

# TERRITORIAL HIGHWAY PROGRAM IMPLEMENTATION AND STEWARDSHIP AGREEMENT

Federal Highway Administration – Puerto Rico and U.S. Virgin Islands Federal-Aid Division

and the

Government of U.S. Virgin Islands

We support the concept of this Stewardship Agreement and hereby direct that the oversight of the Federal-aid highway program be carried out in the spirit of true partnership, as described herein.

## SIGNATURES:



A handwritten signature in blue ink, appearing to read "G. Nadeau", written over a horizontal line.

GREGORY G. NADEAU  
ACTING ADMINISTRATOR  
Federal Highway Administration

A handwritten date "6/23/15" in blue ink, written over a horizontal line.

Date



A handwritten signature in blue ink, appearing to read "K. Mapp", written over a horizontal line.

KENNETH MAPP, GOVERNOR  
Government of U.S. Virgin Islands

A handwritten date "6-23-15" in blue ink, written over a horizontal line.

Date

## TABLE OF CONTENTS

	<u>PAGE</u>
I. PURPOSE	2
II. FUNDING-ANNUAL ALLOCATION	2
III. FUNDING – EMERGENCY RELIEF	3
IV. FEDERAL SHARE	3
V. TERRITORIAL HIGHWAY SYSTEM (THS)	3
VI. ELIGIBLE ACTIVITIES	3
VII. APPLICABILITY OF TITLE 23 CHAPTER 1 PROVISIONS	5
VIII. DELEGATION OF AUTHORITIES	5
IX. OVERSIGHT AND STEWARDSHIP	6
X. PROJECT AND PROGRAM ROLES AND RESPONSIBILITIES	7
XI. MONITORING	18
XII. TECHNICAL ASSISTANCE	19
XIII. CONTROL STANDARDS AND DOCUMENTS	19
XIV. OPERATING (PROGRAMMATIC) AGREEMENTS	19
XV. RE-EVALUATION	20
XVI. EFFECTIVE DATE	20
APPENDIX A – SECTION 165 OF TITLE 23, AS AMENDED BY SECTION 1114(c) OF MAP-21	
APPENDIX B – SECTION 133(b) OF TITLE 23, AS AMENDED BY MAP-21	
APPENDIX C – TERRITORIAL HIGHWAY PROGRAM BACKGROUND	
APPENDIX D – NON-APPLICABLE SECTION OF TITLE 23 U.S.C. CHAPTER 1 PROVISIONS	
APPENDIX E – NATIONAL BRIDGE INSPECTION STANDARDS	

## **TERRITORIAL HIGHWAY PROGRAM IMPLEMENTATION AND STEWARDSHIP AGREEMENT**

### **I. PURPOSE**

Recognizing the mutual benefits that will accrue to the U.S. Virgin Islands (USVI), an unincorporated territory of the United States that consists of St. Thomas, St. Croix, St. John and Water Island, and the United States from the improvement of highways in the USVI, the Federal Highway Administration (FHWA) may carry out a program to assist the USVI in the construction and improvement of a system of arterial and collector highways and necessary inter-island connectors.

With the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the FHWA recognized the need to develop and implement a consistent approach to stewardship and oversight among the United States Territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and USVI), collectively the "Territories," in support of their evolving programs. As a result of SAFETEA-LU, the FHWA and the Government of USVI entered into a Stewardship Agreement on August 4, 2006.

The Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) reaffirmed the mutual benefits that will accrue to the Territories and the United States from the improvement of highways in the Territories and authorized the Secretary of the U.S. Department of Transportation to carry out a program to assist each Territory in the construction and improvement of a system of arterial and collector highways and necessary inter-island connectors. [Title 23, United States Code (U.S.C.), Section 165(c)(2)(A)] In Section 1114 of MAP-21, Congress modified the law establishing the Territorial Highway Program (THP) and required that the Stewardship Agreement be modified to address the changes.

### **II. FUNDING – ANNUAL ALLOCATION**

Sections 1101 and 1114 of MAP-21 provide funds for the THP under 23 U.S.C. 165(a)(2) at \$40,000,000 for Fiscal Years (FY) 2013 and 2014. These funds provide contract authority authorized from the Highway Trust Fund.

This allocated program is subject to the provisions of Section 1102(f) of MAP-21 on "Redistribution of Certain Authorized Funds." This "lop-off" provision requires that any authorized funds that exceed the amount of obligation authority (OA) provided for the program be deducted from the program and distributed to the States for the eligible purposes contained in the Surface Transportation Program (STP). Therefore, the above authorized amounts will be reduced to the amount of obligation limitation available for the program.

The funding available to the Territories each year will continue to be distributed among the four territories based on the following administrative formula that has been used since FY 1993:

U.S. Virgin Islands	40%
Guam	40%
American Samoa	10%
Northern Mariana Islands	10%

The FHWA may, after consultation with the four Territories, adjust the administrative formula.

A background and legislative history of the program as well as the administrative allocation formula history is included in appendix C of this document.

These funds will be distributed to the Territories each year with an equal amount of OA. Further, these funds are available for obligation for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Thus, funds are available for obligation for a total of 4 years.

The THP obligation authority is subject to August redistribution under Section 1102(d) of MAP-21. Any THP OA that cannot be obligated by the end of the fiscal year will be withdrawn in August and will be distributed to the States. The carryover OA will be returned to the Territories in the following fiscal year if the funds have not lapsed.

### **III. FUNDING – EMERGENCY RELIEF**

The total obligations for emergency relief (ER) program projects that FHWA may authorize for any fiscal year in all Territories shall not exceed \$20,000,000 unless otherwise provided by law. Obligation limits shall be followed as outlined in FHWA allocation memos for ER funding to ensure this cap is not exceeded. [23 U.S.C. 125(d)(4)]

### **IV. FEDERAL SHARE**

The Federal share of Federal financial assistance provided under Title 23 of the U.S.C. to the Territories shall be 100 percent of the total cost of the project. [23 U.S.C. 120(g)]

### **V. TERRITORIAL HIGHWAY SYSTEM (THS)**

The THS shall be a system of arterial and collector highways, and necessary inter-island connectors as designated by the Governor or Chief Executive Officer of the USVI and approved by the FHWA Puerto Rico and U.S. Virgin Islands Division Administrator. The THS shall be reviewed and amended as needed. [23 U.S.C. 165(c)(2)(A)]

## VI. ELIGIBLE ACTIVITIES

The THP funds are authorized for the following types of projects and activities carried out in a Territory on the THS [23 U.S.C. 165(c)(6)]:

- Eligible STP projects described in 23 U.S.C. 133(b) (see appendix B for the statute and implementing guidance for the STP as revised by MAP-21);
- Cost-effective, preventive maintenance consistent with 23 U.S.C. 116(e);
- Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of 23 U.S.C. 129;
- Engineering and economic surveys and investigations for the planning and financing of future highway programs;
- Studies of the economy, safety, and convenience of highway use;
- Regulation and equitable taxation of highway use; and
- Research and development as are necessary in connection with the planning, design, and maintenance of the highway system.

