



## Comprehensive Agreement

(Will be Revised After Negotiations with Selected Proposer)

This Comprehensive Agreement is hereby made and executed the date of the last signature set forth below, by and between the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the COUNTY, and \_\_\_\_\_ (the PROPOSER). The COUNTY and the PROPOSER are collectively referred to as the “Parties”.

### AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### BASIC AGREEMENT

- A. The parties hereto agree that the Project as described in RFP attached hereto shall be developed, designed, permitted, financed, acquired, constructed, operated, maintained, equipped and insured in a transaction involving a series of agreements setting forth distinct roles and responsibilities of the County and the Proposer, as well as other parties referred to in Section Z, in accordance with this Agreement and the other Project Agreements.
- B. The Proposer shall provide appropriate oversight, management and reporting of all phases of the Project and its subcontractors such that: (i) the Project is delivered in accordance with and “fit for purpose” intended by the contract documents; (ii) the Proposer resolves all disputes with or among its contractors; (iii) the Proposer shall review and approve all submittals prior to submitting documents to the County; and (iv) the County’s role is one of limited oversight, and not project management.
- C. The Proposer shall perform, or cause the Design-Build Contractor to perform, the Work in accordance with applicable Law and shall provide, or cause the Design-Build Contractor to provide, all notices applicable to the Work in accordance with this Agreement, the Design Build Contract and applicable Law. Performance of any obligation or the giving of any notice to the Department by the Design-Build Contractor shall satisfy the obligation of the

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Proposer to perform such Work or give such notice, provided the foregoing shall not relieve the obligation of the Proposer to manage the Design-Build Contractor, and provided further performance by the Design-Build Contractor shall not relieve the Proposer of liability for the Design-Build Contractor's failure to perform or malfeasance in performance. the County's role is one of limited oversight, and not project management.

### **PURPOSE OF THE AGREEMENT**

A. The Eastern Avenue Extension will be constructed in Crozet, Virginia, and will be consistent with the County's Strategic Plan Goal # 3; Infrastructure & Placemaking that states:

1. "Invest in infrastructure and amenities that create connection, opportunity, and well-being."
2. "Implement long-range plans to embrace multimodal connectivity."

B. The County seeks to promote and improve transportation infrastructure and multimodal connectivity to fulfill the County's Strategic Plan and Crozet Master Plan's vision for improving / developing the Eastern Avenue Extension in Crozet with a road to be constructed from Westhall Drive to Cory Farms Road and a bridge over Lickinghole Creek as shown on the Project Development Plans (PDP).

C. As part of the development of the Project, it is necessary to construct Eastern Avenue as shown on the attached Project Development Plans (PDP). The construction of the Roads is a high priority in the County's Strategic Plan, Crozet Master Plan, and Capital Improvements Program.

### **DESCRIPTION OF PROJECT**

The description of the proposed project is to provide a connection between residential areas on the north side of Lickinghole Creek and Route 250 (Rockfish Gap Turnpike). This connection will supersede the approximately 5.5-mile detour currently required for residents to cross Lickinghole Creek and reach Route 250 (Rockfish Gap Turnpike), which is a key minor arterial linking to shopping centers, schools, and providing interstate access.

As residential development and employment increase within Crozet, Eastern Avenue is needed to link the neighborhoods and mitigate the congestion that is otherwise expected to occur on Route 240 (Crozet Avenue and Three Notch'd Road) and Route 250 (Rockfish Gap Turnpike). This extension is consistent with the Downtown Crozet Master Plan, adopted in 2004. This project also includes pedestrian and bike facilities to provide safe and accessible connectivity for pedestrians and cyclists to be used for commuting and recreational activities between their homes, schools, and other neighborhood destinations.

