

PROFESSIONAL SERVICES AGREEMENT  
SUMMER DANCE PROGRAM

**THIS AGREEMENT**, entered into on the \_\_\_\_ day of May, 2019, by and between the CHAMBER OF COMMERCE, herein called the “Contractor” and the City of Gallup, herein called the “City”.

1. **Scope of Work:** Contractor is to provide a Summer Dance Program for the City in the Dance Arena at the Courthouse Square facility from the Memorial Day holiday through the Labor Day holiday. The Contractor will identify, hire, schedule, and pay a variety of Native American dancers or dance groups to perform live on a regular basis. The Contractor shall also determine the vendor types, solicit and select vendors; plus assign appropriate vendor space. The Contractor shall provide a qualified, articulate Master of Ceremonies to introduce the dance performers; announce the dance activities; gather tourism related statistical information. In addition, the Contractor shall be responsible for providing the necessary support staff (trained volunteers) nightly during the performances in accordance with the dance schedule.

The Contractor will execute a marketing campaign for the Summer Nightly Indian Dances inclusive of social media, digital media, and additional print advertising in addition to the event’s annual inclusion in the GallupRealTrue Visitors Guide. The Contractor will actively promote the performance by networking and promotion in partnership with Gallup businesses, local and area attractions related to tourism. A report will be made to the City of Gallup Tourism and Marketing Department in September of 2019, prior to the City Council program that outlines all program expenditures.

The Contractor shall provide an annual report in the form of a computer spread sheet or hard copy report showing the approximate attendance per night, type of attendees (local, domestic and foreign), number of dances performed, Tour Buses, Vendors, Vendor types, etc. The Contractor shall provide this demographic information report to the City of Gallup Tourism and Marketing Office. The Contractor shall provide a year-end assessment to Mayor and Council at the second council session in February.

The Contractor shall be in charge of allowing Vendors to sell goods & services in the Courthouse Square facility. The Contractor shall develop a fee schedule, collect, and monitor the Vendors. The Contractor shall be responsible for policing the Vendors for adherence to all applicable Federal, State, and City Municipal codes, rules or regulations. The City recognizes that the Contractor will be collecting a fee from the Vendors, and that the Contractor will use those collected funds to further the development or pay the cost of putting on the summer dance program. In the event that any Vendor wishes to receive a reimbursement, it is the financial responsibility of the Contractor to take care of these requests, and hold the City harmless.

It shall be up to the discretion of the City’s Parks Director or his designee, along with the Contractor to determine a mutual understanding as to how or where certain vendor types shall be located in the Courthouse Square area. It shall be the sole discretion of the City’s Parks Director or his designee to ban specific types of vendors if complaints have been substantiated against a Vendor. The Contractor shall ensure that all food Vendors (if any) shall possess and have on hand a State food handling permit. The Contractor shall ensure that all vendors have a City Business license to sell goods and services.

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The Contractor 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's financial records retention regulations.

2. **Payment:** The City shall provide a total of sixty-five thousand dollars (\$65,000.00 which includes the NM Gross Receipts Tax (NMGRST) in the payments) in Lodger's Tax funds to carry out the Scope of Work of this Agreement. The City shall provide the money in accordance with the following payment schedule:

1.	June 1, 2019	\$14,000.00	(PMT INCLUDES GRST)
2.	July 12, 2019	\$18,000.00	(PMT INCLUDES GRST)
3.	August 9, 2019	\$18,000.00	(PMT INCLUDES GRST)
4.	September 2, 2018	\$15,000.00	(PMT INCLUDES GRST)

The City shall not provide any in-kind services such as office/desk space, telephone or clerical support services. Travel expenses, if any, shall not be reimbursed in accordance with the City's travel policy.

3. **Term:** The term of this agreement shall be from the Date of execution to September 2, 2019 (Memorial holiday thru Labor Day holiday) unless terminated. This contract shall not be extended or renewed upon mutual agreement of both parties.

4. **Facilities:** The City shall make available, exclusively during the hours of 6:30 pm to 8:30 pm, to the Contractor all necessary outdoor dance facilities needed to conduct the Scope of Work including the Courthouse Square dance arena, dance pavilion, sound system, and parking area. The City shall be responsible for maintaining the facilities and managing the traffic during the summer dance performances. The Contractor shall be given use of the City's Public Announcement (PA) System at the Courthouse Square dance arena during the dance performances. The Contractor recognizes that it is their sole responsibility for the care and use of the equipment before, during and after the performances. Therefore, any equipment lost, stolen, misplaced, or damaged shall be replaced with equivalent, or better hardware; by the Contractor.

5. **Termination:** This Agreement may be terminated without cause by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

This Agreement shall be terminated for "cause" should the Contractor fail to fulfill any obligation resulting from this Agreement in a timely and responsive manner, or if the

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Contractor violated any terms of this contract, the City shall have the right to cancel the contract by upon written notice delivered to the Contractor.

In the event this Agreement is terminated prior to the full term of the Agreement or subsequent renewal period, the Contractor shall return to the City any unexpected City funds within thirty (30) days. If deemed necessary by the City, the Contractor shall be subject to an audit conducted by an independent Certified Public Accountant selected by the City at the City's expense.

6. **Status of Contractor:** The Contractor or its agent(s), and/or its employee(s) are independent contractors performing professional services for the City and are not employees of the City. The Contractor or its agent(s), and/or its employee(s) shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. Neither shall the City be liable to the Contractor nor its Agents, nor their estate for any injury to person or property incurred in the course of the performance of this Agreement unless such injury shall have directly and proximately resulted from grossly negligent or reckless conduct on the part of the City or its Agents acting within the scope of their employment and official duties.

7. **Status of Performers and Vendors:** The City shall consider the dancers, dance groups, performers, or vendors as "agent(s)" for the Contractor. As such, the status shall be considered the same as the Contractor, as described in Paragraph 6. In any event, the Contractor shall hold harmless the City from any of its subcontractors or financial obligations. Neither shall the City be liable to the Contractor nor its subcontractors, nor their estates for any injury to person or property incurred in the course of the performance of this Agreement unless such injury shall have directly and proximately resulted from grossly negligent or reckless conduct on the part of the City or its Agents acting within the scope of their employment and official duties.

8. **Indemnity:** The Contractor shall indemnify and hold harmless the City, its officers and employees, against liability, claims, damages, losses or expenses arising out of bodily injury to person's or damage to property caused by, or resulting from, contractor's and/or its employee(s) performs or fails to perform its obligations and duties under this Agreement. The City shall indemnify and hold harmless the Contractor for any negligent acts by City employees. The City's liability shall be limited by the provisions of the New Mexico Tort Claims Act Section 41-4-1, et seq. NMSA 9178 comp. (as revised)

9. **Assignment:** The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

10. **Subcontracting:** The Contractor may subcontract any portion of the services to be performed under this Agreement. Any subcontract under this Agreement in excess of \$4,000 must be approved by the City.

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11. **Records and Audit:** The Contractor shall maintain financial and personnel records. The expenditures made under this Agreement will be invoiced in accordance with Contractor's fiscal management system. The Contractor's representative shall brief the City on a monthly basis and give a final report on all relevant aspects of this Agreement.

12. **Appropriations:** 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 Contractor. The City in its sole discretion will determine if sufficient appropriations are available for funding and its decision shall be accepted by the Contractor and shall be final.

13. **Release:** The Contractor, upon final payment of the amount due under this Agreement, releases the City, its officers and employees, and City of Gallup from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City of Gallup to any obligations not assumed herein by the City of Gallup, unless the Contractor has expressed written authority to do so, and then only within the strict limits of that authority.

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

15. **Conflict of Interest:** The Contractor 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 Agreement.

16. **Amendment:** This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

17. **Scope of Agreement:** This Agreement incorporates all the agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, agreements or understandings have merged into this written Agreement. No prior agreement of understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. And no subsequent agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless incorporated by way of amendments as described in Paragraph 16.

18. **Notice of Procurement Code:** The Procurement Code of the City of Gallup imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

19. **Equal Opportunity Compliance:** The Contractor agrees to abide by all the Federal and State laws and rules and regulations, and executive orders of the Governor of

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the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

20. **Insurance:** Contractor shall provide a certificate of insurance which includes proof of Worker's Compensation, and general liability. The City currently provides liability insurance for its public facilities. However, the contractor shall provide insurance coverage over and above during the nightly event performances, where ever the performances are held on City property. As with the City's event permits, the Contractor shall provide a Certificate of Liability with the City named as an additional insured in the amount currently established.

21. **Applicable Law:** This Agreement shall be governed by the laws of the State of New Mexico; Lodgers' Tax Act Sections 3-38-13 through 3-38-24, et. seq. NMSA 1978 comp. (as revised); and the ordinances of the City of Gallup, including the City's Financial Disclosure Ordinance C2005-11.

22. **Renewal:** The City shall have the option to renew this contract for one (1) additional one (1) year period upon thirty (30) days written notice from the City to Contractor.

23. **Waiver of Contractual Right:** The failure of either party to enforce any provision of this Agreement shall not be construed a waiver of that party's right to subsequently enforce and compel strict compliance with very provision of this Agreement.

24. **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 in invalid or unenforceable, but that by limited such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

25. **Notice:** All notices, requests, demands or other communications required or desired to be made or given hereunder or in connection herewith shall be in writing and shall be deemed to be duly given if delivered in person or mailed by certified or registered mail, postage prepaid, to the parties at the following addresses, or to such other addresses as may from time to time be designated by the parties by written notice in the manner herein provided:

City of Gallup: Purchasing Director  
City of Gallup

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P.O. Box 1270  
Gallup, New Mexico 87305-1270

Provided: Chamber of Commerce  
103 West Highway 66  
Gallup, NM 87301

26. **Force Majeure:** Neither party shall be liable for any loss nor damage due to causes beyond its control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communication carriers, or other causes beyond that party's control. Wither party may terminate this Agreement immediately upon written notice if the other party is prevented from performing its obligations under this Agreement for a period of more than thirty (30) days due to the reasons set forth in this subsection.

**IN WITNESS THEREOF**, the parties hereto have read, understood and accept the terms aforementioned and executed this Agreement on the date set forth in the first paragraph hereof.

CHAMBER OF COMMERCE:

By: \_\_\_\_\_  
Bill Lee, Chamber Director

By: \_\_\_\_\_  
Janice Welch, Board President

CITY OF GALLUP:

By: \_\_\_\_\_  
Jackie D. McKinney  
Mayor

Attest:

\_\_\_\_\_  
Alfred Abeita, City Clerk