

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**INTERLOCAL AGREEMENT FOR
CHARLOTTE CONVENTION CENTER RENOVATIONS PROJECT**

This Interlocal Agreement for Charlotte Convention Center Renovations Project (the “Agreement”) is entered into and agreed upon as of the _____ day of _____, 2017 (the “Effective Date”), by and between the CITY OF CHARLOTTE, a North Carolina municipal corporation (the “City”), and the CHARLOTTE REGIONAL VISITORS AUTHORITY (formerly “The Auditorium-Coliseum-Convention Center Authority”), a “special district” as defined in N.C.G.S. §159-7, for purposes of the Local Government Budget and Fiscal Control Act (the “CRVA”).

WITNESSETH:

WHEREAS, pursuant to Section 5.21 of the Charlotte City Code, the CRVA is charged with engaging in activities and programs aiding and encouraging convention and visitor promotion, including sales and marketing activities for the Charlotte region as a travel and tourism destination; and

WHEREAS, the CRVA is responsible for managing several City-owned assets including the Charlotte Convention Center (the “Convention Center”); and

WHEREAS, in accordance with the CRVA’s strategic plan and the organization’s charter, the CRVA has been examining long-term needs and recommendations for the Convention Center and surrounding area; and

WHEREAS, the City and CRVA have selected TVS North Carolina, P.C. using a qualifications-based selection process approved by City Council for the schematic design for proposed improvements to the Convention Center; and

WHEREAS, the City and CRVA have selected Holder-Edison Foard-Leeper using a qualifications-based selection process approved by Council to perform construction management services, construction planning, construction contracting processes, and construction plan review; and

WHEREAS, the City and CRVA have agreed that the CRVA may contract with multiple firms including TVS North Carolina, P.C. for the design development phase, Holder-Edison Foard-Leeper for pre-construction services, a geotechnical consultant, and a building commissioning firm (collectively, the “CRVA Contracts”); and

WHEREAS, the City has agreed to reimburse CRVA for certain costs incurred by CRVA in this initial design development and pre-construction phase in connection with the CRVA Contracts necessary for the construction of further Convention Center real property improvements to be funded from prospective proceeds of one or more installment financings under N.C. Gen. Stat. § 160A-20 in the amount of \$110,000,000.00 in fiscal year 2019; and

WHEREAS, the parties now desire to enter into this Agreement, all in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the fulfillment of the terms of this Agreement, the CRVA and the City agree as follows:

1. Purpose

The purpose of this Agreement is to specify the details of the parties' joint undertaking to contract for real property, design, and construction activity, including design development services, pre-construction services, a geotechnical consultant, and a commissioning firm, in furtherance of prospective improvements on the Convention Center.

2. Reserved

3. Responsibilities of the Parties

a. CRVA Responsibilities.

- i. CRVA may contract with multiple firms to advance the parties' joint goal to develop recommendations for the Convention Center. Vendors with whom the CRVA shall contract (collectively, the "CRVA Contracts") shall include the following:
 - TVS North Carolina, P.C. (for the design development phase);
 - Holder-Edison Foard-Leeper (for pre-construction services, a geotechnical consultant, and a commissioning firm), and
 - Other firms needed in connection with construction planning for the Convention Center improvements, provided that such firms are approved in writing by the City.
- ii. The CRVA shall give the City a reasonable opportunity to review and comment on each CRVA Contract, and shall not enter into a CRVA Contract until the City Engineering and Property Management Department has approved it in writing. The CRVA acknowledges that the City has provided sample contract terms.
- iii. CRVA shall, upon payment by the City, provide to the City access to and joint-ownership of all deliverables, and all other reports, information, designs, plans and other work product and items developed pursuant to any of the CRVA Contracts, and all schematic, partial, intermediate or preliminary versions of any of the foregoing. At such time, the CRVA will further execute such assignments of its rights under the CRVA Contracts as the City reasonably deems necessary to enable the City to successfully complete the Convention Center Renovations Project.
- iv. The CRVA shall provide the City with access to such staff resources as are reasonably required for the performance of the CRVA Contracts.
- v. The CRVA shall permit the City to provide reasonable input and approval over the scope of work performed pursuant to the CRVA Contracts.
- vi. The CRVA will comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

- vii. The CRVA will comply with the City's Charlotte Business INClusion (CBI) policy (available at <http://charlottenc.gov/mfs/cbi/Pages/library.aspx>) and will require all entities with which it contracts through the CRVA Contracts to do so as well.
- viii. The CRVA will require all entities with which it contracts through the CRVA Contracts to maintain the following insurance:
 - Commercial General Liability insurance in an amount not less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate, with the City listed as additional insured.
 - Workers' Compensation insurance meeting State of North Carolina statutory requirements with \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners;
 - Commercial Automobile Liability insurance with limits of no less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate; and
 - Professional Liability insurance under such terms as the City and the CRVA mutually agree

b. City Responsibilities

- i. The City will reimburse the CRVA for up to eight million five hundred thousand dollars (\$8,500,000) for costs incurred under the CRVA Contracts.
- ii. Upon receipt of the proceeds of the future installment financings under N.C. Gen. Stat. § 160A-20, the City shall provide the CRVA with access to such staff resources as are reasonably required and as the parties agree for the performance of the CRVA Contracts.

