

PERFORMANCE AGREEMENT

This agreement ("Agreement") is made this ____ day of February 2019 the date of the last Party to sign, between Eder Flores doing business as La Cachimba Booking of 920 W L Moreno St., Calexico, CA 92231 (the "Representative") and the City of San Luis, incorporated under the laws of Arizona, having its principal office at 1090 East Union Street, P.O. Box 1170, San Luis, Arizona 85349 (the "City"). The Representative represents La Cachimba, Los Chatos, and Inspector (the "Bands"). The City and the Representative may be referred to individually as the "Party" and collectively as the "Parties."

SECTION 1. PERFORMANCE OF CONCERT

Pursuant to the terms and provisions of this Agreement, Representative shall cause the Bands to perform a concert at the Joe Orduño Park, 965 North Park Avenue, San Luis, Arizona, at approximately the following times:

- Los Chatos at 7:15 p.m. on July 4th, 2019 for the duration of one hour.
- La Cachimba at 8:30 pm on July 4th, 2019 for the duration of one hour.
- Inspector at 10:30 pm on July 4th, 2019 for the duration of one hour and fifteen minutes.

City shall be responsible for providing the stage and any public address or sound equipment for the performance.

SECTION 2. COMPENSATION

As compensation for such concert, the City shall on or before the end of the first set of the performance on the date of the concert pay the Representative, a total fee of \$8,800.00. The City agrees to pay one-half of this fee on or before March 21, 2019 and the remainder on or before the time of performance on July 4, 2019.

SECTION 3. SECURITY

City shall provide sufficient security so that no unauthorized person will have access to the stage area or backstage area. The Representative will provide names of persons or guests authorized to be backstage. If security backstage passes and/or laminates are to be used, a representative of the Representative will supply to the City a photo copy of the pass system to be used for the performance.

City shall also provide security for the purpose of the general safety of the event.

City shall take reasonable precautions to prevent theft or damage of the Representative's musical instruments and equipment set-up for the performance under this Agreement.

**SECTION 4.
ADVERTISING**

The City agrees to use its best efforts to promote the performance under this Agreement in local media and community calendars. The Representative shall supply to the City graphics and/or photos to support the promotion.

**SECTION 5.
NO RECORDING**

The concert to be given under this Agreement shall not be broadcast or recorded in any manner or form, without the prior, express, and written consent of Representative.

**SECTION 6.
INABILITY OF THE REPRESENTATIVE TO PERFORM**

Neither Representative nor the Band shall be liable to City for Band's failure to appear or perform by reason of or due to the illness or physical disability, except for return of all monies paid under this Agreement.

**SECTION 7.
CANCELATION**

If a Party cancels for reasons other than those in Section 6, the following liquidated damages apply. In the event that the City or the Representative cancels the concert 14 to 35 days before the date of the performance under this Agreement, the cancelling Party will pay the other Party one-half (50%) of the fee in the amount of \$4,400.00 as liquidated damages. In the event the City or the Representative cancels the concert 13 days or fewer before the performance, the cancelling Party will pay the other Party the full amount of the fee of \$8,800.00.

**SECTION 8.
INSURANCE**

The Representative shall at its expense, for the performance contracted hereunder: (1) insure the instruments and equipment belonging to the Representative against, theft, loss or damage; (2) carry public liability insurance providing for a minimum of \$1,000,000.00 per person, \$2,000,000.00 per occurrence and/or accident, \$2,000,000.00 aggregate, and \$1,000,000.00

for property damage; and (3) procure a policy for accident or damages on or to the premises, under the control or use of Joe Orduño Park, in the amounts set forth in item (2) above.

The Representative shall procure, pay for, and deliver to City the policies of insurance covering the risks described in the preceding paragraph. All insurance companies issuing such policies shall have what is commonly known as an "A" rating with A.M. Best Company and shall insure City. Certificates of insurance shall be delivered to City before the effective date of this Agreement, and new policies shall be delivered fourteen (14) days before the old policies expire. If the Representative fails to deliver the policies in the manner stated to City, City may obtain the required policies and charge their costs to the Representative, and the City may deduct these costs from any sums due and owing to the Representative. If the policy or policies of insurance is/are a "claims made" policy, it/they shall be maintained for two (2) years following termination of this Agreement.

