



Date: June 21, 2017

To: Prospective Proposers

From: Jason Burch, Director of Air Service & Marketing
Charlottesville-Albemarle Airport Authority

Subject: ADDENDUM #3
Request for Proposals: Creative Marketing and Website Services

1. Q: What are the terms of the contract/award?
A: Below is a sample of a proposed contract and is subject to modification for the purposes of this Request for Proposals.

CREATIVE MARKETING AND WEBSITE SERVICES RETAINER AGREEMENT

THIS AGREEMENT (this “**Agreement**”) effective as of 13th day of July, 2017, (the “**Effective Date**”) is entered into between **CHARLOTTESVILLE ALBEMARLE AIRPORT AUTHORITY**, with its principle offices located at 100 Bowen Loop, Suite 200, Charlottesville, Virginia (hereinafter referred to as “**Client**”), and _____, with a place of business at _____ (hereinafter referred to as “**Consultant**”). (Client and Consultant are each hereinafter referred to individually as a “**Party**” or collectively as the “**Parties**”).

RECITALS

WHEREAS, Client desires to retain Consultant to provide creative marketing and website services, as more particularly described below (collectively known as the “**Services**”); and,

WHEREAS, Consultant desires to provide such Services for Client in accordance with the terms and conditions as mutually agreed to herein.

AGREEMENT

NOW THEREFORE, in consideration of the above premises, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. Services

1.1 Scope of Services. During the term of awarded contract, Proposer shall provide creative marketing and website services as fully described in the Creative Marketing and Website Services Request for Proposals, as may be mutually agreed upon and modified from time to time.

1.2 Proprietary Rights. All licensed software used by Consultant in the performance of the Services is and shall remain the property of Consultant unless purchased for Client on a pass-through basis. Consultant shall own exclusively the rights to any software, program, algorithm or other copyrightable material that was owned by or licensed to Consultant prior to its execution of this Agreement, regardless of the use or presence of such software, program, algorithm or other copyrightable material in the creation of any work product or deliverable for Client, unless the parties agree otherwise in writing.

1.3 Warranty. Consultant warrants it shall perform its Services in accordance with the current standards of care and diligence normally practiced by graphic design and video production outsourcing professionals in performing services of a similar nature. OTHERWISE, CONSULTANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, IN RELATION TO THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. USE OF THE SERVICES IS AT CLIENT'S SOLE RISK. WITHOUT LIMITING THE GENERALITY OF THE TWO FOREGOING SENTENCES, CONSULTANT DOES NOT WARRANT THAT THE SERVICES WILL HAVE A POSITIVE IMPACT ON CLIENT'S BUSINESS OR PROFITABILITY. CLIENT UNDERSTANDS THAT IF IT BECOMES DISSATISFIED WITH THE SERVICES, ITS SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT AND DISCONTINUE THE SERVICES IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

2. Term. The term of this Agreement shall commence on the ____ day of July, 2017 (the "**Commencement Date**"), and continue in effect for an initial period of one (1) year, unless terminated sooner as provided in this Agreement. Thereafter, this Agreement may renew for successive one (1) year terms concluding on June 30, 2022 upon the mutual agreement of the Parties (collectively the "**Term**").

3. Independent Contractor. This agreement does not establish Consultant as the agent or legal representative of Client for any purpose whatsoever. Consultant is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of Client or to bind Client in any manner or thing whatsoever. Regarding all matters relating to this Agreement, Consultant shall be deemed to be an independent contractor and shall bear all of its own expenses in connection with this Agreement. Consultant shall have no authority, whether express or implied, to assume or create any obligation on behalf of Client nor shall Consultant issue or cause to be issued any quotation or draft of any letters or documents under the name of Client, but rather shall use its own name for such purposes. Nothing contained in this Agreement shall be construed to (a) give either Party the power to direct and control the day-to-day activities of the other, (b) constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (c) constitute Consultant, its agents or employees as the agents or employees of Client or grant them any power or authority to act for, bind or otherwise create or assume any obligation on behalf of Client for any purpose whatsoever.

4. Fees; Expenses.

4.1 Fees. Client agrees to pay Consultant, in advance, _____ during the Term of this Agreement. The Client will be charged for additional products and/ services as ordered by Client, either on an hourly or fixed fee basis, which are not part of the Services covered by the terms of this Agreement at Consultant's then current rates.

4.2 Expenses. The Client agrees to pay Consultant all reasonable out-of-pocket expenses necessary for the performance and delivery of the Services, and all pre-approved delivery charges and travel expenses when applicable. In addition, Client agrees to pay without need for prior approval all monthly expenses incurred by Consultant not exceeding the total amount of \$100.00 per month. Any expenses greater than \$100.00, either individually or collectively, must be pre-approved by Client prior to being incurred. The Client, at its option, may maintain a prepaid retainer account ("**Retainer Account**") with Consultant; such funds shall be deposited in a non-interest bearing account on behalf of the Client.

