

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES ("Contract") is entered into by and between **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA**, a municipal corporation organized and existing under the laws of the State of South Carolina ("Town") and **HILTON HEAD ISLAND - BLUFFTON CHAMBER OF COMMERCE**, a nonprofit corporation existing under the laws of the State of South Carolina ("Chamber").

WHEREAS, accommodations tax is a state and local tax that is levied on the lodging industry and South Carolina Code Section 6-4-10(3) requires thirty percent of the state received accommodation tax be awarded to a nonprofit corporation and allocated to a special fund used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity ("Promotional Fund").

WHEREAS, the Promotional Fund is not part of the general fund of the Town.

WHEREAS, nonprofit corporations are formed and governed pursuant to the South Carolina Non Profit Act ("Act") and the Act requires the corporation to be governed by a board of directors.

WHEREAS, the Town has determined that entering into a contract with certain non-profit corporations which receive tax funding is in the best interest of the Town so these non-profit corporations will satisfy certain compliance and operating standards.

WHEREAS, the Chamber believes that entering into a contract with the Town is in the best interest of its members and will provide for improved long-term planning.

NOW, THEREFORE, it is hereby agreed to as follows:

1. **Mutual Compliance with Laws.** The Town and the Chamber agree that each of them shall adhere to all applicable laws which govern their respective entities. These laws include Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, Title I of the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the Fair Labor Standards Act of 1938, the Immigration Reform and Control Act of 1986, the South Carolina Wage Act, the South Carolina Worker's Compensation Act, all laws related to the South Carolina Accommodation Tax, the South Carolina Non-Profit Corporation Act, and all laws administered and enforced by the South Carolina Department of Revenue and the Internal Revenue Service.

2. **Chamber Obligations.**

2.1 **Audit.** The Chamber agrees to provide an independent auditor's report to the Town on an annual basis with regard to each of its fiscal years (July 1st to June 30th). The audit shall be delivered to the Town by November 15th after the applicable fiscal year end.

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 (the "AICPA").

(b) The audit shall be performed in accordance with generally accepted auditing standards (the "GAAS").

(c) The auditor must comply with all applicable statements on auditing standards (the "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 and No/100 Dollars (\$1,000,000.00).

(e) The auditor must provide evidence of successful completion of the peer review process approved by the AICPA.

2.2 DMO Report. In addition to the audit, the Chamber shall also produce and deliver to the Town a schedule of revenues and expenses for each fiscal year (the "Report") for the destination 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 2.1(a), (b), and (c) and by the same auditor that has satisfied the standards set forth above in Section 2.1(d) and (e). The Report shall be delivered to the Town by November 15th after the applicable fiscal year end.

2.3 Auditor. The Chamber agrees that it will cause its finance committee to interview other auditing firms when the existing contract with its auditor expires. A town staff member or a council member, at his/her election, shall participate with the finance committee during this process provided the individual demonstrates sufficient financial acumen (consistent with best practices for nonprofit finance/audit committee members) and agrees to all policies and procedures which apply to the Chamber's board of directors. The Chamber makes no representation or assurance that the individual who participates with the finance committee will be covered with directors and officers liability insurance.

2.4 Tax Returns. The federal and state tax returns shall be prepared and filed by a tax professional that must execute the returns as a tax preparer as defined by the Internal Revenue Code, the South Carolina tax code, and/or their regulations. This requirement will insure that such professional tax return preparer is subject to all penalties set forth in the Internal Revenue Code or the South Carolina code concerning tax preparers.

2.5 Promotional Fund. The Chamber shall manage and direct the expenditure of the Promotional Fund. 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 subject to the auditing and reporting requirements of this Contract.

2.6 Process. The Chamber shall submit a budget of planned expenditures for the Promotional Fund ("Budget") and a marketing plan ("MP") for each fiscal year. The MP shall be recommended by the Chamber's marketing council and the MP and the Budget shall be approved by the board of directors of the Chamber. The Town may elect to have a staff

member or council member participate as a member of the marketing council provided the individual agrees to all policies and procedures which apply to the Chamber's board of directors. The Chamber makes no representation or assurance that the individual who participates on the marketing council will be covered with directors and officers liability insurance. The Budget and MP will then be submitted to the Town's accommodations tax ("ATAX") committee for review and recommendation. Upon the recommendation by the ATAX committee, the Budget and MP shall be forwarded for approval by the Town. The ATAX committee and the Town shall make all reasonable efforts to provide review and approval in a timely manner since private funds, state funds and placement of public relations and marketing programs are dependent on meeting deadlines. The Chamber shall submit the Report to the Town by November 15th after the applicable fiscal year end.

