



**CITY OF ALBUQUERQUE**  
Albuquerque, New Mexico  
Office of the Mayor


**EC-19-480**

Mayor Timothy M. Keller

September 18, 2019

**INTER-OFFICE MEMORANDUM**

**TO:** Klarissa Peña, City Council President

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** License Agreement between the City of Albuquerque and Karen Aceves d/b/a Plaza Don Luis – 303 Romero NW

The City requires access to public restroom facilities in the Old Town area. The City wishes to renew the ongoing agreement with Plaza Don Luis and continue the use of facilities at 303 Romero NW.


The public will have access to the facilities during normal business hours and during any City sponsored special event, such as summer concerts or Holiday events that are held in Old Town year round with the exception of Thanksgiving, Christmas and Easter when the facilities will be closed.

The term of this agreement is for one year and provides for three one-year extensions. Annual compensation shall not exceed Forty-Five Thousand and No/100 Dollars (\$45,000.00).

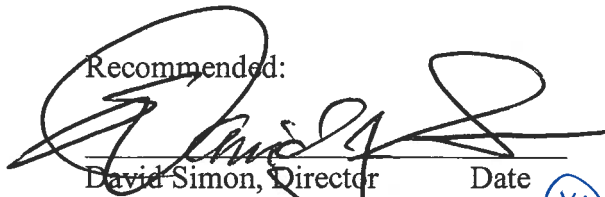

This License Agreement is forwarded to City Council for approval.

**Title/Subject of Legislation:** License Agreement between the City of Albuquerque and Karen Aceves d/b/a Plaza Don Luis – 303 Romero NW

Approved:

  
\_\_\_\_\_  
Sarita Nair Date 10/4/19  
Chief Administrative Officer

Recommended:

  
\_\_\_\_\_  
David Simon, Director Date 9/19/19  
Parks and Recreation Department 

## **Cover Analysis**

### **1. What is it?**

License Agreement between the City of Albuquerque and Karen Aceves d/b/a Plaza Don Luis - 303 Romero NW

### **2. What will this piece of legislation do?**

Continue the ongoing agreement for public restroom access at Plaza Don Luis in the Old Town area.

### **3. Why is this project needed?**

Provide the public with access to restroom facilities during normal business hours and during any City sponsored special event, such as summer concerts or Holiday events that are held in Old Town year round with the exception of Thanksgiving, Christmas and Easter when the facilities will be closed.

### **4. How much will it cost and what is the funding source?**

Annual compensation shall not exceed Forty-Five Thousand and No/100 Dollars (\$45,000.00).

General Fund.

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

N/A

### **6. What will happen if the project is not approved?**

Public access to restroom facilities in the Old Town area will be limited and/or no longer be available.

### **7. Is this service already provided by another entity?**

No.

**LICENSE AGREEMENT  
BETWEEN  
CITY OF ALBUQUERQUE  
AND  
KAREN ACEVES D/B/A PLAZA DON LUIS**

THIS LICENSE AGREEMENT is made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation ("City"), and Karen Aceves d/b/a Plaza Don Luis, a New Mexico, LLC, 303 Romero NW, Albuquerque, New Mexico 87104 ("Licensor"). Collectively referred to as "Parties".

**RECITALS**

WHEREAS, City requires access to public restroom facilities in the Old Town area, and Licensor owns the privately owned restrooms at Plaza Don Luis, at 303 Romero NW, Albuquerque, New Mexico ("Facilities"); and

WHEREAS, Licensor has the ability to provide for public access of restrooms to the Facilities in the Old Town area; and

WHEREAS, City desires to license the Facilities owned by Licensor to provide public restroom facilities in the tourist attraction of Old Town; and

WHEREAS, there was a delay in Licensor's decision to execute this Agreement, causing a gap between the start of a license to use the Facilities and the execution of this Agreement; and

WHEREAS, City and Licensor wish to ratify all actions taken by the Parties from July 1, 2019 to the date of execution of this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the Parties hereto do mutually agree as follows:

1. **Scope of License.** Licensor shall allow the use of the Facilities as stated herein:

A. Provide public access to the Facilities and maintain the Facilities, located at Plaza Don Luis, 303 Romero NW, Albuquerque, NM 87104 during normal business hours and during any City sponsored special events, such as summer concerts or Holiday events that are held in Old Town, year round with the exception of Thanksgiving, Christmas, and Easter when the Facilities will be closed.

