

ATL AIRPORT DISTRICT  
MARKETING SERVICES AGREEMENT

This Agreement (the “**Agreement**”) is made and entered into as of July 1, 2019 (the “**Effective Date**”) by and between CITY OF HAPEVILLE, a Georgia municipal corporation (“**City**”) and ATL AIRPORT DISTRICT, INC., a non-profit corporation created under the laws of the State of Georgia (the “**DMO**”). City and DMO are sometimes referred to in this Agreement individually as a “**Party**” or jointly as “**Parties**”.

WHEREAS, O.C.G.A. Section 48-13-51(a)(1)(A) authorizes municipalities to impose, levy, and collect an excise tax upon the furnishing for value to the public of any room or rooms, lodgings, or accommodations furnished by any person or legal entity licensed by, or required to pay business or occupation taxes to, the municipality for operating a hotel, motel, inn, lodge, tourist camp, tourist cabin, campground, or any other place in which rooms, lodgings, or accommodations are regularly furnished for value;

WHEREAS, Chapter 17, Article 7 of the Code of Ordinances for the City provides for the imposition of a hotel occupancy tax of eight percent (8%) of rent on hotels and motels within City;

WHEREAS, O.C.G.A. Section 48-13-51(a)(3) requires that a municipality levying a tax shall expend (in each fiscal year during which the tax is collected) an amount equal to the amount by which the total taxes collected under O.C.G.A. Section 48-13-5 exceed the taxes which would be collected at a rate of three percent (3%) (i.e., 5%) for the purpose of among other things, promoting tourism, conventions, and trade shows;

WHEREAS, City desires to enter this Agreement with DMO to provide destination marketing services for City and the Atlanta Airport District (defined in this Agreement) (the “**District**”);

WHEREAS, DMO is willing to provide the destination marketing services in an effort to promote tourism, conventions, and trade shows to City and the Atlanta Airport District;

WHEREAS, City will supply DMO with the mutually agreed upon hotel-motel taxes levied throughout City and DMO may be supported in part by private sector contributions;

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements herein contained, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Destination Sales and Marketing/Tourism Promotion Activities.**

DMO will provide functions, literature, advertising, staff, services, supplies, equipment and support for promoting City and District (a) as a destination for local, state, national and international conventions, meetings and events and (b) as a destination for tourism. DMO will (a) develop, arrange for printing, and distribute literature and media (including electronic and Internet-based media) necessary to promote City and District to daytime and overnight tourists and (b) identify and conduct activities and programs designed to promote City and District for daytime and overnight tourists. DMO will coordinate its activities, as appropriate, with affiliated organizations and other tourism promotion entities. All of these activities will be provided for in the DMO's Annual Business and Marketing Plan (the “**Plan**”) as defined below.

**2. Administrative and Management Functions.**

DMO will provide day-to-day management activities including planning, purchase and acquisition of services, equipment, supplies and facilities necessary to fulfill the Plan for City. Managing the acquisition and retention of a capable and competent staff, fund-raising, cultivation of community support and accounting for the budgeting of the Plan funds according to accounting procedures established by City will be the responsibility of DMO. DMO may perform these functions through contractors and/or consultants. In addition, DMO will provide marketing, sponsorship and support for a mutually agreed upon number of City events including, but not limited to, Happy Days, Southern Film Festival Series, and Coffee and Chrome. DMO will comply with the City of Hapeville's requirement to have a stand-alone Visitor's Center located in the Train Depot Museum or other facility of the City's choice.

**3. Annual Business and Marketing Plan.**

After consultation with City, DMO will submit an annual Plan to City by March 30 of each year, containing a detailed proposed budget and identification of activities with a statement of performance goals and standards for all activities contemplated pursuant to this Agreement. The Plan also will contain a detailed budget predicated upon revenue estimates approved by City, and job descriptions, qualifications, requirements, salary ranges, bonus program, and hiring practices. City will review and approve the Plan by June 1 of each year. In the event City fails to approve the Plan by June 1, the Plan approved in the immediate prior year will be used until such time as a subsequent Plan is approved by City. Notwithstanding anything herein to the contrary, DMO will be responsible for implementation of the Plan. Once the Plan has been approved by City, DMO will notify City in writing of any change made to the Plan. Provided, as long as such change is not substantial and adverse to City, such change will be deemed approved by City. DMO will provide a quarterly written report to City on the progress being made on the Plan.

