

**Memorandum of Understanding between the Town of Abingdon, Virginia (“Town”) and
Enhance Abingdon Foundation, Inc. (“Foundation”)**

This Memorandum of Understanding (“MOU”) was made and entered into on December 6, 2021, by and between the Town and Foundation, collectively hereinafter referred to as the “Parties.”

RECITALS

WHEREAS, the Town is a municipality in the Commonwealth of Virginia; and

WHEREAS, Foundation, is a private non-profit corporation organized under Virginia’s non-profit corporation statute for the express purpose of enhancing the health, education, and quality of life for Abingdon residents and visitors by: (1) promoting the Town's parks, historic properties, and recreational activities, (2) providing opportunities for partnerships with other community organizations to support the Town's parks, historic properties, and recreational activities, (3) raising funds to support parks, historic properties, and recreational programs offered by the Town of Abingdon; and

WHEREAS, Foundation currently holds tax-exempt status from the Internal Revenue Service under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, the Town and Foundation want to formalize the relationship between the Town and the Foundation by setting forth a series of mutual expectations; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and commitments herein, and parties agree as follows:

PURPOSE

The MOU aims to establish a general framework for cooperation and collaboration between the Town and the Foundation. It will assist in defining the relationship between the Parties to ensure that the goals are accomplished in a mutually supportive way.

TERM

This MOU will remain active for three (3) years from the date signing and may be renewed for an additional three (3) year terms by mutual written agreement of the Parties, and requiring formal action by both the Foundation Board the Town Council

GUIDING PRINCIPLES

The guiding principles and assumptions for this MOU are as follows:

- The Foundation exists to support Abingdon’s historic properties, parks, trails, and open spaces by raising donations and encouraging civic engagement in alignment with Town priorities.
- Therefore the Foundation is to act as a philanthropic partner for the Town’s historic properties, parks, trails, and open spaces. This relationship is formalized through the adoption of operating agreements and procedures. Both Parties will work collaboratively to develop shared philanthropic priorities.

- The Foundation, although affiliated with the Town by its purpose, is an independent corporate entity.

- The Foundation's fundraising begins with a shared dedication to enhancing the health, education, and quality of life for Abingdon residents and visitors by sustaining and enhancing our historic properties, parks, trails, recreational activities and to promote the economic well-being of our Town.

- To fulfill its mission, the Foundation is both a fundraising and a grant-making organization.

- To create a private donor base for historic properties and public parks, the Foundation creates connections among the Foundation, the Town, private funders, businesses, and community members and organizations.

- The Parties are committed to promoting equity through parks and programming, mindful of geographic, socioeconomic, demographic, cultural, physical ability, and population density realities.

- The Parties will strive for mutual transparency in fundraising efforts to the greatest feasible extent, including prospects, potential proposals, and agreements. Each recognizes that safeguarding donors' privacy may be essential in any given case to build trusting relationships. At the same time, it will encourage donors to view both organizations as trustworthy partners.

- The Parties will strive for mutual transparency in their financial condition and issues, as such matters may influence the positions or priorities that each adopts.

- The Parties will jointly develop annual development plans that assign clear responsibility and accountability, which avoid duplication of effort; which avoid competition for the same dollars, focused instead on the growth of funding opportunities.

- The Parties acknowledge that the Foundation will serve as an additive funder for Abingdon's historic properties, parks, trails, and open spaces rather than supplanting existing Town funding obligations.

RELATIONSHIP BETWEEN THE TOWN AND THE FOUNDATION

The Foundation Board of Trustees agrees to work with Town staff in support of their priorities.

The Town agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between the Town and the Foundation.

The Foundation agrees to cooperate with Town staff to allow the Town to monitor the relationship between the Town and the Foundation.

An employee of the Town holding a position of director-level or above shall be a voting member of the Foundation's governing board.

Funds or gifts to the Foundation shall be owned by the Foundation and shall be maintained and/or distributed for the Town's benefit as determined by the Foundation Board. All funds received by the Foundation for Foundation purposes shall be maintained in accounts that are separate from Town accounts, and Foundation and Town funds shall in no event be intermingled. The Foundation Treasurer shall be

responsible for complete and accurate record-keeping regarding all Foundation receipts and expenditures.

The Foundation agrees to exercise of all its functions and activities to act consistently with all pertinent Town policies.

In all necessary cases, the Town agrees to seek and obtain historic preservation approval for physical improvement projects that involve Foundation funding.

The Town and Foundation agree that, as separate corporate entities, each is responsible for any liabilities and costs arising from its own action(s) and/or inaction(s), and for procuring its own insurance(s) for such liabilities and costs in policy amounts as each deems prudent.

The Parties will discuss and agree on a project-by-project basis if either party identifies a compelling reason to deviate from the general approach outlined in this document; further, the Parties recognize that there may be a compelling reason to adopt additional agreements for specific projects on which they might collaborate.

FUNDRAISING EXPECTATIONS

The Town shall typically accept grants from state or federal agencies, real estate or other property gifts, and gifts-in-kind of equipment and supplies intended for Town use.

The Foundation shall typically accept private philanthropic financial donations and restricted or unrestricted gifts for endowment or capital use.

