

CONTRACTURAL SERVICES AGREEMENT

This Agreement is entered into this ____ day of May, 2022, by and between the City of Gallup, a New Mexico municipal corporation (hereafter “City”), and the Gallup Mainstreet Arts & Cultural District, a New Mexico non-profit corporation (hereafter “GMSACD”).

1. FUNDING

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

- a) Commencing in May of 2022, the City agrees throughout the term of this Agreement to pay the GMSACD the sum of \$25,000 from the City’s Lodger’s Tax funds.
- b) The GMSACD agrees to receive, expend, and account for the entire Lodger’s Tax proceeds for advertising, publicizing, and promotion of the 2022 Levitt AMP Gallup Music Series, as a tourist-related 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.
- c) 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.
- d) The City of Gallup will provide essential services necessary for event operation at courthouse square including but not limited to electric, parks, and the El Morro Theatre manager.

2. TERM OF AGREEMENT

This Agreement shall be effective on the ____ day of May, 2022, and shall continue until December 30, 2022, unless otherwise terminated as herein provided.

3. BASIC SERVICES

- a) GMSACD shall perform all advertising, printing, publication, and other promotional practices as customarily used for securing tourism related events for the City of Gallup and will work with the Tourism and Marketing manager to ensure brand compliance.
- b) GMSACD shall make such expenditures for administration, salaries, and other incidental expenses associated with the above.
- c) All technical services related to the concert series will be provided by GMSACD, and the concert will be offered for free to the public either in person or virtually.

4. USE OF TAX

The GMSACD 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 and private business or interest.

5. REPORTS AND RECORDS

- a) The GMSACD 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 GMSACD 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.
- b) The GMSACD shall submit to the City a report accounting for the usage of the funding and include artwork proofs from all related expenditures. 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.

6. THIRD PARTY SUITS AUTHORIZED

It is specifically agreed between the parties to this Agreement that the terms of this Agreement are not intended to create in the public, or any member thereof, the status of a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit on the basis of breach of contract, tort, prima facie tort, or violation of any Federal or State Constitutional or Statutory provisions.

7. 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.

8. 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 either before, during, or after the execution of this Agreement shall affect or modify any of the terms or obligations herein contained.

9. INDEPENDENT CONTRACTOR

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

10. DISCRIMINATION PROHIBITED

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

11. APPLICABLE LAW

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

12. ASSIGNMENT

The GMSACD may assign any interest in this Agreement and may subcontract for services directly related to the design and marketing of the event. GMSACD may not utilize these funds for event operational costs.

13. INDEMNIFICATION

GMSACD 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 GMSACD or its agents, servants, or employees. GMSACD obligation to protect, defend, indemnify, and hold harmless as set forth herein above shall include any matter arising out of any actual or alleged infringement of any patent, trademark, copyright or service mark, or any actual or alleged unfair competition, disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. GMSACD 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 GMSACD, or any claims, causes of action, or legal proceedings against GMSACD arising out of contract, tort, prima facie tort, or any violation of federal or state constitutions or laws.

14. INSURANCE

GMSACD 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. GMSACD shall, upon reasonable notice, provide City with copies of all applicable insurance policies.

15. 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 Mainstreet Arts & Cultural District
Attn: Michael Bulloch
PO Box 2007
Gallup, NM 87305

Or to such other address as either party may designate by written notice to the other.

16. GOVERNING LAW

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

Executed and approved on the date first written above.

CITY OF GALLUP

Gallup Mainstreet Arts & Cultural District

By _____
Maryann Ustick, City Manager

By _____
Michael Bulloch, Interim Executive Director

Attest:

Attest:

Alfred Abeita, City Clerk

By _____
GMSACD Executive Board Member