

**AGREEMENT BETWEEN
CITY OF STONECREST, GEORGIA, AND
DEKALB CONVENTION AND VISITORS BUREAU, INC.**

THE AGREEMENT made by and between the City of Stonecrest, Georgia, a municipal corporation incorporated under the laws of Georgia, acting by and through its Acting City Manager and City Council (“**City**”), and the DeKalb Convention and Visitors Bureau, Inc., a non-profit corporation, chartered in the State of Georgia, acting by and through its duly elected Board of Directors (“**DMO**”), (collectively referred to as “**Parties**”), witnesseth:

WHEREAS, the City wishes to promote tourism, conventions, and trade shows and wishes to advertise, promote, and encourage the use of all facilities and businesses relating to conventions, trade shows, and tourism, both public and private, within the City, thereby increasing the City’s revenue and creating employment opportunities within the City; and

WHEREAS, the DMO is a nonprofit organization under the Georgia Nonprofit Corporation Code and has been recognized as exempt from taxation under Section 501(c)(6) of the Internal Revenue Code. Through its activities, it is anticipated that the DMO will plan, conduct, or participate in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows to and within the City; and

WHEREAS, O.C.G.A. § 48-13-51(b) authorizes municipalities to impose, levy, and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value; and

WHEREAS, the Georgia General Assembly authorized the City of Stonecrest to levy such taxes at a rate not to exceed eight percent (8%) pursuant to O.C.G.A. § 48-13-51(b) and Ga. L. 2019, p. 3791; and

WHEREAS, Chapter 24, Article VIII of the Code of Ordinances for the City provides for the imposition of a hotel occupancy tax of eight percent (8%) of lodging charges on hotels and motels within the City (the “**Tax**”); and

WHEREAS, the provisions of O.C.G.A. § 48-13-51(b)(~~3~~) require that an amount equal to not less than 50 percent of the total amount of taxes collected that exceed the amount of taxes that would be collected at the rate of 5 percent ~~the amount of the Tax in excess of 3%~~ (the “Expenditures”) be expended for certain purposes stated therein, including but not limited to, promoting tourism, conventions, and trade shows; and

WHEREAS, the Parties desire to make Expenditures in strict compliance with the provisions of O.C.G.A. § 48-13-50, *et seq.*, and for the purpose of promoting conventions, tourism, and trade shows within the City; and

WHEREAS, the provisions of O.C.G.A. § 48-13-51(b)(~~3~~) further require that the expenditure of the Expenditures be made only through a contract or contracts with certain entities stated therein, including, but not limited to, a private sector nonprofit organization; and

WHEREAS, the DMO is a private sector nonprofit organization as defined in O.C.G.A. § 48-13-50.2(3) and satisfies all other requirements for an appropriate entity to contract with to make expenditures of the Expenditures; and

WHEREAS, the DMO has covenanted and agreed that it shall make expenditures of the Expenditures in accordance with an established budget for those funds (the “Budgeted Funds”) which budget and any amendments or modifications thereof shall be subject to the prior approval of the City.

NOW, THEREFORE, for and in consideration of the mutual obligations herein assumed, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DESCRIPTION OF SERVICES:** The DMO shall provide services to the City as detailed in **Exhibit A**, which is attached hereto and incorporated by reference herein. In any conflict between the terms of Exhibit A and this Agreement, this Agreement shall control.

2. **DMO’S OBLIGATIONS AND DUTIES:**
 - (a) The DMO shall make expenditures of the Tax in the amounts approved by the City as Budgeted Funds, and DMO hereby agrees to receive and make expenditures of the Tax in accordance with the terms and conditions set forth herein. Specifically, the Parties agree that the Hotel/Motel tax funds when received by the DMO will not be taxable income under either the IRS Code or the Income Tax Code of the State of Georgia. The DMO shall notify the IRS and the Georgia Revenue Department (if necessary) of this Agreement and seek confirmation of this understanding. If necessary, the Parties agree to amend and modify

this Agreement in order to preserve the tax-exempt status of the DMO and the tax-exempt status of the funds covered by this Agreement.