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The Project is in Albemarle County in the unincorporated town of Crozet. The new alignment will include a bridge over Lickinghole Creek. The Project seeks to construct a connection between Route 250 (Rockfish Gap Turnpike) and Westhall Drive by extending the existing alignment of Eastern Avenue. Construction of this project will provide access which was previously lacking between the Westhall and Brookwood residential areas and Route 250 (Rockfish Gap Turnpike), a key minor arterial for this area. Currently there is no crossing of Lickinghole Creek within Crozet beside Route 240 (Crozet Avenue) and Route 250 (Three Notched Road). As residential developments (i.e., Westlake at Foothill Crossing) are expected to continue north of Lickinghole Creek, the approximate 5.5-mile detour currently required to cross Lickinghole Creek will not remain a viable option. Therefore, the County planned for the extension of Eastern Avenue to provide connectivity from existing and future residential areas to Route 250 (Rockfish Gap Turnpike). As part of a location study for this project, the County identified and analyzed three (3) conceptual alignments for the extension of Eastern Avenue to Route 250 (Rockfish Gap Turnpike). Constraints included wetland impacts, tree clearing, property impacts, and construction cost. The Selected alignment corridor for Eastern Avenue Extended extends the existing Eastern Avenue alignment, then follows the existing alignment of Route 1260 (Cory Farm Road) to the intersection with Route 250 (Rockfish Gap Turnpike).

The Project is Consistent With, Promotes, and Implements the County's Crozet Master Plan that includes, but is not limited to:

- The Future Street Network and supporting recommendations in this chapter envision a well-connected street network that can better enable movement within and between Crozet neighborhoods and Centers and Districts. Proposed streets should be Complete Streets, designed for all users – motorists, pedestrians, bicyclists, and transit riders. Streets within new developments or streets that are upgraded as part of a redevelopment proposal should also be designed to achieve an interconnected street network and to provide new connections where possible.
- Establish a connected network of complete streets that provide safe, convenient, inviting, and viable transportation choices for all users.
- Establish sidewalks, paths, trails, bike lanes, and other improvements to provide safety and access for all users.
- Support the redevelopment of Downtown with appropriate transportation infrastructure improvements.
- Provide safe bicycle and pedestrian routes to nearby County Parks in the Rural Area and other regional amenities.

**D. Proposer Scope:** The Proposer will provide all things required by the RFP to complete the Project, including but not limited to supervision, labor, design, materials, equipment, services, permits, approvals, easements, quality control and quality assurance to perform the work as described in the RFP that includes Administrative Specifications, Technical Specifications, Comprehensive Agreement, and any amendments or addendums for the Eastern Avenue Extension PPTA project.

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The Proposer shall establish and maintain an organization that effectively manages all elements of the Project. This Project management effort will be defined and guided by the Project Development Plans (PDP) as described in the Comprehensive Agreement (Agreement). Project management activities shall include but not be limited to scope, schedule, cost, and document management, and will be consistent with the Project Work Breakdown Structure (WBS) developed by the Proposer.

1. The Proposer's management approach shall provide all components of an effective and efficient management system, including communication and reporting; documentation of Work; supervision of Work personnel and activities; all equipment, facilities, and materials; environmental protection and mitigation; safety of Work personnel; and any other management elements needed to produce and document a successful quality, safe, efficient, and operable Project.

### **E. Procurement Method**

The RFP is issued by the County pursuant to the PPTA, the PPTA Guidelines, and other state and federal Law.

If a selection is made, the County will select as the Preferred Proposer the Proposer that delivers the Apparent Best Value Proposal, which is determined by the County through evaluation based upon the criteria set forth in the RFP in accordance with the above Laws and regulations. For the County to execute a Comprehensive Agreement with the Preferred Proposer, the County Executive will certify that entering into a Comprehensive Agreement with the Preferred Proposer serves the public purposes of the PPTA. The County Executive may so certify if: (1) there is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility; (2) the transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof; (3) the estimated cost of developing and/or operating the transportation facility or facilities is reasonable in relation to similar facilities; and (4) the private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation.

The County will not review or consider unsolicited or nonconforming proposals related to this procurement (except for pre-approved ATCs, as described herein).

