

AGREEMENT NO.

MEMORANDUM OF AGREEMENT

AMONG

THE DEPARTMENT OF THE ARMY

AND

**THE DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION**

AND

**THE COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF TRANSPORTATION**

AND

THE COUNTY OF FAIRFAX, VIRGINIA

**FOR THE DESIGN AND
CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS ON
FORT BELVOIR AND U.S. ROUTE 1
BETWEEN
TELEGRAPH ROAD & MOUNT VERNON MEMORIAL HIGHWAY**

IN

FAIRFAX COUNTY, VIRGINIA

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

THIS MEMORANDUM OF AGREEMENT (Agreement) is made as of the date of the final signature below by and among the following (each a Party, and collectively the Parties): the United States of America, acting by and through the Department of the Army (Army), the Department of Transportation's Federal Highway Administration (FHWA) acting by and through the Federal Highway Administration Eastern Federal Lands Highway Division; the Commonwealth of Virginia (Commonwealth), acting by and through the Virginia Department of Transportation (VDOT); and the County of Fairfax, Virginia (County).

RECITALS

WHEREAS, the County and VDOT pursued Department of Defense Office of Economic Adjustment (DoD) funding for transportation improvements that are necessary to improve patient access to the new Fort Belvoir Community Hospital, constructed under the 2005 Defense Base Closure and Realignment (BRAC 2005); and

WHEREAS, DoD has invited the County to apply for funding in the amount of \$180 million for the design and construction of improvements to Route 1 to improve patient access to the new Fort Belvoir Community Hospital constructed under BRAC 2005 (the Project); and

WHEREAS, upon approval of the application for funding by the County, DoD funding of \$180 million for the design and construction of the Project will be provided directly from DoD to FHWA, in accordance with an Interagency Agreement, to administer the Project at the request of the County; and

WHEREAS, the Project constitutes improvements to approximately 3.5 miles of Route 1 from Telegraph Road to Mount Vernon Memorial Highway, which may include widening the roadway from four lanes to six lanes, provision of pedestrian and bicycle improvements, and preservation of a corridor for future transit; and

WHEREAS, the County, DoD, and VDOT have agreed that FHWA Eastern Federal Lands Highway Division, using funds provided by DoD, will design and construct the Project in accordance with VDOT and FHWA road construction standards and specifications; and

WHEREAS, FHWA, VDOT, and the County have agreed to cooperate in acquiring title to property not owned by the Army but necessary for construction of the Project and shall permit FHWA such access as needed for roadway construction through acquisition of rights-of-way or rights-of-entry; and

WHEREAS, it is the intent of the FHWA to award a design-build (D-B) contract to construct the Project; and

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

WHEREAS, if all proposals exceed available project funds, the Parties will jointly seek additional funding prior to award of the contract, jointly agree to phase the project based upon available project funds prior to the notice to proceed, or award on a phase or option of a contract, such phasing of the Project being subject to DoD review and concurrence; and **WHEREAS**, as it is the expectation of the Parties that all obligations of the Parties arising under this Agreement will be fully funded, the Parties agree to seek sufficient funding through their budgetary processes to fulfill their obligations under this Agreement. 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 Army or the FHWA to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations. Nothing in this agreement shall be construed as binding the Commonwealth or VDOT to expend any sum in excess of appropriations made by the Virginia General Assembly and allocations made by the Commonwealth Transportation Board for the purposes of this Agreement. Nothing in this agreement shall be construed as binding the County to expend any sum in excess of appropriations made by the Fairfax County Board of Supervisors for the purposes of this Agreement; and

WHEREAS, the Army is authorized to enter into this Agreement pursuant to 10 U.S.C. § 3001 *et seq.* and is the agency with administrative jurisdiction, custody, and control over Fort Belvoir; and

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 federal or state cooperating agencies; and

WHEREAS, the FHWA will be the lead federal agency with administrative, financial, and project implementation and management oversight of the Project and shall administer the project on behalf of DoD, the County, and VDOT; and

WHEREAS, the **Commissioner** of Highways, acting pursuant to the decision of the Commonwealth Transportation Board, is authorized to enter into this Agreement pursuant to §§ 33.1-12 and 33.1-13 of the Code of Virginia. VDOT is the state agency with administrative oversight, maintenance, and jurisdictional authority for the Project once the Project is completed and accepted into the systems of state highways; and

Comment [MLF1]: VDOT Comment – Need to use current title, “Commissioner of Highways”?

WHEREAS, in recognition of the participation of the County in this project, including, but not limited to, the County’s voluntary commitments to advance \$3 million for the Environmental Documentation and Preliminary Engineering now underway and to fund all activity on the Project until such time as the \$180 million is transferred from DoD to FHWA, the Parties to this MOA agree that in return the County shall have the

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

right to approve any Project related improvements prior to construction of such improvements in consultation with the FHWA, the Army and VDOT, ;and

WHEREAS, on August 26, 2010, the Army and the Commonwealth executed an Agreement entitled "Memorandum of Agreement between the Department of the Army and the Commonwealth of Virginia Department of Transportation for Construction of Roadway Improvements at the Intersections of Pohick Road and Belvoir Road with Richmond Highway/Route 1 and Construction of a New Five-Lane Bridge on Gunston Road Over Richmond Highway/Route 1 and Construction of the Route 1 Widening Project," which specified, among other things, the existing easements previously granted to VDOT by the Army for the construction, operation, and maintenance of Route 1, and the easement to be granted to VDOT by the Army for this Project to widen Route 1;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I: SCOPE OF WORK

A. The Army agrees to:

1. Assign and designate an individual as the Project point of contact so that all communication regarding the design and construction of the Project will be coordinated through such person;
2. The designation of the FHWA as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2);
3. To the extent authorized by law, participate in a Congestion Management Plan developed for the Northern Virginia Region by FHWA, or its designee, in cooperation with VDOT and the County, to address traffic congestion caused by the construction of transportation projects in the region;
4. Do the following:
 - a. Prior to beginning construction and prior to the conveyance of an interest (easement) in Fort Belvoir property to the Commonwealth:
 - i. Perform all environmental investigations, property assessments, and studies for munitions and explosives of concern (MEC), munitions constituents (MC) (collectively MEC/MC), releases of petroleum, or any hazardous substance on the Project right-of-way or land owned by the Army (Army Land) that are necessary to complete the Project as specified in the approved plan , or

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

modifications thereto, as required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 *et seq.*) and other applicable federal and state laws and regulations. The Army will provide the reports of these investigations, assessments, or studies to FHWA, VDOT, and the County;

