for public events, forums, and entertainments as well as a rental venue for private functions.
- c. Allowing the building to serve as a staging point for community tour groups.
- d. To calculate the value of the above services, SWIF may apply up to \$60,000 in salary expense of its three employees that are located at the Cultural Center.

The Lessee shall, by July 30 of each year, submit to Lessor a statement itemizing the salary expenses that it wants to credit against its rental obligations, such statement to be in a format and contain such information as Lessor may reasonably require. Lessor may, in its reasonable discretion, request such additional information and documentation as it deems necessary. Should the salary expense incurred by SWIF in operating the Cultural Center not equal or exceed Lessee's rental obligations for the previous year, Lessee shall, within thirty (30) days, makeup the rental shortfall by paying Lessor cash or through the provision of additional non-cash items. The parties agree to negotiate in good faith over the way(s) in which Lessee shall make up the rental shortfall.

Should such salary expense exceed Lessee's rental obligation for the previous year, Lessor shall not, under any circumstances, be obligated to reimburse Lessee for or otherwise be liable for any salary expense incurred by Lessee in excess of its annual rental obligations.

4. RENEWAL OPTIONS. SWIF shall have the right and option to renew this Lease for two additional additional five (5) year terms, provided SWIF is not in default, that the City has not terminated the lease pursuant to paragraph 20, and SWIF gives written notice to CITY of its election to exercise such right and option at least ninety (90) days prior to the beginning of the new lease term.

5. USE. SWIF may use its portions of the leased premises for the purpose of engaging in commercial business and SWIF agrees to conform and comply with all applicable county, state and federal ordinances, laws, rules and regulations in using said premises; and not to use or suffer to be used in the premises in any manner in contravention of any applicable city, state or federal ordinances, laws, rules and regulations or so as to create any nuisance. SWIF agrees the premises shall not be used as a wholesale outlet of Indian Jewelry. SWIF shall cooperate with CITY in the use of said parking lots adjacent to the building for CITY-sponsored events.

6. CONDITION OF PREMISES AND REPAIRS. SWIF hereby agrees and covenants with CITY that SWIF has examined the said premises prior to the execution hereof, knows the condition thereof, and acknowledges that SWIF has received the said demised premises in good order and condition and that no representation or warranty as to the condition or repair of the said premises has been made by CITY, and, at the expiration of the term of this Lease or any renewal or extension thereof, SWIF will yield up

peaceably the said premises to CITY in as good order and condition as when the same were entered upon by SWIF, loss by fire or inevitable accident, damage by the elements, and reasonable use and wear excepted; that SWIF will keep the said premises in good order and repair during the term of this Lease, or any extension or renewal thereof. Notwithstanding the foregoing, CITY shall be responsible for major structural repairs, repairs to the roof, and major repairs to the HVAC, air conditioning, boilers, heating units or similar major items. SWIF shall be responsible for routine maintenance to the building and minor repairs (less than \$2000.00). Subject to the provisions of the Bateman Act, the CITY will budget \$20,000 each fiscal year for the purpose of paying for maintenance and repairs of over \$2000.00. SWIF, upon completion of such maintenance or repairs may invoice the CITY for reimbursement. SWIF must comply with CITY procurement rules and regulations for obtaining quotes for such maintenance and repairs.

7. **LIABILITY OF CITY.** SWIF agrees that CITY shall not be liable for any damage to persons or property arising from any case whatsoever, which shall occur in any manner in or about the said premises, and SWIF hereby agrees to indemnify and save harmless CITY from any and all claims and liability for damage to persons or property arising from any cause whatsoever, which shall occur in any manner in or about its portion of the said premises. Further, SWIF hereby agrees and covenants with CITY that CITY shall not be liable for any damage to the said demised premises or any part thereof or to any property or effects therein or thereon caused by leakage from the roof of said premises or by bursting, leakage or overflowing of any waste pipes, water pipes, tanks, drains or stationary wash stands or by reason of any damage whatsoever caused by water from any source whatsoever and SWIF hereby agrees and covenants to indemnify and save harmless CITY from any and all claims and liability for any damage to the said demised premises, or to any part thereof, or to any property or effects therein or thereon. The parties, however, agree that the CITY shall maintain the roof in good repair and the structure of the building in good repair, and, if SWIF determines that repairs need to be made to the roof or to the structure, it shall notify CITY promptly and they shall have repairs made as soon as possible. In such a case, the parties agree that, should the premises be unfit to conduct business, the rental payments due to City shall cease until the premises are rebuilt and repaired so as the SWIF can continue to conduct business.

8. **ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.** SWIF agrees that it shall not make, or suffer or permit to be made, any major alterations (not to exceed \$10,000.00), additions or improvements whatsoever in or about the said demised premises without first obtaining the written consent of CITY therefore; provided, however, that such consent, if given, shall be subject to the express condition that any and all alterations, additions, and improvements shall be done at SWIF'S own expense and in accordance and compliance with all applicable city, state, and federal ordinances. laws, rules, and regulations,

and that SWIF hereby covenants and agrees with CITY that in doing and performing such work, SWIF shall do and perform the same at SWIF'S own expense, in conformity and compliance with all applicable city, state, and federal ordinances, laws, rules, and regulations and that no liens of mechanics, materialmen's, laborers, architects, artisans, contractors, subcontractors, or any other lien of any kind whatsoever shall be created against or imposed upon the said demised premises, or any part thereof, and that SWIF shall indemnify and save harmless CITY from any and all liability and claims for damages of every kind and nature which might be made or judgment rendered against CITY or against said demised premises on account of or arising out of such alterations, additions, or improvements.

9. OWNERSHIP OF ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. SWIF agrees that any and all alterations, additions, and improvements, except shelving and moveable furniture, made at SWIF'S own expense after having first obtained written consent of CITY thereof, in accordance with the provisions contained in paragraph 10 hereof, whether attached to the walls, floors, premises, or not, shall immediately vest in CITY, and all such alterations, additions, and improvements shall remain in the said premises and shall not be removed by SWIF at the termination of this Lease. The shelving and/or moveable furniture which SWIF is privileged to remove, must be removed by SWIF at SWIF'S expense on or before the termination of the Lease.

10. **ASSIGNMENT.** SWIF hereby agrees that neither SWIF nor SWIF's assignee, or successors in interest shall assign this Lease or in any way sublet the said demised premises, in whole or in part, without first obtaining the written consent of CITY therefore,; that no assignment of this Lease or any other subletting said demised premises, in whole or in part, shall be valid, except by and with the written consent of CITY first obtained; that the consent of CITY to any such assignment or subletting shall not operate to discharge SWIF, or SWIF's assignee, or successors in interest, shall remain liable for the full and complete performance of all of the terms, conditions, and agreements herein contained; that any consent of the CITY to any such assignment or subletting shall not operate as a consent to further assignment or subletting or as a waiver of this covenant and agreement against assignment and subletting; and that following any such assignment or subletting; the assignee and/or sublettee shall be bound by all terms, conditions, covenants, and agreements herein contained, including the covenant against assignment and subletting.

11. ADDITIONAL TENANTS. So long as the National Railroad Passenger Corporation (Amtrak) are tenants in the leased premises, they shall be permitted to continue their occupancy at the rents and under the covenants set out in their present leases. All existing subleases are hereby ratified and approved by the Parties. The southeast corner area on the first floor in the leased premises is currently subleased by SWIF to Enchantment Skate Shop. An area in the west parking lot is currently subleased to Blunt Brothers

Coffee to operate a retail coffee shop. The restaurant area on the first floor in the leased premises is currently subleased by SWIF to Angela Chavez. The existing subleases may be transferred by SWIF to other tenants with the approval of the CITY and other areas of the Cultural Center may be subleased by SWIF with the approval of the City. The CITY will not unreasonably withhold its approval. All rents paid by building subtenants, other than Amtrak, shall be retained by SWIF. Any rents paid by Amtrak shall be retained by the City. Subject to availability, the City may use the areas on the second floor that are rented out for temporary events for City sponsored events at no charge to the City. Such events must be scheduled through SWIF.

