

## AGREEMENT

THIS AGREEMENT, made this \_\_\_ day of February, 2018, by and between:

The COUNTY OF FRANKLIN, a municipal corporation with offices at: 355 West Main Street, Malone, New York 12953 (hereinafter referred to as the "COUNTY");

and

REGIONAL OFFICE OF SUSTAINABLE TOURISM (ROOST), an independent contractor, whose address is: Lake Placid Convention and Visitor's Bureau, 2608 Main Street, Lake Placid, New York 12946 (hereinafter referred to as the "CONTRACTOR").

### WITNESSETH:

WHEREAS, the County and Contractor previously entered into an agreement dated the 5th day of February, 2015, for the Contractor to provide services as outlined in the annexed bid request and/or RFP dated the 16th day of January, 2015, the contents of which are herein incorporated by reference, for services generally defined as TOURISM MARKETING CONSULTANT, as bid upon by the Contractor in the Tourism Marketing Consultant RFP Response dated January 27, 2015, annexed hereto; and

WHEREAS, the Agreement dated the 5th day of February, 2015, provided that the original Agreement could be extended for two (2) additional, one (1) year periods; providing all terms, conditions, and specifications remain the same, with both parties agreeing to the extension, and such extension approved by the County; and

WHEREAS, the parties to this Agreement having met and mutually agreed to a one (1) year extension of the Agreement, pursuant to the previous terms of the Agreement; and the Franklin County Legislature having passed a Resolution No. \_\_\_\_\_ of 2018, annexed hereto, authorizing a one (1) year extension of the Agreement; and

WHEREAS, the funds necessary to pay for such services are appropriated in the 2018 Adopted County Budget at Line Item No. \_\_\_\_\_, now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. **SCOPE OF SERVICES.** The Contractor shall perform, using standards of care acceptable to the County and in strict compliance with all applicable federal, state and local laws, regulations and procedures, the services set forth in Exhibit "A" annexed hereto and made a part of this Agreement.

If any term of the Scope of Services contradicts or creates an ambiguity with any term of this

Agreement, this Agreement shall govern.

2. **TERM OF AGREEMENT.** This Agreement shall be effective February 5, 2018, for a contract term of one (1) year. The County shall reserve the option to extend the contract for one additional one (1) year period, providing all terms, conditions, and specifications remain the same, both parties agree to the extension, and such extension is approved by the County. The above is subject to the party's rights of termination as set forth herein.

3. **PAYMENT.** As full and complete consideration for the services so rendered, the County shall pay a total sum not to exceed \$176,000.00 Dollars per year, which includes all monies granted to Franklin County for tourism through the I Love New York Matching Funds program. Additionally, since the prior agreement of the parties dated the 5th day of February, 2015, the party of the First part (Franklin County) has successfully passed an "Occupancy Tax Law," in which the party of the second part (ROOST) has been designated at the County's Tourism Promotion Agent (TPA). The amount paid to the party of the second part shall be further reduced pursuant to Section 15 of the Franklin County Room Occupancy Tax Law. Specifically, at such time as the Revenue generated from the Occupancy Tax exceeds \$350,000.00, the County's contribution to the TPA (Contractor) of \$176,000.00, less the I Love New York Matching Funds, shall be reduced dollar for dollar for each Occupancy Tax Dollar generated over \$350,000.00, until the Occupancy Tax reaches \$526,000.00, when the County's contribution shall be zero (\$0.00). Payment of the above consideration shall be made to the Contractor upon submission of (monthly, quarterly) statements in a form satisfactory to the County. No payment shall be made prior to audit and approval by the County.

176,000  
105  
73,000

4. **PASSAGE OF COUNTY OCCUPANCY TAX.** The parties acknowledge that Franklin County successfully passed a "Room Occupancy Tax" since the original agreement; and that since that time, the party of the second part (ROOST) has been designated as the County's Tourism Promotion Agent (TPA), and now receives the occupancy tax revenues, less the administration fee paid to the County Treasurer for collection and enforcement.

5. **ENTIRE FRANKLIN COUNTY TOURISM BUDGET.** The \$176,000.00 budget allocated to the Contractor is the overall annual tourism budget of the County, to be administered and managed by the Contractor on behalf of Franklin County. Any request for regional tourism funding shall be made to the Contractor directly. If any third party requests payment for tourism related expenses; that request shall be made to the Contractor directly, and shall be made upon the proper prior approval, upon submission of voucher for services, and upon the approved audit of each billing.