- ii. To perform environmental response to any discovery or release of MEC/MC and releases of petroleum or any hazardous substances on the Project right-of-way or on Army Land as required under CERCLA and other applicable federal and state laws and regulations as necessary for completion of design, construction, maintenance, and operation of the Project in accordance with the Project schedule; and
 - iii. If the FHWA takes response action for discoveries or release of hazardous materials on the Army Land, the Army shall be responsible for reimbursement for those costs. Any reimbursement must be based on an auditable accounting.
- b. During construction or after conveyance of the interest in property to the Commonwealth, for discoveries of MEC/MC, and Army releases of petroleum or any hazardous substances, whether on or off Army Land:
- i. Upon any notification of discovery of a discovery or release of MEC/MC, and any Army releases of petroleum or any hazardous substances, the Parties agree to immediately confer to determine the scope of any investigation and the requisite response action; and
 - ii. The Army will perform timely response and remediation in accordance with CERCLA and other applicable federal and state laws and regulations; or
 - iii. Should the Parties deem it more feasible and practical, the FHWA, in coordination with the Army, may take all response action as required under CERCLA and other applicable federal and state laws and regulations. The Army shall bear the cost of any such response action. Reimbursement must be based on an auditable accounting.
5. Convey to the Commonwealth an interest in property (easement) necessary for the maintenance and operation of the completed Project;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

6. When required by the issuer of the permit, and in conjunction with the FHWA, VDOT, and the County, fulfill the obligations as “owner” of Army Land for obtaining any environmental permits, regulatory clearances, or approvals necessary under applicable federal, state, or local law or regulation for construction of the Project;
 7. Make Army-required modifications or additions subject to the approval of FHWA, VDOT, and the County in accordance with applicable American Association of State Highway and Transportation Official (AASHTO) and VDOT standards, regulations, and guides, and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, current edition, as amended;
 8. Participate in decisions associated with improvements to Army land or where Army interests are involved, including, but not limited to, the relocation and establishment of new alignments of Route 1 and related secondary roads and utilities as necessary to implement the Project;
 9. As a cooperating agency, participate in National Environmental Policy Act (NEPA) studies and documentation activities, design activities, right-of-way transfers, public involvement, and any other Project activities as applicable;
 10. Cooperate in the FHWA’s activities as necessary to provide and obtain the required final environmental and historical clearances and the requisite coordination and approval processes, and assist the FHWA in obtaining permits and rights-of-entry for the Project;
 11. Assist with the relocation of Army-owned utilities and non-Army owned utilities that are on Army land;
 12. Participate in all design and construction field reviews and other project development activities and milestones on Army property in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the Project, as applicable;
 13. Conduct its required processes and activities in accordance with this Project concurrent and in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the Project; and
 14. Participate in the final inspection of the constructed facility.
- B. The FHWA agrees to:

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

1. Assign and designate a Project point of contact for the Project so that all communication regarding the design and construction of the Project will be coordinated and managed through such person;
2. Provide full federal oversight for the Project;
3. Prepare a Financial Plan that shall: (i) address all transfers and expenditures of all funds; (ii) include funding sources and yearly needs in order to complete the Project with the goal of acceptance of the Project into the Commonwealth's system of highways by 2017; and (iii) be updated annually. Within 90 days of the completion of each phase of design or construction, as requested for that phase, the FHWA will provide the DoD, VDOT, and the County an auditable accounting of all funds expended for that phase;
4. Expediently proceed with the environmental review process. The funding for this activity has been provided under separate agreement between the County and FHWA;
5. Procure a D-B contractor in accordance with the following:
 - a. FHWA will conduct a two-part process to secure a D-B contractor with the first step being a Request for Qualifications (RFQ), and the second step being a Request for Proposal (RFP) from firms deemed qualified through the RFQ process;
 - b. Prior to issuance of either the D-B RFQ or the D-B RFP, FHWA will conduct a review of its proposed documents, soliciting input from VDOT, the County, and the Army in the form of written comments. FHWA will incorporate comments by VDOT and the County into the RFQ and RFP as appropriate;
 - c. FHWA will conduct review and selection of qualified contractors based on responses to the RFQ. At least one representative of VDOT and one representative of the County will participate as voting members in the selection process;
 - d. FHWA will conduct review and selection of the D-B Contractor based on responses to the RFP. At least one representative of VDOT and one representative of the County will participate as voting members in the selection process; and
 - e. Complete the design and construction for the Project in accordance with applicable AASHTO and VDOT standards and guides and specifications in cooperation with VDOT and the County.

Comment [MLF2]: This was a comment/question from OEA. Will FWHA provide Full Federal Oversight?

Comment [mh3]: convene a meeting to review the proposed documents and solicit input from VDOT, etc. -- ??

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

6. Do the following:

a. Prior to beginning construction on any portion of the Project off Army Land:

i. Perform all environmental investigations, property assessments, or studies for MEC/MC, petroleum, or any hazardous substances on all properties located off Army Land that are necessary to complete the Project as specified in the approved plan, as required under CERCLA and other applicable federal and state laws and regulations and as appropriate under the standards of environmental due diligence. Provide copies of the reports of these investigations, assessments, or studies, along with any recommendations to VDOT and the County prior to commencement of right-of-way acquisition;

Comment [mh4]: Approved right of way plan?

ii. Perform environmental response to discoveries or releases of MEC/MC, and to releases of petroleum or any hazardous substances, as required under CERCLA and other applicable federal and state laws and regulations on the properties located off Army Land required for the completion of the design and construction of the Project. This obligation does not apply if a release of MEC/MC, petroleum, or hazardous substance off Army Land has been caused by the Army. In that event, the Army is responsible for response and remediation under section A(4)(b) of this Agreement. If, as permitted by subsection A(4)(b)(iii) of this Agreement, environmental response is conducted by the FHWA, FHWA agrees to perform such response;

Comment [mh5]: Paragraph A(4)(b) of this Agreement

Comment [mh6]: Paragraph A(4)(b)(iii) of this Agreement

iii. Perform asbestos inspection, demolition, and abatement in or on any structure or fixture located on or off Army Land as necessary for the construction of the Project, as required by applicable federal or state law and regulations; and

iv. The costs of investigation, assessment, study, and response required by this paragraph shall be paid from Project funds.

b. During construction:

i. Notify the Army, VDOT, the County, and, in accordance with state and federal law, appropriate state and federal agencies upon discoveries or releases of MEC/MC, and release of petroleum or any hazardous substances during the course of construction.

