

**MEMORANDUM OF AGREEMENT**  
For  
Devolution of Secondary Highway System Construction

THIS MEMORANDUM OF AGREEMENT, made and executed in triplicate this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the **COUNTY** of \_\_\_\_\_, Virginia, hereinafter referred to as the COUNTY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, Section 33.1-84.1 of the Code of Virginia, as amended, provides that the Board of Supervisors of a county may, upon receipt by the Commissioner of Transportation of a resolution from said Board, enter into an agreement with the DEPARTMENT to resume responsibility for secondary highways within said COUNTY; and

WHEREAS, responsibility for secondary highways may include, maintenance, construction, maintenance and construction, or maintenance, construction and operations; and

WHEREAS, the COUNTY has expressed its desire to resume responsibility for **CONSTRUCTION** of secondary highways within the county and submitted to the DEPARTMENT a resolution indicating its desire; and

WHEREAS, the DEPARTMENT is required to meet specific requirements of the Federal Highway Administration (FHWA) on any maintenance or construction projects funded with federal transportation funds and will require the COUNTY to meet any such provisions.

NOW THEREFORE, in consideration of the mutual premises contained in the Appendices herein, the parties hereto agree as follows:

- A. For projects at least partially funded by federal highway construction allocations as shown in an approved Six-Year Improvement Program:
  1. The COUNTY shall:
    - a. Be responsible for all regulatory clearances including permits, the design, right-of-way acquisition and utility relocation, inspection, and construction of projects in accordance with federal and state law and regulations, except the administrative portion of the SERP, and coordinate with the DEPARTMENT for all NEPA scoping decisions, reviews, and approvals. Projects will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or appropriate supplementary standards as may be agreed upon by the DEPARTMENT.

- b. Receive authorization from the DEPARTMENT before initiating preliminary engineering, right-of-way acquisition, and construction phases of project development.
- c. Maintain accurate records of the projects including documentation of all expenditures. Records for items upon which reimbursement will be requested shall be maintained for no less than five (5) years following FHWA acceptance of the final voucher. Project records shall be made available for inspection and/or audit by the DEPARTMENT or FHWA upon request.
- d. Submit no more frequently than monthly project level invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT.
- e. Reimburse the DEPARTMENT all project expenses incurred by the DEPARTMENT in the event that the COUNTY cancels a project and/or the expenditures incurred are not reimbursed by the FHWA or in the event reimbursements are required to be returned to the FHWA.

2. The DEPARTMENT shall:

- a. Perform the administrative portion of the SERP, provide the COUNTY the results of the SERP, and provide the necessary coordination with the FHWA relative to environmental study scoping, design, decisions, reviews, approvals, and financial documentation, as appropriate.
- b. Upon receipt of the COUNTY's monthly invoices submitted pursuant to paragraph A.1.d, reimburse the COUNTY an amount not to exceed the lesser of the federal portion of the actual cost of eligible items or the amount appropriated and allocated to date for each project, less eligible project costs incurred by the DEPARTMENT. Such reimbursements shall be payable by the DEPARTMENT within 30 calendar days of receipt of a complete and acceptable invoice.

B. For projects not financed by federal funds but at least partially financed by state construction funds through the quarterly payments made by the DEPARTMENT to the COUNTY:

1. The COUNTY shall:

- a. Be responsible for all regulatory clearances including permits, the design, right-of-way acquisition and utility relocation, inspection, and construction of projects, except the administrative portion of the SERP, in accordance with state law and regulations pertaining to highways.

Projects will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or appropriate supplementary standards as may be agreed upon by the DEPARTMENT.

- b. Maintain such records as necessary to show compliance with law and regulations for a period of three (3) years after the completion of each project or for five (5) years after final allocation, whichever is greater, and make such records available for audit by the DEPARTMENT upon request.
2. The DEPARTMENT shall perform the administrative portion of the SERP and provide the results to the COUNTY.
- C. For administration of the COUNTY's entire Secondary System Construction Program:
1. The COUNTY shall:
    - a. Manage its highway program in accordance with state law and regulations pertaining to highways.
    - b. Endeavor to prepare each year's six-year program of projects so that all federal funds apportioned to the COUNTY shall be obligated within three (3) years of apportionment. If federal funds are unable to be obligated within that time, the COUNTY will notify the DEPARTMENT in writing.
    - c. Provide certification in a form prescribed by the DEPARTMENT by a COUNTY official that all project activities have been performed in accordance with state and federal laws and regulations. If the locality utilizes over \$500,000 in federal funding annually, such certification shall include a copy of the COUNTY's single program audit prepared in accordance with Office of Management and Budget Circular A-133.
    - d. In cooperation with the DEPARTMENT and pursuant to paragraph C.2.b, annually conduct a joint evaluation of the COUNTY's secondary system construction program.
  2. The DEPARTMENT shall:
    - a. Pay the COUNTY the state portion of its annual construction apportionment on a quarterly basis in accordance with Section 33.1-23.5.1 of the Code of Virginia 1950, as amended. Such payments shall be made on or about September, December, March, and June.

- b. In cooperation with the COUNTY and pursuant to paragraph C.1.d, annually conduct a joint evaluation of the COUNTY's secondary system construction program.
- c. Develop, update as needed, and make available to the COUNTY guidelines to assist the COUNTY in carrying out program responsibilities under this agreement.
- d. Audit on a random basis construction program and project records as may be required to verify COUNTY compliance with federal and state laws and regulations.

D. The COUNTY and the DEPARTMENT further agree that construction shall also include the following County-Wide construction functions:

- Seeding and Fertilizing
- Private Pipe and Entrance Construction
- Traffic Calming
- Engineering and Survey, and
- Traffic Services

THIS MEMORANDUM OF AGREEMENT shall not be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.

THIS MEMORANDUM OF AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS MEMORANDUM OF AGREEMENT may be modified in writing by mutual agreement of both parties.

THIS MEMORANDUM OF AGREEMENT may be terminated by either party upon advance written notice being provided no later than June 30 of any year becoming effective July 1 of the following year. In either case the requesting party shall include in the written notice the reason for terminating the agreement.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed in triplicate in its name and on behalf of its duly authorized officer as of the day, month, and year first herein written.

**COUNTY OF \_\_\_\_\_, VIRGINIA:**

\_\_\_\_\_

\_\_\_\_\_

Date

\_\_\_\_\_

Title

\_\_\_\_\_

Printed or Typed Name of Signatory

\_\_\_\_\_

Signature of Witness

\_\_\_\_\_

Date

NOTE: The official signing for the COUNTY must attach a certified copy of his or her authority to execute this agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:**

\_\_\_\_\_

Commonwealth Transportation Commissioner  
Commonwealth of Virginia

\_\_\_\_\_

Date

\_\_\_\_\_

Signature of Witness

**ATTACHMENTS**