

**AGREEMENT BETWEEN  
THE COUNTY OF ALBEMARLE AND  
THE CROZET VOLUNTEER FIRE DEPARTMENT**

**THIS AGREEMENT** is made and entered into on the \_\_\_\_\_ of \_\_\_\_\_, 2020, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”), and the **CROZET VOLUNTEER FIRE DEPARTMENT, Inc.**, a Virginia nonstock and nonprofit corporation (“CVFD,” SCC registration: 01854538).

**Recitals**

- R-1** The CVFD is the owner of that parcel identified as Tax Map Parcel 056A2-01-00-03500 (the “Property”), which is located in Albemarle County; and
- R-2** The CVFD intends to refurbish the Property to continue to provide services for the County; and
- R-3** CVFD intends to determine the causes of existing failures of the parking lot of the Crozet Volunteer Fire Department facility; provide general scope of work to make necessary improvements and repairs to remediate those failures; provide estimated construction costs to implement recommendations; upon approval, provide design services and all documentation necessary to procure the services of a contractor or contractors to fulfill those recommendations and return the parking lot to service, and to inspect the contractor’s work in progress to ensure compliance with design documents; and
- R-4** Procure the services of one or more contractors to effect design scope of work. The scope of the contractor’s work is expected to include stormwater infrastructure improvements, replacement/repair of unsuitable soils, re-paving of the parking lot, and potential improvements to the concrete apron at equipment bay exits; and
- R-5** The County has received a onetime funding request from the CVFD to support the costs of design and construction as outlined in R-3 and R-4; and
- R-6** Design and construction of the parking lot is currently scheduled to begin by 2<sup>nd</sup> Quarter 2020 and be completed on or before December 30, 2020; and
- R-7** If design or construction continue past June 30, 2020, the County shall carry-over the remaining funds into FY21.

**Terms and Conditions for the County’s Contribution and the CVFD’s Use of Funds**

The parties agree as follows:

1. **Authority.** The conditional appropriations by the County to the CVFD as anticipated by the terms of this Agreement are made pursuant to Virginia Code §15.2-950 and 15.2-953 and Albemarle County Code § 6-100 *et seq.*

2. **Term.** This Agreement shall be in force and effect from the date of its execution until the County issues a Notice of Substantial Completion, which shall not occur until all anticipated work is complete, all invoices have been addressed, and all design professionals and contractors have been paid or until the parties terminate this Agreement as provided in Section 3.
3. **Termination.** This Agreement may be terminated.
  - a. The County may terminate this Agreement if CVFD is in breach of any term of this Agreement after notice and 10 business days, during which CVFD shall have an opportunity to cure. The County, in its sole discretion, will determine whether the cure is satisfactory. If the cure is unsatisfactory and the County does not agree to additional time to cure, this Agreement is terminated without further notice. A termination occurring pursuant to this section shall invoke return of contributed funds under Section 10 herein.
  - b. Either party may terminate this Agreement for any reason with 60 business days notice to the other party. If the County terminates this Agreement, all uncontested invoices shall be paid, and all contested invoices shall be prioritized for resolution. The parties shall use their best, good faith efforts to resolve disputed invoices.
  - c. In the event that Section 14 (“Non-appropriation”) applies, the County should provide notice to CVFD as soon as possible; however, failure to provide notice in the event of a non-appropriation is not a breach of this Agreement.
4. **CVFD Organizational Requirements.** CVFD must comply with the following during the Term of this Agreement:
  - a. CVFD is and shall remain at all times during the term of this Agreement a member in good standing of the Coordinated Fire and Rescue System (the “System”), providing consistent and reliable volunteer firefighting services;
  - b. CVFD shall maintain its status as a current nonprofit and charitable organization recognized by the Internal Revenue Service;
  - c. CVFD must maintain its registration with the Virginia Department of Agriculture and Consumer Services (VDACS), Office of Charitable and Regulatory Programs, or provide evidence of its approved registration exemption from the VDACS;
  - d. CVFD may not change any material term of its corporate charter without written permission of the County.
5. **Requirements of Ownership.** CVFD shall at all times during the term of this Agreement maintain its full ownership interest in the real property that is the subject of these terms, and the Property shall be the principal locus of operations of CVFD services.
6. **Purposes for Which Contributed Funds may be Used.** The funds provisionally appropriated by the County to the CVFD are to assist CVFD in fulfilling its duties pursuant to Albemarle County Code Section 6-105(b)(10), as amended, and shall be used solely for design and construction, which shall include the facilities and services

described in recitals R-3 and R-4 of this Agreement.

