



January 1, 2021

Mr. Jim Browder  
Executive Director  
Carteret County Tourism Development Authority  
3409 Arendell Street  
Morehead City, NC 28557

Dear Jim:

Thank you for your confidence in appointing The Zimmerman Agency (hereinafter referred to as the "Agency") as the advertising agency of record for the Crystal Coast Tourism Development Authority (hereinafter referred to as the "Client"). This Letter of Agreement (the "Agreement") sets forth the terms and conditions between the Client and the Agency and outlines the services and compensation to which the parties have agreed.

1. Appointment

Client appoints Agency as Client's advertising and marketing communications firm in connection with the products and/or services of Client described in Schedule 1, attached hereto, for a term ("Term") as hereinafter provided.

2. Scope of Services

Agency will provide Client with the marketing communication services (the "Services") provided in Schedule 1, attached hereto. Should Client request Agency to alter the Services or perform additional services beyond what is provided in Schedule 1, Agency and Client will negotiate in good faith with respect to the terms, conditions, and compensation for such additional services. Any agreement for additional services will be agreed in writing in a format similar to Schedule 1 and considered an addendum to this Agreement. Schedule 1 and any subsequent addendums will collectively be referred to as Schedule 1.

3. Ownership

All trademarks, service marks, slogans, artwork, written materials, drawings, photographs, graphic materials, film, music, transcriptions, or other materials that are subject to copyright, trademark, patent, or similar protection (collectively, the "Work Product") produced by Agency pursuant to Schedule 1 are the property of the Client provided: (1) such Work Product is accepted in writing by the Client; (2) Client pays all fees and costs associated with creating and, where applicable, producing such Work Product. Work Product that does not meet the two foregoing conditions shall remain Agency's property. Further excluded from Work Product and remaining Agency's property shall be (i) all materials owned by or licensed to Agency prior to, or independent from, the performance of Services under this Agreement, (ii) all generic or proprietary information, ideas, methodologies, software, applications, processes or procedures used or developed by the

Agency in the general conduct of its business, and (iii) all materials not created specifically for Client hereunder, (iv) all ideas or concepts presented to and rejected by Client.

Notwithstanding the foregoing, it is understood that Agency may, on occasion, license materials from third parties for inclusion in Work Product. In such circumstances, ownership of such licensed materials remains with the licensor at the conclusion of the term of the license. In such instances, Client agrees that it remains bound by the terms of such licenses. Agency will keep Client informed of any such limitations.

#### 4. Term

The initial term of the Agreement shall be three (3) years commencing on January 1, 2021 through December 31, 2023. Thereafter, the client may elect to renew the Agreement for a one (1) year roll-over/extension. Either party may terminate this agreement with written notice via certified mail at least ninety (90) days prior to termination (the "Notice Period"). In the event of early termination, Client shall pay Agency for all Services performed (including payment of any monthly retainer set forth in Schedule 1) through the effective date of termination, as well as any non-cancellable third-party costs or expenses incurred by Agency.

During the Notice Period, each party's rights, duties, and responsibilities shall continue. Upon termination and Client's payment of all obligations, Agency will transfer and/or assign to Client: (1) all Work Product in Agency's possession or control belonging to Client, subject to any rights of third parties or Agency; and (2) all contracts with third parties, including advertising media or others, upon being duly released by Client and any such third party from any further obligations.

#### 5. Compensation and Billing Procedure

Agency will be compensated and Client will be billed as provided in Schedule 1, attached hereto. Client and Agency shall negotiate any adjustments to the compensation on an annual basis. All Agency invoices are net and due within 30 days of date of invoice. Any Agency invoice not paid within 30 days of receipt shall accrue interest at a rate of 1.5% per month from the due date on the unpaid balance.

The Agency may require Client to advance certain agreed upon third-party fees, costs or expenses associated with the Services, including but not limited to production or media costs. In the event Agency elects to enforce this right and provides Client with notice thereof, the Agency will not be obligated to advance such expenses or be in breach of this Agreement for failing to perform Services which are contingent upon or related to the advancement of such monies.

Further, Agency reserves the right, in case 1) credit insurers decline coverage, or revise or withdraw coverage on Client, or 2) Client's credit rating (through Euler Hermes or other source) adversely changes, to change the requirements (but not the amount) as to terms of payment under this Agreement (including the right to require payment in advance) for the Agency's fee and third party costs.

#### 6. Approvals

Agency agrees that Client shall have the right to approve of any and all material or content created or developed by the Agency on behalf of the Client before publishing or

distribution by Agency. In the event that Client makes any correction or change in copy or other materials submitted to it by Agency, Agency shall have the right to approve said changes prior to publication or distribution.

#### 7. Confidentiality and Safeguard of Property

Client and Agency respectively agree to keep in confidence, and not to disclose or use for its own respective benefit or for the benefit of any third party (except as may be required for the performance of services under this Agreement or as may be required by law), any information, documents, or materials that are reasonably considered confidential regarding each other's products, business, customers, clients, suppliers or methods of operation; provided, however, that such obligation of confidentiality will not extend to anything in the public domain, information that was in the possession of either party prior to disclosure, information that becomes available to either party on a non-confidential basis from a source other than the disclosing party, or information that is developed or discovered by a party independent of its receipt from the disclosing party. Agency and Client will take reasonable precautions to safeguard property of the other entrusted to it, but in the absence of negligence or willful disregard, neither Agency nor Client will be responsible for any loss or damage resulting from a breach of this Section 7.

#### 8. Indemnities

Agency agrees to indemnify and hold Client harmless with respect to any damages, claims or actions by third parties against Client to the extent such claims are the result of Agency's material breach of this Agreement, or Services that are libelous, slanderous, plagiaristic, an invasion of privacy, or infringing of a third party's copyright or trade secret, except where any such claim or action arises out of material supplied by Client.

Client agrees to indemnify and hold Agency harmless with respect to any damages, claims or actions by third parties against Agency to the extent arising out of materials furnished by Client (including any products or services manufactured and/or sold by Client), or Client's modification or use of the Services contrary to the agreed upon terms, or Client's breach of this Agreement. . For purposes of clarity, information or data obtained by Agency from Client to substantiate claims made in advertising shall constitute materials furnished by Client. Client further agrees to indemnify and hold Agency harmless with respect to risks which the Agency has brought to Client's attention in writing where the Client has elected to proceed, and any third-party investigation of the acts or practices of Client to which the Agency is not a named party, including compliance with any third party subpoena or discovery request.

#### 9. Commitments to Third Parties

Agency is authorized to act as agent for Client in purchasing the materials and services required to produce the Services hereunder. As Agency is acting as an agent for a disclosed principal, all such goods and services will be purchased under the principle of sequential liability, where Agency will be held liable for payments to third parties only to the extent Agency has been paid by Client for such purchases. For amounts owing but not paid to Agency, Client agrees that it will be held solely liable.

Purchases from third parties on Client's behalf will be subject to Client's prior approval. Client reserves the right to cancel any such authorization, whereupon Agency will take reasonably appropriate steps to affect such cancellation, provided that Client will indemnify and hold Agency harmless with respect to any costs or damages incurred by

Agency as a result of such cancellation.

If at any time Agency obtains a discount or rebate from any supplier as a result of Agency's provision of Services to Client and Client's timely payment to Agency, Agency will pass through such discount or rebate to Client.

Agency shall use best efforts to prevent loss to Client through the failure of suppliers to properly execute their commitments, but Agency shall not be held responsible or liable for any such failures.

10. Limitation of Liability

IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, BASED ON ANY THEORY OR LIABILITY. FURTHER, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID TO AGENCY PURSUANT TO THIS AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE OCCURRENCE OF THE ACTION OR INACTION GIVING RISE TO THE CLAIM AT ISSUE.

11. Amendments

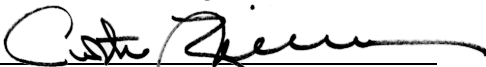
Any amendments to this Agreement must be in writing and signed by Agency and Client.

12. Governing Law

This Agreement shall be interpreted in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws. Jurisdiction and venue shall be solely within the State of Florida.

IN WITNESS WHEREOF, Agency and Client have executed this Agreement.

The Zimmerman Agency, LLC

By: 

Name: Curtis Zimmerman

Title: President

Carteret County Tourism Development Authority, dba Crystal Coast Tourism Development Authority

By: \_\_\_\_\_

Name: Jim Browder

Title: Executive Director

Date: \_\_\_\_\_