



**MASTER SERVICES AGREEMENT
PRESENTED TO
Haywood County Tourism Development Authority**

Prepared by

MMGY NJF, a division of MMGY Global, LLC

**New York, New York
Los Angeles, California
Kansas City, Missouri
Miami, Florida
Austin, Texas**

August 14, 2023



MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is entered into and made effective as of September 1, 2023 (“**Effective Date**”) by and between **MMGY NJF, a division of MMGY Global, LLC**, a Delaware limited liability company with offices at 360 Lexington Avenue, 10th Floor, New York, NY 10017 (hereinafter referred to as “**Agency**”) and **Haywood County Tourism Development Authority, DBA Visit NC Smokies**, a company whose address is 91 North Lakeshore Drive, Suite 2, Lake Junaluska, NC 28745 (“**Client**”).

WITNESSETH

WHEREAS, Client desires to employ services available through the Agency; and WHEREAS, Agency is qualified and willing to render such services; The parties hereto agree as follows:

I. APPOINTMENT

Client hereby authorizes Agency to act as its agent in accord with the terms stipulated in this Agreement. This Agreement becomes effective September 1, 2023 and shall remain in full force and effect until terminated pursuant to Paragraph XI.

II. SCOPE OF SERVICES

Agency shall perform the following services on behalf of Client pursuant to any “Statement of Work” or “SOW”. The SOW will be a mutually executed document containing the description of the Services, including but not limited to, the Deliverables, Project Schedule, Payment Schedule, acceptance criteria and other information applicable to the Services, in a form substantially similar in form to Exhibit A, attached hereto and incorporated herein by reference. Each SOW and any amendment thereto may not be made except by a writing signed by both Agency and Client. In the event of any inconsistencies between the terms of a SOW and the terms herein, this Agreement shall govern, except for instances where the SOW specifically references a deviation from the Agreement, in which case the terms set forth in the SOW will prevail for that SOW only. Each SOW (as may be amended) taken together with the incorporated terms of this Agreement shall be a separately enforceable agreement.

III. AGENCY COMPENSATION

Client agrees to pay Agency for the services set forth for the services rendered in accordance with the payment schedule as provided in any applicable SOW.

IV. MATERIALS, SERVICES AND APPROVALS

Client shall provide Agency with written approval of all materials prior to their production, broadcast and/or issuance. These approvals shall be provided by Client in writing, and in a timely manner, via mail (either traditional or electronic) or facsimile.

Client may modify, reject, cancel, or stop any and all plans, schedules, or work in progress at any time by delivering written notice to Agency. In this event, however, Client will retain sole liability for all commitments made by Agency prior to such action and reimburse Agency for all of Agency’s charges and expenses for work begun with Client approval.

V. OWNERSHIP OF MATERIALS

All completed materials created and/or produced by Agency and accepted by Client shall become the property of Client upon receipt by Agency of payment in full for all services rendered by Agency pursuant to this Agreement.

Agency acknowledges that Client is the sole and exclusive owner of Client's intellectual property, including without limitation, trademarks, service marks, trade names and logos (collectively, the "Client Marks"). Agency agrees that it will not make any use of the Marks without Client's prior written consent. Agency further agrees and acknowledges that it shall not acquire any interest in the Marks or the goodwill associated with the Marks by virtue of this Agreement or Agency's use of the Marks. Client hereby reserves all such rights not specifically granted hereunder.

Client acknowledges that Agency is the sole and exclusive owner of Agency's intellectual property, including without limitation, trademarks, service marks, trade names and logos (collectively, the "Agency Marks"). Client agrees that it will not make any use of the Marks without Agency's prior written consent. Client further agrees and acknowledges that it shall not acquire any interest in the Marks or the goodwill associated with the Marks by virtue of this Agreement or Client's use of the Marks. Agency hereby reserves all such rights not specifically granted hereunder.

VI. INVOICING AND PAYMENT

Client shall be invoiced monthly and agrees to make payments for all services provided under the terms of this Agreement in United States dollars.

