

**NORTH CAROLINA
HYDE COUNTY**

**AGREEMENT BY AND BETWEEN THE
OCRACOKE TOWNSHIP TOURISM DEVELOPMENT AUTHORITY AND
THE OCRACOKE CIVIC & BUSINESS ASSOCIATION**

THIS AGREEMENT ("Agreement") is entered into as of the 1st day of March, 2018 by and between the Ocracoke Township Tourism Development Authority, a Public Authority under the Local Government Budget and Fiscal Control Act, created pursuant to the authority contained in North Carolina House Bill 882, as ratified in the 2006 Session of the North Carolina General Assembly (Session Law 2006-128), by Resolution of the Hyde County Board of Commissioners ("HCBOC") dated March 5, 2018 ("OTTDA") and the Ocracoke Civic & Business Association, a 501(c)(4) non-profit organization organized and existing pursuant to the laws of the State of North Carolina ("OCBA").

WHEREAS, North Carolina House Bill 882, as ratified in the 2006 Session of the North Carolina General Assembly (Session Law 2006-128), established the Ocracoke Township Taxing District ("OTTD") and authorized the governing body of the OTTD (HCBOC) to levy as well as collect a room occupancy tax of up to two percent (2%) and authorized OTTD to distribute the net proceeds from said tax on a quarterly basis to the OTTDA.

WHEREAS, the HCBOC subsequently levied said room occupancy tax and created the OTTDA by Resolution.

WHEREAS, OTTDA desires to contract with OCBA to carry out as well as fulfill OTTDA's statutory obligations with regard to expending some portion of said net proceeds to promote travel and tourism and make tourism-related expenditures in the OTTD and OCBA desires to do the same.

NOW THEREFORE, in consideration of the foregoing as well as the promises and agreements herein made and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is agreed by OTTDA and OCBA as follows.

1. **Scope of Services.** OCBA shall fulfill OTTDA's statutory obligations, within the restrictions stated in the aforementioned and otherwise applicable statutes, to promote travel and tourism and make tourism-related expenditures in the OTTD, as those terms (promote travel and tourism, make tourism-related expenditures) are defined in the above referenced legislation ("Act"), a copy of which Act is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth. The services provided hereunder by OCBA are intended to accomplish, among other things, the following among both repeat and first time visitors to Ocracoke Township according to the key target demographics identified by the Magellan Strategy Group's 2016/2017 research:
 - a. Increase visitation by week-long and longer visitors,
 - b. Increase visitation by single-to-multi-night visitors, and
 - c. Increase visitation by day-trippers with the goal of converting day-trippers to extended-stay visitors.

2. **Specific Services.** The specific services to be furnished by OCBA include, but are not limited to, the following.

- a. Oversee and implement, either directly or indirectly through sub-contract, all travel and tourism-related marketing as well as promotional activities and expenditures permitted by the Act in order to fulfill OTTDA's obligations under the Act.
- b. Submit to OTTDA for approval, which approval shall be in OTTDA's sole discretion, an annual, detailed line item budget, and any subsequent amendments thereto, detailing the manner in which the funds furnished by OTTDA to OCBA will be utilized during the then current fiscal year.
- c. Provide quarterly reports and an annual report in writing to OTTDA concerning all travel and tourism related marketing as well as promotional activities and expenditures performed hereunder.
- d. Produce and submit to OTTDA for approval a Strategic Marketing Plan for OTTD, through sub-contract with a professional marketing firm approved by OTTDA, which approvals shall be in OTTDA's sole discretion.
- e. Upon approval of said Strategic Marketing Plan by OTTDA, implement said Plan.
- f. Maintain, supply, and staff, as appropriate and as may be reasonably directed by OTTDA within budgetary restraints, a presentable Visitor's Center in Ocracoke Village.
- g. Market and promote any travel and tourism-related event identified and approved by OTTDA, such as 4th of July events and the Pirate Jamboree.
- h. Annually produce and distribute the Ocracoke Walking Map.
- i. Insure that Ocracoke Township events identified by OTTDA are properly advertised and publicized utilizing, among other things, social media, including Facebook, Twitter, Instagram, Pinterest, and other formats or mediums.
- j. Sufficiently maintain and refresh, as necessary and appropriate, the www.visitocracokenc.com website as well as its integration with www.visitnc.com and any other appropriate digital or electronic platforms, including those identified by OTTDA.
- k. OCBA shall provide and cause a qualified individual who is acceptable to OTTDA to attend all official meetings of OTTDA, take minutes of said meetings, and provide OTTDA board members with draft minutes from said meetings within five (5) days of each such meeting. The OCBA Executive Director shall attend all OTTDA official meetings.
- l. Any other activities, programs, or initiatives reasonably deemed by OTTDA to be in furtherance of the purposes and intentions described herein.

