

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2013-73**

3 **INTRODUCED BY:**

4  
5 Councilor Trujillo

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9  
10 **A RESOLUTION**

11 **SUPPORTING THE NEW MEXICO LITTER CONTROL AND BEAUTIFICATION ACT OF**  
12 **1985 WHICH AUTHORIZES THE USE OF PUBLIC FUNDS IN THE FORM OF GRANTS**  
13 **FOR THE PURPOSE OF ENHANCING LOCAL LITTER CONTROL AND**  
14 **BEAUTIFICATION PROGRAMS.**

15  
16 **WHEREAS**, the city of Santa Fe recognizes the existence of a litter problem within the  
17 boundaries of Santa Fe; and

18 **WHEREAS**, the New Mexico Litter Control & Beautification Act of 1985 (the "ACT")  
19 provides, through the State Tourism Department, Litter Control and Beautification Section, for the  
20 allocation of public funds in the form of grants for the purpose of enhancing local litter control and  
21 beautification programs; and

22 **WHEREAS**, the city of Santa Fe has reviewed and considered the regulations, the agreement  
23 covering administration and use of said funds.

24 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
25 **CITY OF SANTA FE** that the city of Santa Fe:

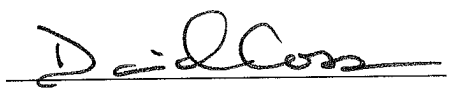
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**Section 1.** Endorses and supports such a program and delegates the administration of such program to Keep Santa Fe Beautiful, as indicated in Exhibit "A" attached hereto and incorporated herein by reference.

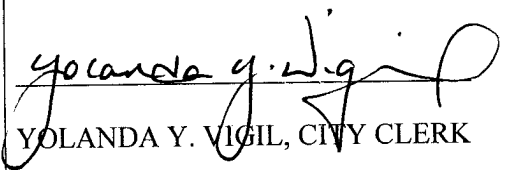
**Section 2.** Authorizes Keep Santa Fe Beautiful Inc. to plan, budget and apply for a grant under the ACT which if approved, will be used to fund said programs.

**Section 3.** Requests the State Tourism Department, Litter Control Beautification Section to consider and approve said application and program. Said program is in accordance with the Act and related regulations governing the use and expenditure of said funds.

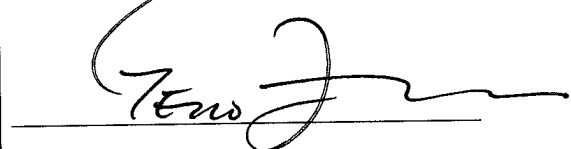
PASSED, APPROVED and ADOPTED this 31<sup>st</sup> day of July, 2013.

  
\_\_\_\_\_  
DAVID COSS, MAYOR

ATTEST:

  
\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
GENO ZAMORA, CITY ATTORNEY

ITEM # 13-0776

Grant No.: 14-418-6001-0051

**LITTER CONTROL & BEAUTIFICATION  
GRANT AGREEMENT**

THIS AGREEMENT made and entered into the date of last signature by a party below by and between the STATE OF NEW MEXICO, NEW MEXICO TOURISM DEPARTMENT, hereinafter referred to as "Department" and the City of Santa Fe, hereinafter referred to as "Public Entity".

**RECITALS**

WHEREAS, the purpose of the "New Mexico Litter Control and Beautification Act," NMSA 1978, §§ 67-16-1 to -14 (1985, as amended through 2001), hereinafter referred to as the "Act," is to control litter by authorizing Department to eliminate litter from the State to the maximum practical extent through a State-coordinated plan of education, control, prevention, and elimination;

WHEREAS, Section 67-16-12(B)(3) of the Act provides that Department may allocate up to fifty percent (50%) of the funds generated annually by the Act to local governments to establish and sustain local keep America beautiful system programs;

WHEREAS, Section 67-16-12(B)(4) of the Act provides that Department may allocate up to sixty percent (60%) of fees generated annual to local governments to establish a youth employment program to aid in litter control and beautification projects;

WHEREAS, Public Entity is a local government; and

WHEREAS, the parties hereto intend to dedicate funds generated by the Act as described in this Agreement to fulfill the requirements of the Act.

NOW, THEREFORE, in consideration of the covenants contained herein and pursuant to the Act, the parties agree as follows:

**SECTION ONE - DEPARTMENT AGREES:**

Upon its approval of Public Entity's grant application for program resources funds and/or youth employment funds:

1. To allocate funds generated by the Act and pay to Public Entity an amount not to exceed the sum of \$ \$70,000.00 for Public Entity to establish or sustain a local keep America beautiful system program, pursuant to Section 67-16-12(B)(3) of the Act; and/or to fund a youth employment program to aid in litter control and beautification projects pursuant to Section 67-16-12(B)(4) of the Act; and as stipulated by the attached Exhibit 1, Grant Award Distribution, which is incorporated herein. The Department shall accomplish its responsibilities under this SECTION ONE and SECTION THREE and the

Public Entity shall accomplish its responsibilities under SECTION TWO and SECTION THREE as provided in Exhibit 1 attached hereto.

