

MEMORANDUM OF AGREEMENT
For
Devolution of Secondary Highway System Maintenance

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 the secondary system of state highways within said COUNTY; and

WHEREAS, the COUNTY has expressed its desire to resume responsibility for **MAINTENANCE** of the secondary system of state highways within the COUNTY's boundaries and has submitted to the DEPARTMENT a resolution indicating its desire; and

WHEREAS, Section 33.1-23.02 of the Code of Virginia provides that "*maintenance*" shall include ordinary maintenance, maintenance replacement, and any other categories of maintenance which may be designated by the Commissioner;" and

WHEREAS, Section 33.1-84.1 of the Code of Virginia, as amended, provides that such agreement entered into with a COUNTY shall specify the equipment, facilities, personnel, and funding that will be provided; and

WHEREAS, the DEPARTMENT is required to meet specific requirements of the Federal Highway Administration (FHWA) when maintenance activities are funded with federal transportation funds.

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

1. The COUNTY shall:
 - a. Be responsible for all activities necessary to perform maintenance of the secondary system of state highways as provided for in Section 33.1-23.02 of the Code of Virginia , to include but not limited to:
 1. Vegetation control (mowing, brush cutting, etc.);
 2. Removal of roadside hazards;
 3. Surface repairs and resurfacing (including pothole repair);
 4. Sign repair and replacement;

5. Traffic control device maintenance and replacement (**except traffic signals and traffic management systems**);
 6. Shoulder maintenance;
 7. Guardrail repair/replacement;
 8. Ditch and drainage cleaning;
 9. Storm water detention and retention basin maintenance;
 10. Pavement marking repair/replacement;
 11. Roadside cleaning (removal of dead animals and litter);
 12. Snow and ice control;
 13. Landscaping;
 14. Bridge repair, and rehabilitation;
 15. Receiving and responding to customer calls; and
 16. Emergency repair and replacement work.
- b. Perform all agreed-to inspection and maintenance activities in accordance with applicable Federal and State requirements, and , Virginia Department of Transportation and industry standards, which include but are not limited to:
1. Code of Virginia;
 2. VDOT Best Management Practices Manual;
 3. Virginia Department of Transportation Road and Bridge Specifications;
 4. COUNTY developed and DEPARTMENT approved standards;
 5. Applicable FHWA standards;
- c. Maintain accurate and complete records of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation shall be maintained for no less than three (3) years following expenditure.
- d. Subject to appropriation, reimburse the DEPARTMENT for all expenses incurred by the DEPARTMENT due to action or inaction solely by the COUNTY. Reimbursement shall include federally funded expenditures incurred which are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements that are required to be returned to the FHWA, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.

- e. Provide annual certification by a COUNTY official that all COUNTY administered activities have been performed in accordance with all federal, state, or local laws and regulations. If the locality expends over \$500,000 annually in federal funding, such certification shall include a copy of the COUNTY's single program audit in accordance with Office of Management and Budget Circular A-133.
 - f. The COUNTY shall report its maintenance expenditures annually through the *Weldon-Cooper Center Financial Survey* and shall also submit to the DEPARTMENT an annual report (included in the COUNTY's annual financial audit) which shall include a summary of annual rehabilitative maintenance activities which have been performed, to include but not be necessarily limited to pavement overlays, bridge/structure rehabilitations, major drainage modifications, and all other similar activities.
2. The DEPARTMENT shall:
- a. Pay the COUNTY the state portion of its annual maintenance apportionment on a quarterly basis. Such payments shall be made on or about September, December, March, and June. In the future, should such maintenance apportionment include federal funds, such funds shall be provided to the COUNTY on a reimbursement basis.
 - b. Retain operational control and permitting authority for all portions of the secondary system of state highways within the COUNTY.
 - c. Identify any Area Headquarters (AHQ), sub-AHQ, chemical storage facilities, storage lots, equipment, and similar assets that will be conveyed to the COUNTY in accordance with the "master" Devolution Agreement executed between the DEPARTMENT and the COUNTY.
 - d. Provide notice to the COUNTY whenever it becomes necessary for it to establish roadway detours that include a secondary route in the COUNTY (to include all necessary signage and coordination), or perform work within the right-of-way for those activities not transferred to the COUNTY, but shall not include those activities related to and including traffic signal maintenance. However, when detours are established due to an emergency, notification shall be provided to the COUNTY as soon as practicable.
 - e. If appropriate, submit invoices to the COUNTY for the COUNTY's share of eligible expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.

- f. Audit the COUNTY's records and documentation as may be required to verify COUNTY compliance with federal and state laws and regulations.
 - g. Continue to perform highway condition assessments for roadways in the secondary system of state highways within the COUNTY as it has prior to this agreement being entered into, and include such data in the DEPARTMENT's inventory system, and shall provide the COUNTY access to the data upon request.
 - h. Make available to the COUNTY guidelines to assist the parties in carrying out responsibilities under this Agreement.
 - i. **(OPTIONAL)** Conduct inspections of bridges and qualifying drainage structures located in the COUNTY in accordance with Federal Bridge Safety Inspection Standards as administered by the FHWA. **(NOTE: This would be considered locality responsibility but both parties could agree that VDOT would perform inspections and provide reports to locality)**
3. The DEPARTMENT and the COUNTY shall:
- a. Identify primary program contacts.
 - b. Establish written operating policies and procedures governing routine and emergency coordination and communications.
 - c. Establish a schedule of coordination meetings, held no less frequently than quarterly, to review and coordinate activities and operations.
 - d. Make available to each, during normal business hours, data files on the secondary system of highways, to include, but no limited to, design drawings, sufficiency reports, condition reports, inspection data, asset inventory data, work programming information and all other similar information.
4. Nothing in this agreement shall be construed as a waiver of the COUNTY's or the Commonwealth of Virginia's sovereign immunity.

THE COUNTY and DEPARTMENT acknowledge that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

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

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

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

_____ **OF** _____, **VIRGINIA:**

Typed or printed name of signatory

Date

Title

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
Department of Transportation

Date

Signature of Witness

Date