3. **Staff/Personnel.** OCBA shall be responsible for hiring an Executive Director and, through the OCBA Executive Director, such other staff/personnel as may be necessary to provide the services described herein. Such staff/personnel shall work under the direct supervision of, and report to, the OCBA Executive Director. The OCBA Executive Director shall work under the direct supervision of, and report to, the OCBA Board of Directors. The OCBA Executive Director and such staff/personnel shall, among other things, address travel and tourism-related inquiries, including telephone, in-person, and electronic communications, in a timely manner; host travel writers as well as other media personnel as may be necessary; and perform other "local" responsibilities.

4. **Payment for Services.** For the period running from April 1, 2018 to June 30, 2018, OTTDA shall provide OCBA \$60,000.00 in exchange for the services required of OCBA hereunder. Said \$60,000.00 payment shall be due and payable once this Agreement is fully executed. For the period running from July 1, 2018 to June 30, 2019, OTTDA shall provide OCBA \$251,000.00 in exchange for the services required of OCBA hereunder. Said \$251,000.00 shall be paid in monthly installments of \$20,916.66 with the first such monthly installment of \$20,916.66 being due and payable on the first Tuesday in July of

2018 and each subsequent monthly installment of \$20,916.66 being due and payable on the first Tuesday of each subsequent month thereafter through June of 2019. Notwithstanding anything herein to the contrary and as more specifically provided for hereinafter, it is expressly understood by the parties hereto that said payments, amounts, and/or installments shall only be due and payable to the extent OTTDA receives sufficient net proceeds from the tax described above to support and make such payments.

5. **Term.** The term of this Agreement shall begin as of April 1, 2018 and shall continue in full force and effect until June 30, 2019. Thereafter, this Agreement shall be subject to renegotiation upon OCBA's presentation of its annual budget to OTTDA. In this regard, OCBA shall submit its annual budget to OTTDA on or before March 1, 2019. An extension or renewal of this Agreement will require a new written agreement.

6. **Metrics.** OTTDA will evaluate OCBA's success in performing the services required herein using objective criteria, including but not limited to statistics from NCDOT regarding ferry ridership as well as changes in occupancy tax revenue collection rates. Demonstrable improvements in these statistics will be considered successful after taking into consideration circumstances beyond the control of either OTTDA or OCBA, including but not limited to hurricanes and other acts of God, ferry disruptions, power outages, highway breaches, acts of terrorism, etc.

7. **Record-Keeping.** All financial and administrative records required to be maintained by federal and North Carolina state law shall be kept and maintained by OCBA accordingly. All tax and other filings required by federal and North Carolina state law shall be appropriately filed by OCBA. In reference to the foregoing, copies of all such records and filings shall be kept by OCBA for a minimum of three years. OCBA shall store all data, records, and other paperwork relevant and pertinent to OTTDA in a safe as well as secure location and make the same reasonably available to OTTDA and its board members upon request.

8. **Indemnification and Independent Contractor.** OTTDA and Hyde County shall stand indemnified by OCBA as hereinafter provided. It is expressly understood and agreed by and between the parties hereto that OCBA is and shall be deemed to be an independent contractor, responsible to all parties for its respective acts or omissions, and OTTDA as well as Hyde County shall in no way be responsible therefor. It is further agreed that OCBA shall indemnify and save harmless OTTDA as well as Hyde County from any negligence of OCBA.

OCBA shall indemnify OTTDA and Hyde County against any and all liability arising hereunder; provided, however, that OCBA shall not be liable for any injury, damage, or loss occasioned by the negligence of OTTDA; and provided further that OTTDA shall give OCBA prompt and timely notice of any claim made or suit instituted which in any way, directly or indirectly, contingent or otherwise, effects or might effect OCBA, and OCBA shall have the right to compromise and defend the suit to the extent of its own interest.

