

TOURISM AND BUSINESS MARKETING REPORT

FY 2018/2019

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BUSINESS MARKETING PERFORMANCE REPORT

FY 2018/2019

BUSINESS MARKETING PERFORMANCE REPORT FY 2018/19

OVERVIEW OF REPORT

This report summarizes the impact of Empire State Development's business marketing efforts during FY 2018/19 and over the past several years. It presents reliable, quantitative evidence demonstrating that shifts in perceptions of New York State among key business leaders can be attributed to Empire State Development's business marketing programs.

BACKGROUND

For much of the 20th century, New York State led the nation with a diverse economy, abundant natural resources, a highly skilled workforce, and world-renowned academic and research institutions. But an evolving global marketplace and declines in traditional manufacturing trends caused private sector job loss, slowed population growth, and caused unemployment levels in New York State to spike. By 2010, statewide unemployment had reached 9.6 percent, a record level, and long-term unemployment also stood at a historic high.

From day one, the Cuomo administration has been committed to generating economic growth and job creation across New York State (NYS). Key to this mission has been significant investments in infrastructure improvements, the creation of innovative business incentives and optimization of existing programs, and the development of academic partnerships that fuel a best-in-class talent pool. These initiatives have made New York State a premiere location for business development, which has led to new jobs and lower unemployment in every corner of the state. It is Empire State Development (ESD) Marketing's charge to develop communications that tell New York State's exciting and compelling story, and that accelerate business leaders' knowledge and belief that a new New York is taking shape.

Marketing Goals

ESD's marketing goals are to:

- Create positive feelings about New York State
- Establish New York State's credentials as a good place to do business
- Provide information that can help decision makers choose New York State
- Connect decision makers with ESD team members who can maximize the possibility of a positive New York decision

These marketing goals are measured against Key Performance Indicators (KPI's), which are set each year based on that year's budget and planned initiatives. KPI's include:

- Measurement of perceptions on New York State business attractiveness, particularly:
 - Likelihood of considering New York State for a possible business expansion, relocation or start-up
 - Perceptions of New York State—measured by level of agreement with eight statements that have been statistically determined to be either *Critically* or *Intrinsically Important* drivers of business location selection
 - Ratings of New York State on three statements pertaining to business climate and momentum
- Website visits
- Quality leads to New York State originators

Performance Measurement Tools

Three critical tools are used to measure and evaluate performance against KPI's:

1. Quantitative In-Market Tracking Research

- Conducted by Russell Research, a well-respected, national marketing research firm
- 1200 online interviews per year (100/month) among top-level business leaders located at company headquarters. Companies of all sizes are represented in the research and sampling is conducted both in-state and out-of-state, with quotas for each of these to ensure they reflect the actual composition of businesses in the regions where communications are placed

- This research is designed to help identify “leading indicator” changes among these key stakeholders, allowing us to respond with optimized media and messaging
- Measures awareness of marketing, perceptions of NY State, consideration and timeframe for business decisions
- Benchmarked versus other states.

2. Analysis of Website Activity via Google Analytics

- ESD website is an important avenue for those seeking information
- In addition to already collecting visits, page views and time spent on site, ESD Marketing will be implementing an ongoing user survey in to help identify who is using the site and to understand the impact of their experience.

3. Lead Generation

- ESD Regional Offices provide Leads Reports, with vital information on both:
 - Quantity of leads—i.e., Total Leads generated
 - Quality of leads—i.e., Second Queries

MARKETING PERFORMANCE SUMMARY: A LOOK AT FY 2018/19

FY 2018/19 saw a shift in communication strategy from a primarily broadcast centric approach to a more concentrated and targeted digital approach. This shift was due to a reduced annual marketing budget that was necessitated by an overall decrease in FY 2018/19 appropriated funds.

KPI goals for FY 2018/19 were determined while keeping in mind both the reduced budget and shift away from broader reaching communication channels. As a result, KPI goals were adjusted to reflect these changes.

Performance against KPIs remained strong, with ESD meeting or exceeding all KPI goals. However, while there was year over year improvement in Brand perception performance, there was a decline in web traffic and leads from the previous year. These declines can be attributed to the reduced marketing spend and more digital centric communication approach.

The strong brand perception performance can be attributed to the strength of past perception building efforts and was able to be maintained despite the reduced budget. Also contributing to this performance are the overall positive perceptions of the economy during this time period that help to reinforce perceptions of the state. This strong brand perception also allowed NYS to remain the #1 choice for location/expansion among all states tracked.

While overall quantitative perception measures of the state continue to increase, there is also an increased number of business leaders indicating higher levels of importance on key consideration metrics (i.e. expectations among business leaders are increasing). Although perceptions of NYS and business leaders' expectations are both increasing, business leaders' expectations are increasing at a slightly higher rate.

In regard to the revised communication strategy, beginning in FY 18/19, ESD launched a targeted, two-pronged approach:

- Decision makers in *specific industries* deemed to be of strategic importance to the future of the State were targeted with a vertical effort consisting of Trade print, targeted paid Social and paid Search.
- Custom digital content was used to specifically engage high-level (primarily C-suite) executives involved in relocation/expansion decisions via a publishing partnership with Conde Nast.

Both efforts were relatively short in duration yet yielded positive results among their intended targets.

DETAILS AND SUPPORTING DATA:

Marketing Spend

For FY 2018/19, the total media budget for business marketing was \$2,525,299, a decrease compared to spending in FY 2017/18. This decrease in media spend reflects a shift away from previously utilized broad reaching channels (e.g. television) to more of a focus on targeted digital channels such as paid social and paid search in addition to investments in content partnerships and print. Despite a reduction in media spend, a number of brand metrics and measures increased year over year.

Business Media Spend

	2016-17	2017-18	2018-19
TV	\$20,730,996	\$24,348,711	-
Search	\$649,591	\$828,258	\$342,888
Social	\$515,274	\$483,682	\$605,330
Print	\$5,717	\$173,545	\$377,081
Content Partnerships	\$1,251,450	-	\$1,200,000
Events	\$342,725	\$383,260	--
TOTAL:	\$23,495,753	\$26,217,456	\$2,525,299

Brand Perception Performance

ESD's marketing efforts exceeded all KPI goals for FY 2018/19, with double-digit positive differences achieved across all measures.

2018/19 Performance Vs. Goal -Among Total Business Decision Makers-

	KPI Goal FY '18/'19	Actual FY '18/'19	Performance vs. Goal
Measures of NYS Business Economy			
Overall NYS Business Climate Rating	33%	57%	+24
Rating of job Government is doing to improve Business Climate	30	53	+23
Business Climate Momentum	30	55	+25
NYS Consideration: Top 2 Box	34	62	+28
Critically Important Attributes			
Provides a quality workforce for business	55	73	+18
Is good for my business	43	63	+20
Provides a good infrastructure for business	45	67	+22
Has a government that understands what business needs	40	62	+22
Intrinsically Important Attributes			
Good place for a young person to live and work	53	66	+13
Attracts innovative businesses	51	71	+20
Good place to recruit young, quality talent	60	74	+14
Is attractive to a young, quality workforce	60	73	+13

*Source: In-Market Tracking/Russell Research

Measures of NYS Business Economy Survey Questions

- To the best of your knowledge, how would you rate the business climate in each of the following states? (Excellent, very good, good, fair or poor)
- To the best of your knowledge, how would you rate the job each of the following state governments are doing to improve the business climate in their state? (Excellent, very good, good, fair or poor)
- Do you believe the business climate in each of the following states has gotten better, worse or stayed the same over the past year? (Much better, somewhat better, stayed the same, somewhat worse or much worse)

Question for Critically and Intrinsically Important Attribute Ratings

- How much do you agree or disagree that each of the following statements describes the business climate of the following states? (Agree completely, agree somewhat, neither agree nor disagree, disagree somewhat or disagree completely)

Overall performance on *Consideration* as well as on all *Critically Important* and *Intrinsically Important* attributes saw year-over-year increases as well.

Performance of NYS on Key Metrics: Current FY vs. Prior -Among Total Business Decision Makers-

	FY 2017/18	FY 2018/19	Difference FY 2018/19 vs. Prior Year
Measures of NYS Business Economy			
Overall NYS Business Climate Rating	52%	57%	+5
Rating of job Government is doing to improve Business Climate	48	53	+5
Business Climate Momentum	49	55	+6
NYS Consideration: Top 2 Box	54	62	+8
Critically Important Attributes			
Provides a quality workforce for business	67	73	+6
Is good for my business	59	63	+4
Provides a good infrastructure for business	58	67	+9
Has a government that understands what business needs	55	62	+7
Intrinsically Important Attributes			
Good place for a young person to live and work	65	66	+1
Attracts innovative businesses	66	71	+5
Good place to recruit young, quality talent	70	74	+4
Is attractive to a young, quality workforce	68	73	+5

*Source: In-Market Tracking/Russell Research

Measures of NYS Business Economy Survey Questions

- To the best of your knowledge, how would you rate the business climate in each of the following states? (Excellent, very good, good, fair or poor)
- To the best of your knowledge, how would you rate the job each of the following state governments are doing to improve the business climate in their state? (Excellent, very good, good, fair or poor)
- Do you believe the business climate in each of the following states has gotten better, worse or stayed the same over the past year? (Much better, somewhat better, stayed the same, somewhat worse or much worse)

Question for Critically and Intrinsically Important Attribute Ratings

- How much do you agree or disagree that each of the following statements describes the business climate of the following states? (Agree completely, agree somewhat, neither agree nor disagree, disagree somewhat or disagree completely)

Competitively, New York State also fared well. Not only did NYS maintain its top position in terms of *Consideration* vs. all other states tracked, it leads by a significant margin.

**FY 2018/19 Consideration: NY State vs. Competitive States
-Among Total Business Decision Makers-**

	Top 2 Box Consideration	% lead: NYS vs. Specific States
New York	62%	
California	46	+16
Pennsylvania	48	+14
Massachusetts	44	+18
New Jersey	46	+16
Connecticut	42	+20
Ohio	40	+22
Illinois	34	+28

*Source: In-Market Tracking/Russell Research

Consideration Question

Q7. If you were to relocate or expand your business, open a new location or start your own business, how likely would you be to consider each of the following states? (Definitely would, probably would, might or might not, probably would not, definitely would not)

Overall these FY measures are clearly impressive given aforementioned reductions in the marketing budget. However, this strong performance may be attributable to a combination of the continued effects of prior year’s campaigns at much higher spend levels and the overall positive perceptions of the economy. Accordingly, maintaining this level of performance at current budget levels may be challenging into FY 19/20.

One sign of the challenges moving forward is seen in the increased importance business leaders are placing on critically and intrinsically important attributes coupled with NYS’s performance against these attributes. As the following shows, more Business Decision Leaders are placing higher importance on all key attributes:

**Shift In Importance of Key Drivers of Location Selection
-Among Total Business Decision Makers-
(% rating “highly important”)**

	FY 2017/18	FY 2018/19	Diff.
Critically Important Attributes			
Provides a quality workforce for business	70%	79%	+9
Is good for my business	77	85	+8
Provides a good infrastructure for business	70	76	+6
Has a government that understands what business needs	70	77	+7
Intrinsically Important Attributes			
Good place for a young person to live and work	62	72	+10
Attracts innovative businesses	60	69	+9
Good place to recruit young, quality talent	65	71	+6
Is attractive to a young, quality workforce	62	70	+8

*Source: In-Market Tracking/Russell Research

Question for Critically and Intrinsically Important Attribute Ratings

- How much do you agree or disagree that each of the following statements describes the business climate of the following states? (Agree completely, agree somewhat, neither agree nor disagree, disagree somewhat or disagree completely)

While New York State performance against critically and intrinsically important attributes remains strong and is increasing year-over-year (as indicated on charts on pages 9 & 10), business leader’s expectations are increasing at a slightly higher rate.

This chart shows the gap between the number of business leaders who feel a certain attribute is important vs how many feel that attribute “describes” New York State.

**NYS Performance vs. Expectations
-Among Total Business Decision Makers-**

	FY 2018/19 % rating “highly important”*	FY 2018/19 % saying “describes NYS”*	Difference: NYS Performance vs. Expectations
Critically Important Attributes			
Provides a quality workforce for business	79%	73%	-6
Is good for my business	85	63	-22
Provides a good infrastructure for business	76	67	-9
Has a government that understands what business needs	77	62	-15
Intrinsically Important Attributes			
Good place for a young person to live and work	72	66	-6
Attracts innovative businesses	69	71	+2
Good place to recruit young, quality talent	71	74	+3
Is attractive to a young, quality workforce	70	73	+3

* Top three box on a 10-point scale

**Source: In-Market Tracking/Russell Research

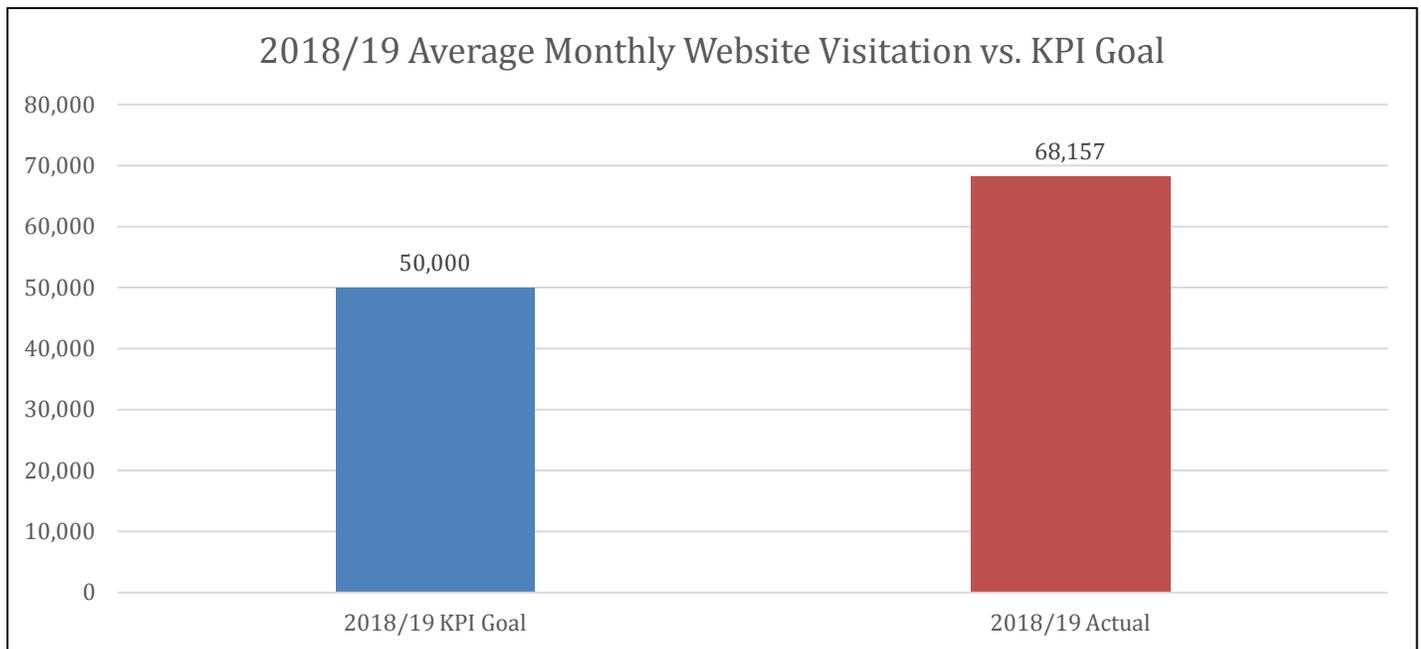
Question for Critically and Intrinsically Important Attribute Ratings

- How much do you agree or disagree that each of the following statements describes the business climate of the following states? (Agree completely, agree somewhat, neither agree nor disagree, disagree somewhat or disagree completely)

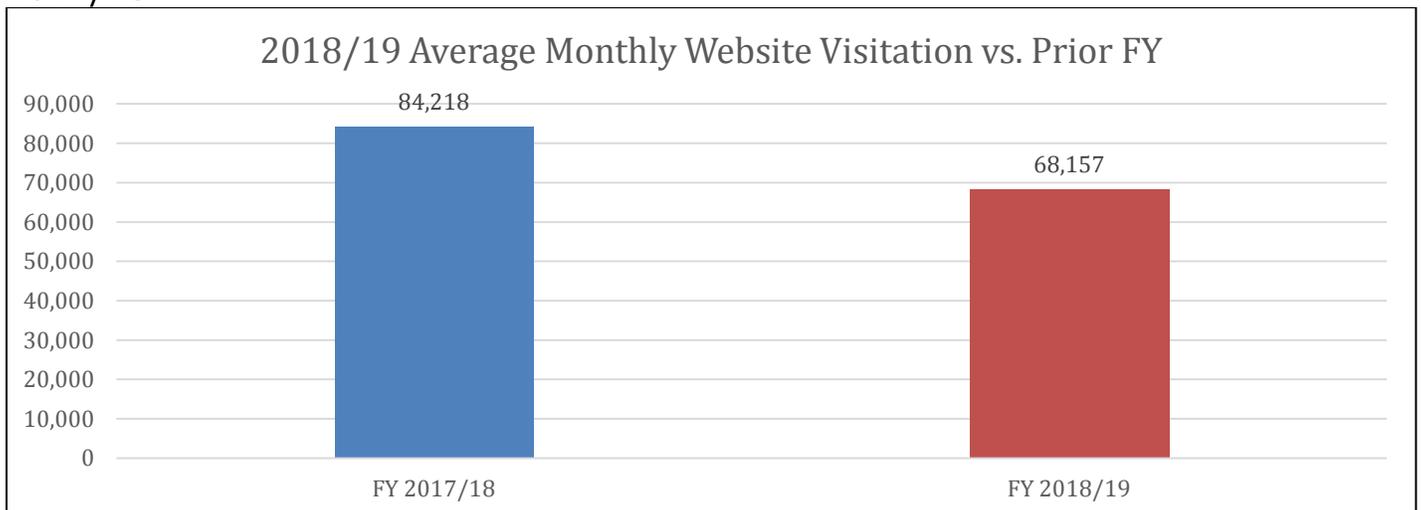
Web and Lead Performance

The reduced marketing spend in FY 18/19 also had a negative impact on overall website visitation and the number of leads produced when viewed year over year.

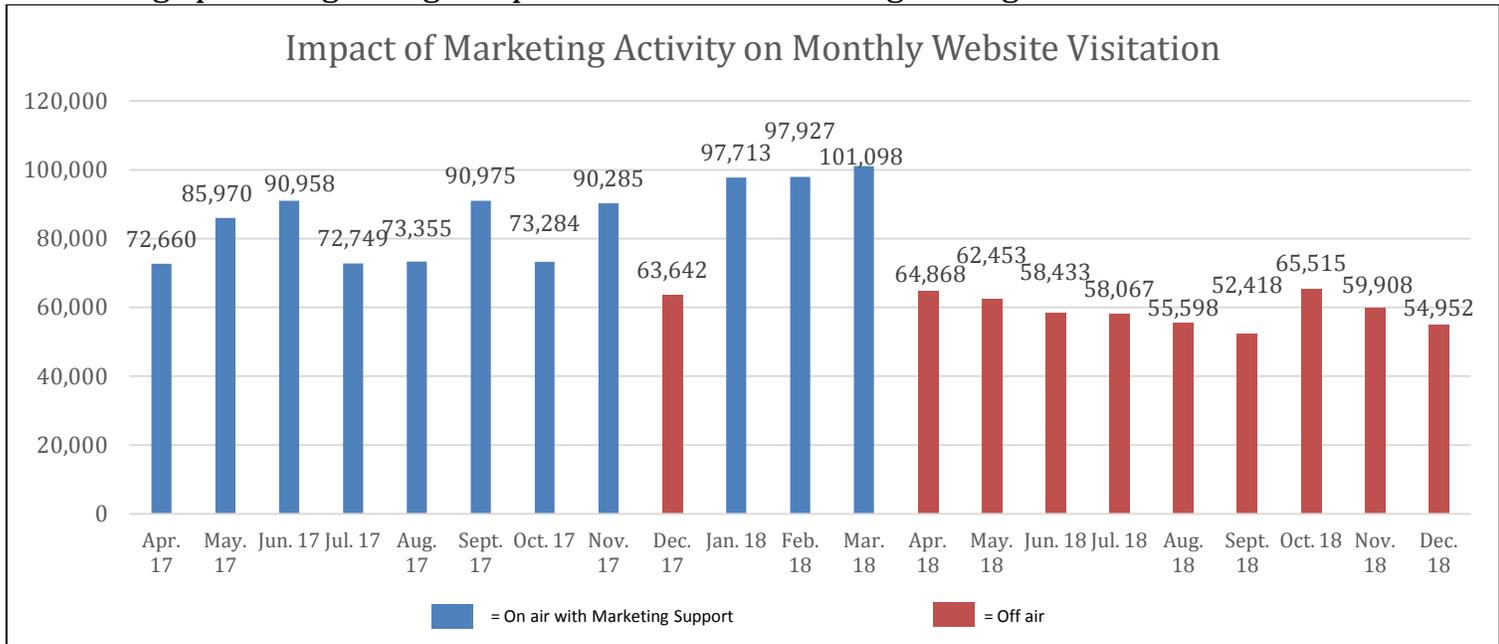
Specifically, ESD exceeded its fiscal year KPI goal for average monthly website visitation (reduced budget was considered when setting KPI goals).



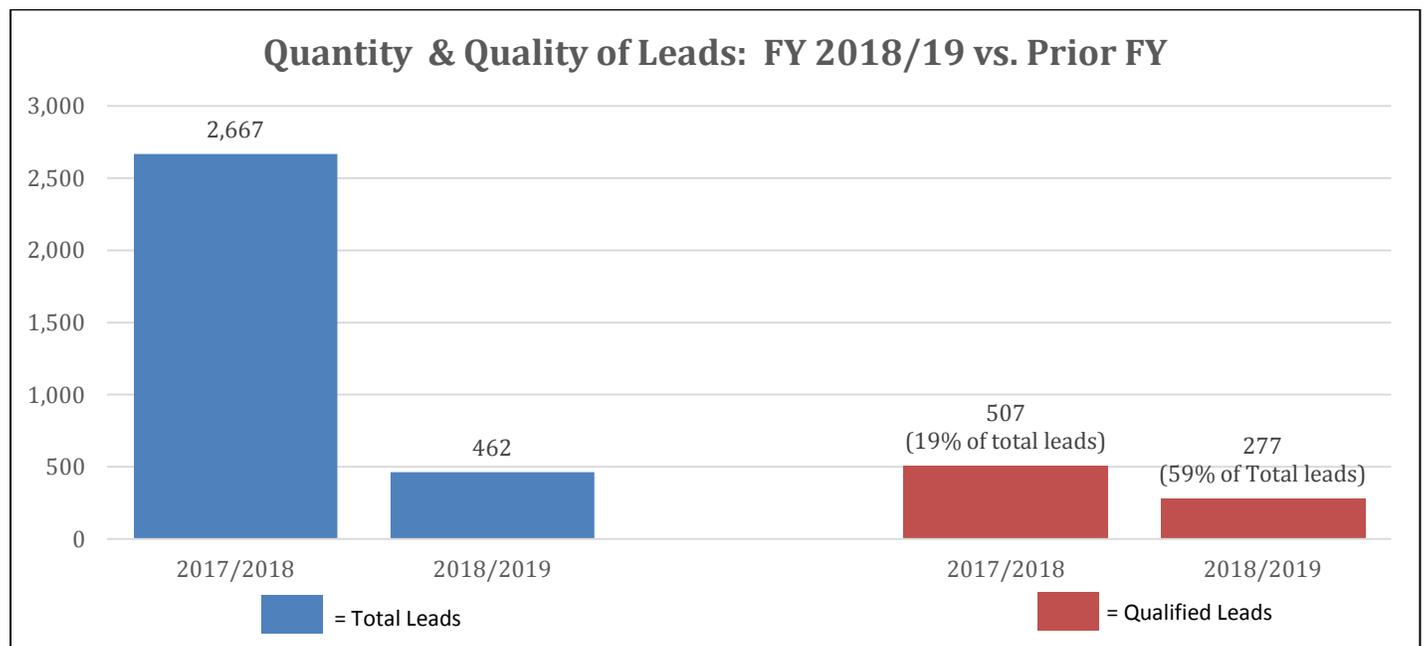
However, average monthly website visitation for 2018/19 lagged behind levels for 2017/18.



The decline in FY 2018/19 website visitation can be directly attributed to the decline in marketing spend beginning in April 2018 and continuing through December 2018.



Total number of leads and total qualified leads also declined when compared to the prior fiscal. This decline can be attributed to the shift away from broadcast channels to a more targeted approach. However this targeted approach resulted in a higher percentage of qualified leads this year.



* Source: ESD Regional Offices Leads Reports

Campaign Performance

FY 18/19 efforts were concentrated against:

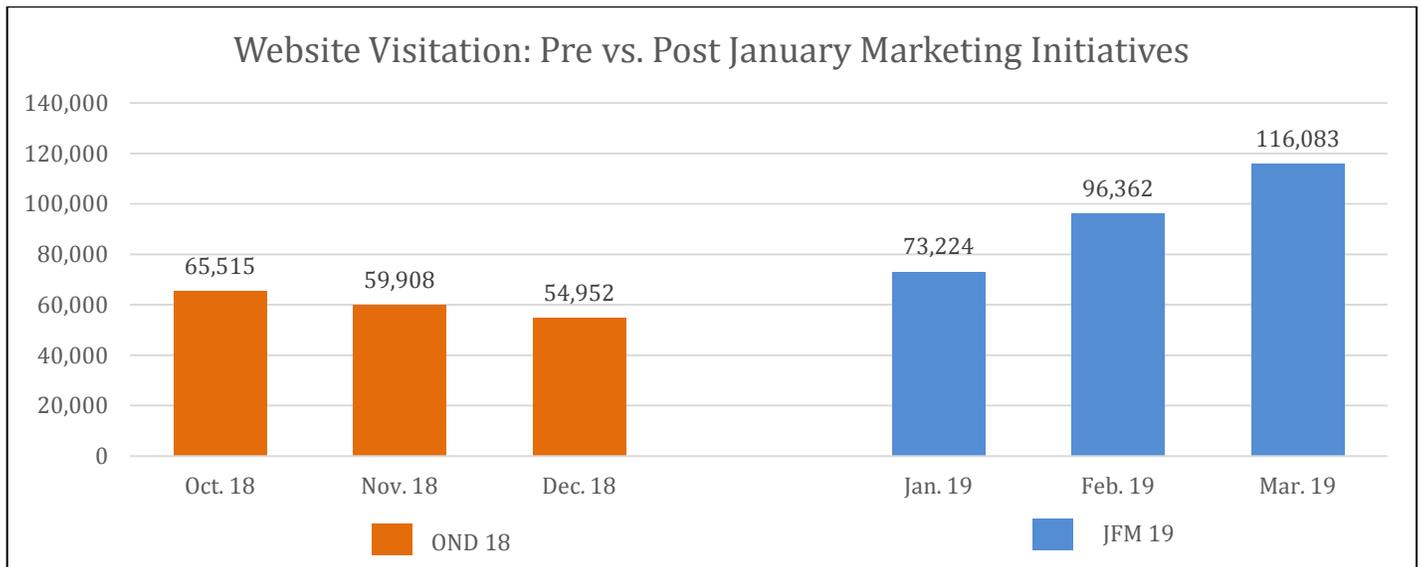
- Vertical trade print, paid Social and paid Search targeting decision makers in the strategically-important industries of Life Sciences & Biotech, Optics, Photonics & Imaging, and Renewable Energy/Clean Energy.
- Partnership with Conde Nast with custom digital content distributed via paid Social, with the goal of reaching and engaging “technologically-oriented,” high-level (primarily C-suite) executives with messaging relevant to business relocation decisions.

While these efforts were necessarily and relatively short in duration, they yielded positive results among their intended, specialized targets. Specifically:

- Research conducted for the Industry Vertical effort shows that the advertising had a positive impact on leaders within the narrowly targeted industries. That is, ad aware professionals rate NYS higher on every single *Critically* and *Intrinsically important* attribute compared to those who are not aware of this effort. They are also more likely to believe that NYS has a positive business climate and that the government of NYS is doing a good job in terms of improving the business climate.
- Digital metrics associated with the Conde Nast effort shows a high-level of engagement with the C-suite audience, garnering a CTR (Click Thru Rate) of .11% vs. a “typical” norm of .05% to .08%. This relatively high level of engagement further resulted in significant improvements in the following perceptual areas:
 - NYS is a good place to recruit young talent
 - NYS is attractive to a young, quality workforce

Source: Custom Quantitative Industry Vertical Research/2019; Lucid/Conde Nast ‘Brand Lift’ Study/2019

Both of these efforts did not impact any measures that are monitored in the broad-scale, Russell Research tracking study because it is conducted among a much broader audience of Business Decision Makers. However, it appears that in the marketplace at large, these efforts helped to maintain positive sentiment towards NYS while also helping to restore website visitation.



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MARKETING PERFORMANCE SUMMARY: TRENDS OVER TIME

ESD Marketing, along with Russell Research, took some initial measurements on *Consideration* and *Business Climate Momentum* in Fall 2013 and Winter 2014. In Fall 2014, some measurements covering perceptions of New York State were added. From 2015/16 on, considerably more data has been collected throughout the entire fiscal year. Thus, while complete data for all years is not available, trends in New York State's performance over time have been examined wherever possible.

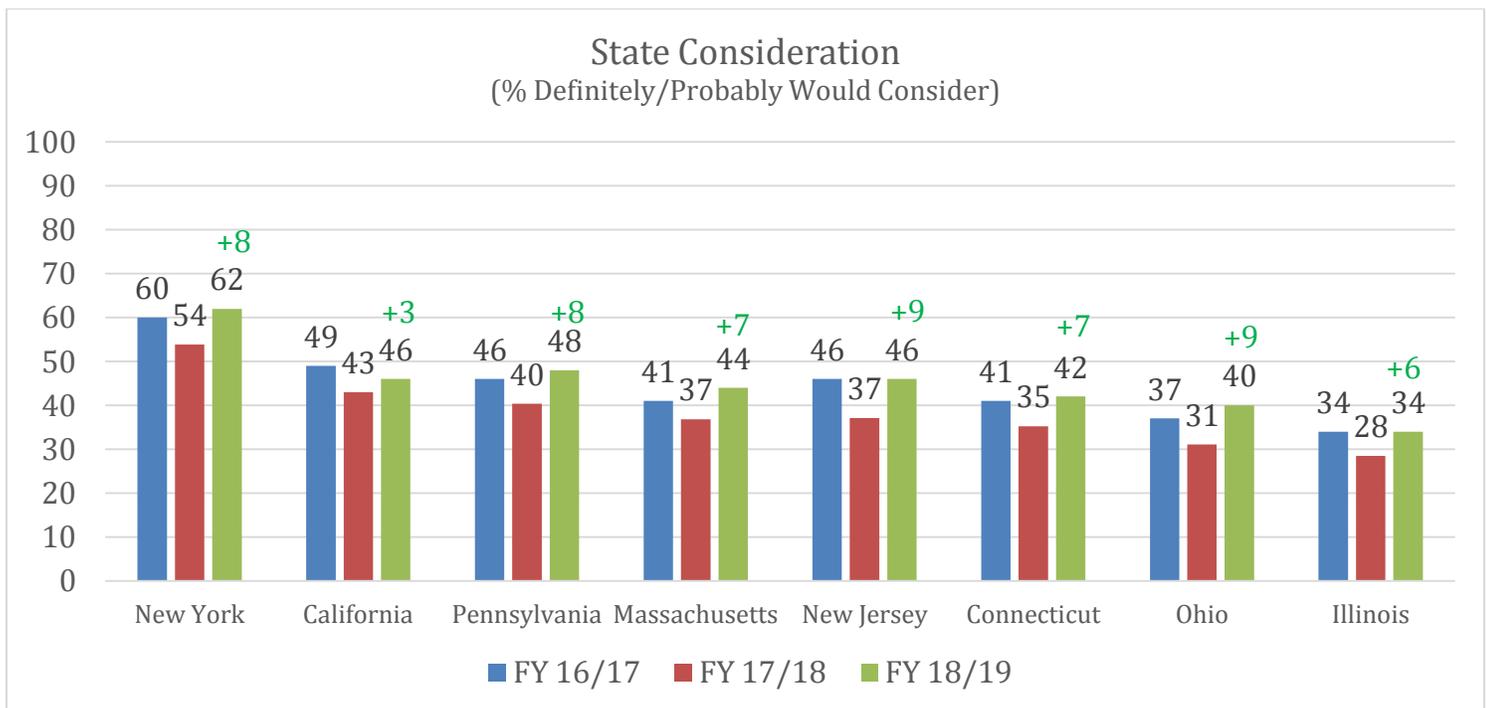
In last year's Marketing Performance Report for FY 2017/18, New York State—along with all other states tracked—experienced considerable declines on a number of key measures, including *Consideration*, *Business Climate Momentum*, and *Business Climate Ratings*.

