

STEWARDSHIP AGREEMENT

FEDERAL HIGHWAY ADMINISTRATION, PUERTO RICO/VIRGIN ISLANDS DIVISION OFFICE

AND

GOVERNMENT OF THE VIRGIN ISLANDS, DEPARTMENT OF PUBLIC WORKS

This Stewardship Agreement is entered into between the Territory of the Virgin Islands, herein after referred to as the "**Territory**" and Federal Highway Administration, Puerto Rico/Virgin Islands Division Office, herein after referred to as the "**Administration**". This Stewardship Agreement hereby direct that the oversight of the Territorial Highway Program (THP) be carried out in the spirit of true partnership as described herein.

Whereas, Section 1118 (a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: Legacy for Users (**SAFETEA-LU**), Public Law 109-59) replaced the outdated section 215 of Title 23 with a revised section 215 that includes provisions regarding the Territorial Highway System (THS), technical assistance to the Territories, applicability of Title 23 provisions, agreement between FHWA and each territory, and eligible projects and activities.

Whereas, under 23 U. S. C. 215(b)(1), the intent of the THP is to assist each territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, referred to as the Territorial Highway System (THS).

Whereas, the Territorial Highway System (THS) is considered the Federal-aid Highway System in the territory for implementation of Title 23 provisions that are applicable to Federal-aid Highways.

Whereas, under 23 U. S. C. 215 (b) (1) (A), the Governor or Chief Executive Officer of each territory must designate the THS for the territory, and must be approved by the Administration.

Whereas, under 23 U. S. C. 215(b)(2), the Federal share for this THP funding is in accordance with 23 U. S. C. 120(h), which states that the Federal share for any project under Title 23 in the Territories is 100 percent.

Whereas, under the provisions of 23 U. S. C. 215 (f) (2), THP funds shall not be obligated or expended for routine maintenance.

Now, therefore, the parties hereto do agree that:

PROGRAM ROLES & RESPONSIBILITIES

Administration

The Administration has stewardship and oversight responsibilities for all FHWA programs, and that these program responsibilities include Title 23 and non-Title 23 program areas. The Administration is ultimately accountable for ensuring that the Territorial Highway Program is delivered consistent with established requirements. In short, it must be recognized that Congress and the public hold the Administration accountable for ensuring that the programs and processes under the Territorial Highway Program are both efficient and effective, and are consistent with applicable laws, regulations and policies.

The Administration will continue to be responsible for the oversight of all Title 23 aspects of all projects and will review and approve project plans, specifications, and estimates, concur in award, approve changes in contract (change orders, supplemental agreements, time extensions, claims, etc.).

The Administration will continue to support the existing agreement between the Territory and Eastern Federal Lands Highway Division for the design and construction of specific Federal-Aid funded projects that are part of the Territorial Highway System. In addition, to promote and maintain a long-range highway development program, the Administration will provide technical assistance to the Territory, on a continuing basis, to engage in highway planning, conduct environmental evaluations, administer right-of-way acquisition and relocation assistance programs; and to design, construct, operate, and maintain the Territorial Highway System and other arterial and collector highways as applicable under the terms of this Agreement. The Administration will also continue to engage the FHWA's Resource Center expertise within the scope of this agreement to assist the Territory in solving complex Territorial Highway Program issues.

The Administration will continue to assume responsibility for Federal actions required under laws outside of Title 23, in respective sections such as:

- Activities for compliance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 et. seq.) and 23 CFR Part 771.
- Activities for compliance with Section 4(f) of the Department of Transportation Act of 1966, P.L. 89-665, 49 USC Part 303
- Civil Rights Act of 1964, 42 USC §2000(d) et. Seq. and 23 CFR Part 200 (Title VI), and 23 CFR 230 (EEO)
- Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, 42 USC Part 4601, et. Seq. 23 CFR Parts 710-740 and 49 CFR Part 24.

Territory

The Territory is committed to the following:

- A. Implement the program in accordance with the applicable provisions of Chapter 1 of Title 23 and this agreement;
- B. Design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are-
 - i. Appropriate for the Territory; and
 - ii. Approved by the Administration;

- C. Provide for the maintenance of facilities constructed or operated under the THP in a condition to adequately serve the needs of present and future traffic; and
- D. Implement standards for traffic operations and uniform traffic control devices as established in the Manual of Uniform Traffic Control devices (MUTCD) for approval by the Administration.
- E. The Territory is committed to provide an adequate office on St. Croix and St. Thomas with the required professional staff and equipment to properly administer the THP.
- F. The Territory will share with other territories experiences; documents and technical materials, which may be of common interest and will benefit and enhance the highway territorial program between the territories.

