

TOWN OF BLUFFTON AGREEMENT
Contract Number 2022-35

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA

THIS AGREEMENT is made the 24th of June, 2022 between Hilton Head Island – Bluffton Chamber of Commerce (hereinafter called “Chamber”) and the Town of Bluffton (hereinafter called “Town”), a municipal corporation organized and existing under the laws of the State of South Carolina.

WHEREAS, the Town is a recipient of an allocation of State accommodations tax revenues (“ATAX”) as defined in South Carolina Code (“S.C.C.”) Section 6-4 which must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity.

WHEREAS, Chapter 24 of the Bluffton Code of Ordinances allows for locally generated ATAX to be used for advertisements and promotions related to tourism development.

WHEREAS, S.C.C. 6-4 and Chapter 24 of the Bluffton Code of Ordinances specify that one or more organizations may be selected to receive these funds to further such advertisement and promotions so long as they meet specific criteria, including but not limited to: being organized as a non-profit organization employing a full-time executive director, submit an annual budget of planned expenditures, and provide an annual audited financial report generated in accordance with Generally Accepted Accounting Principles (“GAAP”).

WHEREAS, the Town desires to enter into an Agreement with a non-profit who meets all of the statutory criteria for the purpose of advertising and promotion of tourism to develop and increase tourist attendance within the Town of Bluffton;

WHEREAS, the Town published a Request for Proposal detailing a scope of work, deliverables and specific schedule, and the Chamber responded thereto, and

WHEREAS, the Town and Chamber desire to enter into an Agreement wherein the Chamber shall provide such services as set forth herein and described in their Request for Proposal response 2022-35.

NOW, THEREFORE, for and in consideration of the mutual promises, undertaking and covenants set forth herein, the receipt and sufficiency of which are acknowledged and affirmed by the Town and the Chamber, the parties hereto agree as follows:

1. Chamber Obligations.

- 1.1 **Audit.** The Chamber agrees to provide an independent auditor’s financial report to the Town on an annual basis for each fiscal year it is under contract. Fiscal year runs July 1 to June 30. The audit shall be delivered to the Town no later than November 15 after the applicable fiscal year ends.

The following standards shall apply to the audit and/or the auditor:

- (a) The audit shall be conducted in conformity with the statements, rules, policies, and procedures set forth by the American Institute of Certified Public Accountants (“AICPA”).
- (b) The audit shall be performed in accordance with generally accepted auditing standards (“GAAS”).
- (c) The auditor must comply with all applicable statement on auditing standards (“SAS”) that are issued by the Auditor’s Standing Board of the AICPA.
- (d) The auditor must maintain malpractice insurance in an amount equal to at least One Million dollars (\$1,000,000.00).
- (e) The auditor must provide evidence of successful completion of the peer review process approved by the AICPA.

- 1.2 DMO Report. On a quarterly basis, the Chamber shall produce and deliver to the Town a schedule of revenues and expenses incurred to date for each fiscal year ("the Report") for the designated marketing organization division of the Chamber ("DMO"). The DMO revenue shall include all accommodation tax revenue received from the Town and/or the State of South Carolina. This Report shall be produced under the standards set forth above in Section 1.1(a), (b), and (c) and by the same auditor that has satisfied the standards set forth above in Section 1.2(d) and (e). The Quarterly Reports shall be delivered to the Town within 45 calendar days following October 1, January 1, and April 1, and the Annual Report with cumulative data no later than November 15 after the applicable fiscal year ends.
- 1.3 ATAX Disbursements. The Chamber shall manage and direct the expenditure of any ATAX monies disbursed to them, whether State or local in origin. In addition, the Chamber shall be eligible to apply for annual supplemental grants from the accommodation tax pool and from the emergency reserve fund established by the Town. All public funds received by the Chamber shall be subjected to the auditing and reporting requirements of this Agreement.
- 1.4 Process. The Chamber shall submit a budget of planned expenditures and a marketing plan ("MP") for the ATAX disbursement for each fiscal year. The MP shall be recommended by the Chamber's marketing professionals and the MP and the budget shall be approved by the Board of Directors of the Chamber. The budget and MP will then be submitted to the Town prior to April 1, and the Town's accommodations tax committee ("ATAC") will review and make recommendation to Town Council. Upon the recommendation by the ATAC, the budget and MP shall be forwarded for approval to Town Council before the beginning of the fiscal year.
- 1.5 Inspection Rights. The Chamber shall provide access, upon reasonable notice, to the Town Manager or his designee who possesses sufficient financial acumen to inspect the necessary financial records, including third party invoices, of the Chamber in order to verify compliance of the Report in all material respects. This inspection right may be invoked twice per year.
- 1.6 Website. The Chamber shall maintain a website that is unique to Bluffton which shall remain the work product of the Town under an open Content Management System platform. The design and functionality of the website should be responsive in a variety of environments including desktop, tablet, and mobile device. The Chamber will measure website traffic and maintain a comprehensive Search Engine Optimization plan.

2. Performance Standards.

- 2.1 Industry Metrics. The Chamber shall provide the Town with certain tourism metrics and/or reports such as:
- (a) Revenue per available room;
 - (b) Occupancy rates;
 - (c) Visitor spending studies;
 - (d) Return on investment for visitor spending per dollar of investment;
 - (e) Local tax revenues generated by visitors;
 - (f) Number of visitors;
 - (g) Number of referrals made to area businesses and number of website hits and click throughs made to area businesses;
 - (h) Numbers related to mail fulfillment and other contacts;
 - (i) Industry awards received for marketing and public relations efforts;
 - (j) Number of jobs created by tourism;
 - (k) Events held and participation in events by Chamber members; and
 - (l) Update on public relations efforts to include number of media impressions and dollar equivalent for the media impressions.

