

DATE: August 14, 2018
TO: Town Council
FROM: Steve Ross, Deputy Town Manager
TITLE: Renewal of Operating Agreement Between the Town of Blacksburg and the Blacksburg Museum and Cultural Foundation Inc.

▪ **Background:**

The operating agreement between the Town of Blacksburg and the Blacksburg Museum and Cultural Foundation Inc. memorializes the relationship and obligations between the two to promote historic preservation, arts and culture, and support of the Town owned Alexander Black House and Odd Fellows Hall. The agreement covers operating procedures including annual funding subject to Town Council appropriation. How the Town and the Foundation will collaborate on improvements to the facilities is included in the agreement as are reporting requirements of Foundation activities to Town Council. The agreement is for five-years and may be renewed for additional five-year terms with the consent of Town Council.

▪ **Considerations:**

Renewal of the operating agreement allows the Town and the Foundation to work together to support and promote the Alexander Black House and Odd Fellows Hall as well as arts and culture.

▪ **Action:**

Authorization for the Town Manager to renew the Operating Agreement between the Town of Blacksburg and the Blacksburg Museum and Cultural Foundation Inc.

▪ **Attachment:**

Operating Agreement Between the Town of Blacksburg and the Blacksburg Museum and Cultural Foundation, Inc.

**OPERATING AGREEMENT
BETWEEN THE TOWN OF BLACKSBURG
AND THE
BLACKSBURG MUSEUM AND CULTURAL FOUNDATION, INC.**

THIS OPERATING AGREEMENT ("Agreement") made and entered into as of this ____ day of _____, 2018, by and between the TOWN OF BLACKSBURG, a municipal corporation of the Commonwealth of Virginia (the "Town"), and the BLACKSBURG MUSEUM AND CULTURAL FOUNDATION, INC., a permanent, non-stock, non-profit organization with a tax exempt status under section 501 (c) (3) of the United States Internal Revenue Code (the "Foundation").

RECITALS

WHEREAS, the Town is the owner of historically valuable grounds and facilities in the Town of Blacksburg known as the Alexander Black House and the Odd Fellows Hall (the "Facilities");

WHEREAS, the Foundation is a non-stock, non-profit, charitable organization existing under the laws of the Commonwealth of Virginia;

WHEREAS, the parties intend for the general responsibilities of the Foundation to include (i) providing resources for the renovation and restoration of the Facilities through a commitment to fundraising, including capital, endowment, and potential on-going annual fundraising; (ii) serving as an advocate for other Town historic properties; (iii) advising on long-range planning and vision for the Facilities and the other historic properties; (iii) serving as an ambassador in the community and region by advocating on behalf of historic preservation, arts and culture; and (iv) having members serve on committees or task forces, as needed;

WHEREAS, more specifically, the Foundation plans to develop an ambitious program to study and record the history of Blacksburg, as well as to promote and facilitate the visual and performing arts in Blacksburg;

WHEREAS, the Foundation is also currently raising funds to continue the restoration of the Alexander Black House, which houses the Foundation and its activities; and

WHEREAS, the Foundation and the Town wish to memorialize the responsibilities and obligations of the Town and the Foundation as they relate to these activities.

AGREEMENT

The parties to this Agreement, for and in consideration of the mutual efforts to promote historic preservation, arts and culture in Blacksburg and support the Facilities, agree as follows:

1. OPERATING PROCEDURES

A. The Town Manager of the Town of Blacksburg (the “Town Manager”) shall be responsible for the administration of this Agreement for the Town.

B. The Foundation shall employ an Executive Director, who will develop and coordinate all aspects of the capital campaign. The Executive Director shall work on public relations and marketing strategies, plan and implement campaigns, donor cultivation, and other special events, and provide professional administrative services to the Foundation. The Executive Director shall be responsible for the administration of this Agreement on behalf of the Foundation. The Foundation may hire other personnel as funding permits. The Foundation agree to have Town representatives involved in any search and interview processes that may be conducted for the Executive Director position.

C. The Town and the Foundation may engage in joint promotional efforts, including marketing and the solicitation of funding through grants. However, no Town employee shall actively solicit any donations on behalf of the Foundation unless the Town Manager specifically approves such activity.

D. Any funds or grants received by the Town to restore, maintain or improve the Facilities, or to fund the Foundation’s historic or cultural activities, shall not be provided to the Foundation unless appropriated by the Town Council. Any funds or grants received by or awarded or donated to the Foundation shall be accounted for in the Foundation’s records and disbursed in accordance with the donor’s or grantor’s instructions. The Foundation and the Town shall work together to determine how improvements to the Facilities shall be funded, and the Foundation shall provide funding in the amounts and at the times established by the parties.

E. The Town has transferred ownership of its collection of historical items to the Foundation. In the event the Foundation dissolves, becomes inactive, or discontinues its active support of the Facilities, the Collection and all monies pledged or dedicated to the Facilities for any existing project or activity shall become the property of the Town. All monies originally pledged or dedicated for specific purposes shall only be used by the Town for the purpose for which they were pledged or dedicated.

F. The Town and the Foundation acknowledge and agree that all Foundation correspondence, financial records and all Foundation documents shall be kept separate and apart from all Town records.

G. In return for the Foundation’s in-kind contributions and services to the Facilities, and in furtherance of the Foundation’s goal of supporting historic preservation, arts and culture, the Town agrees to do the following: (i) provide funding for (a) an Executive Director and other personnel and (b) Foundation operations in the amount of \$112,285 in FY2019 and the following years covered by this Agreement, subject to appropriation (ii) permit access to Town facilities for fundraising activities and for other private functions that generate revenue for the Facilities,

such as parking at Town facilities for Virginia Tech home football games, subject to the prior approval of the Town Manager or his designee, and provide access to Town mail room.