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

Provide VDOT and the County with a description of remediation/disposal activities undertaken to address such MEC/MC, and release of petroleum or any hazardous substances;

- ii. For a discovery or release of MEC/MC, and for a release of petroleum or any hazardous substances off Army Land, not caused by the Army, then the FHWA shall take all response action as required under CERCLA and other applicable federal and state laws and regulations;
 - iii. For discovery or release of MEC/MC, and for a release of petroleum or any hazardous substances caused by the Army, coordinate with the Army all required response activities required by CERCLA and other applicable federal and state laws and regulations. Provide plans for required waste management and remediation activities to VDOT and the County for review. If the FHWA takes response action for contamination on off-Army Land property caused by the Army, the Army shall be responsible for reimbursement for those costs. Any reimbursement must be based on an auditable accounting;
 - iv. Except as otherwise provided in this document, for properties located off-Army Land, if agreed to by VDOT and the County, FHWA shall take all response action related to discoveries or releases of MEC/MC, releases of petroleum or any hazardous substances, abatement of asbestos, and demolition of any structures or fixtures existing on the off-Army Land properties. If the FHWA takes response action, Project funds shall be utilized for reimbursement for those costs. Any reimbursement must be based on an auditable accounting; and
 - v. Perform any asbestos and/or lead-based paint inspections and abatement as required by federal, state, and local laws and regulations for any structures present on or off-Army Land properties, and demolish such structures as required for the construction of the Project. The costs for such inspection, abatement, and demolition will be paid out of Project funds.
7. Obtain written comments and concurrence from the Parties for the following activities and/or products:
- a. RFQ and RFP (for D-B contract);
 - b. Design reviews as appropriate for design-build;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

- c. Plan changes—including plans, specifications, and estimates;
 - d. Schedules and schedule updates;
 - e. Budget and budget updates;
 - f. Completed construction project; and
 - g. Contract modifications.
8. Prepare and provide plans and plats for the acquisition of right-of-way by VDOT;
 9. Coordinate with utility owners and the other Parties to the Agreement, prepare utility relocation plans, obtain utility agreements, and relocate utilities as required for the Project. FWHA shall prepare deeds and plats as required for transfer of easements for County-owned utilities (sanitary sewer, water, storm water);
 10. Apply for and obtain all required environmental permits, including for compensatory mitigation, and approvals in coordination with Army, VDOT, and the County as required;
 11. Award Project contracts in accordance with federal procurement laws and regulations;
 12. Conduct and document the final inspection, with the other Parties to the Agreement in attendance, and provide final inspection documentation;
 13. Provide as-built plans to the Parties to the Agreement;
 14. Prepare a deed, a metes and bounds description, and survey plat of the interest in property to be conveyed to the Commonwealth. Mark all property corners with permanent survey markers;
 15. Be responsible for the administrative settlement or adjudication of claims arising from contracts awarded by the FHWA and covered by this Agreement in accordance with the Federal Acquisition Regulation and the Transportation Acquisition Manual and subject to the availability of Project funds. Settlements shall be subject to VDOT and County approval when settlement would be paid out of Project funds;
 16. Prepare monthly written status reports on the Project for all Parties;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

17. Hold regular meetings with all Parties on the Project regarding the status of the Project. Include all Parties in the partnering meetings with the Contractor;
18. Allow VDOT and the County, or its consultants, access to the Project throughout the procurement, design, right-of-way acquisition, and construction process and to participate in field reviews, onsite inspections, and records reviews and to monitor the entire process;
19. Prepare and submit detailed monthly performance and financial reports for DoD as required by inter-agency agreement for eligible Project expenditures as outlined in this Agreement. Include all necessary documentation required by the Interagency Agreement for Project funds Transfer between DoD and FHWA. Provide copies of all submissions to VDOT and the County;
20. Provide DoD, VDOT, and the County all design and other work performed by FHWA or its contractor on the Project which have been paid with Project funds in the event that FHWA does not award contracts for the construction of the Project;
21. Design future replacement of the existing railroad transit corridor bridge with a bridge consistent with the Real Property Master Plan Digest, Fort Belvoir Virginia, dated December 2009, which requires “Conversion of the abandoned railway into a transit corridor—either as BRT or light-rail system to connect to Franconia-Springfield Metrorail Station and VRE Station.” At the time of design, FHWA will coordinate with Fort Belvoir to determine if a more recent Master Plan information is available, and shall use the latest Fort Belvoir adopted Master Plan to prepare a Type, Size, and Location design for the bridge;
22. Administer contract modifications using the following procedure:
 - a. All potential contract modifications will be evaluated for impacts to scope (design and construction), cost, schedule, and risk, using a standard form to be established by FHWA;
 - b. Contract modifications will be reviewed and approved by all Parties (Army, FHWA, VDOT, and County for Army property; FHWA, VDOT, and County for non-Army property) before direction is given to the designer of record and/or the contractor to implement changes;
 - c. FHWA shall maintain a log of all contract modifications from the date of approval of the design documents through completion of the Project; and
 - d. Project changes will be evaluated on individual and aggregate basis to maintain Project budget and schedule.

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

23. Prepare and maintain a Project schedule throughout the project. Prepare an initial schedule for review and approval by the Parties and, on approval, establish baseline. Provide monthly updates of the Project schedule with explanations for variations in planned activities. The schedule shall be developed prior to contract award and shall include consideration of interim milestones that could allow portions of the project to be completed in advance to provide incremental improvements in capacity and/or functionality during construction;
24. Manage risk using a process by which FHWA, in cooperation with VDOT and the County, will identify, score, and rank risks to the Project. The risk register shall be developed to include the risk, comment and mitigation, probability, impact, and risk score, defined as the product of the probability and the impact. The risk register shall be sorted with the greatest risk listed first with others listed in decreasing order based on risk score. FHWA shall develop risk mitigations simultaneously with current activities to ensure project progress based on evaluation of level of risk, cost of mitigation, and other factors as appropriate. The risk register will be reviewed monthly at the regular progress meetings and probability and impacts re-evaluated as necessary;
25. Enter into a separate Federal-Aid Project Agreement (PR-2) with VDOT to provide funding to complete tasks that are assigned to VDOT in this Agreement;
26. Enter into a separate Federal-Aid Project Agreement with the County to provide funding to complete tasks that are assigned to the County in this Agreement;
27. In accordance with VDOT's Road and Bridge Standards and the Project D-B RFP, maintain, or cause to be maintained, all Project facilities constructed within VDOT right-of-way or easement until accepted by VDOT;
28. Conduct, to the extent reasonably possible, its construction on roadways in such a manner so as to not unreasonably disrupt the movement of pedestrian and vehicular traffic. The FHWA will maintain access to operating businesses to the extent permitted by construction based on approved plans;
29. Install signs and associated structures, pavement markings, lighting and barricades in accordance with plans approved by VDOT and County in compliance with all applicable standards and requirements used by VDOT and County, including but not limited to: the most current respective edition of the Manual on Uniform Traffic Control Devices (MUTCD), Virginia Work Area Protection Manual, VDOT Northern Virginia District Traffic Engineering Design Guidelines for Traffic Control Devices, VDOT Road and Bridge Specification, and VDOT Road and Bridge Standards. FHWA shall be responsible for maintaining the items installed until accepted by VDOT for maintenance;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

