

EMPLOYMENT AGREEMENT AND AMENDMENT

This EMPLOYMENT AGREEMENT AND AMENDMENT (the "Agreement"), effective as of the 1st day of July, 2023, is by and between Victoria Isley ("Executive"), and the Buncombe County Tourism and Development Authority, a North Carolina non-profit corporation doing business as Explore Asheville and Explore Asheville Convention & Visitors Bureau (the "BCTDA").

WITNESSETH

WHEREAS, Executive has been employed by the BCTDA pursuant to the terms of that certain Employment Agreement effective as of October 15, 2020 (the "Original Agreement"); and,

WHEREAS, the Term of the Original Agreement expires November 30, 2023; and,

WHEREAS, pursuant to the terms set forth herein, Executive desires to continue employment with BCTDA as President and Chief Executive Officer beyond the Term of the Original Agreement and the BCTDA desires to continue the employment of Executive beyond the Term of the Original Agreement; and,

WHEREAS, the BCTDA and Executive further desire to amend a provision of the Original Agreement for the remainder of its Term; and,

WHEREAS, Executive and BCTDA acknowledge that Executive will be subject to the restrictive covenants as set forth herein and that Executive is required to enter into these restrictive covenants as a condition of Executive's employment hereunder; and,

WHEREAS, BCTDA desires to (1) retain the services of Executive and provide inducement for her to remain in such employment; (2) make possible full work productivity by assuring Executive's morale and peace of mind with respect to future security; (3) provide expectations regarding the performance of Executive in the role of President and CEO; and (4) provide a just means for terminating Executive's services; and,

NOW, THEREFORE, in consideration of those premises and the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the BCTDA and Executive, intending to be legally bound, hereby agree as follows:

1. EMPLOYMENT. Executive shall remain employed as the President and CEO of the BCTDA. The Executive shall continue to serve at the pleasure of the Board of the BCDTA (the "Board") and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Board to terminate the services of Executive at any time, with or without cause, subject only to the provisions set forth in Sections 6 and 7 of this Agreement.

Executive Initials:



2. DUTIES.

2.1 General. The Executive shall continue to be employed on a full-time basis as the President and CEO of the BCTDA. As President and CEO, Executive shall continue to have at all times, subject to the bylaws and the powers of the Board, the power and authority to supervise and control the business of the BCDTA, to employ and discharge all employees, and in general, to perform all of the duties and exercise all of the powers usually incident to the office of President and Chief Executive Officer or those which may be assigned to her by the Board or Executive Committee thereof, including, but not limited to, promoting at all times the purpose of the BCDTA as set forth in the Bylaws. Executive agrees and understands that this position also includes similar duties for the Buncombe County Tourism and Development Authority, a public authority, created by North Carolina law (the "Public Authority"). Executive agrees and understands that the Public Authority is a public body and is bound by certain North Carolina laws regarding public bodies, public records, and the statute enabling the creation of the Public Authority. Executive's duties include, but are not limited to, responsibility for compliance of the Public Authority with all applicable laws.

2.2 Best Efforts. During the term of this Agreement, Executive shall devote her full and exclusive business time, energy and skill to the business of the BCTDA and the Public Authority, to the promotion of their interests and to the fulfillment of Executive's obligations under this Agreement. Executive shall faithfully and diligently discharge Executive's duties and responsibilities under this Agreement and shall use her best efforts to implement the policies established by the BCTDA and the Public Authority.

2.3 Full-Time. Executive acknowledges that Executive's employment hereunder shall be full time and Executive agrees to devote Executive's full time, energy, skill, and best efforts to Executive's performance under this Agreement. Executive acknowledges that she will regularly be required to work more than forty (40) hours per week. Executive and the BCTDA recognize that Executive will be required to devote significant time outside of the normal office hours of business for the BCTDA. As a result, Executive shall be allowed to establish an appropriate work schedule; provided such schedule is appropriate to the needs of the BCTDA and the Public Authority and allows the Employee to perform her assigned duties and responsibilities as set forth in this Agreement.

