

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE AUGUSTA-RICHMOND COUNTY COMMISSION
(HEREINAFTER “THE COMMISSION”)**

AND

**THE AUGUSTA CONVENTION AND VISITORS BUREAU, INC.
(HEREINAFTER “THE ACVB”)**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into effective the ____ day of _____, 2024, by and between AUGUSTA, GEORGIA, a political subdivision of the State of Georgia (“Augusta”) and the AUGUSTA CONVENTION AND VISITORS BUREAU, INC., A Georgia non-profit corporation (“ACVB”), each a “Party” and collectively, the “Parties”.

WHEREAS, Augusta desires to help support and grow festivals and events that will contribute to the community’s vibrancy, showcase local talent and artists, invigorate community spirit, promote tourism, and contribute substantial economic and social benefits to the community;

WHEREAS, Augusta encourages events that educate and expose the public to a diverse and rich range of cultural expressions;

WHEREAS, the ACVB is the official destination marketing and management organization for Augusta, tasked with attracting leisure and meeting visitors and fostering visitor product development to enhance the economic growth of the region and experiences that are attractive to visitors and residents;

WHEREAS, Augusta approved \$50,000.00 in funding to be granted for the support of festivals and events; and

WHEREAS, Augusta and the ACVB desire to enter into this Memorandum of Understanding in which the Parties will work together.

NOW, THEREFORE, for and in consideration of the mutual promises and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Purpose. The purpose of this Memorandum is to provide the framework for the understanding and cooperation between the Parties to plan, develop, and establish the framework for festivals and events organizers to apply for funding support.

II. Obligations of the Parties. The Parties acknowledge that this is a joint project, and both agree to work closely together to ensure united, visible, and responsive leadership for the framework and implementation of a process to fund applicants.

a. Obligations of Augusta. Augusta shall transfer to ACVB those certain funds constituting Fifty Thousand and No/100 Dollars (\$50,000.00) within 15 days of the execution of this MOU for the purpose of providing funding support to festival and event organizers.

b. Obligations of ACVB.

i. Festivals and Events Funding. As Augusta's agent, ACVB shall develop and manage the process of selecting for funding qualified recipients who are organizers or representatives of festivals and events hosted in Augusta, Richmond County.

ii. Fiscal Responsibility. ACVB shall maintain all funds paid by Augusta under this MOU in an interest-bearing account separate and apart from any other accounts maintained by ACVB. All funds maintained in the account, including interest earned on the funds, will be strictly applied against costs associated with this program. A report accounting for all funds dispersed shall be provided to Augusta, Richmond County semi-annually. Any administrative or management fees should not exceed 5% of funds received. If all funds are not depleted by the end of the fiscal year, funds shall be returned to Augusta, Richmond County.

III. Term.

a. Initial Term. The initial term of this MOU shall commence immediately upon execution of this MOU, and subject to the provisions of Section IV, hereinbelow, terminate absolutely and without further obligation on the part of Augusta on December 31, 2024 (the "Initial Term"), unless otherwise renewed as hereinafter provided.

b. Option to Renew. Subject to the provisions of Section IV, upon the expiration of the Initial Term, this MOU shall be automatically renewed for up to three (3) additional 1-year terms (each an "Additional Term"), with each such renewal based on the same terms and conditions as the Initial Term, unless positive action is taken by Augusta to terminate this MOU pursuant to the provisions of Section IV(d), hereinbelow.

c. Aggregate Term. The aggregate term of this MOU includes the Initial Term and any Additional Term (the "Term"). The aggregate term of this MOU shall terminate each and every December 31st, unless terminated earlier in accordance with the provisions of Section IV.

IV. Suspension and/or Termination.

a. Suspension. To the extent that it does not alter the scope of this MOU, Augusta may unilaterally order a temporary halt of the performance by ACVB under this MOU upon written notice.

b. Budgetary Termination. Augusta may unilaterally terminate this MOU, without notice, if, upon the passing of any particular financial year's budget by Augusta, no funds have been specifically allocated to the Festivals and Events Funding program.

c. Termination without Cause. Notwithstanding paragraph (a) or (b) of this Section, either party may terminate this MOU at any time without cause by giving at least sixty (60) days prior written notice to the other party.

d. Cancellation of Renewal. Either party may elect to cause the contract to be terminated on the last day of its effective date of that particular year with notice to the other party of non-renewal. This non-renewal notice shall require at least ten (10) days' written notice to the other party.

