

**MASTER SERVICES AGREEMENT**

**Between**

**RAWLE MURDY ASSOCIATES, INC.**

**And**

**JACKSON COUNTY TOURISM DEVELOPMENT AUTHORITY**

This **MASTER SERVICES AGREEMENT** (together with any schedules, exhibits, or addenda that may be attached hereto and any amendments hereof, the “Agreement”), is effective as of July 1, 2020 (the “*Effective Date*”), by and between **Rawle Murdy Associates, Inc. (“RM”)** and **Jackson County Tourism Development Authority (“Client”)**. This agreement supersedes the original agreement dated July 1, 2019.

WHEREAS, RM is a corporation, duly organized, validly existing and in good standing under the laws of the State of South Carolina, with the power to carry on its business as it is now being conducted. RM has its principal office and place of business at **960 Morrison Drive, Suite 300, Charleston, South Carolina 29403**. RM is in the business of assisting and representing its clients in marketing and communications; advertising; public relations and social media matters; website development, design, hosting and maintenance; search engine marketing and optimization; preparing marketing and communications material; and obtaining media space or time to present such services.

WHEREAS, Client is a tourism development authority duly organized, validly existing and in good standing under the laws of the State of North Carolina with the power to carry on its business as it is now being conducted. Client has its principal office and place of business at **116 Central Street, Sylva, North Carolina 28779**.

WHEREAS, Client wishes to engage RM services for the product(s) or service(s) described in RM’s Scope of Work outlined in Exhibit A and Exhibit B (attached).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RM and Client, intending to be legally bound, hereby agree as follows:

## 1.

### **MASTER SERVICES AGREEMENT REPRESENTATION AND SERVICES**

#### 1.1. **Appointment and Authorization**

RM is hereby retained and appointed to represent Client in carrying out Client's advertising and marketing services and website services subject to the terms and conditions of this Agreement. RM is authorized to act as Client's agency in purchasing materials and services on Client's behalf as Client requests and desires. RM shall take reasonable steps to prevent any loss to Client resulting from the failure of proper performance by any third party, but RM shall not be liable or responsible to Client for any such failure.

#### 1.2. **RM Services**

RM will study Client's products and/or services so that RM has a firsthand knowledge of their qualities. RM will also analyze Client's present and potential markets to help RM in its recommendations. RM's knowledge of (1) the factors of distribution and sales, (2) methods of operation, (3) available media and (4) the means to most profitably promote Client's product will all be employed in Client's behalf. RM will formulate and recommend a definite plan to achieve the desired results. RM agrees that it will not provide similar services for a destination marketing organization within a seventy-five (75) mile radius of Client's place of business.

#### 1.3. **Prior Approval of Client**

(A) RM shall not incur any material obligations or provide any material services for Client without first obtaining written approval therefore from Client's authorized representative. Client represents that the person(s) designated to work with RM has authority to approve the commitments contemplated by this Agreement.

(B) In order to obtain Client's approval, RM shall submit written proposals to Client, which describe the proposed services and provide estimates of the cost to undertake.

(C) RM shall not be responsible for missed deadlines, closing dates, etc. caused by the delay of Client in approving the proposed services.

#### 1.4. **Authorization for Use of Materials**

RM shall obtain releases, licenses, permits or other authorization to use photographs, copyrighted materials, art work or any other property or rights belonging to third parties obtained by RM for use. Client shall obtain the same for any such items obtained by Client, which are used by RM, and Client shall be responsible for any claims with respect to such use by such items obtained by client.

1.5. **Accuracy of Materials Furnished by Client**

Client shall be responsible for the accuracy, completeness and propriety of information concerning Client's products and services which Client furnishes to RM.