- (b) DMO shall submit a budget acceptable to the City showing the planned expenditure of all Expenditures to be received from the City and maintain accurate records of the Expenditures and disposition of such funds, such records to be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of O.C.G.A. § 48-13-51(a)(9). The DMO shall make available to the City all such records for inspection and audit by the City, upon City's written request.
- (c) The DMO shall expend the funds received from the City, as a result of the collection of taxes levied pursuant to O.C.G.A. § 48-13-51, *et seq.*, to plan, conduct, or participate in programs of information and publicity designed to attract or advertise tourism, conventions, or trade shows.
- (d) DMO shall furnish the following to the City:
- A. Certificates of insurance from companies doing business in Georgia and acceptable to the City covering:
1. Statutory Workers' Compensation Insurance, or proof that DMO is not required to provide such coverage under state law.
 2. Comprehensive Liability Insurance covering all operations and automobiles:
 - a. With limits of \$300,000 for each occurrence of bodily injury – general liability coverage, and with limits of \$100,000 for each person and \$300,000 for each occurrence – automobile liability coverage.
 - b. With limits of \$100,000 for each occurrence of property damage – general liability coverage and automobile liability coverage.
 - c. "Umbrella" or "Excess" coverage cannot be used to reach the limits stated in subparagraphs a and b above.
- B. Certificates of Insurance must be executed in accordance with the following provisions:
1. Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with the agreement;
 2. Certificates to contain the locations and operations to which the insurance applies;
 3. Certificates to contain Corporation's protective coverage for any subcontractor's operations;
 4. Certificates to contain Corporation's contractual insurance coverage;
 5. Certificates are to be issued to, or list as an additional insured:

City of Stonecrest, Georgia
3120 Stonecrest Blvd. Suite 190
Stonecrest, GA 30038
 6. Copies of certificates referred to in subparagraph 5 above must be mailed to:

City of Stonecrest, Georgia
3120 Stonecrest Blvd. Suite 190

- C. DMO shall be wholly responsible for obtaining certificates of insurance showing coverage as set forth above for all subcontractors who are engaged in work covered by this Agreement.
- D. DMO agrees to carry statutory Workers' Compensation Insurance and to have all subcontractors likewise carry statutory Workers' Compensation Insurance, or provide proof that such coverage is not required under state law.

3. CITY'S OBLIGATIONS AND DUTIES:

- (a) The City hereby designates the DMO as the City's destination marketing organization for the purposes of O.C.G.A. § 48-13-51(b)(3).
- (b) The City shall pay to the DMO the agreed upon portion of revenues necessary to be spent by the DMO pursuant to Ga. L. 2019, p. 3791; O.C.G.A. § 48-13-15(b)(3), as amended; and under any City ordinance.
- (c) City shall pay DMO within fifteen (15) calendar days following the end of the month in which the money is collected. ~~The City will retain an administrative charge of three percent (3%) of each total monthly payment.~~
- (d) Any penalties assessed against hotel-motels for late payment of the Tax will be retained by the City.
- (e) The City designates the Acting City Manager as its point of contact, coordinator, and liaison person with DMO in the execution of the terms of this Agreement.

4. TERM AND TERMINATION OF AGREEMENT:

- (a) The Effective date of this Agreement is May 15, 2021. This Agreement shall terminate absolutely and without further obligation on the part of Parties at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed, if renewed.
- (b) This Agreement will be automatically renewed unless either Party elects to terminate the contract on the day of the close of the calendar year in which this Agreement is executed or within ninety (90) days after the close of the day of the calendar year in which this Agreement is executed, or renewed, if renewed.
- (c) The Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the City under the Agreement in accordance with O.C.G.A. § 36-60-13.
- (d) This Agreement is not deemed to create a debt of the City for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond each calendar year of renewal.

- (e) Except to the extent specifically agreed upon by the Parties, any modification or termination of this Agreement in the manner set forth above or any other modification or termination of this Agreement for whatever cause or under whatever circumstances, shall not relieve or impair the obligations of either party arising prior to the effective date of any such modification or termination. DMO shall continue to be obligated to devote any and all non-expended Expenditures funds received from the City, and not returned to the City in accordance with the provisions of this Agreement.
- (f) This Agreement may be terminated, with or without cause, by either party hereto by the giving of ninety (90) days prior written notice of such termination.
- (g) A material breach of this Agreement shall be cured within sixty (60) business days (“Cure Period”) after a party notifies the other of the breach. In the event the material breach has not been cured within the Cure Period, the non-breaching party can terminate this Agreement by providing the other party with a thirty (30) business days’ notice.

5. RELATIONSHIP OF PARTIES:

- (a) Independent Contractors. Nothing contained herein shall be deemed to create any relationship other than that of independent contractor between the City and DMO. This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement between the City and DMO. It is expressly agreed that DMO is acting as an independent contractor and not as an employee in providing the Services under this Agreement.
- (b) Employee Benefits. DMO shall not be eligible for any benefit available to employees of the City including, but not limited to, workers’ compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, pension plans, or savings plans.
- (c) Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to DMO under this Agreement. DMO shall be responsible for all FICA, federal and state withholding taxes and workers’ compensation coverage for any individuals assigned to perform the Services for the City.

6. CONFIDENTIALITY: The City will not for any purpose inconsistent with this Agreement disclose to any third party or use any confidential or proprietary non-public information it has obtained during the term of this Agreement about Corporation’s business, including the terms of this Agreement, operations, financial condition, technology, systems, know-how, products, services, suppliers, clients, marketing data, plans, models, and personnel. DMO shall not for any purpose inconsistent with this Agreement or its privacy policy in effect from time to time disclose to any third party or

use any confidential information it received in connection with its performance of the services.

7. **INDEMNIFICATION:**

- (a) The DMO agrees to the fullest extent permitted by law, to indemnify and hold harmless the City and its governing officials, agents, employees, and attorneys (collectively, the “City Indemnitees”) from and against all third-party liabilities, demands, losses, damages, costs or expenses (including reasonable attorney’s fees and costs), incurred by any City Indemnatee as a result or arising out of (i) the willful misconduct or negligence of DMO in performing the Services or (ii) a material breach by DMO of its covenants.
- (b) DMO shall be responsible from the Effective date, for all injury or damage of any kind resulting from its work or the work of any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them, to persons or property, including employees and property of the City.
- (c) In accordance with subsection (a), DMO shall exonerate, indemnify, and save harmless the City from and against all claims or actions, and all expenses incidental to the defense of any such claims or actions, based upon or arising out of damage or injury (including death) to person or property caused by or sustained in connection with DMO’s performance of this Agreement or the work of DMO or by conditions created thereby or arising out of or in any way connected with work performed under this Agreement and shall assume and pay for, without cost to the City, the defense of any and all claims and actions based on, or arising out of, an act or omission of DMO, or any subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. The DMO expressly agrees to defend against any claims brought or actions filed against the City where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

8. **FORCE MAJEURE:**

DMO will be excused from performing the services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Corporation’s reasonable control and without its fault or judgment, including without limitation, natural disasters, war, terrorist acts, riots, acts of a governmental entity (in a sovereign or contractual capacity), fire, storms, quarantine restrictions, floods, explosions, labor strikes, labor walk-outs, extra-ordinary losses utilities (including telecommunications services), external computer “hacker” attacks, global pandemic, and/or delays of common carrier.

9. **DISPUTES:** Pending resolution of any dispute hereunder, the DMO shall proceed diligently with the performance of work in accordance with the City’s direction. The

Parties do not agree to arbitration or mediation as a method of dispute resolution and reserve the right to a jury trial in case of a dispute arising from this contractual Agreement.

10. GOVERNING LAW AND CONSENT TO JURISDICTION:

This Agreement is made and entered into in the State of Georgia and this Agreement and the rights and obligations of the Parties hereto shall be governed by and construed according to the laws of the State of Georgia without giving effect to the principles of conflicts of laws. The jurisdiction for resolution of any disputes arising from this Agreement shall be in the State Courts of DeKalb County, Georgia.