2. To reimburse funds on a quarterly basis. For the purpose of this Agreement, quarters are designated as: July through September; October through December; January through March; and April through June.

3. To review the Public Entity's written requests to reallocate funds from the program resources allocation to the youth employment allocation, based on the need to support local youth interests.

4. To review the Public Entity's written requests to reallocate funds from the youth employment allocation to the program resources allocation, based on the need to implement programs and projects.

5. To affect the funds reallocations and budget adjustments permitted by this SECTION ONE to Exhibit 1 pursuant to SECTION TWO administratively and to confirm such reallocations in writing or electronically

**SECTION TWO - PUBLIC ENTITY AGREES:**

1. To perform and complete the Litter Control, Graffiti, Beautification, Recycling, and related community programs and tasks as agreed upon by both parties, in furtherance of the statewide keep America beautiful system programs, pursuant to the Act, as agreed upon by both parties, and as further set forth in Exhibit 1 attached hereto, which is hereby incorporated herein by this reference and made a part of this Agreement as though set forth herein in full.

2. To perform the Litter Control, Beautification programs, or youth employment program specified in Exhibit 1, in substantial compliance as specified herein and according to instructions provided by Department.

3. To commence performance of Litter Control, Graffiti, Beautification, Recycling, and related community programs and to continue performing the same with due diligence and progress as to each of all components of the comprehensive program and described tasks.

4. To spend the funds allocated herein as required by, and according to, the provisions of the Act and the applicable rules and regulations of the Department.

5. To request reimbursement on or before the fifteenth (15th) calendar day after the end of each quarter, except for the fourth quarter ending June thirtieth (30th). Public Entity must submit its final requests for reimbursement for the fourth quarter no later than the tenth (10th) day after the end of that quarter, July tenth (10th).

6. To include *at least* the following in its requests for reimbursement to Department:

- a. A detailed accounting of expenditures of all funds allocated and paid herein by line item;
  - b. Copies of detailed Public Entity purchase documents, receipts and proof of payment for equipment, materials, or supplies purchased, (including model and serial numbers, if any) necessary to perform the programs;
  - c. Copies of the payroll for youth employees; and
  - d. Such other information as may be required by Department.
7. To expend funds allocated under this agreement on items of equipment, projects, promotional programs, services, and other matters, only if they are related to litter prevention, elimination, control programs, and beautification.
8. To make reallocation requests in writing to Department.
9. To keep accounting records for the Litter Control, Graffiti, Beautification, Recycling, and related community programs and submit an accounting and performance report to Department on or before the tenth (10th) day after the end of the fourth quarter.
10. To include at least the following in its performance report:
- a. An accounting of expenditures of all funds allocated and paid herein by line item;
  - b. A certification that Public Entity used purchased equipment only for the purpose of fulfilling this Agreement under the Act and for no other purpose;
  - c. A detailed summary of accomplishments towards the objectives and goals of the program;
  - d. Any other information necessary to explain the program accomplishments; and
  - e. Such other information as may be required by Department.
11. To use equipment purchased in whole or part with funds allocated and paid under this Agreement only for the anti-litter and beautification purposes required by the Act.
12. That it shall not assign or transfer any interest in this Agreement and shall not assign any claims or money due or that may become due under this Agreement.
13. That it shall not subcontract any portion of the services to be performed, or programs to be fulfilled and accomplished, or consultants to be hired, under this Agreement without prior written approval of Department.
14. To maintain detailed records documenting the date, time, and nature of services rendered and the progress of programs undertaken and understands that these records shall be subject to inspection by Department, the Department of Finance and Administration, and the New Mexico State Auditor. 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 illegal payment.

15. That it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance or service required of it under this Agreement.

16. To release Department, its officers, and employees, and the State of New Mexico as provided for by law from all liabilities, claims and obligations whatsoever arising from or under this Agreement upon final payment of the amount due under this Agreement.

17. To never purport to bind the State of New Mexico to any obligation not assumed herein, unless Public Entity has written authority to do so, and then only within the strict limits of that authority.

### **SECTION THREE – BOTH PARTIES AGREE:**

1. To strictly adhere to the requirements set forth in Department's Litter Control and Beautification Grant Requirements Rule (as amended) for grant approval, allocation, and reporting.

2. That Department will not disburse grant monies until Public Entity submits proper written documentation of its expenditures.

