

GALLUP MAINSTREET/ARTS & CULTURAL DISTRICT
AMENDED PROFESSIONAL CONTRACT PROPOSAL AGREEMENT

with the

CITY OF GALLUP, NEW MEXICO

This professional contract proposal ("this Agreement") is effective July 1, 2020, between the City of Gallup, New Mexico, a local government corporation (the "City") whose notice address is 110 W. Aztec, Gallup, New Mexico, 87301, and the Gallup MainStreet Arts & Cultural District corporation (the "Contractor") whose notice address is P.O. Box 6007, Gallup, New Mexico 87305, (collectively, the "Parties").

Gallup MainStreet Arts & Cultural District - Mission and Purpose:

The mission of the Gallup MainStreet Arts & Cultural District is to build partnerships with diverse groups and individuals to revitalize the traditional historic commercial center of Gallup, educate visitors and citizens about the historic and economic wealth of downtown Gallup, enhance the quality of the environment, including buildings, signs and landscape improvements, and develop a positive image that will attract tourism through ongoing community involvement, growth and pride.

I. Scope of Services: Activities Reflecting City Funds

A. Core Services

As part of the year-to-year, recurring Core Services in fulfillment of the roles, responsibilities and expectations identified in the Biannual Memorandum of Understanding executed between the Contractor (Gallup MainStreet Arts & Cultural District), the City of Gallup and the New Mexico MainStreet program (NMMS), the Contractor shall provide unified management and coordination for the revitalization and economic development activities in the historic business district of Gallup in accordance to with the guidelines and expectations of the National Main Street Center and the New Mexico MainStreet Program, State Coordinating body:

1. Maintain a legally-compliant 501c3 MainStreet organization to help revitalize and support economic growth within the designated Historic MainStreet District ("Downtown") in accordance with the New Mexico MainStreet guidelines and objectives.
2. Connect technical assistance and financial resources provided by the New Mexico MainStreet program to implement projects under the public-private partnership guidelines established by the biannual MOU.
3. Work closely with the City's elected officials and professional staff, Chambers of Commerce, and all organizations, individuals, and entities in order to draw on resources to augment the work of its staff and board to bring projects to completion and meet common goals.
4. Work with and coordinate activities between community civic groups, downtown business, financial institutions, and the government; forge new and stronger relationships with public and

private agencies and the downtown business community to ensure that teamwork would be in place for the success of the Gallup MainStreet program and its initiatives.

5. Adopt at least two Economic Transformation Strategies and develop annual work plans for the implementation of revitalization projects in the Gallup MainStreet district.
6. Adopt a Capacity-Building strategy that enhances organizational resources and supports long-term sustainability of the Gallup MainStreet program to engage the public-private partnerships with City government and the New Mexico MainStreet program.
7. Provide a qualified, experienced Main Street Program Executive Director whose duties would be, among others, to provide compliance and reporting documentation for the Gallup MainStreet program and also to help coordinate revitalization projects in the historic commercial district.
8. Ensure adequate organizational progress toward completion of all compliance standards and operating guidelines established by the National Main Street Center and the New Mexico MainStreet program to maintain status as a MainStreet America Accredited Program.
9. Establish committees or taskforces to design, plan and implement projects that enhance economic development within the Gallup MainStreet district, including, but not limited to business development, events, public relations efforts, shop local campaigns, events, building improvements, façade or curb appeal projects, streetscapes, placemaking and beautification efforts.
 - Conduct regular business/property owner visits to support stakeholder engagement and to identify key areas for business development and support
 - Maintain building and property inventories
 - Seek resources for implementation of design, placemaking and beautification projects
 - Work with the City on developing priority projects to include in Infrastructure Capital Improvement Plans and seek public funding for public infrastructure projects that support district revitalization
 - Plan and implement branding, image development and promotion activities in the district
10. Use NMMS reporting tools to track and communicate key statistics of jobs, new businesses, building rehabilitations, and public/private sector investments in the district and serve as an information clearing house for this type of information in the community.

B. Additional Services to be Completed within the Current Fiscal Year

In addition to the Core Services listed above, the Contractor shall complete the following activities in advancing the board-adopted Economic Transformation Strategies:

Transformation Strategy #1: Develop Downtown Gallup into a “commons” that welcomes the community to gather, engage, shop, do business, and experience arts and culture.

Tasks to be completed in FY21:

- a. Support the physical transformation of the downtown into a welcoming space for the community.
- b. Create opportunities for the creation of local art representative of the community.

- c. Facilitate accessible community gatherings centered around arts, culture, and local businesses.
- d. Nurture local entrepreneurs and businesses by providing assistance from inception to expansion.

Transformation Strategy #2: Support local arts, culture, and creative practitioners, endeavors and assets to grow the creative economy of Gallup.

Tasks to be completed in FY21:

- a. Promote arts and cultural assets and creative economy activities in the district.
- b. Build artists into entrepreneurs with trainings, resources, and support.
- c. Create and support opportunities for local visual and performing artists to showcase, perform and demonstrate their art.

Capacity-Building Strategy: Build partnerships and increase fundraising efforts to position GMSACD to expand operations and programs by FY2023.

Tasks to be completed in FY21:

- a. Identify and implement fundraisers to generate additional funds for operations
- b. Build relationships with key partners to ensure maximum efficiency in operations and programs
- c. Maintain compliance with all relevant entities: Federal & State Governments; NMMS; City of Gallup
- d. Ensure GMSACD is maintaining and updating all annual compliance documents

II. COMPENSATION

For services, as described hereinafter, compensation shall be provided as follows:

A. Compensation Generally

- (1) In consideration for the Core and Additional Services listed in Section 1, Scope of Work (above) rendered in FY21, and in compliance with the biannual MOU executed with New Mexico MainStreet, the City shall pay to the Contractor the sum of \$40,000.00. Additionally, the City shall provide office space for the Executive Director.
- (2) In support of the implementation of projects and in fulfillment of the biannual MOU executed with New Mexico MainStreet, the City shall provide the following in-kind services to the Contractor during FY21:
 - Appoint City staff to serve on GMSACD board as ex-officio
 - Participate in coordination and information sharing
 - Provide project management services for downtown infrastructure projects

- (3) For the fiscal year above, the Parties may agree to review and renegotiate the amount of compensation to be paid pursuant to this Agreement and amend this Agreement accordingly. Said review shall occur during the regular budget process for the City.

B. Method of Payment

- (1) The City shall pay Contractor in four equal installments of \$10,000.00 on a quarterly basis of each fiscal year. The City shall provide the initial payment in July with the execution of the contract commencing on July 1, 2020 and upon submission and approval of an invoice for services by the Contractor. Thereafter, the City shall provide subsequent quarterly payments in October, January and April upon submission of invoices and quarterly reports detailing progress with implementation of project deliverables in the previous quarter.

III. TERM OF AGREEMENT

The term of this Agreement shall be for one year, beginning on July 1, 2020 and ending on June 30, 2021 ("Term"), unless terminated pursuant to paragraphs 2, 3, 12, 15, 16 and 17 of Section V below.

IV. TERMINATION

This Agreement may be terminated by either party upon sixty days prior written notice to the other party. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT. *

V. ADDITIONAL SPECIFICATIONS AND TERMS

1. REPORTS AND AUDIT

- A. The Contractor shall maintain full and complete financial records kept in accordance with generally accepted accounting principles, which records shall be available for inspection by the City at reasonable times and upon reasonable notice.
- B. The Contractor shall submit an annual financial statement and progress report to the City designated representative and/or Governing Body of the City as requested.
- C. The Contractor shall maintain, for two (2) years, detailed time records which indicate the dates, time and nature of services rendered. These records shall be subject to inspection by the City and the State Auditor. The City shall have a right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the City to recover excessive and/or illegal payments.

2. EVENTS OF DEFAULT

The Contractor shall be deemed to be in default and breach of this Agreement if the Contractor fails to perform the Services of the Contractor under the Agreement.

3. EFFECT OF DEFAULT

In the event of any default, as set forth in the preceding section, the City may terminate this agreement and pursue its remedies at law and equity.

4. INDEMNIFICATION

Contractor indemnifies the City of Gallup against any claims, suits, liens, and judgments of whatever nature, including claims of contribution and/or indemnification, damage to property or other rights of any person or persons, caused by the Contractor.

5. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body of the City for the performance of this agreement. If sufficient appropriations and authorization are not made by the Governing Body of the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

6. STATUS OF CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of Gallup as a result of this Agreement.

7. SUBCONTRACTING

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.

8. NO THIRD PARTY BENEFICIARIES

This agreement confers no additional rights or benefits other than those explicitly provided herein to the City and the Contractor; there shall be no third-party beneficiaries assigned in this contract.

9. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

10. RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to bind the City in any way unless the Contractor has expressed written authority to do so, and then only within the strict limits described herein.

11. CONFIDENTIALITY

Any confidential information provided 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, however information provided to the City may be subject to disclosure under the New Mexico Inspection of Public Records Act.

12. 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 or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-17 NMSA 1978, regarding contracting with a public officer or City employee have been followed.

13. MERGER

This Agreement incorporates all of the agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this Agreement. No prior agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

14. NOTICE

The Procurements Code, Sections 13-1-28 through 12-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

15. EQUAL OPPORTUNITY AND NONDISCRIMINATION COMPLIANCE

The Contractor agrees to abide by all federal and state laws, rule, regulations and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity and non-discrimination.

16. WORKER'S COMPENSATION COMPLIANCE

The Contractor agrees to comply with the state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the City reserves the right to terminate this Agreement.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Gallup.

18. AMENDMENT

This agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this ____ day of _____ 2020.

CITY:

City of Gallup

CONTRACTOR:

Gallup MainStreet Arts & Cultural District
A New Mexico Non-Profit Corporation

By _____
Maryann Ustick, City Manager
City of Gallup

By _____
Emerald Tanner, President
Board of Directors
Gallup MainStreet Arts & Cultural District

ATTEST:

Alfred Abeita, City Clerk
City of Gallup

Kara Smith, Executive Director
Gallup MainStreet Arts & Cultural District