2.4 Compliance and Cooperation In addition to the duties and responsibilities described above, Executive shall: (i) comply with all laws of the Local, State and Federal government; (ii) not discriminate based upon race, color, religion, sex, national origin or disability in providing services for the BCTDA and the Public Authority; and (iii) cooperate and communicate with the employees and personnel of the BCTDA in performing Executive's duties hereunder.

2.5 Representations, Warranties and Covenants of Executive. Executive hereby represents, warrants and covenants that Executive:

2.5.1 is authorized and empowered to enter into this Agreement and to perform Executive's duties and responsibilities hereunder and is not subject to any contract or

Executive Initials:



agreement which prohibits or restricts Executive from entering into this Agreement or performing Executive's obligations hereunder. Executive has not brought and will not bring to the BCTDA, or use in the performance of Executive's responsibilities under this Agreement, any materials or documents of a third party which are not generally available to the public, unless Executive has obtained written authorization from the third party or other owner for their possession and use and provided the BCTDA with a copy of such authorization; and

2.5.2 shall during her employment maintain her residence within Buncombe County; and

2.5.3 will immediately notify the BCTDA of any breach or potential breach of the terms of this Agreement or any change in the representations, warranties and covenants made by Executive herein.

3. TERM OF EMPLOYMENT. The "Initial Term" of this Agreement shall be for thirty-six (36) months, beginning on December 1, 2023 and ending on November 30, 2026, unless terminated sooner pursuant to the terms of this Agreement. Following the end of the Initial Term and each subsequent term as described herein, this Agreement shall automatically renew for a subsequent twelve (12) month term unless notice that the Agreement shall terminate is given by either party at least one hundred eighty (180) days before the end of the current term. The Termination of this Agreement at the end of a Term shall not entitle Executive to benefits pursuant to Section 7. Executive's last day of employment pursuant to this Agreement shall be referred to as the "Termination Date."

4. COMPENSATION AND BENEFITS.

4.1 Salary. Subject to the terms of this Agreement, as compensation for Executive's services provided hereunder, the BCTDA shall pay to Executive an Annual Salary, less all taxes, statutory deductions and withholdings, payable in accordance with the BCTDA's regularly scheduled payroll practices and schedule (the "Annual Salary"). This Agreement includes an Amendment to the Original Agreement to increase the Annual Salary beginning July 1, 2023 to Three Hundred Thousand Dollars (\$300,000.00). The Annual Salary shall be increased as of July 1 in each year of the Initial Term of this Agreement. The amount of the increase as of July 1 of each year shall be in the Board's sole discretion at the performance evaluation described in Section 5 of this Agreement; provided that, by July 1, 2025, the Annual Salary shall be at least Three Hundred Twenty-Five Thousand Dollars (\$325,000.00).

4.2 Incentive Bonus. Executive shall be eligible for an incentive bonus of up to 30% of her Salary on an annual basis. The amount of the incentive bonus, if any, shall be determined based upon the criteria as agreed upon between Executive and the Chair of the Board annually and in writing at the beginning of each fiscal year. Whether Executive has met the bonus criteria and how much of the incentive bonus has been earned shall be considered as part of the performance evaluation process described in paragraph 5, and shall be determined by the Performance Evaluation Committee in its sole discretion from year to year. Executive must be employed on the date the incentive bonus is to be paid to be eligible to receive it. The Incentive Bonus may be prorated for the first year of employment. Any incentive bonus shall be paid

Executive Initials:



within 60 days of the end of the applicable fiscal year and will be subject to applicable taxes and withholdings.

4.3 Retention Bonus. If Executive remains employed on the last day of the Initial Term of this Agreement (November 30, 2026), Executive shall receive a Retention Bonus of Fifty Thousand Dollars (\$50,000), less applicable taxes and withholdings, to be paid within thirty (30) days of the last day of the Initial Term.

4.4 Automobile Allowance. Executive shall use her own private automobile for all local and regional travel required to conduct BCTDA business. BCTDA shall pay Executive a monthly automobile allowance of five hundred dollars (\$500.00) to be used to purchase, lease, or own, operate and maintain a vehicle. Executive shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular replacement of said vehicle. Executive shall not be reimbursed or otherwise compensated for costs of automobile travel for local and regional travel for her BCTDA or Public Authority duties.

