

gallupARTS, INC.

BY-LAWS

March 17, 2016 as approved by the Board of Directors

ARTICLE I - NAME

gallupARTS, INC. under the corporation laws of the State of New Mexico.

ARTICLE II - MISSION STATEMENT

The mission of GallupARTS is to foster creativity, culture, commerce, and quality of life in Gallup and McKinley County through the arts.

ARTICLE III - PURPOSE

gallupARTS is organized exclusively for charitable and educational purposes as an exempt organization under Section 501(c) (3) of the Internal Revenue Code 1954, or the corresponding provision of any future United States Internal Revenue Code.

ARTICLE IV - MEMBERSHIP

Section 1: Qualifications

Any individual, organization, or business expressing an interest in the mission and goals of GallupARTS can become a member upon receipt of annual contributions as suggested by the Board of Directors. Corresponding acknowledgement will be made to the contributor.

gallupARTS does not discriminate against any person on the basis of race, color, national origin, disability, sex or age in admission, treatment, or participation in its programs, services and activities, or in employment. No person shall be excluded from participation in, or be denied the benefits of any service, or be subjected to discrimination because of race color, nationality, religion, sexual orientation, age, disability.

Section 2: Annual Meeting

An annual meeting of the entire membership will be held each year in the Spring.

ARTICLE V – BOARD of DIRECTORS

Section 1: Number and Selection

The Board of Directors will consist of a total of up to eleven members including: four persons elected as officers plus seven other persons. Every effort will be made to assure that the board is comprised to reflect our diverse, multi-cultural community.

Section 2: Powers

Board of Directors will be responsible for the government and direction of GallupARTS. The Board will make all of the rules and regulations deemed necessary for the conduct of its affairs and the management of its property as consistent with the Charter and By-laws of the Corporation.

Section 3: Terms

A Board Member may serve in terms of two years for a maximum of 6 consecutive years to be determined at the time of acceptance of a Board membership. The terms will be staggered to annually replace approximately one third of the membership each year.

Section 4: Meetings

The Board will meet at least four times per year unless otherwise notified. Any Board member may request that the President (Executive Committee) convene a special meeting, if necessary. Members of the Board shall be notified at least 24 hours in advance and minutes recorded. An absence of three consecutive meetings without notification to the Board President will constitute a resignation from the Board, which the Board President will officially acknowledge with a letter of termination.

Section 5: Resignation

A Board member may resign from the GallupARTS Board by providing written notice of his/her intention to the Board President, which will in turn be acknowledged by the Executive Committee and will activate a call for a replacement for the remainder of the unfinished term.

Section 6: Suspension

The Board may suspend or expel any Board member found to be in material violation of the bylaws, regulations and/or practices of GallupARTS and/or of the public laws. The member in question is entitled to be heard by the Board before such action is taken.

Section 7: Voting

Each Board member has a single vote. A simple majority with fifty percent (50%) of the membership constitutes a quorum. Email voting by the Board between meetings is acceptable in rare, time sensitive occurrences, and must follow GallupARTS voting procedure.

Section 8: Appointing New Board Members

The Board may suggest possible new members, with their permission, to the Executive Committee to fill vacancies on the Board.

Section 9: Requirements

Board members must make meaningful contributions in terms of time (i.e., committee work) and/or financial contribution.

Section 10: Advisory Board Members

The Board may appoint Advisory Committee members as necessary for the purpose of securing

additional, specialized representation.

Section 11: Liability

No Board Member shall be personally liable to the Corporation nor its members for monetary damages for breach of fiduciary duties as a Board Member unless:

the Board Member has breached or failed to perform the duties of the Director's Office in compliance with Section 53-8-25.1 NMSA 1978 or a successor statute; and the breach or failure to perform constitutes misconduct or recklessness.

Section 12: Conflict of Interest Policy

(a) Purpose

The purpose of the conflict of interest policy is to protect the interests of gallupARTS, a tax-exempt organization, when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of gallupARTS or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

(b) Definitions

1. **Interested Person:** Any director, principal officer, employee or member of a committee exercising powers delegated by the Board of Directors, who has a direct or indirect financial interest, as defined below, is an interested person.
2. **Financial Interest:** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - a. An ownership or investment interest in any entity with which gallupARTS has a transaction or arrangement,
 - b. A compensation arrangement with gallupARTS or with any entity or individual with which gallupARTS has a transaction or arrangement, or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which gallupARTS is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

(c) Procedures

1. **Duty to Disclose:** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
2. **Determining Whether a Conflict of Interest Exists:** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave

the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest:

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

(d) Records of Proceedings

The minutes of the governing board and all committees with board delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

(e) Compensation

- a. A voting member of the governing board who receives compensation, directly or indirectly, from GallupARTS for services is precluded from voting on matters pertaining to that member's compensation.

- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from GallupARTS for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from GallupARTS, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

(f) Annual Statements: Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

(g) Periodic Reviews: To ensure that GallupARTS operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to GallupARTS' written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

(h) Use of Outside Experts: When conducting the periodic reviews as provided for in Article VII, GallupARTS may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

ARTICLE VI – OFFICERS

Section 1: The Officers will be President, Vice President, Secretary and Treasurer. Officers shall be elected and installed at the annual meeting, and assume their duties immediately for a term of two years. The President and Vice President will be elected to two year terms bi-annually, serving no more than six(6) consecutive years. The Secretary and Treasurer will be elected to two year terms bi-annually, serving no more than six (6) consecutive years. Any vacancy in office during a term will be filled by the Board as soon as possible. In the event of a vacancy prior to the end of an Officer's term, the Board shall appoint from the Board membership to complete the remainder of the term.

Section 2: President is the Chief Executive Officer of the Corporation and Chairperson of the Board. The President presides at meetings of the Board and membership. The President will ensure legal and ethical integrity of GallupARTS. The President may support and supervise staff to ensure accountability and responsibility to the projects of GallupARTS. The President sees that all orders and policies of the Board are carried out and has the power to sign contracts and documents which the Board has authorized. The President will provide a written report at each Board meeting. An End of Year Report will be presented by the President to the Board at the Annual Meeting, reviewing the activity of the past year.

Section 3: Vice President acts under the direction of the President and, in the absence or disability of the President, performs the duties and exercises the powers of the President. The Vice President performs other duties and exercises such powers as the Board may prescribe.

Section 4: Secretary acts under the direction of the President and attends meetings of the Board and prepares and maintains minutes of the proceedings. The Secretary ensures that the membership is notified of the annual membership meeting and prepares minutes of this meeting in addition to the Board meetings and Special meetings. The Secretary will perform other duties as the Board may prescribe.

Section 5: Treasurer acts under the direction of the President and has the custody of the corporate funds, verifies full and accurate accounts of receipts and disbursements and ensures that all monies and other valuables are deposited in the name and to the credit of the Corporation in depositories designated by the Board. The Treasurer renders to the Board at its meetings, or when otherwise required, an accounting of all Corporation transactions and of the financial condition of the Corporation. The Treasurer will perform other duties as the Board may prescribe.

ARTICLE VII – STAFF PERSON/MANAGER

The Board has the authority to hire or contract a staff person or manager to carry out the general management of the business of the Corporation under the direction and supervision of the President of the Board.

ARTICLE VIII – COMMITTEES

Section 1: The Executive Committee is delegated authority to act for the Board in fulfilling the Board's fiduciary duties by engaging in the activities identified in the Organization's Charter and by acting for the Board between meetings of the Board to the extent allowed by law, within the limits established in the Charter and the Bylaws.

- A. Chair. The Chair of the Board shall be Chair of the Executive Committee.
- B. Membership. Membership on the Executive Committee shall consist of the Board Officers of GallupARTS, plus any other directors or officers appointed by the Board.
- C. Meetings and Procedures.
 - 1. The Committee shall hold meetings at the call of the Committee chair, or any two members.
 - 2. The Committee shall either maintain minutes of its meetings and provide them to the full Board at regularly scheduled meetings or shall report to the Board, which shall incorporate the report of the Executive Committee into its written minutes.
- D. Powers. The Executive Committee may act for the Board between meetings; provided, however, that it may NOT do the following:
 - 1. approve or recommend to members the dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the GallupARTS' assets;
 - 2. elect, appoint or remove directors or permanently fill vacancies on the Board or any committee of the Board;
 - 3. adopt, amend or repeal the Bylaws or Articles of Incorporation;
 - 4. amend any committee charter or resolution of a Board committee previously established by the Board;
 - 5. approve or change the budget;
 - 6. add or eliminate programs previously authorized by the Board;
 - 7. change or add membership categories or the rights or benefits of membership; or

8. permanently relocate the main office.
- E. Report to Board. Any action taken by the Executive Committee between meetings of the Board shall be reported to the Board at the next meeting.

Section 2: Standing Committees may be created and suspended to deal with ongoing, major activities within the Organization.

Section 3: Ad hoc Committees can be created and suspended as needed.

ARTICLE IX: REPORTS

Section 1: Fiscal Year will begin on January 1 and end on December 31.

