

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF JACKSON

THIS AGREEMENT is made and entered into as of the 22nd day of May, 2019, by and between the JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY, whose address is 116 Central Street, Sylva, NC 28779, hereinafter "TDA," and SMOKY MOUNTAIN NEWS, LLC, a North Carolina limited liability company, whose address is P.O. Box 629, Waynesville, NC 28786, hereinafter "Contractor."

W I T N E S S E T H

WHEREAS, TDA desires that Contractor perform certain services to include: selling advertisements, designing the ads, preparing the layout of editorial copy and preparing the printing of the 2020 Visitor Guide at the specs, size, press run, paper type all as specified by the TDA and with the TDA retaining the right to have final approval on layout, design, content, copy and photo choices; and

WHEREAS, Contractor is willing to perform such services as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do each contract and agree with the other as follows:

1. SERVICES PERFORMED. Contractor agrees to perform the services as set forth in the attached Scope of Work, which is attached and incorporated herein by reference (hereinafter the "Services"), in accordance with the terms of this Agreement.

2. FEE AND PAYMENT SCHEDULE. TDA shall pay Contractor \$1,500.00 for file preparation and working with the printer though TDA shall have final approval of the printer chosen for the Visitor Guides. Contractor shall also be paid and receive 65% of all advertising revenue collected from the sale of advertisements for the first \$30,000.00 in advertising revenue committed. Contractor shall receive 80% of all advertising revenue collected from the sale of advertisements for the amount of advertising revenue collected in advertising revenue committed above \$30,000. Contractor shall invoice TDA for the file preparation and for working with the printer after these services are complete. Payment is due within thirty (30) days of receipt of an accurate invoice by TDA's Finance Division.

Contractor shall pay TDA 35% of the advertising revenue for the first \$30,000 and 20% of the advertising revenue for the amount over \$30,000 within 30 days of receipt of the payment from the advertiser. Ad sales shall not exceed 37.5% of pages in the guide. The 2020 Visitor Guide shall not exceed 80 pages. The TDA shall pay \$75/month for storage of Visitor Guides upon receipt of invoice from SMN.

3. WORK SCHEDULE. Contractor shall complete all work in a timely manner and deliver materials to printer for a visitor guide delivery date (in JCTDA's hands) no later than March 15, as long as TDA meets agreed upon deadlines to get materials to SMN. SMN is held harmless for any issues that may delay delivery due to problems with the printer or delivery.

4. TERM AND TERMINATION. The Effective Date is the date of mutual execution of this Agreement. This Agreement shall be effective for the 2020 Visitor Guide included in the 19-20 fiscal year. TDA may terminate this Agreement at any time, without cause, by notification to Contractor in writing. In the event of termination without cause, Contractor shall be paid for services performed to the date of notification of termination by TDA.

5. OWNERSHIP OF DOCUMENTS. All deliverables, working files, and any other contract documents prepared by Contractor, or any subcontractors or subconsultants under the terms of this Agreement (“the Documents”), shall be the property of TDA. Contractor further acknowledges that TDA is subject to Chapter 132 of the North Carolina General Statutes, the Public Records Act (the “Act”), and that this Agreement, as well as any of the Documents as defined herein, shall be a public record as defined in such Act, and as such, will be open to public disclosure and copying.

6. BASIC INSURANCE REQUIREMENTS. Contractor does hereby attest that it has general liability insurance coverage (which covers all its operations including but not limited to motor vehicle transportation) in the minimum amount of one million (\$1,000,000) dollars. A “Certificate of Insurance” affirming said coverage is attached hereto as an integral part of this Contract. County shall be listed as an additional insured under said Certificate of Insurance and a copy of said endorsement shall be provided to County within ten (10) days signing of Contract. Contractor shall at all times during the existence of this contract maintain liability insurance coverage in the amount not less than one million (\$1,000,000) dollars. Contractor shall provide evidence of continuation or renewal of Professional Liability Insurance for a period of two (2) years following termination of the Agreement.

7. ADDITIONAL INSURANCE REQUIREMENTS.

- A. The Contractor’s General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY INSURANCE POLICY.

- B. Before commencement of any work or event, Contractor shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. Contractor shall have no right of recovery or subrogation against TDA (including its officers, agents and employees).
- D. It is the intention of the parties that the insurance policies afforded by Contractor shall protect both parties and be primary and non-contributory coverage for any and all losses covered by the above-described insurance.