1.6. **Cancellation of Plans**

(A) Client may reject, cancel, or stop any approved plans, schedules, or work in progress effective as of the date such decision is received by RM in writing. Upon occurrence of such event, any service charges, expenses, or work incurred to the effective date of such decision, as well as any additional service charges, expenses, or work caused thereby, shall be paid by Client, and Client shall indemnify RM pursuant to Section “**3.01 Indemnification**” of this Agreement. RM shall take all reasonable steps to comply with the Client’s request.

(B) RM may withdraw from any marketing, communications, or public relations campaigns which, in RM’s opinion, have become inappropriate or offensive to the public.

1.7. **RM Discretion**

Nothing herein contained shall be deemed to require that RM undertake any campaign, prepare any marketing and communications material or publicity, or cause publication of any advertisement or article, which, in RM’s judgment, would be misleading, indecent, libelous, unlawful, or otherwise prejudicial to Client’s interests or to RM’s interest. RM reserves the right to refuse to handle any marketing and communications, or other publicity that, in RM’s opinion, does or may violate any law, regulation, contract, or self-regulatory rule to which RM or Client have subjected themselves.

**2.**

**CHARGES FOR SERVICES PERFORMED BY RM**

(A) RM charges for the product(s) or service(s) described in RM’s Scope of Work for Jackson County Tourism Development Authority are indicated in Exhibit A (attached).

(B) RM’s Scope of Work for Social Media for Jackson County Tourism Development Authority are indicated in Exhibit B (attached).

(C) All other time of the individual personnel of RM associated with the development and creation of the products and services will be billed to the Client at the applicable hourly rate for the individual performing the services, including but not limited public relations, creative development, production management, and research unless specified in Exhibit A (attached).

(D) Expenses directly relating to RM services, such as long distance, mailing, shipping, travel and photo copying, will be charged at RM net cost.

## 2.2. **Charges for Advertising Space and Time**

(A) If RM is requested to place media advertising, Client agrees to pay RM at current published rates (or at lower rates when available) for advertising run in all non-digital media, except that in the case of media allowing no commission (or less than 15 percent commission) Client agrees to pay RM at current published rates (or at lower rates when available) plus an amount which (together with the commission, if any, allowed by media) will yield RM 15 percent of its total media charge to Client, before cash discount.

(B) If RM is requested to place digital media advertising, Client agrees to pay RM at current published rates (or at lower rates when available) plus an amount which (together with the commission, if any, allowed by media) will yield to RM 20% of RM's total digital media charge to Client, before cash discount.

## 2.3. **Charges for Materials and Services Purchased**

Client agrees to pay RM the net cost, before deduction of cash discount, of all materials and services (other than space and time) purchased for Client.

## 2.4. **Use of Advertising Outside of the United States and its Territories**

In the event Client wishes to adapt, translate, or use outside of the United States and its territories any advertising, marketing, communications, or public relations work authored, created, or developed by RM, the parties shall work together in good faith to determine RM's compensation for the additional use of any advertising, marketing, communications, or public relations work authored, created, or developed by RM and the expansion of the Client's rights to use such marketing and communications materials outside of the United States and its territories. Such determination of compensation shall be effective only when agreed upon in writing signed by a duly authorized representative of each party, which may include any additional terms reasonable requested by either party.

## 2.5. **Billing; Terms of Payment**

RM shall prepare invoices to Client on a monthly basis, as close to the first day of the month as possible. Payment of invoices is due upon receipt. If Client does not pay the invoices within thirty (30) days of the date on the invoice, RM may charge a finance charge of one and one-half percent (1.5%) for each month Client has failed to make the requisite payment. When placing media, RM will pay the media invoice only when payment has been received from Client.

## 2.6. **Payment to Third Parties**

(A) RM shall bill Client for all costs associated with the media, suppliers, or other third parties, in advance of the payment due date. If Client requests additional evidence of such costs, including but not limited to invoices from a third party, any delay in submission of such evidence shall not constitute a cause for delay in Client's payment to RM.

