

AGREEMENT No. DTFH71-13-X-50001

Memorandum of Agreement

among the

Marine Corps Base Quantico

the

Defense Security Service

the

Commonwealth of Virginia
Virginia Department of Transportation

and the

Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division

for

U.S.-1/VA-637 (Telegraph Road) Intersection Improvement Project

in

Stafford County, Virginia

PURPOSE

The purpose of this Memorandum of Agreement (Agreement or MOA) is to establish the roles, responsibilities, funding, and procedures by which the Marine Corps Base Quantico (Marine Corps); the Defense Security Service (DSS); the Commonwealth of Virginia (Commonwealth), Virginia Department of Transportation (VDOT); and the Federal Highway Administration (FHWA) (hereinafter referred to as Parties), will jointly participate in the design and construction of transportation improvements in Stafford County, Virginia. The transportation improvements consist of turn lane improvements at the Telegraph Road intersection with U.S. Route 1 (Project).

AUTHORITIES

WHEREAS, Section 210 of title 23 United States Code authorizes the Secretary of Transportation to provide for the construction and maintenance of defense access roads to military reservations when such roads are certified to the Secretary as important to the National Defense by the Secretary of Defense;

WHEREAS, the Military Traffic Management Command (MTMC) under the Secretary of Defense, has determined the Project to be eligible for financing either in whole or in part with defense access road funds and has certified the project as important to the national defense and has authorized expenditure of defense access road funds;

WHEREAS, the roadway has been certified important to National Defense, and the Defense Security Service, the Marine Corps is authorized to enter into this Agreement pursuant to the authority contained in 10 U.S.C. §3001 *et seq.*;

WHEREAS, the Commander, Marine Corps Quantico has operational control and jurisdiction over the Marine Corps Base Quantico (MCBQ) and the Department of Navy (DoN) is owner of the MCBQ property;

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;

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;

WHEREAS, approximately \$4 Million from Defense Access Road (DAR) Program will be allocated to the FHWA to perform environmental compliance, acquire right-of-way, relocate utilities, design and construct this Project;

WHEREAS, although this agreement is subject to the provisions of the Anti-Deficiency Act (31 U.S.C. §1341(a)(1)), the Parties understand, recognize and agree that VDOT is not responsible for any percentage part of the cost of this Project;

NOW THEREFORE, the Marine Corps, the Commonwealth Transportation Board acting by and through the Commissioner of Highways and VDOT, the County, and the FHWA do hereby mutually agree by the authority contained in 23 U.S.C. §308(a), §33.1-12 and §33.1-13 of the Code of Virginia 1950, as amended, and other authorities applicable to the Parties, as follows:

ARTICLE I: SCOPE OF WORK (Obligations, Responsibilities, and Funding)

A. The Defense Security Service agrees to:

1. Subject to the approval of the other parties to this agreement, cause the design and construction of the Project to be undertaken. In order to accomplish this, the Parties agree that the design and construction of the Project will be executed by FHWA;
2. Cause the FHWA to design and construct the Project 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;
3. Pay for all necessary costs and expenses (project alternatives to be designed and executed in a manner so that all project costs are not to exceed the \$4 million appropriated in FY12) of environmental compliance, right-of-way acquisition, utility relocation, design and construction of the Project, and property maintenance and management prior to acceptance of the Project into the system of state highways;
4. Assign and designate a Project Manager for the Project so that all communication regarding the Project will be coordinated and managed through this identified person;
5. 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;
6. Cooperate with the parties in applicable project activities to accomplish the goal of substantially completing the DAR Projects by the end of June 2014 in accordance with a detailed schedule to be agreed to among the Parties.

