



MEMORANDUM OF AGREEMENT
between
COUNTY OF ALBEMARLE, VIRGINIA
and
ALBEMARLE COUNTY FIRE RESCUE FOUNDATION

This Memorandum of Agreement (“MOA”) is made by and between the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia (“County”), and Albemarle County Fire Rescue Foundation, a not-for-profit Virginia nonstock corporation (“Foundation”).

WHEREAS, the County, through its Albemarle County Fire Rescue Department (“ACFR”), owns, operates, and maintains real estate, buildings, equipment, emergency response apparatus, and a variety of related property and operates a variety of operations, programs, trainings, and services independently and in support of the Albemarle County Coordinated Fire and Rescue System (“System”) and in mutual aid with other localities; and

WHEREAS, one of the County’s goals is to enhance the well-being and quality of life for all community members through the provision of the of the highest level of public service consistent with the prudent use of public funds; and

WHEREAS, ACFR’s vision is to provide superior firefighting, emergency medical, and emergency management services, as well as related public safety services; and

WHEREAS, the Foundation was founded and incorporated on January 7, 2025, for the purposes of: providing resources, assistance, and recognition of the Albemarle County Fire Rescue Department and its members; and

WHEREAS, the Foundation operates as a legal entity separate from the County and is governed independently by a Board of Directors, the members of which are not employed by the County; and

WHEREAS, the County and the Foundation wish to cooperate to sustain and strengthen the successful operation, maintenance, and management of the provision of public safety response for firefighting, emergency medical services, emergency management efforts, and other programs for the health and safety of the County’s residents and visitors by memorializing the Foundation’s and the County’s respective responsibilities.

NOW, THEREFORE, in consideration of the above and the mutual efforts of the County and Foundation, they agree as follows:

1. Operating Procedures.

a. In its efforts to obtain donations, the Foundation shall communicate the following information to prospective donors:

i. the Foundation is a separate legal entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit, support, and enhancement of ACFR’s existing, future, and planned activities, facilities, equipment, and properties;

- c.** When a donation is made for a particular purpose or with conditions or restrictions, the Foundation shall be responsible for reporting to the donor how the donation was used.
- d.** In its efforts to provide financial support and in-kind contributions and services to the County on behalf of ACFR, the Foundation agrees to:

 - i.** allow the County to use the Foundation's name and logo in materials intended to promote the cooperation between the County and the Foundation, to assist the Foundation in soliciting donations of any kind, and to promote Foundation programs, activities, events, and projects;
 - ii.** register and maintain registration with the U.S. Internal Revenue Service as a charitable, non-profit organization and meet all state and local charitable solicitation requirements, including registration with the Virginia Department of Agricultural and Consumer Services;
 - iii.** obtain all necessary permits, licenses, special insurance, equipment, and inspections for Foundation programs, activities, events, and projects, and pay all expenses incidental to the planning and conduct of such programs, activities, events, and projects;
 - iv.** plan, coordinate, and work with the County on specific programs, projects, and funding opportunities, which the parties contemplate may require additional agreements from time-to-time, both between the County and the Foundation, and among the County, the Foundation and third parties;
 - v.** be solely responsible for recruiting, enrolling, instructing, and managing its members, volunteers, and contractors;

- coordination with the County without having to pay the County's special event permit application fees or County site/room reservation fees; and
- vi. obtain the approval of the County Board of Supervisors of any grant or donation, including an in-kind donation of goods or services, in an amount equal to or greater than \$500,000.00 (the County Executive being expressly authorized, in the exercise of the County Executive's discretion, to accept any grant or donation less than \$500,000.00).

2. Record Keeping.

- a. All Foundation correspondence, financial records, donor and prospective donor information, and records of every kind belong exclusively to and under the control of the Foundation. The Foundation must maintain such information and records separate and apart from all County records.
- b. The Foundation shall maintain publicly available, updated, and current copies of its articles of incorporation, bylaws, and amendments to such governing documents. The Foundation shall provide to the County a photocopy of its IRS Form 990 (Return of Organization Exempt from Income Tax) without any accompanying documentation disclosing the names of any specific Foundation donors.
- c. The Foundation shall prepare and reconcile on an annual basis a Treasurer's Report, which it will share with the County. Additionally, the Foundation will provide annually to the County a financial report prepared in accordance with *Statements of Financial Accounting Standards 117* (Financial Statements for Not-for-Profit Organizations). This financial report must be provided to the

County on or before June 30 of each year, but it shall not contain any information disclosing the names of any specific Foundation donors.

- d. Nothing in this MOA shall be construed to preclude the County from disclosing any records as and to the extent required by the Virginia Freedom of Information Act.

3. No Agency, Partnership, or Employment Relationship.

This MOA does not create a partnership between the Foundation and the County and creates no rights or duties arising from a partnership. Neither does this MOA create an agency relationship between the Foundation and the County. No rights of or entitlement to employment between the parties and their respective officers, directors, employees, agents, members, or volunteers arise by virtue of this MOA.