4.5 Insurance. Executive shall be eligible for health, dental, disability, and life insurance benefits in accordance with the applicable plan documents and as provided to other similarly-situated BCTDA employees as determined by the BCTDA in its sole discretion from time to time. Executive shall be provided with health insurance coverage for herself and her immediate family, in accordance with the terms of the applicable plan, at no cost. Executive shall also be provided with a life insurance policy in the benefit amount of three times the Annual Salary by an accredited life insurance carrier, at no cost to Executive.

4.6 Vacation Leave. Executive shall have six (6) weeks of vacation leave per year. All of Executive's vacation time shall be treated in accordance with applicable BCTDA policy as may be in effect from time to time.

4.7 Retirement Benefits. Executive shall be eligible to participate, in accordance with the terms of the applicable plan, in the BCTDA's 401K plan, as may be provided and amended from time to time in the BCTDA's discretion. Additionally, the BCTDA shall provide a Supplemental Executive Retirement Plan ("SERP") for which Executive shall qualify pursuant to the terms of the SERP. The BCTDA agrees, as allowed and in accordance with the terms of the applicable plan, to fund Executive's SERP at the end of each year of the Initial Term as follows: Sixty Thousand Dollars (\$60,000.00) at end of the first year; Eighty Thousand Dollars (\$80,000.00) at the end of the second year; and One Hundred Thousand Dollars (\$100,000.00) at the end of the third year.

4.8 Business Expense Reimbursement. The BCTDA will reimburse Executive for reasonable business expenses, including dues for relevant organizations and professional development and associated travel expenses, Executive incurs in performing the services hereunder pursuant to the BCTDA's usual expense reimbursement policies and practices, following submission by the Executive of reasonable documentation thereof.

Executive Initials: VEI  the text here 4

4.9 Business Tools. The BCTDA further agrees to provide to Executive for business use, a laptop, smart phone with hot spot capability for remote internet access, a tablet, and other devices and materials as necessary for the performance of her duties. Executive agrees to return all provided materials before or on the Date of Termination of this Agreement.

4.10 Additional Benefits. Except as otherwise set forth herein, Executive shall be eligible for all other benefits offered by the BCTDA to similar individuals in accordance with the terms of the applicable plans and/or policies, as may be amended or revoked by the BCTDA from time to time in its sole discretion.

4.11 Tax. Any amounts paid or benefits provided by BCTDA pursuant to this Section 4 that are subject to taxes, statutory deductions, and withholdings shall either be promptly paid by the Executive to BCTDA or withheld by BCTDA from compensation payable to Executive in accordance with the BCTDA's regularly scheduled payroll practices and schedules.

5. PERFORMANCE EVALUATION. The Chair, Vice Chair, and two additional Board members appointed by the Chair (the "Performance Evaluation Committee"), shall review the performance of the Executive annually, in conjunction with the end of the BCTDA's fiscal year on June 30. No later than June 30 of each year of this Agreement, Executive will provide to the Chair of the Board the following: (1) a review of accomplishments from the past year; (2) a discussion of challenges/obstacles faced during the past year; and (3) a narrative of goals for the coming year. The evaluation shall include both a meeting and a written evaluation with Executive and shall occur no later than sixty (60) days following the end of the fiscal year. At this evaluation, Executive will be informed of any Salary adjustment and Executive's Incentive Bonus, if any, for the prior fiscal year in accordance with the terms of Section 4 above.

6. TERMINATION. This Agreement and Executive's employment may be terminated during a Term as set forth herein:

6.1 Upon Death or Disability. This Agreement and Executive's employment pursuant to this Agreement shall terminate immediately upon the death or the Disability of the Executive. Disability shall be defined as Executive's inability to perform the essential functions of her job with reasonable accommodation, with such inability lasting or reasonably expecting to last (i) for a continuous period of six (6) months, or (ii) six (6) months out of any eighteen (18) month period, regardless of whether such period is continuous or intermittent. The disability determination will be made by the Executive Committee of the Board and is in its sole discretion after consultation with a licensed physician and the Executive, and after consideration of other available evidence the Executive Committee deems appropriate. To the extent applicable and required by the law, nothing in this Agreement will interfere with any rights Executive may have under the Family and Medical Leave Act.