30. Conduct and document the final inspection, with the other Parties to the Agreement in attendance, and provide final inspection documentation after obtaining written concurrence of the other Parties;
 31. Provide special provisions and notice of restrictions to its contractors that are acceptable to VDOT for roads maintained by VDOT that are affected by the Project. These shall be listed as performance requirements in the construction contract documents and will serve as the basis for the traffic maintenance (control) plans prepared prior to the issuance of VDOT land use permits;
 32. Provide all right-of-way services for the Project and include in the scope of services to be provided by the D-B contractor all right-of-way services required to complete the Project. Through the D-B contractor, provide all necessary right-of-way functions and activities to acquire Project right-of-way both on-Army Land and off-Army Land. Services shall be provided in accordance with the provisions of "Appendix A: Right-of-Way Acquisition by Design-Builder;"
 - a. Any property remaining as residue parcels after completion of design and acquisition shall be deeded to the Parties to the Agreement or adjacent owners as mutually agreed by the Parties to the Agreement. Residue parcels shall be used, in order of priority:
 - i. To provide for Project requirements (storm water management, access, utilities, etc.),
 - ii. To provide permanent space for maintenance of improvements constructed by the Project,
 - iii. To reduce Project Cost by offsetting impacts to property owners whose property was either given or taken in order to complete the Project, or
 - iv. Other Reasons
- C. VDOT agrees to:
1. Assign and designate a Project point of contact so that all communication regarding the design and construction of the Project will be coordinated and managed through such person;
 2. Enter into a separate Federal-Aid Project Agreement (PR-2) with FHWA to receive funding to complete tasks that are assigned to VDOT in this Agreement;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

3. Coordinate with FHWA and its contractors on all right-of-way services for the Project:
 - a. Provide support, in coordination with FHWA, for all necessary right-of-way functions and activities by FHWA to acquire Project right-of-way both on-Army Land and off-Army Land required for the construction of the Project. Review federal lands transfer and/or right-of-way and/or easement documents for both federal and non-federal lands as applicable. Plans, plats, and metes and bounds descriptions will be provided by FHWA. Review and approve documents required for right-of-way acquisition including, but not limited to, rights-of-entry, title reports, appraisals, owner/tenant relocations, property owner negotiations, property closings, and preparation of Certificates of Take. In the event a property owner is not willing to convey property for the Project, execute condemnation packages prepared by FHWA including filing with the circuit court any Certificates of Take. Review all subsequent Agreement After Certificates. VDOT will pursue cases requiring court action with assistance from the FHWA and its contractor, until final case resolution;
 - b. VDOT will either assign VDOT staff to work on the Route 1 Widening Project, or will hire a contractor to represent VDOT to work on the Route 1 Widening Project. This staff or contractor will serve as VDOT's Route 1 right of way Coordinator, and will manage the right-of-way services contractor and coordinate all right-of-way functions and activities to maintain project schedule and clear right-of-way for construction. Expenses for VDOT's staff and/or Route 1 R/W Coordinator will be paid for using Project funds;
 - c. The VDOT Route 1 right of way Coordinator will coordinate with the County's R/W coordinator to determine what, if any, proffers may exist within the project limits that would result in the dedication of right-of-way to the project, rather than purchase or take;
 - d. Coordinate with FHWA and the County to establish objectives for negotiation;
 - e. For those properties deemed necessary to be acquired through the power of eminent domain, prepare, review, and approve condemnation packages and execute condemnation. Record the appropriate Certificate of Deposit or Certificate of Take. Assign cases to fee counsel approved by the Office of the Attorney General, Commonwealth of Virginia, review and approve invoices, and provide copies of all invoices to FHWA and the County. Approved invoices provided to FHWA for payment will be paid within 30 days of receipt from Project funds;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

- f. Provide written monthly progress reports to FHWA and the County detailing the status of condemnation proceedings including impacts to schedule and cost;
 - g. Any property remaining as residue parcels after completion of design and acquisition shall be deeded to the Parties to the Agreement or adjacent owners as mutually agreed by the Parties to the Agreement. Residue parcels shall be used, in order of priority:
 - i. To provide for Project requirements (storm water management, access, utilities, etc.);
 - ii. To provide permanent space for maintenance of improvements constructed by the Project;
 - iii. To reduce Project cost by offsetting impacts to property owners whose property was either given or taken in order to complete the Project; or
 - iv. Other reasons.
 - h. Grant read-only access to FHWA and the County, and grant full access to the design-builder, to VDOT's Right of Way and Utilities Management System (RUMS) to manage and track the acquisition process. Training in the use of RUMS and technical assistance will be provided by VDOT.
4. Participate in all design and construction field reviews, including pre-construction and progress meetings, and other Project development activities and milestones as applicable;
5. When required by the issuer of the permit, and in conjunction with the FHWA, fulfill the obligations as "owner" of the off-Army Land property for obtaining any environmental permits, regulatory clearances, or approvals necessary under applicable federal, state, or local law or regulation for construction of the Project on off-Army Land property;
6. After approval of Project construction plans, and upon receipt of complete permit applications from the FHWA, issue land use permits for access necessary for construction on the off-Army Land parcels;
7. If the completed Project improvements, or any phase of independent utility, meet VDOT standards and specifications, approve the Project, or any phase of independent utility within 60 days of its completion;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

8. Within 90 days of approval of the completed Project, or any phase of independent utility, and upon receipt of the metes and bounds description, accept an interest in property (in the form of an easement) in order to allow VDOT to operate and maintain the completed Project, or any phase of independent utility, and initiate the acceptance of the road as part of the systems of state highways to be maintained by VDOT;
 9. Regulate and control future access connections to Route 1 through review and approval of proposed future connections to ensure that the roadway continues to operate in a manner acceptable to VDOT and the County;
 10. Issue land use permits or provide easements as appropriate for utilities under or across Route 1 and connecting to adjacent properties as required for the development of the Project. FHWA or its designee will coordinate with VDOT and the County to ensure agreement on location of the facilities and the method of construction;
 11. Participate in the final inspection of the constructed Project; and
 12. Upon FHWA completion of environmental cleanup obligations as stipulated herein and when VDOT has certified that the completed Project meets or exceeds VDOT and FHWA requirements and standards in order to allow VDOT to approve, operate, and maintain the completed Project, accept conveyance of an interest in property (a roadway easement) (hereinafter "an interest in property") as necessary to operate and maintain the roadway; and initiate the acceptance of the road as part of the systems of state highways to be maintained by VDOT.
- D. The County agrees to:
1. Assign and designate a Project point of contact for the project so that all communication regarding the Project will be coordinated and managed through such person;
 2. FHWA administering design and construction of the Project;
 3. FHWA designing and constructing modifications or additions to the Project, which are beyond the design of the approved plan. All required modifications or additions will be subject to the approval of the Army (for Army property), FHWA, VDOT, and the County in accordance with applicable American Association of State Highway and Transportation Officials (AASHTO) and VDOT standards, regulations and guides, and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, current edition, as amended;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

