

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
AGREEMENT
TREE AND DEBRIS REMOVAL
STATEWIDE**

THIS AGREEMENT, executed in duplicate, made and entered into this _____ day of _____, 20____, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter called “Division,” and the _____, a West Virginia not-for-profit company, _____, hereinafter called “VFD,”

WITNESSETH that,

WHEREAS, the Commissioner of Highways is authorized to pay, in limited circumstances, volunteer and combination volunteer fire departments for the removal from Division’s rights-of-way of trees and other debris; and

WHEREAS, payment by the Division to VFD is subject to the provisions outlined in the Division’s policies and guidelines and

WHEREAS, in response to a request by the Division or to address an immediate safety concern, VFD has removed certain trees and other debris from Division’s right-of-way; and

WHEREAS, because of the public benefit to be derived from VFD’s removal of trees and debris from Division’s right-of-way, Division is agreeable to reimbursing VFD’s cost incurred for such work;

NOW, THEREFORE, in consideration of the above and in further consideration of the agreement herein set forth by and between the parties hereto, it is mutually agreed as follows:

- I. The work performed under this Agreement hereinafter is called “Project,” and primarily included tree cutting, removal of cut or uncut trees, limbs and other debris VFD determined to be necessary to allow safe travel along Division’s roadway.
- II. For Project, VFD secured the approvals and/or permits, if any, required by other governmental agencies, and complied with all applicable Federal, State, and local laws, rules, and regulations.
- III. Funding for Project shall be as follows:
 - A. VFD initially bore the cost of Project. Upon submission by VFD to Division of a properly documented invoice that clearly identifies the actual cost incurred by VFD for Project, Division then shall reimburse VFD for the actual Project costs incurred by VFD; however, Division’s maximum amount payable to VFD under the terms of this Agreement is not to exceed five thousand dollars (\$5,000.00) during any State fiscal year (July 1 through June 30).
 - B. The hourly wage rate for VFD personnel associated with Project shall be the wage rate established by the West Virginia Insurance Commissioner for the purposes of worker’s compensation premiums, which rate schedule is attached as Exhibit A to this Agreement.

- C. VFD's costs for materials and equipment associated with Project shall conform with the Schedule of Equipment Rates established by the Federal Emergency Management Agency.
 - D. Division shall have no financial responsibility or obligation for any cost incurred for any work performed by:
 - 1. The VFD during a State of Emergency;
 - 2. The VFD without prior authorization by the Division or without VFD notification to Division within eight (8) hours after performance of work by VFD if:
 - a. The VFD is a first responder and the tree or debris must be removed to allow the public to safely travel the roadway;
 - b. The VFD was unable to contact the Division while VFD was at the scene and the VFD was not notified of the obstruction when VFD was called out to the scene;
 - 3. Any contractor or other entity on behalf of the VFD; and
 - 4. VFD or other entity to haul or transport debris from the scene.
 - E. VFD shall not request of Division reimbursement for any work associated with Project for which VFD is seeking, or intends to seek, reimbursement or payment from any other source for the same work. If VFD receives reimbursement from both Division and another source for the same Project, VFD agrees to reimburse Division the full amount paid to VFD by Division under this agreement.
- IV. To the fullest extent permitted by law, VFD at all times does, and shall, assume all risks of damage to its property, and property of others, and injury or death to all persons (including, but not limited to, any employee or agent of VFD, Contractor or Subcontractor) resulting directly, indirectly or otherwise by (a) the actions or omissions of VFD, any Contractor or any Subcontractor, or their respective agents and employees, (b) any condition of the property, (c) any failure of VFD, any Contractor or any Subcontractor, or their respective agents and employees, to comply with any applicable law, rule, regulation or order of any governmental authority, or to comply with any provision of this Agreement, or (d) any other cause related to VFD's, any Contractor's or any Subcontractor's performance of work hereunder. VFD at all times hereby fully assumes the risk of and shall defend, indemnify and hold harmless the Division, its officers, employees and agents (the Division and such persons collectively "Division's Indemnified Persons"), and shall reimburse Division's Indemnified Persons for, from and against each and every demand, claim, suit, loss (which shall include any diminution in value), liability, damage, cost and expense (including, without limitation, interest, fines, penalties, and investigation, and any and all reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses") imposed on, incurred by or asserted against the Division's Indemnified Persons, (individually or jointly) directly or indirectly, relating to, resulting from, or arising out of VFD's work, services, or other activities performed under this Agreement. These covenants of indemnity shall survive cancellation, termination, or expiration of this Agreement, VFD hereby acknowledges that the allocation of risk set forth in this provision of the Agreement is a part of the consideration to be provided to Division by VFD for performance of this Agreement.

Upon written request by any Division Indemnified Party, VFD shall defend the same (if requested by any Division Indemnified Person, in the name of the Division Indemnified Person) by attorneys and other professionals approved by the Division Indemnified Parties. Notwithstanding the foregoing, any Division Indemnified Persons may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Division Indemnified Persons, their attorneys shall control the

resolution of any claim or proceeding, provided that no compromise or settlement shall be entered without VFD's consent, which consent shall not be unreasonably withheld. Upon written demand, VFD shall pay or, in the sole and absolute discretion of the Division Indemnified Persons, reimburse, the Division Indemnified Persons for the payment of reasonable fees and disbursements of attorneys, accountants and other professional advisors in connection therewith.

- V. The VFD's performance of work along Division's roadway shall not mean that VFD shall have any jurisdiction over any Division roadway, nor shall VFD have any responsibility or financial obligation for maintenance, upkeep or repair of any Division roadway.
- VI. Either Division or VFD may terminate this Agreement upon thirty (30) days' written notice to the other party.
- VII. This Agreement shall be binding upon the successors and assigns of each party hereto.
- VIII. If any provision or portion of this Agreement shall be held invalid or unenforceable, such provision or portion shall be deemed severed from this Agreement to the minimum extent possible, and the remainder of this Agreement shall remain in full force and effect. If any provision or portion of this Agreement is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

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IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS**

(signature)

By: Jimmy Wriston, P. E.
Deputy Secretary/
Acting Commissioner

A West Virginia not-for-profit company

(signature)

By: _____
(printed name)

Its: _____
(printed title)

(To be executed in duplicate)

Distribution: Master File
VFD