This year, FY 2018/19 data shows that all states—including New York State—have rebounded. In all cases, New York State rebounded to the greatest degree, resulting in the State leading on every measure from a competitive standpoint.

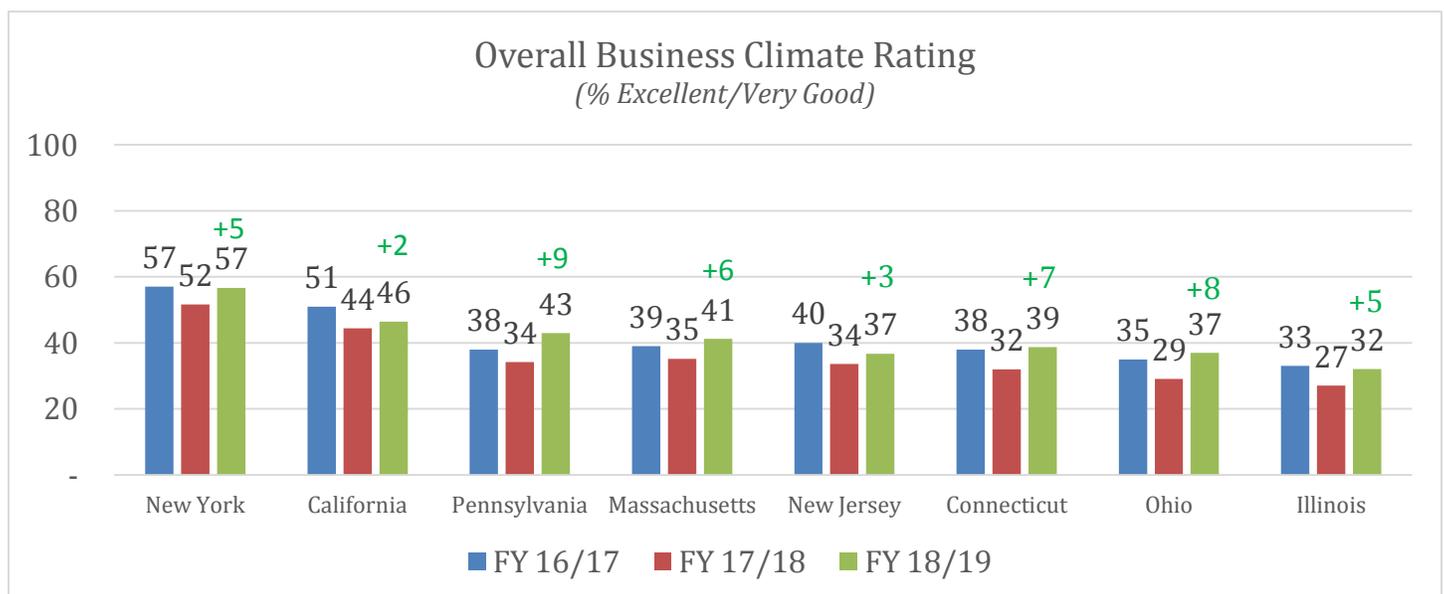
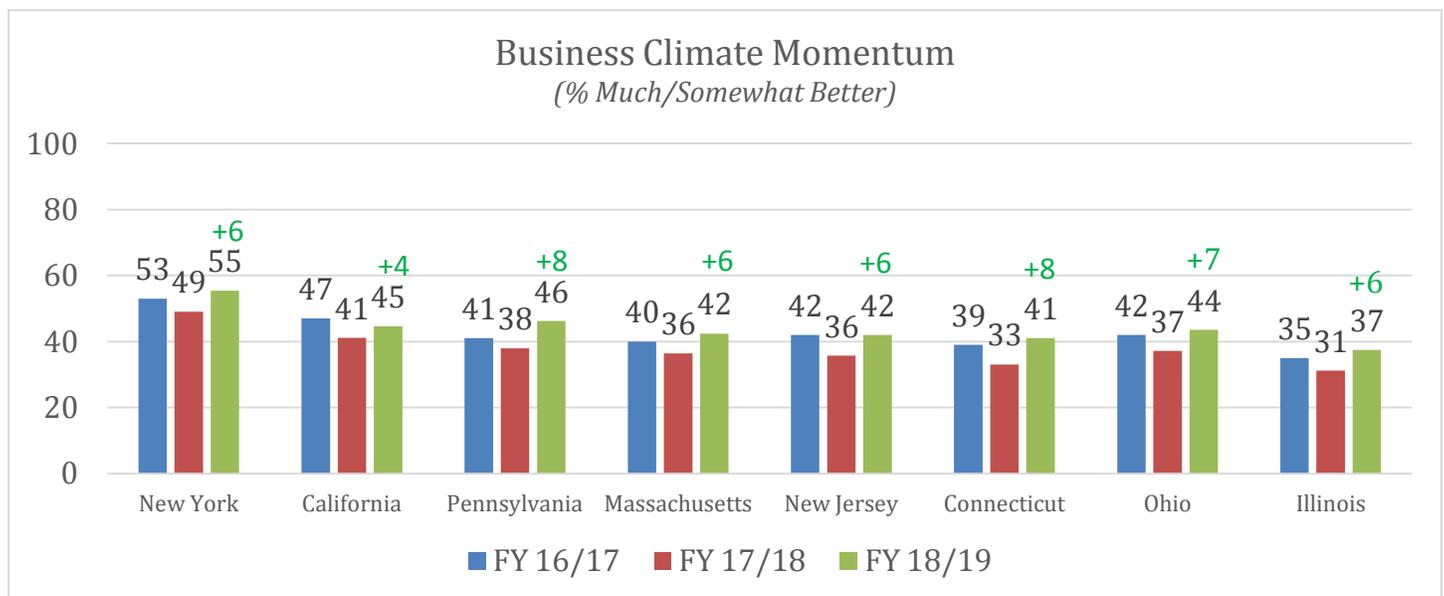
Thus, the 3-year fiscal trends for New York State are very positive. And when all available measures going back to the start of tracking in Fall of 2016 are examined, it is clear that New York State has made significant progress and is clearly the prime choice of Business Decision Makers for relocation/expansion.

Details and supporting data follow:

Compared to the declines experienced in FY 2017/18 vs. FY 2016/17, in the current FY all states have rebounded on the measure of *Consideration*. However, New York State—along with PA, MA, CT and OH—not only rebounded but now exceeds levels of *Consideration* first recorded 3 years ago. Moreover, at 62%, NYS shows the greatest momentum of all states tracked.



The same pattern is seen for the measures of *Business Climate Momentum* and *Business Climate Ratings*—that is, all states showed improved performance in FY 2018/19 relative to FY 2017/18; New York States performance is again either the strongest or one of the strongest of all, placing it in the lead position.



Finally, when trends are examined on key measures available since tracking began, New York State has made significant progress, with double-digit, positive gains on *Consideration, Business Climate Momentum and Business Climate Ratings*.

PERFORMANCE OF NEW YORK STATE SINCE TRACKING BEGAN

	Fall 2013	Winter 2014	Fall 2014	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	Diff: 18/19 vs. 2013
Consideration: % Def/Prob would consider NYS	45	49	57	56	60	54	62	+17
Business Climate Momentum: % getting better	29	49	50	49	53	49	55	+26
Business Climate Rating: % excellent/very good	34	44	55	52	57	52	57	+23

CONCLUSION:

FY 2018/19 was a strong year for New York State in terms of overall marketing performance. In the face of reduced marketing support, consideration and perceptions of New York State as a place to do business in remained at high levels.

Since much of this strong performance can be attributed to the continued positive perceptions and high levels of awareness built over previous campaigns at higher budget levels and the current positive economic environment, ESD should continue to develop effective and efficient marketing strategies and methods to ensure New York stays at these levels moving forward.

While the longer-term effects of reduced marketing budgets on consideration and perceptions remain to be seen, the data show the direct effect of reduced budgets on web traffic and quantity of leads. Typically, when brand advertising budgets are reduced there is lag before downward trends in perceptions appear. This is something ESD must remain conscious of as thoughts on the overall economic environment as well as other environmental factors can change quickly.

Without an on-going and effective marketing effort—in both good economic times and bad—website visitation and quality lead generation will continue to deteriorate; and it is only a matter of time before NYS will begin to feel its full effects on overall marketing performance.

Finally, as both year-to-year and trend data going back to 2013 indicate, marketing communications have been an integral component in strengthening the visibility of New York State, propelling it to its top position in the minds of business decision makers while contributing to job growth and business expansion. As such, relevant and timely messaging should continue to be supported to ensure continued, long-term success.

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TOURISM MARKETING PERFORMANCE REPORT

FY 2018/2019

TOURISM MARKETING PERFORMANCE REPORT FY 2018/19

OVERVIEW OF REPORT

This report summarizes the impact of Empire State Development’s tourism marketing efforts during FY 2018/19 and over time since 2015. It presents reliable, quantitative evidence demonstrating that shifts in perceptions of New York State as a vacation destination among the all-important target of Family Vacationers can be attributed to Empire State Development’s tourism marketing programs.

BACKGROUND

As a vacation destination, few states have as much to offer as New York. Simply put, New York State has it all. With world-class attractions and activities, beautiful beaches, lakes and mountains, as well as numerous State and National Parks, New York State can be enjoyed by vacationers all year-round. From day one, the Cuomo administration recognized the huge potential for tourism to positively impact the state economy and generate job growth and has worked hard to counter perceptions of “a NY vacation” to be confined to just New York City.

According to 2018 data from the Family Travel Association, the family travel market is now estimated to be over a \$150 billion industry. ¹ Millennial families are especially coveted by marketers, as they are the only demographic group with increased travel spending in 2018, up 8%. ² To increase New York’s share of this important sector, the Cuomo administration is committed to tourism, and has invested heavily to promote attractions and destinations across the state, including building welcome centers, improving infrastructure, and providing grants and incentives to businesses looking to grow the tourism economy.

These investments continue to pay off, and for the third fiscal year in a row, New York State remains the #1 most-considered family vacation destination in the Northeast. ³ Moreover, the economic impact of tourism comes from all corners of the state, with Direct Visitor Spending projected to be over \$72 billion in FY 2018/19. ⁴

It is Empire State Development (ESD) Marketing’s charge to develop communications that showcase New York State as an ideal vacation destination for families with children of all ages.

1. Source: The Family Travel Association, the industry’s leading coalition of family travel suppliers, resources and experts.

2. Source: Allianz Partners/Allianz Travel Insurance Group

3. In-Market Tracking/Russell Research

4. Source: ESD Tourism Economics

Marketing Spend

For 2018/19, the total tourism media budget was \$24,923,156, a decrease of 6% compared to marketing spend in 2017/18.

Television continued to be the major driver of spend, as the channel allows ESD to leverage sight, sound and motion to tell the most compelling story about the state. Out-of-Home (OOH), Search, Digital/Social and numerous events (such as the NY State Fair and Harlem Week) also received considerable support.

FY TOURISM MEDIA BUDGETS

	2015/16	2016/17	2017/18	2018/19
TV	\$16,106,503	\$16,794,861	\$18,780,297	\$19,128,606
OOH	\$1,081,059	\$1,676,719	\$2,532,605	\$1,609,057
Events	\$74,531	\$1,232,394	\$1,648,287	\$1,605,535
Search	\$923,750	\$1,158,674	\$1,277,888	\$1,282,542
Online Video	\$0	\$50,000	\$648,000	\$103,000
Digital Content	\$373,500	\$1,301,750	\$566,500	\$402,590
Social	\$303,750	\$462,151	\$396,830	\$625,958
Radio	\$54,092	\$369,518	\$314,408	\$0
Print	\$58,520	\$165,356	\$168,820	\$78,868
Syndication	\$0	\$87,550	\$110,753	\$87,000
TOTAL	\$18,975,705	\$23,298,973	\$26,444,388	\$24,923,156

Marketing Goals

ESD's marketing goals are to increase tourism visits and expenditures in New York State by:

- Creating awareness and enthusiasm for vacationing in New York State;
- Establishing New York State as the best choice for a family vacation within the NE drive-able region; and
- Providing information and resources that help family vacation decision-makers choose New York State and plan their trip.

These goals, in conjunction with marketing spend allocation are translated into Key Performance Indicators (KPI's), which are monitored on an ongoing basis through a variety of ways. KPI's include:

- Measurement of perceptions on New York State attractiveness as a vacation destination, particularly:
 - Likelihood of considering New York State for a vacation/getaway; and
 - Perceptions of New York State—measured by level of agreement with eight statements that have been statistically determined to be either *Critically* or *Intrinsically Important* drivers of vacation destination selection.
- ILoveNY.com website visits and activity.
- New York State visitor counts and RevPAR (i.e., Revenue Per Available Room).

Performance Measurement Tools

Three critical tools are used to measure and evaluate performance against KPI's:

1. Quantitative In-Market Tracking Research

- Conducted by Russell Research, a well-respected, national marketing research firm;
- 5,200 (100/month) online interviews among family vacation planning decision makers—parents 25-54 with HHI \$50K+ who travel with children less than 18 years of age, and reside in New York State or adjoining areas/DMA's;
- This research is designed to help identify “leading indicator” changes among this key target, allowing ESD Marketing to respond with optimized media and messaging;
- Measures importance of vacation criteria, awareness of marketing, perceptions of New York State as a vacation destination and future consideration; and
- Benchmarked versus other states.

2. Analysis of Website Activity via Google Analytics

- ILoveNY.com is an important avenue for those seeking information and to generate further excitement about a New York State Vacation; and
- In addition to already collecting visits, page views and time spent on site using Google Analytics, in FY 2018/19 ESD Marketing developed, launched and completed a Custom Exit Survey to provide information on why visitors come to the site and to measure perceptions of their user experience.

3. Tourism and economic data from ESD and NYS Dept. of Labor

- This includes data on Visitation, Room Supply, Rooms Sold, RevPAR, Job Growth and projected Direct Visitor Spending and Total Economic Impact.

MARKETING PERFORMANCE SUMMARY: A LOOK AT FY 2018/19

Overall, ESD Marketing continued to make a strong impact in FY 2018/19, and was associated with record levels of visitors to New York State and related increases in Direct Visitor Spending, Total Economic Impact and Job Growth. Moreover, ESD’s marketing met or exceeded KPI goals on several of the most important dimensions of performance, including *Consideration*—i.e., the percent of the target who is highly likely to consider NYS for a vacation in the near future.

Advertising communications were well-liked and played a key role in creating awareness and enthusiasm for vacationing in New York State. Among those aware of ESD’s advertising, scores are significantly higher across the board on consideration, willingness to recommend NYS to friends/co-workers, and on all key drivers of vacation selection when compared to those who are not aware.

Additionally, in FY 2018/19, New York State maintained its #1 position as the most highly-considered destination in the Northeast; among the family target in general and especially among those aware of ESD advertising.

Finally, communications led to action—propelling monthly visits to ILoveNY.com to record levels, while annual visitation to the site reached a milestone of over 5MM visits. Data from the recently conducted ILoveNY.com Custom Exit Survey provides insight into these increases: users report that the site is a highly useful and well-liked vacation planning resource.

Details and Supporting Data:

Tourism in New York State continues to boom and show tremendous vitality on all fronts, with increases in visitation, room supply, rooms sold, RevPAR, direct visitor spending, total economic impact and job growth.

Specifically, New York State is projected to attract nearly 254 million visitors in FY 2018/19, an increase of +3.4% versus the prior fiscal. Room supply and rooms sold also increased. RevPAR for NYS in total, as well as for NYS excluding NYC are up as well vs. last year. Increases in visitation have also contributed to gains in Direct Visitor Spending, which is up 6.2% vs. last year.

The net result of all of these positive gains is a 5.6% increase in Total Economic Impact and a 1.8% increase in Average Annual Employment.

Economic Impact of New York State Tourism

	FY 2017/18	FY 2018/19	% Diff.	Percentage Point Diff.
Visitation (Projected)	245,473,600	253,729,441	+3.4%	N/A
Room Supply	84,878,131	86,558,652	+2.0%	N/A
Rooms Sold	63,265,769	64,302,389	+1.6%	N/A
RevPAR % change vs. prior period: New York State	3.9	6.1	N/A	+2.2 PPT
RevPAR % change vs. prior period: NYS (excluding NYC)	2.1	3.8	N/A	+1.7 PPT
Direct Visitor Spending (Projected)	\$68,187,658,149	\$72,388,760,000	+6.2%	N/A
Total Economic Impact (Projected)	\$109,600,000,000	\$115,741,360,000	+5.6%	N/A
Average Annual Employment (Projected)	941,200	958,600	+1.8%	N/A

*Source: NYS Dept. of Labor and ESD Tourism Economics

ESD’s marketing was successful at meeting or exceeding several KPI goals set for FY 2018/19. In particular, *Consideration* surpassed goal by +2 percentage points. This is a sizeable gain as NYS is now approaching near-universal acceptance as a destination—that is, nearly 9 out of 10 target prospects are willing to put NYS on their vacation list.

A similarly impressive (+2 percentage points) gain relative to goal was also achieved on the *Critically Important* driver *A place to spend quality time with family/significant other*, while *A place where I can create lasting memories* met its goal and remains strong at 83%.

Both dimensions were set as strategic imperatives this year and were addressed in ESD communications via advertising that focused on special, “family-bonding” moments that are part of the NYS vacation experience.

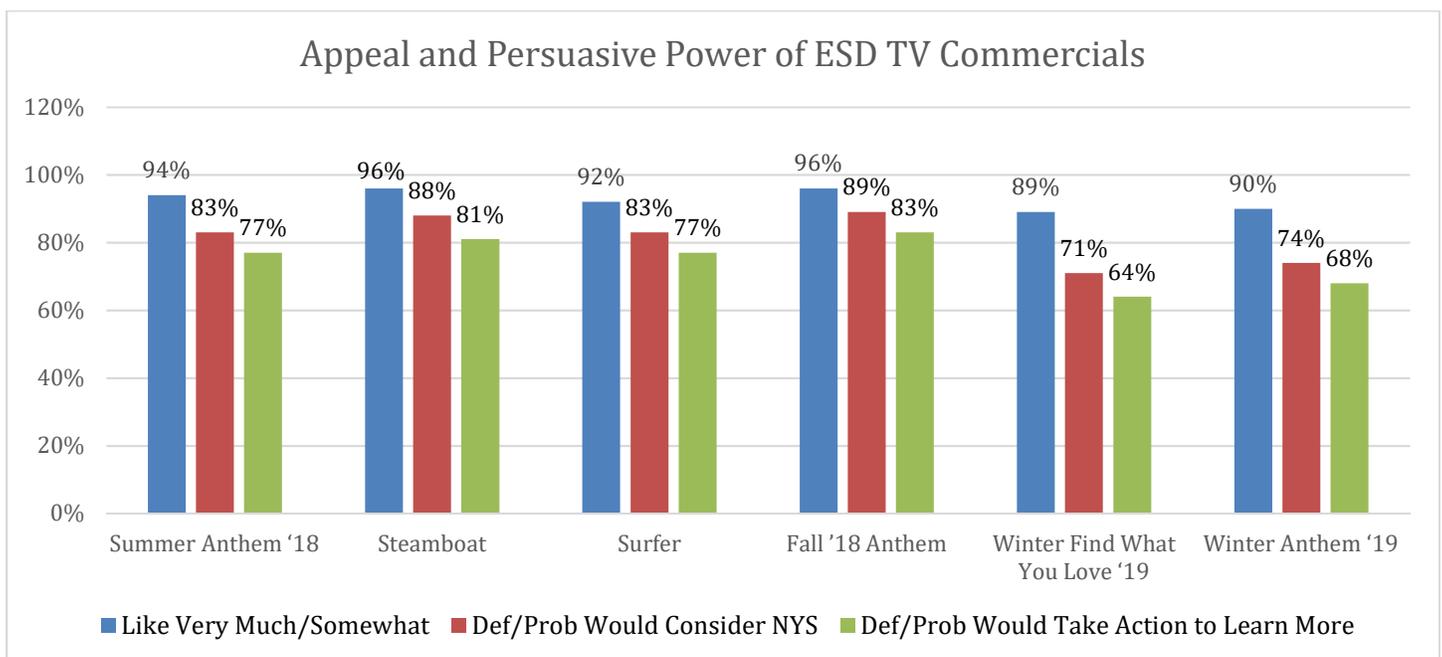
	Aware of Advertising	Diff. vs. KPI Goal
Consideration		
Would definitely/probably consider NYS for vacation in next year	89%	+2
Critically Important		
A place where I can create lasting memories with those I care about	83%	+/-0
A place to spend quality time with family/significant others	86%	+2
Has many places for families to visit	82%	-1
Is good value for the money	71%	-3
Intrinsically Important		
Is a place family and friends go	79%	-3
Is a place I know	75%	-2
Is a place that is special and unique	72%	-2
Recommended by family and friends	73%	-2

*Source: In-Market Tracking/Russell Research

Despite these substantial and positive achievements, performance goals were not met for all key drivers of vacation selection. While some measures fell just short of goal, absolute levels achieved are still very strong, and all other signs clearly point to the effectiveness of ESD’s marketing programs. Moreover, most of the KPI goals that were not achieved are on *Intrinsically Important* attributes, which tend to be more “subconscious motivations”. The 6% reduction in spend for this fiscal is likely attributable to performance measures not reaching all goals.

In the competitive and cluttered family vacation marketplace, ESD’s communications stood out and were highly appealing and motivating to the target. Specifically, nearly half of family vacation decision-makers (47%) recall seeing one or more specific New York State tourism commercials; each commercial aired in FY 2018/19 was well-liked, drove consideration of NYS as a vacation destination, and piqued the target’s interest to learn more.

Commercials aired during the critical summer and fall seasons were especially strong performers on all measures. Winter spots, as seen in the past, generally perform slightly below commercials for other seasons. This is not surprising because not everyone in the tracking study target sample is open to a “cold weather” winter vacation—preferring instead to head someplace warm during November, December and January.



*Source: In-Market Tracking/Russell Research

Taken as a whole, ESD’s communications are highly effective at driving consideration and enthusiasm towards New York State as a place for a family vacation.

While both those aware and unaware of ESD’s advertising show high levels for both measures, those aware of the advertising are even more likely—by a significant margin—to consider vacationing in New York State vs. their unaware counterparts. The same pattern is seen on the measure of enthusiasm, with those aware of advertising significantly beating those unaware when it comes to recommending New York State to friends and co-workers.

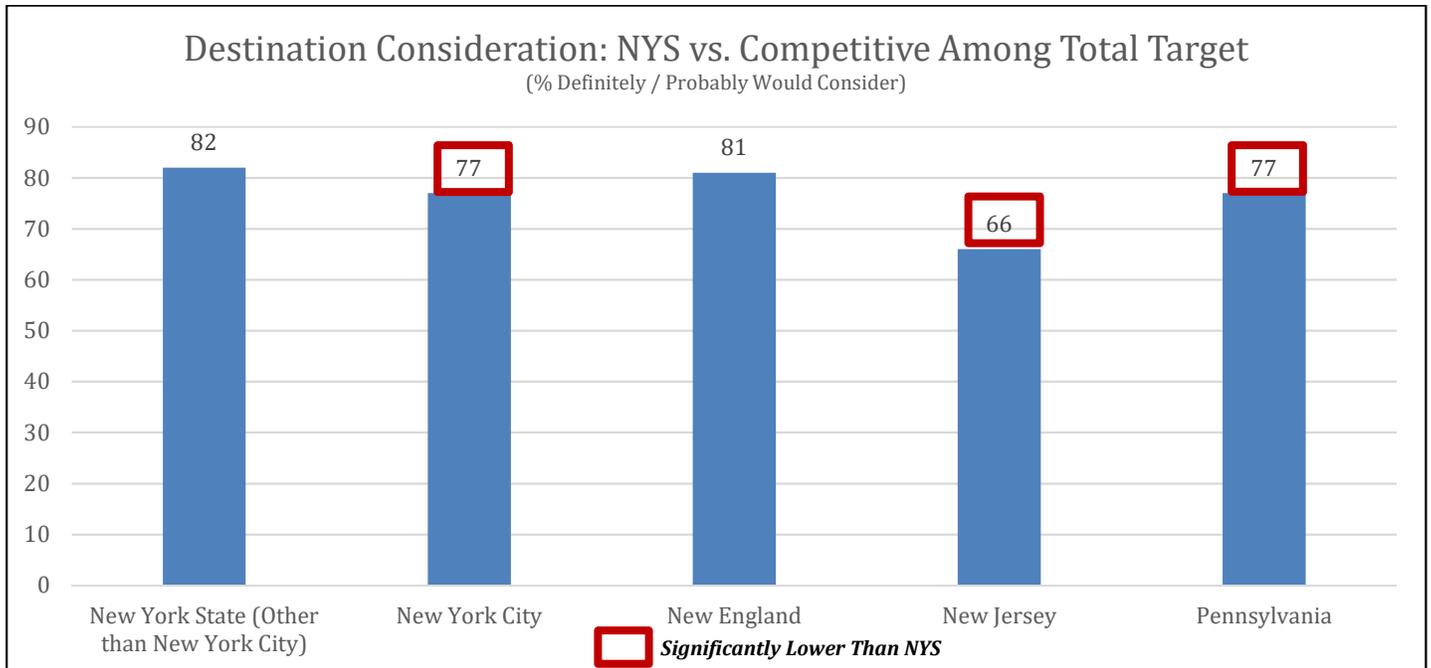
	Aware of Advertising	Unaware of Advertising	Diff.
Consideration			
Would definitely/probably consider NYS for vacation in next year	89%	77%	+12
Enthusiasm			
Highly likely to recommend NYS to friends and co-workers	86%	77%	+9

*Source: In-Market Tracking/Russell Research

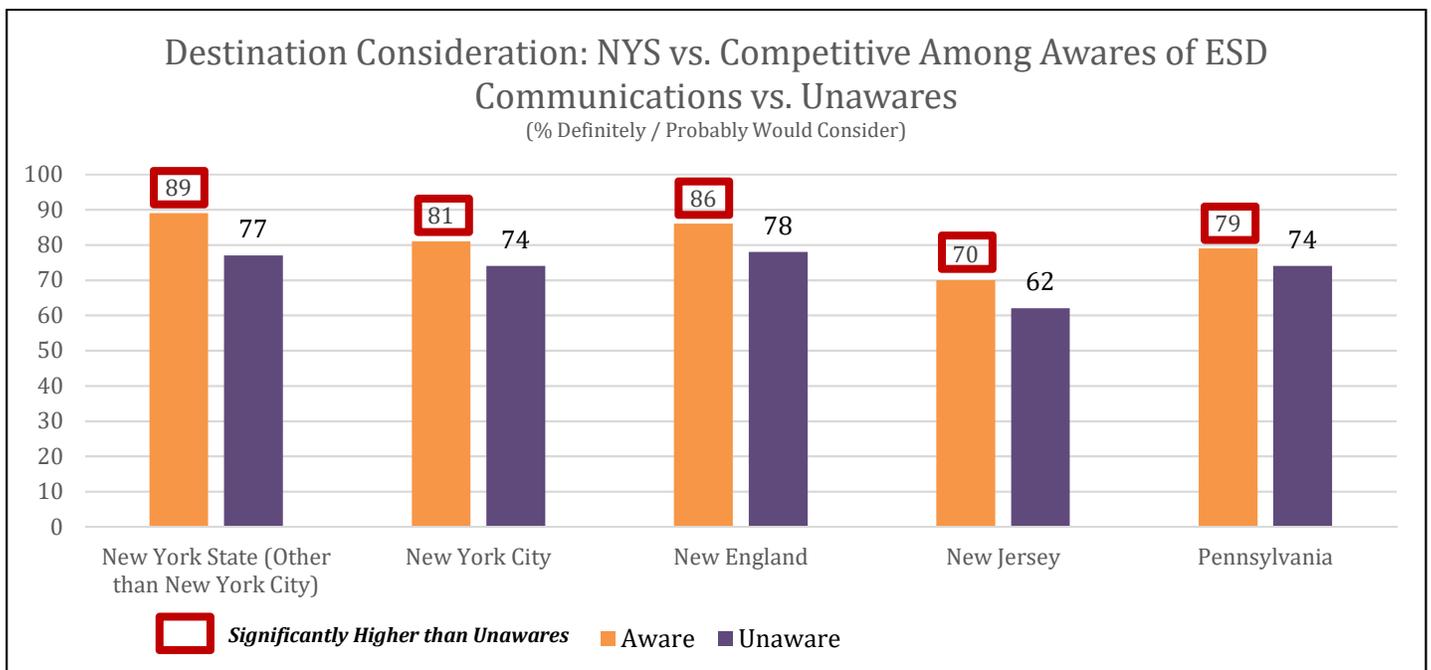
And when it comes to evaluating NYS on the drivers of vacation destination selection, *across the board* those aware of ESD communications also have significantly superior perceptions of NYS vs. those who are unaware.

	Aware of Advertising	Unaware of Advertising	Diff.
Critical Drivers			
Create lasting memories	83%	68%	+15
Quality time w/family & friends	86%	72%	+14
Many places for families to visit	82%	66%	+16
Good value for the money	71%	56%	+15
Intrinsic Drivers			
Place family/friends go	79%	61%	+18
Place I know	75%	54%	+21
Special & unique	72%	54%	+18
Recommended by friends/family	73%	55%	+18

Given the exceptionally strong scores for New York State on consideration, likelihood to recommend and imagery dimensions, it is not surprising that New York State is well-positioned competitively vs. other Northeast drivable vacation destinations. In fact, New York State is #1: it has the highest level of consideration for vacationing in the next year—significantly surpassing NJ, PA and New York City, and just edging out *the entire* New England region. This is true across the total target as well those aware of the advertising.



*Source: In-Market Tracking/Russell Research



Source: In-Market Tracking/Russell Research

Along with these high scores on consideration, NYS image ratings surpass those of neighboring states on every dimension. Again, it is clear that ESD’s communications play a strong role in elevating these perceptions even further. That is, those aware of ESD’s advertising are significantly more positive about New York State when compared to their perceptions of New England, NJ and PA. Furthermore, among this group, New York State even holds its own vs. New York City: the sole exception being on the dimension of “A place that’s special and unique.”

**New York State Advantages Vs. Competitive States
(Among Total Aware of Advertising)
FY 2018/19**

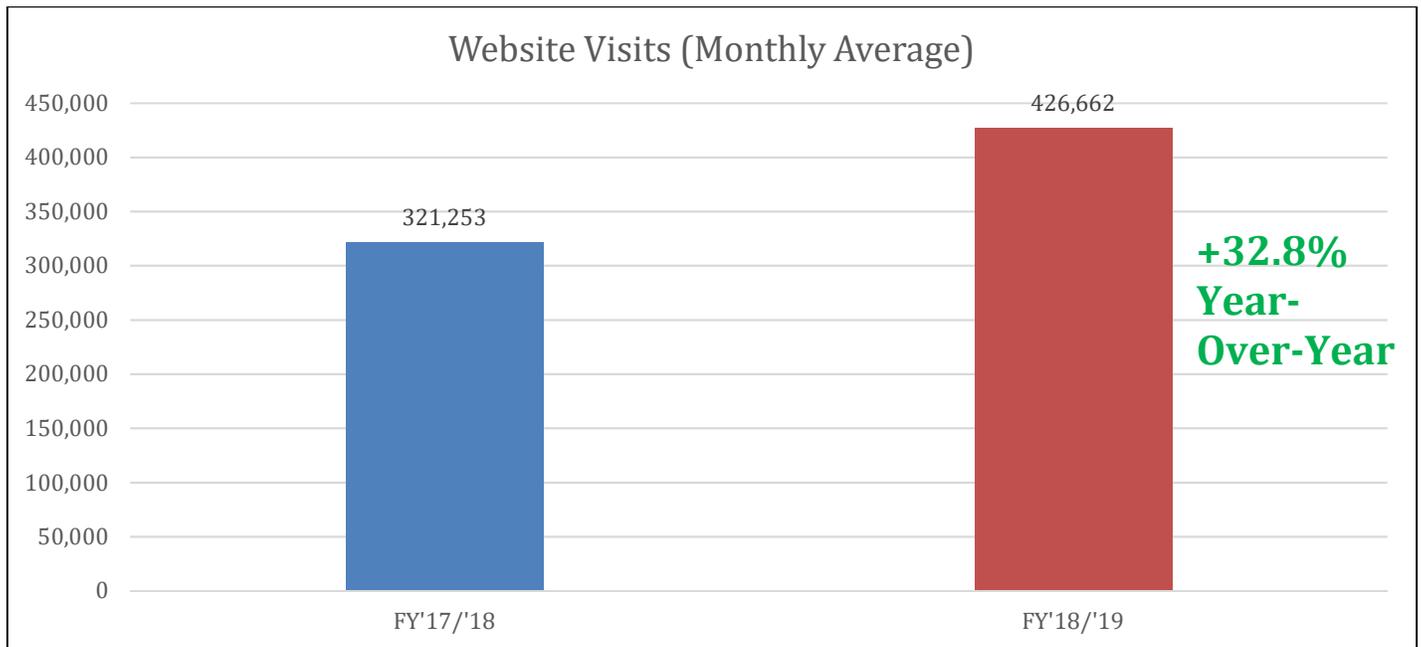
	NYS	NYC	New England	New Jersey	Pennsylvania
Critically Important					
Is a place where I can create lasting memories for myself and those I care about	83	83	79	64	72
Is a place where I can spend quality time with my family/significant other	86	76	80	65	75
Has many places for families to visit	82	79	78	63	72
Is a good value for money	71	43	61	53	69
Intrinsically Important					
Is a place family and friends go	79	75	71	61	68
Is a place I know	75	72	56	54	59
Is recommended by family or friends	73	73	69	52	60
Is a place that's special and unique	72	82	71	50	58

*Source: In-Market Tracking/Russell Research

 **Significantly Higher Than NYS**
 **Significantly Lower Than NYS**

Finally, the ILoveNY.com website plays a critical role in the marketing mix, providing information on all that New York State has to offer. As such, tourism communications from ESD always feature the web address prominently and encourage the target to “visit ILoveNY.com to plan your family’s vacation today.”