5. Payment Schedule. Consultant shall invoice Client for the Retainer Fee, and all permitted expenses, at the beginning of each calendar month during the Term of this Agreement, including any additional fees and expenses incurred for additional products and services incurred during that month. All invoices are due upon receipt. If Client maintains a Retainer Account, the available funds in such account will be applied against each invoice. All invoices not paid within fifteen (15) business days of receipt will bear interest at the rate of twelve percent (12%) per annum until paid.

6. Confidentiality. Consultant acknowledges that, in the course of providing the Services hereunder, Consultant will have access to confidential information about the Client's business. Consultant agrees to keep all such information strictly confidential and not use it for Consultant's own benefit nor disclose or divulge such information to any third party. The Parties acknowledge that the provisions of this Section shall not apply to any information which: (a) had been rightfully in the possession of Consultant prior to its disclosure to Consultant; (b) had been in the public domain prior to its disclosure to Consultant; (c) has become part of the public domain by publication or by any other means except an unauthorized act or omission on the part of the Consultant; (d) had been supplied to Consultant without restriction by a third party who is under no obligation to maintain such information in confidence; or (e) is required to be disclosed by any federal, state/provincial or municipal law, rule or regulation or by any applicable judgment, order or decree or any court or governmental body or agency having jurisdiction in the premises. The provisions of this Section shall survive any termination or expiration of this Agreement. Consultant acknowledges and agrees that Client's remedy at law for a breach or threatened breach by Consultant of any of the provisions of this Section would be inadequate and such breach shall be deemed as causing irreparable harm to Client and, in addition to any remedy at law available to Client, Client shall be entitled to obtain injunctive relief, or any other appropriate equitable remedy, without having to post a bond or other security.

7. Ownership of Intellectual Property. All copyrights, patents, trade secrets, or other intellectual property rights associated with any deliverables, drawings, documentation, specifications, concepts, techniques, or works of authorship developed or created by Consultant during the course of performing work for Client (collectively, the "**Work Product**") shall belong exclusively to Client and shall, to the extent possible, be considered a work made by Consultant for hire for Client, pursuant to applicable law. To the extent the Work Product may not be considered work made by Consultant for hire for Client, Consultant agrees to

assign and automatically assigns to Client at the time of creation of the Work Product, without any requirement of further consideration, any right, title, or interest Consultant may have in such Work Product. Upon the request of Client, Consultant shall take such further actions, including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

8. Termination.

8.1 Termination. This Agreement may be terminated by either Party immediately upon providing written notice of termination (a) in the event of a material breach of this Agreement by the other Party, if such breach continues uncured for a period of ten (10) business days after receipt of written notice of such breach; or (b) in the event the other Party shall (i) become insolvent; (ii) make an assignment for the benefit of creditors; (iii) file a voluntary bankruptcy petition; (iv) acquiesce to any involuntary bankruptcy petition; or (v) be adjudicated bankrupt. Except as otherwise provided in this Agreement, the termination of this Agreement shall not affect the obligations of either Party to the other hereunder for any Services performed prior to the termination hereof, including, but not limited to, the payment for such Services by Client.

8.2 Client Termination without Cause. At any time after the Commencement Date, Client may terminate this Agreement for convenience upon providing Consultant thirty (30) days' prior written notice. The Parties recognize the importance of the full performance of their obligations agreed to hereunder and the Parties agree to the following terms and conditions with respect to the liquidated damages that apply to the early termination of this Agreement. Client agrees that if this Agreement is terminated as provided in this Section 8.2, Client shall pay to Consultant as liquidated damages and not as a penalty, an amount equal to \$25.00 times the number of hours used in the Term as of the date of such termination, for the recovery of certain costs and discounts associated with providing the Services hereunder for the entire Term.

9. Arbitration. Any disputes that arise between the Parties with respect to the performance of this Agreement shall be resolved without court litigation and pursuant to the provisions of this Agreement. "**Claim**" means any controversy, pending or threatened claim, action, proceeding or suit. Accordingly, the Parties agree, following the failure of good faith mutual efforts to resolve any Claim, to submit any Claim arising out of or relating to an Agreement or its breach to binding arbitration by the American Arbitration Association ("**AAA**").

If either Party determines to submit a Claim, the Claim will be submitted to one arbitrator. The arbitration shall be governed by the Commercial Arbitration Rules of AAA (the "**Rules**"). If the parties cannot agree on an arbitrator, an arbitrator shall be selected according to AAA procedures; provided that such arbitrator shall be of national repute and familiar with the legal and business consulting industry. Each arbitration will be held in Charlottesville, Virginia, unless the Parties agree otherwise. The Parties will request that the arbitration hearing commence within sixty (60) days of the selection of the arbitrator. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) business days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. § 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential damages, multiple damages, or any other damages not measured by the prevailing party's actual damages, and may not, in any

event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator.