4. Enter into a separate Federal-Aid Project Agreement (PR-2) with FHWA to receive funding to complete tasks that are assigned to the County in this Agreement;
5. Act as a cooperating agency and be responsible for guiding decisions associated with improvements to County land or where County interests are involved, including but not limited to the relocation and establishment of new alignments of Route 1 and related secondary roads, and utilities as necessary to implement the Project;
6. Cooperatively participate in NEPA environmental studies and documentation activities, design activities, right-of-way transfers, public involvement, and any other project activities as applicable;
7. Approve the final designs for all improvements related to County-owned facilities when the final designs are satisfactory to the County;
8. Cooperate in the FHWA's activities as necessary to provide and obtain the required final environmental and historical clearances and the requisite coordination and approval processes, and assist the FHWA in obtaining permits for the Project;
9. Review and provide comments on the utility relocation plans and assist with the relocation of County-owned utilities;
10. Participate in all design and construction field reviews and other project development activities and milestones as applicable;
11. Cooperate in applicable project activities, including right-of-way acquisition, in accordance with the Project Management Plan, to ensure satisfactory completion of the project;
12. Conduct its required processes and activities in accordance with this project concurrent and in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the project subject to appropriations made by the Board of Supervisors of Fairfax County, Virginia, in its sole discretion; and
13. Participate in the final inspection of the constructed facility.

ARTICLE II: DESCRIPTION OF THE CONVEYANCE

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

- A. The interest in property to be conveyed to the Commonwealth lies generally along the existing alignment of Route 1 between Telegraph Road and Mount Vernon Memorial Highway. Existing Route 1 is generally within an existing 80' wide easement. The proposed improvements will be contained within a 148' wide base easement, with additional easement granted for intersection turn lanes, slopes, utilities, drainage improvements, etc., which alignment is located both on Army land and privately held land.
- B. Both the Army and private land owners shall convey the interest in property to the Commonwealth by a good and sufficient deed in a form agreed upon in good faith by the Parties.
- C. The interest in property conveyed to the Commonwealth shall be subject to the following encumbrances:
 - 1. Existing easements, reservations, and restrictions of record;
 - 2. Institutional controls, conditions, notices, reservations, or restrictions necessary to ensure the health, welfare, and safety of the public or protection of the environment; provided that in imposing any conditions and restrictions, the Army shall make a good faith effort to use reasonable means, without significant additional cost to the Army, to avoid and/or minimize interference with VDOT's operation and maintenance of the roadway;
 - 3. Existing building or zoning laws, as applicable; and
 - 4. Land use permits as appropriate for utilities under or across Route 1 at the time of the conveyance.
- D. In exercising its rights and authorities under this Agreement or any easements, reservations, restrictions, or encumbrances existing, reserved, or requested by the Army pursuant to this Agreement and/or the deed conveying an interest in property, the Army will notify and consult with VDOT to minimize interference with roadway operation or maintenance.
- E. The Parties acknowledge that conveyance to the Commonwealth of an interest in property through the Army Land has been determined by VDOT to be necessary to complete the widening of Route 1. The Parties further acknowledge that the final "on-the-ground" alignment of the Project may differ somewhat from the alignment contemplated in the preliminary drawings available at the time of this Agreement. Accordingly, to ensure that the minimal area needed to support long-term operation and maintenance of the has been conveyed to the Commonwealth, the Parties agree to collaboratively review and determine whether a boundary adjustment of the parcel in which the interest in property is to be conveyed is

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

practicable and warranted. Such review will be conducted after construction of the Project is completed but prior to conveyance of the interest in property. Agreed upon adjustments to the boundary will be reflected in the Deed.

- F. The interest in the Property is to be conveyed in accordance with 10 USC 2668 for use as a highway and related purposes. The Commonwealth, for itself and its successors and assigns, covenants and agrees that the use of the interest in property across the Army Land shall be limited to use for highway, transit, and related purposes. These uses may include, if agreed to, other transportation demand- related improvements.

ARTICLE III: NOTICES

Any notice, request, demand, instruction, or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally, including by messenger or a nationally recognized overnight delivery service, or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or by messenger or two business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of notice of such change in accordance herewith.

If to the Army:

Garrison Commander
Headquarters, United States Army Garrison, Fort Belvoir
9820 Flagler Road, Suite 213
Fort Belvoir, VA 22060-5928
Phone: 703-805-2052

With a copy to:

William L. Sanders
Director of Public Works
U.S. Army Garrison
9430 Jackson Loop, Suite 100
(Building 1442)
Fort Belvoir, VA 22060-5130
Phone: 703-806-3017
Email: Bill.Sanders1@us.army.mil

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

If to FHWA:

Melisa Ridenour, PE
Division Engineer
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, Virginia 20166
Phone: (703) 404-6201
Fax: (571) 434-1599
email: melisa.ridenour@dot.gov

With a copy to:

Mr. Robert Morris
Senior Project Manager
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, Virginia 20166
Phone: (703) 404-6302
Fax: (703) 404-6217
email: robert.morris@dot.gov

If to VDOT:

Mal Kerley
Chief Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219
Phone: 804-786-4798
Email: Mal.Kerley@vdot.virginia.gov
With a copy to:

Tom Fahrney
Commonwealth BRAC Coordinator
Virginia Department of Transportation
4975 Alliance Drive

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

Fairfax, VA 22030
Phone: 703-259-2381
Email: Tom.Fahrney@vdot.virginia.gov

If to the County:

Tom Biesiadny
Director, Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033
Phone: (703) 877-5663
Fax: (703) 877-5723
email: tom.biesiadny@fairfaxcounty.gov

With a copy to:

Laura Miller
County BRAC Coordinator
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033
Phone: (703) 877-5686
Fax: (703) 877-5723
email: laura.miller@fairfaxcounty.gov

ARTICLE IV: GENERAL TERMS AND CONDITIONS

- A. No part of the Project funds shall be used by FHWA to pay for the following:
1. Unless otherwise agreed to by the Parties in writing, design or construction of the Project to a standard less than the preferred alternative resulting from the NEPA process, generally as shown in the Fairfax County Comprehensive Plan;
 2. Installation of new utilities or other improvements, including related right-of-way costs, for the development of Army Land by the Army;
 3. Costs incurred as a result of discovery or releases of hazardous substances, petroleum, or MEC/MC on the Army Land including, but not limited to, Army response costs, contractor delay claims, contractor work order claims, or any re-design costs of the Project necessary to avoid or mitigate discovery of such materials;