6.2 Executive's Voluntary Termination. Executive may voluntarily terminate this Agreement and Executive's employment with the BCTDA for any reason, provided that Executive provides the BCTDA with ninety (90) days' written notice of such termination. If

Executive Initials:



Executive's employment is terminated by Executive pursuant to this provision, the BCTDA may require that Executive perform or not perform any duties during the notice period.


6.3 Immediately for Cause. BCTDA may terminate Executive's employment and this Agreement immediately upon written notice to Executive "for cause" without the necessity of prior notice. For purposes of this provision, "for cause" means a finding by a majority of the Board in its sole discretion of:

- 6.3.1 Executive's indictment, conviction, guilty plea or plea of *nolo contendere* for any felony or any crime of moral turpitude;
- 6.3.2 Executive's excessive or habitual use of intoxicating liquors, narcotics, illegal drugs, or inappropriate use of legal drugs, that affects her ability to perform her duties hereunder;
- 6.3.3 Any dishonest, unethical, negligent or other behavior by Executive that causes or may cause harm to the BCTDA or the Public Authority or either of their reputations; or
- 6.3.4 A governmental agency or regulator prohibiting Executive, on a temporary or permanent basis, from participating in any of the BCTDA or the Public Authority's affairs.

6.4 For Cause After Opportunity to Cure. BCTDA may terminate Executive's employment and this Agreement upon written notice to Executive if the BCTDA has previously provided written notice to Executive of any of the following, and after a thirty (30) day opportunity to cure, Executive has failed to cure the noted deficiencies: (i) Executive has failed to perform her duties competently; (ii) Executive has failed to comply with the rules and regulations of the BCTDA or the Public Authority; or (iii) Executive has breached and/or failed to comply with the terms of this Agreement or any other written agreement with the BCTDA.

6.5 Immediately Without Cause. BCTDA may terminate this Agreement and Executive's Employment upon written notice to Executive of an involuntary termination for reasons not set forth in Section 6.3, or 6.4. Notice pursuant to Section 3 of the BCTDA's intention not to renew this Agreement shall not constitute termination pursuant to this Section.

7. **SEVERANCE PAYMENT UPON TERMINATION WITHOUT CAUSE.** If Executive's employment with the BCTDA is terminated Without Cause pursuant to Section 6.5 during the Initial Term, and Executive signs within twenty-one (21) days of receipt from the BCTDA and does not revoke, a full and general release of claims against the BCTDA, the Public Authority, and other related parties prepared by the BCTDA, Executive shall be entitled to severance pay in an equal to twelve (12) months of Executive's Annual Salary as of the Termination Date (the "Severance Payment"). The Severance Payment shall be paid in a number of equal installments, such number never being more than 12, in accordance with the BCTDA's regular payroll practices, so that the final payment is made no later than March 15 of the calendar year following the year in which the Termination Date occurs. The first installment shall be paid

Executive Initials:  _____ the text here

on the BCTDA's regularly scheduled payday that is thirty-one (31) days after the Termination Date. Any Severance Payment received by Executive pursuant to this Section 7 shall be in lieu of and entirely replace Executive's right to severance under any other BCTDA agreement, plan, or program.

If this Agreement is terminated pursuant to any Section other than Section 6.5, including but not limited to either party providing notice of nonrenewal as set forth in Section 3, the BCTDA shall only owe Executive for wages earned through the Termination Date and shall not owe Executive any Severance Payment pursuant to this Agreement.

8. CONFIDENTIALITY. Executive acknowledges and stipulates that: (a) during her employment, Executive has been and will continue to be placed in a position to become acquainted with and add to various aspects of the Confidential Information (as defined below) of the BCTDA and the Public Authority; (b) the use or disclosure of the Confidential Information by Executive except as authorized by the BCTDA is prohibited and would seriously damage the BCTDA and/or the Public Authority; and (c) the BCTDA and/or the Public Authority exclusively own such Confidential Information.