(B) Prior to receipt of payment in full from Client, Client shall be solely liable for payment to all third parties for their bills, costs, or expenses. Once RM receives payment from Client, RM shall be liable only for those bills which Client has satisfied in full. RM shall not be liable for any bills, costs, or expenses that Client fails to pay according to the terms of this Agreement.

(C) Client shall not designate any partial payment as full payment for any debt owed to third parties, unless the third-party consents in writing, and the consent is submitted to RM stating that such “partial payment will fully satisfy the entire amount owed.”

### 3.

## INDEMNIFICATION

### 3.1. **Indemnification**

(A) Client agrees to defend, indemnify and hold harmless RM, its shareholders, directors, officers, agents, employees, and representatives with respect to any claim, loss, expense, damage or other liability, including reasonable attorney’s fees and court costs, based upon, related to, or arising out of any advertising, marketing, communications, website development, or public relations work authored, created, or developed based upon materials furnished by Client. This indemnification includes, but is not limited to any claim, suit or proceeding made or brought against RM arising out of: (1) any assertion with regard to any product or service of Client or any of the products or services made by any of the Client’s competitors contained or embodied in any advertising, marketing, communications, website development, or public relations work that RM prepares for Client and that Client approves; (2) any advertising, marketing, communications or public relations element that is furnished by Client to RM and that allegedly violates the real, personal, tangible, intangible or intellectual property rights of anyone; (3) use of any RM-produced commercials by Client’s dealers or by anyone else, when such claim, suit or proceeding arises out of RM’s obligations under the applicable union codes or contracts relating to the production of commercials so long as RM has shared their obligations with Client; (4) any advertising, marketing, communications, website development, or public relations work authored, created, or developed by RM pursuant to the terms of the Agreement, which has been modified, changed, or revised by or at the direction of the Client; and (5) any breach of this Agreement. The Client’s duty to defend and indemnify RM attaches to all work performed pursuant to this Agreement and will not terminate upon termination of this Agreement and is binding upon Client, its successors and assigns.

(B) RM agrees to defend, indemnify and hold Client harmless with respect to any claims, loss, expense, damage or other liability suffered by Client, including reasonable attorney’s fees and costs, arising out of: (1) RM’s failure to obtain releases, licenses, permits, or other authorization to use photographs, copyrighted materials, artwork, or any other property or rights belonging to third parties; or (2) any item prepared by RM or at RM’s direction, except where any such claim, loss, expense, damage or other liability arises out of material supplied by Client and incorporated into any materials or advertisement prepared by RM. RM’s duty to defend and indemnify client attaches to all work performed pursuant to this Agreement and

will not terminate upon termination of this Agreement and is binding upon RM, its successors and assigns. Upon termination of this Agreement Client becomes responsible for usage authorization rights beyond the terms set forth when initially purchased.

(C) In the event a consumer, competitor, governmental, or self-regulatory proceeding is initiated as a result of marketing and communications produced and published under this Agreement, each party to this Agreement will assist and cooperate with the other in defending such action. Any costs incurred as a result of said defense shall be the responsibility of the party incurring said costs except to the extent that indemnification under one of the foregoing provisions is applicable.

## 4. TERM; TERMINATION

### 4.1. Term

(A) This Agreement is effective as of the Effective Date and shall continue until terminated as provided herein.

(B) Either party may terminate this Agreement by giving the other party written notice thereof at least **Ninety (90) days prior** to the effective date of termination, sent by registered or certified mail to the principal place of business of the party to whom such notice is addressed provided that this agreement may not be terminated by RM effective prior to the expiration of twelve (12) months from the commencement date. The principal place of business is designated in the Preamble of this Agreement. Upon receipt of notice of termination, RM shall not commence work on any new advertisements, but it shall complete all marketing and communications material previously approved by Client whose closing dates or broadcast dates fall within the notice period, and RM shall be entitled to all commissions and any other compensation relating to such advertising regardless of who places it. All other rights, duties, and responsibilities of RM shall continue in full force during the notice period.