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

4. Relocation or modification of groundwater monitoring wells or any other remedial monitoring device installed on the Army Land within the Project right-of-way;
 5. Costs incurred as result of the discovery or releases of hazardous substances, petroleum, or MEC/MC off of Army Land but caused by the Army, the FHWA, or their contractors; and
 6. Payment of contractor claims for delay determined by the FHWA or a Court of competent jurisdiction to be the result of an act or omission or the result of events under the control of the FHWA.
- B. This Agreement, including the attached Project Management Plan, contains the entire agreement and understanding of the Parties, and may not be amended, modified, or discharged nor may any of its terms be waived except by an instrument in writing signed by all of the Parties.
- C. The failure of a Party to insist in any instance upon strict performance of any of the terms, conditions, or covenants contained, referenced, or incorporated into this Agreement shall not be construed as a waiver or a relinquishment of the Party's rights to the future performance of such terms, conditions, or covenants.
- D. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the articles, paragraphs, sections, or subsections to which they apply or otherwise affect the interpretation thereof.
- E. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of the Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.
- F. Nothing set out in this Agreement shall constitute a waiver of the Parties' rights to seek any and all damages to the extent authorized by law, nor shall anything in this Agreement limit any defenses that the Parties may have with respect to such claims for damages.
- G. Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

Comment [MLF7]: What is the intent of this comment? Need help understanding.

RM – I think this is a holdover from the FC Parkway when VDOT funds were involved. Can it come out?

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

- H. Unless otherwise expressly provided herein, terms used in this Agreement are defined as they are in CERCLA or in regulations promulgated under CERCLA and shall have the meaning assigned to them in CERCLA or in such regulations.
- I. This Agreement has been drafted jointly by the Parties hereto. As a result, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party.
- J. All Parties will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation related to this Agreement; and to participate in all meetings and field reviews.
- K. This Agreement is assignable; however, 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 all Parties, which approval shall not be unreasonably withheld.
- L. 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 extent allowed by the law. All claims shall be processed pursuant to applicable governing law.
- M. Any claim filed 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, under the law that governs such Party.
- N. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, 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.
- O. 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 Titles VI and VII 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.

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

- P. 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.
- Q. The Parties will abide by the provisions of 18 U.S.C. § 1913 (Lobbying with Appropriated Monies).
- R. Contracts entered into by any federal agency pursuant to this Agreement are subject to all laws governing federal procurement and to all regulations and rules promulgated there under, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement.
- S. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
- T. Because the interest in property conveyed to the Commonwealth will be an easement, the Parties to this Agreement shall take all necessary acts to ensure the Commonwealth obtains concurrent jurisdiction over the Project on the Army Land upon approval of the Project by VDOT as part of the process of accepting the roadway into the systems of state highways for operation and maintenance by VDOT. This requirement is not applicable to the conveyance of a fee simple interest.

ARTICLE V: FUNDING LIMITATIONS

It is the expectation of the Parties to this Agreement that all obligations of the Army, FHWA, VDOT, and the County arising under this Agreement will be fully funded. The Parties agree to seek sufficient funding through the budgetary process to fulfill their obligations under this Agreement.

The obligation of the Army and the FHWA to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriated funds, and nothing in this Agreement shall be interpreted to require obligations or payments by the Army or the FHWA in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

VDOT's obligation to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriations by the Virginia General Assembly and allocations by the Commonwealth Transportation Board.

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

The County's obligation to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriations by the Fairfax County Board of Supervisors, such appropriations to be made or not in the sole discretion of the Board of Supervisors.

ARTICLE VI: DISBURSEMENT OF FUNDS

- A. DoD funds (in aggregate up to \$180 million) will be provided directly from the DoD Office of Economic Adjustment to FHWA in accordance with an Interagency Agreement for use on the Project. All funds and activities are subject to the requirements of Title 23 and standard Federal-aid procedures.
- B. FHWA and its contractors shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court. VDOT will process vouchers and issue State Warrants for all payments and send to the FHWA and its contractors, who will be responsible for disbursement and providing indefeasible title to VDOT.
- C. VDOT will be reimbursed for costs in connection with the Project through FHWA's Rapid Approval and State Payment System in accordance with standard Federal-Aid procedures from federal funds provided directly to FHWA for activities such as cooperative participation in FHWA's efforts to obtain necessary environmental and historical clearances and permits and to implement treatment measures, acquisition of right-of-way, roadway abandonment, and acceptance activities on the Project.
- D. For the initial request for funds, or if additional federal funds are needed by VDOT for project activities from funds provided to FHWA, VDOT will prepare, execute, and forward a Project Agreement, PR-2 to request funding for applicable work activities, including a schedule and costs, to FHWA and the County for review and approval. FHWA will authorize and execute the project amount based on the PR-2. VDOT may invoice the FHWA under normal FHWA current billing procedures as work progresses for reimbursement. The PR-2 may also be modified as necessary to cover abandonment and acceptance activities. The VDOT will submit a monthly progress report to FHWA and the County describing the activities performed and expenses billed. Upon completion of the applicable project activities, the Project Agreement, PR-2 will be modified and closed.
- E. The County currently receives federal aid in the form of a grant from DoD to mitigate impacts from BRAC 2005 relocations within the County. It is expected that the DoD grant will cover County costs associated with the development of the Project. In the event the DoD grant does not cover the County's cost for its cooperative participation in the project, the County will be reimbursed for costs in connection with the Project in accordance with standard federal aid procedures

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

from federal funds directly allocated to FHWA for activities such as cooperative participation in FHWA's efforts to obtain necessary environmental and historical clearances and permits and to implement treatment measures, acquisition of right-of-way, roadway abandonment and acceptance activities on the Project. At the request of FHWA, the County will direct that remaining federal aid funds be de-allocated and returned to FHWA and reallocated by the FHWA for design or construction of the Project.

- F. For the initial request for funds, or if additional federal funds are needed by the County for project activities from funds provided to FHWA, the County will prepare, execute, and forward a Project Agreement to request funding for applicable work activities, including a schedule and costs, to FHWA and VDOT for review and approval. FHWA will authorize and execute the project amount based on the submittal. The County may invoice the FHWA under normal FHWA current billing procedures as work progresses for reimbursement. The County will submit a monthly progress report to FHWA and VDOT describing the activities performed and expenses billed. Upon completion of the applicable project activities, the Project Agreement, PR-2 (or similar document) will be modified and closed.