8.1 Definition of Confidential Information. For purposes of this Agreement, Confidential Information means any and all information regardless of form: (i) relating to customers who purchase or otherwise use the services of the BCTDA, including but not limited to, meeting planners and groups bringing meetings to Western North Carolina; (ii) any inventions and related proprietary rights of the BCTDA or the Public Authority; (iii) budgets, financial statements, projections and other financial information of the BCTDA or the Public Authority; (iv) marketing, engagement, retention, and training for customers, employees and contractors of the BCTDA or the Public Authority; (v) pricing, pricing strategies, budgets, financial statements, projections and other financial statements of the BCTDA, Public Authority, and/or their partners; (vi) research, development, current and proposed products or services, marketing, promotions, sales and other business plans of the BCTDA, Public Authority, or its partners; and (vii) any other information regarding the BCTDA. Confidential Information specifically does not include information generally known to the public or information that is required to be shared by local, state or federal law, including but not limited to information subject to disclosure pursuant to the requirements of North Carolina's Public Records Act (N.C. Gen. Stat. § 132-1 et seq) and/or Open Meetings Law (N.C. Gen. Stat. § 143-318.9 et seq).

8.2 Requirements Regarding Confidential Information. For the duration of Executive's employment and for all time thereafter, Executive agrees that she will, unless otherwise required by law, including but not limited to the Public Records Act or Open Meetings Law: (i) only use the Confidential Information in the performance of her duties hereunder; (ii) only communicate the Confidential Information to fellow employees, agents, and representatives strictly on a need-to-know basis; (iii) not otherwise disclose or use any of the Confidential Information, except as may be required by law or otherwise authorized by the Board; and (iv) upon demand by the BCTDA or at the end of Executive's employment, Executive shall deliver to BCTDA all manuals, photographs, records, documents, or any other data in whatever form, which contains Confidential Information. Executive understands that the Defend Trade Secrets Act of 2016 provides that an individual shall not be held criminally or

Executive Initials:



civilly liable under any federal or state trade secrets law for the disclosure of a trade secret that: (i) is made (y) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (z) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

9. **AGREEMENT NOT TO COMPETE.** Executive acknowledges that Executive has been and will continue to be exposed to sensitive and vital information concerning the business of the BCTDA, the Public Authority and their partners. Executive agrees that the covenants set forth in this Section 9 and in Sections 8 and 10, are reasonable and necessary to protect the BCTDA and the Public Authority given the position of Executive within the BCTDA and the Public Authority. Executive therefore agrees that during the term of this Agreement and for twelve (12) months following the termination or expiration of this Agreement and Executive's employment for any reason, Executive will not, either within the Restricted Territory or for the Cities listed in the Restricted Territory, regardless of the location of the entity, perform services similar to those Executive performed for the BCTDA for any entity that provides services or has a mission similar to the BCTDA or the Public Authority. For purposes of this Agreement, the Restricted Territory shall be the Cities of Savannah, Georgia; Charleston, South Carolina; Myrtle Beach, South Carolina; Chattanooga, Tennessee; Gatlinburg/Pigeon Forge, Tennessee; Williamsburg, Virginia; Richmond, Virginia, and Greenville, South Carolina.

10. **AGREEMENT NOT TO SOLICIT EMPLOYEES.** Executive agrees that during the term of this Agreement and for twelve (12) months following the termination or expiration of this Agreement and Executive's employment for any reason, Executive will not solicit for hire, or attempt to recruit, solicit or hire, any employee, independent contractor of, or consultant to, the BCTDA or the Public Authority or encourage any such individual to end or otherwise decrease their relationship with the BCTDA or the Public Authority.

