

MEMORANDUM OF AGREEMENT

Among the

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

And

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION**

And

**DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF TRANSPORTATION**

And

**U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION**

For

**ENVIRONMENTAL PLANNING AND DESIGN
OF SAFETY AND CAPACITY IMPROVEMENTS TO THE 14TH STREET BRIDGES
AND GEORGE WASHINGTON MEMORIAL PARKWAY**

In

WASHINGTON, DC, and ARLINGTON COUNTY, VA

This Memorandum of Agreement ("Agreement") entered into by and among the United States Department of Transportation, Federal Highway Administration, Eastern Federal Lands Highway Division ("EFLHD"); District of Columbia Division ("FHWA-DC"); Virginia Division ("FHWA-VA"); the District of Columbia Department of Public Works ("DCDPW"); the Commonwealth of Virginia, Department of Transportation ("VDOT"); and the United States Department of Interior, National Park Service, National Capital Region, ("NPS"); collectively known as the "Parties," is for the purpose to establish the roles, responsibilities, and procedures under which work shall be performed by the Parties to conduct environmental planning and design associated with the safety and capacity improvements to the 14th Street Bridges and George Washington Memorial Parkway (GWMP) in Washington, DC, and Arlington County, VA

WHEREAS, Public Law 106-113, Section 158, "Appropriations Act for the District of Columbia for FY 2000," provides for \$5,000,000 and directs the District of Columbia's Financial Responsibility and Management Assistance Authority to work with the Commonwealth of Virginia and the NPS to carry out a project to complete the design and environmental planning requirements for the construction of safety and capacity improvements to the 14th Street Bridges and GWMP;

WHEREAS, the Parties seek to change the source of identified funding for the environmental planning and design, and agree to work with congressional delegations to identify the appropriate source and method of funding. Sources of funding are suggested from the Highway Trust Fund and may include Public Lands Highway Discretionary, or other special appropriations by Congress;

WHEREAS, the FHWA will provide the unfunded contract authority (reimbursable) to cover all obligations to begin environmental planning and design activities until an appropriate source of funds is identified. Once a source has been identified, this MOA will be modified to include appropriate funding responsibility and disbursement requirements and all current obligations and expenditures (Federal and State/City matching shares as applicable) incurred by the EFLHD will be reimbursed. Proposed and future obligations (Federal and State matching shares if applicable) will be advanced to the FHWA as funds become available in accordance with 23 U.S.C. §132.

WHEREAS, the DCDPW has the jurisdictional and maintenance responsibility for the 14th Street Bridges (Williams, Mason, and Rochambeau);

WHEREAS, the VDOT has the jurisdictional and maintenance responsibility for I-395 and its approaches to the 14th Street Bridges;

WHEREAS, the NPS has the jurisdictional and maintenance responsibility for the GWMP and National Capital Parks-Central (NACC) which lands surround the 14th Street Bridges;

WHEREAS, the FHWA-DC is the Federal agency with administrative, financial, and project implementation and management oversight of the District of Columbia's Federal-aid Highway Program;

WHEREAS, the FHWA-VA is the Federal agency with administrative, financial, and project implementation and management oversight of the Commonwealth of Virginia's Federal-aid Highway Program;

WHEREAS, 23 U.S.C. §308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies;

WHEREAS, 23 U.S.C. §132 authorizes the EFLHD to be reimbursed for work performed on a proposed Federal-aid project; and

WHEREAS, the EFLHD, FHWA-DC, FHWA-VA, NPS, and DCDPW are authorized to enter into this Agreement pursuant to the authority contained in 31 U.S.C. §1535 and §1537.

NOW, THEREFORE, pursuant to the authority contained in the Appropriations Act for the District of Columbia for FY 2000 (P.L. 106-113, January 29, 1999); 16 U.S.C. §1 *et seq.*; 31 U.S.C. §1535 and §1537; the Intermodal Surface Transportation Efficiency Act (P.L. 102-240, December 18, 1991); the Surface Transportation Extension Act of 1997 (P.L. 105-130); the Transportation Equity Act for the 21st Century (P.L. 105-130, June 9, 1998), and the Transportation Equity Act-Restoration Act (P.L. 105-206, July 22, 1998) the Parties in consideration of the mutual promises herein expressed, do hereby agree as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The DCDPW agrees to:

1. Participate in environmental planning, design activities, and public involvement, as applicable;
2. Assign a contact person for the project so that all communication regarding the planning and design of this project will be coordinated and managed through that person;
3. Approve the final design standards for all improvements related to DC-maintained facilities;
4. Cooperate in the EFLHD's efforts to obtain the required final environmental clearances;
5. Participate in all design field reviews;
6. Cooperate in applicable project activities to ensure satisfactory completion of the project.
7. Prepare project documentation as part of the District's Annual Plan of Transportation Contracts and Capital Improvement Budget for approval of the Mayor, D.C. Council and the Financial Responsibility and Management Assistance Authority;

B. The VDOT agrees to:

1. Participate in environmental planning, design activities and public involvement, as applicable;
2. Assign a contact person for the project so that all communication regarding the planning and design of this project will be coordinated and managed through that one person;
3. Approve the final design standards for all improvements on facilities maintained by the VDOT;
4. Cooperate in the EFLHD's efforts to obtain the required final environmental clearances;
5. Participate in all design field reviews;
6. Cooperate in applicable project activities to ensure satisfactory completion of the project.

