

THIS AGREEMENT, dated September 28, 2016, between the County of Albemarle, Virginia, **GRANTOR**, and the COMMONWEALTH OF VIRGINIA, acting by and through the Commissioner of Highways, **GRANTEE**,

WITNESSETH:

WHEREAS, in connection with State Highway Route 1403 Project 9999-002-900, R201, in the County of Albemarle, Virginia (“Project”), the **GRANTEE**, in accordance with the provisions of Title 33.2, Chapter 10 of the Code of Virginia of 1950, as amended, has lodged with the Clerk of the Circuit Court of Albemarle County, Virginia, Certificate Number C-716005, in the amount of \$12,100.00, for the benefit of the **GRANTOR**; and

WHEREAS, the **GRANTEE** has appointed the law firm of St. John, Bowling, Lawrence & Quagliana, LLP, as its attorney to institute condemnation proceedings for the purpose of determining the amount to be paid for the land, or interest therein, as described in the Certificate aforesaid, and damages to the remaining lands, if any, of the **GRANTOR**; and

WHEREAS, the **GRANTEE** has not yet filed a Petition In Condemnation in the Circuit Court of Albemarle County; and

WHEREAS, the parties have now agreed upon the following amount of just compensation for the land or interests therein and damages to the remainder, if any, and for all other claims and demands by the **GRANTOR** against the **GRANTEE** arising out of the filing of the Certificate, the Petition In Condemnation, and the conveyance of the property.

NOW THEREFORE, in consideration of the recitations above which are made a part of this Agreement, the parties agree as follows:

1.) All issues between the **GRANTEE** and the **GRANTOR** as described herein, including but not limited to just compensation, public use, public necessity, lost profits and lost access, the **GRANTEE'S** bona fide but ineffectual effort to purchase the property prior to the filing of the Certificate, and all other statutory prerequisites to condemnation are hereby settled and forever resolved and the pending condemnation proceeding will be dismissed in accordance with Section 33.2-1027 of the Virginia Code (1950), as amended. The recitals set forth above are hereby incorporated herein as if repeated in full and are true in all respects.

2.) **GRANTEE** has offered and the **GRANTOR** has accepted consideration in the amount of \$12,100.00 as total just compensation for the acquisition of all of the property identified and described in the Certificate, and satisfaction of all Claims (as defined below) including but not limited to Claims arising out of the filing of the Certificate, the filing of the Petition In Condemnation, any physical invasion or physical damage to the **GRANTOR'S** property outside of the fee or easement areas described in the Certificate which the **GRANTOR** has actual knowledge of or should have knowledge of based upon a reasonable inquiry, as of the date of this Agreement, and/or the conveyance of said property to **GRANTEE** pursuant to Virginia Code Section 33.2-1001, as well as all Claims for lost profits and/or lost access, and all Claims under the Rules of the Virginia Supreme Court related to the taking of said property. Said amount is inclusive of the amount deposited under the Certificate. In addition, **GRANTOR** accepts such just compensation in full, final and unconditional settlement and release of any and all claims, demands, remedies, damages and liability in the manner and to the extent as set forth below. **GRANTOR** agrees to provide **GRANTEE'S** counsel with properly executed tax information forms (Virginia Department of Accounts Substitute W-9 Form) contemporaneously with delivery of this properly executed Agreement.

3.) Other than interest on funds being held by the Clerk of the Circuit Court, if any, **GRANTOR** hereby waives and relinquishes all rights, claims, demands, remedies, damages, costs, interest, expert fees, attorney fees, and liability, including claims against **GRANTEE**, **GRANTEE'S**

agents and contractors, and any utility company or agent or contractor of such utility company involved in the construction work of the Project and any other parties acting under the color of the Certificate, (collectively referred to as “Claims”), that **GRANTOR** may have arising out of or related to the filing of the Certificate, the filing of the Petition In Condemnation, the acquisition of the property and property rights described in the Certificate, any physical invasion or physical damage of the **GRANTOR’S** property outside of the fee or easement areas described in the Certificate of which the **GRANTOR** has actual knowledge or should have knowledge of based upon a reasonable inquiry, as of the date of this Agreement, and/or the conveyance of said property to **GRANTEE** pursuant to Virginia Code Section 33.2-1001, *et seq.* as well as all Claims for lost profits and/or lost access and all Claims under the Rules of the Virginia Supreme Court relating to the taking of said property.