(C) In the event Client or RM desires to terminate all work in progress on advertisements commenced before receipt of notice of termination, the parties may do so upon their mutual consent and determination of the compensation to be received by RM for partially completed work.

### 4.2. Assignment of Third Party Contracts upon Termination

On the date of termination of this Agreement or on such other date as may be agreed upon by the parties, RM shall assign to Client all of its rights in contracts, agreements, arrangements, or other transactions made with third parties for the Client's account, and Client shall assume all the obligations of RM and hold RM harmless from all liability thereunder. In the

event any such contract is nonassignable and consent to assignment is refused, or RM cannot obtain a release from its obligations, RM shall continue performance thereof, and Client shall

meet its obligations to RM and shall indemnify RM from all liability arising thereunder as though this Agreement had not been terminated.

#### 4.3. **Billing upon Termination**

Upon termination of this Agreement, RM shall bill Client for all amounts not previously billed and due to RM under the terms of this Agreement and any costs, charges, or expenses arising pursuant to Section 4.04. RM shall not be entitled to commission on or payment for any advertisement if work thereon commenced after the date RM received notice of termination of this Agreement. RM shall, however, be entitled to payment for services and commissions for advertisements commenced and approved by Client prior to receipt of such notice, regardless of who places it.

#### 4.4. **Disposition of Work Product and Materials**

(A) Upon termination of this Agreement, all tangible materials and property, which are produced pursuant to the terms of this Agreement and approved and paid for by Client (“***Tangible Work Product***”), shall be the sole property of Client. RM shall notify Client of any Tangible Work Product within its possession and Client shall promptly inform RM, in writing, of the disposition Client desires with respect to such Tangible Work Product. If Tangible Work Product is in the possession of any third party, Client shall be solely responsible for obtaining Tangible Work Product from any such third party.

(B) All shipping and transportation costs to return to Client any Tangible Work Product or other property belonging to Client, which was provided by Client to RM in order that RM might perform this Agreement, shall be borne by Client. RM shall not be obligated to store at its own expense any such Tangible Work Product or other property belonging to Client, except for a brief period after RM gives notice to Client. In the event Client fails to respond to the RM’s notice within a reasonable time, RM shall have the option, but not the obligation to store in the name of the Client and at Client’s expense and risk any such Tangible Work Product or other property belonging to Client. In such event, RM shall notify Client of the storage and give Client the necessary details in connection therewith. In addition to the costs and expenses described in this subparagraph (C), Client shall be charged for the time necessary to compile the Tangible Work Product or property belonging to Client, either for shipping and transportation or storage, at the then-hourly rate of a Production Manager of RM. Client expressly agrees to pay and/ or reimburse RM for any and all costs, charges and expenses described hereunder.

(C) Upon termination of this Agreement, all ideas, plans, designs, software code, slogans, and any other creative products, whether in tangible or intangible form, which are not adopted, approved and paid for by Client (“***Work in Progress***”) within ninety (90) days notice of termination of this Agreement, shall remain the sole property of RM. Client shall either return, or at the request of RM, destroy all tangible or intangible embodiments of any such Work in Progress in the Client’s possession upon termination or expiration of this Agreement. In the event that RM requests that any Work in Progress be destroyed by Client, an authorized representative of Client shall certify in writing to RM and within 30 days following Client’s receipt of a written request to destroy such Work in Progress that Client has complied with the terms of this Section 4.4(D).

**5.**

**DISCLAIMERS AND LIMITATION OF LIABILITY**

**5.1. Failure of Third-Parties to Perform**

RM shall take reasonable steps to ensure third-parties, including but not limited to the media or suppliers, properly execute their commitments, but RM shall not incur any liability if these third parties fail to act in accordance with such commitments, whether these commitments arise from industry practice or pursuant to the terms of any additional agreements.

**6.**

**CONFIDENTIAL INFORMATION**

**6.1. Confidentiality**

(A) Neither party shall disseminate, nor use for its own purposes, both during and after the termination of this Agreement, any Confidential Information, as hereinafter defined, imparted to the other party, and shall restrict dissemination of Confidential Information within its own personnel on a “need to know” basis.