C. The NPS agrees to:

1. Act as the co-lead agency and be responsible for guiding the decisions associated with NPS lands (GWMP and NACC) for improvements to the 14th Street Bridges and the GWMP where NPS interests are involved;
2. Participate in the environmental planning, design activities, and public involvement, as applicable;
3. Approve the final design standards for all improvements related to NPS-maintained facilities;
4. Participate in all design field reviews;
5. Assist with the preparation of the National Environmental Policy Act (NEPA), 23 CFR §771 decision documentation;
6. Assist with the activities necessary to provide the required final environmental and historical clearances and the requisite coordination and approval process;
7. Assist the EFLHD with the preparation of documents for 4(f) statement, Section 106 compliance, and any other necessary permits.

D. The FHWA-DC and FHWA-VA agree to:

1. Participate on the project planning and design team;

2. Review and approve Federal funding for the planning and design phases of this project, as applicable;
3. Reimburse the EFLHD by phase for the estimated Federal share for proposed planning and design activities in accordance with 23 U.S.C. §132; and,
4. Approve environmental documentation required by the NEPA and the coordination and approval of Section 106 in accordance with the National Historic Preservation Act.

E. The EFLHD agrees to:

1. Perform planning and design services associated with the improvements for the 14th Street Bridges and the GWMP;
2. Act as the co-lead agency with the NPS, in cooperation with the FHWA-DC and FHWA-VA for the coordination, preparation, and approval of the environmental documentation required pursuant to NEPA, 23 CFR §771 and Section 106 in accordance with the National Historic Preservation Act (including environmental documentation, 4(f) statement, and Section 106 statement);
3. Design projects in accordance with applicable NPS, AASHTO, VDOT, and DCDPW standards and guides, and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, current edition, as amended;
4. Select a consultant for planning and design assistance using procurement procedures in accordance with the Federal Acquisition Regulation (FAR), and the Transportation Acquisition Regulation (TAR);
5. Conduct public hearings to discuss design alternatives with DCDPW, VDOT Divisions, FHWA Divisions, and NPS representatives;
6. Coordinate and incorporate requirements of Advisory Neighborhood Commissions, National Capital Planning Commission, Commission of Fine Arts, State Historic Preservation Officer, DC Department of Consumer and Regulatory Affairs, NPS, utilities, railroads, business, neighborhood and civic associations;
7. Initially fund the start of environmental planning and design activities with the understanding that these activities will be reimbursed by project funding;
8. Spend project funding in accordance with spending plans authorized by appropriate legislative bodies, Commonwealth Transportation Board, the District of Columbia Financial Responsibility and Management Assistance Authority, and the District's Office of the Chief Financial Officer;
9. Be responsible for the administrative settlement or adjudication of claims arising from contracts awarded by the EFLHD and covered by this Agreement in accordance with the FAR and TAR, and subject to the availability of project funds; and,

10. Prepare a quarterly financial report reflecting the status of obligations and expenditures.

ARTICLE II: TERM OF AGREEMENT

This Agreement shall be in force for five (5) years from the date of the last approving signature, and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction of all Parties.

This Agreement may be renewed for an additional term upon the written consent of the Parties. The Agreement may be modified by written consent of all of the Parties to cover any questions that may arise subsequent to the date of this Agreement.

All Parties to the Agreement will be afforded the opportunity to inspect, review and comment at any time, work in progress, the financial records, and any other supporting documentation; and to participate in all meetings and field reviews.

