

November 5, 1999

MEMORANDUM OF AGREEMENT

among the

**DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

and the

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION**

and the

**DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

for the

**PREPARATION OF THE EIS,
DESIGN AND CONSTRUCTION**

of the

**BATTLEFIELD BYPASS
U.S. ROUTE 29 AND STATE ROUTE 234
MANASSAS NATIONAL BATTLEFIELD PARK**

PRINCE WILLIAM, FAIRFAX, and FAUQUIER COUNTIES, VIRGINIA

The purpose of this Memorandum of Agreement (hereinafter referred to as the MOA) is to establish the roles, responsibilities, and procedures under which work shall be performed by the U.S. Department of Interior, National Park Service (NPS); Virginia Department of Transportation (VDOT); and the U.S. Department of Transportation, Federal Highway Administration Virginia Division (VA FHWA) and Eastern Federal Lands Highway Division (EFLHD) as necessary to prepare the Environmental Impact Statement (EIS), design and construct the resulting contract for the Battlefield Bypass, Manassas National Battlefield Park, in Prince William, Fairfax, and Fauquier Counties, Virginia.

WHEREAS, Public Law 100-647, "Manassas National Battlefield Park Amendments of 1988," dated November 10, 1988, and Public Law 105-825, "Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999," instruct the NPS to conduct a Bypass study in cooperation with the VDOT and the FHWA;

WHEREAS, the NPS is the Federal agency with administrative oversight, maintenance, and jurisdictional authority for the Manassas National Battlefield Park;

WHEREAS, the VDOT is the agency with administrative oversight, maintenance, and jurisdictional authority over U.S. Route 29 and State Route 234;

WHEREAS, Section 601 of the Economy Act (31 U.S.C. 1535, and 23 U.S.C. 308(a)) authorizes the FHWA to perform engineering and other services in connection with the survey, construction, maintenance, or improvements of highways for other Government or State cooperating agencies;

WHEREAS, funding has been identified from the Fiscal Year 1999 Park Roads and Parkways Program by the NPS for the preparation of the EIS which has an estimated cost of \$2,000,000.

WHEREAS, funding has not been identified for the design or construction. It is unknown at this time when or from what source additional funds will be made available. The cost for the design, and construction shall be shared between Federal sources (75 percent participation) and non-Federal sources (25 percent participation) as cited by Public Law 100-647.

NOW, THEREFORE, pursuant to the authority contained in the "National Park Service Organic Act" of August 25, 1916 (39 Stat. 535), as amended and supplemented (16 U.S.C. 1 *et seq.*); the Economy Act (31 U.S.C. 1535); 23 C.F.R. Sections 202, 203, and 204; "Manassas National Battlefield Park Amendments of 1988," Public Law 100-647, dated November 10, 1988; "Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999," Public Law 105-825; and all applicable laws, the parties in consideration of the mutual promises herein expressed, do hereby agree as follows:

ARTICLE I: SCOPE OF WORK

1. The NPS shall be a joint lead agency in the preparation of the National Environmental Policy Act (NEPA) decision document and project development, and shall (a) fund the preparation of the environmental document (100 percent Federal participation), (b) fund the Federal share (75 percent participation) for design and construction of the project,

