

INDEPENDENT CONTRACTOR AGREEMENT – MAGELLAN STRATEGY GROUP

This agreement (the “Agreement”) is made and entered into as of the 19th day of May, 2021 (the “Effective Date”) between The Jackson County Tourism Development Authority (the “Authority”), an authority of Jackson County, North Carolina and having its principal offices at 116 Central Street, Sylva, North Carolina, and Magellan Strategy Group, LLC, a North Carolina limited liability Authority (the “Contractor” or “Consultant”) (collectively, the “Parties”).

WHEREAS, the Authority requests the Contractor to perform services for it and may request the Contractor to perform other services in the future; and

WHEREAS, the Authority and the Contractor desire to enter into an agreement, which will define respective rights and duties as to all services to be performed,

WHEREAS, the Contractor affirms that he or she understands all of the provisions contained in this Agreement, and in the case that he or she requires clarification as to one or more of the provisions contained herein, he or she has requested clarification or otherwise sought legal guidance,

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

1.0 **Services.** Beginning on the Effective Date, and remaining in effect for the duration of this Agreement, the Contractor shall provide the Authority with the following services, without limitation:

See the Scope of Work in the Proposal for Consulting Services Associated with a Jackson County Tourism Development Authority Incentive Compensation Study, marked as Exhibit “A” incorporated into this Agreement as if fully set forth herein, (“Scope of Work”).

2.0 **Contractor Representations and Warranties.** Beginning on the Effective Date, and remaining in effect for the duration of this Agreement, the Contractor makes the following representations and warranties.

2.1 That he or she is fully authorized and empowered to enter into this Agreement, and that his or her performance of the obligations under this Agreement will not violate any agreement between the Contractor and any other person, firm or organization or any law or governmental regulation.

2.2 That he or she is more than eighteen (18) years of age and not otherwise incapacitated at the time of the Agreement.

2.3 That he or she will notify the Authority of any change(s) to the Contractor’s schedule that could adversely affect the availability of the Contractor, whether known or unknown at the time of this Agreement, no later than three (3) weeks prior to such change(s). If the Contractor becomes aware of such change(s) within the three (3) week period, the Contractor shall promptly notify the Authority of such change(s) within a reasonable amount of time.

2.4 That he or she will bear all expenses incurred in the performance of this Agreement, excepting items contained as out of pocket expenses listed in 'Expenses' in the Scope of Work included as Exhibit "A":

3.0 Authority Representations and Warranties. Beginning on the Effective Date, and remaining in effect for the duration of this Agreement, the Authority makes the following representations and warranties.

3.1 That it is fully authorized and empowered to enter into this Agreement, and that its performance of the obligations under this Agreement will not violate any agreement between the Authority and any other person, firm or organization or any law or governmental regulation.

3.2 That it is in full compliance with any and all laws and/or statutes applicable to the services described hereunder.

4.0 Compensation. The work performed by the Contractor shall be performed at the rate set forth in Exhibit "A" the Scope of Work and not exceed the total estimated amount specified in Exhibit "A" the Scope of Work. Contractor shall provide Authority with monthly reports showing each project worked on for the month and the time that each team member spent on each project.

5.0 Independent Contractor Status.

5.1 The Contractor is an independent contractor of Authority. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship.

5.2 The Contractor shall have no authority to act as agent for, or on behalf of, the Authority, or to represent the Authority, or bind the Authority in any manner.

5.3 The Contractor shall not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of the Authority.

6.0 Confidential Information.

6.1 The Contractor and his or her employees shall not, during the time of rendering services to the Authority or thereafter, disclose to anyone other than authorized employees of the Authority (or persons designated by such duly authorized employees of the Authority) or use for the benefit of the Contractor and his or her employees or for any entity other than the Authority, any information of a confidential nature, including but not limited to, information relating to: any such materials or intellectual property; any of the Authority projects or programs; the technical, commercial or any other affairs of the Authority; or, any confidential information which the Authority has received from a third party.

7.0 Intellectual Property.

7.1 The Contractor represents that all content provided by the Contractor to the Authority, in furtherance of the services described hereunder, including, without limitation, images, videos and text, including any intellectual property, such as copyrights or trademarks (the "Content"), is owned solely and legally by the Contractor.

7.2 The Contractor grants the Authority a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any Content in connection with the services described hereunder.

7.3 Any materials developed by the Authority, making use of Content, remains the sole property of the Authority subject to all applicable laws and/or statutes.

