

DELETED

Meeting Date
11/01/2016



AGENDA	
Section	CONSENT
Item No.	#.B.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval of Gateway Visitor Information Center Kiosk Stations and Contract with Zagster Bike Share
DEPT/OFFICE:	Community Services Group / Tourism Development

Requested Action:
 It is requested that the Board approve the proposed Gateway Visitor Information Center Kiosk Stations through contracting with Zagster bike share stations.

Summary Explanation & Background:

The Tourism Development Office (TDO) requests the Board's approval of the Gateway Visitor Information Center (VIC) kiosk stations integrated with Zagster bike share stations. This unique opportunity provides full-service of each unmanned VIC station (10), transportation to and from any of the other VIC kiosk stations located in prime tourist locations within Cocoa Beach. Only Zagster delivers full-service capability, including a mobile app and connected cloud services in seamless conjunction with its sharing hardware and technology at each station, turn-key operations, user fees generated direct back to the County, and analytics available to determine where users are visiting from, where they choose to go here, and increase in drive to TDO's website. And, through sponsors and user fees, the project pays for itself over time, and potentially assists with continued service contract costs, and expansion projects. Under the contract with Zagster, they will provide full-service to all of the stations and monitor them regularly.

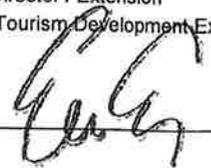
The possibilities will be endless beginning with this project. For instance, this project will begin and integrate with our Gateway VIC system. These VIC kiosk stations will be available to everyone, as well as, the station graphics, and posted information. The mobile app, which provides access to TDO's website and all visitor information (things to do, events, general information on the area, beaches, culture, etc.) can be accessed by fingertips conveniently. There is also a link to Zagster's website providing instructions on using the bike share portion of the stations and a map of the VIC kiosk stations area. Additionally, TDO has budgeted to further develop the stations with an additional station kiosk for delivery of visitor information from a bigger screen that anyone can use providing visitor info on the area and a link to TDO website, book a room, things to do, events, promotions, etc. These VIC stations will be an overall brilliant tool that will push us in front of the digital age in terms of delivering visitor information and separate us from our competitors. It is requested that the Board authorize the TDO Executive Director and County Manager or designee to enter into a full-service contract with Zagster, who has been deemed a sole source based on the company's full-service operational structure and authorize all necessary purchase orders for the additional kiosks, advertising placement, and production costs on the Zagster stations. The total estimated cost of this project has been budgeted within TDO's Visitor Information Center Fund (Zagster service contract - \$80,000 per year; \$25,000 kiosks, and \$20,000 production/media placement costs).

Fiscal Impact FY2016-17; Current TDO Marketing & Media budget is \$125,000, with the ability to recapture costs through sponsors and user fees.

Name: Eric Garvey, Tourism Development Executive Director
Phone: 433.4470 ext. 232, eric.garvey@visitspacecoast.com

Clerk to the Board Instructions:

Exhibits Attached: Zagster Service Contract

Contract /Agreement (If attached):		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR <input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension Eric Garvey, Tourism Development Executive Director					
Stockton Whitten							

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: Zagster	
2. Fund/Account #: 1445/293220/5340000	Division Name: Tourism Visitor Info & Marketing
4. Contract Description: Visitor Information Centers / Bike Share Stations Service	
5. Contract Monitor: Stacy DeLano	6. Mail Stop #: N/A
7. Dept./Office Director: Tourism Development / Eric Garvey	8. Contract Type: Payable
ACTION DATE: Contract begins January 20, 2017	ACTION REQUIREMENT: Review & Approve

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	✓	_____	JLW	10/20/2016
County Attorney	_____	_____	_____	_____

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



INITIAL CONTRACT FORM

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	<u>YES</u>	<u>NO</u>		
User Agency	<u>X</u>	<u> </u>	<u>[Signature]</u>	<u>10/19/16</u>
Risk Management	<u> </u>	<u> </u>	<u> </u>	<u> </u>
County Attorney	<u>✓</u>	<u> </u>	<u>[Signature]</u>	<u>10/24/16</u>

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AO-29: EXHIBIT I

11. B. 1
A

Terms & Conditions

The initial term of this Agreement commences on the Effective Date and will continue for three years (the "Initial Term"). Thereafter this Agreement will automatically renew for successive one year terms (each a "Renewal Term" and together with the Initial Term, the "Term") unless either party notices the other party of its desire not to so renew this Agreement within thirty days from the end of the then-current term.

If this Agreement is renewed for a fourth year, Zagster agrees that the Company's pricing during such fourth year will be the same as the pricing under this Agreement for the Initial Term.

Additional Terms

Location Implementation/Setup Fee

Company will pay to Zagster the nonrefundable product and one time fees in the amounts, if any, described above, within 30 days of the Order Date.

Company Name: Brevard County

Zagster, Inc

Signature

Jim Barfield

Signature

Name (Please Print)

Chairman

Name (Please Print)

Title

As approved by the Board on: 11/1/16

Title

Date

Date

ATTEST

SCOTT ELLIS, CLERK

The parties agree that this Agreement is contingent upon approval of the County at a public meeting to be held in October 2016 (the "Meeting") and that neither party shall have any obligations hereunder until the County receives such approval. County will immediately notify Zagster upon receipt of the approval or denial of this Agreement by the County at the Meeting.

