

AGREEMENT TO OPERATE A JOINT CONVENTION AND VISITORS' BUREAU

THIS AGREEMENT is entered into this ____ day of June, 2018, by and between the County of Albemarle, Virginia (the "County") and the City of Charlottesville, Virginia (the "City"). This agreement may be referred to as the "CACVB Agreement" and "this Agreement." The County and the City may be referred to collectively as the "Parties."

RECITALS

- R-1** The County and the City are each enabled by Virginia Code § 15.2-940 to "expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality"; and
- R-2** The County and the City are each enabled by Virginia Code § 15.2-1300 to jointly exercise the authority granted to them pursuant to Virginia Code § 15.2-940, and they desire to enter into an agreement with one another to continue to jointly fund and operate the local convention and visitors' bureau; and
- R-3** The County and the City desire to promote the resources and advantages of the County and the City, and to do so through the Charlottesville-Albemarle Convention and Visitors' Bureau as provided in this Agreement.

STATEMENT OF AGREEMENT

The County and the City agree to the following:

1. Convention and Visitors' Bureau Established and Authorized.

The Charlottesville-Albemarle Convention and Visitors Bureau (the "CACVB") is re-established and re-authorized.

2. Purpose of the CACVB.

The purpose of the CACVB is to promote the resources and advantages of the County, the City, and the region pursuant to the terms and conditions of this Agreement.

3. Organization of the CACVB.

The CACVB shall be organized to have an Executive Board, an Advisory Board, an Executive Director, and staff serving the CACVB.

A. Executive Board. An Executive Board is hereby established, and its composition and powers and duties are as follows:

- 1. Composition. The Executive Board shall be composed of the following nine voting members and four non-voting members:
 - a. One member of the County Board of Supervisors.
 - b. One member of the Charlottesville City Council.
 - c. The County Executive.
 - d. The Charlottesville City Manager.
 - e. The County Director of Economic Development.
 - f. The City Director of Economic Development.
 - g. The Executive Vice President of the University of Virginia.

- h. One tourism industry organization representative appointed by the Board of Supervisors.
 - i. One tourism industry organization representative appointed by the City Council.
 - j. The Executive Director of the CACVB (non-voting member).
 - k. The Chair of the Advisory Board (non-voting member).
 - l. A representative of the Chamber of Commerce (non-voting member).
 - m. The President or Chief Executive Officer of the Thomas Jefferson Foundation (non-voting member).
2. **Appointments to the Executive Board.** The members of the County Board of Supervisors and the Charlottesville City Council shall be appointed by their respective governing bodies for terms determined by the respective governing bodies. The representatives of the University of Virginia, the Chamber of Commerce, and Monticello shall be appointed by those entities.
3. **Alternates for Members Who are Elected Officials.** The County Board of Supervisors and the Charlottesville City Council may also appoint alternates to attend meetings in their absence.
4. **Designees for Certain Non-Elected Officers.** The County Executive, Charlottesville City Manager, the County Director of Economic Development, the City Director of Economic Development, the Executive Vice President of the University of Virginia, and the President or Chief Executive Officer of the Thomas Jefferson Foundation may designate persons within their respective offices to attend meetings of the Executive Board in their absence.
5. **Powers and Duties of the Executive Board.** The Executive Board shall:
- a. **Adopt a Strategic Plan.** Adopt a strategic plan for the CACVB that is consistent with the purposes of the CACVB.
 - b. **Adopt By-laws.** Adopt by-laws, which shall include procedures and rules for electing a chair, a vice-chair, the conduct of its meetings, and regulating the business of the Executive Board.
 - c. **Adopt Policies and Plans.** Adopt any policies or plans consistent with the purposes of the CACVB and that may provide direction to the CACVB.
 - d. **Marketing Strategies, Performance Measures, and Indicators.** Approve general marketing strategies and programs, and establish performance measures and indicators.
 - e. **Hold Meetings; Quorum; Voting.** Hold a public meeting at least once every two months. Each meeting shall be conducted in compliance with the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) Four voting members of the Executive Board physically present at the meeting shall constitute a quorum. The Executive Board shall act only by a majority vote of those voting members present and voting at a lawfully held meeting.
 - f. **Adopt a Budget.** Adopt a budget for the CACVB's operations and activities each fiscal year.
 - g. **Appoint the Executive Director; Performance; Termination.** The Executive Board shall appoint the Executive Director, who shall serve at the pleasure of the Executive Board, and evaluate the Executive Director's performance each year; provided that any interim executive director appointed by the Management Board pursuant to the Agreement to Operate a Joint Convention and Visitors' Bureau between the County and the City dated July 1, 2004 (the

“July 1, 2004 Agreement”) may continue as interim executive director on and after July 1, 2018 and for a period of up to one year after the executive director’s appointment, subject to termination or dismissal for just cause.

