

PROJECT DESIGN ADMINISTRATION AGREEMENT

BETWEEN FAIRFAX COUNTY and the TOWN OF VIENNA

for the design of pedestrian enhancement improvements on Creek Crossing Road in the Town of Vienna, Virginia and the County of Fairfax, Virginia.

THIS AGREEMENT, made and executed in duplicate on this the ____ day of _____, 2015, ("Effective Date") between the COUNTY OF FAIRFAX, VIRGINIA (the "COUNTY"), and the TOWN OF VIENNA, VIRGINIA (the "TOWN").

WITNESSETH

WHEREAS, the COUNTY's Transportation Priorities Plan, approved on January 28, 2014, includes funding for the design, construction, and implementation of pedestrian enhancement improvements on Creek Crossing Road, located in the TOWN and the COUNTY; and

WHEREAS, the COUNTY and TOWN have agreed that the TOWN will perform, or will engage third parties to perform, the design for the pedestrian enhancement improvements on Creek Crossing Road, including but not limited to, administration, scoping, surveying, preliminary engineering, and layout) (the "PROJECT"), substantially in accordance with the narrative scope and conceptual layout shown in Appendices A and B; and

WHEREAS, the COUNTY and the TOWN enter into this Agreement to set forth their respective obligations regarding the PROJECT; and

WHEREAS, funds in the amount of \$400,000 have been allocated by the COUNTY to finance the PROJECT and constitute the maximum amount the COUNTY will contribute to the PROJECT (the COUNTY Contribution); and

WHEREAS, the location of the pedestrian enhancement improvements is on Creek Crossing Road, running along Creek Crossing Road from Old Courthouse Road to Miller Lane and along Creek Crossing Road from Beulah Road to Fairway Drive.

WHEREAS, the COUNTY's and TOWN's governing bodies have, by resolutions, which are attached hereto as Appendix C and D, respectively, authorized their respective designees to execute this Agreement; and

WHEREAS, Section 15.2-1108 and Section 15.2-1202 of the Code of Virginia authorizes both the COUNTY and the TOWN to enter into this arrangement;

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

A. The TOWN shall:

1. Complete the work identified in Appendix A. All work shall be completed in accordance to scheduled activities established by both parties, and all applicable federal, state, and local laws and regulations, including the Virginia Public Procurement Act.
2. Prepare all design aspects for the portion of the PROJECT located within the COUNTY in accordance with all applicable design standards of the Virginia Department of Transportation (VDOT), and the COUNTY.
3. Work with the County in good faith to resolve any feasibility issues that may develop.
4. Provide a monthly summary of progress and project expenditures to the COUNTY in addition to, as needed, meetings with the designated COUNTY project manager, to discuss design issues and PROJECT progress. The COUNTY reserves the right to request that the TOWN provide to the COUNTY additional information and/or documentation to substantiate the monthly summary.
5. Obtain COUNTY approval before modifying the scope of the PROJECT as described in Appendix A. Prior to approval for such modification, the COUNTY will work with the TOWN on obtaining any required approvals as appropriate. The TOWN understands that if the TOWN takes any step to construct or implement a design that, in the COUNTY'S sole discretion, significantly deviates from the scope described in Appendix A, the COUNTY shall withdraw from the PROJECT and notify the TOWN of its decision. Within 30 days after the COUNTY's notification, the TOWN shall reimburse to the COUNTY all unspent monies provided to the PROJECT by the COUNTY.
6. Prior to incurring any amount in excess of the COUNTY Contribution, notify the COUNTY of additional PROJECT expenses, whether resulting from unanticipated circumstances or other causes, and provide the COUNTY with detailed estimates of the additional costs.
7. Be responsible for all PROJECT cost overruns that exceed the COUNTY Contribution of \$400,000 for the PROJECT. The TOWN, in its sole discretion, may expend more than the COUNTY's Contribution for the

PROJECT, but the TOWN is responsible for all expenses above the COUNTY Contribution for the PROJECT, whether such additional expenses are the result of cost overruns or TOWN enhancements or modifications.