4. Insurance, Indemnification, and Hold Harmless.

- a. Prior to the commencement of any project or the conduct of any special event on County property, the Foundation shall provide to the County a certificate of insurance evidencing maintenance by the Foundation of (i) commercial general liability insurance, in an amount not less than \$1,000,000.00, covering all of the Foundation's operations relating to the performance (A) by the Foundation and its officers, directors, employees, agents, members, and volunteers of work under this MOA on County property, and (B) by the Foundation of its other obligations under this MOA, and (ii) directors and officers liability insurance, in an amount acceptable to the County. The County and its officers, employees, and agents shall be named as additional insureds. The certificate of insurance must provide, in a substantially similar form, that the insurance covered by the certificate shall not be canceled or materially altered except after thirty (30)

days written notice provided to and received by the County. Such insurance coverage shall be primary and noncontributory. The Foundation defends, indemnifies, and holds harmless the County and its officers, employees, and agents from claims, suits, liability, damage, and expenses of any kind that might arise from the Foundation's or its officers', directors', employees', agents', members', or volunteers' negligence, recklessness, or intentional misconduct or the Foundation's failure to perform its obligations under this MOA. The provisions of this section shall survive termination of this MOA as to acts or omissions occurring prior to the effective date of termination. Nothing in this MOA shall be construed to waive or limit the County's sovereign immunity or to waive or limit any immunity the Foundation may enjoy under Virginia law as a charitable non-profit organization or by virtue of its work on County property. By signing this MOA, the Foundation certifies that, as of the date of this MOA, it has no employees and is not subject to Workers' Compensation Insurance requirements under Title 65.2 of the Code of Virginia, 1950, as amended. If at any time hereafter the Foundation becomes subject to such Workers' Compensation Insurance requirements, then it must certify in writing its compliance with such requirements and provide to the County written verification of Workers' Compensation Insurance coverage.

- b.** If the Foundation organizes and provides services to the County under this MOA, the Foundation shall require all of its officers, directors, employees, agents, members and volunteers who provide such services under this MOA to sign an Assumption of Risk, Release of Liability, and Indemnification Agreement (each a "Release Form" and collectively, the "Release Forms")

before providing such services. The Foundation must maintain all original Release Forms for at least three (3) years after the conclusion of a project covered by such Release Form and provide to the County a true copy or copies upon request. Parents, guardians, or legal custodians of members and volunteers under the age of eighteen (18) years must sign Release Forms on their own behalf and on behalf of the minor member or volunteer participating hereunder.

5. Term.

This MOA becomes effective upon execution by all parties. The initial term of this MOA shall expire on December 31, 2029. It may be renewed for subsequent five-year terms upon the written consent of both parties.

6. Termination.

Either party may terminate this MOA in whole or in part at will by delivering to the other party written notice of termination at least ninety (90) days prior to the effective date of any such termination.

7. Dispute Resolution.

If a dispute as to any provision of this MOA arises or if either party materially breaches or fails to perform its obligations under this MOA, the other party may give written notice of the dispute or material breach. The parties will meet to resolve the dispute or material breach within thirty (30) days of receipt of the notice. If the parties fail to resolve the dispute within sixty (60) days of such notice or a longer time upon which the parties might agree, the parties will enlist the services of a mediator to resolve the dispute.

8. Notice.

Any notice or notices required or permitted to be given under this MOA shall be given by certified mail, postage prepaid, to the following at the noted addresses. Any notice or notices provided shall also be delivered in a pdf format by email.

To the County: Albemarle County Fire Rescue
460 Stagecoach Rd.
Charlottesville, Virginia 22902
Attention: Chief Dan Eggleston
Email: deggleston@albemarle.org

with a copy to: County of Albemarle
401 McIntire Road
Suite 228
Charlottesville, Virginia 22902
Attention: County Executive
Email: jrichardson3@albemarle.org

To the Foundation: Albemarle County Fire Rescue Foundation
323 2nd Street SE, Suite 900
Charlottesville, Virginia 22902
Attention: Valerie W. Long, Registered Agent
Email: vlong@williamsmullen.com

9. Mechanic's Liens.

During the term of this MOA, the Foundation will promptly remove or release any mechanic's or materialman's lien attached to or on any County property or any portion by reason of any act or omission of the Foundation, its contractors or its agents in connection with any activity performed by the Foundation. The Foundation will hold harmless the County and its officers, employees, agents, and volunteers from any such lien or claim of lien. This provision shall survive termination, cancellation, or expiration of this MOA.

10. No Funding Obligations.

This MOA creates no fiscal or funding obligation on either party. Nothing in this MOA shall be construed to require either party, the Albemarle County Board of Supervisors, the Board of Directors of the Foundation, or any affiliate, agency, or department of the parties or respective boards to obligate or expend funds.

11. Ownership of Improvements.

Unless the parties otherwise agree in writing, all improvements made under this MOA belong to and are owned by the County. The parties intend all immunities provided for under Virginia common law and the Virginia Code, as amended, from liability for damages arising from the installation, maintenance, and operation of any improvement permitted herein, shall apply fully and without limitation.

12. Modification, Amendment, and Waiver.

There may be no modification to this MOA except in a writing executed by the authorized representatives of the Foundation and the County.

13. Severability.

Any provision of this MOA which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the MOA's remaining provisions.

14. Governing Law and Venue.

This MOA and all matters related hereto shall be governed exclusively by the laws of the Commonwealth of Virginia and all questions arising with respect to the validity, interpretation, obligations, or performance under and pursuant to this MOA shall be determined in accordance with such laws. The Foundation shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted in

the performance of its obligations set forth in this MOA. Any and all suits for any claim or for any and every breach of duty arising out of this MOA shall be maintained in the appropriate court of competent jurisdiction in the County of Albemarle, Virginia.

15. Entire Agreement.

This writing constitutes the entire agreement of the parties.

16. Participation in Similar Activities.

This MOA is non-exclusive in that it does not restrict either party from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Agreement to be executed by their duly authorized representatives as of the latest date noted below.

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey B. Richardson
County Executive

Date

Approved as to form:

County Attorney

ALBEMARLE COUNTY FIRE RESCUE FOUNDATION

By: Valerie W. Long
Valerie W. Long
Director

February 17, 2025
Date