

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
ALBEMARLE, VIRGINIA AND THE ECONOMIC DEVELOPMENT AUTHORITY OF
ALBEMARLE COUNTY, VIRGINIA**

THIS MEMORANDUM OF UNDERSTANDING is entered into this ____ day of September, 2013, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the “County,” and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the “EDA.”

WITNESS:

WHEREAS, the EDA desires to acquire fiscal services beginning September 1, 2013; and

WHEREAS, the County is willing to provide those fiscal services.

NOW THEREFORE, in consideration of the mutual premises stated in this Agreement, the Owner and the County agree as follows:

1. **Term.** The term of this Memorandum of Understanding (hereinafter, the “MOU”) shall be for an initial period beginning on September 1, 2013 and ending on June 30, 2014, and shall automatically renew for an additional one (1) year term on the July 1 each year thereafter. Either the County or the EDA may terminate this MOU at any time for any reason whatsoever by giving at least thirty (30) days’ written notice to the other party of its intent to terminate. If the EDA terminates this MOU, the EDA’s obligation to pay the fee for fiscal services provided by the County under Section 3 and the EDA’s obligation to reimburse the County for its costs for having the EDA’s fiscal activity audited under Section 7 shall continue for the entire fiscal year in which the MOU is terminated.

2. **Fiscal services provided by the County.** As fiscal agent for the EDA, the County will receive, account, segregate, maintain and disburse all: (a) revenues of the EDA, including but not limited to any or all fees, including administrative fees described in Section 4.3 of the EDA’s Rules and Procedures, rates, rentals and receipts collected by, payable to or otherwise derived by the EDA from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the EDA in connection with the ownership, leasing or sale of EDA facilities or in connection with any loans made by the EDA; and (b) all other money, grants, contributions and other financial assistance received from a federal, state or local public entity or agency (hereinafter, the revenues referred to in subsection (a) and the types of financial assistance delineated in subsection (b) are collectively referred to as the “EDA Funds”).

3. **Fee for fiscal services provided by the County.** The EDA shall pay the County a fee for the fiscal services provided by the County. The fee shall be one percent (1%) of the EDA Funds received

each fiscal year; provided that any money, grants, contributions and other financial assistance received by the EDA under Section 2(b) shall be subject to the fee for fiscal services only if both the EDA and the County authorize them to be subject to the fee, and further provided that any money received by the EDA from the County where the EDA and the County have entered into a “pass through” agreement shall not be subject to the fee for fiscal services. The fee shall be deducted annually from the EDA Funds account.

4. Interest on EDA Funds in the County’s EDA Funds account. The EDA Funds being held in the County’s EDA Funds account shall accrue interest based on the County’s monthly interest allocation procedure.

5. Appropriation of EDA Funds. Any EDA Funds received by the County shall be subject to appropriation by the Albemarle County Board of Supervisors to the EDA.

6. Disbursement of EDA Funds. As provided in Section 4.3(c) of the EDA’s Rules and Procedures, EDA Funds will be disbursed to the EDA for expenditure upon request by the EDA for economic development initiatives that support Albemarle County. No funds shall be disbursed for any economic development initiative unless there is an agreement between the EDA and the Albemarle County Board of Supervisors for the initiative for which disbursement is requested.

7. Audit of EDA financial activity; reimbursement for audit. All EDA financial activity will be included in the County’s annual audit, beginning with the annual audit for the fiscal year ending June 30, 2013 and for which the County’s costs will be incurred in the following fiscal year. The EDA shall reimburse the County for its costs for having the EDA’s fiscal activity audited as part of the County’s annual audit provided that the amount of the reimbursement shall not exceed one thousand five hundred dollars (\$1,500.00).

8. Miscellaneous. This MOU is subject to the following:

A. Amendment of this MOU. This MOU may be amended, in writing, upon the mutual agreement of the parties.

B. Notice. Any written notice required by this MOU shall be provided to the following officers at the following addresses:

EDA

Chairman
Economic Development Authority
of Albemarle County
Fourth Floor
401 McIntire Road
Charlottesville, VA 22902

County

County Executive
County of Albemarle
401 McIntire Road
Charlottesville, VA 22902

C. Litigation. To the extent that this MOU is determined to be a contract subject to the requirements of the second clause of Virginia Code § 15.2-4905(3), attorney's fees shall not be recoverable by the prevailing party if this MOU is subject to litigation.

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF ALBEMARLE,
VIRGINIA**

Thomas C. Foley, County Executive

Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE COUNTY OF
ALBEMARLE, VIRGINIA**

John C. Lowry, Chairman

Date: _____

Approved as to Form:

County Attorney

Date