

COMPREHENSIVE AGREEMENT
BY AND BETWEEN
THE TOWN OF CHRISTIANBURG, VIRGINIA
AND
BRANCH HIGHWAYS, INC.

December 6, 2012

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List of Exhibits:

Diamond Hills Stream Restoration Proposal (“Unsolicited Proposal”)... ..	Exhibit A
Public Notice for Competing Proposals – Stream Restoration.....	Exhibit B
Notice of Public Hearing – Unsolicited Proposal	Exhibit C
Public Notice for Competing Proposals – Culvert Replacement.....	Exhibit D
Channel Improvements at Independence Boulevard (“Solicited Proposal”).	Exhibit E
Website Posting of Public Hearing.....	Exhibit F
Modified Agreement Between Owner and Design/Builder.....	Exhibit G
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**COMPREHENSIVE AGREEMENT
BY AND BETWEEN
THE TOWN OF CHRISTIANSBURG, VIRGINIA
AND
BRANCH HIGHWAYS, INC.**

This Comprehensive Agreement (the "Agreement") is made and entered into as of December 6, 2012, by and between the Town of Christiansburg, Virginia, a political subdivision of the Commonwealth of Virginia (the "Town" or "Owner"), and Branch Highways, Inc., a Virginia corporation (the "Private Entity" or "Design/Builder").

Recitals

R-1. Virginia's Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA") as set forth in the Code of Virginia §§ 56-575.1, *et seq.*, and the Town of Christiansburg Guidelines to the Public-Private Facilities and Infrastructure Act of 2002 ("Guidelines") provide the Town the authority and procedure required to enter into an agreement with a private entity to develop or operate certain qualified public infrastructure or government facility projects.

R-2. Pursuant to the PPEA and Guidelines, on or about October 13, 2010, the Private Entity submitted to the Town an unsolicited conceptual proposal (the "Unsolicited Proposal") for a project to restore approximately 2,180 linear feet of an unnamed perennial stream, a tributary of Crab Creek, within the Diamond Hills development in the Town of Christiansburg, Virginia. The proposed project was also offered as a potential mitigation source to regulatory agencies in order to offset environmental impacts resulting from a grading project at Progress Park for the Joint Industrial Development Authority of Wythe County. A copy of the Unsolicited Proposal is attached hereto as Exhibit A.

R-3. The Town accepted the Unsolicited Proposal for consideration and on October 31, 2010, the Town posted and published public notice that it would accept for simultaneous consideration any competing proposals to be submitted by a specified deadline. A copy of the Town's public notice is attached hereto as Exhibit B. No other offeror submitted a proposal by the deadline as required by the Town.

R-4. Following the Town's lengthy review, analysis, and evaluation of the Unsolicited Proposal, the Town Council ("Council") authorized the Town to move forward with the preparation of a comprehensive agreement between the Private Entity and the Town, pursuant to the Guidelines and in accord with the Unsolicited Proposal, for the restoration of the unnamed perennial stream as set forth in the Unsolicited Proposal, along with the construction of a stormwater management facility necessitated by the Project. This phase of the Project is referenced in the Contract Documents as "Phase I."

R-5 The Town held a public hearing on the Unsolicited Proposal on January 4, 2011, and provided an opportunity for public comment on the Unsolicited Proposal for a period in excess of thirty (30) days. A copy of the notice with regard to the public hearing is attached hereto as Exhibit C.

R-6. Subsequently, on or about July 11, 2011, another private entity, Showcase Home Builders ("Showcase"), submitted to the Town an unsolicited proposal pursuant to the PPEA and the Guidelines for a related project titled "Unsolicited Proposal for Channel Improvements at Independence Boulevard" (the "Showcase Culvert Proposal"). This project included the restoration of approximately 90 linear feet of the unnamed perennial stream through the replacement of triple 72-inch culverts at Independence Boulevard ("Culvert Replacement") within the Diamond Hills development.

R-7. The Town accepted the Showcase Culvert Proposal for consideration and posted and published public notice that it would accept for simultaneous consideration any competing proposals on July 24, 2011. A copy of the Town's public notice requesting competing proposals for the culvert replacement is attached hereto as Exhibit D.

R-8. On or about September 9, 2011, the Private Entity submitted a competing proposal for the Culvert Replacement (the "Solicited Proposal") to the Town pursuant to the PPEA and the Guidelines. A copy of the Solicited Proposal is attached hereto as Exhibit E.

R-9. Following the Town's review, analysis and evaluation of the Showcase Culvert Proposal and the Solicited Proposal, the Council authorized the Town to move forward with the preparation of a comprehensive agreement between the Private Entity and the Town, pursuant to the Guidelines and in accord with the Solicited Proposal. The culvert replacement phase of the Project is referenced in the Contract Documents as "Phase II."

