

**AGREEMENT FOR DEVELOPMENT AND ADMINISTRATION  
OF THE LEWIS AND CLARK EXPLORATORY CENTER OF VIRGINIA**

THIS AGREEMENT, made and executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2008, between the **LEWIS AND CLARK EXPLORATORY CENTER OF VIRGINIA**, hereinafter called the “Center”, and the **COUNTY OF ALBEMARLE**, a political subdivision of the Commonwealth of Virginia, hereinafter called the “County”.

**WITNESSETH:**

**WHEREAS**, the Virginia Department of Transportation, hereinafter called the “Department” has approved a Transportation Enhancement Project for the Lewis and Clark Exploratory Center and Trails identified in the Enhancement Program portion of the Six Year Improvement Program and designated as Project EN07-002-114, P101, R201, C501, UPC87015 and referred to hereinafter as the “Project”; and

**WHEREAS**, the estimated cost of the Project is \$1,140,100, which includes \$150,000 of Enhancement Program Funds and \$990,100 in contributions to the Project by the Center; and

**WHEREAS**, the Department and the County desire to assist in the construction of the Project and have entered into an Agreement in which the County agrees to have the Project completed by March 11, 2012 as a condition for receiving the \$150,000 Enhancement allocation; and

**WHEREAS**, the Center desires to undertake certain responsibilities and duties of the County as an incentive for the County to undertake the Project and to complete it as expeditiously as possible.

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

1. The Center shall:
  - a. Pay all project costs.

b. Be responsible for all activities necessary to complete the noted phase of each Project shown in Appendix A, except the performance of the State Environmental Review Process (SERP), and coordinate with the Department for all reviews, approvals, and environmental actions and decisions, as required. Each phase of the Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the Department.

c. Receive prior written authorization from the Department to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of the Project.

d. Maintain accurate and complete records of the Project's development and documentation of all expenditures and make such information available for inspection or auditing by the County or the Department. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on the Project, or all such records and documentation may be turned over to the Department in a manner acceptable to the Department.

e. No more frequently than monthly, submit invoices with supporting documentation to the Department in the form prescribed by the Department. The supporting documentation shall include copies of related vendor invoices paid by the Center and a to-date Project summary schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible Project expenses are incurred by the Center. For federally funded projects and pursuant to the Federal Code of Regulation Title 49, Section 18.43, violations of the provision may result in the imposition of sanctions including possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.

f. Reimburse the County or the Department for all Project expenses incurred

by the County or the Department if, due to action or inaction by the Center, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.1-44 or Section 33.1-70.01 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state or local law or regulations require such reimbursement.

g. If matching funds are required, pay the Department the County's match for eligible Project expenses incurred by the Department in the performance of the SERP and guidance relative to the coordination of environmental commitments that result from the SERP, necessary coordination with the FHWA, and approval of plans, specifications, advertisement documents, and contract awards as determined to be necessary by the Department.

h. Administer the Project in accordance with all applicable federal, state, or local laws and regulations.

i. Provide certification by an official acceptable to the Department that all administered Project activities have been performed in accordance with all federal, state, or local laws and regulations. If expenditures exceed \$500,000 annually in federal funding, such certification shall include a copy of the single program audit in accordance with Office of Management and Budget Circular A-133.

j. If legal services other than that provided by the County are required, consult the Department to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General.

k. Maintain any property improved as part of the Project which is not accepted for maintenance by the Department. The minimum level of maintenance shall be a reasonable standard of care as determined by the Department.

l. If deemed appropriate by the County or the Department, submit each phase of the work to the County or the Department for review and approval as the Project develops and allow County or Department personnel to inspect all phases of the Project at all times.

m. Procure a contractor to construct the Project, in conformance with applicable provisions of the Virginia Public Procurement Act.

n. Submit any change orders to construction contracts for which reimbursement is requested to the County Engineer and the Department's Resident Engineer for approval prior to the authorization of the change order.

o. Receive County and Department approval of any claims arising from construction contracts for which reimbursement is requested prior to settlement.

p. Meet all County site plan, zoning and subdivision ordinance requirements and obtain all necessary permits for the Project.

q. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, national origin or other non-merit factors provided they are qualified and meet physical requirements established for the positions.

r. After construction of the Project, or any part thereof, not permit any changes or alterations to the Project, as approved and completed, without the prior written approval of the Department.

s. Indemnify the County and hold it, and its officers, agents, representatives and employees harmless from any and all claims, damages, costs, including attorney's fees, and liabilities of any kind arising out of or resulting from the Center's or its agents' negligent performance of its obligations under this Agreement or any failure by the Center to meet any obligation required to complete the Project.

t. Maintain during the entire term of this Agreement, property damage insurance and general public liability insurance with adequate limits to protect both the Center and the County from liability, such limit being not less than \$1,000,000. The Center will provide the County with a Certificate of Insurance naming the County as an additional insured and evidencing the insurance coverage required herein.

2. The County will coordinate and cooperate with and assist the Center in implementing the Project, and specifically agrees to:

- a. Respond in an expeditious manner to requests from the Center.
- b. Provide the necessary coordination with the Department, FHWA and other appropriate federal and state agencies.
- c. Process payments to the Center of reimbursements received from the Department for Project expenditures.
- d. Cooperate with the Center and the Department in the audit of all project costs and records as required by the FHWA.
- e. Take all reasonable actions required to obtain funding for the Project pursuant to the Enhancement Program in the Department's Six Year Improvement Program. The maximum amount of federal funds available pursuant to this Agreement for this Project is \$150,000.

3. All applicable federal, state and local regulations shall apply to all work performed on the Project including consultant services contracts and construction contracts.

4. Appendix A outlines the phases of work and general items to be administered by the Center. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.

5. If designated by the Department, the Center is authorized to act as the Department's agent for the purpose of conducting survey work pursuant to Section 33.1-94 of the Code of Virginia, 1950, as amended.

6. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been appropriated. In the event the cost of the Project is anticipated to exceed the allocation shown for the Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however, the Department and the County shall not be obligated to provide additional funds beyond those appropriated and allocated.

7. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee, or agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

8. Nothing in this Agreement shall be construed as a waiver of the County's or the Commonwealth of Virginia's sovereign immunity.

9. Upon the execution of this Agreement by both parties and upon notification by the County that the Department approvals have been received, the Center will be authorized to commence with the Project.

10. This Agreement may be modified by written agreement with the mutual consent of the Center and the County.

11. This Agreement may be terminated by the County upon 30 days advance written notice. Eligible Project expenses incurred by the County through the date of termination shall be reimbursed by the Center. Upon termination, the Department shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have

been reimbursed to the Department by the Center, in which case the Center will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.

12. This Agreement shall be binding upon the parties hereto, and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

ATTEST:

COUNTY OF ALBEMARLE


\_\_\_\_\_  
COUNTY CLERK

\_\_\_\_\_  
COUNTY EXECUTIVE

Approved as to form:

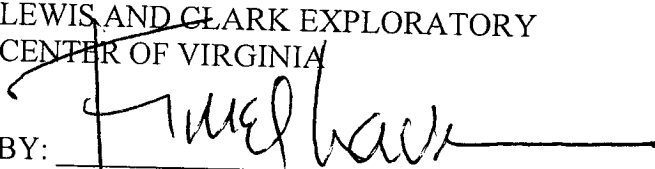
BY: \_\_\_\_\_  
County Attorney

WITNESS:

  
\_\_\_\_\_  
Colin Clark

LEWIS AND CLARK EXPLORATORY  
CENTER OF VIRGINIA

BY: \_\_\_\_\_

  
\_\_\_\_\_  
President