The parties agree that the following schedules and attachments are herein incorporated by reference:

- Schedule A – Zagster Service and Fees
- Schedule B – County Obligations
- Schedule C – General Terms and Conditions
- Schedule D – Order Form for Cocoa Beach, FL (Order: Order: SO-0001200)
- Schedule E – Approval of the Tourism Development Council Zagster, Inc. Confidential Information

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date set forth below.

Zagster, Inc.

By: _____
 Printed Name:
 Title:
 Date: _____, 201__

Brevard County

By: _____
 Printed Name: Jim Barfield
 Title: Chairman
 Date: 11/1, 2016

As approved by the Board

Attest

SCOTT ELLIS, CLERK

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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7. Dept./Office Director: Tourism Development / Eric Garvey	8. Contract Type: Payable
ACTION DATE: Contract begins January 20, 2017	ACTION REQUIREMENT: Review & Approve

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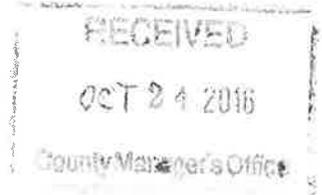
<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	✓	_____	JL	10/20/2016
County Attorney	_____	_____	_____	_____

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**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**



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User Agency	<u>X</u>	<u> </u>	<u>[Signature]</u>	<u>10/19/16</u>
Risk Management	<u> </u>	<u> </u>	<u> </u>	<u> </u>
County Attorney	<u>✓</u>	<u> </u>	<u>[Signature]</u>	<u>10/24/16</u>

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AO-29: EXHIBIT I



BOARD OF COUNTY COMMISSIONERS

County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

Inter-Office Memo

TO: Tourism Development Council

THRU: Scott Knox, County Attorney, County Attorney's Office 

FROM: Becky Behl-Hill, Assistant County Attorney, County Attorney's Office 
Ryan Healy, Legal Intern, County Attorney's Office

SUBJECT: Use of Tourism Tax for Bike Share Program

DATE: October 13, 2016

Issue: The Space Coast Office of Tourism/Brevard County Tourism Development Office (TDO) wants to contract with Zagster to provide a bike sharing program within Brevard County. Zagster will provide 10 bike stations, 50 bikes, maintenance, insurance, repositioning for stations and bikes, and a digital app which will offer links to the website for the Space Coast Office of Tourism/TDO which will allow bike share users as well as other people to explore events within Brevard County. TDO will provide information kiosks on each station to deliver visitor information to both users and non-users of the bike share. Zagster's engineering team will also work with TDO to insure that the TDO's kiosks will be properly integrated with the Zagster stations according to each specific station.

Question: Is the TDO authorized to use tourist development tax funds to fund the proposed bike sharing program?

Short Answer: Yes, the TDO is authorized to use tourist development tax funds to fund the proposed bike sharing program because Florida Statute §125.0104 and Chapter 102, Article III of the Brevard County Code of Ordinances state that funds may be used to promote and advertise county tourism, to fund tourist bureaus and information centers, to finance beach improvements, and to fund activities that are promoted as tourist activities.

Analysis: Florida Statute §125.0104 authorizes a county to impose a tax on short-term rentals of six months or less of living quarters or accommodations in "any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium" within the county unless such activities are exempt pursuant to Chapter 212, Florida Statutes. The funds collected are intended to be used to develop and promote tourism.

F.S. §125.0104(2)(b) defines "promotion" as "marketing or advertising designed to increase tourist-related business activities."

Subsection (5) of the act sets forth the authorized uses of revenue generated by the tourist development tax. Section 125.0104(5)(a), Florida Statutes states in relevant part:

- (a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
 - a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums...; or
 - b. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public...;
2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;
4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies...; or
5. To finance beach park facilities or beach improvement [...] to which there is public access...

Where a statute enumerates the things upon which it is to operate or forbids certain things, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned. *See, e.g., Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976). The specific provisions of the statute limit the use of revenues generated from the tourist development tax to the purposes specified therein. *And see Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952), and *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944), for the proposition that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way.

Brevard County has implemented tourist development taxes under Chapter 102, Article III of the Brevard County Code of Ordinances. Brevard County currently levies a five percent tourist tax – the primary two-percent tax and three additional one-percent taxes, pursuant to F.S. §125.0104. The specific use of funds collected from these taxes is outlined in Sec. 102-119 of the Brevard County Code of Ordinances.

The proposed bike share program could qualify as “promot[ing] and advertis[ing] county tourism in the state, nationally and internationally. Sec. 102-119(3)(a), Brevard County Ordinances. Additionally, the bike share program stations and kiosks could qualify as “convention bureaus, tourist bureaus, other tourist information centers...” Sec. 102-119(3)(d).

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Section 102-119(3)(a) states: "Forty-five percent of the net revenue [...] would be budgeted and disbursed to promote and advertise county tourism in the state, nationally and internationally."

Since the bikes and stations will contain advertising for Brevard County businesses and activities, such advertisements would meet the definition of "promotion" given in F.S. §125.0104(2)(b). Under the current proposal, the proposed kiosks/bike stations would be stationed on A1A from the Cocoa Beach Pier to Minuteman Causeway. Each location will have a sign with the TDO logo and website information, visitor information, and marketing product. Kiosks will be used to urge visitors to explore the area and to continue to explore the area, as during the first term of the program, kiosks will be installed with the help of Zagster's engineering team, to be properly integrated at the choice locations. At least half of the stations will have visitor information kiosks and upon success of program, the remaining stations will receive kiosks, as well as any expansion stations. Each bike will have a basket sign that is customizable. The location sign will announce the station and has space for customization for marketing. Zagster marketing personnel will work with the TDO to customize the signs with the logo and web address of the TDO, and other pertinent tourism related information. The signs will be visible to any person traveling past the location and will at a minimum provide the name and logo of the TDO as well as the web address which contains tourism related information for Brevard County.