3. That Public Entity's requests for reallocation of funds are not valid without Department's prior written approval and that reallocations of funds are not a formal amendment to this Agreement, provided Department does not increase Public Entity's allocation.

4. That Public Entity's illegal or unauthorized expenditures under this agreement shall constitute a debt to the State of New Mexico, owed by Public Entity, its successors, or assigns. In the case of such debt, parties agree that Department may elect to withhold or recover allocations from Public Entity, its successors, or assignees by appropriate legal action.

5. That direct costs of travel or per diem incurred by Public Entity shall be the sole responsibility of Public Entity, unless Public Entity proposes and requests direct and separate travel reimbursement and Department gives advance approval in writing.

6. That equipment purchased through the grants described in this Agreement that has a service life longer than this Agreement shall be used for agreement purposes for length of that service life. Before Department reimburses Public Entity's expenses for such equipment, the parties shall agree and specify its expected service life based on the kind of equipment, amount of anticipated use, service that will be performed, and the equipment's normal service life.

7. That Public Entity's failure to adhere to these requirements will result in a

penalty assessed on the invoice equal to ten percent (10%) of the total invoice submitted for that quarter.

8. That Public Entity's records, detailing date, time, and nature of services rendered and the progress of programs undertaken shall be subject to inspection by Department, the Department of Finance and Administration, and the New Mexico State Auditor and that Department shall have the right to audit billings both before and after payment.

9. That payment under this Agreement shall not foreclose the right of Department to recover excessive illegal payment.

**SECTION FOUR – AMENDMENT:**

This Agreement shall not be altered, changed or amended except by a written instrument, executed by both parties.

**SECTION FIVE – DEPARTMENT'S AUTHORIZATION OF EXPENDITURES:**

Department reserves the right to expend funds under this Agreement until such time as they are budgeted, appropriated by the legislature, and approved for expenditure by Department. Department's decision as to whether funds under the Act are sufficient for fulfillment of this Agreement shall be final.

**SECTION SIX – INDEPENDENT CONTRACTOR:**

Public Entity and its agents and employees are independent contractors fulfilling their obligations to Department under this Agreement and are not employees of the State of New Mexico. Public Entity and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to the employees of the State of New Mexico as a result of this Agreement.

**SECTION SEVEN – TERM and TERMINATION:**

1. This Agreement shall not take effect until executed by the parties hereto. This Agreement shall terminate on **June 30, 2014**, unless terminated pursuant to the following paragraphs of this SECTION.

2. Department may terminate this Agreement if Public Entity fails to commence program activities by the end of the second quarter of the fiscal year or if Public Entity does not comply with restrictions on its expenditures.

3. Either party may cancel this Agreement with thirty (30) days written notice to the other party. By such termination, neither party may nullify obligations already incurred for performance or failure to perform for the programs rendered prior to the date of termination of the Agreement. However, neither party shall have any obligation to perform services or make payment for services or specified programs rendered after such date of termination.

**SECTION EIGHT – INTEGRATION:**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreements or understanding, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**SECTION NINE – PUBLIC ENTITY’S ACQUIRED PROPERTY:**

If upon termination or expiration of this Agreement Public Entity has any property acquired pursuant to this Agreement, then Public Entity shall account for the same and dispose of it as directed by Department.

**SECTION TEN – CONTROLLING LAW:**

The laws of the State of New Mexico shall govern this Agreement. The parties agree that the District Courts of the State of New Mexico have jurisdiction over any lawsuits brought by either party to enforce its rights hereunder. Venue shall be in Santa Fe County, New Mexico.

**SECTION ELEVEN – UNEXPENDED AND UNENCUMBERED PROJECT BALANCES:**

Any unexpended or unencumbered balance allocated by Department under this Agreement shall revert to Department.

**SECTION TWELVE – INTENT OF AGREEMENT:**

This Agreement is not intended by any of the provisions or any part of the Agreement to create in the public, or any member thereof, a third party beneficiary; nor is it intended to authorize anyone not a party to this Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury, damage(s) to property(ies), and/or any other claims(s) whatsoever pursuant to the provisions of this Agreement.

**SECTION THIRTEEN – 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, NMSA 1978, Sections 41-4-1 to -14 (1985, as amended through 2002). 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. Public Entity and its “public employees,” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defenses, and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provisions of the New Mexico Tort Claims Act.

**SECTION FOURTEEN – ACCOUNTABILITY OF RECEIPTS & DISBURSEMENTS:**

There shall be strict accountability for all receipts and disbursements relating hereto.



**SECTION FIFTEEN – EQUAL OPPORTUNITY COMPLIANCE:**

Public Entity agrees to abide by all federal and state laws, rules, and regulations pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, Public Entity 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, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If Public Entity is found to have failed to comply with these requirements during the term of this Agreement, Public Entity agrees to take appropriate steps to correct these deficiencies.