### **F. County Contribution**

To further incentivize, and financially support the Selected Proposer in its construction of the Eastern Avenue Extension and Bridge, the County agrees, subject to the terms and conditions

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of this Agreement, to:

1. Provide Cash Contributions: The County's Board of Supervisors has appropriated funding for this project, and a County Contribution of up to **\$16,000,000** is to be paid to the Proposer, for the construction of the Eastern Avenue Connector in accordance with the terms of this Agreement. The County contribution will be reimbursements to the Proposer monthly and determined as follows:

- a. The Selected Proposer and County will agree on a Final Cost of the Project (see I.3)
- b. The County contribution total will be factored into the Final Cost of the Project as a percentage of the total.

*Example:* Final Cost of Project is determined and agreed upon to be \$20,000,000. The County's maximum contribution is **\$16,000,000**. The County's percentage of the Final Cost of The Project is 80%.

- c. The Selected Proposer will provide a detailed Line-Item Schedule of Values that will be approved prior to work starting and then presented each month as a Pay Application with each line item showing percentage complete. Once the County approves the final monthly amount billed, the County will pay 80% of the monthly Pay Application as a reimbursement to the Selected Proposer.

2. Contribution Increases: Neither the Selected Proposer nor the County shall be obligated to contribute more to the construction of the Road System than specified in without the agreement of both the Selected Proposer and the County.

### **G. Submission of Proposal Security**

As security for its commitment to enter the Project Documents in accordance with its Proposal commitments if it becomes the Preferred Proposer, each Proposer shall submit to the County a Proposal letter of credit (the "Proposal Security") at or before the date and time on which it submits its Financial Proposal, as set forth in Section 4.6 of the Administrative Specifications. The Proposer shall provide as part of its Proposal one original and three certified copies of the Proposal Security. The original Proposal Security shall be provided with the Financial Proposal and shall be in a separate envelope labeled "[Proposer Name]: Proposal Security for the Eastern Avenue Extension P3 Project. The Proposal Security shall be a letter of credit, or multiple letters of credit, in the aggregate amount of \$10 million in the form of Form K-1. The Proposal Security must be issued by an Eligible Security Issuer. A draft of the form of Proposal Security must be submitted to the County for pre-approval by the date set forth in Section 4.6 of the Administrative Specifications. The Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. At any time following the Proposer's submission of its Proposal Security to the County, if any issuer thereof shall fail to be an Eligible Security Issuer, the Proposer shall promptly notify the County in writing of such change and, within 10 days of such notice, the Proposer shall deliver to the County new Proposal Security from a replacement Eligible Security Issuer. Upon the

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County's receipt of such replacement Proposal Security, the County will promptly return the replaced Proposal Security to the Proposer.

**H. This Agreement is Contingent Upon**, the County Board of Supervisors endorsing the Comprehensive Agreement.

### **I. Selected Proposer Obligations**

(1) Construction of the Road System. The Selected Proposer shall construct the Road System in accordance with plans approved by the County. The Proposer shall submit plans to the County for its review and approval at the 30%, 60% and final completion for its approval.

(2) Road System Construction Contract. The Selected Proposer shall, in coordination with the County, select the contractor to build the Road System and negotiate the Road System Construction Contract. The County shall have the opportunity to confirm the Road System Construction Contract has fair and reasonable costs.

(3) Budget. A minimum of 90 days prior to commencement of the construction of the Road System (Road System Commencement Date), the County and the Selected Proposer shall agree on the final project budget for the Road System.

(4) Construction Loan. 45 days prior to the Road System Commencement Date, the Selected Proposer shall obtain a construction loan for the balance of funds more than the County Contribution.

### **J. County Obligations**

(1) County Review of Road Plans. The County shall review and provide comments and/or approval of all the Road Plans prior to submittal to VDOT and within 21 days following receipt of such plans.

(2) County Review of Pay Applications. The County shall review and provide comments and/or approval of all Pay Applications within 5 business days following receipt of such pay applications.

**K. Reporting Obligations.** The Selected Proposer shall provide information regarding the Road System Project to the County as follows:

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- (1) Annual Reports. The Selected Proposer shall provide to the County, at the Proposer's expense, with a written report that verifies in a form and having reasonably satisfactory content to the County Executive about Proposer's progress on the Road System Project. The report shall be provided to the County in October of each year until the Road System Project has been completed.
- (2) Other Information Requested by the County. The County may request any other information regarding the status of the Road System Project as may reasonably require. The proposer shall provide the requested information within a reasonable period, not to exceed 60 days, unless otherwise agreed to by the County.