7.4 During the course of performing under this Agreement, the Contractor and its directors, officers, employees, or other representatives may, independently or in conjunction with the Authority, develop information, produce work product, or achieve other results for the Authority in connection with the services it performs for the Authority under this Agreement. The contractor agrees that any such information, work product, and other results, systems and information developed by the Contractor and/or the Authority in connection with such services (hereinafter referred to collectively as the "Work Product") shall, to the extent permitted by law, be a "work made for hire" within the definition of Section 101 of the Copyright Act (17 U.S.C. § 101), and shall remain the sole and exclusive property of Authority. *Note that this provision shall have no effect on the status of the relationship between the Authority and the Contractor, as set out in Section 5 above.*

8.0 Liability.

8.1 The Authority shall not be responsible for any costs incurred by the Contractor, including, without limitation, any and all fees and expenses, such as those described in Section 2.4 above.

8.2 The Authority makes no guarantees regarding the physical and/or mental fitness of any Client. The Contractor shall perform the services set out in this Agreement at his or her own risk.

8.3 EXCEPT WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING BODILY INJURY, DEATH, LOSS OF REVENUE, OR PROFITS OR OTHER BENEFITS, AND CLAIMS BY ANY THIRD PARTY, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, AND OTHER TORTS.

9.0 Disclaimer of Warranty.

9.1 THE WARRANTIES CONTAINED HEREIN ARE THE ONLY WARRANTIES MADE BY THE PARTIES HEREUNDER. EACH PARTY MAKES NO OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. AUTHORITY DOES NOT PROVIDE ANY WARRANTY THAT OPERATION OF ANY SERVICES HEREUNDER WILL BE UNINTERRUPTED OR ERROR-FREE.

10.0 Indemnification.

10.1 The Contractor agrees to indemnify and hold harmless the Authority, its affiliates, and its respective officers, directors, agents and employees from any and all claims, demands, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs, arising out of,

or relating to, the Contractor's services under this Agreement. This provision shall survive the duration of this Agreement.

10.2 The Contractor agrees to defend against any and all claims, demands, causes of action, lawsuits, and/or judgments arising out of, or relating to, the Contractor's services under this Agreement, unless expressly stated otherwise by the Authority, in writing.

11.0 Duration, Scope and Severability.

11.1 This Agreement shall take effect immediately, and shall remain in full force and effect indefinitely, or until terminated pursuant to Section 11 of this Agreement.

11.2 The Authority may terminate this Agreement for any reason upon ninety (90) days notice to the Contractor. Either party may terminate this Agreement for cause within 48 hours upon notice to the breaching party.

11.3 This Agreement, and any accompanying appendices, duplicates, or copies, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, representations, and understandings of any kind, whether written or oral, between the Parties, preceding the date of this Agreement.

11.4 This Agreement may be amended only by written agreement duly executed by an authorized representative of each party.

11.5 If any provision or provisions of this Agreement shall be held unenforceable for any reason, then such provision shall be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

11.6 No modifications to this Agreement shall be binding upon the Authority without the express, written consent of the Authority.

11.7 This Agreement shall not be assigned by either party without the express consent of the other party.

11.8 If the Scope of Work, Exhibit "A" conflicts with this Agreement, this Agreement shall control.

12.0 Governing Law and Jurisdiction.

12.1 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without reference to any principles of conflicts of laws, which might cause the application of the laws of another state. Any action instituted by either party arising out of this Agreement shall only be brought, tried and resolved in the applicable federal or state courts having jurisdiction in the State of North Carolina. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, HAVING JURISDICTION IN THE STATE OF North Carolina.

13.0 Waiver of Rights.

13.1 A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

13.2 The Authority shall not be responsible for federal, state and local taxes derived from the Contractor's net income or for the withholding and/or payment of any federal, state and local income and other payroll taxes, workers' compensation, disability benefits or other legal requirements applicable to the Contractor.

14.0 E. Verify, Iran Divestment Act Certification, and Digital Signatures.

14.1 E-verify: Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

14.2 Iran Divestment Act Certification: As of the effective date of this contract, the Contractor 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 Contractor hereby certifies that he or she is authorized to make the foregoing statement.

14.3 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.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have each executed this agreement as of the Effective Date.

AUTHORITY:

Jackson County Tourism Development Authority
Robert Jumper, Chair

Date

CONTRACTOR:

Magellan Strategy Group, LLC
Chris Cavanaugh, President

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



Proposal for Consulting Services Associated with a Jackson County Tourism Development Authority Incentive Compensation Study

Magellan Strategy Group proposes to provide consulting services associated with a study for the Jackson County Tourism Development Authority to analyze incentive compensation plans at other destination marketing organizations and to recommend potential options for JCTDA's own incentive compensation program.