Any invoice for which Agency has not received payment within 30 days from the date of invoicing, shall be considered delinquent and shall be subject to an additional service charge computed at the rate of one and one-half percent (1.5%) per month. This provision shall not apply to invoiced amounts that Client has reasonable grounds to question, assuming such questions are submitted in writing by Client to Agency within ten (10) days of receipt of the appropriate invoice. Should delinquent invoices remain unpaid by Client 60 days past the due date, Agency reserves the right to immediately suspend all services on behalf of the Client until such time as payment is received.

Should it become necessary for Agency to institute collection proceedings for any work performed or advertising placed on behalf of Client during the effective dates of this Agreement, or otherwise authorized by Client, Client agrees to pay all costs incurred including reasonable attorney fees.

Client agrees to promptly reimburse Agency for any sales taxes Agency may be required to pay by law for performing services and/or producing materials on behalf of Client.

VII. INDEMNITY; EXCLUSION OF DAMAGES; DAMAGE LIMITATIONS

To the extent authorized by law, Client agrees to indemnify and hold harmless Agency against any and all claims for loss, liability or damages arising out of, or in connection with, work done or to be performed by Agency for and on behalf of Client, including the cost of defending any legal action that may be brought or threatened against Agency arising out of the use of any advertising copy or materials furnished or approved by Client. Client further agrees to indemnify and hold harmless Agency from any and all claims, judgments or costs, including reasonable attorney's fees, that Agency may incur by reason of defending any claim or legal action in which Agency may become involved by reason of any contractual action taken on behalf of Client.

Agency agrees to indemnify and hold Client harmless against any and all claims for loss, liability or damages arising out of the use of any advertising copy or materials furnished by Agency without prior approval by Client. Agency further agrees to indemnify and hold harmless Client from any and all claims, judgments or costs, including reasonable attorney's fees, that Client may incur by reason of defending any claim or legal action in which Client may become involved by reason of any contractual action taken by Agency.

To the fullest extent permitted by law, notwithstanding any other provisions of this Agreement, Agency shall not be liable to Client or anyone claiming by, through or under Client for any special, incidental, indirect, or consequential

damages whatsoever arising out of, resulting from, or in any manner related to services provided to Client by Agency or this Agreement from any cause or causes, including, but not limited to, any such damages caused by the negligence, errors or omissions, strict liability or breach of contract, or breach of any express or implied warranty, including, but not limited to, losses of profits, income, revenue, use, financing, business or reputation and losses of management or employee productivity or the services of such persons.

Notwithstanding any other provisions of this Agreement, and to the fullest permitted by law, the total liability, in the aggregate of Agency to Client and anyone claiming by, through or under Client for any and all claims, losses, costs or damages whatsoever, arising out of, resulting from, or in any manner relating to Services provided to Client by Agency or this Agreement for which Agency is responsible from any cause or causes, including but not limited to the negligence, errors or omissions, strict liability or breach of contract, or express or implied warranty of Agency shall not exceed the total compensation received by Agency under this Agreement for the applicable SOW which is the subject of Client's claim.

VIII. RESERVATION AS TO DUTIES

Agency expressly reserves the right to refuse to undertake any campaign, prepare any advertising material or publicity or cause the publication or broadcast of any advertisement or article which, in Agency's judgment, would be misleading, indecent, libelous, unlawful, or otherwise prejudicial to Client's or Agency's interest. Nothing in this Agreement shall be construed as committing Agency to violate any lawful contractual commitments to media.

IX. CONFIDENTIAL INFORMATION

Any document provided to Agency by Client and designated in writing as containing confidential, proprietary or privileged information will not be disclosed to any third party, unless required by law, court order, or relevant regulation.

Agency shall not be responsible for the loss or destruction of any materials provided by the Client, or the inadvertent disclosure of confidential information, unless such loss, destruction, or disclosure is caused by Agency's negligence. In such an event, Agency shall not be responsible for an amount in excess of the aggregate amount of all fees paid to Agency for services performed pursuant to this Agreement.