The Foundation shall provide the Town with a summary report of gifts received upon request.

The Foundation agrees to seek approved types of gifts that can benefit the Town's historic properties, recreational activities, parks, trails, and open spaces and coordinate with the Town regarding funding goals, programs, or campaigns.

The Foundation agrees, before accepting gifts with any restrictive terms or conditions or gifts of real estate or equipment, to confer with Town, and the Foundation and Town both agree to advise donors that a restricted gift for the benefit of the Town may not be accepted without Town and Foundation approvals.

The Parties will work to streamline internal processes to ensure prompt and relevant support for each other's fundraising efforts to further mutual effectiveness.

FUNDING EXPECTATIONS OF THE FOUNDATION

While there is an MOU that the Foundation exists to partner with the Town in support of Abingdon's historic properties, recreational activities, parks, trails and open spaces, the Town does not exercise the authority to obligate the projects that the Foundation chooses to fund, as the Foundation is an independent corporation.

The Parties acknowledge that the Foundation plans to fund specific projects that are priorities of the Town. That funding may also be used for general maintenance expenses of the Town's historic properties, parks, trails, and open spaces.

The Parties acknowledge that the Foundation will be an additive funder rather than supplanting existing Town funding obligations and that, if there is a time in the future when it appears that the Town does not ensure that the Foundation's funding is additive, this would be grounds for the Foundation to reconsider this MOU with the Town.

The Foundation's spending policy will be established subject to the approval of the Foundation's Board of Trustees.

The Parties understand that the Foundation will transfer funds under its control to the Town when there is an agreement about how these funds are to be used. The Town will use these funds in accordance with this MOU and provide the Foundation with timely accounting and reporting on the expenditure of these funds. If the Town cannot use all of the funds for the stated purposes, it will return the remaining funds to the Foundation.

The Foundation agrees to receive sign-off from the Town Manager before applying for or accepting funds intended to be used toward physical improvements of Town-owned property.

The Foundation agrees to receive sign-off from the Town Manager before applying for or accepting funds intended to be used toward gatherings that are likely to involve 25 people or more.

FUNDING EXPECTATIONS OF THE TOWN

The Parties agree that there is no obligation for the Town to provide financial or in-kind support to the Foundation.

The Town may provide other limited and reasonable support to the Foundation, at the Town's discretion, including but not limited to, Board of Trustee meeting space.

GIFTS FUND MANAGEMENT

During the term of this MOU, the Foundation shall be responsible for overseeing the management of funds that originate with its activities or are entrusted to it by its donors. The Foundation fund management services shall include the following:

- The Foundation is entitled to "capture" a certain portion of the gifts to offset its annual operating expenses.
- The Foundation is authorized to accept restricted gifts that are designed to benefit the Town. The Foundation will not intentionally solicit or accept gifts for any use specified by a donor that is known to be inconsistent with the Town's vision, mission, strategic priorities, goals, policies, or procedures.
- Distribution of restricted current use funds will be made on an *ad hoc* basis or at the discretion of the Foundation Board.
- The Foundation shall maintain a separate accounting for unrestricted funds received and gains, profits, and losses resulting from said investments.

FOUNDATION FILING, AUDITS AND REPORTING

The Foundation will file all reports and other documents required by law in a timely and comprehensive manner, including but not limited to those required by the Virginia Non-Stock Corporations Act, Virginia Solicitation of Contributions Law, and the United States Internal Revenue Code.

The Foundation will supply the Town with an annual set of financial statements for the most recently ended fiscal year no later than the last business day in March. The Town may also contact the Foundation's statement preparer or auditor directly to obtain additional information or clarify information about those statements.

The Foundation agrees to provide the Town, annually:

- An annual report; and
- A list of Foundation governing board, officers, and advisors.

LIMITATIONS

Town's Obligations Limited. The Town's obligations pursuant to this MOU are moral obligations subject to the limitations of the constitution and laws of the Commonwealth of Virginia, subject to annual appropriation by the Abingdon Town Council, and non-appropriation shall not constitute grounds for recovery against the Town.

State law and constitution prohibit the Town from an expenditure of funds unless appropriated by the Town Council; and obligating funds beyond the current fiscal year (July 1–June 30). Therefore, notwithstanding any provision in this MOU to the contrary, if the Town Council does not appropriate funds for the continuance of this MOU in any future fiscal year, this MOU and all obligations hereunder shall automatically terminate upon depletion of the currently appropriated funds.

CONFIDENTIALITY

Neither the Foundation nor the Town shall disclose or use any private or confidential donor or employee information provided from one to the other except as required by law or in and by the terms of this MOU.

COMPLIANCE WITH APPLICABLE LAW AND NON-DISCRIMINATION

The Foundation further agrees not to discriminate in any manner based on race, religion, color, national origin, gender, disability, age, sexual orientation or preference, or marital, parental, or veteran's status in its programs and activities, and to comply with all non-discriminatory laws and policies that the Town promulgates and to which the Town is subject.

This MOU shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia.