The bikes and stations would serve as a means to promote and advertise county tourism while simultaneously generating funds¹. As such, the bike share program could be funded under Sec. 102-119(3)(a) as it states that funds will be used to promote and advertise tourism and does not exclude the vehicle by which the promotions and advertisements are provided to the public.

Section 102-119(3)(d) states: "Seven and five-tenths percent of the net revenue [...] would initially be budgeted and disbursed [...] to fund convention bureaus, tourist bureaus, other tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county."

There is no explicit definition of what constitutes a "tourist bureau" or "tourist information center" within the Brevard County Code of Ordinances, nor is one given in the Florida Statutes. However, a general definition of a "tourist bureau" or "tourist information center" would reasonably be a location where tourists can obtain information relating to businesses and activities in the city, county, or state that they are visiting. If the bike stations are used as locations that contain tourist information and promotions and advertising of tourist-related business activities, then it is likely that this is an authorized use of funds under Sec. 102-119(3)(d). Under the current proposal, not only will there be signage at the location with the TDO logo and website, but Zagster will also provide a direct link to the TDO website through the Zagster application.

The TDO's vision for tourism marketing has receded from traditional and costly visitor's center to focusing on a comprehensive Digital Gateway that will promote tourism throughout Brevard County

¹ All funds generated from bike rentals is retained by Brevard County. Currently, the TDO proposes to use these funds to fund additional expansion of the program.

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through lower cost and tech-friendly tourism kiosks². Since the Zagster application and TDO kiosks will provide a link to the TDO website, these five location kiosks could be classified as the first five Brevard County tourist kiosks. In addition, Zagster has represented that the web links could also be available on the Zagster application which would provide another avenue for tourists to access Brevard County tourism information. The availability of Brevard County tourism information through the application would allow tourists to explore not only the Zagster bike share program, but also other tourism related information for all of Brevard County.

Section 102-119(3)(b) states: "Thirty-five percent of the net revenue [...] would be budgeted and disbursed to finance beach improvement, maintenance, renourishment and erosion control."

The argument for using funds collected under this category would specifically apply only to locations at beach facilities such as Lori Wilson Park. Since these stations and/or kiosks are located at beach parks they may constitute beach improvements as they simultaneously attract tourists and the general public to the activity while also promoting and advertising tourist-related business activities. This would increase the utilization of beach parks and the additional advertisements could generate revenue, thereby improving the beach parks by increasing their value.

Finally, Sec. 102-119(6)(a) outlines the use of an additional one-percent tourist tax levied by Brevard County: "One hundred percent of the net revenue per year would be budgeted and disbursed to promote and advertise tourism in the state and nationally and internationally; however if the tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists."

The bike share program could constitute an activity funded by this one-percent tourist tax as long as the promotion and advertisement of the activity attracts tourists to take advantage of the program or promotes tourism related activities within Brevard County. Essentially, the location signs and kiosks would provide information for tourists within Brevard County apprising them not only of the bike share program, which is a tourist activity in and of itself, but also other tourist related activities within Brevard County. The A1A corridor from the Cocoa Beach Pier to Minute Man Causeway is an area with high tourist traffic and the location stations and/or kiosks along this corridor would provide information for additional tourist related businesses, activities and locations throughout Brevard County. Such a scenario could allow the bike share program to be funded under both 102-119(3) and 102-119(6) as the program can be advertised to tourists while the program itself advertises other activities.

Conclusion: The TDO is likely authorized to use tourist development tax funds to fund the proposed bike sharing program as Chapter 102, Article III of the Brevard County Code of Ordinances and Florida Statute §125.0104 state that funds may be used to promote and advertise county tourism, to fund tourist bureaus and information centers, to finance beach improvements, or to fund activities that are promoted as tourist activities.

² The TDO has budgeted for 5 such kiosks in their upcoming marketing budget. These kiosks will provide digital information and links to websites including the TDO's website which will provide tourism information for Brevard County.



Zagster, Inc
 25 First Street Suite 104
 Cambridge, Massachusetts 02141
 United States
 844-ZAGSTER

**ORDER for Brevard County Board of County
 Commissioners Tourism Development Office**
 Order: SO-0001200
 Date: 9/28/2016
 Prepared by: Chad Jacobs

Order

Company Information

Bill To:
 Brevard County Board of
 County Commissioners
 Tourism Development Office
 430 Brevard Avenue, Suite 150
 Cocoa, Florida 32922
 United States

Billing Contact: Stacy DeLano
Billing Email: stacy.delano@visitspacecoast.com
Billing Phone: (321) 292-0549

Payment Terms

Payment Terms: Net 45 Days

Service Lines

Service	Description	Date Start - Date End	Quantity	Term	Unit Price	Total
Zagster Station Sponsorship	Visitor Information Bike Share Station	1/20/2017 - 1/19/2018	10.00	1 Yr	\$8,000.00 /Yr	\$80,000.00
Zagster Station Sponsorship	Visitor Information Bike Share Station	1/20/2018 - 1/19/2019	10.00	1 Yr	\$8,000.00 /Yr	\$80,000.00
Zagster Station Sponsorship	Visitor Information Bike Share Station	1/20/2019 - 1/19/2020	10.00	1 Yr	\$8,000.00 /Yr	\$80,000.00

Product & One Time Fee Lines

Product & One Time Fee	Quantity	Unit Price	Total
Bike Parking Space (included with Bike)	50.00	\$0.00	\$0.00
Extra Bike Parking Space	50.00	\$0.00	\$0.00
Zagster Standard Adult Bike	50.00	\$0.00	\$0.00
Location Implementation/Setup Fee	10.00	\$0.00	\$0.00

Products and Services Total: \$240,000.00
 Net Amount: \$240,000.00
 Total Applied Payments: \$0.00
Balance Due Amount: \$240,000.00



Zagster Master Services Agreement

This Master Services Agreement, including all schedules, exhibits and attachments hereto (this “Agreement”), is made effective as of the date of last signature below (the “Effective Date”), by and between Brevard County Board of County Commissioners (“County”) and Zagster, Inc. with a principal place of business located at 25 First Street, Suite 104, Cambridge, MA 02141 (“Zagster”). Defined terms used herein shall have the meanings accorded to such terms herein.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties hereto hereby agree as follows:

Company and its Affiliates may place orders for the Zagster Service (as defined in Schedule A) by entering into Zagster’s standard form of order form (each, an “Order Form”) which Order Forms will among other things specify the number of Zagster Bicycles, the Locations and the estimated Launch Dates and will reference this Agreement. Further, the County and its Affiliates may enter into expansion order forms (each, an “Expansion Order Form”) to add additional Locations and Zagster Bicycles from time to time as mutually agreed to by the parties. This Agreement will be deemed incorporated by reference into each Order Form and Expansion Order Form. The parties acknowledge and agree that the pricing set forth in the initial Order Form attached hereto as Exhibit D is special pricing and shall only apply with respect to the initial Order Form. Pricing for Expansion Order Forms and any future Order Forms shall be negotiated and mutually agreed to by the parties.

For purposes hereof an “Affiliate” means, any entity directly or indirectly controlled by, controlling or under common control with County.

WHEREAS, the County is desirous of obtaining a service which will provide bike sharing opportunities to tourists and residents of Brevard County, and

WHEREAS, the Brevard County Tourism Development Office or Space Coast Office of Tourism has the mission of marketing and promoting tourism throughout Brevard County, and

WHEREAS, the Brevard County Tourism Development Office or Space Coast Office of Tourism plan to accomplish the mission of marketing and promoting tourism includes installation of informational kiosks throughout the county where digital information will be available to tourists, and

WHEREAS, the services offered through this contract will promote tourism by providing digital information about Brevard County’s tourist attractions and destinations to all tourists, and

WHEREAS, the Tourism Development Council recommends this contract to meet the future vision of tourism marketing and promotion plan, and

WHEREAS, the Brevard County Board of County Commissioners finds that these services are related to tourism and primarily promotes such a purpose, and

WHEREAS, the provision of such services shall mutually benefit the parties hereto and the residents and visitors of Brevard County.

NOW THEREFORE, inconsideration of the covenants herein contained, it is mutually agreed between the parties as follows:

Schedule A
Zagster Service and Fees

1. **Description of Zagster Service.** Pursuant to each Order Form and Expansion Order Form, Zagster will provide the following (collectively, the "Zagster Service");

- a. The right for Users (as defined below) to access and use bicycles provided by Zagster (collectively, the "Zagster Bicycles"). The number of Zagster Bicycles provided by Zagster under this Agreement shall be as set forth in the Order Form and any Expansion Order Form (as such terms are defined below).
- b. A Site Survey (as defined below) to determine the Locations (as defined below) and the Initial Launch Date (as defined below).
- c. A license to use Zagster's proprietary bicycle rental management software and mobile application (collectively, the "Zagster Software") and accompanying User information (the "Documentation") pursuant to Section 5 below.
- d. Maintenance Services as described in more detail in Section 6 below.
- e. Automated locks and bicycle stations to be used with the Zagster Bicycles, subject to payment of the fees set forth in the Order Form.
- f. Zagster marketing materials (the "Zagster Marketing Materials").
- g. Zagster customer services for Users. Zagster customer representatives shall have sufficient knowledge to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, incidents, comments, complaints, malfunction problems and the Locations.
- h. A Zagster Customer Success Manager.

2. **Term of Agreement; Exclusivity.** The initial term of this Agreement to begin on the date the Zagster system is deemed operational and, unless terminated earlier in accordance herewith, will continue until all Order Forms have terminated or expired (the "Initial Term"). This Agreement will automatically renew for three successive one-year terms unless either party gives the other written notice of termination at least ninety (90) days prior to the end of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term"). During the Term, County agrees that Zagster shall be the only bicycle sharing and/or bicycle rental service promoted and used by County at County Locations.

3. **Launch Date; Site Survey; Locations.**

a. **Initial Launch.** The parties will mutually agree to the estimated initial launch date in the Order Form. The actual initial launch date will be the date that Zagster is able to make the Zagster Service available to the County at the Location(s) designated in the Order Form. Zagster will notify the County of the actual initial launch date by email (the "Initial Launch Date").

b. **Initial Locations.** County acknowledges and agrees that Zagster may perform a survey of the site(s) where County desires that the Zagster Bicycles be installed (the "Site Survey"). The parties will mutually agree on the initial location(s) where the Zagster Bicycles will be installed promptly after completion of the Site Survey (the "Initial Location(s)"). The launch of the Zagster Service on the Initial Launch Date is subject to both Zagster and the County fulfilling all of their obligations under this Agreement which are required to be fulfilled to enable Zagster to launch the Zagster Service at the Initial Location(s), including without limitation payment of the Product and Service Fees set forth in the Order Form(s).

c. **Additional Locations.** Additional Locations (each an "Additional Location" and together with the Initial Locations, the "Locations") and/or Zagster Bicycles may be added from time to time pursuant to an Expansion Order Form. The parties will mutually agree to the estimated launch date of an Additional Location in the applicable Expansion Order Form. The actual launch date of an Additional Location will be the date that Zagster is able to make the Zagster Service available to the County at the Additional Location. Zagster will notify the County of the actual launch date of an Additional Location by email. The launch of an Additional Location is subject to both Zagster and the County fulfilling all of their obligations under this Agreement which are required to be fulfilled to enable Zagster to launch the

Zagster Service at the Additional Location(s), including without limitation payment of the Product and Service Fees set forth in the applicable Expansion Order Form.

4. Fees; Payment Terms.

a. **Fees.** County will pay to Zagster the nonrefundable product and one time fees in the amount of \$80,000 per described in the Order Form and any Expansion Order Form (the "**Product and One Time Fees**"). County will pay to Zagster the nonrefundable recurring fees (the "**Service Lines Fees**") set forth on an Order Form and any Expansion Order Form. Zagster will invoice, and the County will pay, such fees in accordance with the payment terms set forth in the Order Form and any Expansion Order Form, as applicable. Invoices will be paid according to the Florida Prompt Payment Act.

b. **Suspension.** If County's account is more than forty-five (45) days past due or in violation of the Florida Prompt Payment Act, Zagster may, upon forty-five (45) days prior written notice suspend the provision of the Zagster Service until such time as County's account is brought current. This right to suspend the Zagster Service is in addition to any and all other rights and remedies under this Agreement and under applicable law, including without limitation Zagster's right to terminate the Agreement for breach. If Zagster elects to suspend the Zagster Service, Zagster will have the right to enter County's property (with reasonable notice of 7-14 business days) during business hours and remove the Zagster Bicycles and Zagster bicycle stations, signage and any other Zagster materials.

5. License Grant.

a. **License Grant.** Subject to the terms and conditions of this Agreement and payment of the fees described herein, Zagster hereby grants County a non-exclusive, non-transferable, royalty-free, fully paid up, limited license during the Term to access and use the Zagster Software, as hosted by Zagster or its third party hosting provider, from locations in the United States and to use the Documentation provided by Zagster solely for County's management of the Zagster Bicycles at the Locations.

b. **Restrictions.** County will not, and will not permit third parties to, (i) permit any third party to access the Zagster Software except as permitted herein or use the Zagster Software as a service bureau, application service provider, or similar business, (ii) create derivate works based on the Zagster Software, (iii) copy, frame or mirror any part or content of the Zagster Software, (iv) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Zagster Software, in whole or in part, nor will County use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Zagster Software or encourage or permit others to do so (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), (v) access the Zagster Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Zagster Software, (vi) sell, resell, rent or lease the Zagster Software, (vii) use the Zagster Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights (or otherwise use the Zagster Software in violation of the Documentation), (viii) store or transmit virus or other malicious code through the Zagster Software, (ix) interfere with or disrupt the integrity or performance of the Zagster Software, or (x) attempt to gain unauthorized access to the Zagster Software or their related systems or networks.. County shall provide to Zagster a list of authorized users of the Zagster Software. County agrees to maintain the security and confidentiality of the user names and passwords provided by Zagster to the County in connection with County's use of the Zagster Software. This paragraph pertains to the Mobile App offered by Zagster only. Zagster will provide County with a report that provides user location information for marketing purposes.

c. **Ownership.** Except for the rights granted to County in this Section, all right, title and interest in and to the Zagster Software and the Documentation, including without limitation all intellectual property embodied therein, shall remain exclusively with Zagster and Zagster reserves all rights therein and thereto. The license granted hereunder includes no rights in or to the source code versions of the Zagster Software or to the object code version of the Zagster Software, other than to the object code version as hosted by Zagster or its third party hosting provider

(Remainder of page intentionally left blank.)

6. **Maintenance Services.** Zagster will provide the following maintenance services with respect to the Zagster Bicycles (the "Maintenance Services"):

- (i) Zagster maintenance personnel will visit each of the Locations on a regular basis, but no less than 26 times per calendar year (pro-rated for any partial calendar year during the Term) at reasonable intervals to perform general maintenance and cleaning of the Zagster Bicycles.
- (ii) Zagster will, at Zagster's sole option and expense, either replace or fully refurbish the Zagster Bicycles no less frequently than every three years from the Launch Date.

7. Zagster Membership.

a. **Generally.** Each person that has been authenticated by Zagster and is a Zagster member in good standing (a "User") shall be eligible to use the Zagster Bicycles subject to Zagster's then current policies and procedures, including without limitation the terms and conditions of Zagster's member agreement. To become a Zagster member, a person shall complete Zagster's membership application and, if approved for membership by Zagster, shall enter into Zagster's member agreement and waiver in the form set forth at www.zagster.com. Zagster may revise the membership application and member agreement from time to time in its sole discretion. In addition, the parties may, as may be mutually agreed, require Users to sign an additional, secondary waiver in the form provided by County. Zagster owns all right, title and interest in and to any and all information and data submitted to Zagster by Users and prospective Users and Zagster agrees that it will not sell User data.

[Remainder of page intentionally left blank]

Schedule B

County Obligations

1. **Generally.** County represents and warrants to Zagster that County has all rights, licenses, consents, authorizations and permits necessary to permit Zagster to install the Bicycles at the Locations and to provide the Zagster Service at the Locations. Further, County will:

(a) Permit Zagster personnel to access each Location, at mutually agreed dates and times, to perform a Site Survey, take pictures of the Location, and otherwise review and inspect the Location with County personnel to determine a mutually agreed to area at each Location to install Zagster Bicycles and Zagster stations.

(b) Provide the required square footage in a mutually agreed to area at each Location to enable Zagster to install the Zagster stations and Zagster Bicycles and provide the necessary additional space for any mutually agreed to increase in the number of Zagster Bicycles. In addition, if mutually agreed by the parties, (i) County will accept shipments of the Zagster Bicycles and related materials and will store the Zagster Bicycles and related materials in a secure location until Zagster personnel arrive to install, however the County will not be responsible for the shipments, including accuracy of shipment upon receipt or condition of the inventory nor any loss or damage sustained during the interval awaiting installation and (ii) County shall permit Zagster to dispose of shipping materials at the Locations and provide access to County's trash and recycling facilities in connection with same.

(c) Permit Zagster personnel to access each Location, at a mutually agreed to date and time, to set-up and install the Zagster Bicycles and Zagster Signage at the Locations, including installation of appropriate bicycle stations to be provided by Zagster, and to take pictures of the Zagster Bicycles as installed at each Location. Zagster shall have the right to use the pictures for advertising and marketing purposes, with County's prior written consent, which will not be unreasonably withheld.

2. Marketing.

(a) **Information.** Following the Effective Date and at least 30 days before the Launch Date, County will provide to Zagster the information and materials reasonably required by Zagster to implement the Zagster Service at the County's Locations.

(b) **Marketing Contact.** County will assign and maintain an appropriate County contact who will (i) have responsibility for all interactions with Zagster regarding matters covered by this Agreement, (ii) be reasonably accessible to Zagster during normal business hours, and (iii) use the Zagster Marketing Materials to promote the availability of Zagster Bicycles and/or work with Zagster to create relevant materials. County acknowledges and agrees that the success of the program will depend on the level of marketing support provided by the County. The marketing contact will be responsible for training County's employees with respect to the Zagster Service and the Zagster Software.

(c) **Marketing Obligations.** County's marketing contact will coordinate marketing opportunities with Zagster and will assist Zagster in marketing the Zagster Service to Users and prospective users. The County may use the Marketing Materials for the sole purpose of marketing the Zagster Service to Users and prospective users. Further, if County desires to create custom email communications or other marketing materials, County may do so subject to Zagster's prior review and approval, which will not be unreasonably withheld or delayed.

3. Zagster Bicycles.

(a) County will use reasonable efforts to report any maintenance or other issues relating to the Zagster Bicycles or the Zagster stations or facility on County premises. County shall report any issues to Zagster at support@zagster.com and Zagster shall initiate a resolution within 48 business hours. Such reasonable efforts by the County will be construed to mean only a general visual inspection to look for flat tires, obvious and material cosmetic defects to the bicycles and/or stations, and graffiti. Zagster will respond to all maintenance issues reported by County as soon as commercially practicable. Zagster will provide contact information at each station to report any problems with equipment or stations.

[Remainder of page intentionally left blank]

Schedule C

General Terms and Conditions

1. **Services; Relationship of the Parties.** Subject to the terms and conditions of this Agreement, Zagster will provide the Zagster Service set forth in Schedule A and County will perform the obligations set forth on Schedule B. The relationship of the parties to this Agreement is solely that of independent contractors. Neither party will have any authority to contract with third parties on behalf of the other party or to expressly or impliedly represent that it has any such authority, to any person.
2. **Insurance.** During the Term, Zagster will maintain the following insurance:
 - a. General Liability Insurance with coverage limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; Brevard County will be named 'Additional Insured' on Zagster's General Liability Insurance;
 - b. Worker's Compensation Insurance in accordance with statutory requirements; and
 - c. Umbrella coverage in the amount of at least \$2,000,000.

Coverage will be placed with insurance carriers with an A.M. Best Rating of not less than A- and financial rating of not less than VII.

3. **Publicity.** Zagster may release a press release announcing the parties' relationship hereunder with the prior consent of County, which may be provided by email and shall not be unreasonably withheld. Unless otherwise expressly permitted in this Agreement, neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior written approval. For the avoidance of doubt, County hereby consents to Zagster's use of the County's name, logos, trademarks and service marks (i) to create marketing and advertising materials for County to use to promote the Zagster Service; provided, that County shall have the right to review and approve such materials, such consent not to be unreasonably withheld or delayed and (ii) on Zagster's customer list which will be displayed on Zagster's website and in other publications. Each party consenting to use of its name, logos, trademarks and service marks hereunder shall remain the sole and exclusive owner of all right, title and interest in and to its Marks and the goodwill associated therewith. Upon termination of this Agreement, each party shall cease all use of the other party's name, logos, trademarks and service marks.