X. SOLICITATION OF AGENCY PERSONNEL

During the term of this Agreement and for a period of one (1) year following its termination, Client agrees not to solicit for employment any employee of Agency and Agency agrees not to solicit for employment any employee of Client.

XI. TERMINATION

Either party hereto may terminate this agreement by giving ninety (90) days prior written notice thereof by certified mail or registered mail to the other party.

Notification of termination shall be delivered by registered mail as follows:

If to MMGY Global, LLC:

Julie Freeman
EVP & Managing Director
360 LEXINGTON AVENUE, 10TH FLOOR
NEW YORK, NY 10017

With copy to:

Hugh McConnell
Chief Financial Officer
7309 W. 80TH ST.
SUITE 400
OVERLAND PARK, KS 66204

If to Client:

Corrina Ruffieux
Executive Director
Haywood County Tourism Development Authority
91 North Lakeshore Dr., Suite 2
Lake Junaluska, NC 28745

Agency's rights, duties and responsibilities as set forth in this Agreement will continue in full force and effect during any notice period and will include, but not necessarily be limited to, the creation and production of advertising and the negotiation and placement of media insertion orders whose closing or cancellation dates fall within the notice period.

XII. TRANSFER OF OWNERSHIP

Upon the termination of this Agreement and upon receipt by Agency of all amounts to which has been invoiced or is otherwise entitled from Client pursuant to this Agreement, Agency shall transfer, assign and make available to Client, or Client's representative, all property and materials in Agency's possession or control belonging to Client.

Agency shall also cooperate in transferring, with approval of authorized third parties, all reservations, contracts and arrangements with advertising media, or others, for advertising space or materials yet to be used and all related rights and claims, upon being duly released from such obligations. Agency time spent on transition activities including, but not limited to, the onboarding of new partners and packaging up Client files for transfer, are considered billable activity and will be estimated according to the Agency's standard rate card. Any incremental costs outside of standard fees will be provided in writing and approved in advance by Client.

Client shall own all rights to any advertising materials that are produced in finished form prior to the effective termination of this Agreement. Agency shall proceed promptly to complete production of any such materials during the notice period. However, at termination, any advertising concepts, layouts, sketches, mock-ups or other manifestations Client has not authorized Agency to produce shall remain the exclusive property of Agency, and Client shall be deemed to have released and assigned to Agency any copyright or other rights relating to such materials.

XIII. GENERAL

Relationship of the Parties - Nothing in this Agreement shall be construed to create a partnership, joint venture, or employer-employee relationship.

Entire Agreement - This Agreement and the Exhibits attached hereto contain the full and complete understanding and agreement between the parties relating to the subject matter hereof and supersede all prior and contemporary understandings and agreements, whether oral or written, relating such subject matter hereof. Any modification or amendment to this Agreement shall be effective only if in writing and signed by both parties.

Waiver and Modification - The failure of either party to enforce, at any time or for any period of time, the provisions hereof, or the failure of either party to exercise any option herein, shall not be construed as a waiver of such provision or option and shall in no way affect that party's right to enforce such provisions or exercise such option.

Severability - In the event any provision of this Agreement is determined to be invalid or unenforceable by ruling of an arbitrator or court of competent jurisdiction, the remainder of this Agreement (and each of the remaining terms and conditions contained herein) shall remain in full force and effect.

Law and Venue - This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to its choice or conflict of law provisions. Client hereby consents to exclusive jurisdiction and venue in the courts sitting in North Carolina. The prevailing party in any such dispute shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party, whether as claimant or counter-claimant. If any dispute arises between the parties out of any matter governed by this Agreement, then the parties will submit to mediation conducted in Haywood County under the rules of Court-Ordered Mediation of the Superior Court, but without the requirement for the filing of any litigation prior to entering mediation.

Captions - Paragraph titles or captions contained herein are inserted only as a matter of convenience and for reference.

Drafter - No party will be deemed the drafter of this Agreement, and both parties acknowledge that they had sufficient time to have this Agreement reviewed by counsel and that this Agreement will be deemed to have been jointly prepared by the Parties. If this Agreement is ever construed, whether by a court or arbitrator, such court or arbitrator will not construe this Agreement, or any provision hereof, against any party as drafter.

Counterparts - This Agreement may be executed in one or more counterparts and by exchange of signed counterparts transmitted by facsimile or other electronic transmission, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same original instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands by their duly authorized agents on this ____ day of August 2023

Corrina Ruffieux, Executive Director
Haywood County Tourism Development Authority

Hugh McConnell, Chief Financial Officer
MMGY Global, LLC

EXHIBIT A – Statement(s) of Work

STATEMENT OF WORK

This Statement of Work (“**SOW**”) is entered into and made effective as of September 1, 2023 (the “**Effective Date**”), by and between **MMGY NJF, a division of MMGY Global, LLC**, a Delaware limited liability company with offices at 360 Lexington Avenue, 10th Floor, New York, NY 10017 (hereinafter referred to as “**Agency**”) and Haywood County Tourism Development Authority, DBA Visit NC Smokies, a company whose address is 91 North Lakeshore Drive, Suite 2, Lake Junaluska, NC 28745 (“**Client**”).

This SOW is governed by the terms and conditions of the Services Agreement between Agency and Client with an Effective Date of September 1, 2023.

I. Term:

Unless terminated earlier as provided herein, the term of this SOW shall commence on the SOW Effective Date and end June 30, 2024. Client has the option to renew the contract annually on July 1, up to five times. A new scope of work must be agreed upon by Client and Agency each time the contract is renewed. Contract can be terminated by either party with 90 days written notice.

II. Scope of Services:

A) Public Relations

Objectives:

- Position Haywood County as a premiere overnight destination in Western North Carolina
- Secure earned media coverage that will increase awareness of and drive visitation to Visit NC Smokies’ five partner destinations (Canton, Clyde, Waynesville, Maggie Valley and Lake Junaluska)

Activities include:

- Develop and execute an annual public relations plan
- Account management, strategic counsel and message development
- Comprehensive proactive and reactive ongoing media relations/news engine
- Maintain a proprietary media database of local, regional and national print, online and broadcast contacts
- Editorial calendar development for story angles to proactively pitch to media
- Write and distribute pitches and press releases (2-3 per month)
- Fulfillment of media requests and reactive outreach in response to story leads
- Coordinate individual press and influencer trips to generate feature coverage
- Coordination and hosting of one group press trip to Haywood County annually
- Execution of one virtual or in-person media tour in a key market annually
- Minor crisis management, as needed (additional hourly rates may apply for ongoing crisis situations)
- Seek out and make recommendations on brand partnerships
- Creative ideation around destination initiatives
- Ongoing reactionary vetting of non-paid influencers
- Ongoing trendspotting

- Creation and updating of press materials, as needed
- Bi-weekly PR status calls
- Monthly PR activity and coverage reporting, monitoring and measurement
- Administration and operating expenses, including your cooperative share of media relations tools such as Cision, Muck Rack and Meltwater, etc.

All Agency time and expenses related to coordination of special events (large scale consumer activations, media/industry events, property openings, etc.) will be estimated separately and billed incremental to the services fee per Fees and Payment Schedule

Additional services not mentioned in this Scope of Work shall be estimated and performed upon the written authorization by the Client.

B) Estimated Expenses Budget

- Media Relations Costs - \$200 (estimated)
 - Expenses for implementing a media relations program, including coffees/lunches and ground transportation for media meetings to generate interest in producing coverage; purchase of digital and print subscriptions to important local, regional, national and trade media outlets.
- Press/Influencer Trip Costs - \$7,000 (estimated)
 - Hosting budget to cover transportation, lodging, meals and activities for one annual press trip (up to 4 media and 1 NJF host) and up to 3 individual journalist trips (price per trip dependent upon Client-approved itineraries). Media rates and comps will be secured from destination partners whenever possible.
- MMGY NJF Immersion/Familiarization Trip - \$2,800 (estimated)
 - Travel costs for your three core NJF team members to come to Haywood County to tour the destination, meet partners and kick off planning.