6. **PERIODIC REPORTS.** Consistent with the SCOPE of Services provisions of the RFP; the Contractor shall periodically provide reports, and have meetings with the County of Franklin to advise the County of marketing strategies and activities of the Contractor on behalf of the

County.

7. **INDEPENDENT CONTRACTOR STATUS.** The Contractor agrees that they are an independent contractor and that they shall not hold themselves out to be an employee or officer of the County, and that therefore, neither federal, state, nor local income tax nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Contractor or their employees; that the Contractor shall not be eligible for, and shall not be entitled to participate in, any employee pension, health, retirement or other fringe benefit plan of the County; that the Contractor shall have no worker's compensation or disability coverage through the County for the Contractor or their employees; and that the Contractor shall not be entitled to make any claim against the County for these or any other rights or privileges of an officer or employee of the County.

8. **DEFENSE AND INDEMNIFICATION.** The Contractor shall defend and hold the County and its employees harmless from any and all losses, claims, liens, demands, and causes of action of any kind or character, including but not limited to, judgments, penalties, interest, court costs, and legal fees incurred by the County on behalf of any party, in connection with or arising directly or indirectly from this Agreement. The Contractor shall investigate, handle, respond to, and defend any such claims, demands or suits at his sole expense, and shall bear all other related costs and expenses even if such claims, demands or suits, are groundless, false or fraudulent. In any case in which such indemnification would violate Section 5-322.1 of the New York General Obligations Law or any other applicable legal prohibition, the foregoing provisions shall not be construed to indemnify the County for damage arising out of bodily injury to persons or to property caused by or resulting from the sole negligence of Franklin County employees.

The term "employee" shall include all officers, their agents, servants, advisory board members and/or volunteers serving the County.

9. **INSURANCE REQUIREMENTS.** At all times during the term of this Agreement, the Contractor shall maintain at his own cost the following insurance and shall provide proof thereof to the County, in the form of a Certificate of Insurance, prior to commencing work under this Agreement;

(a) Statutory Worker's Compensation Coverage in compliance with the Compensation Law of the State of New York. In the event the statute does not require coverage of contractor, contractor must complete NYS Worker's Compensation Board Form WC/DB-100

or 101 and provide the County with a properly executed copy thereof.

(b) General Liability Insurance Coverage in the comprehensive or commercial general liability form including blanket contractual coverage for the operation of the program under this Agreement in the amount of \$1,000,000.00 per occurrence. This insurance shall include coverage for bodily injury and property damage and shall be on an occurrence form with a waiver of subrogation. The County must be listed as additional insured.

(c) Automobile Liability Insurance Coverage for all owned, leased, or non-owned vehicles in the amount of \$1,000,000.00 per occurrence. This insurance shall include coverage for bodily injury and property damage. The County must be listed as additional insured.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the County Manager at the address listed below:

Franklin County Manager  
355 West Main Street, Ste. 456  
Malone, NY 12953

On receipt of such notice, the County shall have the option to cancel this Agreement without further expense or liability to the County, or to require the Contractor to replace the cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required by this paragraph is maintained continuously throughout the term of this Agreement in form and substance acceptable to the County. Failure of the Contractor to take out or to maintain, or the taking out or the maintenance of any required insurance, shall not relieve the Contractor from any liability under this Agreement nor shall the insurance requirements be construed to conflict with or to limit the obligations of the Contractor concerning indemnification.

All losses of County property shall be adjusted with and made payable directly to the County.

All Certificates of Insurance shall be approved by the County Manager's Office prior to commencement of any work under this Agreement.

All policies of insurance referred to above shall be underwritten by companies authorized to do business in the State of New York and acceptable to the County. In addition, every policy required above shall be primary insurance and any insurance carried by the County, its officers, or its employees shall be excess and not contributory insurance to that provided by the Contractor. The additional insured endorsement for the Comprehensive General Liability Insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Contractor shall be solely responsible for any deductible

losses under each of the policies required above. Proof of additional insured coverage shall be evidenced through an additional insured endorsement provided by the insurance carrier.

In the event that claims in excess of these amounts are filed in connection with this Agreement, the excess amount or any portion thereof may be withheld from payment due or to become due the Contractor until the Contractor furnishes such additional security as is determined necessary by the County.

10. **QUALIFICATIONS OF CONTRACTOR.** The Contractor specifically represents that it and its members, officers, employees, agents, servants, consultants and subcontractors have the experience, knowledge and character necessary to perform their particular duties under this Agreement.