- (c) provide the cooperators with timely existing information, analysis, review comments, and coordination in the preparation of the NEPA document; (d) be lead agency for all Section 106 compliance, and a signatory of the Section 106 MOA (if applicable), (e) participate in the public involvement process, (f) review and approve preliminary plans, (g) participate in all of the design field reviews, (h) approve the final plans, specifications, and estimate for work on NPS lands, (i) concur in the award of contract, (j) participate in the final inspection, and (k) provide written acceptance of the project.
2. The VDOT shall be a cooperating agency in the preparation of the NEPA decision document and project development, and shall (a) cooperate in the preparation of the document by providing all available existing information related to the project, (b) participate in the public involvement process, (c) review and comment on the environmental documentation (if VDOT determines that comments are necessary), (d) review and approve preliminary plans, (e) acquire the necessary right-of-way for VDOT maintained roads (as applicable), (f) participate in all of the design field reviews, (g) approve the final plans, specifications, and estimate for work on State right-of-way, (h) concur in award of any construction contracts (if VDOT funds are used), (i) concur in any significant contract modifications which change physical features of the work, (j) participate in the final inspection, and (k) provide written acceptance of the project for maintenance in accordance with Federal-aid procedures.
 3. The VA FHWA shall be a cooperating agency in the preparation of the NEPA decision document and project development, and shall (a) approve environmental documentation required by the NEP Act, as amended, and 23 CFR 771, including the EIS, Record of Decision, and 4(f) evaluation (if applicable), (b) approve Section 106 MOA (if applicable) in accordance with the National Historic Preservation Act, (c) participate in the public involvement process, (d) approve right-of-way plans and administratively review the right-of-way acquisition and utility relocation activities, (e) approve the final plans, specifications, and estimate for advertisement; and, (f) participate in the final inspection.
 4. The EFLHD shall be a joint lead agency for preparation of the NEPA decision document and project development, and shall (a) provide overall coordination of the project; (b) perform all survey, mapping, and subsurface investigations; (c) administer the activities necessary to provide the required final environmental clearances and coordination and incorporate all environmental commitments into the design; (d) prepare final preliminary plans for review and approval; (e) prepare and sign 4(f) evaluation (if applicable), Section 106 MOA (if applicable), and any other necessary permits; (f) prepare right-of-way, utility, and railroad plans for use for right-of-way acquisition, appraisals, and agreements; (g) prepare contract plans, specifications, and estimates; (h) advertise, evaluate bids, and award of construction contracts; (i) administer the construction contract including construction inspection; and (j) conduct the final inspection.

The EFLHD will also be responsible for the preparation and circulation for review of additional environmental review requirements under Section 4(f) and related laws, and shall include mitigation measures developed with the NPS for activities undertaken on lands under the administrative control and jurisdiction of the NPS. The EFLHD shall coordinate and cooperate with all counties affected by the proposed alternatives identified by the EIS.

ARTICLE II: TERMS OF THE AGREEMENT

1. The procurement of any required environmental, design, or construction contracts will be in accordance with the Federal Acquisition Regulations, and the Transportation Acquisition Regulations. The EFLHD will be the contracting office.
2. The design shall be in accordance with applicable AASHTO and VDOT standards for applicable roads and NPS standards for NPS roads. The EFLHD will obtain written comments and concurrence from the NPS, the VA FHWA, and the VDOT for the following activities and/or products:
 - a. Right-of-way and utility plans.
 - b. Preliminary plans (30 percent).
 - c. Plans-in-hand review (70 percent).
 - d. Final plans, specifications, and estimates (95 percent).
 - e. Completed construction project.
3. All parties to the MOA 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 and field reviews.
4. Nothing herein contained shall be construed as binding on, the NPS, the VDOT, or the FHWA to expend any sum in excess of appropriations made by Congress for the purpose of this MOA, or to involve the NPS, the VDOT, or the FHWA in any contract or other obligation for the further expenditure of money in excess of such appropriations.

ARTICLE III: DISBURSEMENT OF FUNDS

1. The EFLHD shall consolidate data, prepare, and update annually project schedules, cost estimates, obligation plans, disbursement records, and shall furnish copies to all parties of this agreement. The consolidated schedules, cost estimates, and disbursement records will be based on individual schedules, estimates, annual estimates of obligations, and actual disbursements as prepared by the NPS and the VDOT for work performed by each agency, and furnished to the EFLHD.
2. If VDOT funds will be used as the non-Federal share, in accordance with Title 23, Section 132, the VDOT shall advance funds to the EFLHD each fiscal year to cover the 25 percent non-Federal share. This advance will be based on estimates of obligations provided by the EFLHD for each activity (NPS and EFLHD) within that fiscal year. Funds availability will be determined based upon the advance of funds received from the VDOT. No work shall be performed beyond the funds advanced. The EFLHD will forward funding requests (identifying the specific project and activity) for EFLHD project development/construction activities to the VDOT for review and approval. Upon completion of the project, any surplus funds will be returned to the VDOT. The EFLHD fund requests to the VDOT will include the following:

- a. Preliminary engineering (including advance planning, right-of-way and utility plan preparation, EIS preparation, PS&E preparation, consultant contracts, contract administration, survey and mapping, geotechnical investigation, bid evaluation, and award of contract).
 - b. Construction contract (Engineer's estimate + contract incentives).
 - c. Construction engineering (including contract administration, inspection, material testing, and consultant assistance contracts).
 - d. Contingencies ($5 \pm$ percent of the sum of Items a. through c.) for any phase prior to project completion.
3. For acquisition of right-of-way, the VDOT will forward fund requests (identifying the specific project and activity) for project development and construction activities and a "Federal-aid Project Agreement" (Form PR-2), to the EFLHD for review, approval, and obligation. The EFLHD will forward and execute a "Letter of Approval and Authorization" (Form PR-1240) to the VDOT.

Upon completion of a project activity, the VDOT will submit a final voucher (Form PR-20). Billing for actual costs will be processed through the normal Federal-aid current billing process. The billing should be to the EFLHD, Region 15.

4. Funds appropriated to the NPS shall be advanced to the EFLHD for all project work, except that needed for NPS work activity. For NPS work, the NPS shall request funds from the EFLHD for the non-Federal share. Upon receipt of request, the EFLHD shall prepare and execute a Letter of Agreement to reimburse the NPS. The NPS shall invoice the EFLHD quarterly or less often as necessary. The NPS may direct invoices to the following address:

Federal Highway Administration
Eastern Federal Lands Highway Division
Finance Office
21400 Ridgetop Circle
Sterling, VA 20166

5. Upon completion of the project, any surplus funds previously advanced to the EFLHD will be returned. Funds will be adjusted to ensure that all disbursements are made in a 75 percent Federal and 25 percent non-Federal share ratio.

ARTICLE IV: KEY OFFICIALS AND CONTACTS

1. Designated points of contact for the coordination of the EIS, design, and construction for this project are as follows:

Mr. Thomas Farley
 District Engineer
 Northern Virginia District
 Virginia Department of Transportation
 3975 Fair Ridge Drive
 Fairfax, VA 22033
 Telephone: 703-383-2451
 Fax: 703-383-2470

Ms. Vanna P. Lewis
 Environmental Engineer
 Federal Highway Administration
 Virginia Division
 P.O. Box 10249
 400 N. 8th Street, Room 750
 Richmond, VA 23240
 Telephone: 804-775-3337
 Fax: 804-775-3356

Ms. Betty Janes
 Project Manager
 National Park Service
 Denver Service Center
 1849 C Street, NW
 Washington, DC 20240
 Telephone: 202-501-8928
 Fax: 202-208-2389

Mr. Alan Teikari
 Planning and Coordination Engineer
 Federal Highway Administration
 Eastern Federal Lands Highway Division
 21400 Ridgetop Circle
 Sterling, VA 20166-6511
 Telephone: 703-404-6278
 Fax: 703-285-0011

The FHWA, the VDOT, and the NPS shall maintain a close liaison and consult regularly on all matters pertaining to this MOA.

ARTICLE V: REQUIRED AND STANDARD CLAUSES

1. The EFLHD will be responsible for the administrative investigation, settlement or defense in litigation of any claim based on the Contract Disputes Act and arising from any contract awarded by the EFLHD in accordance with this MOA. The EFLHD will coordinate its action with the other parties to this Agreement on the status of these matters.
2. *Non-Discrimination:* The parties will abide by the provisions of Executive Order 11246, as amended; shall be in compliance with the requirements of Title VI of the *Civil Rights Act of 1964*, as amended (78 Stat. 252; 42 U.S.C. 2000(d) *et seq.*); Title V, Section 504 of the *Rehabilitation Act of 1973* (87 Stat. 394; 29 U.S.C. 794) as amended; the *Age Discrimination Act of 1975*, as amended (89 Stat. 728; 42 U.S.C. 6101 *et seq.*); and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, national origin, handicap, religion, or sex in employment and in providing facilities and services to the public.
3. *Interest of Members of Congress:* Pursuant to 41 U.S.C. Section 22, *Interest of Member of Congress*, “[n]o Member of Congress shall be admitted to any share or part of any contract

or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.”

4. *Lobbying Prohibition:* The parties shall abide by the provisions of 18 U.S.C. Section 1913, *Lobbying with Appropriated Moneys*, 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 or after 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 of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

5. *Severance of Terms and Compliance with Applicable Law:* The parties shall comply with all applicable laws and regulations, and nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose or intent of any Act of Congress or the laws of the State establishing affecting, or relating to this MOA. This MOA is subject to all laws, regulations, and rules governing NPS property, whether now in force or hereafter enacted or promulgated. Nothing in this MOA shall be construed as in any way impairing the general powers of the NPS, or the VDOT for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

If any term or provision of this MOA is held to be invalid or illegal, such term or provision shall not affect the validity or enforce ability of the remaining terms and provisions. Meeting the terms of this MOA shall not excuse any failure to comply with all applicable laws and regulations whether or not these laws and regulations are specifically listed herein.

6. *Procurement:* This MOA is subject to all laws governing Federal procurements and to all regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated. Nothing in this MOA shall be construed as in any way impairing the general powers of the NPS, or the VDOT for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
7. *Drug Free Work Place Act (Required for use with Appropriated Funds):* The parties certify that comprehensive actions will be taken to ensure the workplace is drug free.

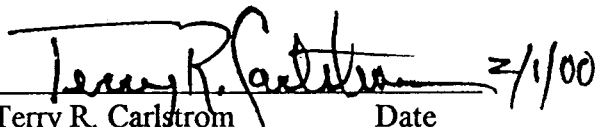
- 8. *Volunteers in the Park*: All unpaid representatives of the parties shall be Volunteers in the Park (VIPs), under 16 U.S.C. Section 18(g) *et seq.* VIPs are not Federal employees but shall be entitled to those benefits and protections related to Workmen's compensation, federal tort claims and others as specified in the *Volunteers in the Park Act*.

ARTICLE VI: TERM OF THIS AGREEMENT

This MOA becomes effective on the date of the last approving signature, and shall remain in effect until the project is completed or through 5 years from the date of execution of the MOA, whichever occurs first. The date of execution is the date of the last signature affixed to this document. The MOA may be modified, extended, or terminated by written consent of all of the parties.

IN WITNESS THEREOF, the parties hereto have caused this MOA to be executed by their duly authorized representatives:


**DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
NATIONAL CAPITAL REGION**


Terry R. Carlstrom Date
Regional Director

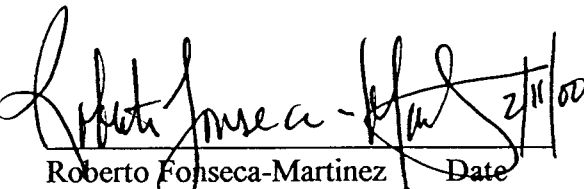
**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION**


Charles D. Nottingham Date
Acting Commissioner

**DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS
HIGHWAY DIVISION**


Allen W. Burden, P.E. Date
Division Engineer

**DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
VIRGINIA DIVISION**


Roberto Fonseca-Martinez Date
Division Administrator