- ## CITY OF JACKSONVILLE
- The following are the proposed amendments:
- H.** **Offices.** Approve the location and terms and conditions for purchasing or renting any CACVB offices, and authorize the Executive Director to execute any required instrument pertaining thereto. The Executive Board will endeavor to locate at least one CACVB office in the County and at least one CACVB office in the City.
 - I.** **Official seal.** Establish and maintain an official seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it, or in any other manner reproducing it.
- B. **Advisory Board.** An Advisory Board is hereby established, and its composition and powers and duties are as follows:
- Composition.** The Advisory Board shall be composed of those members of the Management Board appointed pursuant to the July 1, 2004 Agreement and whose terms have not expired as of June 30, 2018, and they shall continue to serve as members of the Advisory Board until their terms expire under their appointment (the “Holdover Term”). Thereafter, the Executive Board shall appoint each member to the Advisory Board as provided in subsection 3(B)(2) as each Holdover Term expires.
 - Appointments to the Advisory Board.** The Executive Board shall appoint persons to serve on a seven-member Advisory Board as follows:
 - Qualifications.** Any person appointed to the Advisory Board shall have experience or expertise in the local tourism industry.
 - Terms and Term Limits.** Each appointment to the Advisory Board, other than to fill a vacancy during an appointee’s term, shall be for a two-year term. No person may be appointed to more than four consecutive two-year terms in an Appointed Seat, exclusive of time served in the unexpired term of another.
 - Filling a Vacancy.** The Executive Board may fill a vacancy according to its procedure for appointing members to the Advisory Board. An appointment to fill a vacancy arising during an appointee’s term shall be only for the remainder of the term.
 - Holdover.** Any person appointed to the Advisory Board whose term expires may continue to serve on the Advisory Board until a successor is appointed.
 - Powers and Duties of the Advisory Board.** The Advisory Board has the following powers and duties:
 - Meetings; Quorum; Voting.** The Advisory Board shall hold a public meeting at least once every two months. Each meeting shall be conducted in compliance with the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) Four members of the Advisory Board physically present at the meeting shall constitute a quorum. The Advisory Board shall act only by a majority vote of those members present and voting at a lawfully held meeting.
 - Advisor to the Executive Board.** The Advisory Board shall serve as an advisor to the Executive Board. This duty includes, but is not limited to, making recommendations to the Executive Board pertaining to marketing strategies and performance measures and performance indicators.

- c. **Reports.** Prepare and provide reports to the Executive Board pertaining to the promoting the resources and advantages of the County, the City, and the region, pursuant to the terms and conditions of this Agreement.
 - d. **Committees.** Establish committees to research and provide reports to the Advisory Board on issues pertaining to promoting the resources and advantages of the County, the City, and the region.
- C. **Executive Director.** The position of Executive Director is hereby established. The powers and duties of the Executive Director are as follows:
 - 1. **Promotion.** Promote the resources and advantages of the County, the City, and the region pursuant to the terms and conditions of this Agreement, the Strategic Plan, and other policies and plans adopted by the Executive Board, subject to the following:
 - a. **Services Provided Until Executive Board Directs Otherwise.** Beginning July 1, 2018, and until the Executive Board directs otherwise, the Executive Director and the persons hired to provide services for the CACVB shall provide the services identified in Attachment A.
 - b. **Services Identified by the Executive Board to be Provided.** When the Executive Board identifies different or additional services to be provided by the CACVB, the Executive Director and the persons hired to provide services for the CACVB shall provide those services. The different or additional services include, but are not limited to, expanding destination packages focusing on the arts, wineries, breweries, and distilleries; promoting heritage and cultural tourism and including this area's African-American heritage; promoting agritourism; promoting outdoor recreational tourism for activities such as hiking, bicycling, kayaking, and canoeing; and developing and promoting events and activities related to the arts, local resources, and local businesses.
 - 2. **Budgeting.** Recommend a budget to the Executive Board.
 - 3. **Contracting.** Execute contracts on behalf of the CACVB for goods and services for the purposes of promoting the resources and advantages of the County, the City, and the region pursuant to the terms and conditions of this Agreement, and for any goods and services necessary for the proper operation of the CACVB. The contracts may include any contracts for consulting services related to tourism marketing and to promoting the County, the City, and the region. The Executive Director shall procure all goods and services in compliance with the County's procurement laws and procedures.
 - 4. **Reports.** The Executive Director shall provide to the Executive Board any reports required by this Agreement or requested by the Executive Board.
 - 5. **Distribute the Budget and Provide a Balance Sheet.** The Executive Director shall provide the CACVB's adopted budget to the County and the City and a balance sheet showing the CACVB's revenues and expenditures for the prior fiscal year and the fund balance, if any, from the prior fiscal year. The budget and the balance sheet shall be provided by December 31 each year.
 - 6. **Employees.** The Executive Director shall recruit, hire, and manage persons to perform services for the CACVB, subject to Section 8 of this Agreement.
- 4. **Funding the CACVB.**

