

ITEM # 18-0556

CITY OF SANTA FE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Wise Fool New Mexico (the "Contractor"). The date of this Agreement shall be July 1, 2018.

1. SCOPE OF SERVICES

The Contractor shall provide the following services for the City:

- A. Advertise, publicize and promote Santa Fe as an arts center through presentation and production of the project described in Exhibit "A" attached hereto and incorporated by reference in response to RFP #18/26/P.
- B. Promote and advertise nonprofit attractions and nonprofit performing arts in Santa Fe through the presentation and production of the project.
- C. Promote and market the project locally, regionally, and nationally through media coverage and placements that emphasize target markets and demonstrate evidence of attracting audiences.
- D. Promote and market the City by utilizing the City's arts logo and credit line on all printed promotional material related to the project.
- E. Improve marketing effectiveness by providing Santa Fe businesses with opportunities to tie-in to cultural events in Santa Fe by attracting audiences as demonstrated with statistical and demographic information about audience attendance.

F. Encourage the cultural development of Santa Fe by maintaining high standards of artistic excellence as demonstrated by an ongoing series of performances, exhibitions and/or services.

G. Strengthen the position of the arts as an integral part of Santa Fe by providing services to fulfill Arts Commission Policy Planks as identified in the RFP.

H. Demonstrate administrative competency through planning, quality programming and realistic budgeting.

I. Provide a final report to the City providing statistical and demographic information about audience attendance and the results of the project.

J. Provide a report to the City of the results of the advertising project.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. The City shall pay to the Contractor in full payment for services rendered, a sum not to exceed Sixty four thousand dollars (\$64,000), inclusive of applicable gross receipts taxes. Payment shall be made as follows:

(1) Thirty two thousand dollars (\$32,000) payable July 1, 2018 to June 30, 2019

(2) Thirty two thousand dollars (\$32,000) payable July 1, 2019 to June 30, 2020

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid under this Agreement.

C. Payment shall be made upon receipt, approval and acceptance by the City of detailed statements containing a report of services completed. Compensation shall be paid only for services actually performed and accepted by the City.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective July 1, 2018 and shall terminate on June 30, 2020 unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City and the Contractor upon 10 days written notice to the Contractor.

(1) The Contractor shall render a final report of the services performed up to the date of termination and shall turn over to the City original copies of all work product, research or papers prepared under this Agreement.

(2) Compensation is based upon hourly rates and expenses, Contractor shall be paid for services rendered and expenses incurred through the date Contractor receives notice of such termination.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

8. CONFIDENTIALITY

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 individual or organization by the Contractor without the prior written approval of the City.

9. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

The Contractor, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form

and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the

laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. MATCHING FUNDS

The Contractor may use the amount paid by the City pursuant to Article 3, herein, to meet matching requirements of federal or state government for the receipt of additional funds for those entities.

23. LOGO AND CREDIT LINE

A. The Contractor must include the City of Santa Fe Arts Commission logo on all printed publicity, promotion, and program materials applicable to this Agreement. In immediate proximity to the logo, the following credit line must be clearly visible and readable: "Partially funded by the City of Santa Fe Arts Commission and the 1% Lodgers' Tax."

B. Failure to provide the appropriate credit line and use of logo can result in termination of this Agreement.

24. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:
City of Santa Fe Arts Commission
PO Box 909
Santa Fe, NM 87504

Contractor:
Wise Fool New Mexico
1131-B Siler Road
Santa Fe, NM 87507

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

Alan Webber
ALAN WEBBER, MAYOR

DATE: 6/4/18

CONTRACTOR:

Scott Marco *Quindling*
NAME AND TITLE *Officer*

DATE: 6/7/18

CRS# 02-451524-00-8
City of Santa Fe Business
Registration # 18-00090524

ATTEST:

Yolanda Y. Vigil
YOLANDA Y. VIGIL, CITY CLERK
cc mtg. 5/30/18

APPROVED AS TO FORM:

NDM *4/23*
CITY ATTORNEY

APPROVED:

Kurt Young, Interim
FINANCE DIRECTOR

22103.561850
Business Unit Line Item

Exhibit A

Wise Fool New Mexico: Wise Fool performances range from free pageants in public parks to major works on Santa Fe's largest stage. Wise Fool will publicize and perform a season of six major productions in Santa Fe: Bust! circus extravaganza, July 2018; Fall Cabaret, October 2018; Circus Luminous, November 2018; Holiday Cabaret, December 2018; IGNITE Giant Puppet Brigade, date TBD; CircAspire, March/April 2019. Wise Fool will also present touring companies LAVA from Brooklyn and Bread and Puppet from Vermont. Arts Commission funding will support artistic creation that is integral to the Santa Fe art scene, and enable Wise Fool's marketing of these performances and programs at the regional and national level through improved branding, a focus on video content, and increased reach through a consistent PR campaign.

Amount Requested: \$58,200