9. **Insurance.** Throughout the term of this Agreement, OCBA shall procure and maintain in force an umbrella insurance policy that insures against all liability of OCBA and its authorized representatives and includes, among other things, standard commercial general liability, employer's liability, and public liability insurance coverage, in the minimum amount of \$1,000,000.00 to indemnify and hold harmless OTTDA and Hyde County from any and all liability for any and all claims of loss, damage, injury, or otherwise to persons or property caused by, arising from, or any way related to the services required and furnished hereunder from OCBA. OCBA shall also procure and maintain statutory worker's

compensation insurance coverage in amounts required by law. All insurance shall be carried by a responsible company and shall be in a form satisfactory to OTTDA. OTTDA shall be furnished copies of all insurance policies obtained by OCBA in compliance with these requirements on or before the date OCBA receives its first payment for services hereunder. OCBA agrees to maintain sufficient coverage on a current status and that all such insurance policies obtained by OCBA in compliance with these requirements, with the exception of statutory worker's compensation insurance, name OTTDA as well as Hyde County as additional insured and require a thirty (30) day written notice to OTTDA as well as Hyde County of termination, material change in the terms thereof, or non-renewal.

OCBA releases and relieves OTTDA as well as Hyde County and waives OCBA's entire rights of recovery against OTTDA or Hyde County for loss or damage arising out of or incident to any of the perils insured against under this Agreement as well as any insurance policy OTTDA or Hyde County might own, whether loss or damage is due to the negligence of OTTDA or Hyde County. OCBA shall give notice to its insurance carriers that this waiver of subrogation is contained in this Agreement and cause the carriers to accept this waiver of subrogation to the extent permissible by applicable law.

10. **Non-Discrimination.** OCBA shall not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise comply with all other requirements imposed by or pursuant to Title VI of the Civil Rights act of 1964, as may be amended.

11. **Notices.** If to OTTDA as follows:

Ocracoke Township Tourism Development Authority
Amy Howard, Chairperson
PO Box 456
Ocracoke, NC 27960

As to OCBA:

Rudy Austin, President
Ocracoke Civic & Business Association
PO Box 456
Ocracoke, NC 27960

12. Notwithstanding anything herein to the contrary, the parties hereto understand, acknowledge, and agree that OTTDA's ability and legal, contractual obligation(s) to fulfill this Agreement are contingent upon, among possibly other things, OTTDA's legal existence and its receipt of sufficient occupancy tax revenue. To the extent OTTDA's legal existence may be terminated, or otherwise affected, or the occupancy tax revenue OTTDA receives is impaired or prevents OTTDA from fulfilling OTTDA's obligations hereunder, OTTDA shall have no legal obligation to OCBA to the extent of such impairment or prevention and OCBA shall have no claim against OTTDA arising therefrom. Without limiting the foregoing, in the event OTTDA does not receive adequate occupancy tax revenue to fulfill its obligations hereunder, this Agreement shall be void to such extent and the parties will negotiate in good faith a new agreement or an amendment hereto.

13. Notwithstanding anything herein to the contrary, in the event OCBA disbands, its legal existence is terminated, or it does not fulfill its obligations hereunder, OTTDA may withhold any payment called for hereunder and/or terminate this Agreement.

IN WITNESS WHEREOF, OTTDA has caused this Agreement to be signed by its Chairperson and OCBA has caused this Agreement to be signed by its President by authority duly given as of the day and year first above written.

PRE-AUDIT CERTIFICATE
OCRACOKE TOWNSHIP TOURISM DEVELOPMENT AUTHORITY

This Agreement has been pre-audited pursuant to N.C.G.S. § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

_____, Treasurer
Name

OCRACOKE TOWNSHIP TOURISM AND DEVELOPMENT AUTHORITY

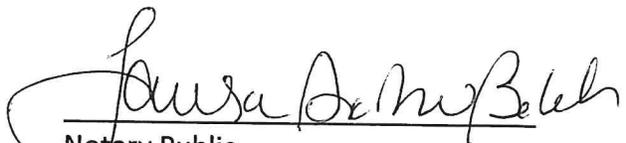


Amy Howard
Chairperson
Ocracoke Township Tourism Development Authority

NORTH CAROLINA
HYDE COUNTY

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that AMY HOWARD personally appeared before me this day, and being duly sworn by me, acknowledged that she is Chairperson of the OCRACOKE TOWNSHIP TOURISM DEVELOPMENT AUTHORITY, and that by authority duly given and as the act of the Board the foregoing instrument was signed by her.

