

**STATE OF NEW MEXICO
TOURISM DEPARTMENT
Cooperative Marketing Agreement**

THIS AGREEMENT, numbered **20-418--3002-04**, is made and entered into by State of New Mexico Tourism Department, hereinafter referred to as the “NMTD,” and **City of Gallup**, hereinafter referred to as the “Partner” (collectively the “Parties”) and is effective as set forth below.

RECITALS

WHEREAS, the New Mexico Legislature appropriated funds to NMTD for the purpose of carrying out the duties of the NMTD, which include providing a coordinated statewide perspective with regard to tourism activities; and

WHEREAS, NMTD desires to coordinate this partnership effort through cooperative marketing programs with matching funds for certain non-profits, local and tribal governments; and

WHEREAS, Partner wishes to leverage the New Mexico True brand (Brand) with advertising and media-related services provided by NMTD to stimulate tourism activities and is willing to contribute funds to further the Parties’ efforts to that effect;

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, for the express and sole purpose of stimulating tourism in New Mexico, in consideration of the mutual covenants and obligations contained herein, as follows:

I. Obligations of Partner.

- A. Meet or exceed the requirements of its FY20 Cooperative Marketing Application to promote travel within and/or to New Mexico through advertising and media efforts as defined in the FY20 Opt-In Award Summary, as approved by NMTD and attached hereto as *Exhibit A*.
- B. Make all payments in accordance with the requirements listed in *Exhibit A*.
- C. Agree to follow the established New Mexico True brand guidelines found in the Ad Builder Tool Kit located at media.nmtourism.org.
- D. Obtain prior approval from NMTD for any and all use of the Brand. NMTD reserves the right to inspect any usage of the Brand to ensure proper quality and consistency.
- E. Participate with NMTD in accordance with the deadlines included in *Exhibit A*; and further acknowledge that failure to do so may result in forfeit of Partner’s full participation in the creation or placement of planned advertising.
- F. Acknowledge that any failure to adhere to the parameters set forth herein may affect Partner’s eligibility for future awards.
- G. In addition to the above obligations, for all Flex funds expended, Partner must also:
 - 1. Acknowledge that it has access to, and agrees to comply with, the FY20 Request for Reimbursement Form via the online grant platform and related cycle documents

located at <https://nmtourism.smapply.io>. The online grant application form and Partner's responses to that form are incorporated herein by reference.

2. Fully and accurately complete and timely submit the Request for Reimbursement Form(s) and end-of-year Tracking and Impact Report.
 - i. Requests for payment of expenses incurred between July 1, 2019 and May 31, 2020 must be submitted within 30 days of placement in market.
 - ii. All requests for payment must be received by June 10, 2020. Incomplete or illegible requests will not be processed.
 - iii. The end-of-year Tracking and Impact Report must be submitted to NMTD no later than July 10, 2020. Failure to do so may result in forfeiture of reimbursement and/or affect Partner's eligibility for future awards.

II. Obligations of NMTD.

- A. Provide customized "logo lockup" to Partner in various file formats and colors (palette compliant with Brand standards, found within and downloaded from Ad Builder Tool Kit located at media.nmtourism.org).
- B. For all Flex funds expended, NMTD will reimburse Partner for all eligible expenses, in accordance with the amounts listed in *Exhibit A*, upon receipt of a completed Request for Reimbursement Form along with all required supporting documentation.
- C. Upon receipt of MMP Partner funds, NMTD will:
 1. Communicate with media vendors and secure ad placement and/or services as agreed upon and set forth in *Exhibit A*.
 2. Provide documentation to Partner to verify agreed upon deliverables were made in accordance with *Exhibit A*.
 3. Pay media vendors for ad placement and/or services.
 4. Collect and share campaign performance measurement data with Partner.

III. Copyright and Quality Control.

- A. For the term of this Agreement, the NMTD grants to the Partner a nonexclusive, nontransferable, worldwide right and license to use the New Mexico True Brand in furtherance of the Partner's promotion and advertising of and within New Mexico, as outlined in *Exhibit A*. This includes but is not limited to the creation and distribution of advertisements defined in the original application submitted and is subject to NMTD creative approval prior to placement.
- B. All Brand usage and creative must be submitted to and approved by NMTD prior to use and must adhere to Brand guidelines found at media.nmtourism.org.
- C. NMTD will exercise its right to inspect Partner's creative assets designed for and used in conjunction with marketing and promotional campaigns that employ Brand logos to ensure that such use is of proper quality and otherwise consistent with this Agreement and may terminate this Agreement should it determine that Partner did not obtain prior approval or that its Brand use is inconsistent.
- D. All materials developed or acquired by the Partner under this Agreement shall become the jointly owned property of the State of New Mexico. Nothing produced, in whole or in part, by the Partner under this Agreement shall be the subject of an application for copyright by

or on behalf of Partner. Furthermore, NMTD may access and use Partner's advertising and other creative production assets at its sole discretion.

IV. Additional Terms & Conditions:

- A. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico. If sufficient appropriations and authorization are not made, this Agreement shall terminate upon written notice given by NMTD to the Partner. NMTD's decision as to whether sufficient appropriations are available shall be accepted by the Partner and shall be final.
- B. This Agreement shall become effective upon its execution by both Parties and shall terminate on June 30, 2020. Either party may terminate or seek to further negotiate this Agreement upon ninety (90) days written notice to the other. In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform, prior to the date of termination and any outstanding reimbursements shall be made pro rata.
- C. This Agreement shall not be altered, changed, or amended except by instrument of writing executed by the Parties hereto.
- D. Partner shall fully indemnify, defend and hold NMTD, its officers, agents and employees harmless from any liability, losses or damages that it may suffer as a result of claims, suits, demands, costs or judgments against Partner or NMTD that directly or indirectly result from or arise in connection with the activities to be carried out pursuant of this Agreement. Any liability in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.
- E. This Agreement is governed by the laws of the State of New Mexico.
- F. This Agreement is not intended to and does not create any rights in any persons or entity not a party hereto.
- G. 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 NMTD: 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

To Partner: MaryAnn Ustick
City of Gallup
110 W Aztec Avenue
Gallup, NM 87301
505-863-1220 | manager@gallupnm.gov

- H. The individual signing below on behalf of the Partner represents and warrants that he or she has the authority to bind the Partner, and that no further action, resolution or approval from the Partner is necessary to enter into a binding agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of signature by the NMTD Cabinet Secretary listed below.

By: _____ Date: _____
MaryAnn Ustick, City Manager
PARTNER

Approved for legal sufficiency:

By: _____ Date: _____
Allison Hedgecock, General Counsel NMTD

By: _____ Date: _____
Isabel Lopez, Chief Financial Officer NMTD

By: _____ Date: _____
Jen Paul Schroer, Cabinet Secretary NMTD