B. The Marine Corps agrees to:

1. Be responsible for guiding the decisions associated with improvements to Marine Corps-owned or maintained roadways or where Marine Corps interests are involved;

2. Review and provide comments (as needed) on the utility relocation plans;
3. Approve the final design standards for any impacts related to Marine Corps-owned facilities (including utilities);
4. Assign and designate a Project Coordinator for the Project so that all communication regarding the Project will be coordinated and managed through this identified person;
5. To participate in NEPA documentation activities; design activities; hazardous materials studies and remediation; right-of-way transfers; public involvement; construction field reviews; and any other project activities as applicable;
6. To review and provide comments on the utility relocation plans;
7. Participate in all design and construction field reviews and other Project development activities and milestones as applicable, and approve the final plans;
8. Assist the FHWA during construction to coordinate scheduling of utility outages with Marine Corps owned facilities;
9. Cooperate in applicable Project activities to ensure satisfactory completion of the Project;
10. Participate in the final inspection of the constructed facility, and provide acceptance of the completed project;
11. To cooperate in applicable project activities to work together toward goal of substantial completion of the DAR Projects by summer 2014 in accordance with a detailed schedule to be agreed to among the Parties;
12. This agreement does not require MCBQ to provide any funding for the Project or funding in excess of the DAR Project Funds previously appropriated from OSD.

B. VDOT agrees to:

1. Assign and designate a Project Manager from its Fredericksburg District Office for the Project so that all communication regarding the design of the Project will be coordinated and managed through that identified 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;
3. Participate in NEPA environmental studies and documentation activities, design activities; right-of-way transfers; public involvement; and any other Project activities as applicable;

4. Review the final plans and specifications for advertisement of the Project;
5. Review and provide comments on the utility relocation plans;
6. At its option, perform hazardous materials studies for all properties to support highway right-of-way acquisitions on a schedule mutually agreeable to VDOT and the FHWA, excluding any asbestos and/or lead-based paint inspections or abatement for any structures;
7. When required by the issuer of the permit, and in conjunction with the FHWA, fulfill the obligations as “owner” of the 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;
8. Cooperatively participate in all design and construction field reviews (including pre-construction and progress meetings) and other Project development activities and milestones as applicable;
9. Coordinate with FHWA and its contractors on all right-of-way services for the Project in accordance with Attachment B of this Agreement and the following provisions:
 - 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-MCBQ Land and off-MCBQ 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 appropriate 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 or will hire a contractor to represent VDOT to work on the Project. This staff or contractor will serve as VDOT’s Project 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 Project Right of Way Coordinator will be paid for using Project funds;
 - c. The VDOT Project Right of Way Coordinator will coordinate with Stafford County staff 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 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 process. 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;
 - f. Provide written monthly progress reports to FHWA 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 determined by VDOT with input from the Parties to the Agreement.
 - h. Grant read-only access to FHWA, 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.
10. 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;
11. Issue land use permits 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 to ensure agreement on location of the facilities and the method of construction;
12. Participate in all design and construction field reviews, including pre-construction and progress meetings, and other Project development activities and milestones as applicable;

13. Participate in the final inspection of the constructed Project;
14. 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 work within 60 days of its completion;
15. 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, initiate the acceptance of the road as part of the system of state highways to be maintained by VDOT;
16. 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;

C. The FHWA agrees to:

1. Be the lead agency for and provide for overall coordination of the Project and designate a Project Manager;
2. Provide the Federal funding from Defense Access Road sources for this Project;
3. Coordinate a project schedule with the Parties;
4. Be the lead agency and conduct all necessary work for the coordination, preparation, and approval of the environmental documentation required pursuant to the NEPA and 49 U.S.C. §303 (as well as environmental documentation and Section 4(f) Evaluation), including public involvement and obtaining all necessary clearances and permits. Prior to, and as a part of, any public meetings concerning this project, FHWA will brief the Stafford County Board of Supervisors on the nature and goals of the public meeting. This briefing should occur at such time that any comments offered by the Stafford County Board of Supervisors can be adequately considered in the final plans for the public meeting. All public meetings related to this project will be conducted in Stafford County, preferably within Boswell's Corner;
5. Serve as the lead agency for compliance with Section 106 of the National Historic Preservation Act (16 U.S.C 470s) in accordance with 36 CFR 800.2(a)(2) and be responsible for treatment of post-review discoveries of potentially affected historic properties in accordance with 36 CFR 800.13(b);
6. Provide VDOT and Stafford County with copies of all reports, agency correspondence, and other documentation resulting from studies and consultation conducted for compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470s);