ARTICLE III: KEY OFFICIALS AND CONTACTS

A. For the DCDPW:

KEY OFFICIAL:

Mr. Daniel Tangherlini
Director
District of Columbia Dept. of Public Works
Division of Transportation
2000 14th Street, N.W., 6th Floor
Washington, D.C. 20009
(202) 673-6813 (phone)
(202) 671-0642 (fax)

CONTACT PERSON:

Mr. Ken Laden
Administrator, Office of Intermodal Planning
District of Columbia Dept. of Public Works
2000 14th Street, N.W., 7th Floor
Washington, D.C. 20009
(202) 671-2309 (phone)
(202) 939-7185 (fax)

B. For the VDOT:

KEY OFFICIAL:

Mr. Thomas F. Farley
District Administrator
Virginia Department of Transportation
3975 Fair Ridge Drive
Fairfax, Virginia 22033
(703) 383-2451(phone)
(703) 383-2470 (fax)

CONTACT PERSON:

Mr. Dusty Holcombe
Transportation Engineer
Virginia Department of Transportation
3975 Fair Ridge Drive
Fairfax, Virginia 22033
(703) 383-2194 (phone)
(703) 383-2190 (fax)

C. For the NPS:

KEY OFFICIAL:

Mr. Terry R. Carlstrom
Regional Director
National Park Service
National Capital Region
1100 Ohio Drive, S.W.
Washington, D.C. 20242
(202) 619-7000 (phone)
(202) 619-7220 (fax)

Mr. John Parsons
Associate Regional Director
Land Resources and Planning
National Park Service
National Capital Region
1100 Ohio Drive, S.W.
Washington, D.C. 20242
(202) 619-7025 (phone)
(202) 401-0017 (fax)

CONTACT PERSONS:

Ms. Audrey Calhoun
Superintendent
National Park Service
George Washington Memorial Parkway
Turkey Run Park
McLean, Virginia 22101
(703) 289-2500 (phone)
(703) 289-2598 (fax)

Mr. Arnold Goldstein
Superintendent
National Park Service
National Capital Parks-Central
900 Ohio Drive, S.W.
Washington, D.C. 20242
(202) 426-1835 (phone)
(202) 426-0099 (fax)

D. For the FHWA-DC Division:

KEY OFFICIAL:

Mr. Gary L. Henderson
Division Administrator
D.C. Division
Federal Highway Administration
820 First Street, N.E., Suite 750
Washington, D.C. 20002
(202) 523-0163 (phone)
(202) 523-0181 (fax)

CONTACT PERSON:

Mr. Edward A. Sheldahl
Fields Operations Engineer
D.C. Division
Federal Highway Administration
820 First Street, N.E., Suite 750
Washington, D.C. 20002
(202) 523-0168 (phone)
(202) 523-0181 (fax)

E. For the FHWA-VA Division:

KEY OFFICIAL:

Mr. Roberto Fonseca-Martinez
Division Administrator
Virginia Division
Federal Highway Administration
P.O. Box 10249
Richmond, VA 23240
(202) 775-3344 (phone)
(202) 775-3356 (fax)

CONTACT PERSON:

Ms. Joyce Curtis
Assistant Division Administrator
Virginia Division
Federal Highway Administration
P.O. Box 10249
Richmond, VA 23240
(804) 775-3344 (phone)
(804) 775-3356 (fax)

F. For the EFLHD:

KEY OFFICIAL:

Mr. Allen W. Burden, P.E.
Division Engineer
Eastern Federal Lands Highway Division
Federal Highway Administration
21400 Ridgetop Circle
Sterling, VA 20166-6511
(703) 404-6203 (phone)
(703) 404-6217 (fax)

CONTACT PERSON:

Mr. Jack Van Dop
Environmental Compliance Specialist
Eastern Federal Lands Highway Division
Federal Highway Administration
21400 Ridgetop Circle
Sterling, VA 20166-6511
(703) 404-6282 (phone)
(703) 404-6217 (fax)

ARTICLE IV: TERMINATION

This Agreement will terminate when its five (5) year term or renewal period has expired or when all transfers of funds are completed and all work associated with this Agreement has been inspected and approved in writing by the Parties with written notification to the FHWA.

In case of the failure on the part of any party to observe any of the conditions of the Agreement, any affected party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination to all parties, effective at the end of the thirty (30) day period.

ARTICLE V: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties.

ARTICLE VI: LIABILITY

- A. The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law.
- B. **TORT CLAIMS:** Any claim filed under the Federal Tort Claims Act (28 U.S.C. §2671 et seq. (1994)), alleging an injury during the performance of this Agreement, which may be traced to a party, shall be received and processed by the party having responsibility for the particular injury-causing condition.

ARTICLE VII: REQUIRED AND STANDARD CLAUSES

- A. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available appropriations.
- B. **NON-DISCRIMINATION:** The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.
- C. **ANTI-DEFICIENCY ACT:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. §1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the United States, Commonwealth of Virginia, or the District of Columbia to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States, Commonwealth of Virginia, or the District of Columbia in any contract or other obligation for the further expenditure of money in excess of such appropriations.
- D. **INTEREST OF MEMBERS OF CONGRESS:** No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
- E. **LOBBY PROHIBITION:** The Parties will abide by the provisions of Section 1913 (Lobbying with Appropriated Monies) of 18 U.S.C., which states:
- No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other devise, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Members of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.
- F. This Agreement is subject to all laws governing Federal, Commonwealth, and District procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