Data from Google Analytics demonstrate the impact of this call-to-action: in FY 2018/19, average monthly website visits reached an all-time high of 426,662. This represents a 32.8% percent increase vs. prior year.



*Source: Google Analytics

During FY 2018/19, ESD developed and launched a Custom Exit Survey on the ILoveNY.com website. Nine hundred (900) visitors to the site completed the Exit Survey from December 2018 through March 2019.

Results of the survey illustrate why site visitation continues to increase year-over-year: more than 8 in 10 visitors rate it as “excellent/very good”, and give it similarly high marks for being inspiring, valuable, fun, and easy-to-use. Moreover, many users visit the site again and again when planning a vacation and/or looking for ideas for activities in NYS.

Overall Website Rating:	
% rating site “excellent/very good”	82%
Website Performance/Image Ratings: Mean score on 10-point scale	
Inspires me to want to travel in NYS	8.4
Is a valuable travel tool	8.3
Is a fun and interesting website	8.1
Is easy and logical to navigate	8.0
Provides info/features I need and want	8.0
Provides info I can’t find anywhere else	7.7
Frequency of visiting website	
1 st time	57%
2-5 times	22
6-9 times	6
10+ times	15

Source: ILoveNY.com Custom Exit Survey

MARKETING PERFORMANCE SUMMARY: TRENDS OVER TIME

ESD Marketing initially began tracking perceptions of New York State in 2015. That year, perceptions at two points in time were measured, to capture winter vs. summer performance. In FY 2016/17, a much more sophisticated and robust *monthly* tracking study was implemented. Therefore, fully comparable trend data is only available for FY 2016/17 through FY 2018/19, with just a few measures being comparable to 2015 waves.

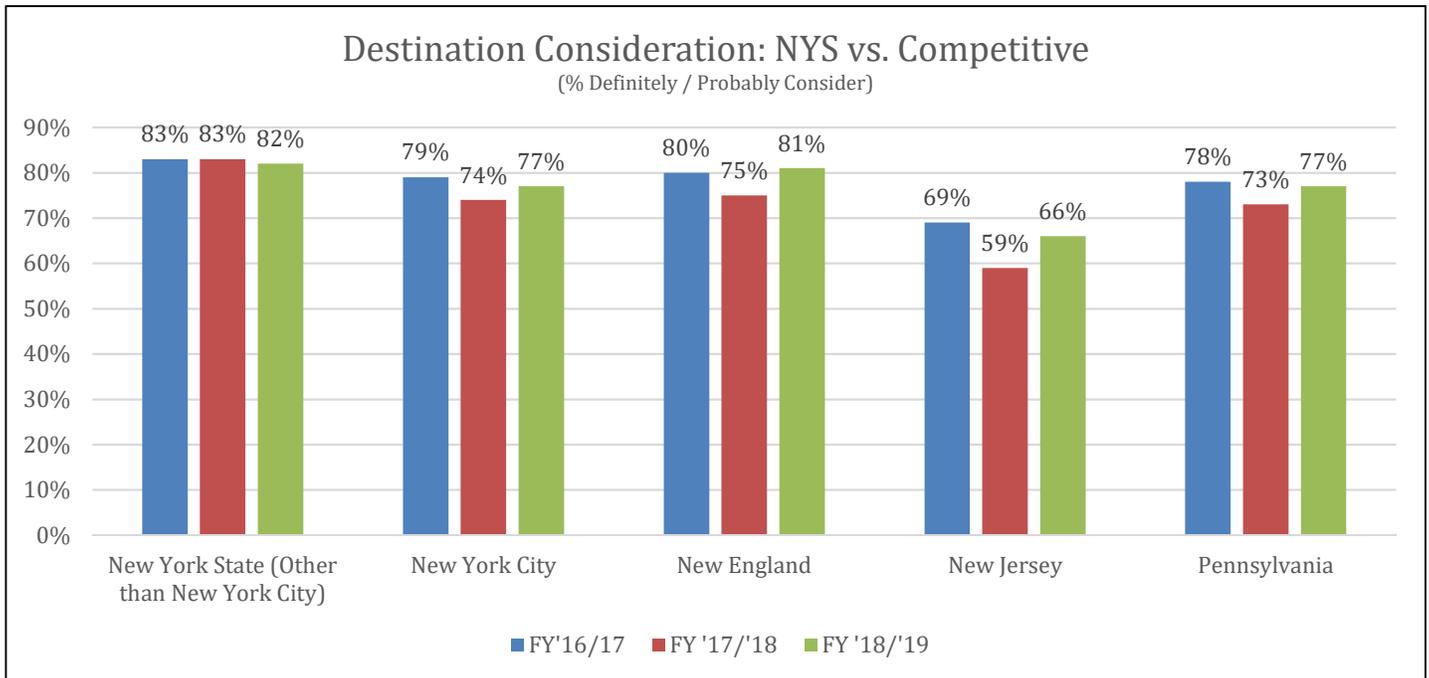
Looking at trends beginning FY 2016/17 through FY 2018/19, year-over-year results for NYS are clearly strong:

- Consideration for New York State is highest compared to all other destinations tracked and has remained consistent for 3 years in a row. This is impressive given that other competitive destinations, after dropping in consideration from FY 2016/17 vs. FY 2017/18, have rebounded in FY 2018/19 to their original levels.
- New York State also continues to exceed expectations among those aware of the advertising on virtually every imagery dimension deemed most important to the target.

Finally, going back to 2015 when tracking started, New York State has made significant and positive progress on every measure for which four waves of trend data are available, showing double-digit gains on consideration and key image dimensions across the board.

Details and Supporting Data follow:

For the past three years, New York State has remained the #1 most-considered destination, surpassing New York City, New England, NJ and PA. Consideration for New York State has held steady at over 80% percent, while consideration for every other destination exhibits year-to-year volatility.



*Source: In-Market Tracking/Russell Research

Again, for three years running, positive associations with a vacation in New York State have exceeded expectations on nearly every single *Critically* and *Intrinsically Important* dimension among those aware of ESD’s communications.

The one dimension that NYS continues to struggle with is on perceptions of value, which is growing in importance and is thus even harder to meet or exceed. ESD Marketing believes that the best way to address the value issue is by building perceptions of the New York State *brand*, rather than by promoting “prices” or “deals.”

**New York State Performance: FY 2016 vs. FY 2018/19
-Among Aware of ESD Communications-**

	FY 16/17 Diff: Associations w/ NYS vs. Importance	FY 17/18 Diff: Associations w/ NYS vs. Importance	FY 18/19 Diff: Associations w/NYS vs. Importance
Critical Drivers			
Create lasting memories	+4	+3	-2
Quality time with family/friends	+3	+2	+/- 0
Many places for families to visit	+14	+17	+12
Good value for the money	+/- 0	-2	-6
Intrinsic Drivers			
Place family/friends go	+20	+24	+20
Place I know	+40	+46	+45
Special & unique	+13	+15	+15
Recommended by family/friends	+26	+30	+30

*Source: In-Market Tracking/Russell Research

Lastly, there is excellent news to report when trends for New York State are examined going back to the start of measurement in 2015. The evidence is clear: As a family vacation destination, New York State shows double-digit or statistically significant gains on consideration and all measurable image dimensions that drive the decision to choose New York State over other vacation options.

Performance Trends Since Measurement Began

	Winter 2015	Summer 2015	FY 16/17	FY 17/18	FY 18/19	Diff: FY 18/19 vs. start
Consideration						
% Def./probably would consider NYS in next year	63	60	83	83	82	+19
NYS Ratings						
Recommended by friends/family	48	46	74	67	63	+15
Place family/friends go	58	57	78	74	69	+11
Special & unique	50	49	73	67	63	+13
Is a place I know	56	54	73	69	64	+8
Good value for the money	49	47	74	67	63	+14

*Source: In-Market Tracking/Russell Research

CONCLUSIONS

Quantitative performance measurements show that New York State continues to be the #1 most-considered family vacation destination in the Northeast. Clearly, ESD’s marketing communications play a vital role in creating awareness of and generating interest in all that a NYS vacation has to offer, while motivating the target to actually select NYS over the myriad of other vacation options available to families. The net result of these efforts has significantly and positively impacted the state’s economy and job growth, and should continue to be generously supported.

I LOVE NY Logo Assessment

2018 Report

Background:

- As part of its overall monitoring of New York State’s brand health, ESD Marketing tracks associations with the ILOVENY logo via their Tourism Tracking Study.
 - The survey launched in July 2016, and is online
 - Sample is comprised of 100 target consumers each week/5200 each year
 - Adults 21+, with emphasis on families with children under 18
 - Key decision makers when it comes to family vacation planning
 - Have taken 3+ leisure trips in the past two years
 - HHI \$50K+
 - Interviews split between in-state residents and out-of-state travelers in NE Driveable Markets, including Canada
- This analysis focuses on data from the 2018 calendar year; data for 2019 is not yet available.

Logo Association Measurement:

- To monitor associations and meaning of the ILOVENY logo, all respondents in the survey are shown an image of the logo and are asked: *“What associations do you have when you see this logo?”*
- They are then presented with the following list of choices, **which are randomized to prevent order bias:**
 - NYC Souvenirs (T-shirts, mugs, caps, etc.)
 - NYC Tourists
 - A way to express that you love New York City
 - Advertising to promote travel to New York City
 - Advertising to promote travel to New York State
 - A way to express that you love New York State
 - It reminds me of some old advertising
 - Something every city has a version of
- Respondents are instructed to “check all that apply.” Therefore, they may select as many or as few associations as they see fit

Key Areas of Interest Explored in this Analysis:

- What are the top associations with the ILOVENY logo?
- Have these associations changed over time?
- Do NY State residents have similar associations with the logo as out-of-state travelers?
- Are there differences in logo associations among those aware of ESD Tourism advertising vs. those who are not aware?

Summary of Findings:

As reported last year, The ILOVENY logo means many things to target consumers. However, *NYC Souvenirs* and *Advertising to Promote Travel to New York State* continue to be the most salient and significant associations, at 44% apiece.

- Secondary associations for the logo include *NYC Tourists*, *Advertising to Promote NYC* and *A Way to Express that you love New York State*, with about one-third of consumers selecting each of these.
- The ILOVENY logo continues to be seen as quite unique, with just 1 in 10 target consumers associating “*Something every city has a version of*” with the logo.

The absolute levels and rank order for most of these associations have remained relatively unchanged over the past year—that is, when data from 2017 is compared to 2018 findings. The two exceptions are as follows:

- In 2018, the logo is significantly more associated with *Advertising to Promote Travel to NYS*
- *A Way to Express that you Love NYC* has dropped significantly

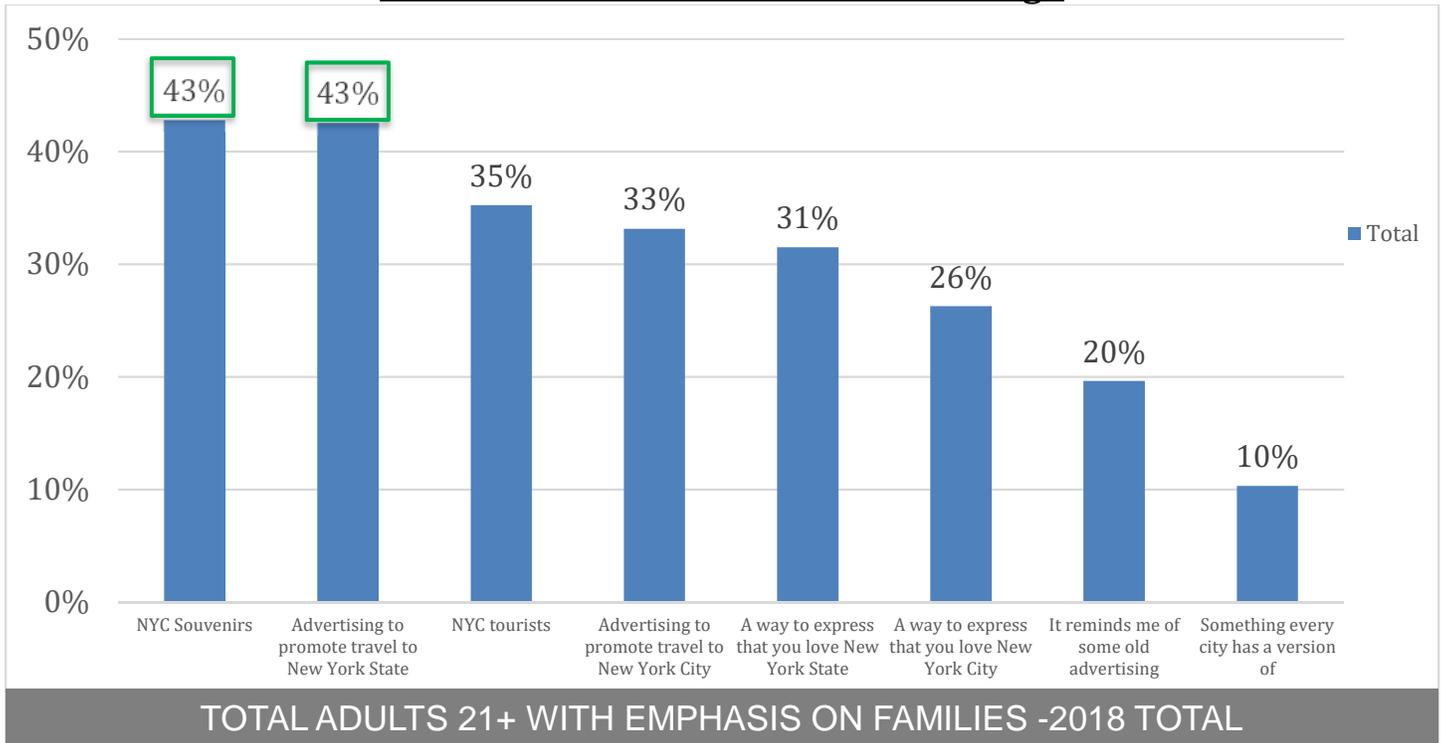
A key goal of NYS Tourism marketing is to more strongly associate the ILOVENY logo with overall state tourism beyond its traditional association with NYC.

New York State residents are significantly more likely than non-residents to associate the logo with *Advertising to Promote Travel to New York State (+17 percentage points)* and *A Way to Express that you love New York State (+11 percentage points)*. Non-New York State travelers have higher associations for the logo on virtually all other dimensions, with several being significant:

- NYC Souvenirs
- NYC Tourists
- Advertising to promote travel to NYC
- A way to express that you love NYC

Finally, those aware of ESD Tourism advertising tend to have higher levels of logo association in general relative to non-ad awares, with the most significant difference being *Advertising to Promote Travel to New York State (50% vs. 36%)*. The top association among those unaware is *NYC Souvenirs*, at 42%.

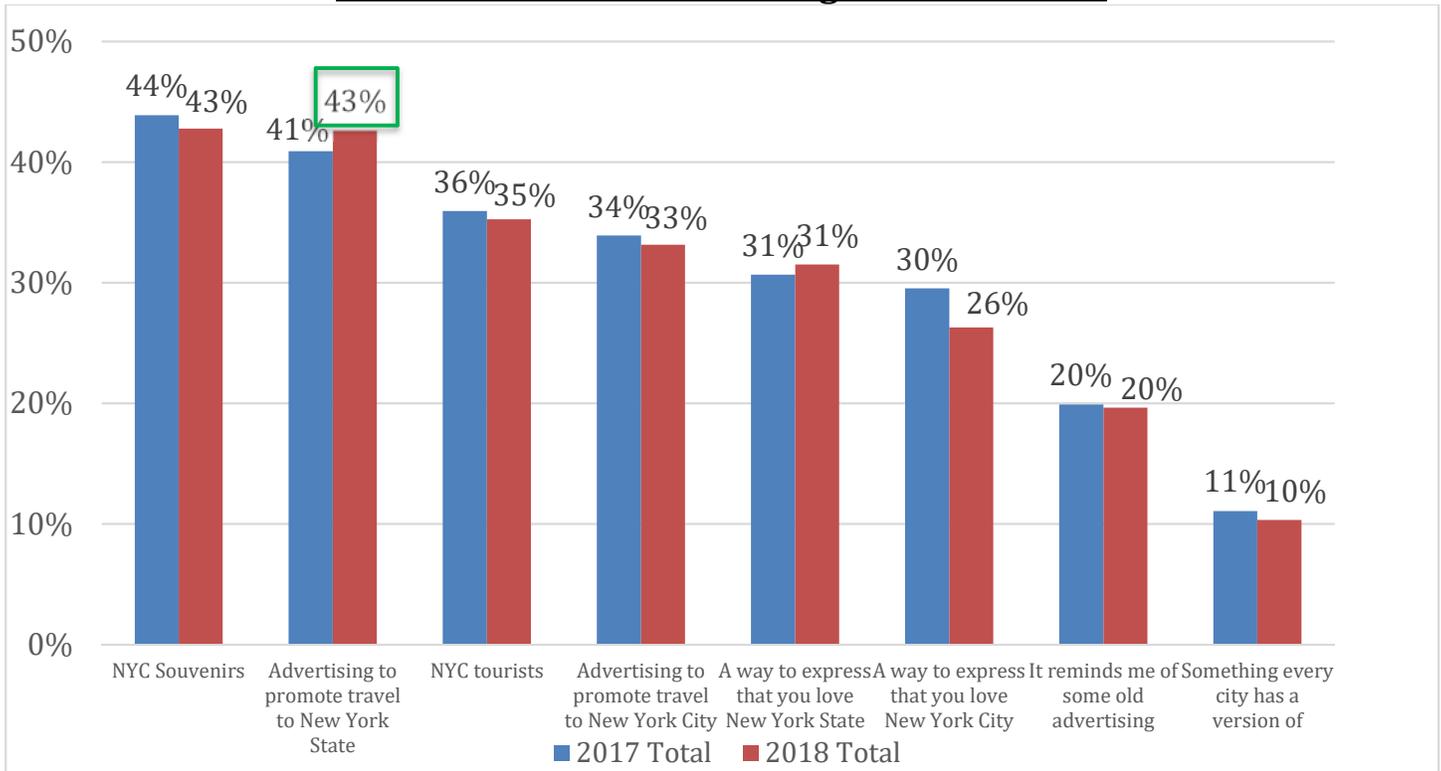
Overall Associations with ILOVENY Logo



 : Indicates figures are significantly higher than all other attributes at a 90% confidence level

Base: Total Respondents
30. What associations do you have when you see this logo?

Overall Associations with Logo: 2017 vs 2018



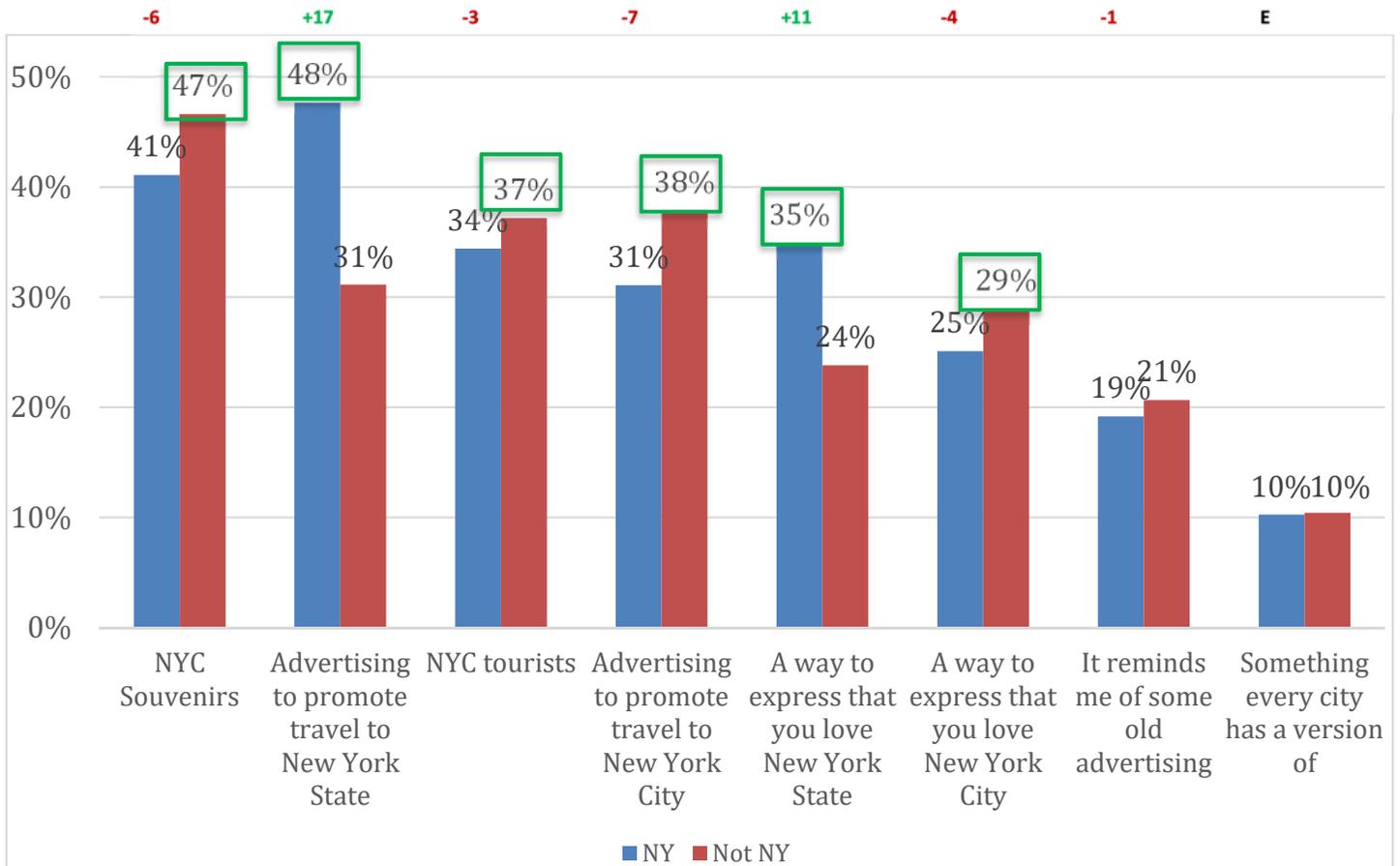
TOTAL ADULTS 21+ WITH EMPHASIS ON FAMILIES – 2017 & 2018 Full Year

○ : Indicates 2018 figure is significantly lower than the 2017 figure at a 90% confidence level

□ : Indicates 2018 figure is significantly higher than the 2017 figure at a 90% confidence level

Base: Total Respondents
30. What associations do you have when you see this logo?

Logo Associations: NY residents vs. Non-NY:

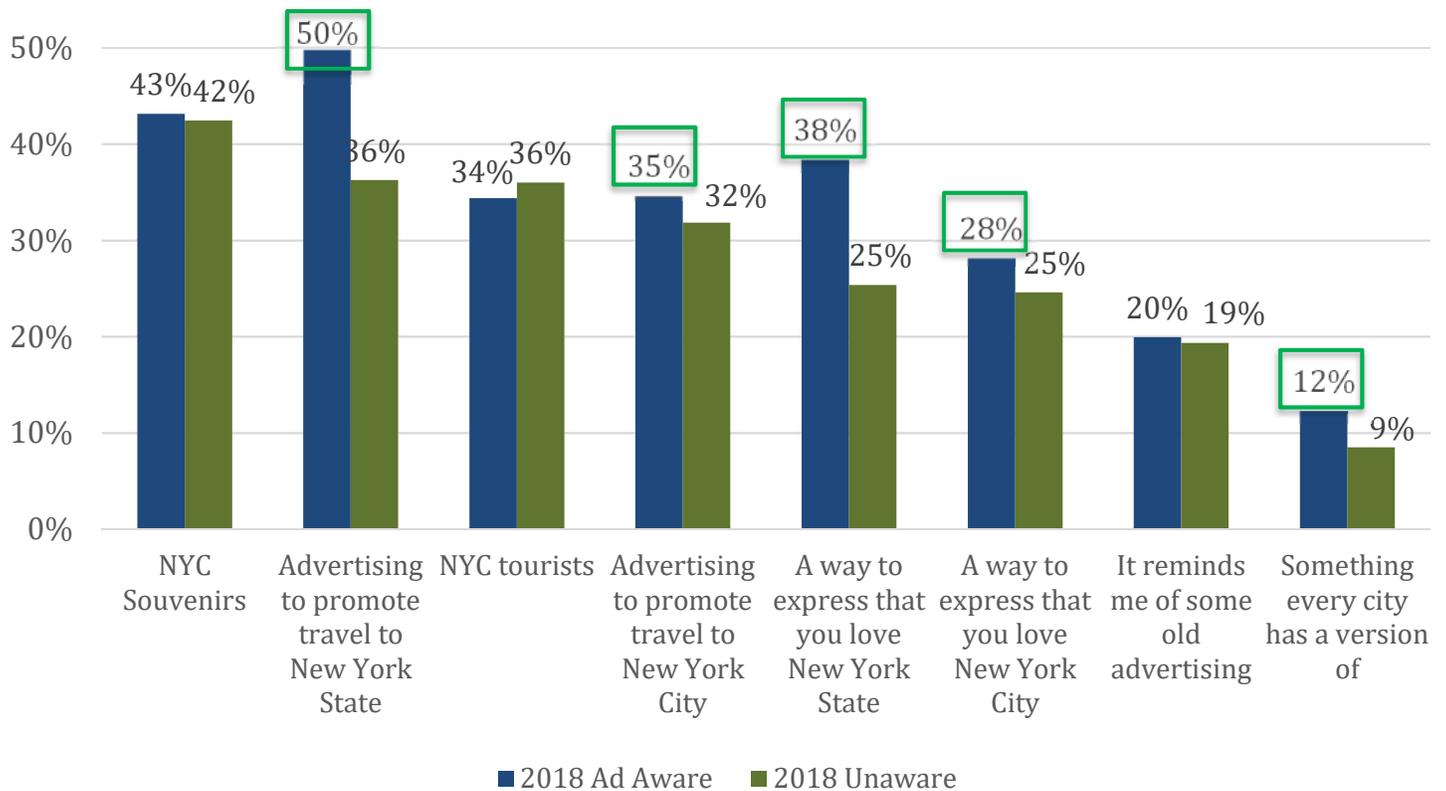


TOTAL ADULTS 21+ WITH EMPHASIS ON FAMILIES -2018 NY VS. NOT NY

 : Indicates figure is significantly higher than the other/indicated sub-group at a 90% confidence level

Base: Total Respondents
30. What associations do you have when you see this logo?

Logo Associations: Aware of ESD Tourism Advertising vs. Unaware



TOTAL ADULTS 21+ WITH EMPHASIS ON FAMILIES – 2018 AWARE VS UNAWARE

 : Indicates figure is significantly higher than the other/indicated sub-group at a 90% confidence level

Base: Total Respondents
30. What associations do you have when you see this logo?

LICENSING PROGRAM

FY 2018/2019 Report

OVERVIEW

The I LOVE NY licensing program seeks to amplify New York State's tourism message through consumer products that connect the logo to a travel experience, either by acting as a souvenir and/or by carrying messaging that inspires travel to New York State.

In FY 18/19, the licensing program is expected to generate over \$800k in revenue across 46 active licensees serving retailers throughout the US, Asia and Europe.

By the Numbers:

- 400+ Retail Stores
- 1,000+ SKUs
- 46 Licensees
- 6+ Countries
- \$10MM+ Retail Revenue
- \$800k+ Licensing Revenue

PROGRAM OBJECTIVES

The program objective of the licensing program is to leverage licensed product as a conduit to promoting tourism to New York State while simultaneously driving revenue.

- Promote tourism to all of New York State
- Connect the I LOVE NY logo to all of New York State
- Increase program revenue

FY 2018/2019 HIGHLIGHTS

I LOVE NY has proactively sought innovative ways to incorporate tourism messaging onto products and packaging in order to promote travel to New York State. Below are some key highlights:

- Tourism messaging has started rolling out onto souvenir products with callouts to iloveny.com, where purchasers can go for travel planning information
- New York State themed imagery from regions across the state has been incorporated onto product packaging to connect the logo to travel statewide
- The logo has been incorporated into new products related to tourism activities, such as souvenir wine glasses, hiking themed trail mix and travel journals

I LOVE NY has begun to cultivate relationships with partners and vendors to make I LOVE NY merchandise available in markets across Upstate New York. These efforts will help deepen the logo association with greater New York State as customers see the logo in areas across the state. Below are examples of recent executions:

- Developed working relationships with Tourism Promotion Agencies and Welcome Centers to explore making I LOVE NY product available that is related to the tourism assets and activities of the specific regions, such as ponchos and umbrellas for Niagara Falls and branded baseballs and hats for gift shops in Cooperstown
- Began outreach to the managers of upstate museum gift shops to develop co-branded merchandise for sale
- Began outreach to snow-sport and sporting goods retailers and licensees to further develop seasonally relevant ILNY product

FY 2018/2019 HIGHLIGHTS (cont'd)

I LOVE NY licensing efforts have leveraged requests to use the logo into opportunities to promote New York State tourism. Within each permission use request, I LOVE NY creatively identifies ways to incorporate tourism messaging generating millions of additional impressions and \$100k+ of revenue for the state. Below are some key highlights:

- The I LOVE NY logo was incorporated into a worldwide advertising campaign for the new Spider-Man movie. The logo was shown in a travel-related context with the specific language “Visit NY State” incorporated into the artwork that will be visible to millions of consumers around the world.
- The I LOVE NY logo was incorporated into a promo spot for the 2018 US OPEN along with the requirement that various regions of New York State including Niagara Falls and Long Island be included in the spot. The commercial was aired internationally.
- Versace promoted @iloveny social media accounts to it’s 20M+ social media following in exchange for the ability to use the logo during a NY themed fashion show.

FINANCIAL OVERVIEW

The ILNY licensing program generates \$800k+ of annual licensing revenue for New York State programs.

