

## PUBLISHING AGREEMENT

AGREEMENT dated August 23, 2018 between Durham Convention & Visitors Bureau, 212 West Main Street #101, Durham, North Carolina 27701 (CVB), and Compass Media LLC, doing business at 175 Northshore Place, Gulf Shores, Alabama 36542 (Publisher).

1. **Publishing Right.** CVB hereby agrees Publisher shall have the sole and exclusive right to publish in guide form the official and exclusive 2019 Official Durham Visitor Inspiration Guide (**Guide**), during the full term hereof in accordance with the specifications attached hereto. CVB shall designate the **Guide** as its official and exclusive CVB visitor's publication.
2. **CVB Support Obligations.** In consideration of the mutual promises contained herein, CVB and Publisher hereby agree that CVB will timely perform the obligations set forth in Exhibit 1, which is attached hereto and incorporated by this reference.
3. **Mutual Obligations Regarding Publication of Guide.** In consideration of the mutual promises contained herein, CVB and Publisher hereby agree that each party will timely perform the obligations set forth in Exhibit 2, which is attached hereto and incorporated by this reference.
4. **Mutual Obligations Regarding Advertising.** In consideration of the mutual promises contained herein, CVB and Publisher hereby agree that each party will timely perform the obligations set forth in Exhibit 3, which is attached hereto and incorporated by this reference.
5. **Term.**
  - A. This Agreement shall continue in force for one year for the 2019 **Guide** and shall renew automatically for subsequent one-year terms thereafter unless and until CVB or Publisher gives notice of non-renewal or termination to the other within 60 days of the delivery of the most recent guide.
  - B. **Publisher's Bankruptcy or Liquidation.** If the Publisher becomes bankrupt or is involuntarily liquidated, the CVB shall have the right to buy back the rights of publication, together with all digital files or remaining copies, bound or unbound, at their fair market value to be determined by agreement or arbitration. In that event, this Agreement shall terminate.
6. **Rights Reserved.** Publisher and CVB will share full, perpetual usage rights to all content and photography created or commissioned for the **Guide** for any CVB promotion to the extent usage rights are granted by writers and photographers.
7. **Copyright.** Appropriate claim of copyright shall be included in the **Guide** in the appropriate places. Publisher shall obtain the copyright and trademark for all contents of the visitor's guide. Protection of all individual copyrights and specific individual requests will necessitate direction of Publisher.
8. **Fees.** Terms and conditions of the fees paid in consideration of this Agreement, the sufficiency of which is hereby acknowledged by CVB, are set forth in Appendix A.
9. **Notices.** Any notice given hereunder shall be sent by registered or certified mail, return receipt requested, addressed to the parties at their respective addresses above given. Either party may designate a different address by notice so given.

10. **Waiver of Modification.** The waiver of a breach of any term hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default, whether the same or of similar nature, and shall not in any way affect the other terms hereof. No waiver or modification shall be valid or binding unless in writing and signed by the parties.
11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors and assignees of the parties.
12. **Entire Agreement.** This Agreement supersedes all agreements previously made between the parties relating to this subject matter. There are no other understandings or agreements.
13. **Non-Waiver.** No delays or failure by either party to exercise any right under this Agreement, and no partial single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
14. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
15. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
16. **Termination.** Either party hereto may terminate the Agreement by giving the other party written notice of the intention to terminate three (3) days after the signing of the Agreement.
17. **Employment.** Publisher acknowledges that neither it nor any employees or assigns are entitled to any benefit, compensation or allowance provided to employees of the Durham Convention & Visitors Bureau (CVB).
18. **Exhibits.** All exhibits, appendixes or attachments referenced in this Agreement are hereby incorporated by reference as if fully set forth herein.
19. **Dispute Resolution.** It is agreed that all disputes between CVB and Publisher arising under case law, statutory law, and all other laws including, but not limited to, all contract, tort, and property disputes, shall be resolved by binding arbitration which shall be conducted under the American Arbitration Association. This agreement is made pursuant to a transaction in interstate commerce, and shall be governed by the Federal Arbitration Act. Notwithstanding the foregoing, Publisher retains an option to use judicial relief to enforce and collect any and all fees called for in the Agreement underlying this arbitration agreement and to enforce any and all payment obligations created by the Agreement and use of said relief shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this agreement, including the filing of a counterclaim in a suit brought by Publisher pursuant to this provision.
20. **Attorney Fees and Costs.** CVB agrees to reimburse Publisher for any and all expenses incurred in collecting any amounts due, including but not limited to a reasonable attorney fee, court costs, interest and all other costs associated with collection. Any amounts that are due and owing more than 30 days past the payment date called for under this Agreement shall accrue simple interest at the rate of 5% per annum.

21. **Contact Interpretation.** Both parties drafted this Agreement and share responsibility for its wording. Notwithstanding any rule to the contrary, no provision of this Agreement shall be interpreted or construed against any party because such party or its legal counsel was the drafter thereof.
22. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction or an arbitrator to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible to effect the intent of the parties, or, to the extent incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect. In such event the parties agree to negotiate in good faith to amend and replace such invalid or void or unenforceable provision with a valid and lawful and enforceable provision which most closely approximates the intent and economic effect of such invalid or void or unenforceable provision.
23. **Assignment.** Either party may freely assign this Agreement, in whole or in part, without the consent of the other party.
24. **Legal Authority.** Both the CVB and the Publisher warrant that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, execute this Agreement by and through the individuals noted below.

In witness whereof the parties have executed this Agreement and fixed their hands and seals as of the date first above witness.

