

INDEPENDENT CONTRACTOR AGREEMENT – MAGELLAN STRATEGY GROUP

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

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

WHEREAS, the Company 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 Company with the following services, without limitation:

See Public Relations Agreement, marked as Exhibit “A” incorporated into this Agreement as if fully set forth herein.

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 Company 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 Company 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 supplemental document under Exhibit "A":

See Public Relations Agreement, marked as Exhibit "A" incorporated into this Agreement as if fully set forth herein.

3.0 **Company Representations and Warranties.** Beginning on the Effective Date, and remaining in effect for the duration of this Agreement, the Company 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 Company 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" and not exceed the total estimated amount specified in Exhibit "A". Contractor shall provide Company 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 Company. 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 Company, or to represent the Company, or bind the Company 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 Company.

6.0 **Confidential Information.**

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

7.0 **Intellectual Property.**

7.1 The Contractor represents that all content provided by the Contractor to the Company, 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 Company 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 Company, making use of Content, remains the sole property of the Company 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 Company, develop information, produce work product, or achieve other results for the Company in connection with the services it performs for the Company 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 Company 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 Company. *Note that this provision shall have no effect on the status of the relationship between the Company and the Contractor, as set out in Section 5 above.*

8.0 Liability.

8.1 The Company 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 Company 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. COMPANY 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 Company, 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 Company, 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 Company 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 Company without the express, written consent of the Company.

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

11.8 If Exhibit "A" conflicts with this Agreement in anyway, 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 Company 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: Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Company utilizes a contractor or subcontractor, Company shall require the contractor or 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 Company 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 Company 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.

COMPANY:

Jackson County Tourism Development Authority
Robert Jumper, Chair

Date

CONTRACTOR:

Magellan Strategy Group
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 to the Jackson County TDA
for Destination Policy and Process
Consulting**



August 6, 2021

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

Dear Nick:

I am pleased to submit this proposal to you for destination strategic marketing planning services for the Jackson County TDA. Our proposed process is intended to be comprehensive in its scope and provide a solid foundation for the JCTDA's efforts to grow the visitor economy.

This proposal leverages 17 years of experience as a consultant in the travel and tourism sector, and 26 years of total experience in the industry. I have extensive experience on the client and DMO sides of the visitor economy, having been vice president of marketing for a large attraction (Biltmore Estate); a five-year board member for a dynamic destination marketing organization, with two years as chair (Explore Asheville CVB); and five months' experience as interim CEO at the same organization in 2020. In 17 years as a consultant, I've worked with a wide variety of urban, suburban, and rural destinations, and much of my work has been focused upon the development of policy and process for destination marketing organizations.

I certainly welcome the chance to speak with you about this proposal and to answer any questions.

All the best,

A handwritten signature in black ink, appearing to read "Chris Cavanaugh", written in a cursive style.

Chris Cavanaugh
President
Magellan Strategy Group

Proposal for Consulting Assistance with the Development of Grant and Investment Strategies, Policies, and Processes for the Jackson County TDA

OVERVIEW

We have organized this proposal based upon an approach that blends our knowledge of destination marketing organization policy and structure, and our local tourism expertise. Throughout the process there are opportunities to interact with the board and staff to build consensus along the way. We believe that planning is an iterative process, combining analysis, brainstorming, and the synthesis of ideas into strategic initiatives that are focused on achieving return on investment. Most importantly, this process should result in a deliverable that is realistic and practical.



We propose the following scope of work:

- Discuss with the JCTDA's executive director and any board or other stakeholder representatives the history and objectives of the Tourism Capital Project Fund and any work that has been completed to date.
- Review all draft documentation that has been created related to the Fund, including policies and processes.
- Present to JCTDA staff and board our observations and recommendations for enhancing the Fund and its related policies and processes, with the objectives of limiting the liability of the JCTDA by protecting its investments, building a thriving destination, and ensuring maximum return on investment. These recommendations will include a reminder of the fiduciary duty of the JCTDA board and how the board's investment decisions must adhere to that duty.
- Our recommendations will be based upon industry best practices and include examples of how other DMOs support tourism product development in their communities, with examples of both successes and failures provided.

Please note that this proposed scope of work is not intended to create a comprehensive tourism development master plan for Jackson County or to identify and recommend specific capital investments. This review is intended to help create a framework that is applicable to

the future grant and investment opportunities that come before the JCTDA board and staff for their review. This work is not intended to address a specific past or present spending opportunity in Jackson County, but should be viewed instead as a chance to develop a proactive guide for the evaluation of future opportunities that will benefit the destination.

PROPOSED INVESTMENT

Magellan Strategy Group proposes to carry out the scope of work described above for a total investment of \$3,000. The client will be invoiced at the conclusion of the project. The terms of this proposal will remain effective for 90 days from the date of the submission of this proposal. Invoice terms are net 30 days.

SCHEDULE

It is estimated that, beginning with the date of the initial meeting proposed above to discuss the objectives and history of the Fund, the project will require a total of four weeks to complete.

RELEVANT EXAMPLES OF PREVIOUS EXPERIENCE

Magellan Strategy Group has completed several projects that include similar examples of DMO tourism product development fund initiatives, policies, and processes. Past clients include Explore Asheville CVB; Pinehurst, Southern Pines, and Aberdeen Area CVB; Goldsboro Tourism; Haywood County Tourism Development Authority; and Transylvania County Tourism.

Chris Cavanaugh served on the Buncombe County Tourism Development Authority board when that body first launched its Tourism Product Development Fund (TPDF), then later assisted the BCTDA with improving its policies and application processes. He has also served as a consultant to numerous TPDF applicants.

PROJECT LEADER

Chris Cavanaugh, President and Founder, Magellan Strategy Group

Chris Cavanaugh has become a nationally recognized expert on tourism marketing and planning since entering the industry 26 years ago. He has been engaged as a consultant by numerous 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 very large and urban DMOs as well as much smaller, rural entities.



Prior to founding MSG in 2004, Cavanaugh served as vice president of marketing for The Biltmore Company in Asheville for nearly 10 years. The Biltmore Company owns and operates Biltmore Estate, the 8,000-acre privately-owned historic property in Asheville. As one part of an amazing team, Biltmore doubled its annual revenue and became the most visited historic house attraction in the U.S. with more than one million guests annually during his tenure. He also oversaw marketing for the Inn on Biltmore Estate and the Biltmore Winery.

Cavanaugh's extensive experience on the client side and in tourism leadership positions makes him a valuable destination consultant partner. 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, and he served as interim CEO of Explore Asheville in 2020.

He regularly teaches classes at STS's annual Marketing College, and this year taught the first course ever offered on the subject of tourism product development. Cavanaugh has a BA degree from Vanderbilt University and an MBA from Emory University.

PRIMARY PROJECT CONTACT

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