(B) RM shall notify any subcontractors to which it delegates work on behalf of Client of the expectation that Confidential Information will be treated as such by said subcontractors.

(C) "Confidential Information" shall include all confidential or proprietary information disclosed by one party (the "Discloser") to the other (the "Recipient") during the term of this Agreement that is marked “Confidential” or “Proprietary”. Confidential Information shall not, however, include the following: (i) information which is now or hereafter comes into the public domain through no fault of Recipient; (ii) is already known by the Recipient when it was disclosed by the Discloser; (iii) is independently developed by the Recipient outside the scope of this Agreement; (iv) is obtained by Recipient rightfully from third parties; or (v) is required to be disclosed by court order or otherwise by applicable law.



## MISCELLANEOUS PROVISIONS

### 7.1. **Examination of Records**

Upon reasonable notice from Client and throughout the term of this Agreement, RM shall afford Client or its duly appointed representative an opportunity to examine RM's files and records pertaining to the handling of the Client's services. This ability to examine RM's files and records pertaining to the handling of the Client's services performed by RM shall simultaneously terminate upon the termination of this Agreement.

#### 7.01a Web Hosting

Website hosting account will be in the name of JCTDA as the account owner. The JCTDA shall have continuous, full access to the account and an up-to-date list of account logins, credentials and passwords.

#### 7.01b Collateral Delivery

RMA shall deliver digital copies of creative artwork, files, collateral, etc. either electronically or by mail on a regular basis (at least quarterly) to client for archival purposes.

### 7.2. **Excuse of Performance**

No failure or omission by the parties in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor create any liability if the same shall arise from any cause beyond the control of the parties, including but not limited to: acts of God; war; acts of terrorism; or acts, omissions, rules, regulations, or orders of any governmental authority, department, RM, or officer.

### 7.3. **Attorneys' Fees**

In the event that either Party institutes an action or suit to enforce this Agreement or to secure relief from any default or breach hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection therewith and in enforcing and collecting any judgment rendered therein.

### 7.4. **Dispute Resolution**

Prior to the commencement of legal proceedings of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the parties agree to participate in a formal non-binding mediation proceeding in accordance with the rules of the American Arbitration Association. The parties shall select a mutually agreed upon mediator, and if the parties are unable to agree upon a mediator, the parties shall request the appointment of a mediator by the American Arbitration Association. The cost of the mediation and the mediator shall be divided equally among all parties participating in the mediation.

#### 7.5. **Survival of Provisions**

All representations, warranties and covenants which by their nature are intended to survive termination of this Agreement shall so survive. Such surviving provisions include, but are not limited to, Section 3.01 Indemnification, Article 4: Term; Termination, Article 5: Disclaimers and Limitations of Liability, Article 6: Confidential Information, Section 7.04 Dispute Resolution and Section 7.06 Controlling Law.

#### 7.6. **Controlling Law**

The parties executing this Agreement acknowledge that a substantial portion of the negotiations and anticipated performance of this Agreement occurred or shall occur, and that this Agreement is executed, in Jackson County, North Carolina, and that, therefore, each of the parties hereto irrevocably and unconditionally (1) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of North Carolina in Jackson County or the U.S. District Court of the United States, Western District; (b) consents to the exclusive jurisdiction of each such court in any such suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts under any statute or law of any jurisdiction; (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules of said State; and (e) agrees that the validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to conflict of laws rules or choice of law rules thereof.

#### 7.7. **Severability**

Any provision or term of this Agreement which is prohibited or unenforceable in any court of competent jurisdiction shall, as to such jurisdiction, be ineffective only to the minimum extent necessary without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

#### 7.8. **Counterparts**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

#### 7.9. **Modifications**

This Agreement may be modified only by a further writing that is signed and duly executed by both parties.