R-10. Thereafter, the Town held a public hearing on the Solicited Proposal on October 2, 2012, and provided an opportunity for public comment on the Solicited Proposal for a period in excess of thirty (30) days. Notice of the hearing was posted on the Town's website and a copy of the web site posting with regard to the public hearing is attached hereto as Exhibit F.

R-11. The Town and the Private Entity have now negotiated a comprehensive agreement consistent with the PPEA, the Guidelines, other applicable law, and both the Unsolicited Proposal and the Solicited Proposal, the terms of which are set out in this Agreement.

R-12. In accordance with the PPEA and the Town's Guidelines, this Comprehensive Agreement shall be posted on the Town's website, along with the Proposals for public comment.

R-13. The Town hereby determines that the Work set forth in the Contract Documents serves the public purpose of the PPEA under the criteria of Virginia Code §56-575.4(C), as amended, and the parties desire to enter into this Agreement.

NOW THEREFORE, for an in consideration of the mutual promises, conditions, and covenants herein set forth, the parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference. The duties of a “private entity” as set forth in the PPEA and as applicable to the contracted work hereunder, are hereby incorporated into this Agreement and imposed upon Private Entity (Design/Builder).

2. Definitions. The following definitions apply to this Agreement:

(a) “Contract Documents” means this Agreement (together with all of its Exhibits) and any written amendments thereto, the Design-Build Contract, the General Conditions, Supplementary Conditions, and all Exhibits listed therein. “Contract Document” means any one of these documents. In the event of any discrepancies between or among any of the Contract Documents, the language in this Agreement and any amendments thereto shall take priority, followed by the Design-Build Contract and then the Supplementary Conditions.

(b) “Design-Build Contract” means EJCDC Document No. D-520 – Suggested Form of Agreement between Owner and Design/Builder on the Basis of a Stipulated Price, as modified and set forth as Exhibit G.

(c) “General Conditions” means EJCDC Document No. D-700 – Standard General Conditions of the Contract Between Owner and Design/Builder, as modified by the Supplementary Conditions and set forth herein as Exhibits H and I. The General Conditions shall serve as the General Conditions of Contract as referenced in the Design-Build Contract.

(d) "Project" means the design and construction of Phase I and Phase II. It also includes the monitoring and other regulatory permit obligations required under Phase III. "Project" includes both the entirety of the Project or a part thereof.

(e) "Project Progress Schedule" means the proposed schedule for the Project to be prepared and approved pursuant to the Contract Documents.

(f) "Scope of Work" or "Work" means all of the design, construction and other duties and services to be furnished and provided by the Private Entity as set forth in the Contract Documents. "Work" may include the entirety of the Work or a portion thereof.

(g) "Site" means the real property on which the Project is to be located. The Site is more particularly described in Exhibit J.

(h) "Work Product" means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Private Entity and in any way related to the Project.

3. General Scope. The Town and the Private Entity agree that the Project shall be designed and constructed by the Private Entity for the benefit of the Town in accordance with the Contract Documents.

4. Term. The term of this Agreement shall begin on the date of this Agreement and shall continue until its termination pursuant to Section 9 hereof, any other provision of this Agreement, or any other Contract Document, or by law.

5. Design-Build Contract. The Town and the Private Entity shall execute and deliver the Design-Build Contract concurrent with their execution and delivery of this Agreement.

6. Project Progress Schedule. The Private Entity shall submit the Project Progress Schedule as required by the Contract Documents and the Town shall timely review such Schedule and approve it as appropriate. The Town and Private Entity shall also (i) execute and deliver in a timely fashion all instruments and documents as contemplated by the terms of this Agreement and the other Contract Documents, and (ii) perform obligations in accordance therewith. The Project Progress Schedule may be modified as circumstances warrant by written agreement of the parties. To help keep the Project on schedule, the Town shall give prompt attention to permits, reviews, and approvals required for the Project.

7. Payment to Private Entity.

(a) Payment by the Town to the Private Entity for Work shall be as set forth in the Design-Build Contract and the General/Supplementary Conditions.

(b) The Town shall arrange to finance any costs of the Project in a manner that results in the availability of funds in the amounts and at the times required to meet the projected needs for the Project. The Town represents and warrants that it has appropriated funds necessary to fulfill all of the Town's financial obligations related to the Project in the amounts and at the times required to meet the projected needs of the Project, including but not limited to a reasonable contingency to address adjustments reasonably required.

8. Representations and Warranties.

(a) Town Representations and Warranties. The Town hereby represents and warrants to the Private Entity as follows:

(i) The Town is the responsible public entity, as that term is used in the PPEA and the Guidelines, for the Project. As such, the Town has full power, right and

authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and the other Contract Documents.

(ii) The Town has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Contract Documents.