Total revenue for FY 2018-2019: \$867,450

2018 LICENSEES

American Tshirt Gifts	Impact Merchandising	Rafia
Amusemints / Nassau Candy	Ingram	S&T World Products
Astor Chocolate Group	Jay Joshua	SBH Marketing
Baggu	Jpatton	Simply Grateful
Camp David	Kurt Adler	Snacktime Distribution
City Merchandise	Maid of the Mist	Sony Pictures
Converse	Maison Margiela	Spirit Products
Disney	Mars	Sugarfina
Easy Street Publications	Matrix NY	Torkia
Empire Brewery	MOMA	Toy Wonders Inc.
ESPN	NBC Universal	Uptown Creative
Everclear/Kings	New York Popular	Vans
ExceptionLab	North American Apparel	Versace
Fantastical	NY Doll Collection	WTC
Hewy Wine Chillers DBA Corkcicle	NY NY Hotel & Casino	
Image Exchange	NYC Screenprinting	

CONTRACT FACE PAGE

AGENCY (Name and Address): ATTN: Contract Management Unit NYS Department of Economic Development Albany, New York 12245	Contract Number: X004852 Business Unit: DED01 Department ID: 3200000
	TYPE OF PROGRAM: Trademark Licensing Agency

CONTRACTOR (Name and Payment Address): Brand Sense Partners, LLC 3250 Ocean Park Blvd., Suite 160, Santa Monica, CA 90405	STATUS: Contractor IS NOT a sectarian entity. Contractor IS a for-profit organization.
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CHARITIES REGISTRATION #: N/A	RENEWAL TERM (IF APPLICABLE): FROM: 7/1/2017 To: 6/30/2020
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NYS Vendor ID # 1100138290 FEDERAL TAX I.D. #: 59-3583245	INITIAL CONTRACT PERIOD: FROM: 7/1/2015 TO: 6/30/2017
--	---

MUNICIPALITY # (IF APPLICABLE): N/A	Contract Amount: Revenue Agreement
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APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT:	
<input checked="" type="checkbox"/> APPENDIX A Standard Clauses	<input type="checkbox"/> APPENDIX G
<input type="checkbox"/> APPENDIX A-1 DED-Specific Clauses	<input type="checkbox"/> APPENDIX H
<input checked="" type="checkbox"/> APPENDIX B Budget	<input type="checkbox"/> APPENDIX X Sample Modification Agreement Form
<input checked="" type="checkbox"/> APPENDIX C Request for Proposals	<input type="checkbox"/> OTHER (Identify) _____
<input checked="" type="checkbox"/> APPENDIX D Work Plan	<input type="checkbox"/> OTHER (Identify) _____
<input type="checkbox"/> APPENDIX E Participation by Minority Groups	<input type="checkbox"/> OTHER (Identify) _____
<input checked="" type="checkbox"/> APPENDIX F Active Trademark Registrations	<input type="checkbox"/> OTHER (Identify) _____

AGREEMENT by and between the NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, with offices located at 625 Broadway, Albany, New York 12207 (the "Department") and BRAND SENSE PARTNERS, LLC, a limited liability company located at 3250 Ocean Park Blvd., Suite 160, Santa Monica, CA 90405 (the "Contractor" or "BSP") (collectively, the "Parties").

WITNESSETH:

WHEREAS, pursuant to Section 100 of the Economic Development Law, the Department is authorized and obligated to undertake ways and means to promote and encourage the prosperous development and protection of the legitimate interest and welfare of New York State (the "State") business, industry and commerce, within and outside the State, and to plan and conduct a program of publicity designed to attract tourists, visitors and other interested persons to the State; and

WHEREAS, pursuant to Section 161 of the Economic Development Law, the Department is authorized and obligated to encourage and facilitate the planning and implementation of programs to advertise, stimulate, promote and increase tourist travel, resort, vacation, culture and convention activities within the State and its regions with such flexibility as to bring about as effective and economical a tourist promotion plan as possible;

WHEREAS, pursuant to paragraph 45 of Section 100 of the Economic Development Law, the Commissioner of the Department shall have the duty to license, maintain and lease, where appropriate, an official brand, "I Love NY";

WHEREAS, pursuant to the aforesaid duties and responsibilities, the Department has adopted and used in commerce certain Property, as that term is defined in Section 1(g) below, and has the exclusive right to license and otherwise exploit, throughout the United States, all merchandising rights in the Property; and

WHEREAS, the Department wishes to license the Property to individuals and businesses willing to pay the Department royalties and/or other compensation or consideration for the right to make, use and/or sell goods and services bearing the Property;

WHEREAS, the Department sent Request for Proposal 15-6102, excepting Sections 4.2 and 4.3, and attached hereto as Appendix C, to qualified firms to serve as the Department's licensing agent to provide full domestic and international licensing services in support of the Property; and

WHEREAS, the Contractor submitted a proposal (the "Proposal") incorporated here by reference and portions of which are attached hereto as Appendix D, which the Department has determined comprises the best value in response to the Department's RFP; and

WHEREAS, the Contractor is engaged in the business of representing the owners of entertainment, music, consumer products, and similar properties, trademarks and trade names, service marks, and prominent persons, in securing revenues from persons and/or firms who will be licensed to make, use or sell goods and services bearing such properties, trademarks and persons; and

WHEREAS, the Department requests the advice, assistance and counsel of the Contractor with respect to various issues relating to the Property, License Agreements and Property Agreements, as those terms are defined in Section 1(c), 1(g) and 1(h) below; and

WHEREAS, the Contractor is a non-sectarian entity;

NOW, THEREFORE, in consideration of the premises and of the mutual promises and agreements hereinafter set forth, the Parties hereto agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings:

- (a) "Conflict of Interest" shall mean any situation in which the representation, proposed representation, or promotion of a person, entity, or the products or services of any person or entity would be, directly or indirectly, to the detriment of

the Department or the Property. The Department and the Contractor hereby agree that any decision concerning the existence of an actual or potential Conflict of Interest shall be conclusively and reasonably made by the Department. For purposes of clarity, nothing herein shall prevent the Contractor from representing a person, entity, or the products or services of any person or entity that cater to the travel or tourism industry generally, including, but not limited to, travel accessories, hotel and hospitality services, or travel publications. Notwithstanding the foregoing, nothing herein shall prevent the Contractor from providing marketing services to any client through its Modern Marketing division.

(b) "Gross Revenue" or "Gross Receipts" shall mean any and all gross receipts actually

received in connection with License Agreements (defined below) and Pre-Existing

Agreements (defined above) including, without limitation, advance payments; minimum guarantees; royalty payments; any and all amounts recovered through collection actions; any and all damages recovered as a result of pursuing third-party infringements including, without limitation, all amounts received from converting such infringements into License Agreements or as a result of settlement agreements; and other fees paid by third-party licensees and received by Contractor on behalf of the Department.

(c) "License Agreement" shall mean any agreement or arrangement, whether in the

form of a license or otherwise, made during the term of this Contract in which the Contractor, on behalf of the Department, with the written approval of the Department and the written approval of the Department of Law and the Office of the State Comptroller where applicable, grants to a third-party the right to make, use, sell, distribute, advertise, promote, or otherwise commercially exploit goods or services bearing the Property in exchange for the payment of lawful currency or

other compensation or consideration. License Agreement shall not include those agreements as defined in Section 1(h) below.

- (d) “Net Revenue” shall mean the gross revenue from Licensing Agreements remitted to the Contractor under this Agreement, less Licensing Agreement fees and costs for services pre-approved in writing by the Department.
- (e) “Pre-Existing License Agreement” shall mean any license agreements to which the Department is or was a party or third party beneficiary that are active as of the date of execution of this Agreement or that existed prior thereto, and any renewals or amendments thereof, in which the Department grants to a third-party the right to make, use, sell, distribute, advertise, promote, or otherwise commercially exploit goods or services bearing the Property in exchange for the payment of lawful currency or other compensation or consideration.
- (f) “Project Manager” shall mean the Department’s Director of Marketing, Licensing and Public Relations, his/her designee or such other person as may be designated in writing by the Department’s Executive Director of Tourism.
- (g) “Property” shall mean the names, symbols, designs, logos, trademarks, trade names or service marks of the Department, which includes, but is not limited to, the **I♥NY** trademarks, service marks and designs set forth in Section 4.18.1 of RFP 15-6102 and such other names and service marks that the Department has, or may hereafter obtain, right, title and interest thereto.
- (h) “Property Agreement” shall mean any agreement or arrangement, including, but not limited to, royalty-free license agreements and partnership agreements in which the Department grants to a third-party the right to make, use, sell, distribute, advertise, promote or otherwise exploit goods or services bearing the Property whether or not

in exchange for the payment of lawful currency, including, but not limited to, any cooperative advertising agreement, sponsorship, or service, in-kind or otherwise.

- (i) "Territory" shall mean all geographic locations throughout the world in which the Department has or may obtain any proprietary rights in and to the Property.

2. Appointment.

- (a) The Department hereby engages the Contractor to act as its non-exclusive representative throughout the Territory for all fields of use, (i) for the purpose of assisting the Department with conceiving and establishing plans to enter into Property Agreements, License Agreements and ancillary services in accordance with the Department's objectives; (ii) to assist the Department in seeking out ~~persons, firms or corporations to enter into Property Agreements, License~~ Agreements and ancillary services; and (iii) to assist the Department in the solicitation and negotiation of Property Agreements, License Agreements and ancillary services on the Department's behalf with any person, firm or corporation.
- (b) The Contractor, as an independent contractor, hereby accepts its appointment as such from the Department.

3. Term.

Unless terminated earlier as provided herein, the Agreement shall have a term of two (2) years as identified on the Face Page of this agreement. Thereafter, the Agreement may be renewed annually for up to three (3) additional one (1) year terms. The total term of the Agreement shall not exceed five (5) years.

4. Duties and Responsibilities of the Contractor and the Department.

The Contractor hereby agrees to act for the Department faithfully and honestly, and to use its best efforts and ability in performing the duties set forth herein. The Contractor's duties shall be those of a full-service domestic and international licensing agent, including, but

not limited to, the services described in Section 2.1 of the RFP, as clarified in subsection (f) below, and the following:

- (a) Upon the written approval of the Project Manager, featuring the Property on the Contractor's web site, brochure, trade booth exhibits, and other appropriate promotional material in a prominent and professional manner;
- (b) Acting at all times in a manner consistent with the Department's right, title, and interest in and to the Property in the Territory, and undertaking all steps necessary or desirable, and ordinarily undertaken by the Contractor on behalf of its other clients or as is standard in the licensing industry, to maintain the validity and use of the Property in the Territory, including, without limitation, exercising its best efforts to ensure that all forms of the Property have affixed thereto a notification of the Department's registration and/or ownership; provided, however, that the Contractor shall not be obligated to institute, or obligated to threaten, any legal action to maintain the validity of the Property unless the Department's General Counsel and Deputy Commissioner, makes a written request of the Contractor to do so;
- (c) Notifying the Department of any infringement, imitation, or similar unauthorized use of the Property, or any act of unfair competition with the Property within five (5) business days of the Contractor becoming actually aware of the same;
- (d) Upon receiving a reasonable request from the Department or the New York State Attorney General's Office, fully cooperating with the same in any action, cause of action, lawsuit, controversy, or other legal proceedings arising out of or relating to the Property, License Agreements or Property Agreements; and
- (e) Providing such other trademark licensing agent services on behalf of the Department as the Project Manager may from time to time request, provided such

services are ordinarily undertaken by the Contractor on behalf of its other clients or are standard in the licensing industry.

- (f) For purposes of clarity, certain services to be provided by Contractor pursuant to Sections 2.1.7, 2.1.11, 2.1.14, and 2.1.20 of the Department's RFP (relating to financial audits and trademark enforcement) may entail additional fees to be further negotiated by the Parties, but in no event will such fees exceed the hourly rates set forth in Section 5(e) of the Agreement.

The Department agrees to (i) apprise Contractor in a timely manner of third-party licensing opportunities which may be brought to the Department from outside sources and which the Department wishes for the Contractor to pursue; and (ii) use commercially reasonable ~~efforts to support third-party licensees and related licensed products in the Department's~~ publications, websites, public relations, advertising, etc., as the Department deems appropriate in its sole discretion.

5. Consideration and Fiscal Procedure.

- (a) Each License Agreement shall be entered into by the Contractor on the Department's behalf, and shall provide for all payments thereunder to be made to the Contractor on the Department's behalf. No Licensing Agreement, Property Agreement or other agreement issued by the Contractor shall be for a term greater than ten (10) years, unless separately agreed to in writing by the Department.
- (b) With respect to gross receipts from any License Agreement, the Contractor shall be entitled to retain a percentage of said gross receipts actually received on the Department's behalf, with the remaining percentages of such gross receipts being remitted to the Department, as follows:
 - (i) In the case of any License Agreement for which the Contractor identifies the licensee(s), negotiates the terms of the License Agreement and

administers the License Agreement (“BSP-Originated Third Party License Agreement”), the Contractor shall be entitled to thirty percent (30%) of the gross receipts actually received under said License Agreement;

(ii) In the case of any License Agreement for which the Department identifies the licensee(s) and provides the name of and contact person for the licensee(s) to the Contractor, and the Contractor negotiates the terms of the License Agreement and administers the License Agreement, the Contractor shall be entitled to twenty-five percent (25%) of the gross receipts actually received under said License Agreement;

(iii) In the case of any License Agreement for which the Department identifies ~~the licensee(s) and negotiates the terms of the License Agreement, and the~~ Contractor administers the License Agreement, the Contractor shall be entitled to ten percent (10%) of the gross receipts actually received under said License Agreement. In addition, if applicable, in the case of any Pre-Existing License Agreement where administration of such Pre-Existing License Agreement is transferred to Contractor, the Contractor shall be entitled to ten percent (10%) of the gross receipts actually received under said Pre-Existing License Agreement.

(c) The Department shall be under no obligation to threaten or bring suit against any licensee under a License Agreement to collect any sums of money due there under. To the extent that the Department makes claims or brings suit to collect such sums of money due, the Contractor’s compensation for such License Agreement shall consist of the percentage of the gross receipts to which the Contractor would otherwise be entitled pursuant to this Section, after the Department has deducted all expenses required to collect such gross receipts, including, without limitation, all

court costs, attorneys' fees and any other costs and expenses. In addition, the Contractor shall have discretion to perform financial audits pursuant to any License Agreement to collect any sums of money due thereunder, provided that the Department has approved in writing any fees associated therewith, such fees not to exceed the hourly rates set forth in Section 5(e) of this Agreement. To the extent that a financial audit is performed, the Contractor's compensation for such License Agreement shall consist of the percentage of gross receipts to which the Contractor would otherwise be entitled to pursuant to this Section, after deduction of all audit fees and expenses required to collect such gross receipts. In the event that any audit findings are not sufficient to cover the audit fees, the Department shall be solely responsible for payment of any remaining audit fees, though such fees shall not exceed the hourly rates established in section 5(e) of this agreement.

- (d) Notwithstanding anything contained in this Agreement to the contrary, the Contractor shall not be entitled to any compensation arising from or relating to orders for goods or services by or on behalf of the Department primarily for The Department's own use or resale. Any License Agreements negotiated by the Contractor shall allow the Department to purchase quantities of goods covered by said License Agreements at a rate which excludes royalties that would otherwise be paid to the Contractor by the licensee when the licensee is selling to its customer base.
- (e) The Contractor shall be entitled to a blended hourly rate for professional services of THREE HUNDRED AND TWENTY-FIVE DOLLARS (\$325.00) and a blended hourly rate of NINETY-FIVE DOLLARS (\$95.00) for administrative/clerical services. Said hourly rates shall be for all services, other than those for Licensing Agreements as described in Section (5)(b), requested and pre-approved in writing

by the Department. Professional services shall include, but not be limited to: preparing and administering Property Agreements, oppositions, and services in the course of actions for the defense of the Property. Prior to providing any professional or administrative service subject to this section, the Contractor shall also provide an estimate of the maximum required hours to provide each such service to the Department for approval (“Pre-Approved Hours”). In payment for the aforesaid services charged at the blended hourly rates, the Contractor shall be entitled to retain a portion of the net receipts owed to the Department from receipts collected by the Contractor on the Department’s behalf from License Agreements, up to the amount of the Pre-Approved Hours, in accordance with Section 6 and the following:

- (f) The Contractor shall bear all promotional, service, operating, collection, overhead and other expenses and costs normally and customarily incurred by it in the general performance of its services hereunder. For purposes of clarity, the expenses and costs covered under this Section 5(f) shall not include out of the ordinary promotional services such as trade show exhibition booths and pop-up shops.

6. Administrative & Fiscal Requirements.

- (a) Within thirty (30) days following the end of the quarter in which it actually receives gross receipts (gross revenue) under any License Agreement, the Contractor shall remit net revenue to the Department, having deducted its compensation as provided for in Section 5 hereof. In the event that the services rendered by the Contractor relative to Property Agreements and/or ancillary services in any given month exceed the net revenues owing to the Department, the remaining balance shall carry forward to the subsequent month to be offset against net revenues collected and owed by the Contractor to the Department. The

Department may, but is not obligated to, compensate the Contractor, pursuant to the rates for professional services and administrative/clerical services established in section 5(e) herein, for services relative to Property Agreements and/or ancillary services in excess of the net receipts. Within thirty (30) days following the end of each quarter in which the Contractor provides ancillary services pursuant to pre-approval in writing, the Contractor shall submit documentation to the Project Manager outlining the total number of hours of services performed during the applicable quarter in relation to each service previously approved in writing by the Department, and the amount of Pre-Approved Hours deducted from net revenue. In the event that the hours of services performed by Contractor during the applicable quarter exceed the Pre-Approved Hours, the Project Manager shall review said documentation and provide the Contractor with a response outlining the number of additional hours approved within forty-five (45) days of receipt thereof. In the event of a dispute concerning the number of additional hours approved, the Contractor may only deduct from net revenue owed to the Department compensation relative to the Pre-Approved Hours. Failure of the Project Manager to respond to the Contractor's documentation within the stated time period shall not constitute cause for the Contractor to deduct more than the Pre-Approved Hours. The disputed hours shall be negotiated in good faith between the Parties.

- (b) In the event that the Contractor fails to make said remittance to the Department within the period of time prescribed in paragraph (a) of this Section, the Contractor shall be liable and shall pay to the Department the remittance due, plus interest thereon at a rate of twelve percent (12%) per annum.
- (c) Together with the net revenue remittance discussed in Section 6(a), the Contractor shall furnish to the Project Manager and the Department's Finance Office (Attn:

Contracts Management Unit) a statement of all gross receipts actually received by the Contractor during the preceding quarter under any License Agreement.

(d) On a quarterly basis during the term of this Agreement, the Contractor shall furnish the Project Manager with an activity report, which shall include, but not be limited to, a discussion and analysis of the services and activities of the Contractor hereunder, including marketing efforts, License Agreements concluded or under development, services relative to Property Agreements, oppositions, defense of property legal enforcement or other pending legal issues, ancillary services and a discussion of the projected and recommended activities of the Contractor on behalf of the Department, and such further information, ~~explanation or recommendations as the Project Manager may request~~

(e) On a quarterly basis during the term of this Agreement, the Contractor shall furnish the Project Manager with a revenue report detailing all licensing receipts and distribution thereof for the reporting period, calendar year-to-date, and contract inception-to-date for each licensee. Distribution information reported shall include a delineation of the sums retained by the Contractor pursuant to paragraph (a) of Section 6, as well as a delineation of sums retained by the Contractor from License Agreements. By January 31 of each year, Contractor shall provide an annual licensing report (detailing the aforementioned information for the entire previous calendar year) to the Program Manager and Department's Finance Office (Attn: Contracts Management Unit).

(f) On a quarterly basis after the expiration of this Agreement, the Contractor shall furnish the Project Manager and Contracts Management Unit with a revenue report, the same as is defined in paragraph (e) of this Section. This provision shall

survive the expiration of this Agreement until such time as the Contractor ceases to receive gross revenue related to this Contract.

- (g) Upon receipt of the Department's written request, and within thirty (30) days following the end of each calendar year, the Contractor shall furnish to the Project Manager and the Department's Finance Office (Attn: Contracts Management Unit) a detailed statement, certified by an officer of the Contractor, showing all gross revenue constructively received by the Contractor during the preceding fiscal year and a delineation of the distribution of the same.
- (h) Within ninety (90) days following the effective date of expiration or termination of this Agreement, the Contractor shall furnish to the Project Manager and the Department's Finance Office (Attn: Contracts Management Unit) an agreed upon procedures report certified by an independent Certified Public Accountant, itemizing all gross receipts actually received by the Contractor during the term of this Agreement and any renewals thereof. For purposes of clarity, any such audit shall be limited to the Contractor's records, including records that the Contractor received from licensees pursuant to any License Agreement, and shall not include an audit of each such licensee's individual records. In the event the Department requires an audit of licensee's individual records, such expense shall be paid for by the Department.
- (i) Within ninety (90) days following the effective date of expiration or termination of this Agreement, the Contractor shall furnish the Project Manager with a final activity report, which shall include a detailed discussion and analysis of the services of the Contractor hereunder, recommendations for the future licensing of the Property, and such further information, explanation or recommendations as the Project Manager may reasonably request.

(j) All statements of gross receipts actually received by the Contractor on behalf of the Department hereunder shall be true, complete and accurate, and shall be calculated in accordance with generally accepted accounting principles applied on a consistent basis.

(k) The following provisions of this Agreement shall survive expiration or termination of the Agreement itself until such time as no further gross receipts are collected unless otherwise indicated: 5(b); 6(a)-(d) with the quarterly reports continuing as quarterly reports for the duration of any survival period after termination of the Agreement as noted in Section 9(g) 6(f)-(i) one time only after the effective date of expiration or termination; 6(j); 10; 11; 12; 14; 18, 19, 21, and ~~22 of this Agreement and Sections 1, 7, 9, 10, 13, 14, 15, 16 and 17 of Appendix~~

A attached hereto. Subsequent to expiration or termination of the Contract, the Contractor shall not market new or renew existing Licensing Agreements or otherwise perform services on behalf of the Department except as otherwise provided herein.

7. Minority and Women-Owned Business Enterprises (“MWBE”) Participation and Equal Employment Opportunities (“EEO”).

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§ 140–145, the Department recognizes its obligation to promote opportunities for the maximum feasible participation of certified Minority- and Women-owned Business Enterprises (“MWBEs”) in the performance of contracts. For the purposes of this Agreement, however, goals will not be established due to the unavailability of MWBEs to provide services for this Agreement.

8. Meetings.

Upon reasonable notice, the Contractor shall make itself available at the Department’s New York City or Albany business locations any of its officers, employees, or professional

consultants to discuss their performance hereunder, and the statements and reports that the Contractor is required to furnish to the Department as discussed in this Agreement.

9. Termination/Expiration of Agreement/Survival Rights.

- (a) The Department shall have the right to terminate this Agreement in whole or in part, for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days' written notice to the Contractor. If terminated for cause, payment to the Contractor for charges incurred will be made at the Department's sole discretion. If terminated for convenience, the Department agrees to pay the Contractor for charges incurred in the performance of the Agreement up to the time of termination. If terminated for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law. Additionally, the Department may terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.
- (b) Regardless of whether the Agreement expires or is terminated, the Contractor shall continue to pay net revenue to the Department for so long as the Contractor receives gross receipts pursuant to this Agreement.
- (c) If this Agreement is terminated for cause, upon written request by the Department, the Contractor shall assign to the Department or the Department's designee all Licensing Agreements and Property Agreements produced under the terms of this Agreement within sixty (60) days of receiving such request. In

addition, the Contractor shall immediately turn over any cash and all accounts receivables to the Department and shall not be entitled to any additional consideration from Licensing Agreements produced under terms of this Agreement.

- (d) If this Agreement is terminated as a result of the expiration of the term of the Agreement, or is terminated by the Department for convenience, the Contractor shall assign to the Department or the Department's designee at such time as the Contractor and the Department shall agree, but in no case later than ninety (90) days from the termination or expiration of the Agreement, all Licensing Agreements and Property Agreements produced under the terms of this Agreement. ~~The Contractor may continue to receive a percentage of gross~~

receipts as discussed in Section 5 for Licensing Agreements and Pre-Existing License Agreements for a period of two (2) years after termination or expiration of the Agreement, or earlier upon the expiration of any License Agreement, as noted in Section 9(g), and may continue to provide administrative services until such time as the Licensing Agreements are assigned to the Department or the Department's designee. The Contractor shall not renew Licensing Agreements that terminate, but shall notify the Department of the pending termination sixty (60) days in advance thereof.

- (e) The Contractor has the right to terminate this Agreement, in whole, for cause. In the event of a cause termination, the Contractor shall first give the Department a written Notice of Termination for Cause, therein specifying the reason(s) for termination (the event of default). The Department will then have sixty (60) days to correct the event of default, in which case the Contractor shall issue without delay a notice to the Department rescinding the Notice of Termination for Cause.

Late payment of funds by the Department shall not be considered a reason for a cause termination.

- (f) The Contractor may request termination of the Agreement for reasons other than cause. Such termination will be at the discretion of the Department.
- (g) Notwithstanding the foregoing, in the event of expiration or termination of this Agreement, Contractor shall be entitled to continue to receive a percentage of gross receipts for License Agreements and Pre-Existing License Agreements as discussed in Section 5 for a period of two (2) years after termination or expiration of the Agreement, or earlier upon expiration of each License Agreement, but shall not have any remaining obligation to provide administrative services after ninety ~~(90) days from expiration or termination of the Agreement. Further, if within one~~

(1) year after the termination or expiration of this Agreement, the Department enters into a new license agreement with a licensee or its successor or assign that is a party to any BSP-Originated Third Party License Agreement, or with any third party that is in negotiations with Contractor on behalf of the Department regarding potential licensing terms or a term sheet, such new agreement entered into by the Department shall also be considered a BSP-Originated Third Party License Agreement for which BSP shall be entitled to receive thirty percent (30%) of gross receipts actually received from such agreement.

10. Procedure upon Termination/Expiration.

- (a) Upon termination/expiration of this Agreement the Contractor shall comply with the Department's termination/expiration procedures, including, but not limited to:
 - (i) Submission of all required reports pursuant to Section 6;
 - (ii) Not incurring any further obligations under the terms of this Agreement, except as provided in Section 9(d) herein;

(iii) Carrying out all reasonable and appropriate written directions of the Department with respect to the disposition of all goods bearing the Property; the originals of License Agreements and Property Agreements; the originals of payment records relating to License Agreements; logotype sheets and guidelines relating to the Property; designs relating to the Property; and any other books, records, accounts and documents relating to the performance of the Contractor hereunder; provided, however that nothing herein shall be construed as precluding the Contractor from maintaining business files relating to the subject hereof in the ordinary course of its business. All materials shall be maintained for a minimum period of seven (7) years after ~~termination or expiration of the contract or termination or expiration of a~~

License Agreement whichever is later; and,

(iv) Notifying, upon the written request of the Department's Deputy Commissioner and General Counsel or Assistant Director Office of Fiscal Management, of all licensees under License Agreements by certified mail, returned receipt requested (with a copy of the same to the Department), that further remittances due pursuant to their License Agreements shall be made to the Department or such other party as the Department may designate.

11. Confidentiality; Privilege; FOIL

(a) The Contractor hereby agrees to maintain all material non-public information which it learns from the Department, other State employees or their contractors, subcontractors or agents in the performance of the Contractor's duties hereunder as confidential information proprietary to the Department, and the Contractor shall have no right to assert any proprietary interest in such information either

during the term of this Agreement or afterwards. The Contractor shall not use such information to the disadvantage of the Department. The Contractor shall not disclose or divulge such non-public information to any third party including the press/media, or cause the same to be disclosed or divulged without the prior written approval of the Project Manager. For purposes of clarity, the issuance, timing and content of any press release regarding the existence, or any aspect, of this Agreement (whether in electronic, print, or other media) shall be subject to the prior written approval of both Parties, such approval not to be unreasonably withheld. Notwithstanding the foregoing, nothing herein shall be construed to prevent either Party from publicly acknowledging or confirming the existence of a contractual relationship between the Parties.

- (b) The Contractor shall invoke all applicable privileges to the greatest extent permitted by law in any proceedings or forum in which the disclosure of such communications is sought. Within two (2) business days of receiving notification that the disclosure of such communications may be demanded, ordered, or otherwise requested or compelled, the Contractor shall notify the Department in writing thereof. The Contractor agrees to seek, move, or otherwise support the motion, request, or other application of the Department or its legal representative to intervene or otherwise participate in such proceedings to protect against such disclosure, with all attorneys' fees and related costs arising from such a motion to be borne by the Department in any such proceedings. The Contractor shall disclose such communications only upon asserting any applicable privilege; receiving a final order, from the court or other forum in which such disclosure is sought, compelling disclosure of such communications and specifying that the Contractor's failure to comply therewith is punishable by law; and after all

appeals and reviews there from, which shall be at New York State's expense, have been exhausted.

- (c) The Department is subject to the Freedom of Information Law, which governs the process for the public disclosure of certain records maintained by the Department. (See Public Officers Law, Sections 84 through 90. The Contractor may request that the Department except all or part of Contractor's proposal, reports or other information submitted to the Department from public disclosure, pursuant to Section 87(2)(d) of the Public Officers Law, on the ground that said specified item(s) contain trade secrets or that the information, if disclosed, would cause substantial injury to the competitive position of the Contractor. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for an exception must be in writing and must state the reasons why the information should be excepted from disclosure. It must also specify the items or portions thereof for which the exception is requested.

The Department shall notify the Contractor of the Department's decision to grant or deny such request for exception from disclosure in accordance with the provisions of Section 89(5) of the Public Officers Law. Any information submitted by the Contractor, for which the Contractor requests exception from disclosure, shall be temporarily excepted from disclosure until fifteen days after the entitlement to such exception has been finally determined by the Department. Contractor's rights upon denial or granting of request may be found in Section 89(5) of the Public Officer's Law.

- (d) The obligations contained in this Section shall survive the termination or expiration

of this Agreement.

12. Conflicts of Interest; Restrictive Covenants.

- (a) The Contractor hereby represents and warrants that it has completely and accurately disclosed to the Department in writing the nature and scope of any and all efforts it is currently undertaking which may constitute a Conflict of Interest;
- (b) During the term of this Agreement or any renewals thereof, regardless of the circumstances under which the Agreement had expired or was terminated (hereinafter called the "designated period"), the Contractor hereby agrees to completely and accurately disclose to the Department immediately in writing the nature and scope of any and all efforts, which to the best of its knowledge, it proposes to undertake in the Territory which may constitute a Conflict of Interest. During the designated period, in no event shall the Contractor engage in a Conflict of Interest in the Territory without notifying the Department's General Counsel and Deputy Commissioner in writing and obtaining its prior written consent, as set forth in paragraph (c) of this Section;
- (c) The Department shall advise the Contractor in writing of whether it consents to the proposed Conflict of Interest within ten (10) business days of receiving the Contractor's written notification of a potential Conflict of Interest. During the designated period, the Contractor hereby agrees that it shall not engage in a Conflict of Interest in the Territory in the event that the Department does not consent to the Conflict of Interest. If the Department does not respond to the Contractor's request for consent to a proposed Conflict of Interest within fifteen (15) business days of receipt of such notification, the Department shall be deemed to have consented to such engagement.
- (d) The Contractor hereby specifically acknowledges and agrees that the representations, warranties, covenants, and obligations contained in Sections 11 and 12 hereof are material provisions relied upon by the Department in entering into this Agreement. The

Contractor specifically acknowledges that it has been advised by the Department to review this entire Agreement with its counsel, and that the Contractor has satisfied itself that the representations, warranties, covenants and obligations set forth in Sections 11 and 12 hereof are reasonable in all respects, and that the same are valid and enforceable.

- (e) The Contractor hereby specifically acknowledges and agrees that a violation of any restrictive covenant or obligation contained in Sections 11 or 12 hereof shall cause irreparable harm to the Department, and that the Department shall be entitled to an injunction without proof of special damages, together with the costs and reasonable attorneys' fees incurred by the Department in enforcing its rights under Sections 11 and 12 hereof.

13. Representations and Warranties by the Department.

The Department represents and warrants that:

- (a) It has the legal competence to grant the rights herein granted to the Contractor and, to the best of its knowledge and belief, the use of the Property as herein contemplated will not infringe upon the rights of any other person, firm or corporation in the United States;

14. Representations, Warranties, and Covenants by the Contractor.

The Contractor represents, warrants and covenants that:

- (a) It is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and is, or is not required to be, duly authorized to conduct business in the State of New York;
- (b) It has the power and authority to execute and deliver this Agreement and to consummate the obligations and activities contemplated on its part hereby. The execution and delivery of this Agreement has been duly authorized by the Contractor, and no other proceedings by the Contractor are necessary to authorize the execution and

delivery of this Agreement or the performance of the Contractor's obligations hereunder;

- (c) All statements of fact contained in the Contractor's proposal, are true, complete, and accurate and shall be true, complete, and accurate during the term of this Agreement and any extension thereof. For purposes of clarity, certain services in Contractor's proposal relating to trademark enforcement and financial audits may entail additional fees to be further negotiated by the Parties, provided that such fees shall not exceed the hourly rates as set forth in Section 5(e); and
- (d) Neither it, nor any of its directors, officers, employees, consultants or subcontractors have given anything of value to anyone to procure this Agreement between the parties or to influence any official act or the judgment of any person in the negotiation of any of the terms of this Agreement.

15. Right of the Department to Use the Property.

- (a) Nothing in this Agreement shall be construed to limit the right of the Department:
 - (i) To make, use, sell or modify the Property in connection with any commercial, or other activity for its own benefit, or;
 - (ii) To grant Property Agreements, including, but not limited to, licenses granted pursuant to the Department's Tourism Matching Funds Program, cooperative advertising agreements, sponsorships, or agreements to promote various festivals, fairs, tournaments, or other tourist attractions in and around the State.

