

**AGREEMENT FOR THE INSPECTION AND MAINTENANCE
OF THE GRADE SEPARATED STRUCTURE OF POLO GROUNDS ROAD
AND THE BROOKHILL TRAIL/GREENWAY, ALBEMARLE COUNTY**

THIS AGREEMENT FOR INSPECTION AND MAINTENANCE (“Agreement”) is made as of the date last signed below, by and between the County of Albemarle (the “County”), and the Commonwealth of Virginia, Department of Transportation (the “Department” or “VDOT”);

WHEREAS, the County has a greenway trail known as the Brookhill Trail (the “Trail”), which is located adjacent to the unnamed stream near the Brookhill development in Albemarle County, Virginia; and

WHEREAS, the developer of Brookhill (the “Developer”) is required to construct improvements in a portion of the roadway referred to as Polo Grounds Road, which will cross over the unnamed stream along the Brookhill Trail, and which will include a concrete culvert structure (the “Structure”) to allow pedestrian traffic to pass under the roadway; and

WHEREAS, the County is entering into a separate agreement with the Developer regarding the Developer’s responsibilities for maintenance and inspection of the Structure; and

WHEREAS, because the Structure is intended to serve a secondary purpose that is not essential to the operation of the roadway, the parties to this Agreement agree that the Structure is an extrinsic structure, ineligible for maintenance by the Department at public expense; and

WHEREAS, the costs associated with periodic safety inspections and maintenance of such structures, including ultimate closure or removal, are deemed appropriately sustained by the community that they are intended to serve; and

WHEREAS, the National Bridge Safety Inspection Act requires that uniquely qualified personnel perform periodic safety inspections of roadway structures to ensure their structural integrity and the safety of those using the structures; and

WHEREAS, the County agrees to bear the costs, including but not limited to the construction, maintenance, inspection, and repair, of the Structure, up to but not including the surface of Polo Grounds Road, which the Department shall maintain.

NOW, THEREFORE WITNESSETH, that for and in consideration of the aforesaid recitals, which are hereby incorporated into this Agreement as if fully set forth herein, and in further consideration of the covenants contained herein, the parties agree as follows:

A. The County agrees to the following:

1. The Structure will be treated as an integral part of the highway system, but that the County shall be responsible for routine bridge safety inspections of the Structure, the results of which the County will promptly provide to the Department. All inspections must meet the Department’s regulatory guidance and be undertaken by an inspector licensed to perform those inspections to the Department’s standards.

2. The Structure shall be inventoried and inspected in accordance with the Department's IIM policy guidance as a large culvert, and that the level of the inventory and inspection shall meet the requirements of the National Bridge Inspection Standards and the Department's IIM policy guidelines provided in the following standards (as they may be amended from time to time):
 - *The National Bridge Inspection Standards (NBIS) found in the Code of Federal Regulations title 23 Highways - Part 650, Subpart C;*
 - *The Manual for Bridge Evaluation (MBE);*
 - *VDOT IIM-S&B-27.8 Bridge Safety Inspections;*
 - *VDOT IIM-S&B-86.1 Load Rating and Posting of Structures (Bridges and Culverts).*
3. The Department has no maintenance, upkeep and/or repair responsibility or liability for the Structure, except in cases of physical damage resulting from road maintenance operations or road construction projects administered by the Department.
4. The Department, in its sole discretion, may require an inspection of the Structure at any time, and may at any time require that the County perform any maintenance it deems necessary for the timely preservation of the Structure or for public safety. In the event of any disagreement regarding the necessity of an inspection, the Department's determination shall be binding.
5. The County shall operate and maintain all pedestrian facilities within the Structure, or otherwise associated with the Trail crossing of Polo Grounds Road that are within VDOT operated right of way, in compliance with all requirements of the Americans with Disabilities Act or any other state and federal law, and to make no claim for financial assistance from the Department for the operation of the pedestrian facilities.
6. The County shall not fasten or attach to the Structure any pedestrian facility component (including but not limited to: signs, lighting fixtures, paved invert, and hand rails), except (a) by pre-approved attachments to anchor systems installed by the prefabricator or (b) as otherwise approved by the Department in its review of the construction plans. Neither additional attachments to the Structure nor any painting of the Structure's surfaces may be made without approval of the Department's bridge and structures office.
7. All maintenance, repairs or replacements of the Structure performed by the County, and all fastenings or attachments to the Structure made by the County, are herein collectively referred to as the "Work". All of the Work shall be done in accordance with a Single Use Permit issued by the Department pursuant to 24VAC30-151 upon proper application therefor made by the County prior to the commencement of such Work.
8. The County shall carry insurance against liability for personal injury and property damage that may arise from the operation of the Trail, up to one million dollars (\$1,000,000) for each occurrence and five million dollars (\$5,000,000) in the aggregate. In addition, the County or any contractor or subcontractor of the County who wishes to enter the Property for the purpose of performing Work thereon shall obtain and maintain Workers' Compensation, Employer's

Liability, Commercial General Liability and Automobile Liability insurance as required by, and in the amounts set forth, in the Commonwealth of Virginia Agency Procurement and Surplus Property Manual, as amended (the "Manual"). All insurance required under this Section shall name the Department as an additional insured. The County, or any contractor or other party performing the Work on County's behalf, as the case may be, shall provide to the Department a certificate of insurance evidencing insurance coverage required by this Section prior to commencement of the Work or entry upon the Department's property, and in addition the Contractor shall provide any bonds required by the Manual in form acceptable to the Department. All insurance coverage required hereunder shall require written notice to the Department at least thirty (30) days prior to any cancellation, renewal or expiration of such coverage.

9. If the Structure is no longer required for its intended purpose, the County will permanently close the structure to the Department's satisfaction at no cost to the Department. Alternatively, in such event the Department may elect to close the Structure and recover its costs from the County up to the amount of the actual costs.
10. To timely perform all maintenance of the Structure when required by the Department.
11. To pay all costs of repair of the roadway over the Structure in the event failure of the Structure causes damage to the roadway.
12. Not to seek indemnification or contribution from the Department for any claims or damages arising from improper maintenance or operation of the pedestrian facility by the County.

B. The Department agrees:

1. To accept the operational responsibilities associated with the Structure as part of the highway system carried by the Structure, in keeping with its normal practices and in accord with this Agreement.
2. To coordinate its activities with the County to avoid interfering with the County's activities, events or use of pedestrian facilities within the Structure.
3. To not restrict pedestrian movement on the trail within its right of way without cause.

C. Both parties further acknowledge that:

1. The Department in its sole discretion may close the road above the Structure or the Structure itself, as the Commissioner of Highways or his agent deems necessary for the safety of the public or for the proper completion of work. However, the Department will coordinate its activities with the County to avoid interference with the County's activities, events, and use of the pedestrian facility within the Structure.
2. This Agreement does not relieve the parties hereto of their rights and obligations pursuant to any applicable federal or state laws or regulations.

3. While this Agreement is not intended to relieve the parties hereto for any liability to each other for the parties' actions under this Agreement for which the parties may be subject under the law, nothing in this Agreement is intended to limit or waive either party's rights to assert sovereign immunity as a defense to any action against that party arising from this Agreement.

Witness the following signatures and seals:

County Board of Supervisors of Albemarle County, Virginia

By: _____

Name: _____

Title: _____

Date: _____

Witness: _____

Approved as to form:

Albemarle County Attorney

Commonwealth of Virginia, Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

Witness: _____