2.7 Inspection Rights. The Town Manager (or a designee that satisfies the same standard to interview auditors as set forth in Section 2.3), or a representative from the Town's Finance and Administration Committee (who also satisfies the same standard to interview auditors as set forth in Section 2.3) may, upon reasonable notice, 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 shall not be exercised more than twice in each fiscal year, unless otherwise agreed to by the parties.

2.8 Legal Opinion. The Chamber shall select and retain a law firm, with the consent of the Town, to deliver a third party opinion to the Town which opines that all expenditures from the Promotional Fund as set forth in the Report are in compliance with the then current requirements of South Carolina Code Section 6-4-10(3) and the Chamber is validly existing as a non-profit corporation under the laws of South Carolina. The legal opinion shall be addressed to the Town and the cost shall be equally divided by the Town and the Chamber. The legal opinion form and content shall adhere to the guidelines, to the extent applicable, of the South Carolina Third Party Legal Opinion Report approved by the Corporate, Banking and Securities Law Section of the South Carolina Bar on December 10, 2014 and approved by the House of Delegates of the South Carolina Bar on January 22, 2015.

3. Performance Standards.

3.1 DMO Standard. The Chamber and the Town agree that Destination Marketing Association International ("DMAI") is the industry leader in setting standards and accreditations with regard to destination marketing organizations. The Chamber agrees that it shall adopt policies and procedures and operate in a manner which satisfies the applicable standards set forth by DMAI under their categories of governance, finance, human resources, technology, marketing, visitor services, group services, sales, communications, membership, management and facilities, brand management, destination development, research and marketing intelligence, innovation, and stakeholder relationships with the goal of receiving accreditation by DMAI. The Chamber shall maintain accreditation with DMAI.

3.2 Organizational Standard. The United State Chamber of Commerce provides criteria to receive accreditation by a local chamber of commerce. The Chamber shall maintain the four star accreditation by the United States Chamber of Commerce.

3.3 DMO's Industry Metrics. The Chamber shall provide the Finance and Administration committee of the Town ("Committee") 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 through(s) 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 its public relations efforts to include the number of media impressions and the dollar equivalent for the media impressions.

It is understood and acknowledged that such metrics and/or reports may change from time to time based upon best practices, available funding and the goals set forth in the MP. The Committee shall review the data provided under this Section and evaluate the performance of the DMO. The evaluation shall consider the above metrics and reports, collectively, and shall be compared with peers and other factors that affect the tourism industry such as the state of the economy, weather, condition of the lodging properties, etc. The Committee shall report a summary of its evaluation to the Town Council.

If the Town Council determines that the Chamber has underperformed, it shall retain an industry recognized expert that has been recommended by DMAI ("Expert") to confirm its determination and to recommend strategies and policies to cure the deficiencies which have created the underperformance (the "Cure Plan").

In such an event, the Chamber shall cooperate with the Town Council and the Expert to implement the Cure Plan. If, after one year from the date of the delivery of the Cure Plan, the Town Council, after consultation with the Expert, determines the implementation of the Cure Plan has not occurred, the Town Council shall have the right to terminate this Contract by written notice, said termination to be effective sixty (60) days after said notice is given.

4. Chamber Covenants and Representations.

4.1 The Chamber covenants and represents that it has all necessary licenses and consents required for the Chamber to enter into and fully perform this Contract.

4.2 The Chamber covenants and represents to perform all tasks required under this Contract with a degree of skill and care of reputable organizations of the same profession in South Carolina.

4.3 The Chamber covenants and represents to properly withhold from all wages, commissions, salaries, and fees paid by Chamber to third parties or employees, agents, or sub-contractors of 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.

4.4 The Chamber covenants and represents that the MP shall include a public relations plan and a social media plan.

4.5 The Chamber covenants and represents that the Report shall include as exhibits the prior years' calendar of events and a dashboard of year over year tourism metrics as historically reported.

4.6 The Chamber covenants and represents to maintain www.ThinkHiltonHeadIsland.org and to post five (5) years of audits and tourism metrics as historically been reported.