Section 2: Financial Report will be presented by the Treasurer to the Board at the meetings. This report may also be reviewed, upon request, by an independent firm or individual for accuracy.

Section 3: Committees will present reports to the Board at Board meetings.

ARTICLE X: GIFT ACCEPTANCE POLICY

Acceptance of any contribution, gift or grant is at the discretion of the GallupARTS. GallupARTS will not accept any gift unless it can be used or expended consistently with the purpose and mission of GallupARTS.

GallupARTS will refrain from providing advice about the tax or other treatment of gifts and will encourage donors to seek guidance from their own professional advisors to assist them in the process of making their.

GallupARTS will accept donations of cash. Gifts of in-kind services will be accepted at the discretion of GallupARTS.

Certain other gifts, real property, personal property, in-kind gifts, and contributions whose sources are not transparent or whose use is restricted in some manner, must be reviewed prior to acceptance due to the special obligations raised or liabilities they may pose for GallupARTS.

GallupARTS will provide acknowledgments to donors meeting IRS substantiation requirements for property received by the charity as a gift. However, except for gifts of cash and publicly traded securities, no value shall be ascribed to any receipt or other form of substantiation of a gift received by GallupARTS.

GallupARTS will respect the intent of the donor relating to gifts for restricted purposes and those relating to the desire to remain anonymous. With respect to anonymous gifts, GallupARTS will restrict information about the donor to only those staff members with a need to know.

GallupARTS will not compensate, whether through commissions, finders' fees, or other means, any third party for directing a gift or a donor to GallupARTS.

ARTICLE XI: UNDERWRITERS

Any individual, association, corporation or commercial firm or group contributing funds to underwrite

specific programs will be known as underwriters and will be so advertised in gallupARTS publications and programs.

ARTICLE XII: RECORD RETENTION AND DOCUMENT DESTRUCTION POLICY

Section 1: Purpose

In accordance with the Sarbanes-Oxley Act, which makes it a crime to alter, cover up, falsify, or destroy any document with the intent of impeding or obstructing any official proceeding, this policy provides for the systematic review, retention, and destruction of documents received or created by gallupARTS in connection with the transaction of organization business.

This policy covers all records and documents, regardless of physical form, contains guidelines for how long certain documents should be kept, and how records should be destroyed (unless under a legal hold). The policy is designed to ensure compliance with federal and state laws and regulations, to eliminate accidental or innocent destruction of records, and to facilitate gallupARTS's operations by promoting efficiency and freeing up valuable storage space. Employees, volunteers, and contractors of gallupARTS are required to comply with this policy.

Section 2: Document Retention

gallupARTS follows the document retention procedures outlined below. Correspondence related to the following documents will be retained with the documents as well. Documents that are not listed, but are substantially similar to those listed in the schedule, will be retained for the appropriate length of time.

Corporate Records	
Articles of Incorporation	Permanent
Bylaws	Permanent
Board Meeting Agendas and Minutes	Permanent
Committee Meeting Agendas and Minutes	Permanent
Board Policies/Resolutions	Permanent
Annual Reports to Public Regulation Commission	Permanent
Charitable Organization Registration with NM Attorney General	Permanent
Annual Reports to the Attorney General	Permanent
Construction Documents	Permanent
Fixed Asset Records	Permanent
IRS Application for Tax-Exempt Status (Form 1023)	Permanent
IRS Determination Letter	Permanent
State Sales Tax Exemption Letter	Permanent
Contracts and agreements (after date of expiration)	7 years
Software licenses and support agreements	7 years
Equipment files and maintenance records	7 years
Conflict of interest disclosure forms	4 years
Correspondence (general)	3 years
Accounting and Corporate Tax Records	
Audit reports and management letters	Permanent
Monthly and annual financial statements	Permanent
Depreciation Schedules	Permanent

IRS Form 990 Tax Returns	Permanent
General Ledgers	7 years
Charts of Accounts	7 years
Business Expense Records	7 years
IRS Forms 1099	7 years
Journal Entries	7 years
Invoices	7 years
Expense reports/reimbursement requests	7 years
Investment records, reports, and correspondence	7 years
Sales Records (concessions, merchandise sales, etc)	5 years
Petty Cash Vouchers	3 years
Cash Receipts	3 years
Credit Card Receipts	3 years
Bank Records	
Check Registers	7 years
Bank Deposit Slips	7 years
Bank Statements and Reconciliation	7 years
Electronic Fund Transfer Documents	7 years
Payroll and Employment Tax Records	
Payroll Registers	Permanent
State Unemployment Tax Records	Permanent
Earnings Records	7 years
Garnishment Records	7 years
Payroll Tax Returns	7 years
W-2 Statements	7 years
Employee Records	
Employment and Termination Agreements	Permanent
Retirement and Pension Plan Documents	Permanent
Employee handbooks	Permanent
Records Relating to Promotion, Demotion, or Discharge	7 years after termination
Accident Reports and Worker's Compensation Records	5 years
Salary Schedules	5 years
Employment Applications	3 years
I-9 Forms	3 years after termination
Time Cards	2 years
[Member,] Donor and Grant Records	
[Membership records (classes and dues paid)]	7 years
Donor Records and Acknowledgment Letters	7 years
Grant Applications and Contracts	7 years after completion, unless otherwise required by grantor
Grants and Scholarships Awarded by the Organization	7 years after date of