### **L. Default and Termination.**

**Events of Default.** Each of the following shall constitute an "Event of Default":

- (1) Such party shall fail to pay any monetary amount under this Agreement as and when the same is due and payable, and such failure shall continue uncured for 30 days after such party receives written notice of such failure from the other party: or
- (2) Such party shall fail to perform any obligation under this Agreement (other than as described in Section 6.1(a)) as and when the same is required, and such failure shall continue uncured for sixty (60) days after such party receives written notice of such failure from the other party, provided that if such failure is not reasonably susceptible of cure within such sixty (60) day period, then such sixty (60) day period shall be extended so long as the defaulting party initiates efforts to cure within the initial sixty (60) day period and thereafter diligently pursues completion of such cure.

**Remedies.** Upon the occurrence of an Event of Default, the non-defaulting party shall have the following rights and remedies: (i) to terminate this Agreement by written notice to the defaulting party, and/or (ii) to pursue such other rights and remedies as may be available under applicable law. Any funds remaining in the Tax Escrow Account shall be promptly returned to the County.

**Term.** The term of this Agreement shall commence on the date this Agreement is executed by the Parties and shall continue until the payment in full of the Permanent Loan unless this Agreement is otherwise terminated in accordance with its terms.

**Effect of Termination.** The termination of this Agreement for any reason shall not affect any right, obligation or liability which has accrued under this Agreement on or before the effective date of such termination.

**M. Amendments.** This Agreement may be modified or amended, and the provisions of this Agreement may be waived, only by a writing executed by the party against whom such modification, amendment or waiver is sought to be enforced.

### **N. Miscellaneous.**

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**Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the following limitations on assignment shall apply:

- (1) The Selected Proposer shall not assign its rights or obligations under this Agreement without the prior written approval of the County.
- (2) The County shall not assign its rights or obligations under this Agreement to any Entity other than the County without the prior written approval of the Proposer.

**(3) References:**

- Provide a contact person of a client for which the private entity has completed a relevant project. More than one reference may be provided. References should include:
  1. Name of client
  2. Name, address, and telephone number of the contact person
  3. Summary of the project, including original budget and final cost
  4. Project schedule, proposed versus actual

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**O. Notices.** All notices and other communications given or made pursuant to this Agreement ("Notice") shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail or facsimile, during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. Any notices sent by email shall only be valid with a read receipt and if a copy of the Notice is also sent by regular mail. All notices shall be sent to the addresses set forth below. Any Party may change its address by notice given in accordance with this Section O.

(1) Each Notice to the Proposer shall be addressed as follows:

**Proposer:**

\_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_  
Designated Representative: \_\_\_\_\_

(2) Each Notice to the County shall be addressed as follows:

Albemarle County Executive's Office  
401 McIntire Road  
Charlottesville, Virginia 22902  
Attention: Jeffrey B. Richardson, County Executive  
[Email: jrichardson3@albemarle.org](mailto:jrichardson3@albemarle.org)  
Designated Representative: Ann E. Wall

(3) With a copy (which shall not constitute notice):

Albemarle County Attorney  
401 McIntire Road  
Charlottesville, VA 22902  
Attn: Andy Herrick, Esq.  
[Email: aherrick@albemarle.org](mailto:aherrick@albemarle.org)

**P. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all oral discussions, agreements or understandings.

**Q. Non-severability.** If any provision of this Agreement is determined by a court having competent jurisdiction to be unenforceable to any extent, the entire Agreement is unenforceable.

**R. Governing Law and Venue.** This Agreement is to be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Albemarle or in the United States District Court for the Western District of Virginia. An action shall not be brought in any other court.

**S. Interpretation of this Agreement.** This Agreement shall be interpreted in accord with how any terms are defined in this Agreement and otherwise by applying the plain and natural meaning of the words used, and not for or against any party by reason of authorship.