7. Select and procure consulting services, as appropriate, for NEPA environmental studies and documentation, design, environmental permitting and approvals, utility relocation, construction assistance, and construction using procurement procedures in accordance with the Federal Acquisition Regulation (FAR), and the Transportation Acquisition Manual (TAM). The FHWA will be the contracting office;
8. Design and construct the Project in accordance with applicable AASHTO and VDOT standards, guides, and regulations including, but not limited to, the VDOT Road and Bridge Specifications, current edition, as amended; the Stafford County Comprehensive Plan including, but not limited to, the Boswell's Corner Redevelopment Plan; the Preliminary Engineering Study for Route 1 Corridor at Marine Corps Base Quantico (FHWA Contract DTFH71-09-D-000001, Task Order 11-012), as may be extended by VDOT and/or Stafford County; and the Department of Defense Office of Economic Adjustment funded Joint Land Use Study for the area surrounding Marine Corps Base Quantico. 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;
 - c. Plan changes—including plans, specifications, and estimates;
 - d. Alternative analysis to evaluate impacts to affected residents and businesses within Boswell's Corner;
 - e. Schedules and schedule updates;
 - f. Budget and budget updates;
 - g. Completed construction project.
9. Obtain all necessary environmental permits for construction and perform all owner/operator responsibilities for all off-MCBQ properties until all permit conditions have been completed and permit agency termination statements have been submitted;
10. Prior to acquisition of the Project right-of-way, perform all environmental investigations, property assessments, or studies for releases of petroleum or any hazardous substance on all non-Federal properties located off-MCBQ and for any Federal properties as otherwise agreed to with MCBQ, that are necessary to complete the Project as specified in the plans, as required under applicable Federal and State laws and regulations, and as appropriate under the standards of environmental due diligence;
11. Prior to, or concurrent with, construction, perform environmental response to releases of petroleum or any hazardous substances, as required under applicable Federal and State laws and regulations on the non-Federal properties located off-MCBQ and for Federal properties as otherwise agreed to with MCBQ, that are required for the completion of the

design and construction of the Project. The affirmative obligation does not apply if a release of petroleum or any hazardous substance on off-MCBQ property has been caused by MCBQ;

12. Provide the reports of MCBQ and the FHWA hazardous materials and MEC investigations and remediation, and remediation plans both on-MCBQ and off-MCBQ sufficient to support right-of-way acquisition, to VDOT for Commonwealth review and approval/concurrence prior to VDOT's initiation of right-of-way acquisition activities;
13. Perform any asbestos and/or lead-based paint inspections and abatement as required by State and Federal law and regulation for any structures present on off-MCBQ acquisitions;
14. Complete any remediation activities for off-MCBQ properties and for on-MCBQ properties, as otherwise agreed to with the Marine Corps, and any hazardous materials clearance studies and any approved remediation plans;
15. 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. Services shall be provided in accordance with the provisions of "Appendix B: Right-of-Way Acquisition by Design-Builder";
16. Be the lead agency for utility relocation by coordinating with utility owners, preparing utility relocation plans, obtaining utility agreements and performing other activities as required;
17. Apply for and obtain all required environmental permits and approvals;
18. Provide plans for any hazardous materials and MEC remediation activities to VDOT for review and approval by the Commonwealth;
19. Advertise, evaluate proposals, and award construction contracts;
20. Administer any construction contracts, including construction inspection;
21. Provide the documented results of all completed hazardous materials and MEC remediation activities to VDOT, including Federal and State Regulatory agency approvals, both on-MCBQ and off-MCBQ, prior to VDOT's acceptance of the improvements for maintenance;
22. Conduct and document the final inspection, with the Marine Corps, and VDOT attending;
23. 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 FAR and TAM, and subject to the availability of Project funds;

24. Prepare periodic written status reports on the Project for all parties as appropriate; and
25. Obtain a minimum five-year warranty satisfactory to VDOT from the Project contractor that warrants work performed under the Project contract is free of any defect in equipment, material or workmanship performed by the contractor, any subcontractor, or any supplier.
26. Provide monthly status reports on the project.
27. Maintain all records of all actions, contracts and expenditures on the Project in sufficient level of detail to allow identification of the nature of the expenditures made. The FHWA will retain these records for a period after the Project records are closed out to provide complete information in response to an audit of either its own records or of the partners' records of the Project; and
28. Promptly initiate project close-out and return unexpended funds to all parties as soon as final costs are known.