ARTICLE VII: DISPUTE RESOLUTION

Any dispute between the Parties that cannot be resolved by the Project point of contacts shall be formally presented in writing to the Chief Engineer of VDOT, the Garrison Commander for Fort Belvoir, the Division Engineer for EFLHD-FHWA, and the Director of the Fairfax County Department of Transportation for review and resolution. Any resolution of the dispute shall be reduced to writing signed by the reviewers.

If the dispute cannot be resolved by the second level of review, then the matter may be presented to the Commissioner of Highways, the Assistant Secretary of the Army (Installations and Environment), the Administrator of the FHWA, and the County Executive of Fairfax County.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as verified by their signatures below.

**UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY**

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

By: _____ Date _____

**UNITED STATES OF AMERICA
FEDERAL HIGHWAY ADMINISTRATION**

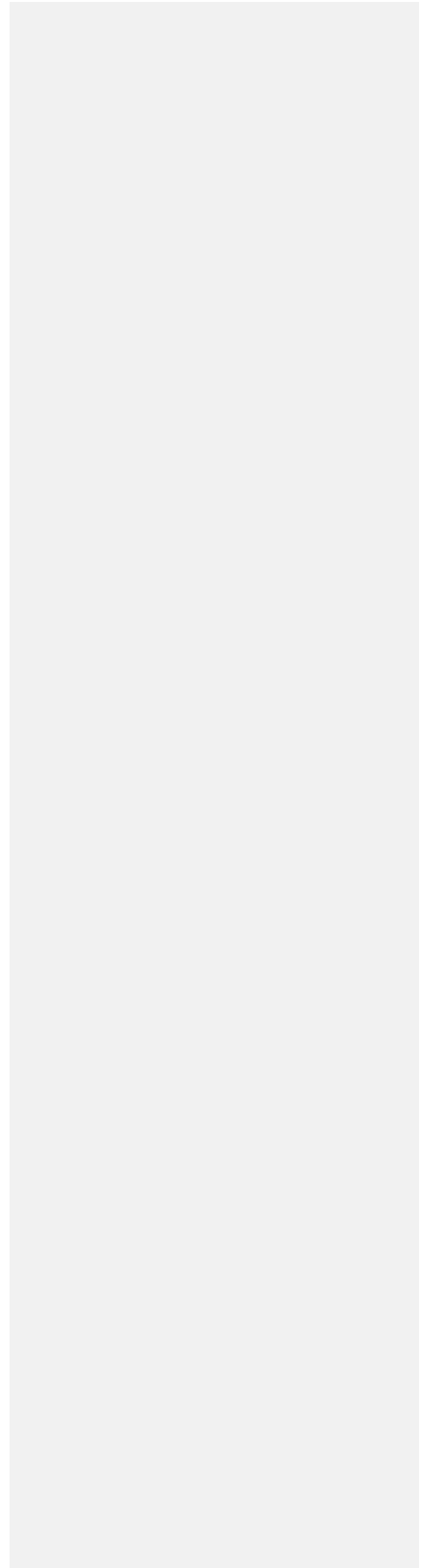
By: _____ Date _____

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION**

By: _____ Date _____

FAIRFAX COUNTY

By: _____ Date _____



Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

Appendix A: Right-of-Way Acquisition by Design-Builder

The design-builder, under contract to the Federal Highway Administration (FHWA), acting as agent on behalf of the Virginia Department of Transportation (VDOT), shall provide all right-of-way acquisition services for the Project's acquisition of fee right-of-way and permanent, temporary and utility easements, including survey plats. Right of way acquisition services shall include certified title reports, appraisal, appraisal review, negotiations, relocation assistance services and parcel closings, to include an attorney's final certification of title. The design-builder's lead right-of-way acquisition consultant shall be a member of VDOT's prequalified right-of-way contracting consultants, listed on VDOT's web site, and the design-builder's right-of-way team shall include VDOT prequalified appraisers and review appraisers, also listed on VDOT's web site. FHWA, in consultation with VDOT, will retain authority for approving appraisal scope and appraiser, just compensation, relocation benefits, and settlements. VDOT must issue a Notice to Proceed for right-of-way acquisition to the design-builder prior to any offers being made to acquire the property. This represents a hold point in the design-builder's baseline schedule. FHWA must also issue a Clearance for Construction to the design-builder once the property has been acquired prior to commencing construction on the property. This also represents a hold point in the design-builder's baseline schedule. The design-builder will not be responsible for the right-of-way acquisition costs. As used in this RFP, the term "right-of-way acquisition costs" means the actual purchase price paid to a landowner for right-of-way, including fee, any and all easements, and miscellaneous fees associated with closings as part of the Project. All right-of-way acquisition costs will be paid by VDOT and shall not be included in the offeror's lump sum bid. Notwithstanding the foregoing provision, should additional right-of-way, whether fee or easements, be required to accommodate design-builder's unique solution and/or contractor's means, methods and resources used during construction above and beyond the right-of-way limits depicted on the preliminary drawings included in the RFP information package, then all right-of-way acquisition costs for such additional fee or easements shall be paid by the design-builder. These costs would include, but not be limited to, the costs of any public hearings that may be required, actual payments to property owners, all expenses related to the additional acquisitions and associated legal costs, and any additional monies paid the landowners to reach a settlement or pay for court award. In the event additional right-of-way is needed as a result of an approved scope change request by the design-builder, the design-builder shall follow the procedures indicated in the "Right of Way Acquisition Guidelines" included in the RFP information package. Additionally, the design-builder is solely responsible for any schedule delays due to additional right-of-way acquisition associated with the design-builder's design changes and no time extensions shall be granted.

The following responsibilities shall be carried out by either the design-builder or VDOT as specified in each bulleted item below:

- The design-builder shall acquire property in accordance with all federal and state

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

laws and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the "Uniform Act") and Titles 25.1 and 33.1 of the Code of Virginia. The acquisition of property shall follow the guidelines as established by VDOT, state and federal guidelines, the VDOT Right of Way Manual of Instructions, the VDOT Utilities Manual of Instructions, and IIM-LD-243.4 and Chapter 12 of the VDOT Survey Manual, which require individual plats to be prepared and recorded with each deed, easement agreement, certificate, or other instrument relating to the acquisition of any interest in real property required for this Project. All conveyance documents for the acquisition of any property interest shall also be accompanied by properly marked plan sheets and profile sheets.

- VDOT shall designate a hearing officer to hear any relocation assistance appeals. VDOT agrees to assist with any out-of-state relocation by persons displaced within the rights of way by arranging with any such other state for verification of the relocation assistance claim.

Comment [MLF8]: Do these remain VDOT responsibilities?

- The design-builder shall submit a Project specific Acquisition and Relocation Plan (Plan) to FHWA for approval, in consultation with VDOT, prior to commencing right-of-way activities. No offers to acquire property shall be made prior to Plan approval. This represents a hold point in the offeror's CPM Schedule. The Plan shall describe the offeror's methods, including the appropriate steps and workflow required for title examinations, appraisals, review of appraisals, negotiations, acquisition, and relocation, and shall contain the proposed schedule of right-of-way activities including the specific parcels to be acquired and all relocations. The schedule shall include activities and time associated with FHWA's review and approval of just compensation, relocation benefits, and administrative settlements. The Plan shall allow for the orderly relocation of displaced persons based on time frames not less than those provided by the Uniform Act. This plan shall be updated as necessary during the life of the Project.

- Both a FHWA Representative and a VDOT Representative will be available to make timely decisions concerning establishing review and approval of just compensation, approval of relocation benefits, and approval of administrative settlements on behalf of VDOT. The FHWA Representative, in consultation with VDOT, is committed to issuing decisions on approval requests within twenty one (21) days. The commitment is based on the Plan providing a reasonable and orderly workflow and the work being provided to the FHWA representative as completed.

- The design-builder shall obtain access to and use VDOT's Right of Way and Utilities Management System (RUMS) to manage and track the acquisition process. RUMS will be used for Project status reporting. Entries in RUMS shall be made at least weekly to accurately reflect current Project status. VDOT standard forms and documents, as found in RUMS, will be used to the extent possible. Training in the use of RUMS and technical assistance will be provided by VDOT. County shall have read-only access to the RUMS system for the purposes of monitoring right-of-way acquisition progress.

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

- The design-builder shall provide a current title examination, no older than sixty (60) days, for each parcel at the time of the initial offer to the landowner. Each title examination report shall be prepared by a VDOT approved attorney or title company. If any title examination report has an effective date that is older than sixty (60) days, an update is required prior to making an initial offer to the landowner. A title insurance policy in favor of the Commonwealth in form and substance satisfactory to the FHWA and VDOT shall be provided by the design-builder for every parcel acquired.
- The design-builder shall prepare appraisals in accordance with VDOT's Appraisal Guidelines.
- The design-builder shall provide appraisal reviews complying with technical review guidelines the design-builder shall submit a scope of work detailing the type of appraisal to be prepared for each parcel and the name of the proposed appraiser for FHWA review and approval prior to commencing the individual parcel appraisal. The proposed appraiser shall be of an appropriate qualification level to match the complexity of the appraisal scope.
- The design-builder shall provide appraisal reviews complying with technical review guidelines found in VDOT's Right of Way Utilities Manual of Instructions and make a recommendation of just compensation. The design-builder's right-of-way consultant shall be a member of the VDOT pre-qualified contracting consultant list, and such team shall include a VDOT pre-qualified fee appraiser. The reviewer shall be approved by FHWA, in consultation with VDOT, and shall also be on VDOT's approved fee appraiser list. VDOT shall have the responsibility to recommend final approval of all appraisals to FHWA.
- The design-builder shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court. Payment documentation is to be prepared and submitted with the Acquisition Report (RW-24). VDOT will process vouchers and issue state warrants for all payments and send to the design-builder, who will be responsible for disbursement and providing indefeasible title to VDOT.
- The design-builder shall prepare, obtain execution of, and record documents conveying title to such properties to the Commonwealth and deliver all executed and recorded general warranty deeds to FHWA and VDOT. For all property purchased in conjunction with the Project, title will be acquired in fee simple (except that VDOT may, in its sole discretion, direct the acquisition of a right-of-way easement with respect to any portion of the right of way) and shall be conveyed to the "Commonwealth of Virginia, Grantee" by a VDOT-approved general warranty deed, free and clear of all liens and encumbrances, except encumbrances expressly permitted by VDOT in writing in advance. All easements, except for private utility company easements shall be acquired in

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

the name of "Commonwealth of Virginia, Grantee." Private utility company easements will be acquired in the name of each utility company when the private utility company has prior recorded easements.

- Because these acquisitions are being made on behalf of the Commonwealth, VDOT shall make the ultimate determination in each case as to whether the recommendation for settlement is appropriate or whether the filing of an eminent domain action is necessary, taking into consideration the recommendations of the design-builder. When VDOT recommends the filing of a certificate to FHWA, the design-builder shall prepare a Notice of Filing of Certificate and the certificate assembly. All required documents necessary to file a certificate shall be forwarded to the FHWA and VDOT Project managers. VDOT will review and execute the certificate, provide the money as appropriate and will return the assembly to the design-builder. The design-builder shall update the title examination and shall file the certificate.
- When FHWA, in consultation with VDOT, determines that it is appropriate, the design-builder shall be responsible for continuing further negotiations for a minimum of sixty (60) days in order to reach settlement after the filing of certificate. After that time the case will be assigned to an outside attorney appointed by VDOT and the Office of the Attorney General. When requested, the design-builder shall provide the necessary staff and resources to work with VDOT and its attorney throughout the entire condemnation process until the property is acquired by entry of a final non-appealable order, by deed, or by an Agreement After Certificate executed and approved by VDOT and the appropriate court. The design-builder will provide updated appraisals (*i.e.*, appraisal reports effective as of the date of taking) and expert testimony supporting condemnation proceedings upon request by FHWA and VDOT. Services performed by the design-builder or its consultants after an eminent domain action is assigned to an outside attorney will be paid, if and when necessary, under a contract modification.
- The design-builder will be responsible for all contacts with landowners for rights of way or construction items.
- The design-builder shall maintain access at all times to properties during construction.
- The design-builder shall use reasonable care in determining whether there is reason to believe that property to be acquired for rights of way may contain concealed or hidden wastes or other materials or hazards requiring remedial action or treatment. When there is reason to believe that such materials may be present, the design-builder shall notify FHWA within three (3) calendar days. The design-builder shall not proceed with acquiring such property until they receive written notification from FHWA.
- During the acquisition process and for a period of three years after final payment is made to the design-builder for any phase of the work, and until the Commonwealth has

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

indefeasible title to the property, all Project documents and records not previously delivered to FHWA and VDOT, including but not limited to design and engineering costs, construction costs, cost of acquisition of rights of way, and all documents and records necessary to determine compliance with the laws relating to the acquisition of rights of way and the costs of relocation of utilities, shall be maintained and made available to FHWA and VDOT for inspection and/or audit. Throughout the design, acquisition and construction phases of the Project, copies of all documents and correspondence shall be submitted to FHWA, and both the Central Office and respective Regional Right of Way office.

- Prior to Project completion, the design-builder shall provide and set VDOT RW-2 right-of-way monuments within the Project Limits.

Comment [MLF9]: VDOT Comment: I believe the requirement for keeping records is 3 years after the FHWA final voucher, not final payment to the DB.