**7. County Responsibilities**

- A. Subject to the terms as stated herein, the County agrees to appropriate to the CVFD a maximum of \$253,000 (“Maximum Allowance”) as provided in Section 9(A) of this Agreement. The appropriation by the County in any fiscal year is subject to non-appropriation by the Board of Supervisors as provided in Section 14 of this Agreement.
- B. County will provide a Point of Contact (POC) to Matt Robb within 14 business days of the execution of this Agreement. The POC will approve and coordinate with CVFD representatives as it relates to the design and construction of the Project, but will not be authorized to amend the terms of this Agreement, bind the County to obligations not contained herein, or provide the written approval referenced in Sections 2 and 3 above.
- C. Prior to beginning of construction, the POC will review and approve the engineer’s preliminary design and construction cost estimates for appropriateness of scope and reasonableness of anticipated costs. If it is determined that the cost estimates of the project are greater than the Maximum Allowance , CVFD will either (1) verify that it can independently pay the costs in excess of the Maximum Allowance and provide evidence of such verification to the POC; (2) work in collaboration with the POC and engineering firm to “value engineer” the project scope so that it may be accomplished within the Maximum Allowance; or (3) stop all work.
- D. Upon request and as otherwise appropriate, provide updates of available funds from the Maximum Allowance.
- E. Review and approve contractor’s proposal for consistency with design.
- F. Review and approve construction schedule in coordination with CVFD, to verify that the project can be accomplished within a reasonable period of time.
- G. Inspect work in progress and when complete, as necessary to effectuate the requirements of the Payment Procedures outlined in Section 9 of this document.
- H. Subject to CVFD’s satisfactory compliance with the terms of this Agreement, process a payment to the CVFD within 14 business days of receiving an uncontested invoice per the procedure outlined in Section 9 of this Agreement or notify CVFD of the basis for an objection, need for clarification or supplemental documentation, or other notice and explanation of a necessary delay.

**8. CVFD Responsibilities.**

- A. Select an engineer that meets County standards.
- B. Enter into a written agreement with the engineer that requires design and construction management services and submit a copy of this agreement to the County upon request. If so advised, CVFD may disclose the substance of this agreement to the engineer. In no event will the County be obligated to the engineer or any of its subcontractors on behalf of CFVD.

- C. Select a CVFD Point of Contact (POC) that will oversee design and construction of the Project, including in-person inspection of work, and coordinate inspections with the County's POC for the duration of the Project.
- D. In coordination with County's POC, review and approve design and construction cost estimates.
- E. Choose a contractor(s) that meets the standards found in the County's General Terms and Conditions.
- F. Enter into a written agreement with the contractor and submit a copy of this agreement to the County upon request. If so advised, CVFD may disclose the substance of this agreement to the contractor. In no event will the County be obligated to the contractor or any of its subcontractors on behalf of CVFD.
- G. Account and timely reconcile invoices with work performed by design professionals and contractors throughout the Project.
- H. Provide requested information to the County. Make available, upon request, the Property and any construction site for inspection by the County's POC.
- I. Pay design firm and/or contractor(s) within 14 business days of receiving payment from the County.
- J. Ensure that all construction will be finally complete within 12 months of the execution of this agreement, unless an extension of time is authorized in writing by the County's Facilities Planning & Construction Division of the Facilities & Environmental Services Department. Such authorization shall not be unreasonably held. If design and construction continue past June 30, 2020, the County shall carry-over the remaining funds into FY21.
- K. Prohibit discrimination against any person in its employment, membership, or services on any basis prohibited by federal or state law.

**9. Payment Procedure**

- A. The combined design and construction payment maximum for this Project is \$253,000. The County will not reimburse any invoices or partial invoices once this Maximum Allowance has been reached.
- B. Engineer and contractor(s) will submit their invoices to the CVFD POC, or her/his designee.
- C. In coordination with the engineer, the CVFD POC, or her/his designee, will inspect all contractor's work that is being invoiced:
  - i. If work is acceptable, the CVFD POC will prepare a request for payment and submit to the County POC. The request shall include as attachment the approved vendor invoice.
  - ii. If the work is unsatisfactory, the CVFD POC, or her/his designee, will notify, by email, the vendor and the County POC regarding the contested invoice and his plan for resolution.
- D. At her/his discretion, the County POC, or her/his designee, will inspect work within 5 business days of receiving a payment request before authorizing a payment.
- E. County will process a payment to the CVFD within 14 business days of receiving an uncontested invoice. If there is a basis for an objection to the invoice or need

for clarification or supporting documentation, the County POC will advise CVFD POC as soon as practicable.