B. Provide all supplies and personnel, including janitorial services, necessary to keep and maintain the Facilities in a neat, clean, and sanitary condition, suitable and usable by the public for restrooms at all times.

C. At its sole cost and expense, make all necessary repairs and replacements to both the interior and exterior of the Facilities to maintain the structure in good repair and in a safe condition for public use. Facilities shall be kept free from dirt, snow, ice, rubbish and other

obstructions or encumbrances, as well as the sidewalks, common areas, railings, gutters, and curbs in front of and adjacent to the Facilities. All repairs, replacements and maintenance shall be made promptly as and when necessary.

D. Provide for water and pay promptly all charges for services used in or rendered or supplied to the Facilities throughout the term of this Agreement.

E. Provide and maintain signage in prominent locations at the Facilities, in the Old Town area and at the entrance of the Plaza directing the public to the Facilities.

2. **Time of Performance.** This Agreement shall commence July 1, 2019 ("Commencement Date") and shall terminate at midnight on June 30, 2020. The Parties acknowledge that, due to a delay in Licensor's decision to execute this Agreement, there was a gap between the start of license and the execution of this Agreement. By signing this Agreement, the Parties ratify all actions taken from the Commencement Date through to the execution of this Agreement. Further, the Parties explicitly agree that all of the terms and conditions of this Agreement, including but not limited to insurance requirements and indemnification are applicable continuously commencing on the Commencement Date. Upon written notice by City, at least thirty (30) days prior to the expiration of the current term and upon approval of Licensor, this Agreement may be extended for three (3) one (1) year terms upon the same terms and conditions as are in effect under this Agreement immediately preceding the commencement of each extended term.

3. **Compensation and Method of Payment.**

A. **Compensation.** For use of the Facilities specified in Section 1 hereof, the City agrees to pay Licensor up to the amount of Forty-Five Thousand and No/100 Dollars (\$45,000.00) ("Compensation"), which includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the use of the Facilities under this Agreement, including all expenditures made and expenses incurred by Licensor in performing all the responsibilities defined in the Agreement and providing the Facilities. Licensor shall be responsible for all costs associated with performance of this Agreement and providing the Facilities in excess of the Compensation provided by City under this Agreement.

B. **Method of Payment.** Such Compensation amount shall be payable to Licensor on a cost reimbursement basis every six (6) months, up to Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$22,500.00) per six (6) month period, upon receipt and audit by City of acceptable receipts and documentation of expenses incurred by Licensor in providing the Facilities during the prior period. Payments shall be made on or about the fifteenth (15th) day of the month following the end of the six (6) month period during the Time of Performance. Reimbursable expenses shall include reasonable costs for personnel, supplies, contract services, equipment rental, advertising and utilities. Additional expenses will not be reimbursed by City unless approved in advance in writing by the Contract Manager of the Parks and Recreation Department. Rent paid by Licensor for the Facilities is not a reimbursable expense. Documentation of expenses must clearly show a relationship of the expenses to the cost of services provided under

this Agreement. Payments will be made following receipt of an invoice and on the condition that Licensor has complied with the responsibilities and requirements of this Agreement to the satisfaction of the City. Invoices dated before the execution of this Agreement, or services performed before that date will not be reimbursed under this Agreement.

C. **Appropriations.** Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of City's then current Fiscal Year upon written notice given by City to Licensor. Such event shall not constitute an event of default. All payment obligations of City and all of its interest in this Agreement will cease upon the date of termination. City's decision as to whether sufficient appropriations are available shall be accepted by Licensor and shall be final.

4. **Independent Contractor.** Neither Licensor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. Licensor is considered as an independent contractor at all times in the performance of the responsibilities required under this Agreement. Licensor further agrees that neither it nor its employees are entitled to any benefits from City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

5. **Personnel.**

A. Licensor represents that it has, or will secure at its own expense, all personnel required in performing all of the requirements of this Agreement. Such personnel shall not be employees of or have any contractual relationships with City.

B. All the responsibilities required hereunder will be performed by Licensor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such responsibilities.

C. None of the responsibilities covered by this Agreement shall be subcontracted without the prior written approval of City. Any work or responsibilities subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. **Indemnity.** Licensor agrees to defend, indemnify and hold harmless City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said Parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the performance by Licensor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of Licensor or its agents or employees or any subcontractor or its agents or employees. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement. Indemnity of Licensor does not include any personal injury or property damage

that occurs caused by the intentional misuse or neglect, by City or City's employees, agents and invitees. City's liability under this paragraph shall in all cases be subject to, and shall not exceed the statutory dollar limits provided in NMSA (1978) Section 41-4-1 et seq., as it may apply to City at the time of any occurrence or claim.