16. Prior Approval of License Agreements and Materials under Licenses.

- a. The Contractor shall obtain the prior written approval of the Project Manager for all License Agreements proposed or negotiated by the Contractor hereunder. The Contractor hereby specifically agrees and acknowledges that the Department shall have the absolute right to disapprove, with or without cause and at its sole discretion, any program, person, firm, corporation, proposed or negotiated license, or License

Agreement hereunder.

- b. The content, form and substance of each such License Agreement shall be solely within the discretion of the Department. All License Agreements must provide the Department with complete control of the nature and quality of all licensed goods or services thereunder.
- c. No License Agreement shall be entered into without the Department's written approval.
- d. The Contractor hereby specifically acknowledges that any License Agreement where the net revenue resulting to the Department from the same exceeds TEN THOUSAND DOLLARS (\$10,000.00) over its term must be approved in writing by the Attorney General's Office of New York State and the Office of the State Comptroller of New York State or the same shall be deemed invalid.
- e. ~~The Contractor shall promptly furnish to the Department three (3) true copies of each~~ and every License Agreement negotiated on the Department's behalf for approval, after the same are executed by the Contractor and the Licensee. If the Department approves, it will forward two (2) fully executed copies to the Contractor, with one to be forwarded by the Contractor to the Licensee. For any License Agreement subject to the provisions of Section 16(d), the Contractor shall forward four (4) true copies to the Department for approval after being executed by the Licensee and the Contractor. In the event the Department approves, the Department will then process the License through to the Attorney General's Office and the Office of the State Comptroller for their approval. Upon obtaining said approvals, the Department will forward two (2) fully executed copies of the same to the Contractor who shall then forward one (1) fully executed copy to the Licensee.
- f. All License Agreements negotiated by the Contractor shall provide that the licensee is to furnish the Department with conceptual art-work, pre-production and final production samples of all items manufactured, distributed or sold pursuant to the

exercise of the rights therein licensed. All products, as well as advertising and promotional materials related thereto, shall be subject to the Department's approval at the appropriate stages of their development. Whenever the Department is required to give or to render an approval hereunder, then the Contractor shall send written notice requesting such approval to the Project Manager. The Project Manager will then notify the Contractor as to its approval or disapproval within seven (7) days or be deemed approved.

17. Approval of Affiliate Licensing Agent Contracts and Subcontractors.

- a. The Contractor shall obtain the prior written approval of the Project Manager for the appointment of an affiliate licensing agent, if any, and any and all contracts, agreements or any other arrangements that the Contractor proposes to enter into with any affiliate licensing agent hereunder. Upon the full execution thereof, the Contractor shall promptly furnish to the Department a true copy of each and every written contract or agreement with the affiliate licensing agent, if any. Such affiliate licensing agent shall be entitled to a commission which shall be subject to the reasonable approval of the Department, provided that such commission shall not be greater than the percentages applicable to the Contractor as set forth in Section 5 of this agreement. For all License Agreements in which the Contractor engages an affiliate licensing agent, the Contractor shall receive a percentage of gross receipts as set forth in Section 5. For the sake of clarity, for each License Agreement in which an affiliate licensing agent is engaged, the Contractor's share of gross receipts shall be calculated from the cumulative net revenues of said agreement after the payment of the affiliate licensing agent commissions.
- b. The Contractor may, with the approval of the Department pursuant to Section 4.6 of the RFP, enter into subcontracts for the performance of services pursuant to this Agreement.

18. Ownership of Property.

The Contractor hereby specifically agrees and acknowledges that it does not, nor shall it, have any proprietary rights in and to the Property (or any part thereof) whatsoever, nor shall it hold itself out as having any such rights or any other rights or powers inconsistent with the provisions of this Agreement.

19. Relationship of the Parties.

(a) The relationship of the Contractor to the Department arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Department or the State of New York by reason hereof, and that it will not by

~~reason hereof, make any claim, demand or application for any right or privilege~~

applicable to an officer or employee of the Department or the State of New York including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

(b) All personnel of the Contractor shall be within the employ of the Contractor only, which alone shall be responsible for their work, their direction, and their compensation.

20. Fidelity Bond.

(a) Within sixty (60) days of ratification of this Agreement by the Office of the State Comptroller, the Contractor will deliver to the Department a fidelity bond payable to the Department. Said bond shall remain payable during the term of the Contract, and shall survive the termination or expiration of the contract so long as payment for Licensing Agreements are due the Department. The bond will be payable in the amount of Three Hundred Thousand Dollars (\$300,000). Said bond must be maintained for the term of the Agreement including any extensions and until such time as the Contractor ceases to receive gross revenue related to this Contract. On each anniversary of the contract

including anniversaries that occur after termination or expiration, the Department may reassess the amount of the bond. The Department may direct the Contractor to increase the amount of the bond as necessary to protect the interests of the Department. The Parties agree that the Bond required pursuant to this section is not a performance bond. The bond required is for the protection of the Department against the fraud or negligence of the Contractor or Subcontractor(s) with respect to revenues generated relative to this Agreement. The Contractor shall be entitled to deduct the cost of the bond not to exceed one percent (1%) of the bonds face value, from Licensing Agreement gross receipts.

- (b) The Contractor shall not breach the terms and conditions of said performance bond, or cause or suffer the same to be done.

21. Do All Things Necessary.

The parties hereto hereby agree to execute and deliver all such other additional documents and instruments, and to do such other acts and things as may be reasonably deemed necessary to carry out the intentions of the parties under this Agreement in compliance with its terms and conditions.

22. Notices.

Except as specifically otherwise provided herein, all notices or communications to either party hereunder shall be in writing and shall be deemed given when personally delivered or when mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the Department: NYS Department of Economic Development
625 Broadway, 8th Floor
Albany, New York 12207
Attention: Counsel's Office

If to the Contractor: Brand Sense Partners, LLC
3250 Ocean Park Blvd., Suite 160
Santa Monica, CA 90405
Attention: CFO

23. Appendices.

- (a) Appendices A (Standard Clauses for New York State Contracts), B (Budget), C (Scope of Services), D (Work Plan) and F (Active Trademark Registrations) attached hereto, are in every respect made a part of this Agreement as if fully set forth herein.
- (b) Conflicts between the Appendices and/or between the Appendices and the body of this Agreement shall be resolved in the following priority order: Appendix A (Standard Clauses for all New York State Contracts), the body of this Contract, RFP 15-6102, Appendix F (Active Trademark Registrations) and Contractors Proposal.

24. Required Approvals.

This Agreement shall not be binding upon the Department until approved by the New York State Department of Law and the New York State Office of the State Comptroller.

25. Waiver.

A waiver of enforcement of any provision of this Agreement by the Department shall not constitute a waiver by the Department of any other provision of this Agreement, nor shall it preclude the Department from subsequently enforcing such provision thereafter.

26. Force Majeure Event.

Neither Party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other cause reasonably beyond the control of such Party ("Force Majeure Event"), provided that such Party gives the other Party written notice thereof promptly and, in any event, within fifteen (15) days of discovery thereof, and uses its diligent, good faith efforts to cure the breach. In the event of such a Force Majeure Event, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure Event but not in excess of six (6) months.

26. Severability.

Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

27. Modification.

The foregoing and the Appendices attached hereto contain the entire Agreement between the Contractor and the Department and no modification thereof shall be binding unless the same is in writing, signed by the respective parties, and approved by the by the New York State Department of Law and the New York State Office of the State Comptroller.

CONTRACT SIGNATURE AND NOTARY PAGE

Contract No. X004852

DED Certification

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

Brand Sense Partners, LLC

By: *Monica Hallinan*
(Signature)

Monica Hallinan
(Printed Name)

Title: CFO

Date: 7/23/15

NYS Department of Economic Development

By: *Ed J Hamilton*
(Signature)

Ed J Hamilton
(Printed name)

Title: Sr. Deputy Commissioner, Finance & Administration

Date: 7/29/15

NOTARY

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.:

On the 23 day of July, 2015, before me personally appeared Monica Hallinan, to me known, who being by me duly sworn, did depose and say that ^{she} (s)he resides at 3250 Ocean Park Blvd, Ste 110 Santa Monica CA, that ^{she} (s)he is the CFO & Chief Revenue Officer of Brand Sense Partners LLC the corporation described herein which executed the foregoing instrument; and that (s)he signed (her)his name thereto by order of the board of directors of said corporation.



NOTARY PUBLIC

Carina Perry

ATTORNEY GENERAL'S SIGNATURE:

Title: _____

Date: _____

APPROVED TO FORM
NYS ATTORNEY GENERAL

AUG 03 2015

Benjamin L. Magoi
BY BENJAMIN L. MAGOI
ASSISTANT ATTORNEY GENERAL

STATE COMPTROLLER'S SIGNATURE:

Title: _____

Date: _____

APPROVED

DEPT. OF AUDIT & CONTROL

SEP 17 2015

John M. ...
FOR THE STATE COMPTROLLER

AMENDMENT TO CONTRACT NO. X004852

Business Unit: DED01 Department ID: 3200000

Agency Name: NYS Department of Economic Development

Contractor Name: Brand Sense Partners, LLC

This is an amendment to an AGREEMENT between the STATE OF NEW YORK, acting by and through the NYS Department of Economic Development and the Contractor named above. This amendment is to renew this Contract as allowed for in the original Agreement.

Renewal Period : 7/1/18 to 12/31/18

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

Brand Sense Partners, LLC

By: [Signature]
 (Signature)
Monica Hallinan
 (Printed Name)
 Title: President
 Date: 6/15/18

NYS Department of Economic Development

By: [Signature]
 (Signature)
Ed Hamilton
 (Printed Name)
 Title: Deputy Commissioner for Finance & Administration
 Date: 6/27/18

NOTARY

STATE OF California)
 COUNTY OF Los Angeles) ss.:

On the 5th day of June, 2018, before me personally appeared Monica Mary Hallinan to me known, who being by me duly sworn, did depose and say that ^{she} (s)he resides at 112 S Alpred St Los Angeles, CA 90035; that (s)he is the President of Brand Sense partners, LLC; the corporation described herein which executed the foregoing instrument; and that (s)he signed (her)his name thereto by order of the board of directors of said corporation.

C. Azamar
 NOTARY PUBLIC



STATE COMPTROLLER'S SIGNATURE:

 Title: **APPROVED**
 DEPT. OF AUDIT & CONTROL

 Date: JUL 26 2018

 FOR THE STATE COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
Bureau of Contracts, Floor 11-1
110 State Street
Albany, New York 12236

APPROVED DOCUMENT TRANSMITTAL

Date 7/26/18

Dept ID 3200000

Contract No. X004852

Purchase Order No. _____

RCVD JUL 31 2018

TO: DED

- Enclosed is an approved contract. Refer to this contract number and Department ID in all correspondence.
- Enclosed is an approved Amendment No./Change Order No. _____ in the amount of \$_____.
- Extension is approved to 12/31/18 Amount if applicable \$ 0.
- Enclosed is an approved purchase order. Refer to this purchase order number and Department ID in all correspondence.
- Enclosed is an approved purchase order change notice in the amount of \$_____.

CONTRACT FACE PAGE

AGENCY (Name and Address): ATTN: Contract Management Unit NYS Department of Economic Development Albany, New York 12245	Contract Number: X004915 Business Unit: DED01 Department ID: 3200000
CONTRACTOR (Name and Payment Address): Brand & Blend LLC 1639 11th St. Suite 263 Santa Monica, CA 90404	TYPE OF PROGRAM: Trademark Licensing Agency
CHARITIES REGISTRATION #: N/A	STATUS: Contractor IS NOT a sectarian entity. Contractor IS a for-profit organization.
NYS Vendor ID # 1100212513	RENEWAL TERM (IF APPLICABLE): FROM: 01/01/2022 To: 12/31/2023
FEDERAL TAX I.D. #:	INITIAL CONTRACT PERIOD: FROM: 01/01/2019 TO: 12/31/2021
MUNICIPALITY # (IF APPLICABLE): N/A	Contract Amount: Revenue Agreement

APPENDICES ATTACHED TO AND PART OF THIS AGREEMENT:	
<input checked="" type="checkbox"/> APPENDIX A Standard Clauses	<input type="checkbox"/> APPENDIX G
<input type="checkbox"/> APPENDIX A-1 DED-Specific Clauses	<input type="checkbox"/> APPENDIX H
<input checked="" type="checkbox"/> APPENDIX B Budget	<input type="checkbox"/> APPENDIX X Sample Modification Agreement Form
<input checked="" type="checkbox"/> APPENDIX C Request for Proposals	<input type="checkbox"/> OTHER (Identify) _____
<input checked="" type="checkbox"/> APPENDIX D Contractor's Proposal	<input type="checkbox"/> OTHER (Identify) _____
<input checked="" type="checkbox"/> APPENDIX E Active Trademark Registrations	<input type="checkbox"/> OTHER (Identify) _____
<input type="checkbox"/> APPENDIX F Participation by Minority Groups	<input type="checkbox"/> OTHER (Identify) _____

AGREEMENT by and between the NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT, with offices located at 625 Broadway, Albany, New York 12207 (the “Department”) and Brand & Blend LLC, a limited liability company located at 1639 11th St. Suite 263 Santa Monica, CA 90404 (the “Contractor”) (collectively, the “Parties”).

WITNESSETH:

WHEREAS, pursuant to Section 100 of the Economic Development Law, the Department is authorized and obligated to undertake ways and means to promote and encourage the prosperous development and protection of the legitimate interest and welfare of New York State (the “State”) business, industry and commerce, within and outside the State, and to plan and conduct a program of publicity designed to attract tourists, visitors and other interested persons to the State; and

WHEREAS, pursuant to Section 161 of the Economic Development Law, the Department is authorized and obligated to encourage and facilitate the planning and implementation of programs to advertise, stimulate, promote and increase tourist travel, resort, vacation, culture and convention activities within the State and its regions with such flexibility as to bring about as effective and economical a tourist promotion plan as possible;

WHEREAS, pursuant to paragraph 45 of Section 100 of the Economic Development Law, the Commissioner of the Department shall have the duty to license, maintain and lease, where appropriate, an official brand, “I Love NY”;

WHEREAS, pursuant to the aforesaid duties and responsibilities, the Department has adopted and used in commerce certain Property, as that term is defined in Section 1(g) below, and has the exclusive right to license and otherwise exploit, throughout the United States, all merchandising rights in the Property; and

WHEREAS, the Department wishes to license the Property to individuals and businesses willing to pay the Department royalties and/or other compensation or consideration for the right to make, use and/or sell goods and services bearing the Property;

WHEREAS, the Department sent Request for Proposal #18-6127, attached hereto as Appendix C, to qualified firms to serve as the Department's licensing agent to provide full domestic and international licensing services in support of the Property; and

WHEREAS, the Contractor submitted a proposal (the "Proposal"), attached here as Appendix D, which the Department has determined comprises the best value in response to the Department's RFP; and

WHEREAS, the Contractor is engaged in the business of representing the owners of entertainment, music, consumer products, and similar properties, trademarks and trade names, service marks, and prominent persons, in securing revenues from persons and/or firms who will be licensed to make, use or sell goods and services bearing such properties, trademarks and persons; and

WHEREAS, the Department requests the advice, assistance and counsel of the Contractor with respect to various issues relating to the Property, License Agreements and Property Agreements, as those terms are defined in Section 1(c), 1(g) and 1(h) below; and

WHEREAS, the Contractor is a non-sectarian entity;

NOW, THEREFORE, in consideration of the premises and of the mutual promises and agreements hereinafter set forth, the Parties hereto agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings:

- (a) "Conflict of Interest" shall mean any situation in which the representation, proposed representation, or promotion of a person, entity, or the products or services of any person or entity would be, directly or indirectly, to the detriment of the Department or the Property. The Department and the Contractor hereby agree

that any decision concerning the existence of an actual or potential Conflict of Interest shall be conclusively and reasonably made by the Department. For purposes of clarity, nothing herein shall prevent the Contractor from representing a person, entity, or the products or services of any person or entity that cater to the travel or tourism industry generally, including, but not limited to, travel accessories, hotel and hospitality services, or travel publications.

- (b) “Gross Revenue” or “Gross Receipts” shall mean any and all gross receipts actually received in connection with License Agreements (defined below) and Pre-Existing Agreements (defined below) including, without limitation, advance payments; minimum guarantees; royalty payments; any and all amounts recovered through collection actions; any and all damages recovered as a result of pursuing third-party infringements including, without limitation, all amounts received from converting such infringements into License Agreements or as a result of settlement agreements; and other fees paid by third-party licensees and received by Contractor on behalf of the Department.
- (c) “License Agreement” shall mean any agreement or arrangement, whether in the form of a license or otherwise, made during the term of this Contract in which the Contractor, on behalf of the Department, with the written approval of the Department and the written approval of the Department of Law and the Office of the State Comptroller where applicable, grants to a third-party the right to make, use, sell, distribute, advertise, promote, or otherwise commercially exploit goods or services bearing the Property in exchange for the payment of lawful currency or other compensation or consideration. License Agreement shall not include those agreements as defined in Section 1(h) below.

- (d) “Net Revenue” shall mean the gross revenue from Licensing Agreements remitted to the Contractor under this Agreement, less Licensing Agreement fees and costs for services pre-approved in writing by the Department.
- (e) “Pre-Existing License Agreement” shall mean any license agreements to which the Department is or was a party or third party beneficiary that are active as of the date of execution of this Agreement or that existed prior thereto, and any renewals or amendments thereof, in which the Department grants to a third-party the right to make, use, sell, distribute, advertise, promote, or otherwise commercially exploit goods or services bearing the Property in exchange for the payment of lawful currency or other compensation or consideration.
- (f) “Project Manager” shall mean the Department’s Director of Marketing, Licensing and Public Relations, his/her designee or such other person as may be designated in writing by the Department’s Executive Director of Tourism.
- (g) “Property” shall mean the names, symbols, designs, logos, trademarks, trade names or service marks of the Department, which includes, but is not limited to, the **I♥NY** trademarks, service marks and designs set forth in Section 4.18.1 of RFP #18-6127 and such other names and service marks that the Department has, or may hereafter obtain, right, title and interest thereto.
- (h) “Property Agreement” shall mean any agreement or arrangement, including, but not limited to, royalty-free license agreements and partnership agreements in which the Department grants to a third-party the right to make, use, sell, distribute, advertise, promote or otherwise exploit goods or services bearing the Property whether or not in exchange for the payment of lawful currency, including, but not limited to, any cooperative advertising agreement, sponsorship, or service, in-kind or otherwise.

- (i) "Territory" shall mean all geographic locations throughout the world in which the Department has or may obtain any proprietary rights in and to the Property.

2. Appointment.

- (a) The Department hereby engages the Contractor to act as its non-exclusive representative throughout the Territory for all fields of use, (i) for the purpose of assisting the Department with conceiving and establishing plans to enter into Property Agreements, License Agreements and ancillary services in accordance with the Department's objectives; (ii) to assist the Department in seeking out persons, firms or corporations to enter into Property Agreements, License Agreements and ancillary services; and (iii) to assist the Department in the solicitation and negotiation of Property Agreements, License Agreements and ancillary services on the Department's behalf with any person, firm or corporation.
- (b) The Contractor, as an independent contractor, hereby accepts its appointment as such from the Department.

3. Term.

Unless terminated earlier as provided herein, the Agreement shall have a term of three (3) years as identified on the Face Page of this agreement. Thereafter, the Agreement may be renewed for two (2) additional years under the same terms and conditions. The total term of the Agreement shall not exceed five (5) years.

4. Duties and Responsibilities of the Contractor and the Department.

The Contractor hereby agrees to act for the Department faithfully and honestly, and to use its best efforts and ability in performing the duties set forth herein. The Contractor's duties shall be those of a full-service domestic and international licensing agent, including, but not limited to, the services described in Section 2.1 of the RFP, as clarified in subsection (f) below, and the following:

- (a) Upon the written approval of the Project Manager, featuring the Property on the Contractor's web site, brochure, trade booth exhibits, and other appropriate promotional material in a prominent and professional manner;
- (b) Acting at all times in a manner consistent with the Department's right, title, and interest in and to the Property in the Territory, and undertaking all steps necessary or desirable, and ordinarily undertaken by the Contractor on behalf of its other clients or as is standard in the licensing industry, to maintain the validity and use of the Property in the Territory, including, without limitation, exercising its best efforts to ensure that all forms of the Property have affixed thereto a notification of the Department's registration and/or ownership; provided, however, that the Contractor shall not be obligated to institute, or obligated to threaten, any legal action to maintain the validity of the Property;
- (c) Notifying the Department of any infringement, imitation, or similar unauthorized use of the Property, or any act of unfair competition with the Property within five (5) business days of the Contractor becoming actually aware of the same;
- (d) Upon receiving a reasonable request from the Department or the New York State Attorney General's Office, fully cooperating with the same in any action, cause of action, lawsuit, controversy, or other legal proceedings arising out of or relating to the Property, License Agreements or Property Agreements; and
- (e) Providing such other trademark licensing agent services on behalf of the Department as the Project Manager may from time to time request, provided such services are ordinarily undertaken by the Contractor on behalf of its other clients or are standard in the licensing industry.
- (f) For purposes of clarity, certain services to be provided by Contractor pursuant to Sections 2.1.16, 2.1.24, and 2.1.26 of the Department's RFP (relating to financial

audits and trademark enforcement) may entail additional fees to be further negotiated by the Parties, but in no event will such fees exceed the hourly rates set forth in Section 5(e) of the Agreement.

The Department agrees to (i) apprise Contractor in a timely manner of third-party licensing opportunities which may be brought to the Department from outside sources and which the Department wishes for the Contractor to pursue; and (ii) use commercially reasonable efforts to support third-party licensees and related licensed products in the Department's publications, websites, public relations, advertising, etc., as the Department deems appropriate in its sole discretion.

5. Consideration and Fiscal Procedure.

(a) Each License Agreement shall be entered into by the Contractor on the Department's behalf, and shall provide for all payments thereunder to be made to the Contractor on the Department's behalf. No Licensing Agreement, Property Agreement or other agreement issued by the Contractor shall be for a term greater than ten (10) years, unless separately agreed to in writing by the Department.

(b) With respect to gross receipts from any License Agreement, the Contractor shall be entitled to retain a percentage of said gross receipts actually received on the Department's behalf, with the remaining percentages of such gross receipts being remitted to the Department, as follows:

(i) In the case of any License Agreement for which the Contractor identifies the licensee(s), negotiates the terms of the License Agreement and administers the License Agreement ("Contractor-Originated Third Party License Agreement"), the Contractor shall be entitled to thirty percent (30%) of the gross receipts actually received under said License Agreement;

- (ii) In the case of any License Agreement for which the Department identifies the licensee(s) and provides the name of and contact person for the licensee(s) to the Contractor, and the Contractor negotiates the terms of the License Agreement and administers the License Agreement, the Contractor shall be entitled to thirty percent (30%) of the gross receipts actually received under said License Agreement;
 - (iii) In the case of any License Agreement for which the Department identifies the licensee(s) and negotiates the terms of the License Agreement, and the Contractor administers the License Agreement, the Contractor shall be entitled to fifteen percent (15%) of the gross receipts actually received under said License Agreement.
- (c) The Department shall be under no obligation to threaten or bring suit against any licensee under a License Agreement to collect any sums of money due there under. To the extent that the Department makes claims or brings suit to collect such sums of money due, the Contractor's compensation for such License Agreement shall consist of the percentage of the gross receipts to which the Contractor would otherwise be entitled pursuant to this Section, after the Department has deducted all expenses required to collect such gross receipts, including, without limitation, all court costs, attorneys' fees and any other costs and expenses. In addition, the Contractor shall have discretion to perform financial audits pursuant to any License Agreement to collect any sums of money due thereunder, provided that the Department has approved in writing any fees associated therewith, such fees not to exceed the hourly rates set forth in Section 5(e) of this Agreement. To the extent that a financial audit is performed, the Contractor's compensation for such License Agreement shall consist of the percentage of gross receipts to which the Contractor

would otherwise be entitled to pursuant to this Section, after deduction of all audit fees and expenses required to collect such gross receipts. In the event that any audit findings are not sufficient to cover the audit fees, the Department shall be solely responsible for payment of any remaining audit fees, though such fees shall not exceed the hourly rates established in section 5(e) of this agreement.

- (d) Notwithstanding anything contained in this Agreement to the contrary, the Contractor shall not be entitled to any compensation arising from or relating to orders for goods or services by or on behalf of the Department primarily for the Department's own use or resale. Any License Agreements negotiated by the Contractor shall allow the Department to purchase quantities of goods covered by said License Agreements at a rate which excludes royalties that would otherwise be paid to the Contractor by the licensee when the licensee is selling to its customer base.
- (e) The Contractor shall be entitled to a blended hourly rate for professional services of THREE HUNDRED AND TWENTY-FIVE DOLLARS (\$325.00), a blended hourly rate for licensing agreements of THREE HUNDRED AND TWENTY-FIVE DOLLARS (\$325.00) and a blended hourly rate of NINETY-FIVE DOLLARS (\$95.00) for administrative/clerical services. Said hourly rates shall be for all services, other than those for Licensing Agreements as described in Section (5)(b), requested and pre-approved in writing by the Department. Professional services shall include, but not be limited to: preparing and administering Property Agreements, oppositions, and services in the course of actions for the defense of the Property. Prior to providing any professional or administrative service subject to this section, the Contractor shall also provide an estimate of the maximum required hours to provide each such service to the Department for approval ("Pre-

Approved Hours”). In payment for the aforesaid services charged at the blended hourly rates, the Contractor shall be entitled to retain a portion of the net receipts owed to the Department from receipts collected by the Contractor on the Department’s behalf from License Agreements, up to the amount of the Pre-Approved Hours, in accordance with Section 6 and the following;

- (f) The Contractor shall bear all promotional, service, operating, collection, overhead and other expenses and costs normally and customarily incurred by it in the general performance of its services hereunder. For purposes of clarity, the expenses and costs covered under this Section 5(f) shall not include out of the ordinary promotional services such as trade show exhibition booths and pop-up shops.

6. Administrative & Fiscal Requirements.

- (a) Within thirty (30) days following the end of the quarter in which it actually receives gross receipts (gross revenue) under any License Agreement, the Contractor shall remit net revenue to the Department, having deducted its compensation as provided for in Section 5 hereof. In the event that the services rendered by the Contractor relative to Property Agreements and/or ancillary services in any given month exceed the net revenues owing to the Department, the remaining balance shall carry forward to the subsequent month to be offset against net revenues collected and owed by the Contractor to the Department. The Department may, but is not obligated to, compensate the Contractor, pursuant to the rates for professional services and administrative/clerical services established in section 5(e) herein, for services relative to Property Agreements and/or ancillary services in excess of the net receipts. Within thirty (30) days following the end of each quarter in which the Contractor provides ancillary services pursuant to pre-approval in writing, the Contractor shall submit documentation to the Project

Manager outlining the total number of hours of services performed during the applicable quarter in relation to each service previously approved in writing by the Department, and the amount of Pre-Approved Hours deducted from net revenue. In the event that the hours of services performed by Contractor during the applicable quarter exceed the Pre-Approved Hours, the Project Manager shall review said documentation and provide the Contractor with a response outlining the number of additional hours approved within forty-five (45) days of receipt thereof. In the event of a dispute concerning the number of additional hours approved, the Contractor may only deduct from net revenue owed to the Department compensation relative to the Pre-Approved Hours. Failure of the Project Manager to respond to the Contractor's documentation within the stated time period shall not constitute cause for the Contractor to deduct more than the Pre-Approved Hours. The disputed hours shall be negotiated in good faith between the Parties.

- (b) In the event that the Contractor fails to make said remittance to the Department within the period of time prescribed in paragraph (a) of this Section, the Contractor shall be liable and shall pay to the Department the remittance due, plus interest thereon at a rate of twelve percent (12%) per annum.
- (c) Together with the net revenue remittance discussed in Section 6(a), the Contractor shall furnish to the Project Manager and the Department's Finance Office (Attn: Contracts Management Unit) a statement of all gross receipts actually received by the Contractor during the preceding quarter under any License Agreement.
- (d) On a quarterly basis during the term of this Agreement, the Contractor shall furnish the Project Manager with an activity report, which shall include, but not be limited to, a discussion and analysis of the services and activities of the Contractor hereunder, including marketing efforts, License Agreements

concluded or under development, services relative to Property Agreements, oppositions, defense of property legal enforcement or other pending legal issues, ancillary services and a discussion of the projected and recommended activities of the Contractor on behalf of the Department, and such further information, explanation or recommendations as the Project Manager may request.

- (e) On a quarterly basis during the term of this Agreement, the Contractor shall furnish the Project Manager with a revenue report detailing all licensing receipts and distribution thereof for the reporting period, calendar year-to-date, and contract inception-to-date for each licensee. Distribution information reported shall include a delineation of the sums retained by the Contractor pursuant to paragraph (a) of Section 6, as well as a delineation of sums retained by the Contractor from License Agreements. By January 31 of each year, Contractor shall provide an annual licensing report (detailing the aforementioned information for the entire previous calendar year) to the Program Manager and Department's Finance Office (Attn: Contracts Management Unit).
- (f) On a quarterly basis after the expiration of this Agreement, the Contractor shall furnish the Project Manager and Contracts Management Unit with a revenue report, the same as is defined in paragraph (e) of this Section. This provision shall survive the expiration of this Agreement until such time as the Contractor ceases to receive gross revenue related to this Contract.
- (g) Upon receipt of the Department's written request, and within thirty (30) days following the end of each calendar year, the Contractor shall furnish to the Project Manager and the Department's Finance Office (Attn: Contracts Management Unit) a detailed statement, certified by an officer of the Contractor, showing all

gross revenue constructively received by the Contractor during the preceding fiscal year and a delineation of the distribution of the same.

- (h) Within ninety (90) days following the effective date of expiration or termination of this Agreement, the Contractor shall furnish to the Project Manager and the Department's Finance Office (Attn: Contracts Management Unit) an agreed upon procedures report certified by an independent Certified Public Accountant, itemizing all gross receipts actually received by the Contractor during the term of this Agreement and any renewals thereof. For purposes of clarity, any such audit shall be limited to the Contractor's records, including records that the Contractor received from licensees pursuant to any License Agreement, and shall not include an audit of each such licensee's individual records. In the event the Department requires an audit of licensee's individual records, such expense shall be paid for by the Department.
- (i) Within ninety (90) days following the effective date of expiration or termination of this Agreement, the Contractor shall furnish the Project Manager with a final activity report, which shall include a detailed discussion and analysis of the services of the Contractor hereunder, recommendations for the future licensing of the Property, and such further information, explanation or recommendations as the Project Manager may reasonably request.
- (j) All statements of gross receipts actually received by the Contractor on behalf of the Department hereunder shall be true, complete and accurate, and shall be calculated in accordance with generally accepted accounting principles applied on a consistent basis.
- (k) The following provisions of this Agreement shall survive expiration or termination of the Agreement itself until such time as no further gross receipts are

collected unless otherwise indicated: 5(b); 6(a)-(d) with the quarterly reports continuing as quarterly reports for the duration of any survival period after termination of the Agreement as noted in Section 9(g); 6(f)-(i) one time only after the effective date of expiration or termination; 6(j); 10; 11; 12; 14; 18, 19, 21, and 22 of this Agreement and Sections 1, 7, 9, 10, 13, 14, 15, 16 and 17 of Appendix A attached hereto. Subsequent to expiration or termination of the Contract, the Contractor shall not market new or renew existing Licensing Agreements or otherwise perform services on behalf of the Department except as otherwise provided herein.

7. Minority and Women-Owned Business Enterprises (“MWBE”) Participation and Equal Employment Opportunities (“EEO”).

Pursuant to New York State Executive Law Article 15-A and 5 NYCRR §§ 140–145, the Department recognizes its obligation to promote opportunities for the maximum feasible participation of certified Minority-and Women-owned Business Enterprises (“MWBEs”) in the performance of contracts. For the purposes of this Agreement, however, goals will not be established due to the unavailability of MWBEs to provide services for this Agreement.

8. Meetings.

Upon reasonable notice, the Contractor shall make itself available at the Department’s New York City or Albany business locations any of its officers, employees, or professional consultants to discuss their performance hereunder, and the statements and reports that the Contractor is required to furnish to the Department as discussed in this Agreement.