IN CONNECTION WITH THE OBLIGATIONS UNDER THIS SECTION, EACH PARTY HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN CONNECTION WITH ANY PROCEEDING OF ANY NATURE ARISING UNDER THIS AGREEMENT, IN ANY WAY, OR ANY AMENDMENT OR SUPPLEMENT THERETO. CONSULTANT AND CLIENT EACH ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

10. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall be enforceable to the maximum extent possible.

11. Indemnification; Limitation on Liability.

11.1 Indemnification. Subject to the limitation of damages set forth below, each Party shall hold the other Party harmless against any and all claims, demands and causes of action for injury to or death of persons or for damage to or destruction of property resulting solely from that Party's negligent or intentional acts or omissions or any failure of that Party to comply with the warranties, if any, applicable to any obligations hereunder. Consultant and Client agree to waive, and shall require its insurers to waive, subrogation against each other under any applicable policy of insurance.

11.2 LIMITATION ON LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER SUCH ALLEGED DAMAGES ARE LABELED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, GUARANTEE OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, INCLUDING LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OF DATA OR THE INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Notwithstanding any other provisions in this Agreement, Consultant's contractual liability under this Agreement shall not exceed the Retainer Fees actually paid by Client to Consultant hereunder during the twelve (12) months immediately preceding accrual of such cause of action.

12. Prior Agreements. Consultant represents and warrants to Client that Consultant is not subject to any restriction or non-competition covenant in favor of any other person or entity, and that the execution of this Agreement by Consultant and engagement by Client, the performance of duties and provision of the Services hereunder will not violate or be a breach of any agreement with a former employer or any other person or entity. Further, Consultant agrees to indemnify Client for any claim, including, but not limited to, reasonable attorneys' fees and expenses of investigation, by any such third party that such third party may not have or may hereafter come to have against Consultant based upon or arising out of any restriction or non-competition agreement or invention and secrecy agreement between Consultant and such

third party. The provisions of this Section shall survive any termination or expiration of this Agreement.

13. Competition. Consultant agrees that during the Term of this Agreement, Consultant will not provide, directly or indirectly, whether as a contractor, proprietor, stockholder, partner, officer, employee or otherwise, any services similar to the Services provided hereunder to any airport, other than those airports with whom Client is affiliated. This restriction shall only apply within a ninety (90) mile radius of 100 Bowen Loop, Charlottesville, Virginia. The provisions of this Section shall expire upon the date of any termination or expiration of this Agreement. Consultant acknowledges and agrees that Client's remedy at law for a breach or threatened breach by Consultant of any of the provisions of this Section would be inadequate and such breach shall be deemed as causing irreparable harm to Client and, in addition to any remedy at law available to Client, Client shall be entitled to obtain injunctive relief, or any other appropriate equitable remedy, without having to post a bond or other security. Notwithstanding anything to the contrary in this Agreement, and in addition to all of its rights at law or in equity, Client shall have the right to terminate this Agreement immediately, without prior notice or opportunity to cure, in the event of a breach of this provision by Consultant.
14. Force Majeure. The obligations hereunder of each Party (except for the payment of any monies or invoices for Services already performed by Consultant) shall be suspended while and to the extent that such party is prevented from complying herewith in whole or in part by any event beyond the reasonable control of such party, which for purposes of this Agreement shall include, without limitation, acts of God, earthquakes, unavoidable accidents, laws, rules, regulations or orders of government authorities, acts of war (declared or not), hostilities, blockades, civil disturbances, embargoes, strikes or any other similar event or cause, If any event described in the preceding sentence should result in the suspension of either party's performance of its obligations hereunder, such Party shall give written notice of such suspension to the other Party, specifying in reasonable detail the nature of the event causing such suspension.
15. Governing Law; UCITA Not Applicable. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regards to its conflict of laws principles. This Agreement and the transactions contemplated herein are not and will never be subject to the Uniform Computer Information Transactions Act (prepared by the National Conference of Commissioners on Uniform State Laws) as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, including, but not limited to, the Commonwealth of Virginia.
16. Counterpart; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the Parties actually executing such counterparts, and all of which together shall constitute one and the same instrument. A facsimile signature shall be considered the same as an original.
17. Entire Agreement; Binding Effect. This Agreement and any schedules attached hereto constitute the entire agreement between the Parties to this Agreement pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties and there are no warranties, representations or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set forth herein. No alteration,

amendment, addition or modification of or to this Agreement shall be binding unless the same is in writing executed by each of the Parties.

18. Assignment Restrictions. This Agreement shall be binding upon and inure to the benefit of Parties hereto and their respective successors and assigns. This Agreement is not assignable by either Party without the prior written consent of the other Party hereto.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CONSULTANT

**CHARLOTTESVILLE ALBEMARLE
AIRPORT AUTHORITY**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____