Witness my hand and notary seal this 25th day of June 2018.

My Commission expires: 10-13-2018


Notary Public

LAURA DUNLOW BELCH
Notary Public, North Carolina
Hyde County
My Commission Expires
October 13, 2018

OCRACOKE CIVIC & BUSINESS ASSOCIATION

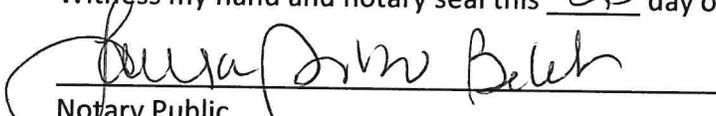


Rudy Austin
President
Ocracoke Civic & Business Association

**NORTH CAROLINA
HYDE COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that RUDY AUSTIN personally appeared before me this day, and being duly sworn by me, acknowledged that he is President of the OCRACOKE CIVIC & BUSINESS ASSOCIATION, and that by authority duly given and as the act of the Board the foregoing instrument was signed by him.

Witness my hand and notary seal this 25th day of June 2018.



Notary Public
My Commission expires: 10-13-2018

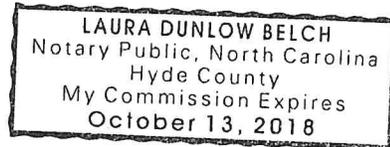


Exhibit A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2006-128
HOUSE BILL 882

AN ACT CREATING A TAXING DISTRICT IN OCRACOKE TOWNSHIP FOR
THE PURPOSE OF AUTHORIZING THE LEVY OF A ROOM OCCUPANCY
AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy Tax. – The Ocracoke Township Taxing District is created. It is coterminous with Ocracoke Township in Hyde County. The Ocracoke Township Taxing District is a body politic and corporate and has the power to carry out the provisions of this act. The Hyde County Board of Commissioners shall serve ex officio as the governing body of the district, and the officers of the county shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 2. Authorization and Scope. – The governing body of Ocracoke Township Taxing District may levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 3. Administration. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155, as if it were a county. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.

SECTION 4. Distribution and Use of Tax Revenue. – Ocracoke Township Taxing District shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the Ocracoke Township Tourism Development Authority created pursuant to Section 5 of this act. The Authority shall use at least two-thirds of the proceeds distributed to it to promote travel and tourism in the district and shall use the remainder for tourism-related expenditures in the district. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of Ocracoke Township. None of the proceeds may be used to promote travel or tourism in areas within Hyde County that are outside of the district or for tourism-related expenditures in the county that are outside of the district.

The following definitions apply in this act:

- (1) Net proceeds. – Gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a district or to attract tourists or business travelers to the district. The term includes tourism-related capital expenditures.

SECTION 5.(a) Ocracoke Township Tourism Development Authority. – Appointment and Membership. – The Board of Commissioners of Hyde County shall adopt a resolution creating the Ocracoke Township Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Tourism Development Authority shall have five members in addition to the Finance Officer. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals affiliated with businesses that collect the tax in the district, and at least one-half of the members must be individuals currently active in the promotion of travel and tourism in the district. The Board of Commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Hyde County shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel and tourism in the district and make tourism-related expenditures in the district.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Hyde County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 6. G.S. 153A-215(g) reads as rewritten:

"(g) This section applies only to Alleghany, Anson, Brunswick, Buncombe, Cabarrus, Camden, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Duplin, Durham, Franklin, Granville, Halifax, Madison, Montgomery, Nash, New Hanover, Pasquotank, Pender, Person, Randolph, Richmond, Rockingham, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, to Watauga County

District U, and to the Township of Averasboro in Harnett ~~County~~-County and the Ocracoke Township Taxing District."

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 2006.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives