

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into on this \_\_\_ day of June 2019 by and between the STILLWATER ECONOMIC DEVELOPMENT AUTHORITY, and VISIT STILLWATER OK, INC.

WITNESSETH:

WHEREAS, the Stillwater Economic Development Authority ("SEDA") is a public trust established under 60 O.S. §176, *et seq.*; and

WHEREAS, Visit Stillwater OK, Inc., ("Visit Stillwater OK") is an Oklahoma not-for-profit corporation organized under the laws of the State of Oklahoma; and

WHEREAS, it is the intention of SEDA to retain Visit Stillwater OK for rendition of destination marketing and visitor development services as set forth in this professional services agreement ("Agreement").

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS HEREINAFTER SET FORTH, IT IS MUTUALLY AGREED BETWEEN SEDA AND VISIT STILLWATER OK AS FOLLOWS:

**1. Scope of Services:** Visit Stillwater OK shall perform the services identified in Attachment "A" for SEDA during the term of this Agreement:

**2. Term:** This Agreement shall commence on July 1, 2019 and expire on June 30, 2020, unless extended by written agreement of the parties. This term may be extended for two (2) additional years by mutual agreement of the parties. The parties agree that the decision to extend a term shall be made on or before March 15 of each FY this Agreement is in effect to permit Visit Stillwater to address any adjustments to existing agreements regarding facilities or vendors for the upcoming year.

**3. Compensation:** SEDA shall pay to Visit Stillwater OK the sum of Seven Hundred Twenty Thousand Dollars (\$720,000.00) for the services described in Section 1 of this Agreement for the period beginning July 1, 2019 and ending June 30, 2020. Said compensation shall be made in four (4) equal payments upon submission of invoice on or before July 1, 2019, September 30, 2019, December 31, 2019 and March 31, 2020. Should the parties agree to extend this Agreement for any additional term, the amount of compensation shall be established in the extension agreement. Visit Stillwater OK acknowledges that the sole source of payment for services rendered under this Agreement shall be the appropriated funds from the Hotel Room Tax, and no other SEDA revenue source. Accordingly, said payment shall be subject to, and contingent upon, SEDA receipt of an appropriation of such funds from the City of Stillwater for this express purpose.

**4. Reporting/Evaluation Criteria:** Visit Stillwater shall produce the deliverables identified on Attachment "B" hereto. It shall produce a semi-annual report by January 31, 2020 and an annual report by July 30, 2020 using the reporting forms included with said Attachment "B."

**5. Intellectual Property Ownership:** All material created by Visit Stillwater OK for SEDA

under this Agreement, regardless of form, including, but not limited to trademarks, logos, tag lines, and marketing slogans identifying the "City of Stillwater," shall be considered the sole and exclusive property of SEDA. In the event that material, which is the subject of this Agreement, is copyrightable subject matter, Visit Stillwater OK and SEDA agree that for the purposes of this Agreement, such material shall be deemed a "work made for hire" as defined in §101 of the Copyright Act (Title 17 United States Code), and shall be owned by SEDA. Visit Stillwater OK shall not use any material created for SEDA under this Agreement for any purpose other than the performance of the services identified in this Agreement.

**6. Personnel:** Visit Stillwater OK shall provide all personnel necessary to operate, manage, and maintain services in accordance with this Agreement. Said personnel shall be under the exclusive direction of Visit Stillwater OK, and shall not be considered employees or agents of the City of Stillwater or SEDA under any circumstance. Any and all volunteers utilized by Visit Stillwater OK shall likewise be considered under the exclusive direction of Visit Stillwater OK and not employees or agents of the City of Stillwater or SEDA under any circumstance. In this connection, should any liability arise under the Worker's Compensation Act of the State of Oklahoma due to injury of any employee of Visit Stillwater OK, the same shall be considered the sole and exclusive liability of Visit Stillwater OK. Contractor shall maintain Worker's Compensation Insurance at all times that its employees are performing work or providing services for Visit Stillwater OK, or are otherwise subject to and/or are covered by said Worker's Compensation Act.

**7. Insurance, Indemnity:** Visit Stillwater OK shall maintain a general liability insurance policy in minimum amounts equal to the liability limits for political subdivisions as set forth in the Oklahoma Governmental Tort Claims Act, 51 O.S. 151, et seq., and shall name SEDA, the City of Stillwater, its officers, employees, and agents, as additional insureds in such amounts, during the term of this Agreement. Visit Stillwater OK further agrees to hold harmless and indemnify the City of Stillwater, its officers, employees, and agents or invitees for any liability occasioned by the intentional acts or negligence of Visit Stillwater OK officers, employees or agents while conducting operations authorized herein during the term of this Agreement.

**8. Legal Compliance, Permits:** Visit Stillwater OK shall comply with all applicable laws, regulations, ordinances and codes of federal, state and local governments in its execution of this Agreement. Visit Stillwater OK shall apply for and secure any and all licenses and permits necessary to complete its responsibilities under this Agreement.

**9. Default:** In the event SEDA should determine that Visit Stillwater OK is in default in regard to the performance of its obligations as required pursuant to this Agreement, SEDA agrees to give Visit Stillwater OK fifteen (15) days' notice in writing of such default. Upon receipt of written notice of such default, SEDA and Visit Stillwater OK will work together in good faith to correct any issues that have caused said default and Contractor shall have a period of sixty (60) days to take appropriate corrective action(s). In the event Visit Stillwater OK shall fail to cure any default within the time allowed under this paragraph, SEDA may declare this Agreement null and void and terminate same by giving Visit Stillwater OK written notice of such intention. SEDA shall have, in addition to the remedies herein provided, any other right or remedy available to SEDA on account of any Visit Stillwater OK default, either in law or equity. SEDA shall use reasonable efforts to mitigate its damages. Provided, that SEDA shall remain obligated to honor and remit payment for appropriate invoices submitted under the terms of this Agreement until such time as this Agreement is terminated.

**10. Non-Discrimination:** Visit Stillwater OK shall manage its operations in accordance with all federal and state anti-discrimination statutes and laws and shall not deny access to any person based on race, ethnicity, national origin, gender, familial status, age, disability or any other protected status.

**11. Change of Status:** Visit Stillwater OK shall immediately report to SEDA any change in its legal status.

**12. Notice:** Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

SEDA: Trust Secretary  
Stillwater Economic Development Authority  
723 South Lewis/P.O. Box 1449  
Stillwater, Oklahoma 74076

Visit Stillwater OK: Visit Stillwater OK  
2617 West Sixth Avenue  
Stillwater, Oklahoma 74074

**13. Waiver:** No waiver of any default of SEDA or Visit Stillwater OK hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent there in stated. One or more waivers by SEDA or Visit Stillwater OK shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

**14. Audit:** Visit Stillwater OK shall maintain all records of financial transactions conducted pursuant to this Agreement for a period of five (5) years. SEDA shall have the right to audit said financial records at any time during the term of this Agreement upon request, and reasonable notice, irrespective of any reporting requirements as set forth in Section 4.

**15. Open Records Act Compliance:** Visit Stillwater OK acknowledges that it is subject to the provisions of the Oklahoma Open Records Act, 51 O.S. §24A, *et seq.*, and shall make all records related to the performance of this Agreement available for public inspection and copying in accordance with said Act.

**16. Effective Date:** This Agreement shall become effective upon final acceptance of and execution by all parties hereto and shall remain in full force and effect during the term thereof.

**17. Governing Law:** This Agreement is governed by the statutes and laws of the State of Oklahoma and the Charter and Ordinances of the City of Stillwater.

**18. Assignment:** This Agreement is not assignable.

**19. Amendment:** Requests for changes may be made jointly or by only one party at any time. Requests for financial changes shall be made during the budget process. This Agreement may be modified only by a writing that is duly executed by both SEDA and Visit Stillwater OK.

**20. Entire Agreement:** This Agreement constitutes the entire agreement between the parties hereto and terminates and supersedes all prior understandings or agreements on the subject matter hereof.

THIS AGREEMENT is executed the day and year first above written.

STILLWATER ECONOMIC DEVELOPMENT  
AUTHORITY, a public trust

\_\_\_\_\_  
William H. Joyce, Chair

ATTEST:

\_\_\_\_\_  
Elizabeth Chrz, Trust Secretary

Approved as to form and content this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
John E. Dorman, General Counsel

VISIT STILLWATER OK, INC.  
*An Oklahoma Not-for-profit Corporation*

\_\_\_\_\_  
Chris Norris, Chairman, Board of Directors

(ATTESTATION OR OTHER VERIFICATION)