11. **DECLARATION BY CONTRACTOR.** Contractor declares that it has complied with all federal, state, and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

12. **NON-DISCRIMINATION.** No services to be rendered pursuant to, or in connection with, this Agreement may be refused to any person because of age, race, color, creed, sex, national origin, disability or marital status.

Contractor shall take all affirmative steps necessary to ensure equal employment opportunities without discrimination because of age, race, creed, color, sex, national origin, disability or marital status and to comply with all federal, state and local civil rights laws including, but not limited to, the Americans with Disabilities Act.

13. **RETENTION OF RECORDS.** The Contractor agrees to maintain and have available for audit such records as may be required by the County, New York State or United States governmental agencies. These records shall be available for inspection by properly identified personnel of the above governmental agencies upon reasonable notice, and shall be maintained for a period of six (6) years after termination of this Agreement.

14. **NON-ASSIGNMENT.**

(a) This Agreement may not be assigned by the Contractor nor his right, title, or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous written consent of the County.

(b) An assignment of this Agreement shall not relieve the assignor of its obligations hereunder. In the event of assignment, all the provisions hereof shall be binding upon and inure to the benefit of the respective successors and assignees to the same extent as if each such

successor or assignee were named as a party to the Agreement.

**15. TERMINATION.**

(a). *Without Cause.* Either party may terminate this Agreement upon sixty (60) days prior written notice to the other of its intent to terminate without cause.

(b) *With Cause.* Either party may terminate this Agreement effective immediately, with subsequent written notice to the other of its intent to terminate with cause.

In the event of termination with or without cause, the Contractor shall deliver to the County any or all drawings, specifications, reports and other data, records, materials and equipment in his custody or control pertaining to the Agreement and the County shall pay to the Contractor all amounts due to the time of termination in accordance with the terms of this Agreement. Such termination shall not give rise to any cause of action against the County for damages, loss of profits, expenses or other remuneration of any kind. Notwithstanding any other provision of this Agreement, if in the judgment of the County, termination is made necessary or desirable because of the Contractor's failure to fulfill his obligations under this Agreement, or any other fault of the Contractor, the County may withhold payment of all or any part of monies which otherwise may be payable to the Contractor under this Agreement and apply such monies toward any damages or expenses sustained by the County as a result of such failure including, without limitations, any excess costs incurred by the County in completing the services under this Agreement by the use or employment of other contractors or otherwise. Notwithstanding the foregoing, the Contractor shall be liable to the County for all such damages and expenses without limitation to any such monies being withheld by the County, and the failure of the County to withhold monies from the Contractor shall not be construed as an acknowledgement by the County that no such damages or expenses exist and shall not prevent the County from thereafter making any claim against the Contractor thereof.

**16. EXECUTORY.** The Franklin County fiscal year begins on January 1st and ends on December 31st of any given year. Notwithstanding anything to the contrary contained herein, it is understood and agreed that this Agreement shall be deemed executor only to the extent of the monies available to the County for the performance of the terms hereof and that, in the event that the Franklin County Legislature fails to appropriate the necessary funds to affect payment in any calendar year beyond the initial year herein, this Agreement shall automatically cease and terminate on the last day of the year in which funds have been appropriated for said Agreement and no liability on account thereof shall be incurred by the County beyond the funds available for the performance of the terms of this Agreement. It is further understood and agreed that neither this Agreement nor any representation of any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of this

Agreement.

17. **EXTENSION.** This contract may be extended for additional periods of one year each if it is not required by the Franklin County Purchasing Policy to competitively seek proposals for this service.

18. **NOTICE.** Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

- The COUNTY OF FRANKLIN, Atten: Donna Kissane, 355 West Main Street, Malone, New York 12953 (hereinafter referred to as the "COUNTY");

- REGIONAL OFFICE OF SUSTAINABLE TOURISM, Atten: James McKenna Lake Placid Convention and Visitor's Bureau, 2608 Main Street, Lake Placid, New York 12946.

19. **NON-WAIVER.** Failure of either party to exercise any rights under this Agreement for a breach thereof shall not be deemed a waiver thereof or a waiver of any subsequent breach.

20. **SEVERABILITY.** If any provision of this Agreement shall be held unenforceable, the rest of the Agreement shall nevertheless remain in full force and effect.