The Virgin Islands Department of Public Works (VIDPW) or other well-qualified and suitably equipped engineering organizations of other governmental departments may use THP funds for costs of their engineering services. The VIDPW may engage the services of private engineering consultants to meet the needs of their programs. Only costs that are directly attributable and properly allocable to specific eligible projects may be claimed. The VIDPW is not relieved of its responsibilities under Federal law and regulations in the event it uses the services of any engineering organization. Funds reimbursed for engineering services for projects that do not proceed to right-of-way acquisition or construction within 10 years of authorization are required to be reimbursed unless an extension is granted.

The THP funds will not be used on roads functionally classified as local with the **exception** of the following activities listed in 23 U.S.C. 133(b) (2), (4), (7), (8), (14), and (19) [23 U.S.C. 165(c)(7)]:

- Replacement (including replacement with fill material), rehabilitation, preservation, protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events), and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges (and approaches to bridges and other elevated structures) and tunnels on public roads of all functional classifications, including any such construction or reconstruction necessary to accommodate other transportation modes [23 U.S.C. 133(b)(2)];
- Inspection and evaluation of bridges and tunnels and training of bridge and tunnel inspectors (as defined in 23 U.S.C. 144), and inspection and evaluation of other highway assets (including signs, retaining walls, and drainage structures) [23 U.S.C. 133(b)(4)];

- Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings [23 U.S.C. 133(b)(7)];
- Highway and transit research and development and technology transfer programs [23 U.S.C. 133(b)(8)];
- Environmental mitigation efforts relating to programs funded under 23 U.S.C. in the same manner and to the same extent as such activities are eligible under 23 U.S.C. 119(g) [23 U.S.C. 133(b)(14)];
- Projects and strategies designed to support congestion pricing, including electric toll collection and travel demand management strategies and programs [23 U.S.C. 133(b)(19)]; and
- Projects on local roads that are no longer eligible for this program include carpool projects; fringe and corridor parking facilities and programs; bicycle transportation and pedestrian walkways; and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990.

The THP funds are not allowed to be used for routine maintenance. [23 U.S.C. 165(c)(6)(B)]

The FHWA **will not** participate in any cost that is not incurred in conformity with applicable Federal and USVI law, the regulations in Title 23, Code of Federal Regulations (CFR), and FHWA policies and procedures. If the FHWA determines that USVI has violated or failed to comply with the Federal laws or regulations with respect to a project, the FHWA **may** withhold payment to the USVI of Federal funds on account of such project, withhold approval of further projects in the USVI, and take such action that the FHWA deems appropriate under the circumstances, until compliance or remedial action has been accomplished by the Territory to the satisfaction of the FHWA.

The THP funds **shall not** be paid on account of any cost incurred prior to authorization by the FHWA to the USVI to proceed with the project or part thereof involving such cost. The FHWA may approve the participation of Federal-aid funds in a previously incurred cost only if the cost can be justified as per 23 CFR 1.9.

## **VII. APPLICABILITY OF TITLE 23 CHAPTER 1 PROVISIONS**

Pursuant to 23 U.S.C. 165(c)(4)(A), certain sections of 23 U.S.C. have been deemed to be inconsistent with the needs of the Territories and, therefore, do not apply to the Territories. Appendix A contains a list of these provisions. All other provisions of chapter 1 of 23 U.S.C. shall apply to the Territories as written, including those specified in section XI of this Agreement, unless specified otherwise in appendix D of this Agreement.

## **VIII. DELEGATION OF AUTHORITIES**

### **Federal Highway Administration**

For the purposes of the THP, any references to the Secretary in 23 U.S.C. and this document shall mean the FHWA Puerto Rico and U.S. Virgin Islands Division Administrator, since responsibility for administration of the THP has been delegated in chapter 5 of part I of the

FHWA *Delegations and Organization Manual* (FHWA Order M1100.1A) to the FHWA Puerto Rico and U.S. Virgin Islands Division Administrator with respect to USVI.

For the purposes of the THP, any references to the FHWA shall mean the FHWA Puerto Rico and U.S. Virgin Islands Division.

### **Government of USVI**

For the purposes of the THP, the VIDPW is the authorized agency to make final decisions for the Government of USVI in all matters relating to, and to enter into, on behalf of the Government of USVI, all contracts and agreements for projects; and also to take such other actions on behalf of the Government of USVI as may be necessary to comply with Federal laws and regulations.

## **IX. OVERSIGHT AND STEWARDSHIP**

The FHWA is **ultimately accountable** for ensuring that the Federal-aid highway program is delivered consistent with established requirements. Congress and the public hold the FHWA accountable for ensuring that the programs and processes under the Federal-aid highway program are both efficient and effective, and are consistent with applicable laws, regulations, and policies.

The FHWA's assistance is not needed only for financial integrity; it is managerial and technical as well. Stewardship goes beyond regulatory compliance or oversight. In order to distinguish stewardship from oversight the following definitions will apply:

**Stewardship:** The efficient and effective management of the public funds that have been entrusted to the FHWA.

**Oversight:** The act of ensuring that the Federal highway program is delivered consistent with applicable laws, regulations, and policies.

Recognizing that stewardship is a **shared responsibility**, the following sections describe the commitments that the FHWA and the Government of USVI shall make to effectively deliver their respective THP:

### **Federal Highway Administration**

The FHWA **will continue** to have stewardship and oversight responsibilities for **all** 23 U.S.C. aspects of all projects, including but not limited to:

- Review and approval of all project plans, specifications, and estimates (PS&E);
- Concurrence in contract awards; and
- Approval of changes in contracts (change orders, supplemental agreements, time extensions, claims, etc.).

The FHWA **will continue** to have stewardship and oversight responsibilities for **all** activities required for compliance in non-23 U.S.C. laws, including but not limited to:

- Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et. seq.) and 23 CFR 771;
- Section 4(f) of the Department of Transportation Act of 1966, P.L. 89-665, 49 U.S.C. 303;
- Civil Rights Act of 1964, 42 U.S.C. 2000(d) et. seq. and 23 CFR 200 (Title VI), and 23 CFR 230;
- Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, 42 U.S.C. 4601, et. seq., 23 CFR 710-740, and 49 CFR 24; and
- Section 106 of the National Historic Preservation Act.

FHWA **will continue** to support:

- The existing agreement between the USVI and Eastern Federal Lands Highway Division for the design and construction of specific Federal-aid funded projects that are part of the THS;
- The USVI's efforts to promote and maintain a long-range highway development program by providing technical assistance to the USVI, on a continuing basis, in the areas of highway planning, environmental evaluations, administration of right-of-way acquisition, and relocation assistance programs; and the design, construction, operation, and maintenance of the USVI's THS and other arterial and collector highways as applicable under the terms of this Agreement; and
- Engagement of FHWA's Resource Center expertise within the scope of this Agreement to assist the USVI in solving complex THP issues.