8. Provide the COUNTY with 30 days' prior notice of its intent to enter into a contract for the design of the PROJECT.
9. Provide to the COUNTY a copy of the final site plan for the PROJECT upon completion of final design.
10. Perform, or engage third parties to perform, and remit all payments for all work associated with the PROJECT, to include administration costs and inspection services and activities for the PROJECT as required.
11. Return any unexpended portion of the COUNTY Contribution to the COUNTY no later than 90 days after the PROJECT has been completed and final expenses have been paid in full.
12. Retain all invoices and all records of payments for any and all materials and services rendered for the PROJECT, and any related expenses for completion of the PROJECT, and provide copies of any such invoices and records of payments to the COUNTY within three business days after such request.
13. Submit monthly summaries as referenced in Section A, Paragraph 4. Failure to submit a monthly summary for three consecutive months shall constitute the TOWN's abandonment of its obligations under this Agreement. Upon notification by the COUNTY to the TOWN of such abandonment, the TOWN will immediately return any amount of the COUNTY Contribution not expended in accordance with this Agreement and, within 14 days of such abandonment or cessation, transmit all invoices and records of payments related to the PROJECT to the COUNTY.

B. The COUNTY shall:

1. Provide to the TOWN for the PROJECT in accordance with this Agreement the payment outlined in Appendix A.
2. Review design plans and cost estimates and provide comments to the TOWN within 30 days after the receipt of the plans and cost estimates.
3. Fifteen days prior to the TOWN's letting of the design contract for the PROJECT, remit the COUNTY Contribution to the TOWN.

4. Participate in monthly, or as needed, meetings with the designated TOWN project manager to discuss project progress.

C. Both parties shall:

1. Maintain all records for the PROJECT for a period of not less than three years from PROJECT completion. All such records shall be subject to audit by either party.
2. Work cooperatively to complete the PROJECT in a timely and expeditious manner.
3. Upon notification of discovery of any hazardous substances in or on the property, immediately confer to determine the scope of any investigation and the requisite response action.
4. Meet and confer to resolve any dispute that may arise between the parties. Nothing herein limits the rights of either party to resolve disputes by means not described or provided for in this Agreement.

D. All requirements for funds to be borne by the COUNTY shall be subject to annual appropriations by the Fairfax County Board of Supervisors.

E. Either party may terminate this Agreement prior to construction award upon 30 days' advance written notice. Any portion of the COUNTY Contribution not spent or incurred as a debt to a third party prior to termination shall be returned to the COUNTY within 90 days of termination.

F. THIS AGREEMENT shall not be construed as a waiver of the sovereign immunity of Fairfax County.

G. All notices under this Agreement shall be sent via U.S. Mail, postage prepaid, and email for

Fairfax County to:

Tom Biesiadny
Director
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033-2895
Tom.biesiadny@fairfaxcounty.gov

Audra Bandy, P.E.
Transportation Planner
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033-2895
Audra.Bandy@fairfaxcounty.gov

and for the Town of Vienna to:

Dennis Johnson, P.E.
Director
Department of Public Works
127 Center Street S.
Vienna, VA 22180
djohnson@viennava.gov

Michael J. Gallagher, PE
Deputy Director of Public Works
Town of Vienna
127 Center Street S.
Vienna, VA 22180
Michael.Gallagher@viennava.gov

- H. THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors and assigns.
- I. THIS AGREEMENT may be modified in writing upon mutual agreement of both parties.
- J. THIS AGREEMENT shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

_____	_____
	Date
<u>Tom Biesiadny</u>	_____

Typed or Printed Name of Signatory

Date

Director, Department of Transportation

Title

Date

Signature of Witness

Date

TOWN OF VIENNA, VIRGINIA:

Date

Typed or Printed Name of Signatory

Date

Title

Date

Signature of Witness

Date