(iii) Each person executing this Agreement or any other Contract Document, or any other agreement, instrument or document on behalf of the Town to which the Town is a party has been or at such time of execution will be duly authorized to execute each such document on behalf of the Town.

(iv) Neither the execution and delivery by the Town of this Agreement and the other Contract Documents executed by the Town concurrently herewith, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(v) There is no action, suit, proceeding, investigation or litigation pending and served on the Town which challenges the Town's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which the Town is a party, or which challenges the authority of the Town official executing this Agreement or the other Contract Documents to which the Town is a party, and the Town has disclosed to the Private Entity any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Town is aware.

(b) Private Entity Representations and Warranties. The Private Entity hereby represents and warrants to the Town as follows:

(i) The Private Entity is a duly organized corporation created under the laws of the Commonwealth of Virginia. It holds a Class A license issued by the Virginia Board for Contractors, and it has and will maintain throughout the term of this Agreement the requisite power and all required licenses (or it or its subcontractors will have all required licenses prior to the time activities which require licenses are undertaken) to carry on its present and proposed activities, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and the other Contract Documents.

(ii) The Private Entity has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Contract Documents.

(iii) Each person executing this Agreement or any other Contract Document on behalf of the Private Entity to which the Private Entity is a party has been or at such time of execution will be duly authorized to execute each such document on behalf of the Private Entity.

(iv) Neither the execution and delivery by the Private Entity of this Agreement and the other Contract Documents executed by the Private Entity concurrently herewith, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(v) There is no action, suit, proceeding, investigation, indictment or litigation pending and served on the Private Entity which challenges the Private Entity's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and

the other Contract Documents to which the Private Entity is a party, or which challenges the authority of the Private Entity official executing this Agreement and the other Contract Documents to which the Private Entity is a party, and the Private Entity has disclosed to the Town any pending and unserved or threatened action, suit, proceeding, investigation, indictment or litigation with respect to such matters of which the Private Entity is aware.

9. Termination.

(a) If a party to this Agreement defaults or fails or neglects to carry out a material obligation under this Agreement (for purposes of this section, the "Defaulting Party") and if the other party (for this purposes of this section, the "Non-Defaulting Party") is not in material breach of this Agreement at the time, the Non-Defaulting party may give written notice to the Defaulting Party that it intends to terminate this Agreement, which notice shall contain a reasonably detailed explanation of the reasons for the proposed termination. The Defaulting Party shall correct the default, failure, or neglect within thirty (30) days after being given such notice; provided, however, if (i) the nature of such default, failure or neglect is such that it is not reasonably capable of being corrected within such thirty (30) day period and (ii) the Defaulting Party notified the Non-Defaulting Party of a reasonable alternative period reasonably acceptable to the Non-Defaulting Party with fifteen (15) days of receipt of such notice, the Defaulting Party shall be allowed such reasonable alternative period to correct the default, failure or neglect so long as the Defaulting Party promptly commences and diligently pursues such corrections to completion. If the Defaulting Party fails to make such corrections within the thirty (30) day period or fails to commence and diligently pursue to completion such corrections within the alternative period, then the Non-Defaulting Party may, at its sole discretion and without prejudice to any other remedy, terminate this Agreement. The terms of this Section 9 shall not

apply to a failure on the part of the Town of timely payment to the Private Entity, which shall be governed by the Design-Build Contract and the General Conditions.

(b) If not sooner terminated pursuant to the terms of subsection (a) above, or by mutual agreement, the Agreement shall terminate when all terms and conditions of all the Contract Documents (exclusive of warranty and indemnity obligations) have been satisfied.

10. Cooperation; Resolution of Disputes, Claims and Other Matters.

(a) The parties agree to cooperate to achieve the objectives of this Agreement, and to use reasonable and good-faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of the Town to those matters requiring an appropriate vote) so as to not unduly delay the Project Schedule.

(b) All disputes, claims and other matters in question between the parties shall be resolved in accordance with the General Conditions.

11. Financial Statement. On an annual basis, the Private Entity shall file with the Town a statement reflecting the general condition of the Private Entity.

12. Proposal Fee. Within one hundred eighty (180) days of the date of this Agreement, the Town shall reimburse to the Private Entity excess review fees paid to the Town by the Private Entity at the time of its submission of the Proposal. Such excess fees shall include the portion of the review fee not expended by the Town to cover its costs of processing, reviewing and evaluating the Proposal. Such costs include those items referenced in Section IV (C) of the Guidelines.

13. Records.

(a) Protected Records. If the Private Entity believes that any Work Product or any other document or item subject to transmittal to or review by the Town under the terms of this Agreement or any other Contract Document contain trade secrets or other information exempt or protected from disclosure pursuant to applicable law, the Private Entity shall use its reasonable efforts to identify such information prior to such transmittal or review, and the Town shall confer an appropriate means of ensuring compliance with applicable laws prior to transmittal or review.