	award or project completion
Legal, Insurance, and Safety Records	
Appraisals	Permanent
Copyright Registrations	Permanent
Trademark Registrations	Permanent
Insurance Policies	Permanent
Real Estate Documents (Deeds, leases, purchase records)	Permanent
Stock and Bond Records	Permanent
Environmental Studies	Permanent
Insurance Claims (after settlement)	7 years
Leases	6 years after expiration
OSHA Documents	5 years
General Contracts	3 years after termination
Corporate Communications (One set of the following documents to be kept on-site and one set to be kept off-site)	
Media releases	Permanent
Annual reports (five copies, minimum)	Permanent
Other publications	7 years
Photos	7 years
Press clippings	7 years

Section 3: Electronic Documents and Records

Electronic documents will be retained as if they were paper documents. Therefore, any electronic files, including records of donations made online, that fall into one of the document types on the above schedule will be maintained for the appropriate amount of time. If a user has sufficient reason to keep an e-mail message, the message should be printed in hard copy and kept in the appropriate file or moved to an “archive” computer file folder. Backup and recovery methods will be tested on a regular basis.

Section 4: Emergency Planning

gallupARTS’s records will be stored in a safe, secure, and accessible manner. Documents and financial files that are essential to keeping GallupARTS operating in an emergency will be duplicated or backed up at least every week and maintained in an off-site location. The Board President and at least two officers will at all times know and have access to the location of the files.

Section 5: Document Destruction

gallupARTS’s Executive Committee is responsible for the ongoing process of identifying its records, which have met the required retention period, and overseeing their destruction. Destruction of financial and personnel-related documents will be accomplished by shredding.

Document destruction will be suspended immediately, upon any indication of an official investigation

or when a lawsuit is filed or appears imminent. Destruction will be reinstated upon conclusion of the investigation.

Section 6: Compliance

Failure on the part of employees or contractors to follow this policy can result in possible civil and criminal sanctions against GallupARTS and its employees and possible disciplinary action against responsible individuals. The Executive Committee will periodically review these procedures with legal counsel or the organization's certified public accountant to ensure that they are in compliance with new or revised regulations.

ARTICLE XIII: CORPORATE DISSOLUTION

Upon the dissolution of this Corporation, the Corporation will, after paying or making provision for the payment of its liabilities, distribute all of its assets to arts and/or education organizations in McKinley County-qualified as exempt organizations under Section 501(c)(3) of the Internal Revenue Code 1954 or the corresponding provision of any future Internal Revenue code. Any indisposed assets will be disposed of by a court of jurisdiction of the county in which the principal office of the Corporation is located to facilities and/or organizations operating as 501(c)(3).

ARTICLE IV: AMENDMENTS

These Bylaws and the Articles of Incorporation may be amended by the Board at any meeting following prescribed voting procedure. Not less than thirty days' written notice of the nature of the proposed amendments must be given to all Board members prior to the meeting.

APPROVED:

President of the Board:

Date

Secretary of the Board:

Date

(6) consecutive years. The Secretary and Treasurer will be elected to two year terms bi-annually, serving no more than six (6) consecutive years. Any vacancy in office during a term will be filled by the Board as soon as possible. In the event of a vacancy prior to the end of an Officer's term, the Board shall appoint from the Board membership to complete the remainder of the term.

Section 2: President is the Chief Executive Officer of the Corporation and Chairperson of the Board. The President presides at meetings of the Board and membership. The President will ensure legal and ethical integrity of GallupARTS. The President may support and supervise staff to ensure accountability and responsibility to the projects of GallupARTS. The President sees that all orders and policies of the Board are carried out and has the power to sign contracts and documents which the Board has authorized. The President will provide a written report at each Board meeting. An End of Year Report will be presented by the President to the Board at the Annual Meeting, reviewing the activity of the past year.