12. UTILITY AND OTHER CHARGES/JANITORIAL. SWIF shall pay all utilities for the building. City shall provide all utilities controlled by it to SWIF at the City of Gallup's cost of said utilities. The CITY shall pay Gas Company of New Mexico directly and SWIF shall promptly reimburse the CITY. The CITY shall provide janitorial services and supplies for all downstairs public areas of the building, including the Amtrak area, and for the upstairs public bathrooms. SWIF shall provide janitorial services for all other interior parts of the building. City shall maintain all exterior areas of the leased premises, including all parking lots and provided snow removal. SWIF shall pay for all telecommunications, internet, cable television or other similar services it uses within the building.

13. TAXES, OTHER ASSESSMENTS, AND INSURANCE. SWIF and CITY hereby agree that all taxes and other assessments which have been or may be levied upon the said demised premises and upon any alterations, additions, and improvements thereon shall be paid by SWIF at the time when the same shall become due and payable, and that all taxes and assessments which have been or may be levied upon the personal property located upon the said demised premises shall be paid by SWIF at the time when the same shall become due and payable. If SWIF fails to pay such assessments, the CITY may, at CITY'S option, pay such assessments, and SWIF hereby agrees with CITY to carry and maintain in full force and effect during the term of this Lease and any extension or renewal thereof at SWIF'S expense public liability insurance, in a form and with an insurance company acceptable to CITY, with limits of coverage not less than One Million (\$1,000,000.00) Dollars for each person and One Million (\$1,000,000.00) Dollars in the aggregate for bodily injury or death liability for each accident and One Million (\$1,000,000.00) Dollars for each accident property damage liability, for the benefit of both CITY and SWIF as protection against all liability claims arising from the premises, causing CITY to be named as an additional-named insured on such policy of insurance, and delivering a copy thereof to CITY.

14. FIRE AND CASUALTY. SWIF shall at all times after commencement of the rental term at its sole cost and expense keep the building and improvements constituting the demised premises insured against

loss by fire, with extended coverage for not less than the full replacement value thereof, and shall keep such insurance in full force and effect during the entire term of this Lease and any extension thereof. Such insurance shall be procured from a reasonable insurance company, or companies, reasonably satisfactory to the CITY and authorized to do business in the State of New Mexico, shall provide for payment of loss thereunder to the CITY and SWIF as their interests may appear, and the policies or certificates evidencing of this Lease, provided acceptable binders or other evidence of insurance in force are delivered to CITY within sixty (60) days after execution of this Lease, provided acceptable binders or other evidence of insurance in full force are delivered prior to commencement of this Lease term, and renewals thereof shall be delivered to the CITY at lease thirty (30) days prior to the expiration dates of the respective policies.

In case SWIF shall at any time fail, neglect, or refuse to insure the demised premises and to keep the same insured as hereinbefore provided, then CITY may, at its election, procure or renew such insurance and any amounts paid therefore by the CITY shall be so much additional rent due for SWIF to CITY at the next rent day after any such payment, with interest at the rate of then (10%) percent per annum from the date of payment thereof by CITY until repayment thereof to CITY by the SWIF.

In the event of loss under such policy, or policies, the insurance proceeds shall be used for the repair or rebuilding of the demised premises and shall be paid out upon architect's certificates for the expense of the repairing or rebuilding of the demised premises which has been damaged or destroyed,; provided, however, that it shall first appear to the satisfaction of the CITY that the amount of insurance money on hand shall at all times be sufficient to pay for the completion of said repairs or rebuilding; and upon completion of said repairs or rebuilding, free from all liens of mechanics, and materialmen, or others, any surplus of insurance money shall be paid to and belong to the CITY.

15.DESTRUCTIONS. SWIF and CITY hereby agree that at any time during the term of this Lease, or any extension or renewal thereof, the said demised premises shall be totally or partially destroyed by fire, earthquake, or other calamity, then CITY shall have the option to rebuild or repair the same. If CITY decides to do such rebuilding or repairing, the same shall be commenced within the period of sixty (60) days after such destruction or damage, and to rebuild or repair the same in as good condition as they were immediately prior to such calamity. In such case, the parties agree that, should the premises be unfit to conduct business, the rental payments due to CITY shall cease until the premises are rebuilt and repaired so as the SWIF can continue to conduct its business.

16.HOLDING OVER. Except as provided in Paragraph 4 hereof, SWIF agrees that holding over by SWIF after the expiration of this Lease, or any renewal or extension thereof, whether with or without the consent of CITY, shall not operate to extend or renew this Lease, and that any such holding over

shall be construed as tenancy from month to month at the monthly rental which shall have been payable at the time immediately prior to when such holding over shall have commenced and such tenancy shall be subject to all terms, conditions, covenants, and agreements of this Lease.

17. BANKRUPTCY, CONDEMNATION/OTHER GOVERNMENTAL ACTION. SWIF hereby agrees that should SWIF make an assignment for the benefit of creditors or should be adjudged a bankrupt, either by voluntary or involuntary proceedings, or if otherwise a receiver should be appointed in any court of competent jurisdiction for SWIF because of insolvency, the occurrence of any such event shall be deemed a breach of this Lease. and, in such event, CITY shall have the option to forthwith terminate this Lease and to re-enter the said demised premises and take possession thereof, whereupon SWIF shall quit and surrender peaceably the said demised premises to CITY. In no event shall this Lease be deemed as asset of SWIF after adjudication in bankruptcy, the appointment of a receiver, or an assignment for the benefit of creditors. Further, SWIF hereby covenants and agrees with CITY that in the event the said demised premises, or any part thereof, are taken, damages consequentially or otherwise, or condemned by public authority, this lease shall terminate, as to the part so taken, as of the date title shall vest in the said public authority, and the rental reserved shall be adjusted so that SWIF shall be required to pay for the remainder of the term that portion of the rent reserved in the proportion that said demised premises remaining after the taking, damaging, or condemnation bears to the whole of the said demised premises remaining after the taking , damaging, or condemnation. All damages and payments resulting from the said taking, damaging, or condemnation of the said demised premises shall accrue to and belong to CITY, and SWIF shall have no right to any part thereof. If any part of the building structure is taken by condemnation or any public authority, SWIF may terminate this Lease at its option.

18. SIGNS. CITY and SWIF agree that SWIF may, at its own expense, erect and maintain a sign or signs to carry out the purpose for which SWIF is leasing the said demised premises; provided, however, the location type and design of all exterior signs shall meet CITY requirements. Upon the expiration of this Lease, or any renewal or extension thereof, SWIF shall remove such sign or signs and shall repair any damage to the premises caused thereby at SWIF'S own expense.

19. TERMINATION. It is expressly understood and agreed between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid more than sixty (60) days after the day the payment is due, or if default shall be made in any of the covenants or agreements herein contained to be kept by SWIF, SWIF's assignee, and successors in interest, it shall and may be lawful for the CITY, CITY'S agents, attorneys, assigns. or successors in interest, at CITY'S election to declare said term ended and re-enter the said premises, or any part thereof, either with or without process of law, to

