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**City of Las Cruces**<sup>®</sup>  
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**Council Action and Executive Summary**

Item # 5 Res. 10-047 For Meeting of August 3, 2009 Council District: 1  
 (Adoption Date)

**TITLE: A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF LAS CRUCES AND BALLET FOLKLORICO DE LA TIERRA DEL ENCANTO FOUNDATION FOR THE USE OF THE SHANNON ROOM AUDITORIUM AT THE BRANIGAN CULTURAL CENTER**

**Purpose of Action:** The purpose of this action is to renew and update an ongoing contract between the Museum System and the Ballet Folklorico. The contract will permit the Ballet Folklorico to use the Shannon Room of the Branigan Cultural Center for the purpose of lessons and practice; in exchange for three public performances per year; the dates of those performances to be mutually agreed upon between the Ballet Folklorico and the Museum System.

<b>Name of Drafter:</b> Will Ticknor <i>Will Ticknor</i>		<b>Department:</b> Public Services/ Museums		<b>Phone:</b> 541-2295	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Originating Department	Lori Grumet PS Director	528-3477	Budget	<i>[Signature]</i>	2300
	<i>[Signature]</i>		Assistant City Manager	<i>[Signature]</i>	2271
Legal	<i>[Signature]</i>	2128	City Manager	<i>[Signature]</i>	2076

**Key Issues/Contributing Factors:**

The previous contract from 2004 was issued without an expiration date and City policy now restricts agreements of this type to a maximum of 5 (five) years duration. In order to comply with various language changes per New Mexico law and City policies, minor changes were made in the interest of conformity. The major changes in content within the contract were clarifications that state that the City may have occasional need to use the Shannon Room space for meetings, public programs, or exhibitions during normally scheduled Folklorico sessions; and that in such event, the City is not responsible for providing an alternative space for use by the Ballet Folklorico.

**SUPPORT INFORMATION:**

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution.
2. Exhibit "A" – Contract between Ballet Folklorico and the City of Las Cruces.

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes" to approve the Resolution. If the contract is approved, no substantial change in Ballet Folklorico's use of the Shannon room will occur.
2. Vote "No", if the contract is not approved, Ballet Folklorico will no longer be permitted to use the Branigan Cultural Center Shannon Room on a regularly scheduled basis.
3. Modify the Resolution and provide staff with alternate direction.

RESOLUTION NO. 10-047**A RESOLUTION APPROVING A CONTRACT BETWEEN THE CITY OF LAS CRUCES AND BALLET FOLKLORICO DE LA TIERRA DEL ENCANTO FOUNDATION FOR THE USE OF THE SHANNON ROOM AUDITORIUM AT THE BRANIGAN CULTURAL CENTER**

The City Council is informed that:

**WHEREAS**, for many years the City has been assisting the Ballet Folklorico de la Tierra's programs that benefit the citizens of Las Cruces; and

**WHEREAS**, the Ballet Folklorico de la Tierra del Encanto are Goodwill Cultural Ambassadors of the City of Las Cruces; and

**WHEREAS**, the Branigan Cultural Center is an ideal venue for the continuing relationship between the Museum System and the Ballet Folklorico de la Tierra del Encanto; and

**WHEREAS**, minor contract revisions are required to clarify roles and responsibilities between the City of Las Cruces and Ballet Folklorico, and to provide for a finite contract period.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces:

(I)

**THAT** the contract between the City of Las Cruces and Ballet Folklorico for the use of the Shannon Room Auditorium in the Branigan Cultural Center is hereby approved.



**CONTRACT BETWEEN THE CITY OF LAS CRUCES AND THE BALLET  
FOLKLORICO DE LA TIERRA DEL ENCANTO FOUNDATION**

This contract is entered into on this \_\_\_ day of \_\_\_, 2009, between BALLET FOLKLORICO DE LA TIERRA DEL ENCANTO FOUNDATION ("Ballet Folklorico") and the CITY MUSEUM SYSTEM on behalf of the CITY OF LAS CRUCES ("City") a New Mexico municipal corporation.