All such insurance policies shall be first payable in case of loss by means of a standard noncontributory clause, shall be written by such companies, on such terms, in such form and for such periods and amounts as the City shall from time to time designate or approve, shall be primary and without right of contribution from other insurance which may be available, shall waive any right of setoff, counterclaim, subrogation, or any deduction in respect of any liability of the Representative or City, shall provide that with respect to the City, the insurance shall not be invalidated by any action or inaction by the Representative, including but not limited to any representations made by the Representative in the procurement of such insurance, and shall provide that they shall not be cancelled or amended without at least [30] days' prior written notice to the City. The Representative grants the City full power and authority as attorney irrevocable of the Representative to cancel or transfer such insurance, to collect and endorse any checks issued in the name of the Representative and to retain any premium and to apply the same to the obligations promised by this Agreement.

SECTION 9. ASSIGNMENT

Neither Party shall assign or transfer this Agreement without the prior, express, and written consent of the other Party.

SECTION 10. NOTICES

Any notice given in connection with this Agreement shall be given in writing and delivered either by hand through a process server to the Party or by overnight delivery service the Party at that Party's address stated at the top of this Agreement. Any Party may change its notice address by giving written notice of the change in accordance with this section.

**SECTION 11.
GOVERNING LAW**

It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of Arizona. The venue for any cause of action shall be in the courts of the State of Arizona.

**SECTION 13.
ARBITRATION OF DISPUTES**

All disputes, claims, and questions regarding the rights and obligations of the Parties under the terms of this Agreement are subject to arbitration. Either Party may make a demand for arbitration by filing such demand in writing with the other Party within 30 days after the dispute first arises. After such demand, arbitration shall be conducted by an arbitrator agreed to by both Parties acting under the rules of commercial arbitration of the American Arbitration Association.

**SECTION 14.
MISCELLANEOUS PROVISIONS**

Required e-verify: Pursuant to A.R.S. §41-4401(A), the Representative warrants its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with § 23-214, subsection A, e-verify. A breach by the Representative of this warranty shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract. The City retains the legal right to inspect the papers of any contractor or subcontractor employee who works under this Agreement to ensure that the Representative or Representative's subcontractor or subcontractors are complying with this warranty.

Notice of Arizona Conflict of Interest Law: This contract is subject to cancellation if there is a conflict of interest under the provisions of A.R.S. § 38-511.

Non-Liability of City Officials and Employees: Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to the Representative, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Representative or successor, or under any obligation under the terms of this Agreement.

Israel Certificate: Representative hereby certifies that it is not boycotting Israel nor will it boycott Israel for the duration of this Agreement.

Headings: 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 any of the provisions of the Agreement.

Authority: 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. The Representative and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Party on whose behalf each individual is signing.

Attorney's Fees and Costs: If either Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorney's fees and court costs.

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

Timing: Time is of the essence.

Counterparts: This Agreement may be executed in counterparts, any of which shall be deemed to be an original

SECTION 15. BUSINESS LICENSE

Representative shall obtain a City of San Luis, Arizona business license before the City shall make any payments.

SECTION 16. SEVERABILITY

The invalidity of any portion of this Agreement shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement of the invalid provision.

SECTION 17. ENTIRE AGREEMENT

This Agreement shall constitute the entire Agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.

SECTION 18. MODIFICATION OF AGREEMENT

Any modification of this Agreement, rider or additional obligation assumed by either Party in connection with this Agreement shall be binding only if placed in writing and signed by each

Party or an authorized representative of each Party.

The Parties have executed this Agreement in the day, month and year first set forth above.

City of San Luis, Arizona

La Cachimba Booking

Tadeo Azael De La Hoya
City Manager

Eder Flores
Representative for Los Chatos, La Cachimba,
& Inspector.

Attest:

Approved as to form

Sonia Cornelio
City Clerk

Kay Marion Macuil
City Attorney