4.7 The Chamber covenants and represents that it will comply with all state accommodation tax laws in administering the Promotional Fund.

4.8 The Chamber shall cause DMO revenue, less expenses, derived from DMO non programing activities to accrue for the benefit of the DMO.

5. Town Covenants and Representations.

5.1 The Town hereby covenants and represents that it will comply with all state accommodation tax laws in administering all such funds to the Chamber and other non-profit corporations.

5.2 The Town hereby covenants and represents that it shall comply will all such laws and procedures in a manner not to discriminate against one non-profit corporation versus another non-profit corporation.

5.3 The Town covenants and represents that it shall cause the Funding to promptly be paid to the Chamber in order for the Budget and MP to be implemented.

5.4 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.

5.5 The Town hereby covenants and represents that Town has the lawful authority required under State law and Town's ordinances to enter into and perform this Contract.

6. **Term.** Since the current fiscal year's budget and MP have already been approved, this Contract shall be effective as of the 1st day of December 1, 2015, and shall continue for a period of five (5) years (the "Initial Term"), unless otherwise terminated as herein provided. If, at the expiration of the Initial Term, the Chamber has maintained the Performance Standards set forth in Section 3.1, 3.2, and 3.3 hereof, without interruption, then this Contract shall be extended by an additional five year term. Provided, however, each party shall have the ability to terminate this Contract upon the expiration of the Initial Term by providing the other party written notice during the month of November, 2019.

7. **Termination.**

7.1 If the Performance Standards set forth in Section 3.1 or 3.2 hereof have not been complied with in all material aspects as determined by DMAI, the United States Chamber of Commerce, or the Town, the Town shall provide written notice to the Chamber of the deficiency and the Chamber shall have one hundred eighty days (180) days to cure the deficiency. If the deficiency is not cured, the Town may terminate this Contract by providing ninety (90) day written notice to the Chamber. In addition, the Town shall have the right to terminate the contract by providing ninety (90) day notice if the auditor or DMAI determines fraud has occurred in the operation of the Chamber.

7.2 With respect to the Performance Standard set forth in Section 3.3 above, the termination process set forth in Section 3.3 shall control.

8. **Updates.** The Town acknowledges that the DMO makes a minimum of two public presentations to the ATAX committee each fiscal year. In addition to these appearances, the DMO shall report to the Committee on two other occasions during the fiscal year. These appearances shall be scheduled as to not interfere with any other presentation the DMO is making to a governmental body.

9. **Other Provisions.**

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

9.2 **Notices.** All notices to each party to this Contract shall be in writing, and sent as follows:

Town:

Town of Hilton Head Island, South Carolina
Attn: Stephen G. Riley, Town Manager
One Town Center Court
Hilton Head Island, SC 29928

Chamber:

Hilton Head Island – Bluffton Chamber of Commerce, Inc.
Attn: William G. Miles, President & CEO
1 Chamber of Commerce Drive
Hilton Head Island, SC 29928

9.3 **Form of Notice.** All notices required or permitted under this Contract shall be sent certified mail with signature required.

9.4 **Merger, Amendment, and Waiver.** This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior discussions, negotiations, contracts, agreements, and understandings between Town and Chamber concerning the subject matter described herein. This Contract may only be amended or varied by a written instrument signed by a

duly authorized signatory of Town and Chamber. Forbearance by Town from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle Chamber to rely upon such forbearance in the future.

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

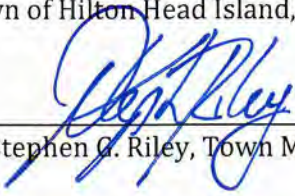
9.6 Attorney's Fees, Dispute Resolution. In the event of a dispute between the parties, the prevailing party in any dispute shall be entitled to an award of all reasonable attorneys and costs, including the costs of appeal, if any.

The parties have executed this Contract effective as of the date set forth in Section 6 above.

TOWN:

Town of Hilton Head Island, South Carolina

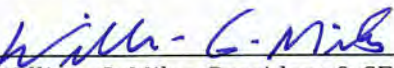
By: _____


Stephen G. Riley, Town Manager

CHAMBER:

Hilton Head Island Bluffton Chamber Of Commerce, Inc.

By: _____


William G. Miles, President & CEO