9. Termination/Expiration of Agreement/Survival Rights.

- (a) The Department shall have the right to terminate this Agreement in whole or in part, for cause or unavailability of State funds at any time or for convenience on thirty (30) calendar days’ written notice to the Contractor. If terminated for

cause, payment to the Contractor for charges incurred will only be made at the Department's sole discretion. If terminated for convenience, the Department agrees to pay the Contractor for charges incurred in the performance of the Agreement up to the time of termination. If terminated for unavailability of State funds, the Department will not be liable for payment but will use its best efforts to pay outstanding charges previously approved by the Department to the extent permitted by New York State Law. Additionally, the Department may terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Department may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

- (b) Regardless of whether the Agreement expires or is terminated, the Contractor shall continue to pay net revenue to the Department for so long as the Contractor receives gross receipts pursuant to this Agreement.
- (c) If this Agreement is terminated for cause, upon written request by the Department, the Contractor shall assign to the Department or the Department's designee all Licensing Agreements and Property Agreements produced under the terms of this Agreement immediately after receiving such request. In addition, the Contractor shall immediately turn over any cash and all accounts receivables to the Department and shall not be entitled to any additional consideration from Licensing Agreements produced under terms of this Agreement.
- (d) If this Agreement is terminated as a result of the expiration of the term of the Agreement, or is terminated by the Department for convenience, the Contractor shall assign to the Department or the Department's designee at such time as the

Contractor and the Department shall agree, but in no case later than ninety (90) days from the termination or expiration of the Agreement, all Licensing Agreements and Property Agreements produced under the terms of this Agreement. The Contractor may continue to receive a percentage of gross receipts as discussed in Section 5 for Licensing Agreements and Pre-Existing License Agreements, and shall continue to collect and disburse gross receipts in connection therewith, for a period which is the lesser of: 1) two years after termination or expiration of the Agreement, or 2) the date of natural expiration of any License Agreement, as noted in Section 9(g), and may continue to provide other administrative services until such time as the Licensing Agreements are assigned to the Department or the Department's designee. The Contractor shall not renew Licensing Agreements that terminate, but shall notify the Department of the pending termination sixty (60) days in advance thereof. Alternatively, if the agreement is terminated as a result of expiration of the term or terminated by the Department for convenience, upon the Contractor's request and with the Department's consent, the Contractor may turn over the administration of any or all License Agreements to the Department with no further consideration due the Contractor.

- (e) The Contractor has the right to terminate this Agreement, in whole, for cause. In the event of a cause termination, the Contractor shall first give the Department a written Notice of Termination for Cause, therein specifying the reason(s) for termination (the event of default). The Department will then have sixty (60) days to correct the event of default, in which case the Contractor shall issue without delay a notice to the Department rescinding the Notice of Termination for Cause.

Late payment of funds by the Department shall not be considered a reason for a cause termination.

- (f) The Contractor may request termination of the Agreement for reasons other than cause. Such termination will be at the discretion of the Department.
- (g) Notwithstanding the foregoing, in the event of expiration or termination of this Agreement, Contractor shall be entitled to continue to receive a percentage of gross receipts for License Agreements and Pre-Existing License Agreements as discussed in Section 5, and continue to collect and disburse gross receipts in connection therewith, for a period of two (2) years after termination or expiration of the Agreement, or earlier upon expiration of each License Agreement, but shall not have any remaining obligation to provide other administrative services after ninety (90) days from expiration or termination of the Agreement. Further, if within one (1) year after the termination or expiration of this Agreement, the Department enters into a new license agreement with a licensee or its successor or assign that is a party to any Contractor-Originated Third Party License Agreement, or with any third party that is in negotiations with Contractor on behalf of the Department regarding potential licensing terms or a term sheet, such new agreement entered into by the Department shall also be considered a Contractor-Originated Third Party License Agreement for which Contractor shall be entitled to receive thirty percent (30%) of gross receipts actually received from such agreement.

10. Procedure upon Termination/Expiration.

- (a) Upon termination/expiration of this Agreement the Contractor shall comply with the Department's termination/expiration procedures, including, but not limited to:
 - (i) Submission of all required reports pursuant to Section 6;

- (ii) Not incurring any further obligations under the terms of this Agreement, except as provided in Section 9(d) herein;
- (iii) Carrying out all reasonable and appropriate written directions of the Department with respect to the disposition of all goods bearing the Property; the originals of License Agreements and Property Agreements; the originals of payment records relating to License Agreements; logotype sheets and guidelines relating to the Property; designs relating to the Property; and any other books, records, accounts and documents relating to the performance of the Contractor hereunder; provided, however that nothing herein shall be construed as precluding the Contractor from maintaining business files relating to the subject hereof in the ordinary course of its business. All materials shall be maintained for a minimum period of seven (7) years after termination or expiration of the contract or termination or expiration of a License Agreement whichever is later; and,
- (iv) Notifying, upon the written request of the Department's Deputy Commissioner and General Counsel or Assistant Director Office of Fiscal Management, of all licensees under License Agreements by certified mail, returned receipt requested (with a copy of the same to the Department), that further remittances due pursuant to their License Agreements shall be made to the Department or such other party as the Department may designate.

11. Confidentiality; Privilege; FOIL

- (a) The Contractor hereby agrees to maintain all material non-public information which it learns from the Department, other State employees or their contractors, subcontractors or agents in the performance of the Contractor's duties hereunder

as confidential information proprietary to the Department, and the Contractor shall have no right to assert any proprietary interest in such information either during the term of this Agreement or afterwards. The Contractor shall not use such information to the disadvantage of the Department. The Contractor shall not disclose or divulge such non-public information to any third party including the press/media, or cause the same to be disclosed or divulged without the prior written approval of the Project Manager. For purposes of clarity, the issuance, timing and content of any press release regarding the existence, or any aspect, of this Agreement (whether in electronic, print, or other media) shall be subject to the prior written approval of both Parties, such approval not to be unreasonably withheld. Notwithstanding the foregoing, nothing herein shall be construed to prevent either Party from publicly acknowledging or confirming the existence of a contractual relationship between the Parties.

- (b) The Contractor shall invoke all applicable privileges to the greatest extent permitted by law in any proceedings or forum in which the disclosure of such communications is sought. Within two (2) business days of receiving notification that the disclosure of such communications may be demanded, ordered, or otherwise requested or compelled, the Contractor shall notify the Department in writing thereof. The Contractor agrees to seek, move, or otherwise support the motion, request, or other application of the Department or its legal representative to intervene or otherwise participate in such proceedings to protect against such disclosure, with all attorneys' fees and related costs arising from such a motion to be borne by the Department in any such proceedings. The Contractor shall disclose such communications only upon asserting any applicable privilege; receiving a final order, from the court or other forum in which such disclosure is

sought, compelling disclosure of such communications and specifying that the Contractor's failure to comply therewith is punishable by law; and after all appeals and reviews there from, which shall be at New York State's expense, have been exhausted.

- (c) The Department is subject to the Freedom of Information Law, which governs the process for the public disclosure of certain records maintained by the Department. (See Public Officers Law, Sections 84 through 90. The Contractor may request that the Department except all or part of Contractor's proposal, reports or other information submitted to the Department from public disclosure, pursuant to Section 87(2)(d) of the Public Officers Law, on the ground that said specified item(s) contain trade secrets or that the information, if disclosed, would cause substantial injury to the competitive position of the Contractor. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for an exception must be in writing and must state the reasons why the information should be excepted from disclosure. It must also specify the items or portions thereof for which the exception is requested.

The Department shall notify the Contractor of the Department's decision to grant or deny such request for exception from disclosure in accordance with the provisions of Section 89(5) of the Public Officers Law. Any information submitted by the Contractor, for which the Contractor requests exception from disclosure, shall be temporarily excepted from disclosure until fifteen days after the entitlement to such exception has been finally determined by the Department. Contractor's rights upon denial or granting of request may be found in Section 89(5) of the Public Officer's Law.

(d) The obligations contained in this Section shall survive the termination or expiration of this Agreement.

12. Conflicts of Interest: Restrictive Covenants.

- (a) The Contractor hereby represents and warrants that it has completely and accurately disclosed to the Department in writing the nature and scope of any and all efforts it is currently undertaking which may constitute a Conflict of Interest;
- (b) During the term of this Agreement or any renewals thereof, regardless of the circumstances under which the Agreement had expired or was terminated (hereinafter called the "designated period"), the Contractor hereby agrees to completely and accurately disclose to the Department immediately in writing the nature and scope of any and all efforts, which to the best of its knowledge, it proposes to undertake in the Territory which may constitute a Conflict of Interest. During the designated period, in no event shall the Contractor engage in a Conflict of Interest in the Territory without notifying the Department's General Counsel and Deputy Commissioner in writing and obtaining its prior written consent, as set forth in paragraph (c) of this Section;
- (c) The Department shall advise the Contractor in writing of whether it consents to the proposed Conflict of Interest within ten (10) business days of receiving the Contractor's written notification of a potential Conflict of Interest. During the designated period, the Contractor hereby agrees that it shall not engage in a Conflict of Interest in the Territory in the event that the Department does not consent to the Conflict of Interest. If the Department does not respond to the Contractor's request for consent to a proposed Conflict of Interest within fifteen (15) business days of receipt of such notification, the Department shall be deemed to have consented to such engagement.
- (d) The Contractor hereby specifically acknowledges and agrees that the representations, warranties, covenants, and obligations contained in Sections 11 and 12 hereof are

material provisions relied upon by the Department in entering into this Agreement. The Contractor specifically acknowledges that it has been advised by the Department to review this entire Agreement with its counsel, and that the Contractor has satisfied itself that the representations, warranties, covenants and obligations set forth in Sections 11 and 12 hereof are reasonable in all respects, and that the same are valid and enforceable.

- (e) The Contractor hereby specifically acknowledges and agrees that a violation of any restrictive covenant or obligation contained in Sections 11 or 12 hereof shall cause irreparable harm to the Department, and that the Department shall be entitled to an injunction without proof of special damages, together with the costs and reasonable attorneys' fees incurred by the Department in enforcing its rights under Sections 11 and 12 hereof.

13. Representations and Warranties by the Department.

The Department represents and warrants that:

- (a) It has the legal competence to grant the rights herein granted to the Contractor and, to the best of its knowledge and belief, the use of the Property as herein contemplated will not infringe upon the rights of any other person, firm or corporation in the United States;

14. Representations, Warranties, and Covenants by the Contractor.

The Contractor represents, warrants and covenants that:

- (a) It is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and is, or is not required to be, duly authorized to conduct business in the State of New York;
- (b) It has the power and authority to execute and deliver this Agreement and to consummate the obligations and activities contemplated on its part hereby. The execution and delivery of this Agreement has been duly authorized by the Contractor,

and no other proceedings by the Contractor are necessary to authorize the execution and delivery of this Agreement or the performance of the Contractor's obligations hereunder;

- (c) All statements of fact contained in the Contractor's proposal, are true, complete, and accurate and shall be true, complete, and accurate during the term of this Agreement and any extension thereof. For purposes of clarity, certain services in Contractor's proposal relating to trademark enforcement and financial audits may entail additional fees to be further negotiated by the Parties, provided that such fees shall not exceed the hourly rates as set forth in Section 5(e); and
- (d) Neither it, nor any of its directors, officers, employees, consultants or subcontractors have given anything of value to anyone to procure this Agreement between the parties or to influence any official act or the judgment of any person in the negotiation of any of the terms of this Agreement.

15. Right of the Department to Use the Property.

- (a) Nothing in this Agreement shall be construed to limit the right of the Department:
 - (i) To make, use, sell or modify the Property in connection with any commercial, or other activity for its own benefit, or;
 - (ii) To grant Property Agreements, including, but not limited to, licenses granted pursuant to the Department's Tourism Matching Funds Program, cooperative advertising agreements, sponsorships, or agreements to promote various festivals, fairs, tournaments, or other tourist attractions in and around the State.

16. Prior Approval of License Agreements and Materials under Licenses.

- a. The Contractor shall obtain the prior written approval of the Project Manager for all License Agreements proposed or negotiated by the Contractor hereunder. The Contractor hereby specifically agrees and acknowledges that the Department shall have the absolute right to disapprove, with or without cause and at its sole discretion, any

program, person, firm, corporation, proposed or negotiated license, or License Agreement hereunder.

- b. The content, form and substance of each such License Agreement shall be solely within the discretion of the Department. All License Agreements must provide the Department with complete control of the nature and quality of all licensed goods or services thereunder.
- c. No License Agreement shall be entered into without the Department's written approval.
- d. The Contractor hereby specifically acknowledges that any License Agreement where the net revenue resulting to the Department from the same exceeds TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) over its term must be approved in writing by the Attorney General's Office of New York State and the Office of the State Comptroller of New York State or the same shall be deemed invalid.
- e. The Contractor shall promptly furnish to the Department three (3) true originals of each and every License Agreement negotiated on the Department's behalf for approval, after the same are executed by the Contractor and the Licensee. If the Department approves, it will forward two (2) fully executed copies to the Contractor, with one to be forwarded by the Contractor to the Licensee. For any License Agreement subject to the provisions of Section 16(d), the Contractor shall forward four (4) true originals and one (1) copy to the Department for approval after being executed by the Licensee and the Contractor. In the event the Department approves, the Department will then process the License through to the Attorney General's Office and the Office of the State Comptroller for their approval. Upon obtaining said approvals, the Department will forward two (2) fully executed copies of the same to the Contractor who shall then forward one (1) fully executed copy to the Licensee.
- f. All License Agreements negotiated by the Contractor shall provide that the licensee is to furnish the Department and/or Contractor with conceptual art-work, pre-production

and final production samples of all items manufactured, distributed or sold pursuant to the exercise of the rights therein licensed, the process of which may be updated from time to time by mutual agreement of the Department and the Contractor. All products, as well as advertising and promotional materials related thereto, shall be subject to the Department's approval at the appropriate stages of their development. Whenever the Department is required to give or to render an approval hereunder, then the Contractor shall send written notice requesting such approval to the Project Manager. The Project Manager will then notify the Contractor as to its approval or disapproval within seven (7) days or be deemed approved.

17. Approval of Affiliate Licensing Agent Contracts and Subcontractors.

- a. The Contractor shall obtain the prior written approval of the Project Manager for the appointment of an affiliate licensing agent, if any, and any and all contracts, agreements or any other arrangements that the Contractor proposes to enter into with any affiliate licensing agent hereunder. Upon the full execution thereof, the Contractor shall promptly furnish to the Department a true copy of each and every written contract or agreement with the affiliate licensing agent, if any. Such affiliate licensing agent shall be entitled to a commission which shall be subject to the reasonable approval of the Department, provided that such commission shall not be greater than the percentages applicable to the Contractor as set forth in Section 5 of this agreement. For all License Agreements in which the Contractor engages an affiliate licensing agent, the Contractor shall receive a percentage of gross receipts as set forth in Section 5. For the sake of clarity, for each License Agreement in which an affiliate licensing agent is engaged, the Contractor's share of gross receipts shall be calculated from the cumulative net revenues of said agreement after the payment of the affiliate licensing agent commissions.

- b. The Contractor may, with the approval of the Department pursuant to Section 4.6 of the RFP, enter into subcontracts for the performance of services pursuant to this Agreement.

18. Ownership of Property.

The Contractor hereby specifically agrees and acknowledges that it does not, nor shall it, have any proprietary rights in, and to the Property (or any part thereof) whatsoever, nor shall it hold itself out as having any such rights or any other rights or powers inconsistent with the provisions of this Agreement.

19. Relationship of the Parties.

(a) The relationship of the Contractor to the Department arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Department or the State of New York by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Department or the State of New York including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

(b) All personnel of the Contractor shall be within the employ of the Contractor only, which alone shall be responsible for their work, their direction, and their compensation.

20. Fidelity Bond.

(a) Within sixty (60) days of ratification of this Agreement by the Office of the State Comptroller, the Contractor will deliver to the Department a fidelity bond payable to the Department. Said bond shall remain payable during the term of the Contract, and shall survive the termination or expiration of the contract so long as payment for Licensing Agreements are due the Department. The bond will be payable in the amount of Three

Hundred Thousand Dollars (\$300,000). Said bond must be maintained for the term of the Agreement including any extensions and until such time as the Contractor ceases to receive gross revenue related to this Contract. On each anniversary of the contract including anniversaries that occur after termination or expiration, the Department may reassess the amount of the bond. The Department may direct the Contractor to increase the amount of the bond as necessary to protect the interests of the Department. The Parties agree that the Bond required pursuant to this section is not a performance bond. The bond required is for the protection of the Department against the fraud or negligence of the Contractor or Subcontractor(s) with respect to revenues generated relative to this Agreement. The Contractor shall be entitled to deduct the cost of the bond not to exceed one percent (1%) of the bonds face value, from Licensing Agreement gross receipts.

- (b) The Contractor shall not breach the terms and conditions of said performance bond, or cause or suffer the same to be done.

21. Do All Things Necessary.

The parties hereto hereby agree to execute and deliver all such other additional documents and instruments, and to do such other acts and things as may be reasonably deemed necessary to carry out the intentions of the parties under this Agreement in compliance with its terms and conditions.

22. Notices.

Except as specifically otherwise provided herein, all notices or communications to either party hereunder shall be in writing and shall be deemed given when personally delivered or when mailed by certified or registered mail, postage prepaid, addressed as follows:

If to the Department: NYS Department of Economic Development
625 Broadway, 8th Floor
Albany, New York 12207
Attention: Counsel's Office

If to the Contractor: Brand & Blend LLC
1639 11th St. Suite 263
Santa Monica, CA 90404
Attention: CFO

23. Appendices.

- (a) Appendices A (Standard Clauses for New York State Contracts), B (Budget), C (RFP), D (Contractor's Proposal) and E (Active Trademark Registrations) attached hereto, are in every respect made a part of this Agreement as if fully set forth herein.
- (b) Conflicts between the Appendices and/or between the Appendices and the body of this Agreement shall be resolved in the following priority order: Appendix A (Standard Clauses for all New York State Contracts), the body of this Contract, Appendix C (RFP 18-6127), Appendix B (Budget) Appendix E (Active Trademark Registrations) and Appendix D (Contractor's Proposal).

24. Required Approvals.

This Agreement shall not be binding upon the Department until approved by the New York State Department of Law and the New York State Office of the State Comptroller.

25. Waiver.

A waiver of enforcement of any provision of this Agreement by the Department shall not constitute a waiver by the Department of any other provision of this Agreement, nor shall it preclude the Department from subsequently enforcing such provision thereafter.

26. Force Majeure Event.

Neither Party will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other cause reasonably beyond the control of such Party ("Force Majeure Event"), provided that such Party gives the other Party written notice thereof promptly and, in any event, within

fifteen (15) days of discovery thereof, and uses its diligent, good faith efforts to cure the breach. In the event of such a Force Majeure Event, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure Event but not in excess of six (6) months.

26. Severability.

Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

27. Modification.

The foregoing and the Appendices attached hereto contain the entire Agreement between the Contractor and the Department and no modification thereof shall be binding unless the same is in writing, signed by the respective parties, and approved by the by the New York State Department of Law where applicable, and the New York State Office of the State Comptroller.

CONTRACT SIGNATURE AND NOTARY PAGE

Contract No. X004915

DED Certification

In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

Brand and Blend LLC

By: *Maria Alcaide*
(Signature)

MARIA ALCAIDE
(Printed Name)

Title: PARTNER

Date: 10/29/18

NYS Department of Economic Development

By: *[Signature]*
(Signature)

Ed J Hamilton
(Printed name)

Title: Sr. Deputy Commissioner, Finance & Administration

Date: 11/20/18

NOTARY

STATE OF CALIFORNIA)

COUNTY OF _____) ss.:

On the ____ day of _____, 2018, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that (s)he resides at _____; that (s)he is the _____ of _____, the corporation described herein which executed the foregoing instrument; and that (s)he signed (her)his name thereto by order of the board of directors of said corporation.

NOTARY PUBLIC

PLEASE SEE THE ATTACHED UPDATED NOTARIAL CERTIFICATE A. D. 10/29/2018

APPROVED AS TO FORM
NYS ATTORNEY GENERAL'S SIGNATURE:

Title: _____

Date: _____

Benjamin L. Maggi
BENJAMIN L. MAGGI
ASSISTANT ATTORNEY GENERAL

STATE COMPTROLLER'S SIGNATURE:

Title: _____

Date: _____

APPROVED
DEPT. OF AUDIT & CONTROL

Michelle Young
FOR THE STATE COMPTROLLER

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], not Notary)

1 _____

2 _____

3 _____

4 _____

5 _____

6 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

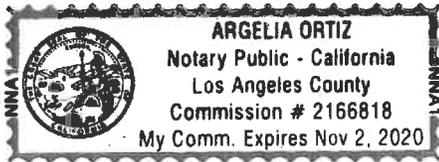
Subscribed and sworn to (or affirmed) before me

on this 29 day of October, 2018
by Date Month Year

(1) MARIA ALCAIDE

(and (2) _____
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Place Notary Seal and/or Stamp Above

Signature Argelia Ortiz
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: CONTRACT SIGNATURE AND NOTARY PAGE

Document Date: _____ Number of Pages: 01

Signer(s) Other Than Named Above: _____

INTERAGENCY TOURISM TASK FORCE UPDATE

2019 Report

Tourism Interagency Taskforce

The New York State Division of Tourism / Empire State Development regularly communicates and partners with other state agencies to coordinate efforts designed to increase visitation to New York State and its tourism assets.

To expand the level of communication and cooperation on tourism-related projects and ensure that New York State is not duplicating efforts, the Division of Tourism reinstated the Tourism Interagency Taskforce in May of 2019. The Division of Tourism coordinated the meetings, inviting delegates from the following agencies to attend:

- Canal Corporation
- Council on the Arts
- Department of Agriculture & Markets
- Department of Environmental Conservation
- Department of Transportation
- Department of Labor
- Department of Health
- Hudson River Park Trust
- Metro North Railroad
- Long Island Railroad
- New York Power Authority
- Office of the Aging
- Office of Parks, Recreation and Historic Preservation
- Olympic Regional Development Authority
- Thruway Authority

The taskforce met twice in 2019 -- once in May and once in September -- to share tourism-related project updates to the agencies in attendance. As a result of reinstating the taskforce, multiple agencies have begun collaboration on marketing projects, as well as tourism policy projects surrounding outdoor recreation.

INTERAGENCY TASKFORCE MEETING MINUTES

Date: Thursday, May 23, 2019

Location: NYS Capitol Building, Blue Room, Albany, New York

Attendance: William Sweitzer, Canal Corporation; Abigail Young, Council on the Arts; Tim Pezzolesi, Department of Agriculture & Markets; Laura DiBetta, Department of Environmental Conservation; Laurel Remus, Department of Environmental Conservation; Karen Madden, Department of Health; Michael Cambridge, Department of Health; Mark Pattison, Department of State; Peter Ryan, Department of Transportation; Ross Levi, Empire State Development; Sara Emmert, Empire State Development; Kelly Garofalo, Empire State Development; Kira Levy, Hudson River Park Trust; Edward Dumas, Long Island Rail Road; Donna Haynes, Metro-North Railroad; John Cochran, Office of the Aging; Matthew Davidson, Office of Parks, Recreation and Historic Preservation; Wendy Gibson, Office of Parks, Recreation and Historic Preservation; Scott Christiansen, Olympic Regional Development Authority; Thierry Dumoulin, Port Authority; Mario Roefaro, Power Authority; Kara Ostrander, Thruway Authority; Cristyne Nicholas, TAC; Assemblyman Danny O'Donnell; Juliana Hernandez-Commisso, Sen. Jose Serrano's office

Meeting called to order: 10:30 a.m.

Welcome from Ross Levi—Executive Director of Tourism

- Ross Levi opened with remarks on importance of tourism to New York State
 - Visitation: 243.8 million in 2017
 - Nearly 5 million more than the previous year and nearly 18% increase since the Governor took office in 2011
 - Direct Spending: \$67.6 billion in 2017
 - Nearly \$3 billion more than 2016, and almost \$14 billion more than in 2011
 - Economic Impact: \$108.7 billion in 2017
 - Exceeding \$100 billion for the fourth straight year - an increase of nearly \$22 billion from 2011
 - Tourism is the third largest private sector employer supporting 938,000 jobs
- The growth in tourism in New York State has led to a lot of good work being done amongst various agencies and want to ensure all projects are being communicated to avoid duplicating efforts.

- This is the reason for reconvening the Tourism Interagency Taskforce, which is statutorily required.
- Goal for the first meeting is twofold: first, to allow each agency to highlight tourism work being done and second, to set joint goals for the group going forward.
- Sara Emmert recognized legislators in the room—Assemblyman Danny O’Donnell and Juliana Hernandez from Senator Serrano’s office—and emphasized importance of making them aware of positive impact of tourism in New York State.

Agency Introductions

- I LOVE NY
 - Best known for marketing the state to potential visitors
 - Main target market is families in a 5hr drive radius
 - Aside from traditional advertising, which manifests in the “Find What You Love” campaign, work includes public relations, digital advertising, experiential advertising, travel tools, strategic partnerships, segment marketing, sales & trade work, policy & program development, and industry support.
- New York State Canal Corporation
 - Responsible for marketing and operating the 525-mile Erie Canal and the 360 miles of trails alongside the canal. Kayaking, boating, and biking along canal is up 55%.
 - Biggest tourism related project is the completion of the Empire State Trail, a 750-mile multiuse trail from New York City to Canada and Albany to Buffalo. Will be the longest multiuse trail in the nation.
 - Also working on the “Reimagine the Canal” taskforce to boost local economies along the canal through tourism by increasing overnight stays along the canal corridor. Can read the recently released [press release](#) for more information.
- New York State Council on the Arts
 - Dedicated to preserving and expanding the rich and diverse cultural resources that are and will become the heritage of New York's citizens through core grantmaking activity.
 - NYSCA awarded \$51M in FY2018 to 2,400 organizations dispersed throughout all 62 counties through direct grants and regrants in 15 programs
 - NYSCA funding supports the visual, literary, media and performing arts and includes dedicated support for arts education and underserved communities.

- Art and culture organizations that self-report showing increased numbers in visitation
- Currently looking for ways to build on successful grant projects—considering expanding on and reinvesting in previously successful smaller projects, like the GlassBarge.
- Would also like to commission a statewide arts & culture impact study
- New York State Department of Agriculture & Markets
 - Promote New York agriculture and its high-quality and diverse products, fosters agricultural environmental stewardship, and safeguards the State’s food supply, land and livestock to ensure the viability and growth of New York’s agriculture industries
 - Governor announced Taste New York program encourages both residents and visitors to buy local, eat local, and drink local. There are Taste New York cafes in each of the new Welcome Centers.
 - Launched new apple, farm, and cuisine trails. Currently have 2 apple trails, 2 farm trails, and 12 cuisine trails throughout New York State. Work with vendors through and application process to become a part of the trail.
 - Currently looking to build relationships with food and beverage providers for listable experiences.
- New York State Department of Economic Conservation (DEC)
 - Regulatory agency for waters and land and are the largest landowners in the state and own both the Adirondack Park and Catskill Park land.
 - Biggest challenge is to maintain aging lands so that both residents and tourists can enjoy them.
 - DEC accommodates 70 million people on both water and land for various activities
 - In 2017, Governor Cuomo announced “Adventure New York” program to improve access to lands as well as the visitor experience on lands. The various programs, which include “First Time Camper” and “I Bird NY” are aimed at trying to get people to experience and enjoy the outdoors.
 - Biggest challenges include:
 - Connecting urban residents without cars or alternative transportation to upstate parks and water systems
 - Continued investment to upkeep aging parks—currently seeking private investment

- Balancing promoting lands to tourists and unsustainable overuse (i.e. Kaaterskill Falls)
 - Upcoming projects relating to tourism include Frontier Town and the 100th Anniversary of Campgrounds in 2020.
- New York State Department of Health
 - Work with DEC and DOS on environmental health such as regulating drinking water and balancing power needs for all residents and visitors. Promote getting people outdoors for a healthy lifestyle. Manage safety of beaches and distribute restaurant permits.
 - Ultimate goal is to make sure that communities' people may visit are healthy & safe.
 - While agency doesn't have a direct role in tourism, ensure the ancillary services, like hospitals, are able to care for visitors.
 - Additionally, the agency is able to help streamline safety and regulatory processes (i.e. changing antiquated regulations for brewery industry which had direct influence on growth of craft beverage growth).
- New York State Department of Transportation (DOT)
 - Manage and maintain all New York State infrastructure from roads to subway system.
 - Received recent \$144 million grant from Governor to assist with various infrastructure projects.
 - Biggest tourism related project is the Empire State Trail—DOT is helping to fill the gaps between the existing trails to create the 750-mile trail.
- New York State Department of State (DOS)
 - Agency a part of two federal commissions to help distressed communities
 - 14 in the Southern Tier
 - 28 in the North Country
 - Recently worked with a group of students from Maxwell School to conduct a study to measure the need for an Office of Outdoor Recreation in NYS
- Hudson River Park Trust
 - Hudson River Park Trust is a partnership between New York State and City charged with the design, construction and operation of the four-mile Hudson River Park in NYC
 - Host 20 million visits a year and have 500 free and low-cost programs
 - 25% of visitors come from out of New York State

- Looking to serve New York State wine and beers at events
- New York State Office of the Aging
 - Mission is to help older New Yorkers be as independent as possible for as long as possible through advocacy, development and delivery of programs and services which support and empower older adults and their families.
 - Senior Travel Program recently announced, which will aim to promote senior friendly attraction and destination to older New Yorker residents as well as potential visitors
- New York State Office of Parks, Recreation, and Historical Preservation
 - Maintain, manage, and promote New York States 250 state parks, historic sites, boat launches, golf courses, and campsites.
 - Welcomed 74 million visitors in 2018 bringing in \$5 billion in economic impact.
 - Recently received a \$900 million grant for the 2020 Parks Plan to update and refresh state parks
 - Trying to encourage longer stays at both camping and glamping sites
 - New Shirley Chisholm State Park will open in 2020—the largest state park
 - Current challenge parks face is getting up to par with digital reservations and technology to enter parks—both of these will help with demographic collection.
 - Also looking to expand concession partnerships
- Olympic Regional Development Authority (ORDA)
 - ORDA has two distinct functions: managing and promoting three state owned ski mountains (Whiteface, Gore, and Belleayre) & managing the 1980 Olympic Parks
 - Both present different challenges—working with the privately-owned ski mountains in New York State and ensuring Olympic facilities maintain their world-class status for Olympic athletes in training as well as for potential visitors-need to ensure a positive experience for both groups.
 - Upcoming projects include the 2023 University Games, which Lake Placid is hosting. Will be double the size of the 1980 Olympics
- Port Authority of New York and New Jersey
 - The Port Authority manages all New York airports as well as the World Trade Center transportation center.

