

**MEMORANDUM OF AGREEMENT**

**between**

**DISTRICT OF COLUMBIA  
DEPARTMENT OF PUBLIC WORKS**

**and**

**U.S. DEPARTMENT OF TRANSPORTION  
FEDERAL HIGHWAY ADMINISTRATION  
D.C. DIVISION**

**and**

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

**for**

**DESIGN, ENGINEERING AND CONSTRUCTION SERVICES  
OF  
ROADWAYS AND BRIDGES IN THE DISTRICT OF COLUMBIA**

MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, EASTERN FEDERAL LANDS HIGHWAY DIVISION, THE U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION, D.C. DIVISION, AND THE DISTRICT OF COLUMBIA, DEPARTMENT OF PUBLIC WORKS FOR DESIGN ENGINEERING AND CONSTRUCTION SERVICES OF ROADWAYS AND BRIDGES IN THE DISTRICT OF COLUMBIA.

This Memorandum of Agreement ("Agreement") entered into by and between the United States Department of Transportation, Federal Highway Administration, Eastern Federal Lands Highway Division (EFLHD), the United States Department of Transportation, Federal Highway Administration, D.C. Division (FHWA D.C. Division) and the District of Columbia, Department of Public Works (DCDPW), collectively known as the "parties".

**WHEREAS**, the purpose of this Agreement is to establish the roles, responsibilities, and procedures under which work shall be performed by the EFLHD, FHWA D.C. Division and DCDPW to fund, plan, design, and construct various highway and bridge improvement projects within the District of Columbia.

**WHEREAS**, the DCDPW has the jurisdictional and maintenance responsibilities for highways and bridges within the District of Columbia;

**WHEREAS**, the DCDPW has requested assistance from the EFLHD, for design engineering and construction services of various highway and bridge improvement projects;

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

**WHEREAS**, the EFLHD has the authority under 23 USC 308 to enter into partnerships and interagency agreements among federal and state transportation agencies to provide highway and bridge infrastructure improvements;

**WHEREAS**, the FHWA D.C. Division is the Federal agency with administrative, financial and project implementation and management oversight of the District of Columbia's Federal-aid Highway program;

**WHEREAS**, 23 U.S.C. § 132 authorizes EFLHD to receive funds in advance of the estimated Federal share of a proposed Federal-aid project;

**WHEREAS**, the EFLHD, FHWA D.C. Division and DCDPW are authorized to enter into this Agreement pursuant to the authority contained in the Economy Act 31 U.S.C. § 1537 and,

**WHEREAS** this Agreement seeks to establish the responsibilities and procedures by which the EFLHD, FHWA D.C. Division and DCDPW will jointly participate in the planning, design engineering and construction of various highway and bridge improvement projects within the District of Columbia.

**NOW, THEREFORE**, pursuant to the authority contained in 16 U.S.C. 1 et seq.; the Economy Act (31 U.S.C. 1537); Title 23 C.F.R. (Highways); the Intermodal Surface Transportation Efficiency Act (P.L. 102-240, December 18, 1991); the Surface Transportation Extension Act of 1997 (P.L. 105-130); the Transportation Equity Act for the 21<sup>st</sup> Century (P.L. 105-130, June 9, 1998), and the Transportation Equity Act-Restoration Act (P.L. 105-206, July 22, 1998) the parties in consideration of the mutual promises herein expressed, do hereby agree as follows:

**Article I: Scope of Work (Obligations, Responsibilities and Funding)**

1. The DCDPW agrees to:

- (a) Serve as the lead agency for project planning and selecting project locations for improvement;
- (b) Provide the required federal funding and local matching share of highway and bridge improvement costs;
- (c) Approve the final design standards for all improvements;
- (d) Assist EFLHD with activities necessary to provide the required final environmental clearances and coordination for the entire project;
- (e) Assign and identify an Engineer/Project Manager for each project so that all communication regarding the design and construction of this project will be coordinated and managed through that identified person;
- (f) Participate in all design field reviews;
- (g) Acquire necessary right-of-way;
- (h) Notify Council of the District of Columbia ("D.C. Council") members and Advisory Neighborhood Commissions ("ANC") of impending work within jurisdictional ward;
- (i) Submit for review and approval final contract plans, specifications and engineering estimate ("PS&E") packages to the FHWA D.C. Division;
- (j) Prepare all necessary Federal-aid project approvals and authorization documents (Form 351/1240/Federal-aid Project Agreement (PR2A));
- (k) Prepare project documentation as part of the District's Annual Plan of Transportation Contracts for the D.C.

