

PERFORMANCE AGREEMENT

This agreement ("Agreement") made this 12 day of October, 2018, between Los Ramones de Nuevo Leon, Los Navarro and Milton Arce, professional entertainers ("Performers") by their duly authorized agent, Roman Rubio, an individual in his capacity as agent for the Performers, 2008 East Boston Street, Chandler, Arizona 85225-5828 ("Manager") and City of San Luis, a municipal corporation organized under the laws of Arizona, having its administrative offices at 1090 East Union Street, San Luis, Arizona 85349 ("City"). Manager and City may be referred to singularly as the "Party" and collectively as the "Parties."

In consideration of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

1. Place of engagement, (the "Venue"): Joe Orduño Park (a City park)
2. Address of engagement: 925 North Park Avenue, San Luis, Arizona 85349
3. Type of engagement: Concert by the Performers for Founders' Day City Celebration
4. Date and time of engagement: December 8, 2018
Start Time: 8:00 p.m.
Finish Time: 11:00 p.m.

5. Payment.

(a) Fee. The total performance fee agreed upon is \$11,500.00 U.S. Dollars ("Fee").

(b) Performer Expenses. Included in the \$11,500.00 Fee are all expenses for the Performers and their staff, for accommodations, for travel to and from the Venue.

(c) Deposit. From the \$11,500.00 Fee, the City shall pay \$6,000.00 to the Manager by October 15, 2018 to secure Performers for the engagement on December 8, 2018 ("Deposit"). If the Manager does not receive the Deposit by October 15, 2018, the Performers may cancel this Agreement without further obligation.

The City shall make a regular check for the Deposit payable to the order of Roman Rubio, the Performers' duly-authorized agent, and mail it to:

Roman Rubio
Business Manager
2008 E BOSTON ST
CHANDLER AZ 85225-5828

(d) The City shall pay the full remaining balance of the Fee by certified check promptly after the performance ends on December 8, 2018.

6. Cancellation or Postponement. "Business Days" means Monday, Tuesday, Wednesday, and Thursday unless the day is a City holiday.

(a) The Performers reserve the right to cancel this Agreement without obligation upon written notice to the City prior to October 31, 2018. If the Performers cancel under the terms of this section, the Manager shall return the Deposit within 2 business days to the City. On or after October 31, 2018, the Performers cannot cancel this Agreement except by mutual written consent of both the City and Performers.

(b) The City reserves the right to cancel or postpone this Agreement without obligation upon written notice to the Manager prior to October 15, 2018. If the City postpones, then the Parties must agree in writing to a new date. If the City cancels for any reason later than October 15, 2018, then the City forfeits the Deposit. If the City cancels later than October 31, 2018 then the City shall pay any outstanding balance of the entire Fee.

7. Security Deposit. The City does not require the Manager or the Performers to post a security deposit of any kind.

8. Force Majeure, Sickness & Accidents. Performers shall be excused from performing due to sickness, accidents, riots, strikes, epidemics, acts of God, Force Majeure, or any other legitimate condition beyond Performers' control. If such circumstances arise, all reasonable efforts shall be made by Performers to find a replacement entertainment at the agreed-upon Fee. Should Performers be unable to procure a replacement, City shall receive a full refund of all fees paid to Performers. City agrees that in all circumstances, Performers' liability shall be exclusively limited to refunding the fees paid, and that Performers shall not be liable for indirect or consequential damages arising from any breach of contract.

9. No Recordings of the Performance. Upon Performers request, the City will assist the Performers in prohibiting recording or transmitting of the Performance by anyone not

authorized to do so by the Performers.

10. **Exclusivity.** The Performers will perform exclusively for the City at the date and time of the engagement under this Agreement. At the time of the payment of the Deposit, the Performers will not be under any contract to a third party that might preclude the Performer from performing on December 8, 2018 and fulfilling the requirements of this Agreement.

11. **Indemnity.** To the fullest extent permitted by law, each Party (as indemnitor) shall defend, indemnify and hold harmless against liability, loss and damages each of the other (as Indemnatee). Each Party shall indemnify the other for each Party's own negligence. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

12. **Permits.** The City warrants that it has all the authority necessary for the Performance.

13. **Security.** The City will take reasonable precautions for the safety of the Performers and the Performers' equipment during all aspects of the Performance and at all times while the Performers and the Performers' equipment is on the Venue's premises. The City is also responsible to ensure that only the Performers and their designated technicians and representatives are allowed on stage or in the area designated as the back stage if there is such an area.