MISCELLANEOUS

ENTIRE MOU - This MOU sets forth the entire agreement and understanding of the Parties concerning its subject matter. Any prior agreements regarding the subject matter are no longer in force. No terms, provisions, or representations not outlined in this MOU shall be of any force or effect.

AMENDMENT - This MOU may be amended only in writing signed by an authorized representative of both Parties.

BINDING NATURE - This MOU shall be binding on the heirs, successors, and assigns of the Parties.

TERMINATION - This MOU shall terminate immediately if:

- The Foundation dissolves.
- Town Council withdraws recognition of the Foundation.
- The Foundation ceases to be a non-profit corporation.
- Should the Foundation ceases to exist, all monies and items of value received by or held by the Foundation for the benefit of the Town shall immediately be transferred to the Town consistent with federal and state laws and any restrictions as may have been imposed by the donors.

INDEPENDENT CONTRACTOR STATUS - The Parties' relationship under this MOU is strictly that of independent contractors and not that of joint venturers, partners, or agents. No Party shall have any authority to bind any other Party unless such power is specifically granted to the Party in writing by the other Party.

ASSIGNMENT - This MOU and the obligations under it are not assignable or transferrable without the written consent of both Parties.

NOTICES - All notices relating to this MOU shall be in writing and delivered personally or mailed by email to the addresses stated below:

To Town: Town of Abingdon
 P.O. Box 789
 Abingdon, VA 24212-0789
 toafinance@abingdon-va.gov

To Foundation: Enhance Abingdon Foundation
 P.O. Box 2148
 Abingdon, VA 24212-2148
 president@enhanceabingdon.org

SIGNATURES - the Town of Abingdon and the authorized representative(s) of Enhance Abingdon Foundation, Inc. have executed this MOU on December 6, 2021, the effective date of this Memorandum of Understanding. This MOU will expire three years from the date of signing.

TOWN OF ABINGDON, VIRGINIA

By: [Signature]
Derek Webb, Mayor

Commonwealth of Virginia

County of Washington to wit:

The foregoing instrument was acknowledged before me on December 6, 2021 by Derek Webb, Mayor for the Town of Abingdon, Virginia.

My Commission Expires: 8-31-2024

Registration Number: 186904



Kimberly S. Kingsley
Notary Public

ENHANCE ABINGDON FOUNDATION, INC.

By: [Signature]

Print Name: TRAVIS B. HAWKINS

Its: President

Commonwealth of Virginia

County of Washington, to wit:

The foregoing instrument was acknowledged before me this 20 day of December 2021 by Travis B. Hawkins on behalf of Enhance Abingdon Foundation, Inc.

My Commission Expires: 8-31-2024

Registration Number: 186904



Kimberly S. Kingsley
Notary Public

- copy

**A RESOLUTION BY THE COUNCIL OF THE
TOWN OF ABINGDON, VIRGINIA
TO ENTER INTO A MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF ABINGDON, VIRGINIA AND
ENHANCE ABINGDON FOUNDATION, INC.**

WHEREAS, the Code of Virginia, 1950, as amended, § 15.2-1427 the Town of Abingdon, Virginia (“Town”) supports the Enhance Abingdon Foundation, Inc. (“Foundation”) purpose of enhancing the health, education, and quality of life for residents and visitors; and

WHEREAS, the Code of Virginia, 1950, as amended, § 15.2-1108, provides that a municipal corporation may accept gifts, donations, bequests or grants from any source; and

WHEREAS, the Town wishes to enter into a Memorandum of Understanding with the Foundation for promoting, providing opportunities for partnerships with other community organizations for support, and fundraising to support the Town’s parks, historic properties, and recreational activities, a copy of which is attached hereto and made a part hereof; and

NOW, THEREFORE, BE IT KNOWN, AGREED, AND RESOLVED that Council approves the Memorandum of Understanding with Enhance Abingdon Foundation, Inc., and further authorizes the Mayor to endorse the Memorandum of Understanding on behalf of the Town.

TOWN OF ABINGDON, VIRGINIA

BY:



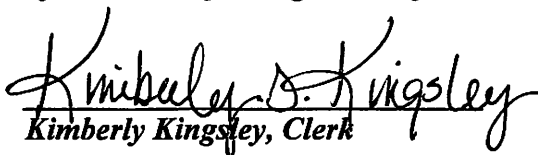
Mayor Derek Webb

The undersigned Clerk of the Town of Abingdon, Virginia (the “Town”) hereby certifies that the foregoing constitutes a true and correct copy of a resolution duly adopted at a meeting of the Council held on December 6, 2021. I hereby further certify that such meeting was a regularly scheduled meeting and that a quorum was present during the consideration of the foregoing resolution. I further certify that the minutes of such meeting reflect the attendance of the members, and the voting on the foregoing resolution as follows:

Member	Attendance	Vote
Derek Webb, Mayor	Yes	Yes
Donna Quetsch, Vice Mayor	Yes	Yes
Amanda Pillion	Yes	Yes
James Anderson	Absent	-
Mike Owens	Yes	Yes

WITNESS my hand and seal of the Town of Abingdon as of December 6, 2021.

(SEAL)



Kimberly Kingsley, Clerk