(b) Requests for Public Disclosure. The Town recognizes that certain Work Product and other documents or materials of which the Town obtains a copy, may contain trade secrets or other information exempt from disclosure under applicable law, or may include information that is otherwise subject to protection from misappropriation or disclosure. Should any such items become the subject of a request for public disclosure, the Town shall respond as follows:

(i) The Town shall use reasonable efforts to immediately notify the Private Entity of such request and the date by which it anticipates responding.

(ii) The Private Entity must then assert in writing to the Town any claim that such items are protected from disclosure.

(iii) If the Private Entity fails to make such assertion within three (3) business days after the Town notifies the Private Entity of its intended response, the Town shall have the right to make such disclosure.

(iv) If the Private Entity makes a timely assertion that the requested items contain trade secrets or other information exempt from disclosure or otherwise protected under applicable law, the Town and the Private Entity shall seek judicial declaration of the rights

of the parties. Until such declaration is made, the Town will maintain the confidentiality of such items.

(v) If the Town's denial of a request for disclosure of items is challenged in court, the Private Entity shall assist the Town in its defense, and shall indemnify the Town for direct damages assessed and reasonable costs the Town incurs in such defense, excluding any damages or costs resulting from the Town's negligence.

14. Conditions Precedent to Agreement's Effectiveness. It shall be a condition precedent to this Agreement's effectiveness that:

(a) Entry into a Comprehensive Agreement between the Town and the Private Entity for the Project pursuant to the terms hereof has first been approved by the Council; that this Agreement has been properly executed by the Town; and that the approved, executed Agreement has been delivered to the Private Entity; and

(b) The Private Entity has certified that all material representations, information and data provided by the Private Entity to the Town in support of, or in connection with, the Proposal are true and correct in all material respects; that such certification has been made by an officer of the Private Entity who has knowledge of the information provided in the Proposal; and that the executed certification has been delivered to the Town.

15. Copy of Agreement to Auditor of Public Accounts. The Town shall submit a copy of this Agreement to the Auditor of Public Accounts of the Commonwealth of Virginia within thirty (30) days of its effective date.

16. Miscellaneous.

(a) Successors and Assigns. Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the

parties hereto and their respective successors and assigns. This Agreement may not be assigned without prior written consent of the parties to this Agreement.

(b) Notices. All notices and demands by either party to the other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Town: Town of Christiansburg, Virginia
Attn: Barry Helms, Town Manager
100 East Main Street
Christiansburg, Virginia 24073
Telephone: (540) 382-6128
Facsimile: (540) 382-7338

and Wayne O. Nelson, P.E.
Director of Engineering & Special Projects
Town of Christiansburg, Virginia
100 East Main Street
Christiansburg, Virginia 24073
Telephone: (540) 382-6120
Facsimile: (540) 381-7238

To Private Entity: Branch Highways, Inc.
Michael P. Higgins, Vice President of Operations
P.O. Box 40004
Roanoke, Virginia 24022
Telephone: (540) 982-1678
Facsimile: (540) 982-4217

with a copy to: Williams Mullen
Attn: Charles E. Wall, Esquire
200 South 10th Street
Suite 1600
Richmond, VA 23219
Telephone: (804) 420-6000
Facsimile: (804) 420-6507

(c) Binding Effect. Subject to the limitations of subsection (a) above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in

this Agreement is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

(d) Relationship of Parties. The relationship of the Private Entity to the Town shall be one of an independent contractor, not an agent, partner, joint venturer or employee, and the Town shall have no rights to direct or control the activities of the Private Entity in its performance under this Agreement.

(e) No Third-Party Beneficiaries. Nothing contained in this Agreement is intended of shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

(f) Waiver. No waiver by any party of any right or remedy under this Agreement of the other Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other Contract Documents. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

(g) Severability. If any term or provision of this Agreement shall be determined to be invalid or unenforceable in any respect, it shall be replaced with a substantially similar provision to the greatest extent possible, and the Agreement shall remain in full force and effect.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

(i) Entire Agreement. This Agreement, the other Contract Documents, and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between the Private Entity and the Town concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced to writing and signed by each party.


(j) Headings. The section and paragraph headings appearing in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provision hereof.

(k) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

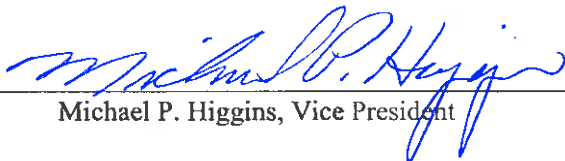
[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the
day and year first above written.

TOWN OF CHRISTIANSBURG, VIRGINIA, a political
subdivision of the Commonwealth of Virginia

By: 
Barry D. Helms, Town Manager

BRANCH HIGHWAYS, INC., a Virginia Corporation

By: 
Michael P. Higgins, Vice President

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