- F. Within 7 business days of payment to the vendor, the CVFD POC, or her/his designee, will submit proof of payment to the County POC.

10. **Return of Contributed Funds.** The funds provided by the County to the CVFD shall become immediately due and repayable to the County in their entirety in the event any of the following circumstances occur:

- A. The CVFD does not obtain all necessary permits from the County by the start of construction.
- B. The CVFD fails to comply with any of the terms herein, including but not limited to its Organizational Requirements and Ownership Requirements.
- C. The CVFD sells, leases, or otherwise loses any portion of its ownership interest in the Property or permits an encumbrance on the Property on or before the CVFD expends all of the County's contribution.
- D. The CVFD ceases to operate the Crozet Volunteer Fire Department on the Property and/or to provide firefighting at any point and/or dissolves or is dissolved.

11. **Security for the County's Contribution in the Event of the CVFD's Failure to Complete Design and Construction as outlined in R-3 and R-4.** The County, in its sole discretion, may record an instrument against the Property to secure the return of its contributed funds under any of the circumstances described in Section 10 of this Agreement. The CVFD will sign the documents necessary to allow the County to record its instrument, and will not otherwise prevent, or seek to prevent, the County from recording its instrument. The County instrument will be subordinate to any instrument recorded by one or more financial institutions to secure its funding provided to the CVFD for this project. The County will sign the documents necessary to subordinate its instrument to the instrument recorded, or to be recorded, by the financial institution, and will not otherwise prevent, or seek to prevent, the financial institution from recording its instrument. The County will promptly and timely release any instrument that it records to secure the return of its contributed funds as provided under this Section when the CVFD is no longer obligated to return contributed funds as provided under Section 10 of this Agreement. The CVFD shall not be responsible for any costs, including recording costs, incurred by the County for it to record any instrument under this Section.

12. **No Goods or Services Received by the County.** The contributions made by the County pursuant to this Agreement are solely to enable the CVFD to design and construct this project. The descriptions of the services that will be provided by the CVFD in recitals R-3 and R-4 of this Agreement state the public and charitable purposes that may be served by the County's contribution and are not a description of goods or services being procured by the County by this Agreement.

13. **Remedies.** The remedies available to the County at law and equity are not restricted by this Agreement. The County's plenary authority, pursuant to Virginia Code §27-10, is

unaffected or unrestricted by the terms herein.

14. **Non-appropriation.** The obligation of the County to contribute funds as provided in Sections 7 and 9 of this Agreement is subject to, and dependent upon, appropriations being made from time to time by the Board of Supervisors. Under no circumstances shall this Agreement be construed to establish an irrevocable obligation on the County to contribute the funds.
15. **Assignment.** This Agreement is nonassignable by CVFD without the express, written permission of the County.
16. **Waiver.** No failure of the County to exercise any right or power given to it by law or by this Agreement or to insist upon strict compliance by CVFD with any of the provisions of this Agreement, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the County's right to demand strict compliance with the terms of this Agreement.
17. **Entire Agreement.** This Agreement states all the covenants, promises, agreements, conditions, and understandings between the County and the CVFD regarding the County's contribution of funds.
18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
19. **Amendments.** This Agreement may be amended by a written amendment signed by the authorized representatives of the parties.
20. **Legal Notices:** All legal notices and requests required or permitted hereunder shall be sent by United States certified mail, return receipt requested, and to be effective, shall be postmarked not later than the final date for giving of such notice, or such notices may be sent by commercial messenger service, in which event, to be effective, such notices shall be delivered to a commercial messenger service not later than the final date for giving such notice.

**Notices for County shall be addressed as follows:**

Blake Abplanalp, Chief, Facilities Planning & Construction  
401 McIntire Road, 4<sup>th</sup> Floor  
Charlottesville, VA 22902

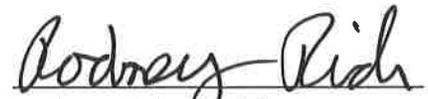
**Notices for CFVD shall be addressed as follows:**

Matt Robb  
P.O. Box 696  
Crozet, Va. 22932

Such addresses may be changed at any time and from time to time by like written notice given by either party to the other.

WITNESS, the following authorized signatures:

**CROZET VOLUNTEER FIRE DEPARTMENT, INCORPORATED**

  
Rodney Rich, President

06/17/2020  
DATE

**COUNTY OF ALBEMARLE, VIRGINIA**

\_\_\_\_\_  
Ned Galloway, Chair  
Albemarle County, Board of Supervisors

\_\_\_\_\_  
DATE

Approved as to form:

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
DATE