V. Miscellaneous.

a. Governing Law/Venue. The laws of the State of Georgia shall govern this MOU with regard to its interpretation and performance, and any other claims related to this MOU. All claims, disputes and other matters in question between Augusta and ACVB arising out of or relating to the MOU, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. ACVB, by executing this MOU, specifically consents to jurisdiction and venue in Richmond County and waives any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia.

b. Legislative Authorization. ACVB acknowledges that this MOU and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Augusta-Richmond County Commission and approval of the Mayor. Under Georgia law, ACVB is deemed to possess knowledge concerning Augusta's ability to assume contractual obligations and the consequences of ACVB's provision of goods or services to Augusta under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that ACVB may be precluded from recovering payment for such unauthorized goods or services. Accordingly, ACVB agrees that if it provides goods or services to Augusta under a contract that has not received proper legislative authorization or if ACVB provides goods or services to Augusta more than any contractually authorized goods or services, as required by Augusta's Charter and Code, Augusta may withhold payment for any unauthorized goods or services provided by ACVB. ACVB assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, however characterized, including, without limitation, all remedies at law or equity.

c. Georgia Prompt Pay Act. The terms of this MOU supersede all provisions of the Georgia Prompt Pay Act.

d. Entire Agreement. This MOU shall supersede all previously executed agreements between the parties. This MOU constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this MOU. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this MOU are expressly merged into and superseded by this MOU. The provisions of this MOU cannot be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this MOU, neither party has relied upon any

statement, representation, warranty or agreement of any other party except for those expressly contained in this MOU. There are no conditions precedent to the effectiveness of this MOU, other than any that are expressly stated in this MOU.

e. Waiver. If the terms and conditions of this MOU are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this MOU, nor will such non-enforcement prevent such party from enforcing every term of this MOU thereafter.

f. Notice. Any notice, request, demand, statement or consent required or permitted by this MOU shall be deemed to have been completed if in writing and mailed by first-class, registered, or certified mail, postage prepaid to the other party at the respective address given hereinbelow.

To ACVB:

Augusts Convention and
Visitors Bureau, Inc.
Bennish Brown, President/CEO
P.O. Box 1331
Augusta, Georgia 30903

To Augusta:

Office of Mayor
Attn: Garnett L. Johnson
535 Telfair St. Suite 200
Augusta, GA 30901

Office of the Administrator
535 Telfair Street Suite 910
Augusta, GA 30901

g. Severability. If any term or provision of this MOU is held invalid or unenforceable, the remainder of this MOU will be considered valid and enforceable to the fullest extent permitted by law.

h. No Third Party Beneficiaries. This relationship is intended solely for the mutual benefit of the parties hereto, and there is no intention, express or otherwise, to create any rights or interests for any party or person other than ACVB and Augusta; without limiting the generality of the foregoing, no rights are intended to be created for any student, parent or guardian of any student, spouse, next of kin, employer, prospective employer, or any other third party.

i. Independent Contractor. ACVB is not a political subdivision, agency or instrumentality of Augusta or the State of Georgia, and the relationship of ACVB to Augusta is that of independent contractor for all Services performed pursuant to this MOU. ACVB shall have exclusive control of its operations hereunder, and the persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Neither ACVB nor its employees are considered to be employees of Augusta for any purpose, nor shall ACVB or its employees be entitled to any benefits from Augusta. ACVB shall be solely responsible for all matters relating to the payment of its employees, compliance with withholding taxes, and all other regulations governing such matters. Nothing in this MOU shall be interpreted as a waiver of Augusta, Georgia's sovereign immunity.

j. No Assignment. Except as otherwise provided in this MOU, ACVB may not transfer, sell, or otherwise contract with any other person or organization its obligations or responsibilities in this MOU without prior approval of Augusta.

k. Force Majeure. "Force Majeure Event" means any act or event that: (i) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this MOU, (ii) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (iii) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party can resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this MOU. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event. A Force Majeure Event includes, but is not limited to: epidemics, pandemics, declared national, state, local states of emergency, hurricanes, tornadoes, floods, severe and unexpected acts of nature, war, governmental shutdowns, or the availability of funds in the budget of Augusta.

l. Interpretation. Whenever the singular number is used in this MOU and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. Days, unless otherwise specified, shall be calendar days.

m. Amendment. This MOU may be altered, amended, changed, or modified as mutually agreed upon by and between Augusta and the ACVB, and such alterations, amendments, changes, or modifications shall be incorporated into written amendments to this MOU.

n. Public Access - Open Meetings. ACVB shall provide reasonable public access to all the ACVB board and committee meetings, according to the Georgia Open Meetings Law, and shall issue notices of meetings required by said Open Meetings Law.

o. Public Access - Open Records. ACVB recognizes its obligations to continue to maintain open and public records as required by the Georgia Open Records Act and subject to any exception enumerated therein.

<Signatures Next Page>

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

ACVB

Augusta, Georgia

By: _____

By: _____

Name: Bennish D. Brown

Name: Garnett L. Johnson

Title: President/CEO

Title: Mayor

Date: _____

Date: _____

Attest: _____

Name: Lena Bonner

Title: Clerk of Commission