expel, remove, and put out, the SWIF, or any other person or persons occupying the same, using such force as may be necessary in so doing, and to repossess and enjoy the same premises again as in its first and former state, and distraint for any rent that may be due thereon any property belonging to SWIF, whether the same be exempt from execution and distress by law or not, and SWIF in that case hereby waives any and all rights which SWIF now has or may have to hold or retain any such demised property under any laws now in force in this State, or in any other way; meaning and intending hereby to recognize in CITY, CITY's assignee, or successors in interest, a valid lien as provided in the laws of New Mexico upon any and all goods, chattels, and other property belonging to SWIF and located in said premises as security for the payment of said rent and fulfillment of the faithful performance of conditions in the manner aforesaid, anything hereinbefore mentioned to the contrary notwithstanding. And if at any time said term shall be ended at such election of CITY, CITY'S assigns, or successors in interest, immediately upon the termination of said term as aforesaid, and if SWIF shall remain in possession of the same ten (10) days after notice of such default, or after the termination of the Lease in any of the ways above-named, and the eviction and removal forcible or otherwise, with or without process of law as above stated and is further covenanted and agreed by and between the parties hereto that the SWIF shall pay and discharge all costs, attorney's fees, and expenses that shall arise from enforcing the covenants of this indenture by CITY, CITY'S assigns, or successors in interest. In the event that the CITY violates a term or condition of this Lease, the CITY shall pay and discharge all costs, attorney's fees and expenses that shall arise from enforcing this Lease.

20. OTHER TERMINATION. SWIF agrees with CITY that the failure, neglect, or omission of CITY to terminate this Lease for any one or more breaches of any of the covenants hereof, shall not be deemed a consent by CITY of such breach and shall not stop, bar, or prevent CITY from thereafter preventing terminating this Lease, either for such violation, or for prior or subsequent violation of any covenant hereof. Notwithstanding anything to the contrary herein, SWIF has the absolute right to terminate this Lease at any time by giving CITY twelve (12) months written notice of its intent to terminate this Lease. The City may terminate this lease without cause by giving SWIF twenty-four (24) months written notice of its intent to terminate this lease. In addition to the foregoing, this Lease may be terminated pursuant to paragraph 4 hereof.

21. NOTICE. Any notice, request or instruction to be given hereunder by either party to the other shall be in writing and mailed to them by Certified Mail, postage prepaid, duly posted to the addresses set below:

LESSOR: City of Gallup
Office of City Manager
P.O. Box 1270
Gallup, New Mexico 87305-1270

LESSEE: Southwest Indian Foundation, Inc.
P.O. Box 307
Gallup, NM 87305-0307

22. CONTROLLING LAW. This Lease shall be construed and enforced in accordance with the Laws of the State of New Mexico.

23. NET-NET LEASE. This is a net-net Lease (double net Lease) and the rent and all other sums payable hereunder by SWIF shall be paid without notice, demand, set-off, counterclaim, abatement, suspension, deduction or defense. It is the intention of the parties hereto that the rent payable hereunder shall be net-net to CITY and that CITY shall have no expense in respect to the premises during the term of this Lease for insurance, maintenance (other than as provided in paragraph 12), or real estate and/or personal property taxes, and CITY shall only be responsible for roof, major structural repairs, and other major repairs as set out in Paragraph 6 hereof, and for providing the services in Paragraph 12 hereof.

24. BINDING ON HEIRS, EXECUTORS, ADMINISTRATORS, ASSIGNS, AND SUCCESSORS IN INTEREST. It is covenanted and agreed by and between the parties hereto that the covenants and agreements herein contained shall extend to and be binding upon the administrators, assigns, and successors in interest of the parties to this Lease.

25. THIS LEASE AGREEMENT EMBODIES ALL AGREEMENTS BETWEEN THE PARTIES. It is covenanted and agreed by and between the parties hereto that this Lease Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and that all such covenants, agreements, and understandings have been merged into this written Lease. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Lease.

26. AMENDMENTS. It is covenanted and agreed by and between the parties hereto that this Lease shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

[SIGNATURE PAGE FOLLOWS]

LESSOR:
CITY OF GALLUP

MARYANN USTICK, City Manager

ATTEST:

ALFRED ABEITA II, City Clerk

LESSEE:
SOUTHWEST INDIAN FOUNDATION, INC.

WILLIAM B. McCARTHY, CEO

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by William B. McCarthy.

NOTARY PUBLIC
My Commission Expires; _____