PROJECT ROLES AND RESPONSIBILITIES

Environment

Applicable Laws, Regulations and Procedures

- 42 USC Parts 4321-4347, National Environmental Policy Act as amended (P.L. 91-190)(P.L. 94-83)
- 23 USC §109(h)- 23 CFR 771, FHWA Environmental Regulations
- 49 USC Part 303 and 23 USC 138, Section 4(f) and 6(f)
- 23 CFR Part 771, FHWA Environmental Regulations
- Executive Order 11214, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991
- Executive Order 11990, Protection of Wetlands
- Other applicable Federal environmental laws
- Title 1, Clean Air Act Amendments of 1990

For the environmental function, the Administration maintains ultimate responsibility and approval authority for all activities.

The Territory is responsible for preparing the environmental document (i.e. Documented Categorical Exclusion forms, Environmental Assessment, Environmental Impact Statement). The Administration reviews and approves all environmental documents (project categorization requests, NEPA documents, wetland findings, Section 106 compliance, and Section 4(f) Evaluations, etc.).

The Territory is responsible for making early contact with the local resource agencies. If there are no adverse impacts, the Territory shall obtain letters and coordination without the Administration's involvement. Once adverse impacts are identified, the Administration shall be an integral part of the negotiations.

The Territory is responsible for implementing all mitigations agreed to during the environmental process and project development.

The Administration will monitor compliance with Federal environmental requirements through project-by-project approval actions. Additional monitoring may be done on a program-wide basis.

Right-of-Way

Applicable Laws, Regulations and Procedures

- 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
- 49 CFR Part 18, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments
- 23 CFR Part 620, Subpart B, Relinquishment of Right-of-Way Access Control
- 23 CFR §635.309, Right-of-Way Certification
- 23 CFR Part 710, Right-of-Way and Real Estate

The Territory is required to maintain the existing Right-of-Way Manual which specifies the manner in which the Territory will apply the right-of-way related requirements of Title 23 and Title 49 and in accordance with its local laws and customs. The Right-of-Way Manual will include the procedures and requirements for all projects, which utilize Federal funds in any phase of the project.

The Territory shall acquire rights-of-way of such nature and extent as is adequate for the construction, operation and maintenance of a project. A right-of-way certification shall be submitted for each project prior to obligation of funds.

All real property, including airspace, within the right-of-way boundaries of a project shall be devoted exclusively to public highway purposes except when the Territory determines that such occupancy, use or reservation is in the public interest and will not impair the highway or interfere with the free and safe flow of traffic thereon.

The Administration will monitor compliance through project-by-project approval actions. Additional monitoring may be done on a program-wide basis.

Financial Management

Applicable Laws, Regulations and Procedures

- Title 23 USC Highways
- Title 23 CFR 140, Payment Procedures
- OMB Circular A-133, Single Audit Act of 1984
- OMB Circular A-87, Cost Principles for State and Local Governments
- OMB Circular A-102 Common Rule for Governments
- Title 49 USC Transportation
- Cast Management Improvement Act of 1990
- Current Billing Agreement dated May 4, 1988

The Administration provides the Federal-aid funds for highways and monitors usage of the funds.

The Administration will approve final vouchers, project agreements, and modified project agreements on all projects.

The Territory shall submit all back-up information for all billings to the Administration. Should the Administration disagree on costs based on the back-up information, the Territory will be notified and funds will be deducted in the following payment.

The Territory and the Administration will perform project closeouts.

The Territory will prepare a plan to implement electronic billing and documentation by the end of fiscal year 2007.

FHWA will monitor all financial management and accounting activities through routine contacts and program reviews. FHWA personnel will provide guidance and technical assistance in such areas as fiscal document processing, financial management and reimbursement issues. Risk assessment techniques will be used where appropriate to determine areas for review.

Planning & Programming

Applicable Laws, Regulations and Procedures

- Title 23 USC Highways
- Title 1, Clean Air Act Amendment of 1990
- Title 23 CFR Part 450, Statewide Planning and Programming
- Title 23 CFR Part 420, Planning Program Management and Coordination
- Title 23 CFR Part 652, Pedestrian and Bicycle Accommodations and Projects
- Title 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments

The Territory shall develop a Territorial Transportation Improvement Program (TTIP) and approved by the Administration. The TTIP will cover a period of not less than 4 years, but at the discretion of the Territory, may cover a longer period. If the TTIP covers more than 4 years, the projects in the additional years will be considered by the Administration only as informational. The TTIP will be fiscal constraint by year and include sufficient financial information to demonstrate which projects are to be implemented.

