

**NEW MEXICO TOURISM DEPARTMENT  
COOPERATIVE MARKETING GRANT AGREEMENT**

This Agreement is between the New Mexico Tourism Department (Department) and Santa Fe County, a New Mexico government entity (Contractor), collectively the "Parties". This Agreement is effective on the date of last signature, below.

The New Mexico State Legislature appropriated funds to the Department for the purpose of providing a coordinated statewide perspective with regard to tourism activities.

The Department desires to coordinate a statewide perspective by leveraging the tourism advertising of certain non-profits, local and tribal governments.

The Department also wishes to provide advertising and promotional service to promote tourism in New Mexico, and is willing to provide matching funds to further the above purpose.

**THEREFORE, the Parties agree as follows:**

**1. SCOPE OF WORK:**

**A. The Contractor shall:**

1. Promote travel within and to New Mexico by advertising through various forms of media defined in the original application submitted in response to the FY17 Online Application Process at <http://nmtourism.culturegrants.org/>
2. Expend an amount that meets or exceeds twice the amount of the Grant Award through actual cash expenditures; in-kind services do not qualify toward the match requirement.
3. Meet or exceed the requirements of the FY17 Online Application.
4. Use the Department's toolkit in creating all advertising. In the case of radio and television advertising, Contractor must integrate the New Mexico True Brand (Brand) and personalize the message to be "(your community/asset/event) is New Mexico True". Any usage of the brand will be approved by the Department prior to use, and must adhere to the Brand guidelines which can be found in the Ad Builder Toolkit at [media.nmtourism.org](http://media.nmtourism.org).
5. Provide its own funds, above and beyond the Grant Award, to perform the objectives set forth in the application attached to and made part of this Agreement.
6. Agree that if Contractor fails to spend all of its awarded funds, that failure may affect Contractor's eligibility for future awards.

**B. Match Requirement: The Department shall provide a fifty percent (50%) match of eligible expenses up to the amount of the Grant Award below.**

**C. Deliverables:**

1. **End of year Tracking and Impact Report (TIR):** Contractor shall complete and submit a TIR along with the Contractor's final request for payment on or before July 5, 2017. The TIR is available at the online grant platform. Failure to submit the completed report on or before July 5, 2017 may result in forfeiture of reimbursement and affect Contractor's eligibility for future awards.

2. **PAYMENT OF AWARD:**

- A. The Department shall reimburse to the Contractor in full payment for eligible expenses an amount not to exceed \$49,685.
- B. If the Contractor is a federal IRS non-profit organization, local government, or tribal government and/or is registered with the New Mexico Taxation and Revenue Department, it may be exempt from paying New Mexico Gross Receipts Tax. If Contractor is registered to pay gross receipts tax, the amount of the award described in Section 2.A. above includes this tax.
- C. Contractor must adhere to and complete fully and accurately the FY17 Online Application, Request for Payment Form and Tracking and Impact Report. Reimbursement will be made to the Contractor upon the Department's receipt of a completed Request for Payment Form along with supporting documentation, as defined in the form. Requests for payment must be submitted within 30 days of placement in market. Incomplete or illegible requests will not be processed.

All Requests for Payment must be received by July 5, 2017. Failure to adhere to these requirements may result in the Department re-designating any remaining Agreement balance and not reimbursing that balance to Contractor at a future date.

3. **TERM:**

Agreement shall terminate on June 30, 2017, unless terminated pursuant to Paragraph 4.

4. **TERMINATION:**

- A. This Agreement may be terminated by either of the Parties upon written notice delivered to the other Party at least sixty (60) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the Department's sole liability upon such termination shall be to reimburse for eligible expenses made prior to the Contractor's receipt of the notice of termination, if the Department 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 a completed request for payment as defined by Section 2C. 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 Department 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 state funds or due to the Appropriations paragraph. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE DEPARTMENT'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

- B. Appropriations: The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate upon written notice being given by the Department to the Contractor. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
- C. Termination Management: Immediately upon receipt by either the Department 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 Department; 2) comply with all reasonable directives issued by the Department in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Department shall direct for the protection, preservation, retention, or transfer of all property titled to the Department and records generated under this Agreement. Any non-expendable personal property or equipment provided to the Contractor by the Department shall become property of the Department upon termination and shall be submitted to the agency as soon as practicable.

5. STATUS OF THE CONTRACTOR:

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

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 Department.

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 Department.