**4. City Funding for DMO Services.**

City hereby designates DMO as City's destination marketing organization for purposes of O.C.G.A. § 48-13-51(a)(3). City will remit to DMO on a monthly basis, an agreed upon portion of revenues necessary to be spent by the DMO pursuant to O.C.G.A. § 48-13-51(a)(3) and under any City ordinance. City will submit revenue projections to DMO by January 31 of each year, so that DMO can include those figures in the Plan to be submitted to City by March 30 of such year. DMO will use such funds as provided in this Agreement.

**5. Ownership of Assets.**

DMO will own all consumable assets purchased to enable it to perform its obligations under this Agreement including without limitation, office supplies, technical and office equipment, furniture and fixtures. Ownership of all intellectual property rights of whatever nature, including any rights subsequently acquired by DMO, will remain or be placed in the name of DMO. Ownership of publications, brochures, and other inventories of similar materials will remain with the DMO.

**6. Records and Accounting.**

DMO will maintain business and financial records related to the performance of its obligations under this Agreement. City will have the right to review such records. Within 72 hours of a written request by City, DMO will make such records available for review by City, provided all such records will remain confidential unless disclosure is required by rule, regulation or law. DMO will on a semi-annual basis provide complete financial records relating to the preceding six months to City and to City's auditor. Such financial records will include, but not necessarily be limited to, a balance sheet and income and expense reports. The financial records will be maintained by DMO for at least three (3) years, or such longer period, as may be required by law or regulation after the expiration of this Agreement.

## **7. Additional Inspection Rights.**

City, through duly authorized representatives, has the right upon 48-hour prior notice to DMO to enter upon and inspect DMO's facilities and all equipment related to the performance of DMO's obligations under this Agreement, provided such inspection will occur only during DMO's normal working hours and so as not to disrupt the regular conduct of DMO's business.

## **8. DMO Representations and Warranties.**

DMO represents and warrants the following:

- a. Quality of Materials and Operations. All of DMO's literature, materials, brochures, or related items will be of high quality and will not contain any indecent, obscene or defamatory material. No materials protected by copyright or other intellectual property rights will be knowingly produced, displayed or distributed without first acquiring the legal rights to do so.
- b. Quality of Equipment. DMO will use commercially reasonable efforts to insure that all permanent or temporary facilities, supplies, equipment, fixtures, and materials purchased or used by DMO in furtherance of this Agreement will be of good quality and appropriate for the intended use.
- c. Equal Opportunity. DMO will not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex (including, but not limited to, pregnancy), national origin, age, disability, genetic information, sexual orientation, gender identity/reassignment or expression, veteran status, or any other status protected by applicable federal, state or local law or ordinance. DMO will take affirmative action and will administer on a non-discriminatory basis all other aspects of employment including, but not limited to, hiring, promotion, assignments, benefits and compensation of employees and will comply with all applicable laws, including those dealing with equal opportunity. DMO will not, in the performance of this Agreement, discriminate against any customer, potential customer, patron or other person as to the aforementioned protected categories, and will provide services, facilities and other privilege to all such persons equally.
- d. Each of DMO's contracts with vendors or supplies will include language acknowledging City's right to terminate this Agreement. Such contracts will provide for (a) similar termination rights by the DMO and (b) the unilateral assignment of such contracts by DMO to City or any successor entity designated by City pursuant to O.C.G.A. § 48-13- 51(a)(3).

## **9. City Representations and Warranties.**

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ATL AIRPORT DISTRICT  
MARKETING SERVICES AGREEMENT

a. Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement and compliance with the provisions of this Agreement will not conflict with, or result in any breach, violation of, any laws, statutes, orders, rules, ordinances, regulations, policies or guidelines promulgated, by any federal, state or local government or any administrative agency or commission or other governmental authority or agency.

b. Authorization. City has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of City. This Agreement has been duly executed and delivered by City and this Agreement constitutes a legal, valid and binding obligation of City.

c. Intellectual Property. City is the sole and exclusive legal and beneficial, record, owner of all right, title and interest in and to all trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing, delivered to DMO for use under this Agreement.