#### 7.10. **Headings**

Headings used in this Agreement are provided for convenience and reference and shall not be used to construe, define, or limit the scope or intent of this Agreement.

7.11. **Waiver of Presumption of Interpretation**

The parties to this Agreement represent and warrant that each has, by counsel or otherwise, actively participated in the negotiation and finalization of this Agreement, and in the event a dispute arises regarding the interpretation of this Agreement, each party hereby waives the doctrine that an ambiguity should be interpreted against the party that has drafted the document.

7.12. **Successors and Assigns**

This Agreement shall be binding upon the successors and permitted assignees of the parties and no person, other than the parties and their successors and permitted assignees, is intended to be a beneficiary of this Agreement. No assignment to any permitted assignee shall be effective until such assignee agrees in writing to be bound by and comply with the terms of this Agreement.

7.13. **Notices**

All notices pertaining to this Agreement shall be in writing and shall be transmitted by certified or registered mail through the facilities of the United States Postal Service, personal hand delivery or overnight delivery:

If to RM, to:

Rawle Murdy Associates, Inc.  
960 Morrison Drive, Suite 300  
Charleston, SC 29403  
Attention: Bruce D. Murdy, President

If to the Client, to:

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

unless written notice of a change of address is given. All such notices and communications shall be deemed to have been duly given two (2) business days after being deposited in the United States mail, if mailed; when delivered by hand, if personally delivered; and when receipt is mechanically acknowledged, if transmitted by overnight delivery.

7.14. **Warranty of Authority**

The individuals executing this Agreement personally represent and warrant that they have the necessary power and authority to execute this Agreement on behalf of the party they represent, and that their signatures are sufficient to make this Agreement the binding and enforceable obligation of such party.

7.15. **Entire Agreement**

This Agreement and all exhibits and attachments hereto embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings of such persons, verbal or written, relating to the subject matter hereof. This Agreement and the documents and instruments executed in connection herewith represent the final agreement between the parties and may not be contradicted by prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

7.16. **E-Verify**

Rawle Murdy shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if RM utilizes a contractor or subcontractor, RM shall require the contractor or subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

7.17. **Iran Divestment Act Certification**

As of the effective date of this contract, RM is not listed on the Final Divestment List created by the State Treasurer pursuant to North Carolina General Statute § 147-86.58 The signatory below for the RM hereby certifies that he or she is authorized to make the foregoing statement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Master Services Agreement effective as of the Effective Date.


**Client:**

**RM:**

**JCTDA**

Rawle Murdy Associates, Inc.

By: \_\_\_\_\_  
Ann Self, Chair

By:  \_\_\_\_\_  
Bruce D. Murdy, President

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

Date: May 7, 2020

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

Signature of Finance Officer: \_\_\_\_\_

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

**EXHIBIT A**  
**to**  
**MASTER SERVICES AGREEMENT**

**ADVERTISING AND MARKETING COMPENSATION**

RM charges for the product(s) or service(s) are indicated below for Fiscal Year 2020-2021.

Annual Budget for FY 20/21 - \$290,000

Ad Firm Media - (24-4926-370-00)	<b>173,600</b>
Website Service - (24-4926-370-01)	<b>19,200</b>
Creative and Production Services (24-4926-370-02)	<b>15,000</b>
Digital Campaign Reporting - (24-4926-370-03)	<b>7,200</b>
Email Campaigns - (24-4926-370-04)	<b>5,700</b>
SEM Management Fee - (24-4926-370-05)	<b>10,800</b>
Social Media Paid Spend Management and Reporting	<b>8,400</b>
Website Projects - (24-4926-393-05)	<b>7,500</b>
Ad Firm Retainer - Brand Leadership - (24-4926-393-06)	<b>30,600</b>
Misc. Agency Expenses - (24-4926-393-08)	<b>12,000</b>
<b>TOTAL</b>	<b>\$290,000</b>