4. LIMITED WARRANTY;DISCLAIMER OF WARRANTIES.

a. **General.** Each party represents and warrants that: (i) this Agreement has been duly approved by all necessary action of such party; (ii) it has full power and authority to enter into and execute this Agreement; (iii) this Agreement is valid, binding and enforceable in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement does not result in a violation or breach of and does not contravene, violate or conflict with any provision of applicable law, regulations or obligations to which it is a party.

b. **Zagster Service.** Zagster represents and warrants that the Zagster Service will be provided in accordance with the terms of this Agreement.

c. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ZAGSTER MAKES NO WARRANTIES WITH RESPECT TO THE ZAGSTER SERVICE OR THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO WARRANTY IS MADE THAT THE ZAGSTER SERVICE WILL MEET COUNTY'S REQUIREMENTS.

5. **Indemnification.** Zagster agrees to defend, at Zagster's sole expense, County and County's affiliates, and their respective officers, directors, and employees, from any and all claims asserted against County by a third party ("Third Party Claims") alleging (i) the gross negligence or willful misconduct of Zagster or its employees in the performance of the Zagster Service hereunder; or (ii) infringement by the Zagster Software or Zagster trademarks of the third party's intellectual property rights; and Zagster shall indemnify and hold County harmless from and against all damages finally awarded by a court of competent jurisdiction or agreed to by Zagster in settlement with respect to such Third Party Claims; provided, that (a) County shall provide Zagster with written notice promptly upon learning of any Third Party Claims or complaints that may reasonably result in the indemnification of County, provided, however, that failure by County to provide notice to Zagster shall not relieve Zagster of its obligations under this Section unless such failure prejudices Zagster's defense or settlement of the Third Party Claim; (b) County will permit Zagster to control the defense and settlement of the Third Party Claim, provided, however, that Zagster may not settle the Third Party Claim in a manner adverse to County or which would impose liability on County without County's prior written consent; and (c) County will provide Zagster with assistance in the defense and settlement of the Third Party Claim at Zagster's expense. County may (at its own cost) engage its own counsel to participate in the defense and settlement of the Third Party Claim. County will not settle any Third Party Claim without Zagster's prior written consent.

6. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OR CORRUPTION OF DATA, LOSS OF GOODWILL, COSTS TO PROCURE SUBSTITUTE GOODS OR SERVICES, OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SAME. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY'S LIABILITY HEREUNDER WILL EXCEED THE FEES PAID BY COUNTY TO ZAGSTER FOR THE ZAGSTER SERVICE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ZAGSTER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6, COUNTY'S PAYMENT OBLIGATIONS, OR BREACH OF OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 7. COUNTY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION REPRESENT A REASONABLE ALLOCATION OF RISK THAT IS REFLECTED IN THE FEES PAID BY COUNTY.

7. Confidentiality; Suggestions.

a. **Confidentiality.** Each party acknowledges that during the term of this Agreement the other party may disclose information, whether orally, visually, or in tangible form, that is proprietary and confidential to the disclosing party and is disclosed or marked as proprietary or confidential ("Confidential Information") and that the unauthorized disclosure of Confidential Information may cause irreparable harm to the disclosing party. Each party shall only use the Confidential Information to perform its obligations hereunder and will take all reasonable measures to safeguard and prevent the unauthorized disclosure of Confidential Information, but no less than the measures it takes to safeguard its own confidential information, including without limitation disclosing Confidential Information only to those of its employees with a need to know such information to perform their obligations hereunder and which have been advised of the confidential nature of the information and have agreed to protect the Confidential Information to the same extent as County hereunder. The parties acknowledge that it will be impossible to measure the damages that would be suffered by one party if the other party fails to comply with the provisions of this Section 7 and that in the event of any such failure, such party will not have an adequate remedy at law and shall, therefore, be entitled, in addition to any other rights and remedies, to seek specific performance of the receiving party's obligations and to seek immediate injunctive relief with respect thereto.

b. **Suggestions.** County may, from time to time, provide suggestions, techniques, know-how, comments, feedback or other input to Zagster with respect to the Zagster Service (collectively, "Suggestions"). Both parties agree that each Suggestion is and shall be given entirely voluntarily. Each Suggestion, even if designated as confidential by County shall not, absent a signed, written agreement with Zagster, create an obligation of confidentiality for Zagster. County agrees that it shall not give any Suggestion that is subject to license terms or restrictions that seek to require any Zagster technology, service, product or documentation incorporating or derived from such Suggestion, or any Zagster

intellectual property, to be licensed or otherwise shared with County or any third party. Furthermore, County hereby assigns all right, title and interest in and to Suggestions to Zagster including without limitation all intellectual property rights therein, and will take any and all actions reasonably requested by Zagster to effect such assignment.

