

CONTRACTURAL SERVICES AGREEMENT

This Agreement is entered into effective the 1st day of July, 2019, by and between the City of Gallup, a New Mexico municipal corporation (hereafter “City”), and the Gallup McKinley Chamber of Commerce, Inc., a New Mexico non-profit corporation (hereafter “Chamber”).

1. FUNDING

The terms of this Agreement are contingent upon sufficient Lodgers’ Tax monies being made available by the City of Gallup for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City of Gallup, this Agreement shall terminate upon written notice being given by the City to the Chamber. The City in its sole discretion will determine if sufficient appropriations are available for funding and its decision shall be accepted by the Chamber and shall be final.

For services, as described in Article 3, funding will be computed as follows:

1.1 Commencing on the 1st day of July, 2019, the City agrees throughout the term of this Agreement to pay the Chamber on a quarterly basis from City of Gallup Lodger’s Tax funds. It is understood that the total annual expenditure by the City will be One hundred Eighty-Five Thousand dollars (\$185,000) paid in the quarterly amounts set out below.

a) Payments will be as follows:

July 15, 2019	\$46,250
October 1, 2019	\$46,250
January 2, 2020	\$46,250
April 1, 2020	\$46,250

1.2 The Chamber agrees to receive, expend, and account for the entire Lodger’s Tax proceeds for advertising, publicizing, and promotion of tourist-related attractions, facilities, and events (including expenditures for administration, salaries, and other indicated expenses), in strict compliance with the terms of this Agreement and requirements of the Lodger’s Tax Ordinance. The Chamber shall provide sufficient documentation (contracts, receipts, 1099’s, etc.) to the City’s Finance department as to the expenditures of the Lodger’s tax monies on the facilities, performers, and performances, or those categories identified in Sections 3-38-15 and 3-28-21, et. seq. NMSA 1978 Comp. (as revised). Any funds not spent at the end of the term shall and must be returned to the City. Original records, receipts and documentation shall be retained for the period years as specified in accordance with the State’ financial records retention regulations.

1.3 The \$185,000 is for a combination of three previous contracts between City and Chamber and broken out as follows:

a) \$100,000 for advertising and promotional services

- b) \$50,000 for operation of the year-round Visitor Information Center
 - c) \$35,000 for the 2020 Visitor Guide
- 1.4 The Chamber agrees to use a minimum of \$100,000.00 of the annual payment for advertising and promotional services.
- 1.5 All performance by the City under this Agreement is subject to available funding and revenues from the City's Lodger's Tax and is subject to budget approval of the City Council of the City of Gallup.

2. TERM OF AGREEMENT

This Agreement shall be effective on the 1st day of July, 2020, and shall continue until June 30, 2020, unless otherwise terminated as herein provided.

3. SERVICES

- 3.1. **ADVERTISING AND PROMOTION:** Chamber shall promptly and diligently perform all services required by this Agreement, including the services described in this Article. Chamber shall perform all advertising, printing, publication, and other promotional practices as customarily used for securing tourism and conventions for the City of Gallup. Chamber shall make such expenditures for administration, salaries, and other incidental expenses associated with the above.
- 3.2. **VISTORS' CENTER:** Chamber shall provide a visitor information center, year around, within the Chamber's facility at 106 West Highway 66 and will provide the initial meet and greet liaison interface for walk-up tourists, phone inquiries, internet requests and other tourist related information for Gallup and the surrounding area. The visitors' center will also collect zip code and email data from visiting guests and submit a report in March of 2018 with the annual data to the City of Gallup Tourism and Marketing Manager.
- 3.3. **VISITORS GUIDE** Chamber will oversee and manage the design, content, production, sales, and distribution of the Visitors Guide for 2019. The Gallup Visitor guide will be ready for distribution no later than February 15 of the coming year. The Chamber will provide the City with a digital copy for the Tourism and City websites no later than March 1, 2019. The City of Gallup Tourism and Marketing Manager will be included in the final design stages for approval prior to print and distribution. The final product will be delivered to the City of Gallup warehouse for storage. Distribution will begin no later than March 1, 2019. All materials produced under this Visitor Guide provision of this agreement shall become the property of the City.
- 3.4. **REPORT TO COUNCIL** The Chamber shall provide a year-end report to Mayor and Council at the second council meeting in September, or at such other time designated by the City.

4. USE OF TAX

The Chamber shall use Lodger's Tax funds only for the purposes authorized by the state law and the City Lodger's Tax Ordinance, and shall use no Lodger's Tax monies or other resources to advertise or promote any private business or interest.

5. BUDGET

The Chamber agrees to prepare and submit a detailed annual budget to the City's designated representative by February 2020.

6. REPORTS AND RECORDS

- 6.1. The Chamber shall submit to the City Manager, Tourism and Marketing Manager, and City Finance department an accounting of funds received and expended by the Chamber for the month and year to date, both budgeted and actual, within thirty (30) days after the end of each quarter.
- 6.2. The Chamber shall keep or cause to keep true, accurate, and complete records of all revenue and expenses associated with this Agreement, which records shall be available to the City without unreasonable delay and without expense, and the Chamber agrees that the City shall have the right through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times for the purpose of determining the accuracy thereof and of the reports required to be made to the City pursuant to this paragraph.
- 6.3. The Chamber shall submit to the City all other reports as may be required by State law, the City's Lodgers' Tax Ordinance, or as may be requested from time to time by the City Manager or designee.

7. INDEPENDENT CONTRACTOR

Neither the Chamber nor any of the Chamber's employees are considered to be employees of the City of Gallup for any purpose whatsoever. Chamber is considered as an independent contractor at all times in the performance of the services described in Article 3.

8. TERMINATION FOR CAUSE

If through any cause Chamber fails to fulfill in a timely and proper manner its obligations under this Agreement, or if Chamber violates any of the covenants, terms, or stipulations of this Agreement, the City may order Chamber in writing to stop services or any portion of them until the violation has been corrected. If Chamber fails to correct the violation within fifteen (15) days of the date of mailing of the written notice, City shall have the right to terminate this Agreement. The Chamber, and its contractors, shall continue to be entitled

to receive just and equitable compensation for any work satisfactorily completed up to the time of termination.

9. TERMINATION FOR CONVENIENCE OF THE CITY

Notwithstanding the provisions of Article 11, the City may terminate this Agreement at any time by giving at least ninety (90) days written notice to the Chamber. City will reimburse Chamber for all documented out-of-pocket expenses incurred up to the date of termination of this Agreement.

10. DISCRIMINATION PROHIBITED

In performing the required services, Chamber shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

11. ASSIGNMENT

The Chamber may not assign any interest in this Agreement, and may not subcontract for any services required by this Agreement, without first receiving the written consent of City.

12. INDEMNIFICATION

Chamber agrees to protect, defend, indemnify, and hold harmless City and its officials, agents, and employees from and against any and all liability, damages, claims, suits, liens and judgments, of whatever nature, including claims for contributions and/or indemnification for injuries to or death of any person or person, or damage to the property or other rights of any person, caused by the negligent or intentional acts or omissions of Chamber or its agents, servants, or employees. Chamber further agrees to protect, defend, indemnify and hold harmless the City and its officials, agents, and employees from and against any and all claims for liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of Chamber, or any claims, causes of action, or legal proceedings against Chamber arising out of contract, tort, prima facie tort, or any violation of federal or state constitutions or laws.

13. INSURANCE

Chamber agrees to secure general comprehensive liability insurance coverage against claims arising for personal injury, medical expenses, property damage, and constitutional or statutory claims in an amount not less than limits of liability for claims against governmental entities as set forth in the New Mexico Tort Claims Act, N.M. Stat. Ann. §§41-4-1 to -27 (Repl. 1996), as that statute now reads or may be amended, and to name City as an additional insured under the terms of such policy or policies of insurance. Chamber shall, upon reasonable notice, provide City with copies of all applicable insurance policies.

14. NOTICE AND REQUESTS

All notices and requests that are required to be given in connection with this Agreement shall be given to the respective parties in writing and shall be deemed to be given as of the day such notice or request is deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

City of Gallup
City Manager
P.O. Box 1270
Gallup, NM 87305-1270

Gallup McKinley Chamber of Commerce
P.O. Box 600
Gallup, New Mexico 87301

15. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provisions shall be deemed to be written, construed, and enforced as so limited.

16. CONFLICT OF INTEREST

The Chamber certifies 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 Agreement.

17. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property, or services expended or rendered directly or indirectly under this Agreement shall be used to promote any political activity prohibited by federal, state, or local law, or to further the election or defeat of any candidate for public office.

18. ENTIRE AGREEMENT

This Agreement constitutes the full and complete Agreement between the parties, supersedes any prior written Agreement, and may be amended only in writing. No verbal Agreement or conversation with any employee of the City before, during, or after the execution of this Agreement shall affect or modify any of the terms or obligations herein contained.

19. GOVERNING LAW

This Agreement shall be interpreted according to the laws of the State of New Mexico and ordinances and regulations of the City of Gallup. Any legal proceeding to interpret or enforce this Agreement shall be instituted only in the McKinley County District Court of the 11th Judicial District.

SIGNED AND APPROVED this ____ day of May, 2019.

CITY OF GALLUP

By _____
Jackie D. McKinney, Mayor

Attest: _____
Alfred Abeita, City Clerk

**GALLUP MCKINLEY COUNTY
CHAMBER OF COMMERCE, INC.**

By: _____
President

Attest: _____
Secretary