11. **INJUNCTION.** Executive acknowledges that irreparable loss and injury would result to the BCTDA upon the breach of any of the covenants contained in Sections 8, 9, or 10, and the damages arising out of any such breach would be difficult to ascertain. Executive agrees that, in addition to all other remedies provided at law or equity, Executive shall be entitled to injunctive relief in the event of a breach or threatened breach of any of the covenants set forth in Section 8, 9 or 10, and Executive hereby waives any requirement that the BCTDA post any bond in connection with obtaining such injunctive relief. Furthermore, in the event of a breach or threatened breach of any of the covenants set forth in Sections 8, 9, or 10, Executive agrees to pay all of the BCTDA's costs, including attorneys' fees, of enforcing such covenants. Nothing herein shall be construed as prohibiting the BCTDA from pursuing any other remedies available to it for such breach, including the recovery of damages from Executive.

12. **SEVERABILITY OF COVENANTS.** Executive and the BCTDA agree that the covenants contained in Sections 8, 9, and 10 are severable and divisible, that none of such covenants depend on any other covenant for their enforceability, and that each such covenant constitutes an enforceable obligation between the BCTDA and Executive. If any covenant or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remaining covenants shall remain in full force and effect and shall be

Executive Initials: 

construed in all respects as if such invalid or unenforceable covenant was omitted. If any court shall determine that the scope, duration, geographical limits, or any other aspect of any restriction of any covenant contained herein is unenforceable, it is the intention of the Executive and the BCTDA that the restrictions set forth herein shall not thereby be terminated but shall be deemed amended and revised to the extent required to render them valid and enforceable. The covenants on the part of the Executive contained in Sections 8, 9, and 10 shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of the Executive against the BCTDA, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the BCTDA of such covenants.

13. **AMENDMENT.** Except as otherwise set forth herein, the terms of this Agreement may not be varied except by written amendment signed by Executive and by the Chair of the Board of the BCTDA.

14. **WAIVER.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach hereof.

15. **SURVIVAL.** Any and all representations, warranties, covenants and agreements made by Executive in this Agreement shall survive the termination of this Agreement, including but not limited to, Sections 8, 9, and 10 of this Agreement and such other provisions of this Agreement as are necessary or desirable to enforce or interpret said Sections.

16. **NOTICE.** Any and all notices or other communications provided for herein shall be given in writing and delivered as follows: (a) by personal delivery, with a witness, to Executive or the Chair of the Board of the BCTDA; or (b) by certified or registered mail, return receipt requested, addressed to the Chair of the Board of the BCTDA or, in the case of Executive, to Executive's address as last provided to the BCTDA. If such notice is given by certified or registered mail, it shall be deemed given at the time it is sent by first class mail with postage affixed in any post office or branch post office regularly maintained by the United States Government. Any party may change the address to which notices are to be mailed by giving notice as provided herein to all other parties.

17. **MISCELLANEOUS.** This Agreement shall be governed by and construed pursuant to the laws of the State of North Carolina, wherein this Agreement has been executed. The Executive and the BCTDA agree that the state or federal courts sitting in Buncombe County, North Carolina, shall have sole and exclusive jurisdiction over any disputes arising out of this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, successors, executors and assigns, except that the Executive may not assign any of her duties or benefits hereunder. The BCTDA may assign this Agreement and its rights and duties hereunder upon providing Executive with prior written notice of such assignment. No deviation from this Agreement or failure to enforce rights or obligations hereunder shall be construed as a waiver of the rights and obligations of the parties hereto, whether any such deviation or waiver is continuing or otherwise. The opening clauses of this Agreement are part of this Agreement. The headings herein are for the convenience of the reader only, and in no event shall they be utilized in the construction or interpretation of this Agreement.


Executive Initials:




18. ENTIRE AGREEMENT. This Agreement contains the entire agreement by and between the Parties with respect to the subject matter herein and the Term beginning December 1, 2023 as set forth herein. The Parties specifically agree that the Original Agreement, as amended by Section 4.1 herein, shall remain in full force and effect until November 30, 2023. Except as set forth herein, all prior negotiations, writings, and understandings relating to the subject matter of this Agreement are merged into and superseded by this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first hereinabove written.

BCTDA

By:  (SEAL)
Kathleen Mosher, Chair of the Board of Directors

Executive

By:  (SEAL)
Victoria Isley

4885-9244-9387, v. 1

Executive Initials: 