4. Invoicing and Payment by the City

The CRVA may invoice the City for any payment under this Agreement on or after December 1, 2018. No payment shall be due from the City to the CRVA under this Agreement until or after December 1, 2018, but full reimbursement of expenses under this agreement shall be paid to the CRVA on or before December 31, 2018. All invoices shall be accompanied by invoices paid by CRVA under the CRVA Contracts, and such other documentation as the City shall determine is necessary to validate the reimbursable expense.

5. Work Product and Intellectual Property

Upon payment by the City, the City will own all work product and intellectual property created pursuant to the CRVA Contracts, including all copyrights and other intellectual property rights, at all times during and after the term of the Agreement (the "Intellectual Property"). The CRVA will have the right to access the City work product and Intellectual Property for all purposes relating to the construction or operation of the Convention Center.

6. Audit.

During the term of this Agreement and for a period of two years after termination of this Agreement, the City shall have the right to audit, either itself or through an independent

auditor, all books and records and facilities of the CRVA necessary to evaluate compliance with the terms and conditions of this Agreement.

7. Resolution of Concerns and Administrative Details.

A representative designated by the City Engineer and the CRVA's VP – Venues shall be authorized to resolve such administrative details as may arise in connection with CRVA's administration of the CRVA Contracts, to the extent not inconsistent with this Agreement.

8. Term of Agreement.

The term of this Agreement shall commence on the Effective Date, and shall continue through [DATE].

9. Termination.

a. Termination by Mutual Consent. The parties may terminate this Agreement at any time by mutual consent under such terms as may be agreed to in writing by the City Manager and CRVA's CEO.

b. Termination for Breach. Either party may terminate this Agreement for default in the event the other party materially breaches this Agreement and fails to cure such failure within thirty (30) days after receipt of written notice from the non-breaching party.

10. Designee

Any action or consent under this Agreement that is required to be made by the City Manager, the City's Engineer, CRVA's CEO or CRVA's VP - Venues can be made by their respective designees.

11. Amendments.

Any amendments to this Agreement must be in writing, approved by the City Council and CRVA Board of Directors and signed by the City Manager and the CRVA's CEO.

12. Limitation of Liability

To the extent permitted by law, neither party shall be liable to the other party for consequential, indirect, special damages or lost profits in connection with any matters relating to this Agreement.

13. Notices.

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the CRVA:

Attn: Steve Bagwell
Charlotte Regional Visitors Authority
501 South College Street
Charlotte, NC 28202
PHONE: 704-339-6040
E-MAIL:
steve.bagwell@charlotteconventionctr.com

For the City:

Attn: William Haas
City of Charlotte
600 East Fourth Street, 12th Floor
Charlotte, NC 28202
PHONE: 704-336-4625
E-MAIL: whaas@charlottenc.gov

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement (collectively, "Legal Notices") shall further be copied to the following (in addition to being sent to the individuals specified above):

Grier Furr & Crisp, PA
101 N. Tryon St.; Suite 1240
Charlotte, NC 28246
Attn: Cameron Furr
Phone: 704-375-3720
cfurr@grierlaw.com

City Attorney's Office
City of Charlotte
600 East Fourth Street, 15th Floor
Charlotte, NC 28202
Phone: 704-336-2254

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice that is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

14. Miscellaneous

- a. Entire Agreement. This agreement exists separately from any other contracts or agreements between the City and CRVA. This agreement is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter.
- b. Governing Law and Jurisdiction.
This Agreement shall be governed by, and construed in accordance with, the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Mecklenburg County.
- c. Survival of Provisions. All provisions of this Agreement which by their nature and effect are required to be observed, kept or performed after termination of this Agreement shall survive the termination of this Contract and remain binding thereafter, including but not limited to provisions regarding ownership of work product and Intellectual Property and assignment of rights.
- d. Waiver.
No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant.
- e. Severability.
The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the

extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

f. Counterparts.

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signatures are on the following page]

DRAFT

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

**CHARLOTTE REGIONAL
VISITORS AUTHORITY:**

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

CITY OF CHARLOTTE:

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Deputy Finance Officer

Date