The TTIP will contain all capital and non-capital transportation projects. Permanent repair Emergency Relief (ER) projects, if performed in the years following the event shall be listed in the TTIP.

The Territory shall develop public involvement processes on the TTIP, and shall be proactive and provide complete information, timely public notice, full public access to key decisions and opportunities for early and continuing involvement by affected communities. The Administration will be informed at the end of each fiscal year which projects from the TTIP were advanced to construction.

The Territory will review the existing functional classification of its highways and shall submit the updated functional classification system for the THS for approval by the Administration. The THS shall be a system of arterial and collector highways, and necessary inter-island connectors as designated by the Governor of the Territory and approved by the Administration.

The Administration will approve roadway functional classifications defining the Territorial Highway System (THS). The THS shall be reviewed and amended on an as needed basis.

Civil Rights

Applicable Laws, Regulations and Procedures

- 23 USC Highways
- 23 CFR Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures
- 23 CFR Part 230, External Programs
- Civil Rights Act of 1964
- Americans with Disabilities Act
- Civil Rights Restoration Act of 1987
- Executive Order 12898, Environmental Justice
- Section 504 of the Vocational Rehabilitation Act of 1973
- 49 CFR Transportation, Various Sections

The Administration will monitor civil rights activities on an ongoing basis through open communication with the Territory; reviews of required reports and program updates prepared by the Territory; project-by-project and item-by-item reviews associated with Federal approval actions required by laws, regulations and special requests.

Engineering and Design Related Service Contracts

Applicable Laws, Regulations and Procedures

- 23 CFR Part 172 Administration of Engineering and Design Related Service Contracts

The Administration will approve all contracts, revisions, and contract settlements prior to execution for all project phases.

Monitoring of all Federal-aid projects will be accomplished by the Administration through the project-by-project monitoring of eligibility determinations. Additional monitoring may be done on a program-wide basis.

Design

Applicable Laws, Regulations and Procedures

- 23 USC
- 23 CFR Part 625 Design Standards for highways
- 23 CFR Part 626 Pavement Policy
- 23 CFR Part 627 Value Engineering
- 23 CFR Part 630 Preconstruction Procedures
- 23 CFR Part 655, Traffic Operations

The Administration approval is required for all standard plans and general special provisions.

The Administration will approve plans, specifications, and estimates (PS&E) prior to advertisement of projects. The Administration may delegate to Territory the approval of PS&E's

for projects consisting only of roadway resurfacing on a project-by-project basis when requested in advance by the Territory and approved by the Administration.

The Territory will perform the following actions:

- Submit PS&E checklist for each project
- Submit all PS&E and checklists to the Administration by August 1 of each fiscal year for all projects that the Territory plans to use available Federal-aid funds during that fiscal year.

Design monitoring of all Federal-aid projects will be accomplished by the Administration through the project-by-project monitoring of eligibility determinations and environmental document approvals. Additional monitoring may be done on a program-wide basis.

Construction

Applicable Laws, Regulations and Procedures

- 23 USC Parts 106, 114, 121
- 23 CFR Part 633, Required Contract Provisions
- 23 CFR Part 635, Construction and Maintenance
Guidance for Implementation of Buy America Act to the Territory will apply as per April 24, 2006 correspondence from the Administration.
- 23 CFR Part 636, Design-Build Contracting
- 23 CFR Part 637, Construction Inspection and Approval
- 23 CFR Part 645, Utilities

The Administration will perform the following actions:

- Concur in award for all Federal-aid projects
- Approve all contract change orders/modifications
- Conduct routine and final inspections

The Territory will perform the following actions:

- Ensure that Federal-aid projects receive adequate supervision and inspection
- Properly document the construction of the federal-aid projects
- Ensure that Federal-aid projects are constructed in accordance with the approved plans and specifications

The Administration and the Territory will prepare timely closing documents and actions for completed projects. The Administration may conduct program reviews to ensure adequate closeout progress.

Maintenance

Applicable Laws, Regulations and Procedures

- 23 USC 116
- 23 CFR §1.27, Maintenance

The Territory commits to provide for the maintenance of facilities constructed or operated under this section in a condition to adequately serve the needs of present and future traffic.

The Administration will continuously review facilities during routine visit to the territories and report conditions of not properly maintained Federal-aid projects and get the Territory to place the project in proper condition of maintenance. Failure to place the Federal-aid project in acceptable maintenance conditions by the set time by the Administration, may result in the withholding of approval of further projects.

Bridges

Applicable Laws, Regulations and Procedures

- 23 USC Part 144, Highway Bridge Replacement and Rehabilitation Program
- 23 USC Part 151, National Bridge Inspection Program
- 23 CFR Part 650, Bridges, Structures and Hydraulics
- FHWA ORDER 5520.1, Preliminary Plan Review and Approval

The Administration will perform bridge inspections on a need basis.

Emergency Relief

Applicable Laws, Regulations and Procedures

- 23 USC
- 23 CFR Part 668, Emergency Relief Program

The Territory shall prepare and submit a damage survey summary report to the Administration.

The Administration will continue to be responsible for the oversight of all Title 23 aspects of all Emergency Relief (ER) projects and will review and approve project design, approve plans, specifications, and estimates, concur in award, approve changes in contract (change orders, supplemental agreements, time extensions, claims, etc.).

ELIGIBLE ACTIVITIES

The eligible projects and activities for which funds are made available for the THP, under 23 U. S. C. 215 (f)(1) are as follows:

- A. eligible surface transportation program (STP) projects described in 23 U. S. C. 133(b);
- B. cost-effective, preventive maintenance consistent with 23 U. S. C. 116(d);
- C. ferry boats, terminal facilities, and approaches, in accordance with 23 U. S. C. 129(b) and (c);
- D. engineering and economic surveys and investigations for the planning and the financing of future highway programs;
- E. studies of economy, safety and convenience of highway use;
- F. regulation and equitable taxation of highway; and
- G. research and development necessary for the planning, design, and maintenance of the highway system.

Under the provisions of 23 U. S. C. 215(g), THP funds shall not be used on roads functionally classified as local, with the following exceptions:

- Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements **on bridges**, as indicated in 23 U. S. C. 133(b);
- Carpool , bicycle, and pedestrian projects, as indicated in 23 U. S. C. 133 (b)(3); and
- Highway and transit safety projects and programs, as indicated in 23 U. S.C. 133(b)(4).

NON APPLICABLE TITLE 23 PROVISIONS

The following sections in Chapter 1 of Title 23 U. S. C. do not apply to the THP.

- Section 105 – Equity bonus program
- Section 107 – Acquisition of rights-of-way - Interstate System
- Section 111 – Agreements relating to use of and access to rights-of-way – Interstate System
- Section 119 – Interstate maintenance program
- Section 124 – Advances to States
- Section 126 – Uniform transferability of Federal-aid highway funds
- Section 127 – Vehicle weight limitations – Interstate System
- Section 130 – Railway-highway crossings
- Section 131 – Control of outdoor advertising
- Section 134 – Metropolitan transportation planning
- Section 135 – Statewide transportation planning
- Section 136 – Control of junkyards
- Section 137 – Fringe and corridor parking facilities
- Section 141 – Enforcement of Requirements
- Section 143 – Highway use tax evasion projects
- Section 144 – Highway bridge replacement and rehabilitation program
- Section 147 – Construction of ferry boats and ferry terminal facilities
- Section 148 – Highway safety improvement program
- Section 149 – Congestion mitigation and air quality improvement program
- Section 151 – National bridge inspection program
- Section 152 – Hazard elimination program
- Section 153 – Use of safety belts and motorcycle helmets
- Section 154 – Open container requirements
- Section 155 – Access highways to public recreation areas on certain lakes
- Section 157 – Safety incentive grants for use of seat belts
- Section 158 – National minimum drinking age
- Section 159 – Revocation or suspension of drivers' licenses of individuals convicted of drug offenses
- Section 160 – Reimbursement for segments of the Interstate System constructed without Federal assistance
- Section 161 – Operation of motor vehicles by intoxicated minors
- Section 162 – National scenic byways program
- Section 163 – Safety incentives to prevent operation of motor vehicles by intoxicated persons

- Section 164 – Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence
- Section 165 – Puerto Rico highway program

REEVALUATION

This agreement shall be reevaluated and as necessary revised at least every 2 years.

EFFECTIVE DATE

This agreement shall be effective upon the date of execution by the Administration and supersedes previous agreements concerning stewardship and oversight of Federal-aid projects.

TERRITORY OF THE VIRGIN ISLANDS

s/ V. Richards

Honorable Charles W. Turnbull, Governor
U. S. Virgin Islands

Date: 8/2/06

s/ George Phillips

George Phillips, Esq., Commissioner
Department of Public Works

Date: 7/28/06

FEDERAL HIGHWAY ADMINISTRATION, PUERTO RICO/VIRGIN ISLANDS DIVISION OFFICE

s/ Roberto Fonseca-Martínez

Roberto Fonseca-Martinez, P. E.
Acting Division Administrator

Date: 8/4/06