**TERMS OF CONTRACT.** The City and Ballet Folklorico agree as follows:

1. The City agrees to permit the Ballet Folklorico to use a portion of the City facility located at 501 North Main Street known as the Branigan Cultural Center. More particularly described as:

The Shannon Room Auditorium (2,584 square feet) from 5:00 to 9:00 p.m., Monday through Thursday for the purpose of dance practice and lessons.

2. The term of this contract shall be for a period of 5 years, commencing on August 10, 2009; and terminating on \_\_\_\_\_, 2014.

3. The Ballet Folklorico, a 501c3 non-profit entity, is organized exclusively to provide cultural and recreational opportunities which enhance the quality of life for citizens of the City of Las Cruces, as stated in the organization by-laws.

In recognition of the educational and performance services Ballet Folklorico provides to the citizens of Las Cruces; the parties agree that in exchange for the use of the room at the Branigan Cultural Center, the Ballet Folklorico shall provide three (3) public performances annually at no charge to the City or the attendees. The date, time and location of said performances shall be mutually agreed upon by both parties.

4. **USE OF PREMISES.** Ballet Folklorico shall use the premises for the purpose of providing cultural, historical and recreational opportunities during the hours of 5:00 p.m. through 9:00 p.m., Monday through Thursday. The City reserves the right to use the Shannon Room for museum events or activities, and will provide reasonable notice to Ballet Folklorico of such use. In the event that the Museum System or other City entity needs to use the room during normally scheduled Ballet Folklorico activities, it is up to Ballet Folklorico to find an alternate location for their use.

5. **ADMINISTRATIVE RESPONSIBILITY.** Ballet Folklorico shall be solely responsible for the operation of its programs and activities and shall clearly identify Ballet Folklorico programs as such. Ballet Folklorico, its officers, members and agents will not attempt to interfere with or usurp the duties of the City staff. The Branigan Cultural Center manager shall serve as the liaison and point of contact between the City and Ballet Folklorico.

**6. DONATIONS.** Funds or property transferred to the City by Ballet Folklorico shall be considered subject to all state laws and regulations governing the disbursement and administration of public funds and/or public property, except to the extent of any specific conditions of the transfer that are acceptable to the City and do not require actions that are punishable as crimes under state law.

**7. NEW MEXICO PUBLIC REGULATORY COMMISSION STATUS.** Ballet Folklorico shall remain in good standing with the NMPRC during the period of this contract. Failure to remain in good standing will be grounds for termination of this contract. Ballet Folklorico shall provide the City with a document specifying the Board of Directors of Ballet Folklorico, and most current bylaws on an annual basis. Ballet Folklorico shall also provide a web print-out of active status of the organization with NMPRC. Ballet Folklorico will deliver these documents at the commencement of this contract and on July 1 of each year.

**8. FINANCIAL REPORTING.** Should Ballet Folklorico's gross annual income exceed One Hundred Thousand Dollars (\$100,000), Ballet Folklorico shall have a financial accounting system considered adequate under customarily and currently accepted accounting standards. Financial affairs of the organization shall be audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor. Ballet Folklorico shall furnish the City with copies of such audits, which, exclusive of any lists of donors or donations, shall be of public record and shall make the associated working papers available to the City for review upon its written request for a period of three years after the audit report date. If Ballet Folklorico's gross annual income is below One Hundred Thousand Dollars (\$100,000); no audit will be required by the City except in response to the appearance of irregularities in the operation of the Ballet Folklorico.

**9. ADDITIONAL USE OF BRANIGAN CULTURAL CENTER FACILITY.** Ballet Folklorico may use additional portions of the Branigan Cultural Center facility with the prior written approval of the Museums Administrator per occasion.

**10. REPAIR AND MAINTENANCE.** During the term of the contract, Ballet Folklorico will take responsible care of the facility and will promptly report any problems or maintenance issues to the Branigan Cultural Center Manager. If the premises are damaged due to any act of Ballet Folklorico, its employees, agents, members or invitees, such damage will be repaired by Ballet Folklorico at its sole cost and expense.