8. RECORDS AND AUDIT:

The Contractor shall maintain detailed time records, which indicate the date, time and nature of services rendered. These records will be subject to inspection by the Department, The Department of Finance and Administration, and the State Auditor. The Department shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

9. **RELEASE:**

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

10. **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 Department.

11. **GRANT OF RIGHTS:**

A. For the term of this Agreement, the Department grants to the Contractor a nonexclusive, nontransferable, worldwide right and license to use the New Mexico True Brand in furtherance of the Contractor's promotion and advertising of and within New Mexico. This includes, but is not limited to the creation and distribution of advertisements defined in the original application submitted.

B. All usage of the New Mexico True Brand will be approved by the Department prior to use, and must adhere to the Brand guidelines which can be found at [media.nmtourism.org](http://media.nmtourism.org).

C. The Department may use the advertisements of Contractor upon prior, written approval of Contractor in each instance, granted or withheld in Contractor's sole discretion.

12. **QUALITY CONTROL:**

The Department will exercise its right to inspect the Contractor's goods, services and promotional activities employing the Brand logo to ensure that such use is of proper quality and otherwise consistent with this Agreement, and may terminate the Agreement should it determine that the use is inconsistent with this Agreement. ALL creative must be submitted for approval by the Department, in advance of placement(s) with any vendor.

13. **PRODUCT OF SERVICES: COPYRIGHT:**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

**14. GOVERNMENTAL CONDUCT ACT:**

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. The Contractor certifies that the requirements of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 to -18 (1967, as amended through 2011), regarding contracting with a public officer or state employee have been followed.

**15. AMENDMENT:**

This Agreement shall not be altered, changed or amended except by instrument, in writing, executed by the Parties hereto.

**16. 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 understandings, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**17. NOTICE:**

The Procurement Code, NMSA 1978, Sections 13-1-28 to -199 (1987, as amended through 2016), imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**18. EQUAL OPPORTUNITY COMPLIANCE:**

The Contractor agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, or, if the employer has fifty (50) or more employees, spousal affiliation, or, if the employer has fifteen (15) or more employees, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

**19. APPLICABLE LAW:**

This Agreement is governed by the laws of the State of New Mexico.

**20. INDEMNIFICATION:**

Neither party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq

**21. OTHER PROVISIONS:**

- A. Online Application Form: This Agreement is contingent upon Contractor's compliance with the FY17 Online Application and the FY17 Request for Payment Form. By signing this Agreement, the Contractor acknowledges that it has access to the FY17 Request for Payment Form via the online grant application and related cycle documents at [nmtourism.culturegrants.org](http://nmtourism.culturegrants.org). The Online Application Form and Contractor's responses to that form are incorporated by reference.
- B. Worker's Compensation: The Contractor shall comply with State laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Department.

**22. NOTICES:**

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


To the Department:  
New Mexico Tourism Department  
Andrea M. Lawrence  
Brand Development & Marketing Specialist  
491 Old Santa Fe Trail | Santa Fe, NM 87501  
505-795-0108 | [andrea.lawrence@state.nm.us](mailto:andrea.lawrence@state.nm.us)


To the Contractor:  
Santa Fe County  
Katherine Miller, County Manager  
Mailing Address: PO Box 276  
Physical Address: 102 Grant Ave.  
Santa Fe, NM 87504  
(505) 986-6200 / [kmiller@santafecountynm.gov](mailto:kmiller@santafecountynm.gov)

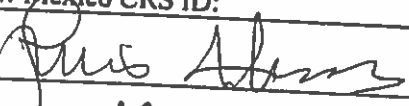
23. **AUTHORITY:**

The person signing below for the Contractor has the authority to bind the Contractor without further resolution or authorization by Contractor's organization.

The Parties have executed this Agreement as of the date of execution by the State of New Mexico.

<b>CONTRACTOR</b>	
By: 	Title: <b>DEPUTY COUNTY MANAGER</b>
Federal Tax ID: <b>85-6000073</b>	Date: <b>12.7.16</b>
New Mexico CRS ID: <b>01-505911001</b>	Approved as to form Santa Fe County Attorney

<b>STATE OF NEW MEXICO</b>	
New Mexico Tourism Department	
By: 	Date: <b>12-21-16</b>

<b>NEW MEXICO TAXATION &amp; REVENUE DEPARTMENT</b>	
The records of the New Mexico Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department to pay gross receipts and compensating taxes, if applicable.	
New Mexico CRS ID:	
By: 	Date: <b>12.13.16</b>

Taxation and Revenue is only verifying the registration and will not confirm or deny any taxability statements contained in this contract.