- E. TDA shall have no liability with respect to Contractor's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of Contractor.
- F. Notwithstanding the notification requirements of the Insurer, Contractor hereby agrees to notify the Executive Director or Board President of TDA, within two (2) days of the cancellation or substantive change of any insurance policy set out herein. TDA, in its sole discretion, may deem failure to provide such notice as a breach of this Agreement.
- G. Insurance procured by Contractor shall not reduce nor limit Contractor's contractual obligation to indemnify, save harmless and defend TDA for claims made or suits brought which result from or are in connection with the performance of this Agreement.
- H. Certificate Holder shall be listed as follows:

Jackson County Tourism Development Authority
Attention: Nick Breedlove, Executive Director
116 Central Street
Sylva, NC 28779

- I. If Contractor is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, Contractor shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

8. INDEMNIFICATION. Contractor agrees to protect, defend, indemnify and hold TDA, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this Agreement and/or the performance hereof that are due, in whole or in part, to the negligence of Contractor, its officers, employees, subcontractors or agents. Contractor further agrees to investigate, handle, respond to, provide defense for, and defend the same at its sole expense and agrees to bear all other costs and expenses related thereto.

9. DECLARATION BY CONTRACTOR. Contractor declares that Contractor has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the work to be performed under this Agreement.

10. FEDERAL, STATE, AND LOCAL TAXES. Neither federal, nor state, nor local income tax nor payroll tax of any kind shall be withheld or paid by TDA on behalf of Contractor

or the employees of Contractor. Contractor shall not be treated as an employee with respect to the services performed hereunder for federal or state tax purposes.

11. NOTICE TO CONTRACTOR REGARDING ITS TAX DUTIES AND LIABILITIES. Contractor understands that Contractor is responsible to pay, according to law, Contractor's income tax. If Contractor is not a corporation, Contractor further understands that Contractor may be liable for self-employment (social security) tax, to be paid by Contractor according to law.

12. FRINGE BENEFITS. Because Contractor is engaged in Contractor's own independently established business, Contractor is not eligible for, and shall not participate in, any employee pension, health or other fringe benefit plan of TDA.

13. TDA NOT RESPONSIBLE FOR WORKERS' COMPENSATION. No workers' compensation insurance shall be obtained by TDA concerning Contractor or the employees of Contractor. Contractor shall comply with the workers' compensation law concerning Contractor and the employees of Contractor.

14. NO AUTHORITY TO BIND TDA. Contractor has no authority to enter into contracts or agreements on behalf of TDA. This Agreement does not create a partnership or any form of agency between the parties.

15. ASSIGNMENT. Neither TDA nor Contractor shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, monies that may become due or monies that are due) without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

16. NON-WAIVER. The failure of either party to exercise any of its rights under this agreement for a breach thereof shall not be deemed to be a waiver of such rights or a waiver of any subsequent breach.

17. HOW NOTICES SHALL BE GIVEN. Any notice given in connection with this agreement shall be given in writing and shall be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address stated herein. Any party may change its address stated herein by giving notice of the change in accordance with this paragraph.

18. APPLICABLE LAW AND JURISDICTION. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. The parties to this Agreement confer exclusive jurisdiction of all disputes arising hereunder upon the General Courts of Justice of Jackson County, North Carolina.

19. COMPLETE AGREEMENT. This Agreement contains the complete agreement of the parties regarding the terms and conditions of the Agreement, and there are no oral or written conditions, terms, warranties, understandings or other agreements pertaining thereto which have not been incorporated herein. This Agreement may be modified only by written instrument duly executed by both parties, or their respective successors in interest.

20. SEVERABILITY. The provisions hereof are severable, and should any provision be determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, the other provisions shall remain in full force and effect and shall not thereby be affected unless such ruling shall make further performance hereunder impossible or impose an unconscionable burden upon one of the parties.

21. AUTHORITY. Each party warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each party further warrants that the execution, delivery and performance by it of the Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.

22. E-VERIFY. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. Contractor shall ensure that Contractor and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this provision by Contractor will be considered a breach of this Agreement, which entitles TDA to terminate this Agreement, without penalty, upon notice to Contractor.

23. DIGITAL COPIES. All parties agree that scanned, faxed, digital signatures, electronic signatures or e-mailed signatures by any or all of the parties to this Contract, shall be binding originals for all needed purposes including admissibility as evidence in any legal proceedings.

24. IRAN DIVESTMENT. Pursuant to Article 6E of Chapter 147 of the North Carolina General Statutes, TDA must require most entities with which it contracts, which would include Contractor under this Agreement, to certify that the entity is not identified on a list created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"). This requirement is related to ensuring that entities with which local governments contract are not involved in investment activities in Iran. Contractor certifies that: (i) it is not listed on the Final Divestment List, and (ii) it will not utilize any subcontractor performing work under this Agreement which is listed on the Final Divestment List.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed.

SIGNATURES ON NEXT PAGE

JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY

BY: _____
Ann Self, Chair of the Board

DATE: _____

SMOKY MOUNTAIN NEWS, LLC

BY: _____

PRINTED NAME: _____

TITLE _____

DATE: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Signature of Finance Officer

Date