With extensive consulting experience in DMO management and policy, Magellan Strategy Group is well suited to this assignment. We will execute a process that integrates JCTDA leadership in a cohesive manner, identifies best practices employed elsewhere, and recommends solutions for Jackson County that can be executed and are effective.

SCOPE OF WORK

Our proposed process for this project is as follows:

1. Perform research to identify other destination marketing organizations' incentive plans, using a combination of secondary sources such as Destinations International data and primary research into other DMOs' plans. The focus of the latter will be upon both similarly-sized and -structured DMOs as well as DMOs that we think may represent best-in-class incentive programs.
2. Interview both the JCTDA executive director and board leadership to understand organizational objectives, the desire for personal performance metrics for JCTDA staff, and the status of the JCTDA strategic plan.
3. Develop draft recommendations for incentive compensation plans for both the executive director and the sales and marketing manager based upon insights

gathered, and provide guidance to the JCTDA board on the application and execution of this program.

4. Present draft recommendations to the JCTDA board and refine these recommendations as necessary following input from the board and staff. Provide a final report to JCTDA summarizing the work performed and the recommendations for the client.

PROJECT SCHEDULE

While the final schedule will be determined in consultation with the client, we propose the following for JCTDA:

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|---|---------|
| Research into other DMO plans and policies | 4 weeks |
| Interviews of JCTDA leadership | 1 week |
| Develop draft recommendations | 2 weeks |
| Present draft recommendations and refine as necessary | 1 week |
| Present final recommendations | 1 week |
| Total project timeline | 9 weeks |

PROFESSIONAL FEE

Magellan Strategy Group proposes to execute the entire scope of work outlined above for a total professional fee of \$5,600. This fee proposal is effective for 180 days following the start of the FY2022 fiscal year for JCTDA.

The full fee amount will be invoiced and due at the conclusion of the project, unless the client requests otherwise. Standard terms are 30 days.

This proposal is dated May 5, 2021.

CONTACT INFORMATION

Magellan Strategy Group, LLC

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FIRM BACKGROUND

Magellan Strategy Group was founded in 2004 with the vision of providing travel and tourism organizations with greater focus upon opportunities in the marketplace. Since its founding, MSG has worked primarily in strategic planning, market research, and strategic marketing with a diverse group of clients in a variety of categories, including destinations, attractions, resorts, restaurants, retailers, activity providers, local and state governments, and non-profit organizations. We don't believe in a one-size-fits-all approach for helping our clients. Every client has needs that are different and every market has opportunities that are unique, so we devise processes that make sense for the client.

Our mantra is *Create a dissatisfaction with the status quo.*TM It's at the heart of everything we do—developing solutions that generate meaningful results by identifying real benefits customers want and organizations can deliver.

The services we have provided to travel and tourism entities include:

- Market Research
- Marketing Communications Audits
- Strategic Plan Facilitation
- Occupancy Tax Analysis
- Demand Projection Analyses
- Economic Impact Studies
- Feasibility and Demand Analysis
- Agency Search and Review Management
- Tourism Master Planning
- Marketing Plan Development
- Brand Strategy Development
- Pricing Strategy
- Stakeholder Assessments
- Community and Stakeholder Forums

MAGELLAN STRATEGY GROUP CLIENTS AND PROJECTS

Below are the clients with whom MSG has been fortunate to work during more than 16 years of service. Some of these have been in partnership with other firms, and others have been solely the work of Magellan—but all have been highly valued.