The content and format of the Industry Metrics report may change from time to time at the discretion of the Town and in accordance with activities planned in the Marketing Report. The Industry Metrics reports shall be submitted quarterly within 45 calendar days following October 1, January 1, April 1 and July 1. The Industry Metrics report shall also include year over year metrics as available.

- 2.2. **Key Performance Indicators.** The Town shall use the Industry Metrics reports to evaluate the performance of the Chamber against the objectives stated in the Marketing Plan, resulting in an evaluation of Key Performance Indicators ("KPIs"). Such evaluation shall take into account outside effects on tourism such as the state of the economy, weather, etc. In the event that the Town, in its sole discretion, determines that the Chamber is not meeting the objectives of the Key Performance Indicators, it shall work with the Chamber on a remedial plan to cure the deficiencies. If the Chamber does not meet the objectives and deadlines of the remedial cure plan, the Town shall have the right to provide written notice of contract termination.

3. Chamber Covenants and Representations.

- 3.1 The Chamber covenants and represents that it has all necessary licenses, permissions and authority to enter into this Agreement.
- 3.2 The Chamber covenants and represents to perform all tasks required under this Agreement with a degree of skill and care of reputable organizations of the same profession nationally.
- 3.3 The Chamber covenants and represents to properly withhold from all wages, commissions, salaries, and fees paid by the Chamber to third parties or employees, agents, or subcontractors of the Chamber all amounts required by state or federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation.
- 3.4 The Chamber covenants and represents that it shall maintain the appropriate amounts and coverages of insurance for general liability, auto liability, and workers compensation as determined by the Town for the entire length of the Agreement. The Chamber must provide the Town with a Certificate of Insurance that names the Town as an additional insured on their general liability policy. The Chamber is required to immediately contact the Town should any change to these policies occur during the course of the performance of this contract.
- 3.5 The Chamber covenants and represents that it shall comply with the most current Federal and State of South Carolina Laws and Regulations, including but not limited to, Fair Labor Standards Act of 1938, Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990, the South Carolina Wage Act, the South Carolina Worker's Compensation Act, all laws related to the South Carolina Accommodation Tax, and all Town of Bluffton Ordinances.
- 3.6 The Chamber covenants and represents that the MP shall include a public relations plan and a social media plan, including development and maintenance of the Town of Bluffton tourism web site.

4. Town Covenants and Representations.

- 4.1 The Town hereby covenants and represents that it will comply with all state and local accommodation tax laws and ordinances in administering all such funds to the Chamber and other non-profit organizations.
- 4.2 The Town hereby covenants and represents that it shall comply with all such laws and procedures in a manner not to discriminate against one non-profit versus another non-profit.
- 4.3 The Town hereby covenants and represents that it shall pass a resolution no later than June 30 of the preceding fiscal year allocating the funding for the upcoming fiscal year.
- 4.4 The Town hereby covenants and represents that it shall cause the funding to be paid quarterly to the Chamber for the budget and MP to be implemented. Quarterly payments will be made within 5 days of receipt of quarterly State ATAX proceeds.
- 4.5 The Town hereby covenants and represents not to disturb, violate, request to be violated, any laws, loan covenants, policies and procedures, including but not limited to all federal and state laws, and the South Carolina Non-Profit Act which effect the Chamber.

4.6 The Town hereby covenants and represents that the Town has lawful authority required under State law and Town ordinances to enter into and perform this Agreement.

5. **Term.** This Agreement shall be effective July 1, 2022 and shall continue for a period of three (3) years with an option to renew for another two (2) year term unless otherwise terminated as provided herein. Each party retains the right to terminate this Agreement in accordance with Section 6.

6. **Termination.**

6.1 **For Cause.** If the Performance Standards have not been met, and the Chamber has not cured in accordance with Section 2.2, the Town may terminate this Agreement by providing ninety (90) day notice to the Chamber. In the event the auditor determines fraud has occurred, the Town may terminate this Agreement immediately.

6.2 **For Convenience.** Each party shall have the ability to terminate the Agreement by providing the other party 90 days' written notice.

7. **Other Provisions.**

7.1 **Headings.** Headings to paragraphs in this Agreement shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Agreement.

7.2 **Notices.** All notices to each party shall be in writing and sent as follows:

Town:
Town of Bluffton
ATTN: Stephen Steese, Town Manager
PO Box 386
20 Bridge Street
Bluffton, SC 29910

Chamber:
Hilton Head Island – Bluffton Chamber of Commerce
ATTN: William G. Miles
PO Box 5647
Hilton Head Island, SC 29938

7.3 **Jurisdiction.** This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.

7.4 **Independent Contractor Status.** The Chamber shall not, by entering into this Agreement, become a servant, agent, or employee of the Town, but shall remain at all times and independent contractor. This Agreement shall not be deemed to create any joint venture, partnership, or common enterprise between the Chamber and the Town, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

7.5 **Attorney's Fees, Dispute Resolution.** In the event of a dispute between the parties, the prevailing party in any dispute shall be entitled to an award of all reasonable attorneys and costs.

IN WITNESS WHEREOF, the parties hereto affixed their signatures hereto the date first written hereinabove.

HILTON HEAD – BLUFFTON CHAMBER OF COMMERCE

TOWN OF BLUFFTON

Date: 6-14-2022

Date: 6/24/2022

By: William G. Miles

By: Heather & Colin

Print Name: William G. Miles

Print Name: Heather Colin

Position: PRESIDENT & CEO

Position: Assistant Town Manager

Witnesses: Connie Gill

Witnesses: _____