- Working on \$20 billion renovation program for all New York airports including JFK and LGA. The new terminal at LGA will be the first new airport in 25 year in the US. Trying to move New York State airports into the top 10% of airports worldwide. Additionally, creating positive visitor experience at our airports with various I LOVE NY creative and messaging to provide a sense of place. Want visitors to know they are in New York State when they land at our airports. This will also include providing New York State local food, shops, and information.
- TWA Hotel at JFK recently opened
- The New York State Power Authority (NYPA)
 - Power the economic growth and competitiveness of New York State by providing customers with low-cost, clean, reliable power and the innovative energy infrastructure and services
 - Current programs include the Recharge NY Power Program and the Electric Car Charging Program, which aims to create a corridor along the Northeast of charging station at select attractions and destinations.
 - NYPA also manages three Visitor Centers that allow visitors to view and learn about NYPA's major hydroelectric power projects
 - Niagara Power Vista
 - Blenheim-Gilboa Visitors Center
 - Hawkins Point Visitors Center
 - A fourth visitor center is planned to open in 2020 near Utica
 - Looking to increase visitation at Visitor Centers
- Metro-North Railroad
 - Railway system that transports residents and visitors to the Hudson Valley from NYC
 - Currently producing Metro-North Getaway packages to encourage visitation to upstate
 - Trying to reach a wider audience of daily riders
- Long Island Rail Road
 - Railway system that transports residents and visitors to Long Island from NYC
 - Currently have very limited marketing and advertising budget
 - Looking for partnerships with other state agencies to reach a wider audience of riders
- New York State Thruway

- Provide safe and reliable way to travel throughout the state
- Manage several Welcome Centers along the Thruway which attract 40 million visitors a year
- Also manage 27 service areas—each has a TV that can loop content and footage
- Currently launched Farmer’s Market Program which includes Taste NY products at service areas
- Looking for ways to promote 3 miles of shared use path along Governor Mario Cuomo Bridge

Goals for Future Meetings

- Would like to ensure all agencies are communicating with each other on current & future projects
 - Recommendation to focus on certain multi-agency, tourism-related projects that involve policy & research, grants & funding opportunities, and promotion & marketing

INTERAGENCY TASKFORCE MEETING MINUTES

Date: Wednesday, September 4, 2019

Location: 625 Broadway, Albany, New York

Attendance: Olive Cadet, New York State Bridge Authority; William Sweitzer, New York State Canal Corporation; Mara Manus, New York State Council on the Arts; Tim Pezzolesi, Department of Agriculture & Markets; Laurel Remus, Department of Environmental Conservation; Michael Cambridge, Department of Health; Mark Pattison, Department of State; Peter Ryan, Department of Transportation; Ross Levi, Empire State Development; Sara Emmert, Empire State Development; Kelly Garofalo-Wilkins, Empire State Development; Tom Lindon, Hudson River Park Trust; Edward Dumas, Long Island Rail Road; Donna Haynes, Metro North Railroad; Andy Fyfe, Office of Parks, Recreations, and Historic Preservation; Wendy Gibson, Office of Parks, Recreations, and Historic Preservation; Diana Carter, Office of Parks, Recreations, and Historic Preservation; Scott Christiansen, Olympic Regional Development Authority; Mario Roefaro, New York State Power Authority; Kara Ostrander, New York State Thruway Authority

Meeting called to order: 1:07 PM

Welcome from Ross Levi—Executive Director of Tourism

- Ross Levi opened with welcome remarks and asked everyone to introduce themselves around room

Announcement of 2018 Tourism Numbers

- In 2018, nearly 253 million visitors traveled to New York State, almost 10 million more than 2017 and an almost 25% increase since the Governor took office in 2011
- Visitors generated an economic impact of \$114.8 billion exceeding \$100 billion for the 5th straight year. This is a \$6.1 billion increase over 2017 and nearly \$28 billion more than 2011
- Visitors generated an all-time high of \$71.8 billion in direct visitor spending, up more than \$4 billion from last year. Direct visitor spending is up more than 33%, nearly \$18 billion since 2011
- New York State tourism generated \$8.9 billion in state and local taxes in 2018, and nearly 5% increase over 2017, saving each household an average of \$1,221 in taxes
- Tourism remains the third largest private sector employer in the state supporting 957,800 jobs last year according to data from the NYS Department of Labor
- Passenger counts at all NYS airports increased 4.5% in 2018 with a more than 4% jump in hotel room demand
- Tourism statistics were provided by Tourism Economics, an internationally recognized travel data firm, using the Impact Analysis for Planning input-output model for New York State, utilized worldwide by governments, universities, and public and private sector organizations. The model follows the flow of sales through the economy to the generation of GDP, employment, wages, and taxes

2019 I LOVE NY Summer Marketing Efforts Recap

- WorldPride
 - WorldPride had over 5M people attend the events in NYC this past June, making it the largest LGBTQ+ event ever and the largest event held in NYC history
 - More than 632,700 people watched the live broadcast of the pride march on ABC7, nearly 2.5 times the viewership of 2018
 - At 12h30m, it was officially the longest pride march in the world, with 150,000+ marchers, 750+ marching groups, and 150+ floats
 - I LOVE NY has spent past two years preparing for and promoting WorldPride, and our campaign was one of the most comprehensive promotional campaigns for I LOVE NY in recent years

- We also worked with TPAs and the Parks Department to encourage putting on seven commemorative events outside of NYC such as “Pride at the Falls”, which by anecdotal reports, was a successful event
- One of the main takeaways was learning the value of maximizing high-profile events or anniversaries. Given more lead time, it’s easier to create a more robust campaign, and it’s certainly more effective to promote an event that’s already captured people’s interest.
- Catskills Challenge
 - Governor held the second Catskill Challenge at Bethel Woods on July 11
 - Governor announcements included:
 - Catskills Fire Tower Five Challenge
 - DEC’s guided “Hike with Us” Program
 - Two new I LOVE NY ads: one promoting the fire tower challenge and the second featuring Catskills attractions
 - A digital campaign including a new landing page on iloveny.com with travel itineraries built around Catskills hiking destinations
- Summer 2019 Advertising
 - I LOVE NY produced two summer ads in June that ran for six weeks in our drive market
 - “Anthem” spot highlighting must-see summer attractions like the Adirondacks, Niagara Falls, Baseball Hall of Fame, and others
 - “Emotional” spot portraying families making memories on their summer vacation in NYS
- Lake Ontario Tourism Campaign
 - Governor went fishing with NYS Attorney General Tish James on August 1 to promote fishing in the Thousand Islands and announced new tourism campaign to support the Lake Ontario region and shoreline impacted by flooding
 - Governor announcements include:
 - Free fishing thru Labor Day on Lake Ontario, St. Lawrence River & Lower Niagara River
 - 50% off camping and vehicle entrance fees at state parks along Lake Ontario and the St. Lawrence River
 - A new I LOVE NY TV ad featuring attractions in the region

- A I LOVE NY digital advertising campaign complemented by specific regional content and itineraries on iloveny.com
- The Great New York State Fair
 - I LOVE NY partnered with Amtrak for special promotion to promote attendance to the fair
 - Two Amtrak cars on Empire Service line 63 were wrapped with specially designed New York State Fair graphics and messaging
 - All Empire line trains served Taste NY products during the fair, with Taste NY promotional materials distributed on board
 - I LOVE NY ran TV ad and had digital campaign to encourage visitation
 - Those who rode Amtrak to the fair could get free admission
 - Governor announcements around the fair included a five-year “Green Fair” Plan to increase recycling, end use of some plastics, and make the fairgrounds energy independent by 2023 and the \$1.5M for a New Gate 10 and next phase of access improvements

2019 Recap for Other Agencies

- Office of Parks, Recreation, and Historic Preservation
 - Parks opened the new Shirley Chisholm park in Brooklyn, the largest park in the state
- Olympic Regional Development Authority
 - ORDA hosted the U22 and U18 hockey teams for Canada and USA
 - The Ironman triathlon which finishes at the ORDA skating building had record attendance
 - Junior Grand Prix Figure Skating at ORDA facilities had record attendance
 - A new accessible elevator at Whiteface Veterans’ Memorial Highway lookout point has allowed for record visitation
 - Would like to address overuse of hiking and parking areas in the Adirondacks by better communicating with I LOVE NY, DEC, and Parks
- New York Power Authority
 - Construction for the new \$25M Visitors’ Center in Utica began Summer 2019.
 - The new facility will host state of the art exhibits focusing on the past, present and future of New York’s energy grid, and host STEM programming
- Canal Corporation
 - The Canalway Challenge has been a huge success, bigger than anticipated.

- Looking to utilize social media/influencers to spread the word about the challenge for next year
- Thruway has offered use of TV screens in their Service Areas for advertise Canalway Challenge

Tourism Interagency Coordination

- I LOVE NY would like to maximize coordination around announcements and press releases that include a tourism aspect. When I LOVE NY knows about openings or announcements ahead of time, we can better plan to promote it. Many announcements can dovetail with programs already in progress at the Division of Tourism.
- Perhaps a detailed spreadsheet with potential upcoming announcements that is shared across agencies? Maybe assisting Public Information Officers for each agency as they regularly communicate to review all announcements?
- For I LOVE NY's part, plan on sharing "deliverable" document to all agencies on this task force twice a year: in March and September. Document outlines all the work completed by the department.

State of the State Tourism Policy Ideas

- Outdoor recreation is at the forefront for proposals this year. Once such proposal from DEC is to expand the successful "Hike With Us" program announced for the Catskills to the rest of the state.
- Several agencies have been approached about a proposal from the private sector for a dedicated Office of Outdoor Recreation. Several states have been approached and some have created the department while others like California have found it to be redundant.
- Department of State worked with student capstone project to understand what an Office of Outdoor Recreation would look like for New York State and who would be involved. Conclusion seemed to be that not entirely necessary as we have Parks, DEC, and I LOVE NY, but did start discussion on how to better promote outdoor recreation.
- Department of State applying for \$225,000 grant through USTA to promote outdoor recreation and is looking for partners who can help with promotional piece as not in the realm of the DOS.
- Additional new proposals could be about tourism product development to improve overall visitor experience and attract repeat visitation. I LOVE NY is trying to include more than just marketing proposals since marketing is going very well and doesn't seem to be main issues—rather infrastructure and visitor experience is.

- A customer satisfaction survey would be beneficial to do before making any new proposals so that state can find out firsthand from visitors what their feedback is.
- The 40th Anniversary of the Lake Placid Olympic Games is in 2020, so ORDA may host event to bring in Olympic Athletes from the 1980 games
- The Empire State Trail is opening in 2020 and touches almost every agency on the taskforce in some way. Should be thinking about how it will be promoted, not just for visitors, but for residents, for health purposes, etc. This is a huge opportunity for the state.
- Funding to close “last mile” transportation from airports and public transportation?

Looking Ahead for Fall/Winter

- Office of Parks, Recreation, and Historic Preservation
 - Parks is continuing half off camping into the Fall in the Lake Ontario region due to success
 - Parks is offering online renewal for Empire Pass Renewal to be more green
 - A number of parks are open for the winter season with cabin rentals and “first day” hikes
- Department of Economic Preservation
 - The “Hike With Us” program will continue through the end of the year and plug into the Fall Foliage Report
- New York Power Authority
 - Will be hosting Wildlife Festivals at all Visitor Centers and expecting 25,000+ attendees
- Olympic Regional Development Authority
 - Will be having ribbon cutting for ADA compliant gondola at the Ski Jumps
 - Zipline opening at Ski Jumps
 - Oktoberfest will take place at all ORDA resorts
 - Opening Discovery Lodge at Belleayre Mountain in the Catskills

Meeting adjourned: 2:45PM

TOURISM MATCHING FUNDS PROGRAM

2018 Report

TOURISM MATCHING FUNDS PROGRAM – 2018

Overview

The Tourism Matching Funds grant program, initiated in the 1978 New York State Tourist Promotion Act, was established to provide funding to tourist promotion agencies (TPAs) for the planning and promotion of programs designed to stimulate and increase the economic impact of tourism for New York State.

Funding is available to official TPAs for marketing efforts that look to reach new market areas and expand current efforts that have the potential to result in new or sustainable overnight visitation. \$4,515,000 was appropriated in the 2017-2018 FY NYS Budget for tourism Matching Funds. From that amount, \$4,413,104 was disbursed to 61 counties.

Below is a general summary of the activities that were conducted by the counties:

33% Advertising

23% Transferred to the Region (Regional Programming)

16% Collateral

6% Research

5% Web Development/Maintenance

5% Mailings & Distribution

7% Travel Shows

4% Public Relations

.8% Video/AV Elements

.1% Telephone Services/ Consumer

.1% Familiarization Tours

This year the Matching Funds program implemented an online application and reporting database system to increase efficiency for TPA grantees, more easily identify inaccuracies and reduce reporting errors.

The 2018 Matching Funds Guidelines and a Summary of the 2018 Financial Statements are both attached to this report.

Return on Investment

The Matching Funds Grant Program requires a 1:1 spending match by counties. All counties participating in the program are also requested to report any additional tourism spending for that corresponding year. The total overall tourism investment by counties for the 2018 calendar year was **\$34,313,965**. This indicates a 678% return on state investment, where every \$1 of taxes invested in the Matching Funds program contributed to \$6.78 worth of tourism promotion for the state.

Recommendations

The following recommendations are being made concerning the future organization, implementation and improvement of the Matching Funds program:

- A statutory change would allow for flexibility in the way that counties demonstrate their initial commitment to their application amount.
- A training for TPA grantees will be implemented to provide additional guidance around using the updated Matching Funds database reporting system and related processes.

	Total Award Amount	Amt Vouchered	Award + Match	Total Project Expenditures Reported	Amt Transferred to Region	Supplemental Spent	Total Spent	Notes
The ADIRONDACKS								
Clinton County	\$72,096	\$72,096	\$144,193	\$144,193	\$52,979	\$26,742	\$170,935	
Essex County	\$105,959	\$105,959	\$211,918	\$211,918	\$55,000	\$1,085,763	\$1,297,680	
Franklin County	\$105,959	\$105,959	\$211,918	\$211,918	\$55,000	\$230,739	\$442,657	
Hamilton County	\$105,959	\$105,959	\$211,918	\$211,918	\$55,000	\$53,006	\$264,924	
Lewis County	\$50,245	\$50,245	\$100,490	\$100,490	\$19,963	\$47,670	\$148,160	
Warren County	\$92,414	\$92,414	\$184,828	\$184,828	\$148,342	\$1,373,802	\$1,558,630	
REGION TOTAL	\$532,632	\$532,632	\$1,065,264	\$1,065,264	\$386,284	\$2,817,722	\$3,882,986	
(6 Counties)		\$1,065,264						
				Adirondack Regional Spending	\$397,705	\$10,443	\$408,148	
CAPITAL-SARATOGA								
Albany County	\$62,309	\$62,309	\$124,618	\$124,618	\$15,000	\$140,144	\$264,762	
Fulton County	\$63,067	\$60,290	\$120,580	\$120,580	\$14,000	\$2,450	\$123,030	
Rensselaer County	\$65,379	\$65,379	\$130,758	\$130,758	\$21,450	\$1,602	\$132,360	
Saratoga County	\$62,809	\$62,809	\$125,618	\$125,613	\$10,000	\$225,978	\$351,591	
Schenectady County	\$64,409	\$64,409	\$128,818	\$128,818	\$10,000	\$50	\$128,868	
Washington County	\$61,409	\$61,409	\$122,818	\$122,818	\$6,000	\$11,913	\$134,731	
REGION TOTAL	\$379,381	\$376,605	\$753,209	\$753,205	\$76,450	\$382,137	\$1,135,342	
(6 Counties)		\$753,209						
				Capital Saratoga Regional Spending	\$85,893	\$0	\$85,893	
The CATSKILLS								
Delaware County	\$66,409	\$66,409	\$132,818	\$132,818	\$26,286	\$189,711	\$322,529	
Greene County	\$71,193	\$71,193	\$142,387	\$142,387	\$49,623	\$633,105	\$775,492	
Sullivan County	\$67,581	\$67,581	\$135,163	\$135,163	\$40,000	\$467,747	\$602,910	
Ulster County	\$70,709	\$70,709	\$141,418	\$141,418	\$49,500	\$198	\$141,616	
REGION TOTAL	\$275,893	\$275,893	\$551,785	\$551,786	\$165,409	\$1,290,762	\$1,842,548	
(4 Counties)		\$551,785						
				Catskill Regional Spending	\$160,975	\$0	\$160,975	
CENTRAL NEW YORK								
Broome County	\$64,809	\$64,809	\$129,618	\$129,618	\$18,775	\$65,339	\$194,957	
Chenango County	\$58,498	\$58,498	\$116,996	\$116,994	\$12,000	\$25,477	\$142,471	
Madison County	\$64,809	\$64,809	\$129,618	\$129,618	\$18,775	\$139,756	\$269,374	
Montgomery County	\$64,809	\$28,500	\$57,000	\$57,000	\$10,000	\$57,000	\$57,863	
Oneida County	\$64,809	\$64,809	\$129,618	\$129,618	\$18,775	\$183,116	\$312,734	
Otsego County	\$64,809	\$64,809	\$129,618	\$129,618	\$18,775	\$370,306	\$499,924	
Schoharie County	\$62,609	\$62,609	\$125,218	\$117,911	\$18,775	\$63,685	\$181,596	\$3654 repaid to NYS
Herkimer County (Town Webb)	\$62,809	\$0	\$0	\$0	\$0	\$0	\$0	
REGION TOTAL	\$507,961	\$408,843	\$817,685	\$810,377	\$115,875	\$848,542	\$1,658,919	
(8 Counties)		\$817,685						
				Central NY Regional Spending	\$138,500	\$13,201	\$151,701	
CHAUTAUQUA-ALLEGHENY								
Allegany County	\$63,066	\$63,066	\$126,132	\$126,132	\$10,595	\$0	\$126,132	
Cattaraugus County	\$63,066	\$63,066	\$126,132	\$126,132	\$10,596	\$72,354	\$198,486	
Chautauqua County	\$63,066	\$63,066	\$126,132	\$126,159	\$10,596	\$305,819	\$431,978	
REGION TOTAL	\$189,199	\$189,198	\$378,396	\$378,423	\$31,787	\$378,173	\$756,596	
(3 Counties)		\$378,396						
				Chautauqua-Allegheny Regional Spending	\$31,894	\$0	\$31,894	
FINGER LAKES								
Chemung County	\$69,839	\$69,839	\$139,678	\$139,682	\$107,975	\$21,300	\$160,982	
Cayuga County	\$67,609	\$67,609	\$135,218	\$135,218	\$31,916	\$223,405	\$358,623	
Cortland County	\$71,544	\$71,544	\$143,088	\$143,088	\$94,550	\$6,659	\$149,747	
Ontario County	\$68,359	\$68,359	\$136,718	\$136,718	\$35,436	\$228,571	\$365,289	
Monroe County	\$67,909	\$67,909	\$135,818	\$135,818	\$33,324	\$730,710	\$866,528	
Livingston County	\$69,839	\$69,839	\$139,678	\$139,678	\$45,403	\$3,035	\$142,713	
Schuyler County	\$69,839	\$69,839	\$139,678	\$139,781	\$88,638	\$0	\$139,781	
Seneca County	\$65,609	\$65,609	\$131,218	\$131,218	\$24,530	\$33,351	\$164,569	
Steuben County	\$85,859	\$85,859	\$171,718	\$171,718	\$136,127	\$108,000	\$279,718	
Onondaga County	\$66,009	\$66,009	\$132,018	\$132,018	\$33,435	\$8,337	\$140,355	
Tioga County	\$67,509	\$67,509	\$135,018	\$135,018	\$31,448	\$4,413	\$139,431	
Tompkins County	\$69,839	\$69,839	\$139,678	\$139,678	\$42,384	\$354,178	\$493,856	
Wayne County	\$69,839	\$69,839	\$139,678	\$139,687	\$42,384	\$159,677	\$199,364	
Yates County	\$45,050	\$45,050	\$90,100	\$90,100	\$18,348	\$88,034	\$178,134	
REGION TOTAL	\$954,651	\$954,651	\$1,909,302	\$1,909,420	\$765,898	\$1,829,670	\$3,739,090	
(14 Counties)		\$1,909,302						
				Finger Lakes Regional Spending	\$749,364	\$0	\$749,364	
								\$60,000 paid directly to vendor for regional programming instead of Regional TPA in error

GREATER NIAGARA								
Erie County	\$63,713	\$63,713	\$127,426	\$127,426	\$13,630	\$1,149,330	\$1,276,756	
Genesee County	\$67,309	\$67,309	\$134,618	\$134,618	\$30,508	\$265,633	\$400,251	
Niagara County	\$64,421	\$64,421	\$128,842	\$128,842	\$16,954	\$3,400,199	\$3,529,041	
Orleans County	\$55,717	\$55,717	\$111,434	\$111,434	\$32,942	\$6,982	\$118,416	
Wyoming County	\$65,324	\$65,324	\$130,648	\$130,648	\$21,192	\$0	\$130,648	
REGION TOTAL	\$316,484	\$316,484	\$632,968	\$632,968	\$115,226	\$4,822,144	\$5,455,112	
(5 Counties)		\$632,968						
				Greater Niagara Regional Spending	\$115,500	\$0	\$115,500	
HUDSON VALLEY								
Columbia County	\$62,163	\$62,163	\$124,327	\$124,327	\$6,356	\$37,279	\$161,606	
Dutchess County	\$65,324	\$65,324	\$130,648	\$130,648	\$21,575	\$852,491	\$983,139	
Orange County	\$66,809	\$66,809	\$133,618	\$133,618	\$28,162	\$447,795	\$581,413	
Putnam County	\$62,163	\$62,163	\$124,326	\$124,326	\$6,856	\$6,719	\$131,045	
Rockland County	\$62,309	\$62,309	\$124,618	\$124,618	\$7,040	\$137,394	\$262,012	
Westchester County	\$65,324	\$65,324	\$130,648	\$130,648	\$21,192	\$251,500	\$382,148	
REGION TOTAL	\$384,092	\$384,092	\$768,184	\$768,185	\$91,181	\$1,733,179	\$2,501,364	
(6 Counties)		\$768,184						
				Hudson Valley Regional Spending	\$124,808	\$12,040	\$136,848	
LONG ISLAND								
Long Island CVB	\$211,918	\$211,918	\$423,836	\$423,836	\$423,836	\$608,412	\$1,032,248	
(2 Counties)		\$423,836						
NEW YORK								
NYC & Co	\$529,795	\$529,795	\$1,059,589	\$1,059,590	\$1,059,590	\$10,620,265	\$11,679,855	
(5 Counties)		\$1,059,589						
THOUSAND ISLANDS-SEAWAY								
Oswego County	\$66,227	\$66,227	\$132,454	\$132,454	\$25,430	\$118,217	\$250,671	
St. Lawrence County	\$65,324	\$65,324	\$130,648	\$130,648	\$21,192	\$10,015	\$140,663	
Jefferson County	\$101,444	\$101,444	\$202,888	\$202,888	\$190,726	\$0	\$202,888	
REGION TOTAL	\$232,995	\$232,995	\$465,989	\$465,990	\$237,348	\$128,232	\$594,222	
(3 Counties)		\$465,989						
				TI Regional Spending	\$226,752	\$0	\$226,752	
2018	Total Awarded	Total Vouchered	Total Investment	Total Expenses Reported	Total Transferred to Region	Total Supplemental Spent	Total Spent	
	\$4,515,000	\$4,413,104	\$8,826,208	\$8,819,045	\$3,468,884	\$25,494,920	\$34,278,281	
					Overall Tourism Investment			
					\$34,313,965			



Tourism Matching Funds Guidelines

2018 PROGRAM YEAR
(JANUARY 1 - DECEMBER 31, 2018)

2018 Tourism Matching Funds Guidelines

I. GENERAL PROGRAM INFORMATION

A. STATEWIDE MARKETING PROGRAM

The now famous “I LOVE NEW YORK” campaign started in 1977 to address a worsening economic crisis across New York State. With the support of this historic campaign, the tourism industry helped turn around both the economy and the image of the state.

B. MATCHING FUNDS PROGRAM INTRODUCTION

The New York State Department of Economic Development (“the Department”) has been provided with \$4,515,000 to award to Tourism Promotion Agencies (“TPA”) for the 2018 Tourism Matching Funds Program Year. In the event this level of funding changes, TPAs will be notified immediately and the Department will take necessary action to adjust the amount of your grant in accordance with the new level of funding and pursuant to Economic Development Law, Article 5-A. While the grant application process will resume, awards will be contingent upon availability of state funds given the difficult economic situation faced by New York this year.

PURPOSE

The purpose of the Tourism Matching Funds Program (“Program”) is to provide matching funds to tourism promotion agencies for the planning and promotion of marketing programs designed to stimulate and increase the economic impact of tourism for New York State. The Program’s priorities are to reach new market areas and expand current programs that have the potential to result in new or sustainable overnight visitation.

TPAs are encouraged to consider the most effective and efficient marketing program, including media mix, that will stimulate tourism in the local and regional economy. All advertising purchased under the Program must support efforts to strengthen the state’s I LOVE NEW YORK brand and further the new branding strategy.

Please Note: TPAs county and regional marketing plans are expected to align with any 2018 DED marketing plans.

MATCHING FUNDS ADMINISTRATION

The New York State Department of Economic Development administers the Program and is directed by statute to perform the following duties:

- Plan, facilitate and implement marketing programs to increase tourism across the state
- Establish and publish annual Guidelines for the use of Matching Funds
- Accept or reject applications for Matching Funds on the basis of the Guidelines
- Authorize payment of funds within state finance guidelines out of the Matching Funds budget appropriation
- Review and approve all marketing efforts developed with Matching Funds and carrying the state’s I LOVE NEW YORK brand
- Do all things necessary, desirable and convenient to carry out its powers, functions and duties

2018 Tourism Matching Funds Guidelines

PROGRAM DEFINITIONS

- **Tourism Matching Funds Program Year: January 1—December 31, 2018**
- **Tourism Promotion Agency (TPA)** Any not-for-profit corporation or other nonprofit organization, association or agency designated by resolution of the county legislature or other governing body of any county, or upon designation of the mayor of the city of New York, as the agency authorized to apply for and receive Tourism Matching Funds.
- **Project Director** The Project Director is the person designated by the TPA who is responsible for all aspects of the Program. The Project Director must have a demonstrated knowledge of tourism promotion acceptable to the Department.
- **Regional Program** The Regional marketing program promotes each of the 11 official vacation regions.
- **Supplemental regional programs may include:**
 - more than one county within a single tourism region for the purposes of promotion shared assets or themes, or;
 - one or more counties and their contiguous states and/or Canadian provinces, or;
 - one or more counties in each of at least two tourism regions for the purpose of promoting shared product assets or themes.
- **Regional Tourism Promotion Administrator (“Regional TPA”)** The Regional TPA is the person designated by the counties within each tourism region to administer regional programs, and financial transactions and reporting on behalf of those counties.
- **Recognized Advertising** Recognized advertising is media advertising and promotional materials to be distributed in accordance with a marketing plan approved by the Department.
- **Marketing Message “Template”** Marketing Message “Template” is a term used to denote a consistent message/ theme is created in regards to all co-op marketing advertisements. It is similar to a “template” in that the message or theme is all around the outside of the ad with the highlighted information in the center.

C. PROGRAM APPLICATION ASSESSMENT

TPAs are again strongly encouraged to align their marketing programs with regional council objectives and consult with their council about their individual program. The Commissioner shall take into consideration such alignment and consultation with the council when making awards under this Program.

Program applications are assessed against the following criteria:

- Marketing initiatives that target consumer and business travelers from 50+ miles and/or overnight visitation
- Research based programs based on identifiable marketing needs
- Alignment with New York State marketing strategy and I LOVE NEW YORK branding
- Participation in established regional programs and cross-county promotions
- Established metrics to measure return on investment
- Emphasis on digital media and online initiatives, where appropriate
- Alignment with the goals of respective regional council

2018 Tourism Matching Funds Guidelines

D. TOURISM PROMOTION AGENCY (TPA)

Only an officially designated TPA may apply for and receive Matching Funds. Once designated, the TPA is the official tourism agency for the county and is the primary contact with the state for all matters relating to tourism promotion and marketing. The TPA is accountable to and serves at the pleasure of county government or the Mayor of the City of New York and the Department, in all matters relating to Matching Funds.

The Department or county government may replace the officially designated TPA at any time, if it is in the best interest of the Program. Reasons for this could include: specific request by county government due to a re-organization, formation of a new organization specifically for tourism marketing purposes or failure to perform in accordance with established Guidelines. County government must secure Department approval in writing to change a TPA designation, unless it is done at time of application.

If an agency or organization has no demonstrated knowledge of tourism promotion, it can still qualify as a designated TPA if it will only serve as an organization to apply for and receive matching funds and have no direct involvement in the development, planning or administration of the matching funds program AND a qualified tourism professional, acceptable to the Department, is employed as the Project Director solely responsible for the Program. If necessary, a tourism advisory board may be established to assist and give nonbinding advice to the Project Director about the program.

E. PROJECT DIRECTOR

REQUIREMENT

The Department requires each TPA to designate a Project Director, who will be responsible for management of the Program and serve as the official contact. The Project Director must have a demonstrated knowledge of tourism promotion acceptable to the Department. All communication to and from the Department must be made through the established Project Director in order to ensure accountability. Any exceptions to this must be approved by the Department.

CHANGE IN STATUS

If the Project Director changes at any time during the life of the Program the TPA must immediately notify the Department. Once a new Project Director is designated, the TPA must inform the Department and receive approval in writing.

PROCEDURE FOR PROJECT DIRECTOR CHANGE

- Immediate notification to the Department including explanation of circumstances and person(s) who authorized (if change was result of a Board action, a dated and notarized copy of documentation is requested), and;
- A statement verifying the county government was consulted and approved the action, and;
- Written request for approval of new Project Director, and;
- Any other requested information the Department determines necessary or pertinent.

If the Project Director is changed without notification to the Department and county government, the Department will request immediate clarification and assess the status of the Program.

If the TPA does not replace the Project Director, it must immediately terminate the Program and return any monies advanced by the state.

DEPARTMENT REQUEST FOR CHANGE

If the Department determines the Project Director does not have an acceptable demonstrated knowledge of tourism promotion, Tourism Matching Funds guidelines compliance and reporting even after training, the Department will request a Project Director change. If so requested, the Department can assist the TPA in the selection process of a new Project Director.

Failure to follow Project Director policies including response to a request for change can lead to a determination of non-compliance with the Program.

2018 Tourism Matching Funds Guidelines

F. REGIONAL TPA

Regional tourism efforts are encouraged to pool resources for greater impact, build regional brand equity and promote thematic cross-county marketing.

Applicants must participate in their official vacation region before other supplemental regional promotions can be considered. Participation in supplemental regional programs is contingent upon a majority vote of all counties within the official vacation region. Applicants are required to send their marketing plans detailing their proposed regional activity to their Regional Administrator to obtain majority approval.

The regional administrator for the official vacation region will also coordinate, fund and report on the activities of the supplemental regional programs. Once a supplemental regional program is approved, a county TPA from within that region may be assigned to manage approvals on behalf of all participants.

The Department requires that TPAs engaging in regional programs designate a Regional TPA, who will be responsible for the programs and serve as the official contact. The designated Regional TPA will be responsible for the administration and fiscal management of the regional programs, including submission of vouchers and required reports.

Pursuant to Economic Development Law, Article 5-A, Section 164(d) A regional advertising program as described in statute may include those personal service administrative expenses actually attributable to such program, provided such expenses not exceed 20% of the total budget of the regional advertising program and such expenses have been approved by no less than one-half of the counties within the region.

TPAs' are again strongly encouraged to align their regional promotion programs with regional council objectives and consult with their council about their programs. The Commissioner shall take into consideration alignment and consultation with the respective regional council when making regional program bonuses under this Program.

G. PROGRAM YEAR & REPORTING

Although the Program Year dates have changed, all reporting requirements remain the same for 2018. Quarterly and Final Reports are mandatory.

II. PROGRAM PROCEDURES AND REQUIREMENTS

Any questions regarding procedures and requirements should be addressed directly with the Department for clarification before taking any action.

A. GENERAL PROGRAM POLICIES

I LOVE NEW YORK LOGO

The I LOVE NEW YORK logo and all of its variations and treatments are trademarks and the sole property of the Department. Use of the I LOVE NEW YORK logo in any form, anywhere must be approved by the Department, whether used with a Matching Funds project or otherwise. There are no blanket policies for logo use whatsoever. In addition, TPAs are not authorized to assign or transfer the logo to any party whatsoever. All inquiries and requests for the I LOVE NEW YORK logo must be directed to the Department. Every time the I LOVE NY logo is used the appropriate legal language is required to be included. Exceptions may be made by the Department only. Please reference the Logo Usage Summary (page 13) for the appropriate language for the differing logos.

I LOVE NEW YORK MUSIC/SONG

Use of the I LOVE NEW YORK song in any form, including the "4 little notes" requires the permission of the Department and payment to Elsmere Music for licensing. Unauthorized use of the music in advertising will not be eligible for Matching Funds. The copyright notice "©1977 Elsmere Music, Inc. All rights reserved." must appear on audio packaging and any other reproduction materials including sheet music. Contact information for Elsmere Music is as follows: Elsmere Music, Inc. Box 185 Bedford, NY 10506 Attention: Steve Karmen 914/234-9201.

2018 Tourism Matching Funds Guidelines

POLICY ON RELEASES

Any releases, written consents or permissions required by law are the responsibility of the TPA and not the Department.

NEW YORK STATE CONTENT ONLY

With the exception of approved cross-border promotions, Matching Funds can only be used to promote tourism activities within the borders of New York State. Tourism collateral cannot include advertising for tourism activities or businesses outside of the State unless it is part of an approved cross-border marketing program. Advertising is limited to tourism businesses, and final discretion of the NYSDED Matching Funds Director.

EXCLUSION OF OFFICIALS AND/OR POLITICAL SUB-DIVISIONS

Materials funded through this program cannot include any reference whatsoever, whether real or intended, to the name of any public official or political subdivision.

TRAVEL REIMBURSEMENT

Travel by the Project Director to attend official statewide TPA meetings or statewide tourism meetings hosted by the Department are eligible for travel reimbursement. Project Directors will be reimbursed for travel expenses incurred to attend meetings hosted by their regional administrator. See Claiming Travel Expenses for procedure.

PERSONNEL AND/OR EQUIPMENT EXPENSES

Personnel costs (except Regional TPA) and costs for the purchase of equipment are not eligible for Matching Funds.

FEES, SALES, LEASE OF ITEMS

No fee may be charged for the sale, lease or loan of any advertising themes or materials including but not limited to: official festival posters, brochures, CD/DVD projects, or any other materials purchased, developed or produced through Matching Funds.

B. PROJECT APPROVALS

All projects must be submitted to the Department for approval at least three business days before production or publication. Projects that have not received prior approval are not eligible for Matching Funds. If more than one TPA is working on a collaborative project all of the TPAs involved must receive approvals for project elements.

