

PERFORMANCE AGREEMENT

This agreement ("Agreement") is made this ____ day of May 2019 the date of the last Party to sign, between Erick Cario doing business as ECOMUSICKRECORDS LLC of 37224 Bedford Court, Palmdale, CA 93550 (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 Los Tiranos del Norte, Los Cadetes de Linares, and La Sonora de Sonoras Pura Dinamita (Sonora Dinamita) (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

Under 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 these times:

- Los Tiranos del Norte at 7:30 p.m. on October 4th, 2019 for the duration of one hour,
- Los Cadetes de Linares at 9:00 p.m. on October 4th, 2019 for the duration of one hour and
- La Sonora de Sonoras Pura Dinamita (Sonora Dinamita) at 10:30 pm on October 4th, 2019 for the duration of one hour and fifteen minutes.

City shall provide the stage, sound equipment and lights for the performance.

SECTION 2. COMPENSATION

As compensation for such concert, the City shall by the end of the first set of the performance on the date of the concert pay the Representative, a total fee of \$11,600.00. The City agrees to pay a deposit of \$5,000.00 dollars by the ____ day of _____, 2019 and the remaining \$6,600 by the end of the first set on October 4, 2019. The only people authorized to accept the payments are Erick Cario or Alberto Cario.

SECTION 3. SECURITY

City shall provide security for averting unauthorized person having 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 photocopy of the pass system to be used for the

performance.

City shall also provide security aimed at 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.
INABILITY OF THE REPRESENTATIVE TO PERFORM**

The Representative shall return to the City all money paid under this Agreement if Bands fail to appear or perform due to the illness or mechanical problems with their transportation.

**SECTION 6.
CANCELATION**

If a Party cancels for reasons other than those in Section 6, the following amounts shall be paid. If the City or the Representative cancels the concert 14 to 35 days before the date of the performance under this Agreement, the canceling Party will pay the other Party the deposit amount of the fee of \$5,000.00. If the City or the Representative cancels the concert 13 days or fewer before the performance, the canceling Party will pay the other Party the full fee of \$11,600.00.

**SECTION 7.
INSURANCE**

The City shall pay for insurance to cover this event with terms and coverages acceptable to the City and the Arizona Municipal Risk Retention Pool.

**SECTION 8.
ASSIGNMENT**

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

**SECTION 9.
NOTICES**

Any notice 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 under this section.

**SECTION 10.
GOVERNING LAW**

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

**SECTION 11.
INDEPENDENT CONTRACTOR**

The Parties agree that Representative, its employees, agents and subcontractors shall be independent contractors with regard to the providing of services under this Agreement and that Representative, Representative's employees, agents and subcontractors shall not be considered to be employees or agents of City for any purpose and will not be entitled to any of the benefits City provides for its employees. Rights of the Representative as independent contractor include but are not limited to control of the work, manner and methods of the work, and the right to contract with other employers.

Rights of the City include but are not limited to inspection and approval of the work and the right to contract with others to perform the work.

**SECTION 12.
MATERIALS AND EQUIPMENT**

Representative shall furnish at its own expense all materials and equipment necessary to carry out the terms of this Agreement.

**SECTION 13.
MISCELLANEOUS PROVISIONS**

Required e-verify: under 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 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 may be canceled if there is a conflict of interest under A.R.S. § 38-511.

Non-Liability of City Officials and Employees: No member, official or employee of the City shall be personally liable to the Representative, or any successor in interest, if any default occurs 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 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 to this Agreement shall have any right or cause of action under this Agreement.

Timing: Time is of the essence.

Counterparts: This Agreement may be executed in counterparts, any of which shall be deemed to be an original. Electronically scanned signatures are the same as the original.

SECTION 14. BUSINESS LICENSE

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

**SECTION 15.
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 after the invalid provision is deemed to be stricken.

**SECTION 16.
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 17.
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

ECOMUSICKRECORDS LLC

Tadeo Azael De La Hoya
City Manager

Erick Cario
Representative for Los Tiranos del Norte, Los
Cadetes de Linares, & La Sonora de Sonoras
Pura Dinamita (Sonora Dinamita).

Attest:

Approved as to form

Sonia Cornelio
City Clerk

Kay Marion Macuil
City Attorney