7. **Insurance.** Licensor shall procure and maintain at its expense until final payment by City for use covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing this Agreement and on the renewal of all coverages, Licensor shall furnish to City a certificate or certificates in form satisfactory to City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire - Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for City by Licensor, and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. **Automobile Liability Insurance.** N/A

C. **Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensations Act of the State of New Mexico.

D. **Increased Limits.** If, during the term of this Agreement, City requires Licensor to increase the maximum limits of any insurance required herein, an appropriate adjustment in Licensor's compensation will be made.

8. **Discrimination Prohibited.** In performing the responsibilities required hereunder, Licensor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical handicap, or disability as defined in the Americans with Disabilities Act of 1990, as now enacted or hereafter amended.

9. **ADA Compliance.** In performance of the responsibilities under the Scope of License required hereunder, Licensor agrees to meet all the requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the 'ADA'), which are imposed directly on Licensor or which would be imposed on City as a public entity. Licensor agrees to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and hold harmless City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said Parties as a result of any acts or omissions of Licensor or its agents in violation of the ADA.

10. **Conflict of Interest.** No officer, agent or employee of City will participate in any decision relating to this Agreement which affects that person's financial interest, the financial interest of his or her spouse or minor child or the financial interest of any business in which he or she has a direct or indirect financial interest.

11. **Interest of Licensor.** Licensor agrees that it presently does not have, and shall acquire no direct or indirect interest which conflicts in any manner or degree with the performance of the terms of this Agreement. Licensor will not employ any person who has any such conflict of interest to assist Licensor in performing the requirements of this Agreement.

12. **No Collusion.** Licensor represents that this Agreement is entered into by Licensor without collusion on the part of Licensor with any person or firm, without fraud and in good faith. Licensor also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by Licensor or any agent or representative of Licensor to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

13. **Debarment, Suspension, Ineligibility and Exclusion Compliance.** Licensor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States. Licensor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by Licensor, Licensor will notify City immediately.

14. **Reports and Information.** At such times and in such forms as City may require, there shall be furnished to City such statements, records, reports, data and information, as City may request pertaining to matters covered by this Agreement. Unless otherwise authorized by City, Licensor will not release any information concerning the work product including any reports



or other documents prepared pursuant to this Agreement until the final product is submitted to City.

15. **Open Meetings Requirements.** Any nonprofit organization in City which receives funds appropriated by City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of City, is subject to the requirements of § 2-5-1 et seq., R.O.A. 1994, Public Interest Organizations. Licensor agrees to comply with all such requirements, if applicable.

16. **Establishment and Maintenance of Records.** Records shall be maintained by Licensor in accordance with applicable law and requirements prescribed by City with respect to all matters covered by this Agreement. Except as otherwise authorized by City, such records shall be maintained for a period of three (3) years after receipt of final payment under this Agreement.

17. **Audits and Inspections.** At any time during normal business hours and as often as City may deem necessary, there shall be made available to City for examination all of Licensor's records with respect to all matters covered by this Agreement. Licensor shall permit City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. Licensor understands and will abide by all provisions of City's Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994, and also agrees to provide requested information and records and appear as a witness in hearings for City's Board of Ethics and Campaign Practices pursuant to Article XII, Section 8 of the Albuquerque City Charter.

18. **Ownership, Publication, Reproduction and Use of Material.** No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

19. **Compliance with Laws.** In performing the covenants, conditions and provisions required hereunder, Licensor shall comply with all applicable laws, ordinances, and codes of the federal, state and local governments.

20. **Changes.** City may, from time to time, request changes in the Scope of License to be performed hereunder. Such changes, including any increase or decrease in the amount of Licensor's compensation, which are mutually agreed upon by and between City and Licensor, shall be incorporated in written amendments to this Agreement.

22. **Termination for Cause.** If, through any cause, Licensor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if Licensor shall violate any of the covenants, agreements, or stipulations of this Agreement, City shall thereupon have the right to terminate this Agreement by giving written notice to Licensor of such termination and specifying the effective date thereof at least five (5) day before the effective date of such

termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by Licensor under this Agreement shall, at the option of City, become City's property, and Licensor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, Licensor shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this Agreement by Licensor, and City may withhold any payments to Licensor for the purposes of set-off until such time as the exact amount of damages due City from Licensor is determined.