21. **CHOICE OF LAW, VENUE.** Any dispute arising directly or indirectly out of this Agreement shall be determined pursuant to the laws of the State of New York. The parties hereby choose the New York State Supreme Court, Franklin County as the forum for any such dispute.

22. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must instead be heard in accordance with the Paragraph above entitled "Choice of Law, Venue."

23. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process on it by registered or certified mail, return receipt requested or by facsimile (fax) transmission. Service hereunder shall be complete when deposited in the United States mail, duly addressed and with proper postage or when the fax has connected. Contractor must promptly notify the County, in writing, of each and every change of address to which service of process can be made. Service by the County to the last known address shall be sufficient.

Contractor will have thirty (30) calendar days after service is complete in which to respond.

**24. NOTICE OF INTENT TO SUE.**

(a) Contractor agrees that at least ninety (90) days prior to commencing suit against the County for any matter arising directly or indirectly out of this agreement, Contractor shall provide to the County a sworn document listing the time, place, and manner of any breach of this agreement, together with an itemized list of any damages to which Contractor believes himself entitled.

(b) County shall have the right to conduct a deposition upon oral questions of an officer, employee or agent of the Contractor, of the County's choice, as to any matter arising under this agreement within the 90 day period described above.

(c) Strict compliance with this paragraph shall be a condition precedent to maintenance or institution of any action or proceeding, whether legal or administrative. This paragraph shall not be construed to toll any applicable statute of limitation.

(d) Any action against the County must be commenced within one year of the event which gives rise to liability.

**25. CAPTIONS.** The captions are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms hereof.

**26. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original and shall constitute the same Agreement.

**27. GENDER.** Words of the masculine or feminine gender in this Agreement, unless the meaning of the sentence indicates otherwise, shall be deemed to refer to either male or female persons.

**28. CONFIDENTIALITY.** The Contractor shall comply with applicable federal and state requirements for confidentiality of records and information, and agrees not to allow examination of records nor disclosures of information, except as required by the County under the terms of this Agreement.

**29. CONFIDENTIALITY AND HIPAA COMPLIANCE.** The Contractor shall comply with applicable federal and state requirement for confidentiality of records and information, and agrees not to allow examination of records nor disclosures of information, except as required by the County under the terms of this Agreement. The Contractor, its officers, agents, and employees, and subcontractors will treat all client/patient information which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the laws and regulations of the State of New York and of the United States including, but not



limited to the Federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104.191 also known as HIPAA) and the Federal Health and Human Services (HHS) Administrative Rule: "Standards for Privacy of individually identifiable Health Information" (the "Privacy Rule").

**30. NON-APPROPRIATIONS CLAUSE.** In accordance with NYS General Municipal Laws, Franklin County will not be liable for any purchases or contracts for goods or services for which funding is not available. As a result, the vendor agrees to hold the County harmless for any contracts let for which funding either does not currently exist or for which funding has been removed prior to the issuance of a purchase order by the County. As such no contract becomes binding until the necessary funds have been approved for the fiscal year during which the contract is in effect.

**31. ENTIRE AGREEMENT.** The terms of this Agreement, including its attachments and exhibits, represent the final intent of the parties. Any modification, rescission, or waiver of the terms of this Agreement must be in writing and executed and acknowledged by the parties with the same formalities accorded this basic Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

APPROVED AS TO FORM:

\_\_\_\_\_  
**Jonathan J. Miller, Esq.**  
**Franklin County Attorney**

\_\_\_\_\_  
**Date**

ACCEPTED: COUNTY OF FRANKLIN

By: \_\_\_\_\_  
**Chairman, Franklin County Legislature**

\_\_\_\_\_  
**Date**

By: \_\_\_\_\_  
**Donna Kissane, Franklin County Manager**

\_\_\_\_\_  
**Date**

APPROVED AS TO CONTENT:

COMPANY NAME

REGIONAL OFFICE OF SUSTAINABLE TOURISM

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

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

Title: \_\_\_\_\_

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

desires the services of contractor to provide services as outlined in the annexed bid request and/or RFP dated the 16th day of January, 2015, the contents of which are herein incorporated by reference, for services generally defined as TOURISM MARKETING CONSULTANT, as bid upon by the Contractor in the Tourism Marketing Consultant RFP Response dated January 27, 2015, annexed hereto.

WHEREAS, the funds necessary to pay for such services are appropriated in the 2015 Adopted County Budget at Line Item No. \_\_\_\_\_, now, therefore, it is mutually agreed by and between the parties hereto as follows: