

MEMORANDUM OF AGREEMENT
No. DTFH71-04-X-00017
BETWEEN
THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS
AND THE
FEDERAL HIGHWAY ADMINISTRATION

The purpose of this Memorandum of Agreement (Agreement) made this 7th day of July, 2004, is to establish the roles, responsibilities, and procedures under which work shall be performed for the Department of Public Works (DPW) of the Government of the Virgin Islands by the Federal Highway Administration (FHWA) for engineering and construction services for Federal-aid highway and bridge projects on the islands of St. Thomas, St. Croix, and St. John, U.S. Virgin Islands.

WHEREAS, the Government of the Virgin Islands has the jurisdictional and maintenance responsibilities for the Territorial Highway System routes in the U.S. Virgin Islands, which are eligible for funding under FHWA Federal-aid programs for which non-maintenance capital improvements are eligible for funding; and

WHEREAS, the FHWA, Puerto Rico Division (FHWA-PR) is the Federal agency with administrative, financial, and project implementation and management oversight of the Government of the Virgin Island's Federal-aid Highway Program; and

WHEREAS, 23 USC 308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvement of road projects for other Government or State cooperating agencies; and

WHEREAS, the DPW has requested assistance from the Eastern Federal Lands Highway Division (EFLHD), of the FHWA, to provide engineering and/or construction services for various projects as determined by the Commissioner of Public Works.

NOW THEREFORE, the DPW and the FHWA do hereby mutually agree as follows:

1. **DPW RESPONSIBILITIES:** The DPW shall be the lead agency for project development, and shall (a) develop the Territorial Transportation Improvement Program (TTIP) of projects, (b) approve the final design standards for the projects; (c) administer the activities necessary to provide all required permits and clearances, including environmental clearances from the Government of the Virgin Islands and Federal agencies, and coordination of the entire project; (d) participate in all of the design field reviews; (e) acquire necessary right-of-way and coordinate utility agreements to provide timely relocations; (f) approve the final plans, specifications, and estimate for construction; and (g) participate in the final construction inspection.
2. **FHWA-PR RESPONSIBILITIES:** The FHWA-PR shall be the lead Federal agency for project development and shall (a) provide the Federal funding for the projects; (b) be responsible for the approval of the environmental document required by the National Environmental Policy Act, as amended, and 23 CFR 771, including the Environmental Impact Statement/Record of Decision, Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, and 4(f) Statement, and the coordination and approval of Section 106 in accordance with the National Historic Preservation Act; (c) approve the right-of-way plans and administratively review the right-of-way acquisition and utility relocation activities; (d) approve statement of work and concur in award of any consultant design contracts; (e) approve the final plans, specifications, and estimates for advertisement; (f) participate in the final acceptance of the project; and (g) accept the completed project as being in conformance with the approved design package. Some of the above functions could be delegated to the DPW as provided for

in the "Memorandum of Agreement - Oversight and Administration of Federal-aid Highway Projects," dated August 7, 2002, (incorporated by reference) entered into between the FHWA-PR and the DPW.

3. **EFLHD RESPONSIBILITIES:** The EFLHD shall be a cooperating agency for project development, and shall (a) coordinate and develop the individual project scope; (b) procure and administer any consultant assistance contracts deemed necessary; (c) administer all surveying and mapping necessary for final design activities and for support in issuing right-of-way certificates; (d) administer all subsurface investigations; (e) provide assistance in the preparation of environmental documents and permits when requested and incorporate all environmental commitments into the design; (f) prepare preliminary plans for review and approval; (g) prepare right-of-way and utility plans; (h) develop and administer utility agreements as per the Virgin Islands Code; (i) prepare the final plans, specifications, and estimate for review and approval; (j) advertise and award the construction contract; (k) administer the construction contract, including necessary construction inspections; (l) process payments to design consultants, construction contractors and utility companies as applicable; (m) conduct a final inspection of the project; and (n) provide quarterly status reports on project development and project expenditures.
4. **STANDARDS:** The design shall be in accordance with the applicable AASHTO standards and guides. The EFLHD shall use the "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects" for the work. New projects will be designed in English units. Projects that are currently under design or construction in metric units will be completed in those units.
5. **CONTRACT ADMINISTRATION:** Procurement of any contracts under this Agreement by the EFLHD will be conducted in accordance with the Federal Acquisition Regulations (FAR), and 23 CFR 172 for design activities and 23 CFR 635 for construction contracts to the extent feasible. The solicitation for bids and award of contract will be coordinated with the DPW and FHWA-PR. The EFLHD shall be the contracting office. The EFLHD will copy various information to other Government of the U.S. Virgin Islands agencies (including the Department of Public Works, Department of Finance, and the Bureau of Internal Revenue) to make them aware of EFLHD's contracting activities as requested by the DPW. Whenever possible, consultants needed for design or construction assistance on any project will be selected from available and qualified consultants licensed in the Virgin Islands. DPW personnel will be represented on consultant selection panels. For construction inspectors, the EFLHD is responsible for providing appropriate staff however any local hiring will be coordinated with the DPW.
6. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):** DBE Program requirements, where not in conflict with the FAR, will be incorporated into construction contracts through the Special Contract Requirements. The EFLHD will be responsible for contract administration and will (1) collect subcontract information from the prime contractor using Forms SF 1413 and FHWA 1775; and (2) provide the information to the DPW's DBE Liaison Officer. The DPW's DBE Liaison Officer will be responsible for overall administration of the Virgin Islands DBE program, and will (1) determine DBE goals on a project-by-project basis where appropriate; (2) participate at the preconstruction conference relative to the prime contractor's responsibilities under the DBE Program; and (3) perform monitoring activities as done for any other DPW project.
7. **PROJECT COMPLETION:** Upon successful completion of any project in accordance with the approved plans and specifications, and all approved contract modifications, the DPW will accept the completed project for maintenance and jurisdiction. The EFLHD shall provide one hard copy of the final as-constructed plans and a compact disc of the plan files to the DPW.
8. **COMMUNICATION:** Throughout the project development and construction, EFLHD is responsible

for continual communication with the Commissioner or appointed designee and the FHWA-PR which will include various status reports as identified by the DPW and FHWA-PR.

9. APPROVAL ITEMS: The EFLHD shall request written comments and/or concurrence from the FHWA-PR and the DPW for the following activities with specific response timeframes identified:
- a. Project scope, including modifications;
 - b. Preliminary plans, including alternatives;
 - b. Right-of-way plans, based on 35 percent design;
 - c. Plan-in-hand plans (70 percent plans);
 - d. Final plans, specifications, and estimate (95 percent plans);
 - e. Contract award;
 - f. Construction contract modifications; and
 - g. Completed construction project.

10. FINANCES: Funding for the projects will be provided in accordance with the provisions of 23 U.S.C. 308. The EFLHD will forward funding requests (identifying the specific project and activity) for EFLHD project development and construction activities to the DPW for review and approval by both the DPW and the FHWA-PR. For each project, the DPW will enter project data into FMIS for the FHWA-PR's review and approval. Once the FHWA-PR authorizes the project and enters into the project agreement, the DPW will submit to the FHWA-PR a PR-20 within 30 calendar days after it is entered into agreement, along with a cover letter requesting that payments be directed to the EFLHD. The DPW will base the amount on the PR-20 on estimated contract costs as calculated by the EFLHD. The EFLHD will not initiate any work until payment has been received. In the event that the actual project costs are less than the original cost under agreement, the EFLHD will request FHWA Headquarters to process a credit to the project. The DPW will enter and the FHWA-PR will process in FMIS a modification to the agreement amount to make appropriate adjustments to the Virgin Islands Federal-aid Highway fund balance and payments previously made to the EFLHD.

Some projects may be funded from special appropriations and authorizations. Funds for these projects shall be separately tracked because the funds are authorized for specific projects only. The DPW shall identify these projects and special funds when authorization is provided. The EFLHD will maintain separate financial records for these projects and funds.

11. DPW DEVELOPMENT OPPORTUNITIES: A training plan will be developed by the DPW and FHWA-PR. At the request of the FHWA-PR, the EFLHD will (1) provide training to DPW employees in highway design and construction contract administration to assist in redeveloping the DPW's capability to manage the Federal-aid Highway Design and Construction Program and/or (2) provide assignments for Coop Students. Lengths of assignments and individual work plans will be tailored to the skills and abilities of the individuals receiving the training. Other technical assignments of varying length in all areas of highway planning, design, and construction can also be provided at the request of the DPW. Attached to this Agreement is an outline of the key training available in design and construction. The FHWA-PR will determine the appropriate funding mechanism for this training.
12. ACCESS RIGHTS: All parties to the Agreement will be afforded the opportunity to inspect, at any time, work in progress, the financial records, and any other supporting documentation; and to participate in all meetings, field reviews, bid openings, pre-construction conferences, and periodic and final construction inspections.
13. ANTI-DEFICIENCY: Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the DPW or the FHWA, or as requiring the parties to perform beyond their respective authorities. The Parties agree that no funds will be expended in excess of available appropriations.

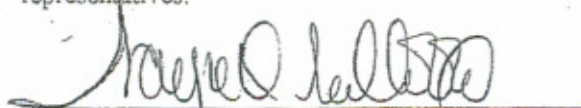
grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (7B Stat. 252; 42 USC 2000(d) *et seq.*) and Title 10 of the Virgin Islands Code. The parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.

15. INTEREST OF MEMBERS OF CONGRESS: No member of or delegate to Congress, or Resident Commissioner or elected official of the Government of the Virgin Islands shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.
16. LOBBY PROHIBITION: The parties will abide by the provisions of Section 1913 (Lobbying with Appropriated Monies) of Title 18, Under States Code, 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 device 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.

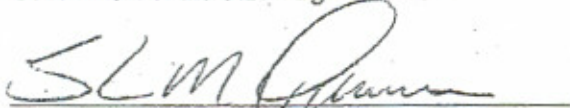
This Agreement, replacing the Agreement of June 27, 1997, and succeeding amendments, shall become effective upon the approval of the Governor, and shall remain in effect until such date which may be agreed to by written consent of all the parties subsequent to the date of this Agreement. The Agreement may be modified also by written consent of all the parties to cover any questions which may arise subsequent to the date of this Agreement. The Agreement may be terminated unilaterally by any of the signing parties upon thirty (30) days written notice to all the other parties. At that time, the EFLHD is responsible for completing that phase (design or construction) of work currently funded and underway unless some other agreement is reached.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.



Wayne D. Callwood, Commissioner
Department of Public Works
Government of the U.S. Virgin Islands

Date: 5/1/04



Lubin Quinones
FHWA Division Administrator
Puerto Rico Division

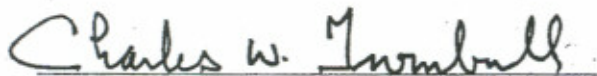
Date: 4/23/04



Melissa L. Ridenour
FHWA Division Engineer
Eastern Federal Lands Highway Division

Date: 4-7-04

APPROVED:



Charles W. Turnbull
Governor, Government of the U.S. Virgin Islands

Date: 7-15-04

Reviewed by the Department of Justice for Legal Sufficiency



Attachment (Possible Developmental Opportunities)

Date: 7-2-04

POSSIBLE DEVELOPMENTAL OPPORTUNITIES

Attachment

Design Engineer/Technician: This outline is designed to develop Highway Engineers and Civil Engineering Technicians in the general area of highway design and design contract administration. The DPW employees will learn the following:

1. Geometric Design - This consists of applying the primary concepts of geometric design of highway facilities, including horizontal and vertical alignment, cross-section elements, intersection design, sight distance, clear zone criteria, design exceptions, and accommodation of pedestrians, bicycles, and the handicapped. Interpret and use the AASHTO Green Book, Roadside Design Guide, MUTCD, and Highway Capacity Manual.
2. Drainage Design - This consists of applying and interpreting the concepts of the Highway Drainage Design Manuals (HEC-1, HEC-2, etc.) to calculate drainage areas and determining design flows to size culverts and channels.
3. PS&E Preparation - This consists of evaluating and developing plans, specifications, and estimates (PS&E) packages to determine if all required elements are provided and are accurately presented, including general site requirements, typical sections, plans and profiles, cross sections, special features, specifications, and cost estimates.
4. Contracting Officers Technical Representative (COTR) - This consists of formal classroom training in the duties, responsibilities, and authority of a COTR with respect to the design contract.
5. Environmental Compliance - This consists of an introduction to the National Environmental Policy Act, Historic Preservation Act, Endangered Species Act, Clean Air Act, Clean Water Act and Section 4(f) and the review and implementation of the different classifications of environmental documents.
6. Computer Applications - This consists of on the job training to use CADD and other computer applications for PS&E development.

Construction Project Engineers/Technician: This outline is designed to develop Highway Engineers and Civil Engineering Technicians in the general area of highway construction contract administration. The DPW employees will learn the following:

1. Contracting Officer's Technical Representative (COTR) - This consists of formal classroom training in the duties, responsibilities, and authority of a COTR with respect to the construction contract (Contract Plans, Specifications, and Special Contract Requirements).
2. Project Record Keeping - This consists of hands on training relative to keeping proper project records (Inspector's Daily Reports, Project Diaries, Material Quantity Records, and progress estimates).
3. Materials Testing and Sampling - This consists of on the job training in the proper methods of material sampling, frequency of sampling, and material pay factors based on the quality and consistency of the material being tested. The training will cover how to keep proper materials

registers, material certifications, and conduct material testing.

4. Project Traffic Safety - This consists of both on the job and possibly classroom training in the proper methods of controlling project traffic relative to setting up lane closures, shoulder closures, and flagging traffic.
5. Asphalt Concrete Pavement - This consists of both on the job and possibly classroom training in the mix design and placement of asphalt concrete pavement. The training will cover the proper mix material properties, the methods of placement required to achieve a quality product (proper paving machine and roller operations).
6. Portland Cement Concrete - This consists of both on the job and possibly classroom training in the mix design and placement of portland cement concrete. The training will cover the proper mix material properties (including admixtures), the methods of placement and curing required to achieve a quality product. This training will include structural concrete, concrete pavement, and minor concrete structures.