4.) Notwithstanding any provision to the contrary, **GRANTOR’S** settlement in paragraph two (2) and waiver in paragraph three (3) does not apply to any unlawful interference with access caused by something other than the rights conveyed in the Certificate and/or Petition, any physical invasion of or physical damage to the **GRANTOR’S** property outside of the fee or easement areas described in the Certificate of which the **GRANTOR** has no actual knowledge nor should have no knowledge of based upon a reasonable inquiry, as of the date of this Agreement. **GRANTOR** hereby represents and warrants that, as of the date of this Agreement, it is unaware of (a) any unlawful interference with access caused by something other than the rights conveyed in the Certificate and/or Petitioner, (b) any physical invasion of any property outside the fee or easement area described in the Certificate and (c) any physical damage caused by **GRANTEE**, its agents or contractors to **GRANTOR’S** remaining property. Nothing in this paragraph shall be read to exclude any other lawful claims that the **GRANTOR** may otherwise possess and which are not otherwise waived in this Agreement.

5.) As part of the consideration for this Agreement, **GRANTOR** warrants and represents that since the recordation of the aforesaid Certificate and continuing to the date of this Agreement,

there has been no sale or contract for sale of the land or interest therein or any part thereof between the **GRANTOR** and any third party.

6.) There have been no other promises, consideration or representations made which are not set forth in this Agreement.

7.) The consideration hereinabove mentioned represents the value of all estates or interests in such land and the damage to the remaining property, if any, and is in lieu of any and all Claims (subject to the terms of Paragraph 4, above) for compensation and damages by reason of the location, construction and maintenance of the highway including such drainage facilities within the fee and easement acquisition areas as may be described in the Certificate.

8.) The **GRANTOR** agrees to accept its legally proportionate share (if there be such apportionment) of such total consideration for the interests and rights in the land. If the settlement funds described in paragraph 2 of this Agreement are subject to any liens pursuant to Section 33.2-1021 of the Virginia Code (1950), as amended, the **GRANTOR** shall be responsible for securing and recording a proper instrument in the Clerk's Office of the Circuit Court where the Certificate was recorded releasing such liens prior to the funds being distributed, or, in the alternative, securing the endorsement of each such lienholder to the Final Order in this case releasing their respective liens on such funds. Notwithstanding any provision to the contrary, and in addition to the compensation stated above, the **GRANTEE** will pay the cost, if any, of recording such instrument releasing said liens.

9.) The parties hereto agree that the total consideration set forth above shall be reduced to the extent of any payment previously made pursuant to the provisions of Section 33.2-1023 of the Code of Virginia 1950, as amended, if any.

10.) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

WITNESS the following signatures and seals:

THE COUNTY OF ALBEMARLE, VIRGINIA

By: _____ (SEAL)
Thomas C. Foley, County Executive

STATE OF _____
COUNTY/CITY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 2016, by Thomas C. Foley, County Executive, on behalf of the County of Albemarle, Virginia.

My Commission expires _____ Notary Registration No.: _____

Notary Public

Approved as to Form:

Albemarle County Attorney

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

COMMISSIONER OF HIGHWAYS

BY: _____
James M. Bowling, IV,
its attorney duly authorized to act

Commonwealth of Virginia,
City/County of _____, to-wit:

The foregoing Agreement was acknowledged before me this ____ day of _____, 2016 by James M. Bowling, IV, on behalf of the Commissioner of Highways.

Given under my hand this ____ day of _____, 2016.

My Commission expires _____ Notary Registration No.: _____

Notary Public