C. FISCAL REQUIREMENTS

BANKING PROCEDURES

- The TPA must set up a bank account dedicated solely to the Matching Funds Program.
- In the case where county law prohibits the establishment of a separate bank account, a notice of encumbrance for the local share is acceptable.
- The TPA must deposit and account for an amount equal to or greater than the Matching Funds award.
- For regional programs, a separate bank account must be maintained that is dedicated solely to the regional program.
- TPAs participating in regional programs must transfer funds for the regional programs to the regional account for administration and handling.
- Canceled checks will be required for vouchering and reporting unless the TPA utilizes County Government vouchers as proof of payment.

2018 Tourism Matching Funds Guidelines

D. HANDLING OF FUNDS

DEPOSITS

Funds designated for the purposes of this program must be held in a dedicated checking account that is used expressly for payments for approved projects. Once funds are deposited into the dedicated account and State Aid Voucher submitted, funds cannot be transferred to another account, except for transfers to designated regional accounts. Once grants are received and are deposited into the matching funds account, they may not be withdrawn or borrowed for such items as certificates of deposit, temporary funding of other projects or paying other bills not associated with this program. Funds can only be used to pay expenses directly to vendors for the Program. All grant monies received for the purposes of regional promotions must be sent, upon receipt of invoice, to their regional administrator. TPAs will not be allowed to withhold regional funds for any reason.

UNUSED FUNDS

If the total amount of a grant is not spent by December 31, 2018, unless an extension has been granted by the Department, unused funds must be returned and next steps will be determined by the Department.

BORROWING

Taking out a loan to cover the costs of any promotions covered under this program is not recommended. In the case of a regional program, at no time should a Regional TPA borrow funds from county or regional programs to cover funds that are not sufficient to support a program. TPAs should not incur debt for partners.

INTEREST

Interest charges paid on money borrowed in relation to the Program is not an eligible expense. However, interest accrued on Matching Funds accounts may be used as part of the local match.

TRANSFER

The transfer of funds from one TPA to another, except for regional grant, for any purpose is strictly prohibited. Failure to comply with any policies regarding the Handling of Funds can lead to a determination of non-compliance with the program.

E. EXTENSIONS

All grant money for the Matching Funds Program Year must be spent by December 31, 2018. Extensions may be granted for up to 90 days if the TPA shows good cause. Extensions are not recommended but can be granted at the discretion of the Department. Only under extraordinary circumstances will additional extensions be considered.

2018 Tourism Matching Funds Guidelines

F. PAYMENT PROCESS

Payment is pursuant to submission of a signed State Aid Voucher complete with backup documentation. The voucher must contain proof of the local match (state awards/grants do not qualify for the local share.) Regional TPAs are responsible for invoicing all participants (including themselves), paying all vendor invoices and maintaining a separate bank account for regional programs.

STATE AID VOUCHER PREPARATION

The deadline for payment of state matching funds is December 1. All vouchers must be submitted six (6) weeks in advance of that date to ensure payment. No guarantees can be made on late submissions.

Two complete, separate and collated sets of the required back-up documentation must be submitted with the voucher. Vouchers received that do not contain the required documentation and copies will be returned. If you are applying for your total grant on one voucher, a bank statement or letter from the bank is required showing a balance (less than 30 days old) for the full amount of the local share. A notice of encumbrance for the local share is also acceptable.

If you are accounting for additional funds above the amount displayed on the bank balance statement submitted, a copy of the validated deposit slip(s) showing dates and amounts of deposit and a copy of the check(s) received from participating contributors is necessary.

NEW: Digital evidence of above is acceptable.

If any payments against the balance have been made, you must submit proof of payment in the form of cancelled checks and copies of invoices. **In all cases TWO copies including a Claim for Payment Voucher, State Aid Voucher Worksheet, and an Expenditure Listing Worksheet must accompany your voucher and back-up documentation.**

If you are submitting more than one voucher throughout the year:

- Your first voucher follows the same procedure as indicated for a single voucher.
- Subsequent Vouchers must be submitted with evidence of availability/expenditure of not only the local share of the amount being requested, but also the state and local share of all previous vouchers.
- As an example if a TPA has already received a payment from the State for \$10,000, voucher #1, and is now requesting payment of \$5,000, voucher #2, the total the TPA must account for is \$25,000 (\$10,000 expenses shown first time shown in voucher #1 + \$10,000 expenses paid with \$10,000 from the state + \$5,000 for current request).

An example of how to submit more than one voucher can be found on the State Aid Voucher Worksheet at: <http://thebeat.iloveny.com/industry>

If a voucher is found incomplete a TPA will have 30 days to reconcile, unless time frame is extended by Department due to special circumstances. Any vouchers that are not completed within this time frame will not be processed by the Department and will be returned to the TPA.

2018 Tourism Matching Funds Guidelines

CLAIMING TRAVEL EXPENSES

Travel expenses allowed under this program are subject to the following rules and regulations:

- If expenses are reimbursed from any other source or agency, they may not be claimed.
- Payment must be made directly to the traveler, vendor or credit card company.
- Reimbursement for consumer and trade shows is limited to two (2) official representatives per 10 feet of exhibit space or per registration.
- Payments may not exceed the established Gov't per diems for the travel destination

Expense forms for each traveler must be submitted with Quarterly Reports and vouchers if applicable.

Required support documentation includes:

- Copies of hotel/motel bills, with proof of payment for overnight travel
- Copies of transportation ticket receipts for payment and copy of ticket
- Copies of receipts for transfers at the beginning/end of each trip
- Copies of toll receipts
- Copies of parking receipts
- Statement of mileage traveled
- Mileage form created by Department

NOTE: Mileage claims must be legitimate travel to business meetings to qualify. Justification of expense must be submitted with forms.

Expenses will be reimbursed at the current State rates and subject to State requirements and definitions. All rates are available on the General Service Administration (GSA), Travel and Transportation Management Policy Division's website:
www.gsa.gov/portal/category/100120

OFFICIAL STATION

An official station is used to determine travel expenses. Travel status is defined as being on official business at a distance of more than 35 miles from either an official station or place of residence. When in official travel status for less than three hours, meals and/or lodging are not allowed.

TIME LIMIT FOR MEAL ALLOWANCES

Breakfast will be allowed when the time of departure at the beginning of trip occurs one hour before travelers normal work day. Dinner will be allowed when the time of return at the end of a trip occurs two hours after a traveler's normal work day. Receipts are not required for meal allowances.

MEAL ALLOWANCES

When you are in travel status for less than a full day and lodging charges are not incurred, reimbursement is as follows: Breakfast \$5.00 and Dinner \$12.00.

TRANSPORTATION

Rental fees for transportation or use of personal vehicles are eligible for mileage reimbursement at current state mileage rate. Transfers are eligible up to \$25 each way in New York City or out-of-state. They are also eligible \$15 each way in-state with receipts for taxi and common carrier between official station, home or hotel and transportation terminals. A maximum of \$7.00 will be reimbursed without receipts.

2018 Tourism Matching Funds Guidelines

EXPENSE FORMS

- State Aid Voucher
- State Aid Voucher Worksheet and Sample
- Matching Funds Travel Voucher
- <http://thebeat.iloveny.com/industry>

MAXIMUM REIMBURSEMENTS

The maximum reimbursement for lodging and meal expenses cannot exceed the lodging and meal allowances for the area of assignment. If the cost of lodging exceeds the maximum allowance, the meal allowance must be used to offset the higher lodging expense.

Under no circumstances will approval be granted to exceed the total per diem allowance.

All rates are available on the General Service Administration (GSA), Travel and Transportation Management Policy Division's website: www.gsa.gov/portal/category/100120

G. REPORTING PROCEDURES

Each County and Regional TPA receiving Matching Funds is required to submit Quarterly Reports and a Final Report. *Only one copy of each report is necessary.* For the 2018 Matching Funds Program Year, first quarter is January-March 31, 2018.

Quarterly Reports are due on the following dates:

Quarterly 1	May 1
Quarterly 2	August 1
Quarterly 3	November 1
Quarterly 4	February 1, 2019

QUARTERLY REPORTS

Quarterly Reports are required progress reports that detail your financial and program activity for each Matching Funds Fiscal year quarter. In addition to a list of payments made and cancelled checks for the quarter, supporting documentation includes, but is not limited to:

- Invoices for media buys and advertising production with itemization of services (attach scripts, copies of ads as required).
- Copies of invoices indicating transfer of funds to the Regional TPA/Administrator.
- Printing and production costs for collateral, CD/DVD and other media, including three competitive bids, and original RFPs.
- Copies of travel show contracts and related travel expenses.
- Tear Sheets from print media (or copies of ads if tear sheets are not yet available).
- Affidavits of performance from radio and TV stations and copies of scripts.
- Copies of cancelled checks, vouchers authorized for payment by someone other than the project director, or signed receipts.
- Additional documentation requested by the Department to satisfy proof of payment.
- Quarterly Report Expenditure Listing Form.
- Quarterly Reports must be submitted even if no payments were made within the quarter.

2018 Tourism Matching Funds Guidelines

FINAL REPORTS

Final Reports are due April 1, 2019 for the 2018 Matching Funds Program Year. Final Reports will address the overall effectiveness of your program and may include:

- Program description and effectiveness assessment
- Research tools and performance measures
- Financial report, including tourism promotion programs not paid for with Matching Funds
- Comments and suggestions to improve the Program

The required format for the 2018 Final Report will be sent to you at the end of the Matching Funds Program Year. The final report numbers should reflect the expenditures reported in the quarterly reports. If there is a difference, you must explain and document the reason why the numbers differ.

ADDITIONAL REPORTING

An additional report may be required from a TPA who has received a program extension. This report will cover any unreported expenses through the extension period. Payments made after the extension period may not be claimed.

NOTE: TPAs delinquent with Quarterly or Final Reports will not have vouchers processed until reports are up to date. Failure to submit required reports can lead to a determination of non-compliance with the Program.

H. NON-COMPLIANCE

TPAs found to be in non-compliance with the Guidelines are subject to disciplinary action by the Department that can include but is not limited to, suspension or termination of current or future programs or Matching Funds award(s).

Examples of non-compliance include, but are not limited to:

- Failure to follow policy for Project Director change
- Failure to comply with policies of Cooperative Marketing
- Failure to submit Quarterly or Final Reports
- Failure to follow fiscal requirements or misuse of funds

NOTE: State policies and procedures concerning Matching Funds take precedent over any local contract or agreement between county government, private co-op partners and the TPA.

2018 Tourism Matching Funds Guidelines

III. PROGRAM MARKETING

In general, marketing projects and programs and some related items are eligible for Matching Funds. Contact the Department to determine eligibility of anything not listed in this section.

A. BRANDING

I LOVE NEW YORK branding is required on all Matching Funds marketing and advertising projects.

Some general branding guidelines include:

- The logo must always be surrounded with a minimum amount of clear space. This isolates the logo from competing elements such as photography, text or background patterns that may detract attention and lessen the overall impact. The clear space minimum is equivalent to the vertical height of the heart icon, on all four sides of the logo.
 - No elements of the logo may be recreated, deleted, cropped, highlighted or reconfigured in ANY way.
 - Logo files that have been supplied are the only files approved by the Department for use.
 - Logo artwork should always appear upright.
 - Logos are supplied in EPS vector files that are infinitely scalable, and therefore ensure proper resolution for reproduction in any size.
 - The logo should appear against a solid background whenever possible to ensure proper contrast.
 - Logo artwork should never be reproduced (cut & paste) from previously printed materials.
 - Do not put a white box around/ behind the logo at any time.
 - Do not change the colors of the logo.
 - Minimum Sizing of Logos
 - **ESSENTIALLY: DO NOT EVER CHANGE THE LOGO!**
 - All full page, 1/2 page and 1/4 page ads must use the logo no smaller than 1" wide.
 - The standard web banner sizes are: 300 x 250 pixels, 160 x 600 pixels and 728 x 90 pixels. All three sizes should use a logo that is no smaller than 60 pixels wide.
- (See next page for I LOVE NEW YORK Logo Usage Summary and legal language requirement.)

LEGAL LANGUAGE

In order to protect the trademark legally, it is required that the ownership of the logo is displayed with all marketing materials. Please reference the Logo Usage Summary (page 13) for the specific language required for each logo or logo treatment.

SEASONAL LOGOS

Season logos may be used by TPAs for seasonal advertising or other approved projects. They may not be used on Travel Guide covers.

TAGLINE

Use "I LOVE NEW YORK" until a new tagline is announced.

2018 Tourism Matching Funds Guidelines

LOGO USAGE SUMMARY

MARKETING TOOLS	ILNY LOGO TO USE	SPECIFIC RULES
Calendar of Events	Standard Logo	Complete list of events in county/region; Contact info for county/region required
Collateral	Standard Logo	Call to action to county/region required;
Newsletters	Logo with iloveny.com	Call to action to county/region required;
Online Banners/Buttons	Logo with iloveny.com	Call to action to county/region required;
Print Ads	Standard Logo	Call to action to county/region required; Template required of co-op ads
Promotional Items	Standard Logo*	Standard logo; some cases such as bags, use URL logo
Seasonal Pieces	Standard Logo	Standard logo; some cases seasonal logo upon request for approved seasonal programs/tools
Specialty/Group Tour Guide	Standard Logo	
Show Handouts	Logo with iloveny.com	
Radio	Tagline	Call to action to county/region required; county name or event proceed tagline. Must also conclude with "I Love New York."
Television	Standard Logo	Call to action to county/region required; logo at end; Doughnut required of co-op ads
Travel Guide	Standard Logo	Logo placement top right corner w/ county name to left; official county/regional Travel Guides must include half page ad for I Love New York
Web site	Button to iloveny.com	Hyperlink required; location in top right corner
Trade Show Exhibits & Displays	Logo with iloveny.com	Must appear in top half of all exhibits and displays

LEGAL LANGUAGE		
Required ANY Time Logo Used	Standard Logo	Seasonal Logo (Fall, Winter)
Less Than Full Page =	® NYSDDED	™ NYSDDED
Full Page =	® I LOVE NEW YORK is a registered trademark and service mark of the New York State Department of Economic Development; used with permission.	™ I LOVE NEW YORK is a registered trademark and service mark of the New York State Department of Economic Development; used with permission.

PROPER USE OF THE I LOVE NEW YORK LOGO
Logos may not be changed or altered in any manner
Ensure clear space all 4 sides in accordance with the Branding Guidelines
Department approval on projects for single projects & current program year ONLY unless otherwise specified. Marketing tools used prior to approval may not be eligible for matching funds.
Logos For TPA use ONLY; attractions, business may never use the official logo without permission from DED.

2018 Tourism Matching Funds Guidelines

B. COOPERATIVE MARKETING

Cooperative tourism marketing involves a collaborative effort between the county or region and outside entities (eg. tourism businesses, associations, organizations) for the mutual benefit and economic improvement of the area. These must be considered an adjunct to your primary countywide program. Under no circumstances should an advertising program be based solely upon private partnerships. Cooperative projects cannot be used to fund or promote individual entities nor can individual entities influence projects for their own benefit.

Cooperative marketing is encouraged by the Department to the extent it leverages the efforts of county/region marketing programs. All county or regional tourism related businesses or events are eligible to participate in applicable cooperative projects and must be notified of opportunities.

POLICIES FOR COOPERATIVE PROJECTS

Projects must represent a comprehensive or thematic county/region marketing campaign. They cannot be limited to a single attraction or business. Promotion of single events may be considered if they meet the following criteria:

- Is the event in close proximity to out-of-state tourist markets?
- Does the event result in statewide and out-of-state press?
- Does the event result in significant job creation for your county?
- Does the event generate overnight stays and visits to other tourism assets and services in your county?

During the approval process for advertising single events, in the case of challenge by the DED, you must be able to support your decision to market this event by supplying the following information:

1. How many out of state visitors are expected to attend this event this year? You must provide at least one metric to support your position (e.g. hotel rooms booked or revenue from last year's event, number of out-of-state registered attendees, number or percentage of out-of-state license plates)
2. Estimate of the total number of new jobs created by the event (if applicable), and whether these are permanent or temporary
3. Briefly describe the value the event creates for (1) your area and (2) NYS tourism as a whole

Exceptions may also be made for certain destinations or attractions if they are unique in the county or the primary tourism asset for the county. This could apply to a downhill ski area or amusement park provided they are presented in context as an asset among the others in the county/ region. These guidelines apply whether the partner entity partially or fully funds the local match for the particular project.

The Department strongly encourages marketing partnerships and thematic packaging, including actual getaway packages. The statewide tourism program includes seasonal retail programs that can include getaway packages or other opportunities for alignment with cooperative marketing efforts.

For cooperative advertising placements, a minimum of 1/3 of the ad must be dedicated to the county/region marketing theme with a clear call-to-action to obtain more information about the area (i.e. county or region logo or name and URL or toll-free number). A standard marketing advertising "template" must be used to create continuity and an identity for your county/region. This year you are required to submit a rendering of your proposed template and a list of potential co-op partners in your marketing plan when you apply for funds.

It is the responsibility of the TPA to coordinate cooperative programs with tourism partners. Under no circumstances can a media entity or private business act as a broker on behalf of the Program.

Failure to follow the Cooperative Marketing procedures can lead to a determination of non-compliance with the Program.

2018 Tourism Matching Funds Guidelines

C. ADVERTISING

DIGITAL MARKETING

Matching Funds can be used for digital marketing including but not limited to online advertising, search optimization and e-marketing. The use of digital marketing is strongly encouraged to reach consumers where they plan travel. It is efficient, cost effective and measurable.

For websites that contain county or regional information other than tourism, the call-to-action for digital marketing must lead directly to tourism related content.

The supplied I LOVE NEW YORK logo with specific size and location requirements must appear on all digital marketing. Specific logo to be used for digital marketing projects will depend on the nature of the project. Please reference Section III A. for logo usage.

Please Note: I LOVE NEW YORK LOGO is not required to be used on image-based advertisements on Facebook, Twitter, Instagram or other social media platforms. Videos appearing in social media ads must still adhere to logo guidelines.

Ineligible Expenses: Advertising that directs consumers to pages or sites that are not tourism related.

NEW: Costs related to Digital Marketing must be reported under the Digital Marketing category in Quarterly Reports.

PRINT

Matching Funds can be used for production and placement of print media. Print advertising must be placed outside of the county/region with the exception of a county placing an ad in the Regional Travel Guide. A region may not place an ad in a county Travel Guide. Advertising projects must be part of an overall approved county/region marketing campaign.

Print ads cannot be limited to a single attraction, business or event. Exceptions as noted above may be made upon approval from the Department. Exceptions will only be made if the individual attraction, business or event is the primary tourism asset or the only one of its kind (e.g. a downhill ski area or iconic landmark) for the county or region. For approved exceptions, the project must include the county/region marketing theme and a clear call-to-action to obtain more information about the county or region. Ideally, if approved, a single attraction, business or event should be coupled with other tourism opportunities in the area (e.g. accommodations, restaurants, shopping) to drive incremental business and encourage longer stays.

The supplied I LOVE NEW YORK logo, with specified size and location requirements, must appear on all print ads. Specific logo treatments may vary depending on what is most appropriate for the particular ad. Please reference Section III A. for logo usage.

Final print advertising must be approved by the Department before release.

RADIO

Matching Funds can be used for production and placement of radio advertising and must be part of an overall approved county/region marketing campaign.

Radio advertising cannot be limited to a single attraction, business or event. Any exceptions to this policy must receive prior approval from the Department. (For the exception to this policy see "Print.")

Radio copy must include your county/area name or a unique quality/event followed by "I LOVE NEW YORK!"

Final radio copy must be supplied to the Department for approval before airing.

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TELEVISION

Matching Funds can be used for production and placement of television advertising and must be part of an overall approved county/region marketing campaign.

Television advertising cannot be limited to a single attraction, business or event. Any exceptions to this policy MUST receive prior approval from the Department. (For the exception to this policy see "Print.")

The supplied I LOVE NEW YORK logo must be a minimum size of 230 x 100 pixels, it must appear in the last frame/ few seconds of all television spots and may not appear outside the television safe area.

Television ad copy and finished spot must be approved by the Department before airing.

D. WEBSITE DEVELOPMENT/DATABASE

Matching Funds can be used for design, construction, hosting and updating consumer travel websites and tourism databases. The main county tourism website must contain comprehensive information about the county/region. The intent of the site is to be the primary source of tourism information for the area.

Each county tourism database and website must be kept up-to-date with the most recent and current consumer tourism information. The updated data MUST be shared with the Department on a regular and timely basis to update the state tourism database and website.

Costs for vendor contracts (on a fee-for-service basis) to update and cleanse the New York State Division of Tourism's database are eligible for Matching Funds.

Please Note: Failure to supply updated data to the Department quarterly for the State tourism database and website can lead to a determination of non-compliance with the Program.

Regional sites may direct consumers to corresponding county sites provided there is a sufficient amount of regional content included and all county partners agree to the format.

For websites that contain county or regional information other than tourism, the information must be kept on separate pages and tourism content must be clearly visible and contained in its own section.

Membership associations and/or organizations shall not exclude non-members from listings or participation on the tourism websites.

Ineligible Expenses: Matching Funds cannot be used for equipment rental or purchase. For mixed-use websites, non-tourism pages are not eligible.

Costs related to Internet Development/Database must be reported in Quarterly Reports. For mixed-use websites, only tourism related information should be included. Vendor invoices must itemize costs which are specifically for tourism content, including website and database hosting, as well as design, construction and updating.

2018 Tourism Matching Funds Guidelines

E. COLLATERAL PROGRAM

Matching Funds can be used to produce county or regional travel guides, meeting planner guides, events calendars, package brochures, multi-purpose shells, special interest theme brochures (that support specific marketing programs) and limited direct-mail materials. Production costs for CD/DVD supporting projects are also eligible. Matching Funds may not be used to design and print posters, signage, and/or single event brochures.

The supplied I LOVE NEW YORK logo, with specified size and location requirements, must appear on all collateral materials. Specific logo treatments may vary depending on what is most appropriate for the particular project. For general guidelines, please refer to the Section III A. Specific guidelines apply for Travel Guide covers.

TRAVEL GUIDES

Matching Funds can be used to produce one annual or two seasonal comprehensive Travel Guides (including foreign language versions). Eligible costs include design, production and printing. There are no specific size requirements. Printing requires three competitive bids, copies of which must be handed in with reports.

The Department encourages the use of environmentally friendly printing methods. If printed in the US (preferred), "Printed in USA" should appear somewhere in the publication in small type.

The front cover of all Travel Guides must include the supplied I LOVE NEW YORK logo in the upper right corner with your logo or name placed to the left. The county/region logo or name can be placed immediately to the left of the logo or in the upper left corner of the cover. Logo must be .09" x 1" stacked logo or 1" x .5" horizontal logo. No graphic elements can appear above, beside or between the county/ region logo or name and the I LOVE NY logo.

County or Regional Travel Guides must represent the entire county/region, include year round information (unless seasonal guides are produced) and include prominently placed contact information for county/region. Guides cannot include credit lines (unless required by law) or any references to non-NYS tourism information, unless part of an approved cross-border promotion.

Selling advertising in Travel Guides is acceptable to offset costs. However, only tourism-related advertising is allowed.

The entire publication (not just the cover) MUST be approved by the Department before printing.

BROCHURE INSERTS

Matching Funds can be used to produce brochure inserts that supplement an existing brochure and support the overall approved county/region marketing campaign. Please reference Section III A. for logo usage.

CALENDARS OF EVENTS

Matching Funds can be used to produce Events Calendars provided a complete list of major events is included. Matching Funds cannot be used for materials that promote single events. Contact information for the county/region must be included.

Please reference Section III A. for logo usage.

2018 Tourism Matching Funds Guidelines

REGIONAL TOUR PLANNING DIRECTORY

Matching funds can be used to produce Regional Tour Planning Directories including listings and contact information for both single and group travel. Please reference Section III A. for logo usage.

Services listed should include:

- Information services including local publications that are available
- Attractions, events, arts and theater
- Special interest tours, tour modules, established itineraries
- Transportation services (e.g. air, rail, motor coach, auto rental, limo, taxi)
- Hotels/Motels
- Restaurants
- Local tour operators
- Motor coach tour operators
- Foreign language services, if available
- Monetary exchange

SPECIAL-INTEREST THEMED BROCHURES

Matching Funds can be used to produce Special-Interest Themed Brochures provided they are in support of an overall approved county/region marketing campaign. Matching Funds cannot be used to produce brochures in support of a single event, community or attraction.

The brochure cover should include the title/theme used in the marketing campaign and must include the county/region logo or name, and a clear call-to-action to obtain more information about the county/region. The brochure should be submitted for approvals with the submission of the overall campaign that it is developed to fulfill. Please reference Section III A. for logo usage.

DIRECT MAIL PROJECTS

Matching Funds can be used for Direct Mail Projects that support overall approved county/region marketing campaigns. Direct Mail Projects cannot support a single tourism business or event.

SHELLS/FOLDERS

Matching Funds can be used for production of trade and public relations shells or folders. There are no specific size requirements but the cover must contain the county/region name and/or logo. Please reference Section III A. for logo usage.

ACCOMMODATIONS, CAMPING AND/OR RESTAURANT GUIDES

Matching Funds can be used to produce county/region Accommodations, Camping and/or Restaurant Guides provided they supplement county/region Travel Guides.

There are no specific size requirements but the guides must contain the official names of the county/region name and/or logo and support overall approved county/region marketing campaign.

MEETING PLANNERS GUIDES

Matching Funds can be used to produce Meeting Planners Guides. Information should include details and contacts for:

- Exhibit, convention and meeting facilities
- Hotels and motels
- Entertainment, sports and recreational opportunities
- Local support services
- Services specific to the group provided by local organizations

2018 Tourism Matching Funds Guidelines

F. PHOTOGRAPHY & AUDIO/VISUAL PROGRAM

Matching Funds can be used for Photography and Audio/Visual projects provided they support the overall approved county/region marketing campaign. The purchase of New York State footage or photography is also acceptable.

Projects submitted for this program must include:

- A description of the objectives including use and intended target
- Scope of work
- Story boards and scripts
- Distribution services plan including contracts, if applicable

The supplied I LOVE NEW YORK logo with specific size and location requirements must appear in all video projects. For audio-only projects, copy must include Another Reason I LOVE NEW YORK. Video must include the logo at the end of the production or segments and follow the general rules. The logo must be a minimum size of 480 x 295 pixels. Please reference Section III A. for logo usage.

Ineligible Expenses: Equipment costs, travel, food, lodging and entertainment.

G. RESEARCH

Matching Funds can be used to commission tourism-related research projects including the cost of contracts (on a fee-for-service basis) with firms or universities, to design, conduct and analyze a research study. Tourism studies can include but are not limited to researching: target markets, visitor demographics and behavior, economic impact, advertising effectiveness, program return on investment and conversion.

A copy of any research findings must be provided to the Department.

It is expected that TPAs use all information and research available to them to inform their marketing plans. The Department provides economic impact findings and consumer research and strongly recommends TPAs to engage local and regional research and to form cooperative research partnerships with local universities.

Projects submitted must include:

- A detailed description of the objectives and goals
- Scope of work and anticipated costs with itemized budget
- A detailed list of research studies or information currently used to inform marketing strategy (eg. target markets, visitor demographics and behavior, economic impact, advertising effectiveness, lodging tax receipts, specific program ROI, conversion studies)
- Information about proposed firm or partnership contracted for the project

2018 Tourism Matching Funds Guidelines

H. PUBLIC RELATIONS

Matching Funds can be used for limited expenses related to Public Relations efforts including the cost of contracts with individuals or firms (on a fee-for-service basis) to design, conduct and analyze a PR program. Fee-for-service contracts can include but are not limited to: production and distribution of press releases, press kits, mailings, purchase of B-roll, preparation of press materials, sponsorship solicitation and press visits. Program costs cannot exceed twenty-five percent (25%) of the total program amount (local plus state share).

Projects submitted must include:

- A detailed description of the objectives and goals
- Scope of work and anticipated costs with itemized budget
- Information about proposed firm contracted for the project

The supplied I LOVE NEW YORK logo with specific size and location requirements must appear on all public relations packaging (e.g. shells, folders, CD/DVD covers). For general guidelines, please refer to Section III A.

Ineligible Expenses: Equipment or display purchases, travel, food, lodging and entertainment. Retainer fees, local press conferences, interviews, resident FAM tours, local campaigns and internal relations programs are not eligible.

I. TRADE & CONSUMER OUTREACH

TRAVEL SHOWS

Matching Funds can be used for Travel Show expenses, including but not limited to: signage, space rentals, audio/visual equipment rentals, service contracts for on-site rentals and exhibit shipping/drayage/storage. Limited travel expenses are also eligible, please see Travel Reimbursement section for details.

Expenses related to the purchase of new exhibits and displays for approved shows are eligible provided they are in alignment with the new branding efforts of I LOVE NEW YORK. The “logo” including the web site lock up must appear within the top half of the display. Further, if you create a multiple panel display that allows for use of it’s individual components, you must display the panel that contains the “logo.”

The supplied I LOVE NEW YORK logo and other branding elements must be incorporated into new exhibits or signage. Each project is unique and will require working with the Department for creative/branding guidance. The Department encourages review of old exhibits and signage to incorporate new branding strategies.

Show programs submitted must include:

- A detailed description of the objectives and goals
- List of proposed shows
- Anticipated budget, itemized by show

Cooperative booth space, including two or more counties participating together, can be part of a regional program if approved by participating counties and managed by the regional TPA. Cooperative marketing efforts with private partners is acceptable if booth is clearly identified as the respective county or region not an individual business or attraction. The identification must be absolutely clear, and information about the entire county/region must be available.

Ineligible Expenses: Long-term rentals, on-site construction costs, purchase of electronic or other display equipment costs, entertainment and beverages.

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SALES OUTREACH

Matching Funds can be used for Sales Outreach such as: sales meetings, FAMs and marketplaces.

Eligible costs include but are not limited to: fee to hire a motor coach, van, auto and service contract for such services as arranging appointments, providing itineraries and providing pre/post leads. If a separate meeting is held, expenses can also be claimed for equipment and space rentals. TPA travel reimbursement is allowed. Limited costs related to hosting FAM tours are also eligible such as local transportation, lodging and associated attraction admission expenses.

Outreach programs submitted must include:

- A detailed description of the objectives and goals
- Detailed schedule
- Anticipated budget with itemized expenses

Ineligible Expenses: Entertainment and beverages. For FAM tours, ineligible expenses include cost of transportation to area.

PROMOTIONAL ITEMS

Matching funds can be used on a limited basis to produce promotional items such as buttons and stickers for travel shows and sales outreach provided they include a call-to-action (e.g. URL or toll-free number). The I LOVE NEW YORK logo should be included when size and design specifications allow for appropriate branding. Projects must be reviewed by the Matching Funds Director on a case-by-case basis.

J. INFORMATION CENTER SERVICES

Matching Funds can be used for expenses related to Information Center Services including contracts with operators of travel information centers, collateral distribution (on a fee-for-service basis), signage and other display materials.

Projects submitted must include:

- A detailed description of the objectives and goals
- Site selection and/or distribution list and justification for selections
- Anticipated budget with itemized expenses

Ineligible Expenses: Exhibit construction and equipment purchase. Travel, food, lodging and entertainment.

K. MAILING/DISTRIBUTION PROGRAM

Matching Funds can be used for expenses related to mailings of approved collateral or marketing materials, vendor contracts for distribution services (on a fee-for-service basis) or expenses for fulfillment services. You may not use this provision to mail materials that were not approved and paid for with tourism matching funds.

Program costs cannot exceed twenty-five percent (25%) of the total program amount (local plus state share).

Ineligible Expenses: Equipment purchase.

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L. TELEPHONE SERVICES

Matching Funds can be used for Telephone Services provided the service is directly related to the Program and/or providing consumers with tourism information. Detailed back-up documentation and reporting is required for Telephone Services reimbursement.

TOLL-FREE NUMBERS

Matching Funds can be used for costs for incoming toll-free number telephone calls and monthly service charges. Toll-free number expenses must have a direct relationship to an overall approved county/region marketing plan.

Ineligible Expenses: Equipment and costs relating to service contracts (except answering services) and personnel costs.

FAX RESPONSES

Matching Funds can be used for the actual cost of sending faxed responses and monthly service charges. Fax delivery of tourism information to consumers must be part of an overall approved county/region marketing plan.

Ineligible Expenses: Equipment and costs relating to service contracts and personnel costs.

TELEPHONE ANSWERING SERVICES

Matching Funds can be used to cover contracts (on a fee-for-service basis) with telephone answering service vendors to respond to inquiries received as a direct result of an overall approved county/region marketing plan.

Ineligible Expenses: Equipment and costs relating to service contracts, personnel costs, line charges and costs of incoming toll calls.

IV. CONTACT INFORMATION

For more information on the Matching Funds Program or Guidelines contact:

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