### **Government of USVI**

The Government of USVI **is committed** to the following:

- Implement the THP in accordance with the applicable provisions of 23 U.S.C., Chapter 1, and this Agreement;
- Have adequate powers, and be suitably equipped and organized to discharge the duties required to the satisfaction of the FHWA;
- Design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are appropriate for USVI and approved by the FHWA Puerto Rico and U.S. Virgin Islands Division;
- Provide for the maintenance of facilities constructed or operated under this section in a condition to that will adequately serve the needs of present and future traffic;
- Implement standards for traffic operations and uniform traffic control devices that are approved by the FHWA;
- Provide an adequate office on St. Croix and St. Thomas with the required professional staff and equipment to properly administer the THP; and



- Share with other Territories the USVI's experiences, documents, and technical materials that may be of common interest and will benefit and enhance the THP among Territories.

## **X. PROJECT AND PROGRAM ROLES AND RESPONSIBILITIES**

The following sections set forth the respective roles and responsibilities of each party in the administration and oversight of the THP in USVI. The list of applicable laws and regulations should not be considered all inclusive.

### *Environment*

#### **Applicable Laws, Regulations, and Procedures:**

##### *Federal Procedures*

- National Environmental Policy Act, 42 U.S.C. 4321-4347
- FHWA Environmental Guidelines, 23 U.S.C. 109(h)
- Public Hearings, 23 U.S.C. 128
- Efficient Environmental Reviews for Project Decision Making, 23 U.S.C. 139
- Section 4(f) and 6(f), 49 U.S.C. 303 and 23 U.S.C. 138
- FHWA Environmental Regulations, 23 CFR 771
- FHWA 4(f) Regulations, 23 CFR 774
- CEQ Regulations, 40 CFR 1500-1508
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR 777
- Clean Air Act Amendments of 1990, 42 U.S.C. 7401

##### *Noise*

- Abatement of Traffic and Construction Noise, 23 CFR 772

##### *Historic and Cultural Resources*

- Section 106 of the National Historic Preservation Act.
- Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)-11
- Archeological and Historic Preservation Act, 16 U.S.C. 469-469(c)

##### *Wildlife*

- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544 and
- Section 1536
- Marine Mammal Protection Act, 16 U.S.C. 1361
- Anadromous Fish Conservation Act, 16 U.S.C. 757(a)-757(g)
- Fish and Wildlife Coordination Act, 16 U.S.C. 661-667(d)
- Migratory Bird Treaty Act, 16 U.S.C. 703-712
- Magnuson-Stevenson Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq.

##### *Social and Economic Impacts*

- Farmland Protection Policy Act, 7 U.S.C. 4201-4209,

##### *Water Resources and Wetlands*

- Clean Water Act, 33 U.S.C. 1251-1377, section 309, 401, and 319
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510

- Coastal Zone Management Act, 16 U.S.C. 1451–1465
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)– 300(j) (6)
- Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
- Flood Disaster Protection Act, 42 U.S.C. 4001–4128

*Parklands*

- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604

*Hazardous Materials*

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act of 1986 (SARA)
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k)

*Executive Orders Relating to Highway Projects*

- E.O. 11990 – Protection of Wetlands
- E.O. 11988 – Floodplain Management
- E.O. 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112 – Invasive Species

*Other applicable Federal environmental laws.*

The **Government of USVI** shall:

- Develop procedures to implement the National Environmental Policy Act, Council of Environmental Quality Regulations, 23 CFR 771, and associated Federal laws for transportation projects, subject to the FHWA Puerto Rico and U.S. Virgin Islands Division’s approval;
- Prepare the environmental document (i.e., Documented Categorical Exclusion forms, Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact, and Record of Decision);
- Make early contact with the local and Federal resource agencies;
- Coordinate and consult with the resource agencies for projects with ***no impacts*** to environmental resources; and
- Implement all mitigations agreed to during the environmental process and project development.

The **FHWA** shall:

- Maintain ultimate responsibility and approval authority for all activities;
- Review and approve all environmental documents (National Environmental Policy Act documents, Section 106 compliance, and Section 4(f) Evaluations, etc.);
- Be an integral part of the consultation/coordination for projects with ***impacts*** to environmental resources; and
- 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:**

- 23 U.S.C. 108 – Advance Acquisition of Real Property
- 23 U.S.C. 123 – Relocation of Utilities
- 23 U.S.C. 156 – Proceeds from the sale or lease of real property
- 23 U.S.C. 301 and 129 – Toll Facilities
- 49 CFR 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs
- 23 CFR 1.23 – Rights of Way
- 23 CFR 620 Subpart B – Relinquishment of Right-of-Way Access Control
- 23 CFR 635.309 – Right-of-Way Certification
- 23 CFR 645 – Utilities
- 23 CFR 710 – Right-of-Way and Real Estate

### The **Government of USVI** shall:

- Maintain a Right-of-Way Manual which specifies the manner in which it will apply the right-of-way related requirements of 23 U.S.C. and 49 U.S.C and in accordance with its local laws and customs. The Right-of-Way Manual will include the procedures and requirements for all projects that use Federal funds in any phase of the project;
- Acquire rights-of-way of such nature and extent as are adequate for the construction, operation, and maintenance of a project;
- Submit a right-of-way certification for each project prior to obligation of funds; and
- Devote all real property, including airspace, within the right-of-way boundaries of a project exclusively to public highway purposes except when the USVI 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 **FHWA** shall:

- Approve the Right-of-Way Manual and any amendments; and
- Monitor compliance with Federal right-of-way requirements through project-by-project approval actions. Additional monitoring may be done on a program-wide basis.

## ***Financial Management***

### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 102(b) – Engineering Cost Reimbursement
- 23 U.S.C. 302 – State Transportation Department
- 23 U.S.C. 115 – Advance Construction
- 23 U.S.C. 118 – Availability of Funds
- 23 U.S.C. 120 – Federal Share Payable
- 23 U.S.C. 121 – Payment for Construction

- 23 U.S.C. 122 – Payments for bond and other debt instrument financing
- 23 U.S.C. 165(c) – Territorial Highway Program
- 23 CFR 1.9 – Limitation on Federal Participation
- 23 CFR 1.36 – Compliance with Federal laws and regulations
- 23 CFR 172 – Administration of Engineering and Design Related Service Contracts
- 23 CFR 630.106 – Authorization to Proceed and Project Monitoring
- 23 CFR 635.122 – Participation in progress payments
- 23 CFR 635.123 – Determination and documentation of pay quantities
- 2 CFR 200<sup>1</sup> - Uniform Administrative requirements, cost principles, and audit requirements for Federal awards
- OMB Circular A-123 – Management’s Responsibility for Internal Control
- Cost Management Improvement Act of 1990 Treasury-State Agreement

The **Government of USVI** shall:

- Fax/e-mail vouchers for reimbursement on an as-needed basis;
- Immediately submit all backup information for all billings to the FHWA;
- Continue to utilize electronic documentation to ensure the retention of backup information;
- Monitor project progress to ensure timely completion and closure;
- Monitor projects for inactivity and close/cancel inactive projects when applicable in accordance with 23 CFR 630.106(a)(5) or as directed by the FHWA Chief Financial Officer;
- Consider the life of all construction contracts to be 1 year after the number of days for which the Contractor shall complete the work;
- Reimburse any funds paid to the USVI for preliminary engineering services for a project that has not commenced right-of-way acquisition or construction within 10 years from when funds were first authorized for preliminary engineering services unless an extension is granted; and
- Arrange the exchange of supporting documentation between the Department of Finance and the VIDPW to comply with Federal document retention requirements for the highway program.

The **FHWA** shall:

- Approve project agreements, modified project agreements, and final vouchers that are in compliance with Federal laws and regulations on **all** projects;
- Notify the Government of USVI if there is a disagreement on costs based on backup information;
- Intercept funds for overpayment in the following request for reimbursement;
- Continuously perform closing of projects;

---

<sup>1</sup> 2 CFR 200 is effective no later than December 26, 2014, for projects under 23 U.S.C. and replaces 49 CFR 18 and 19 and OMB Circular A-87 (2 CFR 225), OMB Circular A-133, and OMB Circular A-50 among others. Additional DOT regulations may be implemented to revise this regulation for administering projects under Title 23.

- Monitor all financial management and accounting activities through routine contacts and program reviews. The FHWA's personnel will provide guidance and technical assistance in such areas as fiscal documents processing, financial management, and reimbursement issues;
- Provide the Federal-aid funds for highways and monitor use of the funds for projects that are managed by the VIDPW. Funds transferred for projects managed by other Federal Agencies shall be monitored by the recipient agency;
- Review and approve all written procedures related to Financial Management; and
- Provide all necessary training and assistance related to financial management as requested by the VIDPW.

### ***Planning & Programming***

#### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 135 – Statewide and Nonmetropolitan Transportation Planning
- Clean Air Act Amendment of 1990
- 23 CFR 652 – Pedestrian and Bicycle Accommodations and Projects

The **Government of USVI** shall develop a U.S. Virgin Islands Transportation Improvement Program (TIP). The TIP will:

- Cover a period of not less than 4 years, but at its discretion may cover a longer period. If the TIP covers more than 4 years, the projects in the additional years will be considered by the FHWA only as informational;
- Be financially constrained by year and include sufficient financial information to demonstrate which projects are to be implemented;
- Contain all capital and non-capital transportation projects;
- Include all projects programmed with 23 U.S.C. and 49 U.S.C. funds (such as Federal Transit Administration, FHWA, and Eastern Federal Lands Highway Division);
- Contain permanent ER repair projects that will be performed in the 12 months after the event; and
- The TIP may be amended at any time as long as it is processed in accordance with the approved public involvement process.

The **Government of USVI** shall develop public involvement processes and allow the public to comment on the TIP and any amendments. Public involvement processes shall be proactive and provide complete information, timely public notice, full public access to key decisions and opportunities for early and continuing involvement. The VIDPW shall:

- Maintain a website;
- Develop and follow written procedures that are used to modify the TIP when project changes are needed. Advancing projects from future years does not require compliance with the public involvement process.
- Report to FHWA which projects from the TIP were advanced to construction during the fiscal year. This report is due no later than 90 days after the end of the fiscal year.

The **FHWA** shall review and approve the TIP, all amendments, and the public involvement process.

### ***Civil Rights***

#### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 140 – Nondiscrimination
- 49 CFR 21 – Nondiscrimination in Federally-Assisted Program of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964
- 49 CFR 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance
- 23 CFR 200 – Title VI Program and Related Statutes – Implementation and Review Procedures
- 23 CFR 230 – External Programs
- Title VI of the Civil Rights Act of 1964
- Americans with Disabilities Act of 1990
- Section 504 of the Vocational Rehabilitation Act of 1973
- E.O. 12898 – Environmental Justice in Minority & Low Income Populations
- 49 CFR 26 – Participating DBE in the Department of Transportation Financial Assistance Programs

#### **The Government of USVI shall:**

- Design and construct all projects in compliance with the Americans with Disabilities Act of 1990;
- Apply prevailing wage rates on all Federal-aid highway projects; Include form FHWA 1273 in all construction projects;
- Comply with all Federal regulations regarding nondiscrimination on Federal-aid highway projects; and
- Submit the disadvantaged business enterprise (DBE) goal and set methodology for approval by the Puerto Rico and U.S. Virgin Islands Division.

#### **The FHWA shall:**

- Monitor civil rights activities on an ongoing basis through open communication with USVI;
- Review required reports and program updates prepared by USVI;
- Carry out project-by-project and item-by-item reviews associated with Federal approval actions required by laws, regulations, and special requests; and
- Approve the DBE goal and methodology.

## ***Engineering and Design Related Service Contracts***

### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 112 – Letting of Contracts
- 23 CFR 172 – Administration of Engineering and Design Related Service Contracts
- 40 U.S.C. Chapter 11, Sections 1101-1104 – Selection of Architects and Engineers, “Brooks Act”

### The **Government of USVI** shall:

- Prepare written procedures for each method of procurement it proposes to use; and
- Execute contracts for **all** engineering and design-related service contracts.

### The **FHWA** shall:

- Review and approve the written procedures;
- Approve all eligible contracts, revisions, and contract settlements prior to execution for all project phases that have demonstrated compliance with applicable laws and regulations; and
- Monitor all Federal-aid projects through the project-by-project monitoring. Additional monitoring may be done on a program-wide basis.

## ***Design***

### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 106 – Project Approval and Oversight
- 23 U.S.C. 109 – Standards
- 23 CFR 625 – Design Standards for highways
- 23 CFR 626 – Pavement Policy
- 23 CFR 627 – Value Engineering
- 23 CFR 630 – Preconstruction Procedures
- 23 CFR 650 – Bridges, Structures and Hydraulics
- 23 CFR 652 – Pedestrian and Bicycle Accommodations and Projects
- 23 CFR 655 – Traffic Operations

### The **Government of USVI** shall:

- Use *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP14*, published by the FHWA, U.S. Department of Transportation;
- Develop standard special provisions for USVI;
- Develop standard design plans for USVI;
- Prior to **July 31** of each fiscal year, submit to FHWA all final PS&E and project checklists for construction projects that are to be funded with the current fiscal year funds; and

- Submit all PS&Es to FHWA to obtain approval prior to project advertisement.

The **FHWA** shall:

- Approve all standard plans and standard special provisions;
- Participate in design progress meetings on a project-by-project basis;
- Review intermediate design submittals;
- Approve all PS&Es that meet Federal requirements; and
- Approve all addendums that meet Federal requirements.

### ***Construction***

#### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 106 – Project Approval and Oversight
- 23 U.S.C. 113 – Prevailing Rate of Wage
- 23 U.S.C. 114 – Construction
- 23 U.S.C. 121 – Payment to States for Construction
- 23 U.S.C. 313 – Buy America
- 23 CFR 633 – Required Contract Provisions
- 23 CFR 635 – Construction and Maintenance
- 23 CFR 636 – Design-Build Contracting
- 23 CFR 637 – Construction Inspection and Approval
- 23 CFR 645 – Utilities
- 23 CFR 655 – Traffic Operations
- *Manual on Uniform Traffic Control Devices for Streets and Highways*, latest edition

The **Government of USVI** shall:

- Ensure that Federal-aid projects receive adequate supervision and inspection, including but not limited to general contract administration, material testing and quality assurance, review, and inspections of Federal-aid contracts as well as final inspection/acceptance;
- Properly document the construction of the Federal-aid projects in accordance with the regulations listed above and retain the documents for at least 3 years after final acceptance by the FHWA or as otherwise required under 2 CFR 200.333;
- Ensure that Federal-aid projects are constructed in accordance with the approved PS&E; and
- Prepare timely closing documents and actions for completed projects.

The **FHWA** shall:

- Concur in award for all Federal-aid projects;
- Approve all contract change orders/modifications that meet Federal requirements; and
- Conduct routine and final inspections and provide written reports.



## ***Bridges***

### **Applicable Laws, Regulations, and Procedures:**

- 23 CFR 650 – Bridges, Structures and Hydraulics
- FHWA Order 5520.1 – Preliminary Plan Review and Approval

The **Government of USVI** shall comply with the National Bridge Inspection Standards (NBIS) as set forth in 23 CFR 650 Subpart C, and in accordance with the understandings and schedule contained in appendix E.

The **FHWA** shall:

- Allow THP funds for the cost of the bridge inspections;
- Provide technical assistance to the Government of USVI to comply with the NBIS requirements in an efficient and cost effective manner;
- Periodically assess compliance with the NBIS through a combination of record reviews, on-site visits, and data examination; and
- Provide or facilitate necessary training as requested by VIDPW.

## ***Routine Maintenance***

### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 116 – Maintenance
- 23 U.S.C. 165(c)(6)(B) – Prohibition on use of Federal funds for routine maintenance
- 23 CFR 1.27 – Maintenance
- Manual on Uniform Traffic Control Devices for Streets and Highways, latest edition

The **Government of USVI** commits to provide, at its own expense, routine maintenance of facilities constructed or operated under this section in a condition to provide adequate service to the needs of present and future traffic. Routine maintenance is ineligible for Federal funds under 23 U.S.C. 165(c)(6)(B).

The **FHWA** will continuously review facilities during routine visits to USVI. If at any time the FHWA finds that any project constructed with Federal-aid highway funds is not properly maintained, the FHWA shall notify the USVI Government. If, within 90 days after receipt of such notice, such project has not been put in proper condition of maintenance, the FHWA shall withhold approval of further projects of all types in an area the FHWA deems most appropriate, until such project shall have been put in proper condition of maintenance.

## ***Emergency Relief***

### **Applicable Laws, Regulations, and Procedures:**

- 23 U.S.C. 125 – Emergency Relief
- 23 CFR 668 – Emergency Relief Program

### **The Government of USVI shall:**

- Notify the FHWA of the conditions of the highways immediately after the event;
- Notify the FHWA of its intent to apply for ER funds; and
- Prepare and submit a damage survey summary report to FHWA as soon as possible following the event. The report is to provide a factual basis for FHWA's finding that serious damage to THS highways have been caused by a natural disaster over a wide area or a catastrophe.

### **The FHWA shall:**

- Conduct an on-sight inspection as soon as travel arrangement(s) can be made; and
- Approve all aspects of project development for ER Projects.

## ***Project Close Out***

### **Applicable Laws, Regulations, and Procedures:**

- 23 CFR 637 – Construction Inspection and Approval

### **The Government of USVI shall:**

- Develop project close-out standard operating procedures;
- Provide FHWA with a final acceptance letter for the project;
- Provide a materials certification for the statement in appendix A to subpart B of 23 CFR 637 - Guide Letter of Certification by State Engineer;
- Submit a final voucher; and
- Maintain in a safe environment all project documentation for at least 3 years after final acceptance by FHWA or as otherwise required under 2 CFR 200.333.

### **The FHWA will:**

- Issue a Final Acceptance Report (FHWA 1446B) if the above documentation is provided.

**XI. MONITORING**

The **FHWA** will monitor compliance with Federal requirements through project-by-project approval actions. Additional monitoring may be done on a program wide basis. Risk assessment techniques will be used where appropriate to determine areas of review.

The following stewardship/oversight indicators will be used to track the effective administration of the Federal-aid highway program. These indicators will only be used to track trends and implement countermeasures/actions when the data are not moving in the desired target direction.

<b>Area of Focus</b>	<b>Indicator</b>	<b>Target</b>
Selection and Management of Consultants	Maintenance of design schedule	On Schedule
	Maintenance of design budget	Within 10% of original negotiated fee
	Construction change orders attributed to design work by consultant	Less than 5%
Financial Management	Number of inactive projects	Avoid any inactive accounts quarterly rate not to exceed 2%
	Percent of payments to contractor in less than 30 days	90%
	Number of days between obligation of construction funds and Notice to Proceed	120 days
Planning	Percent of TIP projects advanced	75%
Design	Number of unknown utilities impacted during construction	1 type of utility per project
	Percentage of low bids within $\pm 10\%$ of Engineer's Estimate	100%
Right-of-Way	Percentage of projects with type 3 conditional right-of-way certifications	1 per year
Construction	Cost growth during construction	Less than 15%
	Cost growth due to unknown utilities during construction	Less than 5%
	Schedule growth during construction	Less than 15%
	Percentage of projects completed on time (includes justified and approved contract change orders)	90%

## **XII. TECHNICAL ASSISTANCE**

The **FHWA** will provide technical assistance to the Government of USVI. To continue a long-range highway development program, the FHWA Puerto Rico and U.S. Virgin Islands Division may provide technical assistance to the Government of USVI to enable it, on a continuing basis, to:

- Engage in highway planning;
- Conduct environmental evaluations;
- Administer right-of-way acquisition and relocation assistance; and
- Design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.

The **FHWA** will:

- Provide opportunities for the Government of USVI to attend training courses, workshops, seminars, conferences in Puerto Rico and United States, with approval on an event-by-event basis;
- At the request of the Government of USVI, coordinate on-island training, with approval on an event-by-event basis; and
- Coordinate a biennial USVI meeting, subject to availability of funds, to be held in Puerto Rico or USVI.

## **XIII. CONTROL STANDARDS/DOCUMENTS**

VIDPW Manuals (approved by FHWA for use on Federal-aid highway projects):

- USVI 2035 Comprehensive Transportation Plan
- USVI Transportation Improvement Plan
- Right-of-Way Manual

## **XIV. OPERATING (PROGRAMMATIC) AGREEMENTS**

Memorandum of Agreement among the Government of the USVI, VIDPW, the FHWA Puerto Rico and U.S. Virgin Islands Division, and Eastern Federal Land Highway Division for engineering and construction services and other activities for delivering Federal-aid highway and bridge projects on the U.S. Virgin Islands. (Agreement No. DTFH71-13-X-50049).

## **XV. RE-EVALUATION**

This Agreement shall be reevaluated and, if necessary, revised, at least every 2 years. However, nothing shall prohibit the parties from reevaluating or revising the Agreement earlier than every 2 years.

**XVI. EFFECTIVE DATE**

This Agreement shall be effective on the date of the last signature. This Agreement supersedes previously approved documents concerning FHWA project oversight.

## APPENDIX A

### SECTION 165 OF TITLE 23, AS AMENDED BY SECTION 1114 (c) OF MAP-21

#### 23 U.S.C. § 165 TERRITORIAL AND PUERTO RICO HIGHWAY PROGRAM

- (a) Division of Funds.— Of funds made available in a fiscal year for the territorial and Puerto Rico highway program—
  - (1) \$150,000,000 shall be for the Puerto Rico highway program under subsection (b);  
and
  - (2) \$40,000,000 shall be for the territorial highway program under subsection (c).
- (b) Puerto Rico Highway Program.— [...]
- (c) Territorial Highway Program.—
  - (1) Territory defined.— In this subsection, the term “territory” means any of the following territories of the United States:
    - (A) American Samoa.
    - (B) The Commonwealth of the Northern Mariana Islands.
    - (C) Guam.
    - (D) The U.S. Virgin Islands.
  - (2) Program.—
    - (A) In general.— Recognizing the mutual benefits that will accrue to the territories and the United States from the improvement of highways in the territories, the Secretary may carry out a program to assist each government of a territory in the construction and improvement of a system of arterial and collector highways, and necessary inter-island connectors, that is—
      - (i) designated by the Governor or chief executive officer of each territory; and
      - (ii) approved by the Secretary.
    - (B) Federal share.— The Federal share of Federal financial assistance provided to territories under this subsection shall be in accordance with section 120 (g).
  - (3) Technical assistance.—
    - (A) In general.— To continue a long-range highway development program, the Secretary may provide technical assistance to the governments of the territories to enable the territories, on a continuing basis—
      - (i) to engage in highway planning;
      - (ii) to conduct environmental evaluations;
      - (iii) to administer right-of-way acquisition and relocation assistance programs;  
and
      - (iv) to design, construct, operate, and maintain a system of arterial and collector highways, including necessary inter-island connectors.
    - (B) Form and terms of assistance.— Technical assistance provided under subparagraph (A), and the terms for the sharing of information among territories receiving the technical assistance, shall be included in the agreement required by paragraph (5).
  - (4) Nonapplicability of certain provisions.—
    - (A) In general.— Except to the extent that provisions of this chapter are determined by the Secretary to be inconsistent with the needs of the territories and the intent of this subsection, this chapter (other than provisions of this chapter relating to

the apportionment and allocation of funds) shall apply to funds made available under this subsection.

(B) Applicable provisions.— The agreement required by paragraph (5) for each territory shall identify the sections of this chapter that are applicable to that territory and the extent of the applicability of those sections.

(5) Agreement.—

(A) In general.— Except as provided in subparagraph (D), none of the funds made available under this subsection shall be available for obligation or expenditure with respect to any territory until the chief executive officer of the territory has entered into an agreement (including an agreement entered into under section 215 as in effect on the day before the enactment of this section) with the Secretary providing that the government of the territory shall—

- (i) implement the program in accordance with applicable provisions of this chapter and paragraph (4);
- (ii) design and construct a system of arterial and collector highways, including necessary inter-island connectors, in accordance with standards that are—
  - (I) appropriate for each territory; and
  - (II) approved by the Secretary;
- (iii) provide for the maintenance of facilities constructed or operated under this subsection in a condition to adequately serve the needs of present and future traffic; and
- (iv) implement standards for traffic operations and uniform traffic control devices that are approved by the Secretary.

(B) Technical assistance.— The agreement required by subparagraph (A) shall—

- (i) specify the kind of technical assistance to be provided under the program;
- (ii) include appropriate provisions regarding information sharing among the territories; and
- (iii) delineate the oversight role and responsibilities of the territories and the Secretary.

(C) Review and revision of agreement.— The agreement entered into under subparagraph (A) shall be reevaluated and, as necessary, revised, at least every 2 years.

(D) Existing agreements.— With respect to an agreement under this subsection or an agreement entered into under section 215 of Title 23 as in effect on the day before the date of enactment of this subsection—

- (i) the agreement shall continue in force until replaced by an agreement entered into in accordance with subparagraph (A); and
- (ii) amounts made available under this subsection under the existing agreement shall be available for obligation or expenditure so long as the agreement, or the existing agreement entered into under subparagraph (A), is in effect.

(6) Eligible uses of funds.—

(A) In general.— Funds made available under this subsection may be used only for the following projects and activities carried out in a territory:

- (i) Eligible surface transportation program projects described in section 133 (b).
- (ii) Cost-effective, preventive maintenance consistent with section 116 (e).

- (iii) Ferry boats, terminal facilities, and approaches, in accordance with subsections (b) and (c) of section 129.
  - (iv) Engineering and economic surveys and investigations for the planning, and the financing, of future highway programs.
  - (v) Studies of the economy, safety, and convenience of highway use.
  - (vi) The regulation and equitable taxation of highway use.
  - (vii) Such research and development as are necessary in connection with the planning, design, and maintenance of the highway system.
- (B) Prohibition on use of funds for routine maintenance.— None of the funds made available under this subsection shall be obligated or expended for routine maintenance.
- (7) Location of projects.— Territorial highway program projects (other than those described in paragraphs (2), (4), (7), (8), (14), and (19) of section 133 (b)) may not be undertaken on roads functionally classified as local.



## **APPENDIX B**

### **SECTION 133(b) OF TITLE 23, AS AMENDED BY MAP-21**

- (1) Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, or operational improvements for highways, including construction of designated routes of the Appalachian development highway system and local access roads under section 14501 of Title 40.
- (2) Replacement (including replacement with fill material), rehabilitation, preservation, protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and deicing compositions for bridges (and approaches to bridges and other elevated structures) and tunnels on public roads of all functional classifications, including any such construction or reconstruction necessary to accommodate other transportation modes.
- (3) Construction of a new bridge or tunnel at a new location on a Federal-aid highway.
- (4) Inspection and evaluation of bridges and tunnels and training of bridge and tunnel inspectors (as defined in section 144), and inspection and evaluation of other highway assets (including signs, retaining walls, and drainage structures).
- (5) Capital costs for transit projects eligible for assistance under chapter 53 of Title 49, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus.
- (6) Carpool projects, fringe and corridor parking facilities and programs, including electric vehicle and natural gas vehicle infrastructure in accordance with section 137, bicycle transportation and pedestrian walkways in accordance with section 217, and the modifications of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- (7) Highway and transit safety infrastructure improvements and programs, installation of safety barriers and nets on bridges, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.
- (8) Highway and transit research and development and technology transfer programs.
- (9) Capital and operating costs for traffic monitoring, management, and control facilities and programs, including advanced truck stop electrification systems.
- (10) Surface transportation planning programs.
- (11) Transportation alternatives.
- (12) Transportation control measures listed in section 108 (f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408 (f)(1)(A)).
- (13) Development and establishment of management systems
- (14) Environmental mitigation efforts relating to projects funded under this title in the same manner and to the same extent as such activities are eligible under section 119 (g).
- (15) Projects relating to intersections that—
  - (A) have disproportionately high accident rates;
  - (B) have high levels of congestion, as evidenced by—
    - (i) interrupted traffic flow at the intersection; and

- (ii) a level of service rating that is not better than “F” during peak travel hours, calculated in accordance with the Highway Capacity Manual issued by the Transportation Research Board; and
  - (C) are located on a Federal-aid highway.
- (16) Infrastructure-based intelligent transportation systems capital improvements.
- (17) Environmental restoration and pollution abatement in accordance with section 328.
- (18) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.
- (19) Projects and strategies designed to support congestion pricing, including electric toll collection and travel demand management strategies and programs.
- (20) Recreational trails projects eligible for funding under section 206.
- (21) Construction of ferry boats and ferry terminal facilities eligible for funding under section 129 (c).
- (22) Border infrastructure projects eligible for funding under section 1303 of the SAFETEA-LU (23 U.S.C. 101 note; Public Law 109-59).
- (23) Truck parking facilities eligible for funding under section 1401 of the MAP-21.
- (24) Development and implementation of a State asset management plan for the National Highway System in accordance with section 119, including data collection, maintenance, and integration and the costs associated with obtaining, updating, and licensing software and equipment required for risk based asset management and performance based management, and for similar activities related to the development and implementation of a performance based management program for other public roads.
- (25) A project that, if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.
- (26) Construction and operational improvements for any minor collector if—
  - (A) the minor collector, and the project to be carried out with respect to the minor collector, are in the same corridor as, and in proximity to, a Federal-aid highway designated as part of the National Highway System;
  - (B) the construction or improvements will enhance the level of service on the Federal-aid highway described in subparagraph (A) and improve regional traffic flow; and
  - (C) the construction or improvements are more cost-effective, as determined by a benefit-cost analysis, than an improvement to the Federal-aid highway described in subparagraph (A).

## **APPENDIX C**

### **TERRITORIAL HIGHWAY PROGRAM**

#### **Background and Legislative History**

The Territorial Highway Program (THP) was created in Section 112 of the Federal-Aid Highway Act of 1970 (Public Law 91-605) by adding Section 215 to Title 23, United States Code (U.S.C.). Section 115 granted Federal financial assistance to the U.S. Virgin Islands, Guam, and American Samoa for the construction and improvement of a system of arterial highways and necessary inter-island connectors. The funds were provided from the General Fund of the Treasury, with a Federal share of 70 percent for any project under Section 215. Section 215 authorized the Federal Highway Administration (FHWA) to provide technical assistance for the establishment of an appropriate agency in each Territory to administer the program on a continuing basis.

Section 104(a)(13) of the Federal-Aid Highway Act of 1978 (Public Law 95-599) added assistance to the Commonwealth of the Northern Mariana Islands (CNMI) by providing funds in the same manner as those provided for the other three Territories under 23 U.S.C. 215. Section 129(f) of the 1978 Act also amended 23 U.S.C. 215 by increasing the Federal share from 70 percent to 100 percent. Section 129(i) of this act added subsection (i) to 23 U.S.C. 215, which provided that the Federal share for any project under 23 U.S.C. in the U.S. Virgin Islands, Guam, American Samoa, or CNMI shall be 100 percent.

Section 108(d) of the Surface Transportation Assistance Act of 1982 (STAA) (Public Law 97-424) changed the funding source for the THP from the General Fund of the Treasury to the Highway Trust Fund by apportioning one-half of 1 percent of the Federal-aid primary funds to the four Territories. These funds were distributed to the Territories for Fiscal Year (FY) 1983 by an administrative formula of 1/3 urban population greater than 5,000, 1/3 rural population, 1/6 land area, and 1/6 public road mileage. Use of this formula was discontinued after FY 1983, and the funds were distributed by the following administrative formula: 1/12 each for American Samoa and CNMI, and 5/12 each for Guam and the U.S. Virgin Islands.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Public Law 100-17) continued the authorization of one-half of 1 percent of the Federal-aid primary funds for the Territories. Section 133(b)(16) of the STURAA also amended 23 U.S.C. 215(a) by officially adding CNMI to the group of covered territories under Section 215, although funding had been provided to CNMI since 1978.

Section 1006 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102-240) established the National Highway System (NHS) and provided continued funding for the THP as a 1 percent set-aside from the NHS funds. Section 1006(c) of ISTEA also required the functional reclassification of all roads and streets in each State, including these four Territories. After this reclassification, each Territory designated its Territorial Highway System (THS), which was approved by the FHWA Division Office. The NHS funds

for the territories could be used on the THS for any eligible NHS activity under 23 U.S.C. 103(i), or could be transferred to the Surface Transportation Program (STP) and then be used for any eligible STP activity under 23 U.S.C. 133(b).

The administrative formula for distributing the funds among the four Territories was reviewed by the FHWA in 1992 considering population, land area, and road mileage in each of the Territories. Based on this review, the funding has been distributed to the Territories as follows since 1993: 1/10 each for American Samoa and CNMI, and 4/10 each for Guam and the U.S. Virgin Islands.

Section 1103(b) of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) (Public Law 105-178) continued the funding of the THP from the NHS funds, but provided a fixed amount of \$36.4 million each fiscal year rather than the 1 percent set-aside established in ISTEA. In addition, Section 1102(f) of TEA-21 provided that only the funds for which obligation authority was provided shall be allocated. As a result, the actual allocation to be distributed to the Territories each year under TEA-21 was determined by multiplying the \$36.4 million by the calculated obligation limitation percentage for that fiscal year.

Section 1106(b) of TEA-21 amended 23 U.S.C. 103 by providing in 23 U.S.C. 103(b)(6)(P) that the NHS funds provided for the Territories may be obligated for any project eligible for assistance under 23 U.S.C. 133, any airport, and any seaport.

Section 1118(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A 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 THS, technical assistance to the Territories, applicability of Title 23 provisions, agreement between the FHWA and each Territory, and eligible projects and activities.

Section 1118(b) of SAFETEA-LU deleted subparagraph (P) from 23 U.S.C. 103(b)(6), thus removing airports and seaports from the list of eligible projects and activities under 23 U.S.C. 133.

Section 1801(f) amended 23 U.S.C. 129(c)(5) to permit funding of ferry boats, terminal facilities, and approaches, that provide service between the islands of any Territory, even if such ferry operation is through foreign or international waters.

Section 1114 of MAP-21 re-established the THP under the Territorial and Puerto Rico Highway Program in 23 U.S.C. 165(c) and repealed 23 U.S.C. 215. MAP-21 provided a period of availability of the funds, modified the list of projects eligible for Federal-aid highway funds and location of such projects, and identified the elements that must be incorporated into the Stewardship Agreement. Applicable parts of 23 U.S.C. 165 are included in this agreement as appendix A.

## Administrative Allocation Formula History

- ❖ Current formula - FY 1993 to present
  - 40% of funds each to Guam and U.S. Virgin Islands
  - 10% of funds each to American Samoa and CNMI
  
- ❖ Territorial highway funds were authorized by amount for each territory in the 1970, 1973, 1976 and 1978 highway acts:
  - 1970 Highway Act (FY 1971-1973)
    - AS - \$1.5 million (11.1%)
    - GU - \$6 million (44.44%)
    - VI - \$6 million (44.44%)
  - 1973 Highway Act (FY 1974-1976)
    - AS - \$3 million (12.5%)
    - GU - \$6 million (25%)
    - VI - \$15 million (62.5%)
  - 1976 Highway Act (TQ & FY 1977-1978)
    - AS - \$2.25 million (9.1%)
    - GU - \$11.25 million (45.45%)
    - VI - \$11.25 million (45.45%)
  - 1978 Highway Act (FY 1979-1982)
    - AS - \$4 million (8.33%)
    - GU - \$20 million (41.67%)
    - CNMI - \$4 million (8.33%)
    - VI - \$20 million (41.67%)
  
- ❖ 1982 Surface Transportation Assistance Act (STAA) authorized one-half percent of Federal-aid primary (FAP) funds for the four territories - these were allocated using the following administrative formula:
  - 1/3 urban population > 5,000
  - 1/3 rural population
  - 1/6 land area
  - 1/6 public road mileage
  - This resulted in following percentage distribution:
    - AS - 8.57%
    - GU - 37.5%
    - CNMI - 8.56%
    - VI - 45.4%
  - Use of formula was controversial. Population and road mileage figures were contested by the territories, even though the data was provided by the territories.
  
- ❖ In September 1983, it was decided to use the following formula for allocating the FAP funds to the territories:
  - AS - 1/12
  - GU - 5/12
  - CNMI - 1/12
  - VI - 5/12

- This was chosen because of simplicity. It had previously been used by Congress in the 1978 Act, and was not dependent on questionable figures of population, area or road mileage.
- This formula was used through FY 1992
- ❖ In 1992 various formulas were again analyzed.
  - Based on any combination of population (1990 census), land area, and road mileage, it was determined that the two smaller territories (AS & CNMI) were getting less than their fair share.
  - Formula was administratively changed by FHWA's Executive Director as follows, which is still being used today:
    - AS - 10%
    - GU - 40%
    - CNMI - 10%
    - VI - 40%

## APPENDIX D

### NON-APPLICABLE SECTION OF TITLE 23 U.S.C. CHAPTER 1 PROVISIONS

Pursuant to 23 U.S.C. 165(c)(4)(A), the FHWA finds that the following provisions are inconsistent with the needs of the Territories (unless specified in part above), and therefore the following sections in Chapter 1 of Title 23 do not apply to the THP:

- Section 103 – National Highway System
- 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 – National highway performance program
- Section 126 – 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 136 – Control of junkyards
- Section 137 – Fringe and corridor parking facilities
- Section 141 – Enforcement of Requirements
- Section 143 – Highway use tax evasion projects
- 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 150 – National goals and performance management measures
- Section 152 – Hazard elimination program
- Section 153 – Use of safety belts and motorcycle helmets
- Section 154 – Open container requirements
- Section 158 – National minimum drinking age
- Section 159 – Revocation or suspension of drivers' licenses of individuals convicted of drug offenses
- 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 166 – HOV facilities
- Section 167 – National freight policy

## APPENDIX E

### NATIONAL BRIDGE INSPECTION STANDARDS

USVI will comply with Subpart C of Title 23, Code of Federal Regulations, Part 650, in an efficient and cost effective manner, with the following understandings:

#### **FHWA National Bridge Inspection Standards (NBIS) Oversight Reviews**

NBIS oversight reviews will consist of the following:

- *Record reviews* – Reviews of bridge files, inspection reports, load ratings, qualifications of inspection personnel, etc. Some of these reviews can be done from the FHWA Puerto Rico and U.S. Virgin Islands Division Office by examining submitted documents; others may require on-site visits to USVI.
- *On-site visits* – Visits to USVI bridge sites to verify bridge conditions and accuracy of inspection reports.
- *Bridge data examination* – Evaluation of National Bridge Inventory data, conducted by the FHWA Puerto Rico and U.S. Virgin Islands Division Office.

The FHWA will perform an NBIS oversight review annually. The annual review will always consist of bridge data examination. At times, it will be supplemented with record reviews and on-site visits. On-site visits will occur at least every 4 years; however, if the inspection team significantly changes (i.e., a new consultant firm) or prior reviews had major concerns, on-site visits may occur more frequently.

#### **USVI Quality Assurance (QA)**

At least one team member of the consultant inspection team, who has an influence in the bridge ratings, will be different from one inspection cycle to the next. If for any reason all team members are the same from cycle to cycle, a different team (most likely from the same consultant firm) will independently review one in every five bridges that received a routine inspection by the original team. The QA review may be done in conjunction with the FHWA on-site visit.

#### **Schedule of Activities**

The following is the anticipated schedule of activities:

Calendar Year	When	What	Who
2015	July/August	2015 Routine Inspection	Consultant
2015	Jan-Jun	FHWA NBIS Oversight Review of 2014 Routine Inspection (on-site visit required)	FHWA
		Underwater Inspection	Consultant
		Scour Analysis	Consultant



Calendar Year	When	What	Who
2017	Jan-June	FHWA NBIS Oversight Review of Underwater Inspection and Scour Analysis and other data modifications (on-site visit optional)	FHWA
	July/August	2017 Routine Inspection	Consultant
2018	Jan-June	FHWA NBIS Oversight Review of 2017 Routine Inspection (on-site inspection optional)	FHWA
2019	Jan-June	FHWA NBIS Oversight Review (on-site visit optional)	FHWA
	July/August	2019 Routine Inspection	Consultant
2020	Jan-June	FHWA NBIS Oversight Review of 2019 Routine Inspection (on-site visit required)	FHWA
2021		FHWA NBIS Oversight Review (on-site visit optional)	FHWA
	July/August	2021 Routine Inspection	Consultant
		Underwater Inspection	Consultant
2022	Jan-June	FHWA NBIS Oversight Review of 2021 Routine and Underwater Inspection (on-site visit required)	FHWA