

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**  
**AIR SERVICE MARKETING ASSISTANCE GRANT AGREEMENT**



Project No.

Contract No.

Vendor No.

This AGREEMENT is between  , (“Sponsor”) and the State of New Mexico, acting through the State Department of Transportation (“Department”), for the purpose of carrying out the provisions of NMSA 1978, Section 64-1-13.1, of the Aviation Act ( “Act”) and the Municipal Airport Law of 1978 (NMSA 1978, Section 3-39-1 et seq.).

**RECITALS**

WHEREAS, pursuant to NMSA 1978, Section 64-1-13.1 and Rule 18 NMAC 11.3 the Department is responsible for administering the Air Service Assistance Program (“ASAP”) to support marketing regional air transportation services; and,

WHEREAS,  (“Sponsor”) filed an application with the Department to participate in the Air Service Assistance Program.

THEREFORE, in consideration of the covenants contained herein, THE PARTIES AGREE AS FOLLOWS:

**SECTION ONE - PURPOSE:**

The purpose of this Agreement is to provide a grant to the Sponsor to promote regional air transportation services pursuant to the Air Service Assistance Program under NMSA 1978, Section 64-1-13.1 and 18 NMAC 11.3 (Project) and to state the terms, conditions, and mutual understandings of the Parties to this Agreement. Attached as Exhibit A is Project Costs.

**SECTION TWO - PROJECT FUNDING:**

1. The Department agrees to pay as the State’s share  % of the Sponsor’s allowable costs for marketing and promotion of the selected air service.

2. The maximum obligation of the Department under this Grant Agreement shall be  . The Sponsor shall be responsible for any sums that exceed this amount.

**SECTION THREE – METHOD OF PAYMENT - REIMBURSEMENT:**

Funds expended by the Sponsor in accordance with the terms of this Agreement shall be reimbursed by the Department to the Sponsor on a form provided by the Department. Interim reimbursement requests shall include the form provided by the Department requesting the amount due at that time and be accompanied by invoices paid by the Sponsor and proof of payment by the Sponsor for the invoices. Proof of payment may be canceled checks or formal ledger entries.

**SECTION FOUR - SPONSOR SHALL:**

1. Perform all labor and supply all materials for the purpose as described in SECTION ONE.
2. Provide a representative from its organization who shall serve as the single point of contact for the Department.
3. Make no changes in purpose of the Air Service Marketing Assistance Project without written approval of the Department.
4. Ensure that airline services are cooperatively procured through the competitive proposal process as required by the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 et seq.
5. Ensure that aircraft, services and operations in the Project conform to the most up to date safety standards prescribed by the Federal Aviation Administration to the fullest extent required by law, require the selected airline to indemnify and hold harmless the Eligible Recipient(s) and the State of New Mexico and the Department for all claims, damages, and liability or potential liability (including but not limited to attorney fees, court costs and the cost of appellate proceedings) arising out of or resulting from the negligent, act, errors or omissions of the airline, its agents, subcontractors, or employees in the operation of the contracted air service.
6. Take all steps, including litigation if necessary, to recover State funds spent fraudulently, wastefully, or in violation of State statutes, or misused in any other manner on any project upon which State funds have been expended. For the purposes of this Grant Agreement, the term "State funds" means funds, however used or disbursed by the Sponsor, that were

paid by the Department pursuant to this Grant Agreement. The Sponsor shall obtain the approval of the Department as to any determination of the amount of the State share of such funds. It shall return the recovered State share, including funds recovered by settlement, order, or judgment, to the Department. It shall furnish to the Department, upon request, all documents and records pertaining to the determination of the amount of the State share of any settlement, litigation, negotiation, or the efforts taken to recover such funds. All settlements or other final dispositions by the Sponsor, in court or otherwise, involving the recovery of such State share shall be approved in advance by the Department.

7. The Sponsor's acceptance of the Offer, and ratification and adoption of the terms and conditions contained herein shall be evidenced by execution of this Grant Agreement, constituting the contractual obligations and rights of the Department and the Sponsor with respect to the accomplishment of the Project in accordance with all of the State's applicable laws and rules and in compliance with the assurances and conditions as provided herein. This Grant Agreement shall become effective upon the Sponsor's acceptance of the Offer and upon complete execution of this Agreement by all parties.

#### **SECTION FIVE - COMPLIANCE WITH LAW:**

The Sponsor shall comply with all Federal, State, and local laws and ordinances applicable to the work called for herein.

#### **SECTION SIX - EQUAL OPPORTUNITY COMPLIANCE:**

The Sponsor 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 and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Sponsor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age, or handicap 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 the Sponsor is found to be not in compliance with these requirements during the life of the Agreement the Sponsor agrees to take appropriate steps to correct these deficiencies.

**SECTION SEVEN – CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:**

The Department and Sponsor shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The Department and Sponsor further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR 60). Accordingly 49 CFR 21 is applicable to this Agreement and incorporated herein by reference.

**SECTION EIGHT - THIRD PARTY BENEFICIARY CLAUSE:**

This Agreement is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**SECTION NINE - NEW MEXICO TORT CLAIMS ACT:**

By entering into this Agreement, 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., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties’ liabilities as governed by common law or the New Mexico Tort Claims Act. The Sponsor and its “public employees” as defined in the New Mexico Tort Claims Act, and the Department and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION TEN - ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:**

There shall be strict accountability for all receipts and disbursements relating hereto. The Sponsor shall maintain all records and documents relative to this Agreement for a minimum of three (3) years after final payment under this Agreement. The Sponsor shall furnish the Department or State Auditor, upon demand, all records relevant to this Agreement and allow them the right to audit all records which support the terms of this Agreement.

**SECTION ELEVEN - AUTHORIZATION OF EXPENDITURES:**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the State Legislature, this Agreement shall terminate upon written notice given by the Department to the Sponsor. The Department is expressly not committed to the expenditure of any funds until such time, as they are programmed, budgeted, encumbered and approved for expenditure by the Department. The Department's decision as to whether its funds are sufficient for the fulfillment of this Agreement shall be final.

**SECTION TWELVE - TERMINATION:**

This Agreement shall expire two years from the date of execution by all parties hereto. Neither party shall have any obligation under this Agreement after said date. If the Sponsor fails to comply with any provisions of this Agreement the Department has the option to terminate this Agreement. By such termination neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

**SECTION THIRTEEN - TERMS OF THIS AGREEMENT:**

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, by parties or their agents shall be valid or enforceable unless embodied in this Agreement. The terms of this Agreement are lawful; performance of all duties and obligations herein shall conform with and do not contravene any State, local, or Federal statutes, regulations, rules, or ordinances.

**SECTION FOURTEEN - EXECUTION OF AGREEMENT:**

The Agreement shall not take effect until executed by all of the parties hereto.

**SECTION FIFTEEN - SEVERABILITY:**

In the event that any portion of this contract is determined to be void, unconstitutional, or otherwise unenforceable, the remainder of this contract shall remain in full force and effect.

**SECTION SIXTEEN - AMENDMENT:**

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties hereto.

**IN WITNESS WHEREOF** , the Parties hereto have executed this Agreement the day and year hereinafter first written.

Recommended by AVIATION DIVISION

Approved by the NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Director or Designee

By: \_\_\_\_\_  
Cabinet Secretary or Designee

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

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

Approved as to form and legal sufficiency By the Department's Office of General Counsel

By: \_\_\_\_\_  
Assistant General Counsel

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

\_\_\_\_\_  
Print Name of Sponsor

By: \_\_\_\_\_  
Sponsor's Designated Official Representative

Title: \_\_\_\_\_