

**Pueblo of Laguna
Independent Services Agreement**

This Independent Services Agreement is entered into by and between the Pueblo of Laguna (hereinafter, "Pueblo") and _____ (hereinafter "Contractor"), and is effective as of the date of final and full execution by both parties.

RECITALS

1. The Pueblo is a federally recognized Indian tribe and is engaged in activities associated with tribal governance and related activities.
2. Contractor is an independent contractor (OPTIONAL: *and not an employee of the Pueblo.*) Contractor provides _____ services.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Pueblo and Contractor agree as follows:

TERMS AND CONDITIONS

Section 1. Scope of Services

Contractor shall provide the following services to the Pueblo:

Section 2. Term of Agreement

This Agreement is in effect as of the date of final execution of by all parties. The term of this agreement shall be until _____(date), or until terminated pursuant to Section 4 below.

Section 3. Compensation

- A. The Pueblo shall pay to the Contractor in full payment for services satisfactorily performed at the rate of \$_____ per hour. With regard to expenses, Contractor agrees to pay for any minor costs incurred by Contractor while performing services under this agreement such as office supplies, long distance phone calls, faxes and copies. Subject to availability, while Contractor is on the Pueblo, Contractor shall have use of and access to Pueblo facilities, and necessary office supplies, including without limitation telephone service, facsimile transmissions, and reproduction facilities. The Pueblo of Laguna will pay or reimburse Contractor for any significant and reasonable expenses incurred while performing services under this agreement, including but not limited to air travel, car rental, lodging, and meals as approved by the Pueblo of Laguna. If Contractor uses his own vehicle for assigned tasks, he shall be reimbursed for mileage at the then current IRS rate. Mileage reimbursement shall not include costs for commuting to and from the Pueblo. Reimbursement for alcohol with meals is not

allowed. Contractor will not incur any significant expenses unless the Pueblo pre-approves such expenditure in writing. The Pueblo shall determine what expenses are considered significant. Contractor must submit receipts with requests for reimbursement along with invoices for services.

- B. The total amount payable to the Contractor under this Agreement shall not exceed \$_____ for the term of this agreement. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Pueblo when the services provided under this Agreement reach or approach the total compensation amount. In no event will the Contractor be paid for services in excess of the total compensation amount without this Agreement being amended according to Section 20 prior to those services in excess of the total compensation amount being provided.
1. All invoices and requests for reimbursement must be received by the Pueblo on a bi-weekly basis, must be signed by Contractor, and must be received by the Pueblo no later than fifteen (15) calendar days after the period in which the services were performed.
 2. Payment is subject to availability of funds and to any negotiations between the parties pursuant to Section 1, Scope of Services, and to approval by the Pueblo. All invoices MUST BE received by the Pueblo no later than fifteen (15) days after the term of this agreement in which the services were delivered.
 2. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Pueblo finds that the services are not acceptable, within thirty (30) calendar days after the date of receipt of written notice from the Contractor that payment is requested, the Pueblo shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Pueblo that the services have been received and accepted, payment shall be tendered to the Contractor within thirty (30) calendar days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the Pueblo shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

Section 4. Termination

- A. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) calendar days prior to the intended date of termination. Except as otherwise allowed or provided under this

Agreement, the Pueblo's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the Pueblo is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within ten (10) calendar days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Pueblo or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of Pueblo funds. THIS PROVISION DOES NOT WAIVE THE PUEBLO'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT."

B. Termination Management

Immediately upon receipt by either the Pueblo or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Pueblo; 2) comply with all directives issued by the Pueblo in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Pueblo shall direct for the protection, preservation, retention or transfer of all property titled to the Pueblo and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Pueblo upon termination and shall be submitted to the Pueblo as soon as practicable.

Section 5. Additional Responsibilities and Status of Contractor

- A. Status. In performing the services covered by this Agreement, the Contractor, including any agent or employee of Contractor, is an independent contractor performing services for or delivering goods to the Pueblo. The Contractor is not an employee of the Pueblo or any of its subdivisions, entities, or departments. The Contractor, including any agent or employee of Contractor, shall not as a result of this Agreement accrue leave, retirement, insurance, bonding, or any other benefit afforded to employees of the Pueblo, including the use of Pueblo vehicles. The Contractor is responsible for obtaining and maintaining professional liability insurance, and shall provide the Pueblo a certificate of professional liability insurance, if applicable.
- B. Taxes. The Contractor acknowledges that all sums received from the Pueblo for goods delivered or services performed under this Agreement are reportable by the Contractor to applicable governmental authorities for tax purposes, including the Pueblo's Tax Administration Division. The Contractor is responsible for payment of applicable federal, state, Pueblo, and local taxes or levies required under gross

receipts tax, unemployment insurance, social security, income tax, and/or other laws, with respect to Contractor's performance of obligations and receipt of payment under this Agreement. The Contractor shall provide the Pueblo evidence of applicable business licensure and tax authority registration. *(If not previously registered, the Contractor should contact the Pueblo's Secretary at 505-552-5761, and the Pueblo's Tax Administration at 505-552-5787, in addition to proper state and federal offices.)*

- C. Authority. Nothing contained in the Agreement shall be construed as establishing a partnership or joint obligation of the parties. The Contractor and the Pueblo shall each retain its respective right to conduct its own separate business affairs, provided that such conduct does not interfere with the parties' obligations under this Agreement. The Contractor will not and cannot bind the Pueblo in any manner absent separate written authority granted by the Pueblo of Laguna Council.

Section 6. Assignment

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 Pueblo.

Section 7. Subcontracting

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Pueblo.