**SECTION SIXTEEN – CIVIL RIGHTS LAWS AND REGULATION COMPLIANCE:**

Department and Public Entity shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. Department and Public Entity 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, and the New Mexico Human Rights Act. IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below specified.

New Mexico Tourism Department  
"DEPARTMENT"

By: \_\_\_\_\_  
Monique Jacobson, Cabinet Secretary

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

"Public Entity"

By: \_\_\_\_\_

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

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

As to form and legal sufficiency

By: \_\_\_\_\_  
Erin K. McSherry, Legal Counsel

CITY OF SANTA FE:

David Coss

David Coss, Mayor

8-1-13

Date

ATTEST:

Yolanda Y. Vigil  
Yolanda Y. Vigil, City Clerk  
CC# 731-13

Approved as to form:

Geno Zamora  
Geno Zamora, City Attorney

Date:

6/25/13

Approved:

Marcos A. Tapia 8/2/13  
Marcos A. Tapia, Finance Director

NEW MEXICO  
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Exhibit 1  
 Page 1

COMMUNITY NAME	Santa Fe, City of	
FY14 Total Grant Award	\$70,000	

Focus Area	Project Names							Total
Litter/Weed Eradication								
Budget Line Items								
								\$0
		DID	NOT	APPLY				\$0
								\$0
								\$0
								\$0
								\$0
								\$0
								\$0
								\$0
								\$0
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Focus Area	Project Names							Total
Beautification/Graffiti	COSF Entry Ways							
Budget Line Items								
Plants, flowers and landscape materials.	\$1,000							\$1,000
Entry signs	\$4,000							\$4,000
								\$0
								\$0
								\$0
								\$0
								\$0
								\$0
<b>Total</b>	\$5,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000

Focus Area	Project Names							Total
Education								
Budget Line Items								
								\$0
		DID	NOT	APPLY				\$0
								\$0
								\$0
								\$0
								\$0
								\$0
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Page 1 Total	\$5,000
Grand Total of Projects	\$70,000

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Exhibit 1

Page 2

COMMUNITY NAME	Santa Fe, City of	
FY14 Total Grant Award	\$70,000.00	

Focus Area		Project Names							Total
Recycling		Parks Recycling							
Budget Line Items									
Recycling Bags	\$1,000							\$1,000	
Recycling Receptacles	\$3,000							\$3,000	
								\$0	
								\$0	
								\$0	
								\$0	
<b>Total</b>	<b>\$4,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$4,000</b>	

Focus Area		Project Names							Total
Youth Employment		Litter and Weed Eradication	Beautification and or Graffiti Eradication						
Budget Line Items									
Youth Interns	\$32,000	\$16,350						\$48,350	
Youth Subcontract	\$300	\$600						\$900	
								\$0	
								\$0	
								\$0	
								\$0	
								\$0	
								\$0	
<b>Total</b>	<b>\$32,300</b>	<b>\$16,950</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$49,250</b>	

Focus Area		Project Names						Total
Marketing/Promotional		Printing, Publishing & Advertising	KSFB Awards	Promotion of Program				
Budget Line Items								
Advertising	\$1,500						\$1,500	
Postage				\$1,000			\$1,000	
Awards		\$1,000					\$1,000	
Printing	\$1,500						\$1,500	

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Promotion of Programs Items that promote KSFB for example (stylus pens, car trash bins, reusable tumblers)			\$3,500					\$3,500
								\$0
<b>Total</b>	<b>\$3,000</b>	<b>\$1,000</b>	<b>\$3,500</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$8,500</b>

<b>Total Page 2</b>	<b>\$61,750</b>
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NEW MEXICO  
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**Exhibit 1**

Page 3

<b>COMMUNITY NAME</b>	Santa Fe, City of	
<b>FY14 Total Grant Award</b>	\$70,000	
<b>Focus Area &amp; Project Name</b>		
<i>Keep America Beautiful</i>		
<b>Budget Line Items:</b>		
<b>Keep America Beautiful Materials:</b>		
		\$0.00
		\$0.00
		\$0.00
		\$0.00
	<b>Total</b>	<b>\$0.00</b>
<b>Board Development Materials:</b>		
		\$0.00
		\$0.00
		\$0.00
		\$0.00
	<b>Total</b>	<b>\$0.00</b>
<b>Per Diem and Fees:</b>		
Travel, Per Diem, and Registrations		\$3,000.00
Network Service Fees		\$250.00
		\$0.00
	<b>Total</b>	<b>\$3,250.00</b>

<b>KAB Total</b>	<b>\$3,250</b>
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