H. In recognition of the Foundation's fundraising efforts, the Town and the Foundation shall collaborate on the design and construction of all renovations to the Facilities. The Foundation shall approve designs and construction plans for any renovations to the Facilities that are funded by donations from the Foundation; provided, however, that this approval shall not be unreasonably withheld. When Town procurements of goods or services relating to the Facilities are funded by donations from the Foundation, input from the Foundation shall be solicited in drafting Invitations to Bid and Requests for Proposals, and Foundation members may serve on procurement evaluation committees. The Town and Foundation agree to work together, for the benefit of the citizens of the Town of Blacksburg, to resolve any differences concerning planned renovations to the Facilities. In the event of a substantial conflict between the Town and the Foundation concerning the scope, design or construction of significant capital improvements to the Facilities, the parties agree to engage in mediation, if necessary, to facilitate resolution of the dispute.

I. While the funding described in Section (G) is subject to appropriation, the Town sets forth its intention to provide additional funding in future fiscal years to enable the Foundation to perform the activities set forth in this Agreement. However, to lessen its dependence on Town funding over time, the Foundation shall actively engage in fundraising and developing other sources of revenue.

2. INSURANCE

The Foundation shall provide to the Town evidence of liability insurance coverage for the Foundation and its employees and board members. The Town of Blacksburg shall be named as an additional insured. All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia and shall carry the provision that the insurance will not be cancelled or materially modified without thirty (30) day prior written notice to the Town.

3. REPORTING/RECORD KEEPING/PUBLIC INVOLVEMENT

A. This Agreement contemplates a strong working relationship between the parties. To enable this, the Foundation shall regularly report to the Town Council on its activities and efforts. These reports shall be provided, in writing, on at least a quarterly basis. The Executive Director shall also make presentations as requested by the Town Council.

B. The Foundation shall provide the Town with an updated copy of its articles, bylaws and officers and directors, as such changes occur. Each year the Foundation shall also provide the Town with a copy of its IRS Form 990, as well as an independent CPA's review report and proof of the insurance required by this Agreement as part of the Foundation's annual Agency Funding Request. Every three years, the Foundation shall provide to the Town an audited financial statement. The audit shall be made in accordance with generally accepted

auditing standards by an independent certified public accountant covering all monies which are the subject of this Agreement. This statement shall not include any information regarding individual Foundation donors.

C. While the Foundation is a private non-profit, it shall endeavor to engage and involve the public as much possible in its activities. To the greatest extent possible, and while acknowledging that the Foundation will need to conduct some private fundraising activities, the Foundation agrees to work to develop events and educational activities that are open to the general public.

4. INDEPENDENT CONTRACTORS

In the performance of this Agreement, both the Town and the Foundation will be acting in an individual capacity and not as agents, employees, partners or joint venturers or associates of one another. The agents or employees of the one shall not be construed to be the agents or employees of the other. Town employees shall remain employees of the Town notwithstanding the fact that they may assist the Foundation.

Neither the Town nor its agents, volunteers, servants, employees or officials shall be responsible or liable for any claim or suit arising from contracts, agreements, understandings or arrangements made by the Foundation with any person or entity covering services or goods procured by the Foundation, or for the negligent or willful acts of the Foundation.

5. TERM

This Agreement supersedes the Agreement dated February 20, 2014. The initial term of this Agreement shall be for five (5) years from the date of execution. The Agreement shall be reviewed and revised following the expiration of the original term to reflect the evolving roles of the Town and the Foundation. Thereafter, the Agreement may be renewed for additional five-year terms with the consent of Town Council.

6. AMENDMENTS OR MODIFICATIONS

The Town or the Foundation may amend or modify this Agreement upon mutual agreement. Such amendment(s) or modification(s) shall be in writing and executed by the authorized representatives of the Town and the Foundation.

7. TERMINATION

The Town or the Foundation may terminate this Agreement at any time upon giving six months (180 calendar days) written notice to the other party. Each party shall continue to fulfill all of its obligations under the Agreement during the said six month period.

8. NOTICES

Any notice or notices required or permitted pursuant to this Agreement shall be given by certified mail, postage prepaid, return receipt requested as follows:

To the Town: Marc A. Verniel
 Town Manager
 Town of Blacksburg
 300 South Main Street
 Blacksburg, VA 24060

To the Foundation: Executive Director
 Blacksburg Museum and Cultural Foundation, Inc.
 204 Draper Road, SW
 Blacksburg, VA 24060

9. ENTIRE AGREEMENT

The parties agree that this writing constitutes the entire agreement of the parties and that there may be no modification of this Agreement, except in writing, executed by the authorized representatives of the Town and the Foundation.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

As evidence of their agreement to the terms and conditions set forth herein, the parties affixed their authorized signatures hereto:

TOWN OF BLACKSBURG

By: _____
Town Manager / Authorized
Designee of Town Manager

COMMONWEALTH OF VIRGINIA
COUNTY OF MONTGOMERY

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ Town Manager/Authorized Designee of the Town Manager of the Town of Blacksburg, on its behalf. He is personally known to me.

Notary Public

My Commission expires: _____
My Commission Number: _____

**BLACKSBURG MUSEUM AND
CULTURAL FOUNDATION, INC.**

By: _____
President

COMMONWEALTH OF VIRGINIA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, as _____ (title), respectively of the Blacksburg Museum and Cultural Foundation, Inc., on its behalf.

Notary Public

My Commission expires: _____
My Commission Number: _____