Section 8. Release

Final payment of the amounts due under this Agreement shall operate as a release of the Pueblo, its officers and employees, and the Pueblo from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

Section 9. Confidentiality

Contractor acknowledges that all information related to Contractor's work under this Agreement, including all findings, reports, and other information provided directly or indirectly by the Pueblo in connection with the Agreement or developed, compiled or created by Contractor in performing services specifically for the Pueblo under this Agreement, is confidential and proprietary information owned by, and of great value to, the Pueblo. 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 third-party individual or organization by the Contractor without the prior written approval of the Governor of the Pueblo. Contractor shall employ industry best practices, both technically and procedurally, to protect confidential information from unauthorized physical and electronic access by an unauthorized third-party.

Section 10. Product of Service -- Copyright

All materials developed or acquired by the Contractor specifically for the Pueblo of Laguna under this Agreement shall become the property of the Pueblo and shall be delivered to the Pueblo no later than the termination date of this Agreement. Nothing

developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

Section 11. Merger

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written 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.

Section 12. Indemnification

The Contractor shall defend, indemnify and hold harmless the Pueblo from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Pueblo of Laguna by certified mail.

Section 13. Severability: Invalid Term or Condition

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

Section 14. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

Section 15. Notices

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by email, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency: _____ (Agency Head)

Pueblo of Laguna
P.O. Box 194/22 Capital Road
Laguna, NM 87026

_____ (email address)

To the Contractor: _____ (name of authorized representative)

_____ (name of Contractor)

_____ (physical and mailing address)

_____ (e-mail address)

Section 16. Authority

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that they have the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

Section 17. Dispute Resolution

A. Mediation

1. The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by mediation, which shall be conducted under any procedure upon which the parties may agree. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including arbitration.
2. Either party may commence the mediation process by providing to the other party written notice, setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) business days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation session shall be held within thirty (30) calendar days after the initial notice. The parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).
3. The parties acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable

shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

4. In the event of termination by either party, the parties agree that the mediation process may be invoked within thirty (30) days of the date of the termination notice.

B. Arbitration. Any dispute arising out of this Agreement or the breach, termination, or validity of this Agreement, that has not been resolved by informal negotiation or mediation between the parties within ninety (90) calendar days of the date the dispute arose, shall be resolved by binding arbitration as follows:

1. The parties shall jointly select a single arbitrator to conduct the arbitration. If the parties cannot agree on the arbitrator, then either party may request the New Mexico Bar Association to select the arbitrator.
2. The Commercial Arbitration Rules of American Arbitration Association will govern the arbitration. However, nothing in the Commercial Arbitration Rules of the American Arbitration Association shall be deemed a waiver of sovereign immunity or of exclusive jurisdiction in the Pueblo of Laguna.
3. The arbitrator has authority to award compensatory damages not to exceed the face value of this Agreement. Damages shall not include punitive or exemplary damages, attorney's fees or post-judgment interest and does not extend to actions for declaratory judgment or injunctive relief. The arbitrator must render a written decision setting forth the factual and legal basis of the award. There must be an arbitration record that includes all hearings and all evidence (including exhibits, deposition transcripts, affidavits, etc., admitted into evidence) in the arbitration proceeding.
4. The arbitration shall be held in the Pueblo of Laguna no later than ninety (90) calendar days after arbitration is invoked.
5. The arbitrator's award is final, and shall be entered and enforced in the Pueblo of Laguna Court, and only if necessary, any other court of competent jurisdiction.
6. Any arbitration proceeding under this agreement must be initiated no later than one year after the dispute arose. The failure to timely bring an arbitration proceeding is (i) an absolute bar to the commencement of the arbitration proceeding concerning the dispute and (ii) a waiver of the dispute.
7. Each party is required to continue to perform its obligations under this agreement pending final resolution of the arbitration proceeding unless to do so would be impossible or impracticable under the circumstances.

Section 18. Applicable Law

The laws of the Pueblo of Laguna shall govern this Agreement.

Section 19. Limited Waiver of Sovereign Immunity

- A. The Pueblo of Laguna consents to a limited waiver its sovereign immunity for the sole purpose of authorizing the implementation of the terms in Section 17. This

limited waiver of sovereign immunity does not extend to any non-signatory third-parties to this Agreement. This limited waiver of sovereign immunity does not extend to tort claims arising from the performance of this Agreement. This limited waiver of sovereign immunity shall be for the duration of this Agreement or until the conclusion of all proceedings set forth in Section 17, above, whichever is later. This limited waiver of sovereign immunity shall not, under any circumstances, permit the cumulative award of damages to exceed the total amount of payable as identified in Section 3(B) of this Agreement.

- B. Provisions of this Agreement may, pursuant to this limited waiver of immunity, be satisfied only from Pueblo’s funds available for this Agreement. Nothing in this limited waiver of sovereign immunity shall be construed as a waiver or consent to the levy of any judgment, lien, attachment or encumbrance upon any other funds, assets or income or any real property or interest in any real property of the Pueblo, whether held in trust for the benefit of Pueblo by the United States, as restricted fee land, trust, or held in fee simple.
- C. Sovereign immunity is not waived as to any Pueblo employee or Board member, Pueblo Council member, or agent of Pueblo, and Pueblo hereby specifically reserves and retains its sovereign immunity, and all rights and privileges pertaining thereto except to the limited extent expressly stated in this Section.

Section 20. Modification of Agreement

This Agreement shall not be altered, changed, or amended except by instrument in writing and executed by the parties hereto and all other required signatories.

Section 21. Effective Date of Agreement

The effective date of this Agreement shall begin on the final date of execution by both parties.

PUEBLO OF LAGUNA

CONTRACTOR

(Type name of signor here) Date

(Type name of signor here) Date

Title of Authorized Signatory

Title of Authorized Signatory

Approved for Legal Sufficiency:

Pueblo of Laguna Legal Counsel

Date