## **10. Risk of Loss, Bonds and Insurance.**

a. Fidelity Bond. Upon execution of this Agreement, DMO will furnish City with a fidelity bond in the amount of \$250,000 guaranteeing that the surety will reimburse City, its agents and employees for such pecuniary loss suffered by City, its agents and employees as may be sustained as a result of any act of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of DMO or any of its agents or employees. The Fidelity Bond will be issued by a responsible surety company authorized to do business within the State of Georgia and will be subject to approval as to form and content by City.

b. Liability Insurance. DMO will maintain in force during the term of this Agreement Commercial General Liability Insurance against all claims for personal injury, bodily injury, death and property damage that occur as a result of DMO's performance of its obligations under this Agreement. Such insurance shall be for limits not less than a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). DMO may satisfy the requirement to carry and maintain such Commercial General Liability Insurance through the use of Umbrella or Excess Liability coverage providing equally broad and concurrent coverage.

c. Automobile Liability Insurance. In the event a motor vehicle is to be used by DMO in connection with the performance of its obligations under this Agreement, Comprehensive Automobile Liability Insurance coverage with limits of not less than Five Hundred Thousand (\$500,000.00) combined single limit coverage against bodily injury liability and property damage liability arising out of the use by or on behalf of DMO, its agents and employees in connection with this Agreement, of any owned, non-owned or hired motor vehicles.

d. Worker's Compensation. DMO will secure worker's compensation insurance in form and amount sufficient to satisfy the requirements of applicable laws of the State of Georgia and be issued for the benefit of each of the persons employed by DMO.

e. Property Insurance. Special Form ("All Risks") property insurance in an amount adequate to cover the full replacement cost of all equipment, installations, fixtures and contents of DMO.

f. Form of Policies. Each policy shall (a) name City as an additional insured (except Workers'

Compensation), (b) be issued by one or more responsible insurance companies licensed to do business in the State of Georgia rated A- Class VII or better in "Best's Insurance Guide" and otherwise reasonably satisfactory to City, (c) shall provide that such insurance may not be canceled or amended without thirty (30) days' prior written notice to City. DMO shall deliver to City, certificates of insurance and at City's request, copies of all policies and renewals thereof to be maintained by DMO hereunder, not less than ten (10) days prior to the date of this Agreement and not less than ten (10) days prior to the expiration date of each policy.

f. Failure to Provide Bonds and Insurance. If bonds and insurance become unavailable or cost prohibitive, City and DMO will negotiate an alternative acceptable to each.

## 11. Indemnification and Limitation of Liability.

a. Indemnification by DMO. DMO will indemnify and hold harmless City and its officers, employees and agents (each a "City Party") against any and all against any and all losses, damages, judgments, amounts paid in settlements and expenses (including costs and attorneys' fees actually incurred) (collectively, "Losses") incurred by City or any City Party in any civil, administrative, or investigative proceeding in which City or a City Party is involved by reason of (i) any failure by DMO to perform its obligations under this Agreement; or (ii) any breach of any covenant, representation or warranty made by DMO under this Agreement. The obligations under this Section 11(a) will survive the expiration or termination of this Agreement.

b. Indemnification by City. To the extent City maintains liability insurance that covers, in whole or in part, Losses arising out of subsections (i) - (iii), below, City will indemnify and hold harmless DMO and its officers, employees and agents (each a "DMO Party") against any and all Losses incurred by DMO or any DMO Party in any civil, administrative, or investigative proceeding in which DMO or a DMO Party is involved by reason of (i) any failure by City to perform its obligations under this Agreement; (ii) any breach of any covenant, representation or warranty made by City under this Agreement; or (iii) any claim by a citizen of, or business owner in, City related to this Agreement. The obligations under this Section 11(a) will survive the expiration or termination of this Agreement.

c. Cumulative Remedies. The rights and remedies provided in this Section 11 are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

d. Limitation of Liability. IN NO EVENT WILL DMO BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID BY CITY TO DMO UNDER THIS AGREEMENT. IN ADDITION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OF ANY OF THE OTHER PARTY'S OFFICERS, EMPLOYEES AND AGENTS FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF GIVEN ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

## 12. Designated Representatives and Notices.

a. Representatives. Each Party designates the person listed on Exhibit A as its representative (and its "**Designated Representative**" for dispute resolution purposes) for the administration of this Agreement.



b. Notices. Notices pertaining to this Agreement will be in writing and will be transmitted either by personal delivery, facsimile, or by overnight delivery carrier and will be deemed to be delivered up receipt. The addresses set forth on Exhibit A will be the addresses used for notice purposes unless written notice of a change of address is given.