Council and the Financial Authority approval;

- ✓ (l) Designate appropriate personnel for representation on consultant selection panels;
- (h) Provide (for contracts that have been designed previously by DCDPW), the required time for the consultant to answer design, bid, and construction related questions including a contact name for the consultant and who will be responsible for the cost of this additional time under DCDPW's contract with the consultant;
- (i) Co-monitor projects' progress to ensure the satisfactory completion of the project;
- (j) Confer with EFLHD on all significant design and construction change orders, claims and non-participating federal-aid costs;
- (k) Participate in the final construction inspection; and,
- (l) Accept the completed improvements to the various highway and bridge improvements for future maintenance and jurisdiction.

2. The FHWA D.C. Division agrees to:

- (a) Review and approve federal funding for selected design and construction improvement projects;
- (b) Will advance funds for the estimated Federal share for proposed highway and bridge improvements in accordance with Title 23 U.S.C. § 132,;
- (c) Approve environmental documentation required by the National Environmental Policy Act, as amended, and 23 CFR § 771, including the Environmental Impact Statement, Record of Decision, Categorical Exclusion, Finding of No Significant Impact, and 4(f) Statement, and the coordination and approval of Section 106 in accordance with the National Preservation Act;
- (d) Approve right-of-way plans and administratively review the right-of-way acquisition and utility relocation activities;
- (e) Approve the final PS&E packages for advertisement; and,
- (f) Participate in the final inspection of the projects.

3. The EFLHD agrees to:

- (a) Request written comments and concurrence from the DCDPW and the FHWA D.C. Division for the following activities and/or products:
  - (1) preliminary plans, including alternatives;
  - (2) right-of-way plans, based on 35 percent design;
  - (3) plan-in-hand plans (70 percent plans);
  - (4) final contract PS&E packages (95 percent plans);
  - and,
  - (5) completed construction project;
- (b) Perform design engineering services and prepare final contract PS&E packages;
- (c) Administer all surveying, mapping and subsurface investigations for final design activities;
- (d) Prepare the environmental documentation required by the National Environmental Policy Act, as amended, and 23 CFR § 771, including the Environmental Impact Statement, Record of Decision, Categorical Exclusion, Finding of No Significant Impact, and 4(f) Statement, and the coordination and approval of Section 106 in accordance with the National Preservation Act;
- (e) Prepare documents for 4(f) statement, Coast Guard permit, 404 clearance (permit), 106 statement, National Park Service permits, and any construction permits and utility clearances required for each project;
- (f) Acquire any necessary utility and railroads easement agreements;
- (g) Design projects in accordance with the applicable AASHTO standards and guides and use the DCDPW "Standard Specifications for Highways and Structures, 1996", as amended [and as the contracting office, the General Provisions (Division 100) of the Standard Specifications for Highways and Structures, will be deleted and substituted with the General Requirements (Section 100) of the "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, 1996," as amended];
- (h) Select consultants needed for design or construction assistance on any project from available consultants in

the Washington metropolitan area using procurement procedures in accordance with the Federal Acquisition Regulations (FAR), and the Transportation Acquisition Regulations (TAR);

- (i) Submit to the DCDPW and FHWA D.C. Division a S.F. 1080 Voucher for review and approval, advance funding pursuant to Title 23 C.F.R. § 132 funding requests in two stages:
  - (1) for preliminary engineering, environmental compliance, and agreements; and,
  - (2) for construction, construction engineering, and contingencies;
- (j) Coordinate and incorporate requirements of ANC, National Capital Planning Commission, Commission of Fine Arts, State Historic Preservation Officer, DC Department of Consumer and Regulatory Affairs, National Park Service, utilities, railroads, business and civic associations;
- (k) Spend project funding in accordance with spending plans authorized by appropriate legislative bodies, the Financial Authority and the District's Office of the Chief Financial Officer;
- (l) Procure construction contracts in accordance with the FAR and the TAR;
- (m) Coordinate with DCDPW and FHWA D.C. Division the analysis of bidders and bids;
- (n) Advertise and award the construction contract at a time requested by the DCDPW;
- (o) Administer the construction contract including necessary construction inspections;
- (p) Prepare a temporary sign visible to the public, indicating the funding sources and participation levels provided by the federal government and the District;
- (q) Assume responsibility for the administrative settlement or adjudication of claims arising from contracts covered by this Agreement in accordance with the FAR and TAR, and using and subject to the availability of project funds;
- (r) Provide the DCDPW with a quarterly financial report reflecting the status of obligations and expenditures; and,

- (s) Adjust financial accounting information and return unexpended funds based upon the final cost of the project pursuant to Title 23 C.F.R.
- (t) For the purposes of utility adjustments or relocations, the EFLHD will act for and on behalf of the DCDPW, and all prior rights shall be considered to be continuing to be under the jurisdiction of the DCDPW. Since the EFLHD is acting on behalf of the DCDPW with regard to utility adjustments, the same rights will apply with regard to adjustment or relocation costs and to the waiver of inspection fees incurred by the EFLHD on behalf of the DCDPW.

**Article II: TERM OF AGREEMENT**

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

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

All parties to the Agreement will be afforded the opportunity to inspect, at any time, work in progress, the financial records, and any other supporting documentation; and to participate in all meetings, field reviews, bid openings, pre-construction conferences, and periodic and final construction inspections.

**ARTICLE III: KEY OFFICIALS AND CONTACTS**

A. For the EFLHD:

**KEY OFFICIAL:**

Mr. Donald W. Miller  
Acting Division Engineer  
Eastern Federal Lands  
Highway Division  
Federal Highway Administration  
21400 Ridgetop Circle  
Sterling, VA 20166-6511  
(703) 404-6203 (phone)  
(703) 285-0011(fax)

**CONTACT PERSON:**

Mr. Alan T. Teikari  
Planning & Coordination Engineer  
Eastern Federal Lands  
Highway Division  
Federal Highway Administration  
21400 Ridgetop Circle  
Sterling, VA 20166-6511  
(703) 404-6277 (phone)  
(703) 285-0011 (fax)

B. For the FHWA D.C. Division:

**KEY OFFICIAL:**

Mr. James Cheatham  
Administrator  
D.C. Division  
Federal Highway Administration  
820 First Street, N.E.  
Suite 700  
Washington, D.C. 20002  
(202) 523-0163 (phone)  
(202) 523-0181 (fax)

**CONTACT PERSON:**

Mr. Peter Kulyk  
Financial Manager  
D.C. Division  
Federal Highway Admin.  
820 First Street, N.E.  
Suite 700  
Washington, D.C. 20002  
(202) 523-0168 (phone)  
(202) 523-0181 (fax)

C. For the DCDPW:

**KEY OFFICIAL:**

Ms. Vanessa Dale Burns  
Director  
Department of Public Works  
2000 14th Street, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20009  
(202) 939-8000(phone)  
(202) 939-8191 (fax)

**CONTACT PERSON:**

Mr. Gary Burch  
Division of Transportation  
Design Eng. & Const. Admin.  
2000 14th Street, N.W., 7<sup>th</sup>  
Washington, D.C. 20009  
(202) 673-2377 (phone)  
(202) 939-7185 (fax)

**ARTICLE IV: TERMINATION**

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

In case of the failure on the part of any party to observe any of the conditions of the Agreement, the affected party may terminate this

Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination to such party, effective at the end of the thirty (30) day period.

Any party may terminate this Agreement for its convenience when it is in the best interest of the public to do so, without legal process by giving thirty (30) days notice to the other parties. Such termination shall not be deemed a breach of the Agreement.

#### **ARTICLE V: ASSIGNMENT**

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by the EFLHD, FHWA D.C. Division and DCDPW.

#### **ARTICLE VI: LIABILITY**

- A. The parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the fullest extent of the law. All claims shall be processed pursuant to applicable governing law. To the extent that work is performed by other than federal or District employees, those persons shall be licensed to do business in the District of Columbia, as indicated in 23 CFR §635.110(c).
- B. Construction contracts awarded by the EFLHD will include by reference Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP (current edition), particularly Section 107, which among other things requires the Contractor to indemnify and hold harmless the Government from all claims for injuries or damage resulting from construction operations, or arising out of the negligent performance of the contract.

To the extent that work is performed by other than federal or District employees, the parties shall require such person or corporation to:

1. Procure public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the United States and the District of Columbia as an additional insured, shall specify that the insured shall have no right of subrogation against the United States and the District

of Columbia for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Pay the United States and the District of Columbia the full value for all damages to the lands or other property of the United States or the District of Columbia caused by such person or organization, its representatives, or employees;

2. In the event the United States is paid for damages to property owned by the District of Columbia, then said payment will be forwarded to the appropriate party;
3. Indemnify, save and hold harmless, and defend the United States, the District of Columbia and all other parties, against all fines claims, damages, losses, judgments, and expenses arising out of or from any omission of activity of such person, organization, its representatives or employees; and,
4. The Standard Specification for Construction of Roads FP (current edition), Section 107, also holds the Contractor responsible for the protection and restoration of property and landscape.

C. **TORT CLAIMS:** Any claim filed under the Federal Tort Claims Act (23 U.S.C. §2671 et seq. (1994)), alleging an injury during the performance of this Agreement, which may be traced to a party, shall be received and processed by the party having responsibility for the particular injury causing condition.

#### **ARTICLE VII: REQUIRED AND STANDARD CLAUSES**

1. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the DCDPW or the FHWA, or as requiring the parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any party to expend funds in excess of available appropriations.
2. **NON-DISCRIMINATION:** The parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000(d) et seq.). The parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.

3. **ANTI-DEFICIENCY ACT:** Pursuant to the Anti-Deficiency Act, 31 U.S.C. §1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the United States or the District of Columbia to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States or the District of Columbia in any contract or other obligation for the further expenditure of money in excess of such appropriations.
4. **INTEREST OF MEMBERS OF CONGRESS:** No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
5. **LOBBY PROHIBITION:** The parties will abide by the provisions of Section 1913 (Lobbying with Appropriated Monies) of 18 U.S.C., which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other devise, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its departments or agencies from communicating to Members of Congress on the request of any Members of Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.

6. This Agreement is subject to all laws governing Federal and District of Columbia procurement and to all regulations and rules promulgated thereunder, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement. Nothing in this Agreement shall be construed as in any way impairing the general powers of the District of Columbia for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

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

DISTRICT OF COLUMBIA  
DEPARTMENT OF PUBLIC WORKS

Vanessa Dale Burns 10/6/99  
Vanessa Dale Burns Date  
Director

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
DISTRICT OF COLUMBIA DIVISION OFFICE

James A. Cheatham 10/22/99  
James A. Cheatham Date  
Division Administrator

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
EASTERN FEDERAL LANDS HIGHWAY DIVISION

Donald W. Miller 10/20/99  
Donald W. Miller Date  
Acting Division Engineer

MEMORANDUM OF AGREEMENT No. DTFH71-99-X-00023: DESIGN ENGINEERING AND CONSTRUCTION SERVICES OF ROADWAYS AND BRIDGES IN THE DISTRICT OF COLUMBIA.