14. **Picket Lines.** The Performers will not be required to cross a picket line established by a labor union at Venue at the time of the engagement under this Agreement. Such refusal to cross a picket line will not be deemed a breach of this Agreement. The City will not take any retaliatory action for such refusal to cross a picket line. If the performance cannot occur due to the picket line, the Parties will come to a mutual agreement for another performance.

15. **Governing Law.** The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction in Yuma County, Arizona or in the United State District Court for the District of Arizona at the election of the plaintiff in such legal action and the Parties waive any right to object to such venue. Nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

16. **Covenant of Good Faith and Fair Dealing.** The City and the Performers and the Performers through the Manager agree to perform their obligations under this Agreement, in all respects, in good faith.

Miscellaneous Terms

17. Time is of the essence in this Agreement.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document. Facsimile signatures are binding and are considered to be original signatures.

19. No part of the performance may consist of acts in violation of any federal laws, local laws, codes, statutes, ordinances, regulations, rules or any other requirements including building and fire regulations. The Performance will not contain any lewd or indecent acts, images or language. If the Performers violates this section, the City may immediately cancel the performance and this Agreement.

20. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

21. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of the provisions of this Agreement.

22. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

23. This Agreement constitutes the entire Agreement between the Parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded and merged in this Agreement.

24. The Performers specifically warrant and represent that all copyrighted material to be performed has been licensed or authorized by the copyright owners or their representatives. The Performer indemnifies the City for any copyright infringement and any expenses that may result from such copyright infringement during or as the result of the performance.

25. The City will be responsible for providing suitable power and electricity for the Performance.

26. It is the intent of the parties to this Agreement that the Performers are an independent contractor and will control the manner and means of the Performance. The Agreement will control the scheduling of the performance. The Performer is not an employee of the City. The exclusive nature of this Agreement is limited to the duration of the Performance, and it is expected that the Performer will enter other similar agreements with other customers.

27. Notices. All notices to be given under this Agreement, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:

- deposit in the United States Postal Service by certified mail, return receipt requested, and postage

prepaid,

- personal delivery by process server or
- sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

If to the City -

City Manager
City of San Luis
P.O. Box 1170 (by United States Postal Service)
1090 East Union Street (by personal process or courier)
San Luis, Arizona 85349

Copy to
Director of Parks and Recreation Department
P.O. Box 1170 (by United States Postal Service)
1015 North Main Street (by personal process or courier)
San Luis, Arizona 85349

If to the Performers/Manager Roman Rubio, Business Manager
2008 East Boston Street
Chandler, Arizona 85225-5828

or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any urgent or time-sensitive notice shall be first communicated in person, or by phone, or by email. The Performers/Manager Roman Rubio contact information is (480) 313-9986 rdrubio16@gmail.com. The City's contact information is (928) 341-852 lgalaviz@cityofsanluis.org.

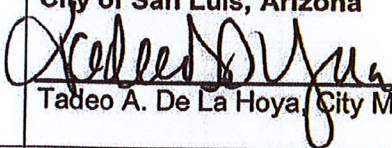
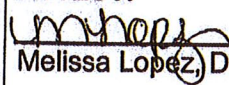
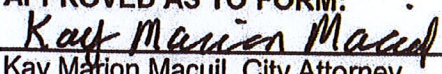
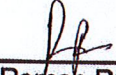
28. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, and no person or entity not a Party shall have any right or cause of action under this Agreement.

29. **No Agency Created.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any agency, partnership, joint venture or other similar arrangement between the Parties, except that the Parties understand that Manger is the agent of the Performers.

30. **No Personal Liability.** No member, official or employee of the City shall be personally liable to Performers, or any successor or assignee, (a) if any default occurs or breach by the City, (b) for any

amount which may become due to the Performers or its successor or assign, or (c) under any obligation of the City under this Agreement.

IN WITNESS WHEREOF the City and the Performers through their Manager have executed this Agreement in the State of Arizona.

	City of San Luis, Arizona  Tadeo A. De La Hoya, City Manager
ATTEST:  Melissa Lopez, Deputy City Clerk	APPROVED AS TO FORM:  Kay Marion Macuil, City Attorney
	Roman Rubio Business Manger for Los Ramones de Nuevo Leon, Los Navarro and Milton Arce  Roman Rubio