### 13. Term and Termination.

(a) Term. This Agreement will commence on the Effective Date and will terminate on the **Termination Date** set forth on Exhibit A. This Agreement will automatically renew under the same terms and conditions for the number of full calendar years set forth on Exhibit A ("**Renewal Term**") unless DMO or City gives notice of cancellation to the other party at least six (6) months prior to the expiration of the then current Term. The initial term and any renewal terms are referred to herein as the "**Term.**"

(b) Notwithstanding the foregoing, (i) City may terminate this for cause upon 30 day's written notice to DMO of any failure by DMO to observe, comply with or perform any of its material obligations under this Agreement, provided that such failure continues for a period of thirty (30) days subsequent to receipt of notice thereof from City, and (ii) DMO may terminate this for good reason upon 30 day's written notice to DMO of any failure by DMO to observe, comply with or perform any of its material obligations under this Agreement, provided that such failure continues for a period of thirty (30) days subsequent to receipt of notice thereof from City.

### 14. Miscellaneous

a. Assignment. Neither Party will assign its rights or obligations hereunder without obtaining the prior written consent of the other Party, and any attempted assignment without such prior written consent will be void. Permitted assigns and successors in interest will have the benefit of, and will be bound by, all terms and conditions of this Agreement.

b. Headings. The headings in this Agreement are for convenience and reference only, and will not affect the interpretation of this Agreement.

c. No Joint Venture. DMO will perform its duties herein as an independent contractor. Notwithstanding anything contained herein to the contrary, nothing contained herein will be considered to create the relationship of employer and employee, partnership, joint venture or other association between the Parties, except as principal and independent contractor.

d. Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement will operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement will occur as the result of any course of performance or usage of trade.

e. Severability. If any provision of this Agreement or the application thereof to any person or circumstances will to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement will be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

f. Governing Law, Forum and Venue. This Agreement will be subject to and construed in accordance with the laws of the State of Georgia. The parties agree that any and all claims arising out of or relating to this Agreement shall be brought in either the Superior Court of Fulton County, Georgia, or the United States District Court for the Northern District of Georgia, Atlanta Division.

g. Counterparts and Facsimile Execution. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, will be deemed an original, and all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile will be equally as effective as delivery of a manually executed counterpart. Any Party hereto delivering an executed counterpart of this Agreement by facsimile will also deliver a manually executed counterpart, but the failure to do so will not affect the validity, enforceability or binding effect of the counterpart executed and delivered by facsimile.

h. Additional Documents. The Parties agree to execute and to deliver to each other any and all other additional documents and to take any additional steps reasonably necessary to complete, to document and to carry out the business transaction contemplated by this Agreement.

i. Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement will be deemed to have been drafted jointly by each of the Parties.

J. Representation regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she or it is purporting to represent.

k. Entire Agreement. This Agreement and its exhibits contain the entire agreement between the Parties and it supersedes any prior written or oral agreements between the Parties concerning the subject matter of this Agreement. There are no representations, agreements, or understandings between the Parties relating to the subject matter of this Agreement which are not fully expressed within this Agreement and its exhibits.

l. Binding Effect. This Agreement will be binding upon and inure to the benefit of the respective heirs, successors, assigns, affiliates and personal representatives of the Parties.

m. Modification. This Agreement will not be modified, amended, or changed except in a writing signed by each of the Parties affected by such modification, amendment or change.

n. Further Assurances. All of the Parties to this Agreement agree to perform any and all further acts as are reasonably necessary to carry out the provisions of this Agreement.

o. Force Majeure. Other than a failure to make payment when due, neither party shall be in default which results from the act of God or public enemy, restrictions, prohibitions, priorities, or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes or any cause outside the reasonable control of such party, then the time for performance of the affected obligation of such party shall be extended for a period equivalent to the period of such delay, interruption or prevention.

p. Neutral Construction. The parties to this Agreement agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the parties' negotiations.

*[Signatures on Next Page]*

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives, as of the Effective Date.

**CITY OF HAPEVILLE**

**ATL AIRPORT DISTRICT, INC.**

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

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

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

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

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

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

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**EXHIBIT A**

**Designated Representatives [Section 12]:**

**District [Fourth Whereas]:** The Cities listed below are in the District. Additional Cities will be added as the Cities sign Marketing Services Agreement with DMO, which additions are hereby approved by City.

City of College Park, Georgia  
City of East Point, Georgia  
City of Union City, Georgia  
City of Hapeville, Georgia

**Notices [Section 12]:**

<p>To City:</p> <p>City Manager City of Hapeville 3468 North Fulton Ave. Hapeville, Ga 30354</p>	<p>To DMO:</p> <p>Beverly (Cookie) Smoak 2077 Convention Center Concourse Suite 260 College Park, GA 30337</p>
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**Termination Date [Section 13]: June 30<sup>th</sup>, 2021 (two-year term)**

**Renewal Term [Section 13]: Two (2) one-year automatic renewal terms.**