23. **Termination for Convenience of City.** City may terminate this Agreement at any time by giving at least fifteen (15) day notice in writing to Licensor. If the Agreement is terminated by City as provided herein, compensation will be prorated to the date of termination in the manner described in this Agreement until the end of the date of termination, less payments of compensation previously made. If this Agreement is terminated due to the fault of Licensor, the preceding Section hereof relative to Termination for Cause shall apply.

24. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion and the remainder does not materially prejudice either party in its rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

25. **Enforcement.** Licensor agrees to pay to City all costs and expenses including reasonable attorneys' fees incurred by City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.

26. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

27. **Applicable Law and Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque. The venue for actions arising out of this Agreement is Bernalillo County, New Mexico.

28. **No Waiver.** The waiver by Licensor and City of any reach of any term, condition contained in this Agreement shall not be deemed to be a waiver thereof on any subsequent occasion. Neither party shall be deemed to have waived any term, covenant, r condition of this Agreement unless the waiving party has signed a written waiver waiving the term, covenant, or condition.

29. **City-Licensor Relationship.** It is further understood and agreed that City shall in no event be construed or held to be a partner, joint venturer or associate of Licensor in the conduct of Licensor's business, nor shall City be liable for any debts incurred by Licensor in Licensor's

business, but it is understood and agreed that the relationship is and at all time shall be of licensee and licensor.

30. **Notice.** Wherever in this Agreement a party is required or permitted to give or serve a notice, request, demand, consent or approval to or on the other, the communication shall be given or served upon the party to whom it is directed in writing and may be delivered personally, by an overnight courier service with proof of delivery, or forwarded by certified mail, postage prepaid, return receipt requested addressed as follows:

If to City:	City of Albuquerque Chief Administrative Officer One Civic Plaza, 11th Floor P.O. Box 1293 Albuquerque, New Mexico 87103
With a copy to:	City of Albuquerque Real Property Division Manager City of Albuquerque P.O. Box 1293 Albuquerque, New Mexico 87103
With a copy to:	City of Albuquerque Director of Parks and Recreation Department 1801 4 <sup>th</sup> Street N.W. Albuquerque, New Mexico 87102
If to Licensor:	Karen Aceves 303 Romero NW Albuquerque, New Mexico 87104 Telephone: 331-1103

Notices delivered as required herein shall be deemed to have been duly given or served (i) on the date personally delivered or delivered by courier service, or (ii) if delivered by mail as provided above, on the third business day after mailing. Either party may change its address for notice by written notice given to the other in the manner hereinabove provided. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent.

31. **Attorney Fees and Legal Costs.** If either party to this Agreement institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

32. **Representation.** Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this Agreement. Accordingly, each party hereto represents to the other that it has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either part to induce the other party to execute this Agreement.

33. **Authorization.** If Licensor executes this Agreement as a corporation or partnership, then Licensor and the person(s) executing this Agreement on behalf of Licensor represents and warrants that such entity is duly qualified to do business in the State of New Mexico and that the individuals executing this Agreement on Licensor's behalf are duly authorized to execute and deliver this Agreement on Licensor's behalf. Licensor represents and warrants that it is the fee simple owner of the Facilities and it has all requisite authority and approval to enter into this Agreement.

34. **Headings and Captions.** Captions and headings of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

35. **Public Document.** City is a municipal corporation under the laws of the State of New Mexico. City and Licensor acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a "public record" within the meaning of said Act

36. **Counterparts.** The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all Parties thereto as if all Parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

**IN WITNESS WHEREOF,** City and Licensor have executed this Agreement as of the date indicated by each signature, and being effective after approval by the City Council and then only upon the signature of the City's Chief Administrative Officer or authorized designee.

THIS SPACE INTENTIONALLY LEFT BLANK

CITY OF ALBUQUERQUE:  
A New Mexico municipal corporation

EC # \_\_\_\_\_

\_\_\_\_\_  
Sarita Nair, Chief Administrative Officer

Date: \_\_\_\_\_

Recommended & Approved by:

\_\_\_\_\_  
David J. Simon, Director  
Parks and Recreation Department

Date: \_\_\_\_\_

LICENSOR:

Karen Aceves, d/b/a Plaza Don Luis  
a New Mexico, LLC

\_\_\_\_\_  
Karen Aceves, Owner

Date: \_\_\_\_\_