- 11. NOTICES:** All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally or sent by United States certified or registered mail addressed to the DMO or the City, as the case may be, with postage thereon fully prepaid. The effective time shall be at the time of mailing.

DMO

DeKalb Convention and Visitors
Bureau, Inc.
1990 Lakeside Parkway, Suite 170
Tucker, Georgia 30084

CITY

City of Stonecrest
Attn: City Manager
3120 Stonecrest Blvd., Suite 190
Stonecrest, Georgia 30038

- 12. ATTORNEYS' FEES:** The DMO shall pay reasonable attorneys' fees to the City should the City be required to incur attorneys' fees in enforcing the provisions of this Agreement or in the collection of any monies herein required to be paid by the DMO to the City.

13. STANDARDS OF PERFORMANCE AND COMPLIANCE WITH APPLICABLE LAWS:

- (a) DMO warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. DMO agrees to perform in a diligent, efficient, competent and skillful manner commensurate with the highest standards of the profession, and to otherwise perform as is necessary to undertake the services required by this Agreement.
- (b) DMO warrants and represents that it will, at all times, observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the Services to be provided by DMO hereunder or which in any manner affect this Agreement.
- (c) Except as expressly set forth in this Agreement, DMO disclaims all other representations or warranties, express or implied, made to the City or any other person, including without limitation, any warranties regarding quality, suitability,

merchantability, fitness for a particular purpose or otherwise of any services or any good provided incidental to the services provided under this Agreement.

14. WAIVER OF BREACH:

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to constitute a waiver of any subsequent breach or violation of the same or other provision thereof.

15. SEVERABILITY:

If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

16. INTERPRETATION:

It is the intent of the Parties that no portion of this Agreement shall be interpreted more harshly against either of the Parties as the drafter.

17. AMENDMENT OF AGREEMENT:

Modification or changes in this Agreement must be in writing and signed by the Parties to this Agreement.

18. COUNTERPARTS:

This Agreement may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Agreement. PDF signatures shall constitute original signatures. This Agreement shall be executed in an original and two (2) copies, any one of which may be used for any purpose for which the original may be used.

19. ENTIRE AGREEMENT:

This Agreement which includes the exhibits hereto contains the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes and replaces any and all prior discussions, representations and understandings, whether oral or written.

(Signatures on Following Page)

The Parties hereto have affixed their hands and seals on this _____ day of _____, 2021.

**DEKALB CONVENTION &
VISITORS BUREAU**

CITY OF STONECREST

JAMES TSISMANAKIS
Executive Director & CEO

GEORGE TURNER
Mayor Pro Tem

ATTEST:

ATTEST:

Secretary

City Clerk

(SEAL)

(SEAL)

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
STATEMENT OF SERVICES

DMO agrees to operate a convention and visitors bureau which will enable Stonecrest, Georgia, and the hotels and motels located therein to market the City as a destination for specific inbound groups, increase the occupancy rate of hotel and motel rooms, and promote the development of facilities designed to enhance the growth of the convention, trade show, and tourism industry. DMO shall also perform the following:

1. DMO will hire and direct staff members whose duties will include the following:
 - a. Develop and implement marketing plans for convention, trade show, and tourism sales.
 - b. Produce and distribute publications in support of facilities and attractions in the City, DeKalb County, and its other cities.
 - c. Implement a tourism program to increase tourist visitation and spending in the City, DeKalb County, and its other cities.
 - d. Make contact with meeting planners and other groups to provide them with information about facilities located in the City, DeKalb County, and its other cities that are available to host their events and make appropriate referrals of such groups to such facilities.
2. DMO will require and assure performance of its Annual Marketing Plan, which is on file with the DMO and which is incorporated herein by this reference.
3. DMO will (a) submit monthly programmatic and financial progress reports indicating its accomplishment of the Program to the City not later than the 15th day of each month for the preceding month and (b) report its accomplishment of the above in the Corporation's annual report and provide copies of all such publications to designated City personnel and to the City Council.
4. DMO will use its best efforts to ensure that all funds received under this Agreement are expended for the purposes set forth in this Agreement.