The CACVB shall be funded as follows:

- A. **Funding Cycle.** The County and the City agree to fund the activities and responsibilities of the CACVB during each Fiscal Year (July 1 through June 30 of each calendar year) in which this Agreement remains in effect, beginning with the Parties' Fiscal Year 2019.
- B. **Funding Levels.** Subject to the subsection 4(F), the County and the City shall provide funding for the CACVB in each Fiscal Year in an amount equal to 30 percent of its Transient Occupancy Tax revenues collected by it in the most recent Fiscal Year ("Actuals"). This specified percentage and obligation is based on, and specifically limited to, a Transient Occupancy Tax of five percent in each locality. If either the County or the City enacts a Transient Occupancy Tax greater than five percent, that Party's funding obligation under the formula in this subsection is not changed by the increase in the tax rate for the Transient Occupancy Tax.
- C. **Payments to the Fiscal Agent.** Annual funding provided pursuant to subsection 4(B) shall be delivered by the locality that is not the Fiscal Agent to the locality that is the Fiscal Agent in equal quarterly payments, payable on July 1, October 1, January 1, and April 1 each year, due upon receipt of an invoice from the Fiscal Agent.
- D. **Budget.** The budget prepared and recommended by the Executive Director, and adopted by the Executive Board, shall use the Actuals provided by the County and the City and referenced in subsection 4(B), and any other revenue sources.
- E. **Documenting Costs.** All costs incurred and expenditures made by the CACVB in the performance of its obligations under this Agreement shall be supported by payrolls, time records, invoices, purchase orders, contracts, or vouchers, and other documentation satisfactory to the County and the City, evidencing in proper detail the nature and propriety of the costs. Upon request by either the County or the City, the Executive Director shall provide all documentation and records pertaining in whole or in part to this Agreement.
- F. **Appropriations.** Notwithstanding any other provisions of this Agreement, the County's and the City's obligation to fund the CACVB is expressly contingent upon the availability of public funds derived from Transient Occupancy Tax revenues and the annual appropriations of those funds thereof by the Parties. The City's appropriations of funds for the promotion and advertisement of the City are and shall be further subject to the provisions of Section 21 of the City's Charter.

5. Permitted and Prohibited Uses of Funds, Goods, and Services by the CACVB.

The CACVB shall expend revenues and use its funds, goods, and services only as follows:

- A. **Purposes for Which Tax Revenues May be Spent.** Revenues appropriated by the County and the City to the CACVB shall be expended only for the purposes for which transient occupancy tax revenues may be spent.
- B. **Prohibited Use of Funds, Goods, and Services for Political Purposes.** The CACVB shall not expend its funds, use its materials or property, or provide services, either directly or indirectly, for any partisan political activity, to further the election of, or to defeat, any candidate for public office.

6. Duration of this Agreement; Termination.

This Agreement shall be effective on July 1, 2018 and remain in effect until it is terminated by the Parties, or either of them, as follows:

- A. **Termination by One Party.** Either the County or the City may terminate this Agreement by giving at least six months' written notice to the other Party.

- B. **Termination by Mutual Agreement.** The County and the City may mutually agree to terminate this Agreement under any terms and conditions they agree to.
- C. **Termination by Non-appropriation.** If either the County or the City fails to appropriate funds in the amount required to support its obligations under this Agreement for a subsequent fiscal year, then this Agreement shall automatically terminate at the end of the then-current fiscal year.

