

STATE OF NORTH CAROLINA

SERVICE CONTRACT

COUNTY OF BUNCOMBE

THIS SERVICES CONTRACT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Buncombe County, a body politic and existing under the laws of the State of North Carolina (hereinafter sometimes referred to as "County"), and Buncombe County Tourism Development Authority, a North Carolina nonprofit corporation (hereinafter sometimes referred to as "Explore Asheville").

**RECITALS:**

WHEREAS, in accordance with Part VI, Section 22 of Chapter 908, House Bill No. 426, ratified by the North Carolina General Assembly, the Buncombe County Board of Commissioners, after due notice and public hearing, passed a resolution creating the Buncombe County Tourism Development Authority ("TDA") in August 1983 immediately following the County's imposition and levy of its room occupancy tax;

WHEREAS, Explore Asheville is the non-profit entity that employs the employees who carry out the mission of the TDA and Explore Asheville;

WHEREAS, pursuant to North Carolina Statutes, the County provides certain services to the TDA, including, but not limited to, administering the room occupancy tax it levies and providing its finance officer to serve as the ex officio finance officer of the TDA, ensuring its compliance as a public authority with the Local Government Budget and Fiscal Control Act (such services referred to herein as the "Statutory Services");

WHEREAS, the County provides other support services, not mandated by statute, to Explore Asheville including processing its employee payroll and Human Resources management associated with payroll (such services referred to herein as the "Contractual Services").

NOW THEREFORE, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual agreements contained herein, the parties hereto do covenant and agree as follows:

I. TERMS AND CONDITIONS.

1. The Contractual Services shall include:

- a. Processing Explore Asheville's employee payroll according to personnel, benefit, and time entry information provided by Explore Asheville in accordance with the roles and responsibilities set forth in the Appendix incorporated herein by reference; and
- b. Oversee TDA Accounts Payable, including processing of payments and creation of checks.

Nothing herein regarding the Contractual Services shall in any way affect the provision of the Statutory Services.

2. Consistent with its statutory authority, the County will charge and the TDA will compensate the County in an amount equal to five percent (5%) of the gross proceeds of the occupancy tax collected or accrued each fiscal year, and which five percent (5%) shall be retained by the County from the gross proceeds collected, as compensation for all of the Statutory Services and Contractual Services provided.
3. The County will provide to the TDA a monthly account of its receipts and disbursements of the occupancy tax and such other financial information as the TDA may reasonably request.
4. Independent Contractor. In all matters relating to or concerning this agreement, County, its agents, contractors, subcontractors and other representatives are, and shall act as, independent parties acting within their own means and on their own behalf. County, its agents, contractors, subcontractors and other representatives, respectively, are not employees of Explore Asheville. Nothing contained in this agreement shall be construed to establish a joint venture or partnership between Explore Asheville and County, its agents, contractors, subcontractors or other representatives.
5. Explore Asheville shall indemnify, defend and hold harmless County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, any act or omission of County or any employee, agent or assign of the County in the provision of the Contractual Services. Explore Asheville shall indemnify the County in the provision of the Contractual Services, except where the County causes an injury to Explore Asheville or its employee by some negligent act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. Nothing herein shall be construed as providing any indemnity to County in the provision of the Statutory Services.
6. Term of Agreement. The term of the agreement shall begin on July 1, 2023 and end on June 30, 2024.
7. Renewal Terms. Provided the parties have complied with all terms, conditions, and provisions of this Agreement then the Agreement will automatically renew for successive terms of one (1) each on the same terms and conditions as set forth herein.

## II. GENERAL MATTERS.

1. **Notice.** The parties hereby acknowledge that all notices provided for in this agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, facsimile transmission or overnight delivery addressed:

To County:      Buncombe County Government  
                         County Manager  
                         200 College Street

Suite 300  
Asheville, NC 28805

To TDA: Buncombe County Tourism Development Authority  
President and CEO  
27 College Place  
Asheville, North Carolina 28801

Any party hereto may from time to time, by notices herein provided, designate a different address to which notices to it shall be sent.

2. **Governing Law.** This contract shall be governed by the laws of the State of North Carolina and should any claim or dispute arise between the parties that cannot be resolved amicably then any action to enforce or interpret its terms shall be brought in the General Court of Justice of Buncombe County, North Carolina which shall have venue and jurisdiction over the subject matter and the parties. All rights and remedies of County under this agreement shall be cumulative and none shall exclude any other rights or remedies allowed by law or by equity. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.
3. **Severability.** Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
4. **Entirety.** This contract contains the entire agreement of the parties with respect to the subject matter hereof and may not be modified, except by an instrument in writing and signed by both parties. This contract supersedes and cancels all prior agreements between the parties as to the subject matter hereof.
5. **Execution.** The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

**IN WITNESS WHEREOF**, the parties have caused this Service Contract to be executed in their respective names by their duly authorized officers, all as of the date first above written.

Buncombe County

\_\_\_\_\_  
Avril Pinder, County Manager

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

Buncombe County Tourism Development Authority, a non-profit corporation d/b/a Explore Asheville

\_\_\_\_\_  
Name:

Title:

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

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Mason Scott, Interim Finance Director

## Appendix – Roles and Responsibilities

Roles and responsibilities are identified below.

1. Buncombe County will provide limited information technology support related to process configuration; report development and maintenance; and initiation of certain transactions (e.g., budget amendments) in the County's enterprise resource planning (ERP) system where TDA and/or Explore Asheville does not have system access to complete such work based on the discretion of the County.
2. Explore Asheville will be responsible for providing all employee information required by County for payroll and HR services (e.g., SSN, name, hire date, salary, bank account, etc.) and benefit information (e.g., plan, administrator, employees affected, start and stop dates, rates). Explore Asheville will provide County with any personnel and employee changes that occur during the normal course of business.
3. Explore Asheville will provide County with bi-weekly timecard information.
4. The County will enter the time information and make a salary report available for review by Explore Asheville before payments are issued.
5. Explore Asheville will be responsible for reviewing the payroll information prepared by County and communicating any necessary corrections before the County proceeds to issue payments.
6. The County will be responsible for making the changes to employee records and benefit plans per Explore Asheville instructions, paying Explore Asheville employees on a bi-weekly schedule for the time reported, providing payments, information files and any other pieces of information necessary for the benefit administrators, and providing accurate, timely and effective payroll reports to management.
7. Explore Asheville will maintain complete control over its employees' conduct and County will disburse payrolls as a service only to Explore Asheville, and that Explore Asheville will continue to operate all other aspects of its functions as an independent entity in accordance with the terms herein and the Statutory Services.