8. Termination.

a. This Agreement may be terminated (1) by Zagster if County fails to timely make any payment due hereunder (other than with respect to charges then subject to a good faith dispute) and fails to cure such default within the terms of the Florida Prompt Payment Act and receiving notice in writing from Zagster of such failure (whether or not Zagster avails itself of its right to suspend the Zagster Service); or (2) by either party in the event (i) the other party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to cure such breach or provide the other party with an acceptable plan for curing such breach within thirty (30) days after receipt by the breaching party of written notice specifying the breach; (ii) a receiver, trustee, administrator, or administrative receiver is appointed for the other party or its property; (iii) the other party makes an assignment for the benefit of creditors; (iv) any proceedings should be commenced against the other party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; or (v) the other party is liquidated or dissolved. Termination shall not relieve County of the obligation to pay any fees accrued or payable to Zagster prior to the effective date of termination.

b. Upon the termination of this Agreement, each party will promptly destroy or, on the other party's request, return all of the other party's Confidential Information, including all copies thereof. The payment and fee provisions of Schedule A and each Order Form (Schedule D) and any Expansion Order Forms shall survive any termination or expiration of this Agreement with respect to any fees due and owing hereunder. Sections 4(c), 5, 6, 7, 8, 9 and 10 of this Schedule C shall survive any termination or expiration of this Agreement.

9. **Notices.** Except as otherwise provided in this Agreement, all notices, requests and demands, and other communications required or permitted under this Agreement shall be in writing and sent to the addresses noted in the Order Form or to such changes of address of which one party notifies the other in accordance with this provision. A notice shall be deemed effective: (i) upon delivery, if delivered personally by hand to a party; (ii) one (1) business day after deposit, if delivered to a nationally recognized courier service offering guaranteed overnight delivery; or (iii) five (5) business days after having been deposited in the United States mail, certified mail, postage prepaid, return receipt requested.

10. **Miscellaneous.** Each party represents and warrants to the other that it has the authority to enter into this Agreement and is not under any obligation to any third party that would conflict with this Agreement. This Agreement, including all of the Schedules hereto, is the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. Additional or different terms in any purchase order or similar document will not modify or add to the terms of this Agreement unless mutually agreed in writing by the parties. This Agreement may be amended only by a written agreement between the parties. If one party fails to enforce any provision of this Agreement, such party will not be precluded from enforcing the same provision at another time. This Agreement and the rights granted under it may not be assigned or transferred by either party without the written consent of the other party; provided, however, either party will have the right to assign this Agreement to its successor in the event of a merger, acquisition or other consolidation, including without limitation the sale of all or substantially all of its assets or stock or business to which this Agreement relates. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties and the remaining terms and conditions of this Agreement will remain in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflicts of laws provisions thereof. The parties agree that the sole and exclusive jurisdiction and venue for actions

arising out of this Agreement shall be the state and federal courts located in Brevard County, Florida.

Any trial shall be non-jury. The paragraph headings contained in this Agreement are for convenience only and are not intended to be used nor may they be used in the interpretation of this Agreement. Neither party will be liable for a delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, fire, flood, earthquake, failures of suppliers, utility or telecommunications outages, or other significant event beyond the reasonable control of the affected party, provided the non-performing party immediately notifies the other party and takes commercially reasonable and expedient action to resume performance. This Agreement may be executed in one or more counterparts, each counterpart of which will be deemed to be an original and which together will constitute one and the same instrument. The signature of any of the parties may be evidenced by an electronic or facsimile copy of this Agreement bearing such signature, and such signature will be valid and binding as if an original executed copy of the Agreement has been delivered.

(Remainder of page intentionally left blank.)

Schedule D – Order Form for Cocoa Beach, FL (Order: SO-0001169)

See attached.

Schedule E – Approval of the Tourism Development Council

See attached.

11.B.1
A

Terms & Conditions

The initial term of this Agreement commences on the Effective Date and will continue for three years (the "Initial Term"). Thereafter this Agreement will automatically renew for successive one year terms (each a "Renewal Term" and together with the Initial Term, the "Term") unless either party notices the other party of its desire not to so renew this Agreement within thirty days from the end of the then-current term.

If this Agreement is renewed for a fourth year, Zagster agrees that the Company's pricing during such fourth year will be the same as the pricing under this Agreement for the Initial Term.

Additional Terms

Location Implementation/Setup Fee

Company will pay to Zagster the nonrefundable product and one time fees in the amounts, if any, described above, within 30 days of the Order Date.

Company Name: Breyard County

Zagster, Inc



Signature

Signature

Jim Barfield

Name (Please Print)

Name (Please Print)

Chairman

Title

Title

As approved by the Board on: 11/1/16

Date

Date

ATTEST



SCOTT ELLIS, CLERK

The parties agree that this Agreement is contingent upon approval of the County at a public meeting to be held in October 2016 (the "Meeting") and that neither party shall have any obligations hereunder until the County receives such approval. County will immediately notify Zagster upon receipt of the approval or denial of this Agreement by the County at the Meeting.

The parties agree that the following schedules and attachments are herein incorporated by reference:

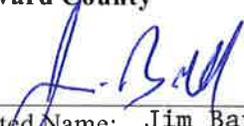
- Schedule A – Zagster Service and Fees
- Schedule B – County Obligations
- Schedule C – General Terms and Conditions
- Schedule D – Order Form for Cocoa Beach, FL (Order: Order: SO-0001200)
- Schedule E – Approval of the Tourism Development Council Zagster, Inc. Confidential Information

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date set forth below.

Zagster, Inc.

By: _____
 Printed Name:
 Title:
 Date: _____, 201__

Brevard County

By: 
 Printed Name: Jim Barfield
 Title: Chairman
 Date: 11/1, 2016

As approved by the Board

Attest: 

 SCOTT ELLIS, CLERK