7. **Performance.**

The performance of the CACVB shall be measured as follows:

- A. **Until New Performance Measures and Performance Indicators are Adopted.** From July 1, 2018, until the Executive Board adopts new performance measures and performance indicators, the CACVB shall:
 - 1. **Return on Investment.** Meet a return on investment ratio of 7:1 annually that is based on seven dollars of total direct visitor expenditures for every one dollar of funding provided to the CACVB by the County and the City pursuant to the formula in Attachment A.
 - 2. **Performance Measures.** Measure performance using the specific measures in Attachment A.
 - 3. **Performance Indicators.** Track the performance indicators identified in Attachment A.
- B. **Adopted Performance Measures and Performance Indicators.** When the Executive Board adopts a new required return on investment, new performance measures, and new requirements to track performance indicators, the CACVB shall meet and perform those new measures and requirements.
- C. **Audits.** The County and the City may, at their option, request an independent audit of the CACVB's books and records. The cost of the audit shall be shared equally by the County and the City.

8. **Employees; Duty to Both the County and the City.**

[Final language being drafted]

The Executive Director and any other persons hired to perform services for the CACVB are subject to the following:

9. **Fiscal Services.**

[Final language being drafted; language below subject to further change]

The County and the City will provide the following fiscal services for the CACVB:

- A. **Fiscal Agent.** The City shall serve as Fiscal Agent for the CACVB from July 1, 2018 until December 31, 2018. On and after January 1, 2019, the County shall serve as Fiscal Agent for the CACVB.
- B. **Fee for Serving as Fiscal Agent.** The Fiscal Agent shall be entitled to a fee of two percent of the Actuals referenced in Section 4(B) as compensation for acting as Fiscal Agent. In Fiscal Year 2019, when the County and the City will be each acting as Fiscal Agent for one-half year, the fee shall be reduced pro rata. This fee may be deducted from the Fiscal Agent's funding contribution pursuant to Section 4 each year.
- C. **Insurance.** The Fiscal Agent will provide insurance coverage to the CACVB.

- D. **Legal Services.** The attorney for the Fiscal Agent shall provide legal services to the CACVB, provided that representation does not create a conflict of interest under any rules of professional responsibility or other ethical rules of conduct.
- E. **Other Services.** The Fiscal Agent shall act as the CACVB's accounting and disbursing office, provide personnel services and maintain personnel and payroll records, provide information technology services, provide procurement services and maintain purchasing accounts and monthly statements, and contract for annual audits.

10. Disposal of Property Upon Termination or Partial Termination.

Upon the expiration or earlier termination of this Agreement, all personal property of the CACVB shall be and remain the joint property of the County and the City for disposition, and the proceeds of disposition shall be pro-rated between the County and the City in accordance with the ratio of the amounts provided by each of them to the CACVB: (i) as capital contributions since 1979; and (ii) as contributions of operating funds during the 10 years preceding the date of termination, as compared with the aggregated contributions of the County and the City during that same 10-year period.

11. Liability.

Any liability for damages to third parties arising out of or in connection with the operations and activities of the CACVB shall be shared jointly by the County and the City, to the extent that any liability is not covered by funding within the CACVB's budget or insurance proceeds, and only to the extent that the County and the City may be held liable for damages under the laws of the Commonwealth of Virginia.

12. Miscellaneous.

- A. **Ownership of Materials; Copyright; Use.** Any materials, in any format, produced in whole or in part pursuant to this Agreement are subject to the following:
 - 1. **Ownership.** The materials are jointly owned by the County and the City.
 - 2. **Copyright.** The materials are copyrightable only by the County and the City. Neither the CACVB, the Executive Board, nor any of its members, the Advisory Board, nor any of its members, the Executive Director, any CACVB employee, nor any other person or entity, within the United States or elsewhere, may copyright any materials, in any format, produced in whole or in part pursuant to this Agreement.
 - 3. **Use.** The County and the City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared by or for the CACVB pursuant to this Agreement.
- B. **Amendments.** This Agreement may be amended in writing as mutually agreed by the County and the City.
- C. **Assignment.** The CACVB shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement, whether by assignment or novation, without the prior written consent of the County and the City.
- D. **Severability.** If any part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that determination shall not affect the validity or enforceability of any other part of this Agreement.

- E. **Entire Agreement.** This Agreement contains the entire agreement of the County and the City and supersedes any and all other prior or contemporaneous agreements or understandings, whether verbal or written, with respect to the matters that are the subject of this Agreement.
- F. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia.
- G. **Approval Required.** This Agreement shall not become effective or binding upon the County and the City until it is approved by ordinances of the Charlottesville City Council and the Albemarle County Board of Supervisors.

IN WITNESS WHEREOF, and as authorized by duly adopted ordinances of the Albemarle County Board of Supervisors and the Charlottesville City Council, the County and the City each hereby execute this Agreement as of the date first above written, by and through their respective authorized agents or officials:

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____
City Manager

Approved as to Form: _____
City Attorney

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
County Executive

Approved as to Form: _____
County Attorney