III. Agency Resources Allocation: Estimated 50 Hours / Month

IV. Fees and Payment Schedule

A) Public Relations Fee

Client agrees to pay Agency a public relations program fee in the amount of seven thousand dollars (\$7,000) monthly for Agency staff time devoted to development and implementation of the public relations plan. This fee shall be due and payable on the first day of each month beginning September, 2023.

Additional staff time exceeding the monthly allocations will be billed at the blended rate of \$150 per hour. The Client's designated representative will first be consulted for approval prior to incurring staff hours in excess of approved retainer.

B) Agency Admin/Operations Fee

Client agrees to pay five percent (5%) of monthly agency fees at the beginning of each month as an Agency Admin/Operations Fee to cover internal costs relating to the servicing of your account. The purpose of this fee is to better equip our team with enhanced platforms, tools, and technology that will allow us to secure more impactful media placements on your behalf, resulting in a strong ROI.

These costs include your pro-rated, cooperative share for specialized services MMGY NJF uses daily on your behalf, including but not limited to technical tools like Cision, the Agency's online media database; magazines and newspapers that are part of the media outreach, publicity lead subscriptions such as ProfNet and other various editorial notification services the agency uses to research client-specific news outlets for placement of news about you.

C) Reimbursement of Expenses

Client shall reimburse Agency for all (i) reasonable direct out-of-pocket expenses including, without limitation, travel expenses, shipping costs, third party vendors, design costs, printing, mailing, catering expenses, model honoraria, online marketing service costs, rentals for special events, event production expenses, monthly clipping service costs, and similar expenses; (ii) disbursements; and (iii) production expenses including purchases from third parties including, without limitation, illustrations, photography, retouching and typography, which are ordinary or necessary to the accomplishment of the Services.

Client shall reimburse Agency for any travel by members of Agency, journalists, and influencers on behalf of Client including mileage at the current IRS allowable rate, business class airfare (if travel time exceeds 6 hours) and single room accommodations for each member of Agency. Any travel booked by Agency on behalf of Client by our internal travel booking service will be billed back to Client at cost plus an additional booking fee of \$50 for domestic travel or \$100 for travel outside of the United States.

Any expenses over \$250 must be approved in advance in writing by Client. All expenses will be billed monthly.

D) Early Termination

If Client terminates this Agreement prior to December 1, 2023 Client shall pay to Agency an Early Termination Fee as consideration for the significant time invested by Agency in the initial three (3) months of the relationship. The Early Termination Fee shall be calculated as forty-two thousand dollars (\$21,000) less the total of all monthly retainer fees paid by Client to Agency up to the effective date of termination. Payment of the Early Termination Fee shall be in addition to any amounts billed by Agency under any other provision of this Agreement. No Early Termination Fee shall be due from Client if termination occurs after December 1, 2023 or if this Agreement is terminated at any time by Agency.

E) Annual Increase

The Public Relations Fee will be subject to a five percent (5%) automatic increase on an annual basis effective on each yearly anniversary of the Effective Date.

F) Other Services

Any additional Agency services or changes in the scope as outlined under the Description of Services shall be estimated and approved by both parties under an additional Statement of Work. A change in services may necessitate a change in compensation

G) Initial Payment

An "Initial Payment" is required upon execution of this Agreement, after which the Agency will begin work. The Initial Payment required shall be fourteen thousand seven hundred dollars (\$14,700). Seven thousand three hundred and fifty dollars (\$7,350) of this payment shall be applied to the services fee to compensate the Agency for the first month of the Agreement. The remaining portion of the Initial Payment shall be held in escrow by Agency and, upon termination of this Agreement, be applied to the remaining balance for fees owed to Agency under the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands by their duly authorized agents on this ____day of August, 2023.

Corrina Ruffieux, Executive Director
Haywood County Tourism Development Authority

Hugh McConnell, Chief Financial Officer
MMGY Global, LLC