

**~~FIRST~~ SECOND AMENDED AGREEMENT TO OPERATE
A JOINT CONVENTION AND VISITORS' BUREAU**

THIS AGREEMENT is entered into this ____ day of ~~January~~ October, 2019, 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 is enabled by Virginia Code § 58.1-3819 to expend Transient Occupancy Taxes collected by it (amounts in excess of two percent of the total five percent authorized to be collected) solely for tourism and travel, marketing of tourism or initiatives that, as determined after consultation with tourism industry organizations, including representatives of lodging properties located in Albemarle County, attract travelers to the County, increase occupancy at lodging properties, and generate tourism revenues within the County; and
- R-3** 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-4** 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, including marketing of tourism, as well as marketing of initiatives that: attract travelers to the City and County, increase lodging at properties located within the City and County, and generate tourism revenues within the City and County.

3. Organization of the CACVB.

The CACVB shall be organized to have an Executive 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 fifteen voting members ~~and one non-voting member:~~
 - a. Two members of the County Board of Supervisors.
 - b. Two members of the Charlottesville City Council.
 - c. The County Executive or his designee.

- d. The Charlottesville City Manager or his designee.
 - e. The County Director of Economic Development or his designee.
 - f. The City Director of Economic Development or his designee.
 - g. The Executive Vice President of the University of Virginia or his designee.
 - h. One tourism industry organization representative appointed by the County Board of Supervisors as provided in Section 3(A)(2)(b).
 - i. One tourism industry organization representative appointed by the Charlottesville City Council as provided in Section 3(A)(2)(b).
 - j. One representative of the arts community jointly appointed by designated members of the County Board of Supervisors and the Charlottesville City Council as provided in Section 3(A)(2)(c).
 - k. One representative of the recreation community jointly appointed by designated members of the County Board of Supervisors and the Charlottesville City Council as provided in Section 3(A)(2)(c).
 - l. ~~One representative of the Chamber of Commerce jointly appointed by designated members of the County Board of Supervisors and the Charlottesville City Council as provided in Section 3(A)(2)(e).~~ The President or Chief Executive Officer of the Charlottesville Regional Chamber of Commerce or designee.
 - m. The President or Chief Executive Officer of the Thomas Jefferson Foundation or his designee.
 - ~~n. The Executive Director of the CACVB (non-voting member).~~
2. **Appointments to the Executive Board.** Appointments to the Executive Board shall be made as follows:
- a. **Appointment of Members of the County Board of Supervisors and the Charlottesville City Council; Alternates.** The members of the County Board of Supervisors and the Charlottesville City Council who serve on the Executive Board shall be appointed by their respective governing bodies for terms determined by the respective governing bodies. The County Board of Supervisors and the Charlottesville City Council may appoint alternates to attend any meeting(s) that the regular appointees cannot attend. An alternate attending a meeting in place of the regular member may vote on behalf of the Board or Council at any such meeting.
 - b. **Appointment of Representatives of Tourism Industry Organizations; Term.** The tourism industry representatives identified in Sections 3(A)(1)(h) and (i) shall be appointed by a majority vote of the members of the County Board of Supervisors or the Charlottesville City Council, respectively, present and voting. Each appointment shall be for a two-year term; no person serving under this appointment may be appointed to more than four consecutive two-year terms, exclusive of time served in the unexpired term of another.
 - c. **Appointment of Representatives of the Arts and Recreation Communities and the Chamber of Commerce; Term.** The arts and recreation community representatives ~~and the Chamber of Commerce representative~~ identified in Sections 3(A)(1)(j) ~~and~~ (k), ~~and (l)~~ shall be made by a majority of the four members of the County Board of Supervisors and the Charlottesville City Council appointed to the Executive Board. Each appointment shall be for a two-year term; no person serving under this appointment may be appointed to more than four consecutive two-year terms, exclusive of time served in the unexpired term of another.

3. **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 regular 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.*). Eight voting members of the Executive Board physically present at the meeting 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. **Contracts.** Acting through its Executive Director, arrange or contract for (in the name of the CACVB) the furnishing by any person or company, public or private, of goods, services, privileges, works or facilities for and in connection with the scope of Section 2 of this Agreement and the administrative operations of the CACVB and its offices. The contracts may include any contracts for consulting services related to tourism marketing and to promoting the County, the City, and the region.
 - h. **Appoint the Executive Director; Performance; Termination.** Appoint the Executive Director, who shall serve at the pleasure of the Executive Board, and evaluate the Executive Director's performance each year. If the CACVB does not have an Executive Director or an interim Executive Director on July 1, 2018, until the Executive Board appoints an interim or permanent Executive Director, the County shall provide an employee currently on its payroll to serve as an interim Executive Director for the CACVB, commencing July 1, 2018 and continuing only until such time as the newly constituted Executive Board has appointed an interim or permanent Executive Director.
 - i. **Offices.** Provide regular staffed visitor services at one location within the City of Charlottesville and one location within the County of Albemarle. Additional locations may be approved by the Executive Board. The Executive Board shall approve the location and terms and conditions for purchasing or leasing any CACVB office(s), and may, by recorded vote or resolution, authorize the Executive Director to execute any required instrument pertaining thereto.
 - j. **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.
4. **Attendance.** Members of the Executive Board or their designees are expected to attend all regular meetings of the Executive Board. The Executive Board may request the County Board of Supervisors or the Charlottesville City Council, as the case may be, to replace any Executive Board Member appointed by that body, or the designated members thereof, to replace any Member who is absent, or whose designee is absent, from more than three regular meetings during a calendar year.