**11. ALTERATIONS.** Ballet Folklorico will make NO alterations to the Branigan Cultural Center. Should the Ballet Folklorico desire any alterations, they must obtain the City's written permission through the Museums Administrator prior to making any alterations or improvements to the premises. Any alterations or improvements made to or placed in the premises by Ballet Folklorico are and shall remain the property of the City except as the parties mutually agree otherwise in writing.

**12. CONDITON OF PREMISE UPON SURRENDER.** At termination of this contract, Ballet Folklorico will surrender the premises to the City in the condition in which they existed at execution excepting reasonable use and ordinary wear and tear.

**13. UTILITIES AND JANITORIAL SERVICES.** Utilities shall be furnished by the City. The City will also provide general janitorial services to maintain the Shannon room in usable condition. However; it is the responsibility of the Ballet Folklorico to ensure that the Shannon room is returned to its existing condition of cleanliness and order at the end of each of their sessions.

**14. RIGHT OF ENTRY.** The City, or its agents have the right to enter upon the Shannon Room at any time to inspect, to make repairs, to clean, and other reasonable purposes.

**15. HOLD HARMLESS AND INDEMNITY.** Ballet Folklorico will indemnify and hold the City, its officers and employees harmless from any and all claims including reasonable attorney fees and costs of investigation arising out of this contract or any amendment hereto in the proportion that the tortuous act or omission of Ballet Folklorico has caused such liability.

**16. DUTY TO INSURE.** During the term of this contract, Ballet Folklorico shall maintain in full force and effect a \$1,000,000 comprehensive public liability protection policy naming the City as an "additional insured", with the same coverage as Ballet Folklorico, covering both personal injuries and property damage in the maximum sums required under the New Mexico Tort Claims Act. Ballet Folklorico will deliver this document certifying coverage at the commencement of this contract and on July 1 of each year.

**18. ASSIGNMENT.** The contract and all rights contained herein shall not be assigned or transferred by one party to a third party.

**19. ATTORNEY FEES.** If either party defaults in any respect regarding the contract, thus making it necessary for the other party to employ an attorney to enforce the provisions of the contract, then the defaulting party shall pay reasonable attorney fees to the other party. Prior to institution of any litigation, however, the parties have the contractual duty to in good faith attempt to resolve any controversy as expeditiously as possible.

**20. TERMINATION OF LEASE.** Either party may terminate this contract, with or without cause, by providing the other party with written notice of intent to terminate the contract. Failure of Ballet Folklorico to be in good standing with the New Mexico Public Regulation Corporation, or failure to maintain proper insurance as noted in this contract will be grounds for termination of this contract. Notice of termination must be provided at least forty-five (45) days prior to the effective date of the termination. The City's Museums Administrator and the President of Ballet Folklorico's Board of Director's shall be considered the proper persons who shall be served with notice of the termination of this contract.

**21. DISPUTE RESOLUTION.** The parties will negotiate in good faith to resolve any dispute concerning the contract prior to instituting litigation.

22. ENTIRE CONTRACT. This reflects the<sup>83</sup> entire contract between the parties and replaces any previously existing contract between the parties for the use of the premises. No amendment or modification shall be permitted unless agreed to by both parties in writing.

23. NOTICE. For purposes of notice under this contract, notice shall be delivered to the City through the Museums Administrator, P.O. Box 20000, Las Cruces, New Mexico, 88004; and to the Ballet Folklorico, 1627 Winton Circle, Las Cruces, NM 88007.

IN WITNESS THEREOF, this contract was executed in duplicate on the date first written above.

BALLET FOLKLORICO DE LA  
TIERRA DEL ENCANTO

CITY OF LAS CRUCES

BY: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Terrence R. Moore, City Manager

Title

ATTEST:

BY: \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

BY:   
Asst. CITY ATTORNEY