**T. Dispute Resolution.** If there is a dispute of any kind between any parties arising under this Agreement, upon the written request of a party:

(1) Designation of a Senior Representative; Negotiation. Each of the parties to whom the dispute pertains will designate one or more senior representatives to negotiate with the other parties' senior representative in good faith and as necessary to attempt to resolve the dispute without any formal proceedings.

(2) Corrective Action. If the negotiated resolution of the dispute requires any party to take, cause to be taken, or cease taking some action or practice, that party shall do so within a reasonable period, not to exceed 90 days.

(3) Dispute Resolution Process a Prerequisite to Starting Court Proceedings. No party may initiate court proceedings by filing an action in a court of competent jurisdiction to resolve a dispute until the earlier of: (i) a good faith mutual conclusion by the senior representatives that amicable resolution through continued negotiation of the dispute does not appear likely; or (ii) 90 days after the initial request to negotiate the dispute. After either condition has occurred, a party may file an action in the jurisdiction and venue provided in this Agreement and may pursue any other remedy available at law or in equity. Each party shall pay its own attorney's fees.

(4) When the Dispute Resolution Process is Not Required. Nothing in this Section T will, however, prevent or delay a Party from instituting court proceedings to: (i) avoid the expiration of any applicable limitations period; or (ii) seek declaratory and injunctive relief.

**U. Relationship of the Parties.** This Agreement is intended solely for the purpose of establishing the relative rights and obligations of the parties and does not create

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any type of partnership, joint venture, joint venture, purchaser-vendor, or employer-employee relationship. The County may enter into Comprehensive Agreements with private entities that have formed joint ventures. In such cases, one or more of the individual private entities must provide a surety on behalf of all involved private entities participating in the joint venture. This requirement is in addition to the statutory requirement for a performance bond.

**V. No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or entity who is not a party, whether as a third-party beneficiary or otherwise.

**W. No Waiver of Sovereign Immunity or Other Immunities.** This Agreement and any action taken by the County, the Board pursuant to this Agreement is not, and shall not construed to be, a waiver of either sovereign immunity or any other governmental immunity that applies to the County, or the Board.

**X. Non-liability of County and Employees.** No County Supervisor or other County officer or employee shall be personally liable to the Offeror if there is any default or breach by the County, or the Board pursuant to this Agreement.

**Y. Force Majeure.** If the Offeror's timely performance of any obligation in this Agreement is interrupted or delayed by any occurrence that is not caused by the conduct of the officers or employees of either the County, the EDA, or the Offeror, whether the occurrence is an "Act of God" such as lightning, earthquakes, floods, or other similar causes; a common enemy; the result of war, riot, strike, lockout, civil commotion, sovereign conduct, explosion, fire, or the act or conduct of any person or persons not a party to or under the direction or control of the County, the EDA, or the Offeror, then performance is excused for a period of time that is reasonably necessary after the occurrence to remedy the effects thereof.

**Schedule:**

**Project to be accepted (complete) by December 31, 2028.**

**Detailed schedule to be agreed upon as part of this Agreement.**

**Z. SIGNATURE PAGE TO DEVELOPMENT AGREEMENT**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

**Selected Proposer:**

TBD

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

**County:**

County of Albemarle, Virginia

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**Definitions**

**Agreement** means Comprehensive Agreement

**Board** means the Albemarle County Board of Supervisors

**County** means the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia

**County Contribution** has the meaning set forth in Section 4.2(a)(i).

**PDP** means Project Development Plans contained in RFP

**PPTA** means Public Private Transportation Act

**Preferred Proposer** means Proposer that has been preliminarily Selected prior to the execution of this Agreement

**Selected Proposer** means Proposer that has executed this Agreement

**Project** has the meaning set forth in Section A.

**RFP** means Request for Proposal

**Road Plans** means the plans for the construction of the Roads.

**Road System** is road/ bridge and amenities as described in the RFP

**Road System Commencement Date** is the time or date that a contract becomes officially effective and therefore legally binding.

**The Parties** are the County of Albemarle and the Selected Proposer

**VDOT** means the Virginia Department of Transportation

**WBS** means Work Breakdown Structure