B. **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 within the scope of Section 2 of this Agreement, 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**, incorporated by reference herein.
 - 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 may 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 an annual budget to the Executive Board.
3. **Contracting.** Execute contracts on behalf of the CACVB; perform the duties of purchasing officer on behalf of the Executive Committee, subject to compliance with Albemarle County procurement ordinances and procedures. The Executive Director shall procure all goods and services in compliance with the County's procurement laws and procedures, or may delegate procurement responsibilities to the County's purchasing agent. As an exception to the County's procurement laws and procedures, the Executive Director or the County's purchasing agent, if delegated procurement responsibilities under this section, may contract for or purchase alcoholic beverages for tourism-related promotional and appreciation events and familiarization tours with the advance written approval of (i) the Executive Board or (ii) the County Executive or (iii) the County Director of Finance/Chief Financial Officer.
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 annual 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 be employed 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 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 Party that is not the Fiscal Agent to the Party 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 shall be presented to the Executive Board, and the recommended budget shall use the Actuals provided by the County and the City and referenced in Subsection 4(B), and any other revenue sources. Following receipt of a recommended budget from the Executive Director, the Executive Board shall take action to approve an annual budget, no later than May 1 each calendar year.
- 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. Records shall be maintained in accordance with Virginia law. Upon request by either the County or the City, the Executive Director shall allow City or County officials to inspect the documentation and records pertaining in whole or in part to this Agreement, or the Executive Director may, if acceptable to the requesting party, provide reports summarizing information within CACVB’s records.
- 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 their respective Transient Occupancy Tax revenues may be spent, as may be governed by state enabling legislation, the City’s charter, and local ordinances.
- 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 as of October 2, 2019, 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. **Fiscal Agent Designation; Services.**

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

- A. **Fiscal Agent.** The ~~City will continue to serve as Fiscal Agent for the CACVB through December 31, 2018. Effective January 1, 2019, the~~ County shall serve as Fiscal Agent for the CACVB. 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. This fee may be deducted from the Fiscal Agent's funding contribution pursuant to Section 4 each year.
- B. **Insurance.** The County will provide liability insurance coverage to the CACVB.
- C. **Legal Services.** The ~~City Attorney will continue to provide legal services to the CACVB through December 31, 2018. Commencing on January 1, 2019, the~~ County Attorney 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. In the event any such conflict arises, the County Attorney shall so advise the Executive Board, so that the Executive Board may make necessary arrangements to obtain legal services. ~~If the County Attorney anticipates any such conflict(s), he shall advise the Executive Board prior to January 1, 2019.~~
- D. **Other Services.** The County shall act as the CACVB's accounting and disbursing office; provide personnel administration services; maintain personnel and payroll records; provide information technology services; provide procurement services and maintain purchasing accounts and monthly statements; and contract for annual audits. Personnel administration shall include the matters referenced in paragraph E, following below.
- E. **Personnel Administration.** The employment of the Executive Director and any other persons hired to perform services for the CACVB are subject to the following:

1. **County Employees.** Any Executive Director or other person hired on or after July 1, 2018 to perform services for the CACVB shall be hired as an employee within the County's personnel and payroll systems.
 - a. **Transition of Employees Hired Prior to July 1, 2018.** Effective January 1, 2019, or as soon thereafter as the County and the City have created and funded an Employee Transition Plan, any person who was hired prior to July 1, 2018 to perform services for the CACVB shall be transitioned to become an employee of the County and shall be classified within the County's pay system and shall be paid in accordance with the County's payroll system and policies and its personnel policies. Until January 1, 2019, all such employees shall remain within the City's personnel/payroll system.
 - b. **Pay and Benefits for Transitioning Employees.** Within their Employee Transition Plan, the City and the County shall provide benefits and funding, as necessary to assure, to the fullest extent practicable, that no employee will lose pay or retirement benefits as a result of making the transition from City to County employment. With respect to retirement benefits, it is the intention of the Parties to keep each person transitioning from City to County employment whole, and to ensure that they neither lose retirement credit for time employed nor monetary contributions made to the City's retirement plan.
2. **Duty Owed to Both the County and the City.** The Executive Director and any other persons hired to perform services for the CACVB owe a duty of good faith and trust to the CACVB itself as well as to both the County and the City as the localities which provide public funding for the CACVB.

~~F. **Sooner Transfer of Fiscal Agency.** Notwithstanding the January 1, 2019 date for fiscal agency to transfer from the City to the County as provided in this section, fiscal agency may transfer sooner if the County and the City have created and funded the Employee Transition Plan as provided in subsections 8(F)(1)(a) and (b) and the County and the City are otherwise prepared for fiscal agency to transfer.~~

9. **Disposition 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.

10. **Liability.**

Any liability for damages to third parties arising out of or in connection with the operations and activities of the CACVB and any persons employed to provide services for 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 liability 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.

11. **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 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