  
Dustin Gontarski, President  
Compass Media LLC

9/4/18  
Date

  
E'Vonne Coleman, Chief Operating Officer  
Durham Convention & Visitors Bureau

8/31/18  
Date

**EXHIBIT 1**  
**CVB Support Obligations.**

Agreement between Compass Media LLC and Durham Convention & Visitors Bureau  
August 23, 2018

In accordance with Section 2 of the Agreement, the **CVB** will perform the following obligations at the dates, times and locations outlined below, as applicable:

- A. **CVB** shall mail a copy of the **Guide** in response to telephone, online and written requests for visitor information received by **CVB**.
- B. **CVB** shall also distribute the **Guide** in its visitor's center, at state welcome centers and at various events and outreach locations, as appropriate.
- C. **CVB** shall designate one of its officials in writing as the coordinator and approval authority for all matters relevant to publishing the **Guide**, subject to final approval by the **CVB**.

**EXHIBIT 2**  
**Mutual Obligations Regarding Publication of Guide.**

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August 23, 2018

In accordance with Section 3 of the Agreement, the **CVB** and **Publisher** will each perform the following designated obligations at the dates, times and locations outlined below, as applicable:

- A. **Publisher** will provide the sales, graphic design, editing, copywriting, layout, production, printing and delivery of the **Guide**.
- B. **Publisher** and **CVB** will participate in a planning meeting at the beginning of the production cycle, regular update meetings and/or phone calls throughout the production cycle, and a final review meeting after publication of the **Guide**. **Publisher** and **CVB** agree to maintain open and active email, phone and in-person communication throughout the production cycle to ensure timely completion of production milestones.
- C. **Publisher** will provide **CVB** a **Guide** production schedule for this contract.
- D. **Publisher** will provide **CVB's** designated representative an editorial outline and initial design comps for the **CVB's** approval.
- E. **CVB** will provide fact checked listings in word format with appropriate legends
- F. **Publisher** will provide **CVB**, in Word document format, the editorial copy for the **Guide** for review in accordance with the production schedule. Approval or changes to the editorial copy by **CVB** are required within seven (7) business days.
- G. **Publisher** will provide **CVB** with an initial proof of **Guide** for review in accordance with production schedule. Approval or changes to initial book proof by **CVB** are required within seven (7) business days.
- H. **Publisher** will provide **CVB** with second book proof of **Guide** for review and approval. Approval or changes to the second proof by **CVB** are required within five (5) business days.
- I. If requested by **CVB**, a third and final book proof will be provided. Approval to the final proof by **CVB** is required within three (3) business days.
- J. Significant content additions or changes at the book proof stage may require changes in the schedule and may result in additional charges to the **CVB**.
- K. **CVB** will provide **Publisher** access to photo library. **Publisher** will coordinate with **CVB** on all photography matters relevant to the **Guide**. Any new photography required by the **CVB** in excess of the 10% of new images (including cover images) will be paid for by the **CVB**. **CVB** represents that it is fully authorized and licensed to use all images and/or photography provided by the **CVB** for placement in the **Guide**. As part of the consideration and to induce **Publisher** to publish such **Guide**, the **CVB** agrees to indemnify and hold harmless the **Publisher** and its employees and representatives against any and all claims, errors, omissions, liability, loss, damage and expense of any nature, including attorney's fees, arising out of the copying, printing, publishing, distribution or transmission of such images and/or photography.
- L. **Publisher** will print the **Guide** according to the following specifications:
  - Page Size: 6.5" x 10"
  - 64 pages plus cover
  - Cover Stock: 7 pt., #2 gloss cover
  - Body Stock: 70#, #3 gloss text
  - Four Color
  - Finishing: Perfect Bound on the 10" side
- M. **Publisher** will provide **CVB** with 80,000, 64 page plus cover **Guide**. The advertising-to-editorial ratio shall not exceed 40% advertising to 60% editorial.

- N. **Publisher** will package in 50s and deliver 80,000 Guides to a **CVB** designated warehouse in Durham, North Carolina.
- O. **Publisher** will provide a digital version of the **Guide** at no expense to the **CVB**. The **Publisher** will provide the **CVB** with a URL link to the digital guide which the **CVB** may use on its website and on any additional platforms the **CVB** desires. The **CVB** will be provided a login and password and will be able to access reports and metrics any time, in real time.
- P. **Publisher** agrees to immediately initiate sales and production activities, barring acts of God or nature, to ensure a delivery date of February 26, 2019.

**EXHIBIT 3**  
**Mutual Obligations Regarding Advertising.**

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August 23, 2018

In accordance with Section 4 of the Agreement, the **CVB** and **Publisher** will each perform the following designated obligations at the dates, times and locations outlined below, as applicable:

- A. **Publisher** will coordinate all matters relevant to advertising, including sales, advertising rates, proofs, mechanical and digital production, billing and collection.
- B. **Publisher** will solicit and sell advertising in the **Guide** to any "good taste" establishment or organization that has a location within Durham County. If establishment has multiple locations, the Durham County location must be listed first in the advertisement.
- C. **Publisher** will make every effort to maximize ad sales, thereby minimizing the financial exposure of the **CVB**, with the ultimate intent of producing the Guide at no cost to the **CVB**.

**APPENDIX A**

**Visitors Guide Fee Schedule**

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1. **Publishing Fee.** Publisher will produce the Guide as specified for a publishing fee.
  - a. The publishing fee will be equal to \$ 94,000 less all contracted advertisement sales.
  - b. The fee is to be paid in the following installments: One half on December 1, 2018 and the remainder on delivery.
  - c. **BRC Card.** Design, print and binding of BRC card in the Guide can be added to the original order at a set cost of \$2,500 if approval to do so is received by 12/28/2018. This cost will be remitted by the **CVB** to the **Publisher** with the final installment.