Destinations

Arlington, TX CVB
Augusta, GA CVB
Greater Beaufort and Port Royal, SC CVB
Blowing Rock, NC Tourism Development Authority
Blue Ridge National Heritage Area, NC
Blue Ridge Parkway Association
Burke County, NC Tourism Development Authority
Burlington/Alamance County, NC Tourism Development Authority
Caldwell County, NC Chamber of Commerce
Cascade Highlands Regional Tourism Association, NC/VA
Central Park Region of North Carolina
Cherokee, NC Tourism Marketing & Promotion
Crystal Coast, NC Tourism Development Authority
Elizabeth City, NC CVB
Explore Asheville CVB, NC
Fentress County, TN Chamber of Commerce
Gaston County, NC Travel and Tourism
Georgetown/Scott County, KY Tourism Commission
Goldsboro, NC Tourism Office
Graham County, NC Revitalization Economic Action Team
Greenville, SC CVB
Haywood County, NC Tourism Development Authority
Henderson County, NC Tourism Development Authority
Hickory Nut Gorge, NC Chamber of Commerce
High Country, NC Marketing Partnership
Historic Morganton, NC Main Street Office
Iron County, MO Economic Partnership
Jackson County, NC Tourism Development. Authority
Johnston County, NC Visitors Bureau
Lenoir, NC Tourism Development Authority
North Myrtle Beach, SC CVB
Ocracoke, NC Tourism Development Authority
Piedmont Triad Host Group, NC
Pinehurst, Southern Pines, and Aberdeen Area CVB, NC
Polk County, NC Travel and Tourism
Randolph County, NC Tourism Development Authority
Rockingham and the Uwharrie Region, NC
Roswell, GA CVB
Rutherford County, NC Tourism Development Authority
Salisbury/Rowan County CVB, NC
Sampson County CVB, NC
Sevierville, TN Chamber of Commerce

South Carolina Parks, Recreation & Tourism
St. Johns County, FL Tourist Development Council
Transylvania County, NC Tourism Development Authority
Visit Huntington Beach, CA
Visit NC
Visit Tampa Bay, FL
Watauga County/Boone, NC Tourism Development Authority
Western Piedmont Council of Governments, NC
Wilkesboro, NC Tourism Development Authority
Williamson County, TN CVB
Yancey County, NC Economic Development Commission

Attractions and Activities

Asheville Art Museum
Asheville's Fun Depot
Asheville Ice
Biltmore, Asheville, NC
Center for Craft, Asheville, NC
Cherokee Historical Association, Cherokee, NC
Chimney Rock State Park, NC
City of Asheville/U.S. Cellular Center, NC
City of Roswell, GA
Fort Ticonderoga, Ticonderoga, NY
Graham County Historical Association, NC
Groveswood Village, Asheville, NC
Imaginarium Science Center, Fort Myers, FL
Jimmy Buffett's Margaritaville, Key West, FL
John C. Campbell Folk School, Brasstown, NC
Kennedy Space Center Visitor Complex, FL
Nantahala Outdoor Center, NC
National Civil War Naval Museum, GA
Navitat, Asheville, NC
North Carolina Arboretum, Asheville, NC
Patriots Point Naval and Maritime Museum, Mount Pleasant, SC
See Rock City, Lookout Mountain, GA
Stecoah Valley Cultural Arts Center, Stecoah, NC
Thomas Jefferson's Poplar Forest, VA
Tweetsie Railroad, Blowing Rock, NC
Whalehead, Corolla, NC

Hospitality and Tourism-Related

Asheville Independent Restaurant Association
Biltmore Farms Hotels
CREA Mont-Blanc (Research Center for Ecosystems Altitude), Chamonix, France
Foodways Texas
Green Sage Café, Asheville, NC
Mast General Stores
Omni Grove Park Inn, Asheville, NC
Southeast Tourism Society
Southern Foodways Alliance
Tupelo Honey Café

CHRIS CAVANAUGH, MAGELLAN STRATEGY GROUP

Cavanaugh has become a nationally recognized expert on tourism marketing and planning since entering the industry 27 years ago. He's been engaged as a consultant by destinations of all sizes and many attractions, especially historic, natural, and cultural sites. He has a diverse range of destination experience and expertise, having worked with both large and urban communities as well as smaller, rural areas.

Prior to founding MSG in 2004, Cavanaugh served as vice president of marketing for The Biltmore Company in Asheville for nearly 10 years. During his tenure, Biltmore doubled its annual revenue and became the most visited historic house attraction in the U.S., with more than one million guests annually. He also oversaw marketing for the Inn on Biltmore Estate and the Biltmore Winery.

The governor of North Carolina appointed Cavanaugh to serve on the state's travel and tourism board from 2003 to 2012, and he was chair of that board in 2009. Cavanaugh is also a past member and chair of the Buncombe County Tourism Development Authority, which oversees the work of the Explore Asheville CVB. His extensive experience on the client side and in leadership positions in tourism makes him a valuable destination consultant partner. He is the recipient of the NC Travel Industry Association (NCTIA) Tourism Excellence Award and the Southeast Tourism Society (STS) Shining Example Award. He regularly teaches classes at STS's annual Marketing College.

Cavanaugh had a career in consumer packaged goods marketing before entering the travel and tourism sector in 1995. He has a BA degree from Vanderbilt University and an MBA from Emory University.