ARTICLE II: DISBURSEMENT OF FUNDS

- A. Defense Access Road funds will be allocated directly to the FHWA for use on the Project. All funds and activities are subject to the requirements of Title 23 of the United States Code and Title 23 of the Code of Federal Regulations and standard Federal-aid procedures.
- B. All costs associated, directly or indirectly, with any and all Project responsibilities including, but not limited to: right-of-way acquisition, traffic studies, hazardous materials studies, design review, inspection, meetings, and Project administration shall be paid for using federal funds provided to FHWA by the Defense Security Service for the Telegraph Road intersection DAR project. EFL reserves the right to employ private consultants to assist in its responsibilities outlined in this Agreement. EFL will establish a method by which personnel and/or consultant costs and other costs and expenses on Project-related activities can be measured and billed to the FHWA. VDOT's Project Manager will review all submitted billings from VDOT staff before presenting them to the FHWA for reimbursement and will submit a monthly invoice and report to the FHWA describing the activities, costs and expenses for which payment is being requested.
- C. It is understood that although nothing in this MOA may be deemed to require violation of the Anti-Deficiency Act, that Act applies and that completion of certain commitments made in this MOA is subject to the availability of Federal appropriated funds (as provided for in Article V of this MOA), and funding for all costs associated with the approved DAR related scope of the Project is the responsibility of the Defense Security Service. Funding to cover these costs has already been transferred by DSS to the FHWA. VDOT and the County are not responsible for any of the costs for approved Project scope.

- D. It is the understanding and agreement of all Parties that the approved DAR Project will be constructed entirely with Federal funding. The parties acknowledge that four million dollars appropriated for military construction has already been transferred to FHWA for the Project, prior to the effective date of this MOA.
- E. The schedule for this Project is hereto attached, marked as Exhibit A, and made a part of this Agreement.

ARTICLE III: KEY OFFICIALS AND CONTACTS

Designated points of contact for the coordination of this Project are as follows:

Key Official

Point of Contact

A. For the Marine Corps:

Colonel David W. Maxwell
 Commander
 Marine Corps Base Quantico
 3250 Catlin Avenue
 Quantico, VA 22134-5000
 Phone: 703-784-5902
 Email: david.w.maxwell@usmc.mil

Mr. Joseph Winterer
 Community Planner
 Marine Corps Base Quantico-Public Works Branch
 2004 Barnett Avenue, P.O. Box 1855
 Quantico, VA 22134-0855
 Phone: (703) 784-5530
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B. For Defense Security Service:

Mr. Barry Sterling
 CFO/Director, Business Enterprise
 Defense Security Service
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 Quantico, VA 22134
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Ms. Kristin York
 Project Manager
 Defense Security Service
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 Email: Kristin.York@dss.mil

C. For the VDOT:

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 Chief Engineer
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Ms. Michelle Shropshire
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 Fredericksburg, Virginia 22405
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 Email: Michelle.Shropshire@VDOT.Virginia.gov

D. For the FHWA:

Ms. Karen Schmidt
Director of Program Administration
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
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Mr. Robert A. Morris
Senior Project Manager
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Federal Highway Administration
Eastern Federal Lands Highway Division
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Email: Robert.Morris@dot.gov

ARTICLE IV: GENERAL TERMS AND CONDITIONS

- A. This Agreement 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. Unless otherwise expressly provided herein, terms used in this Agreement have the

meaning and 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.

- H. This Agreement has been drafted jointly by the Parties hereto with advice of counsel. 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.
- I. All parties to the Agreement 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.
- J. 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.
- K. 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.
- L. 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(s) having responsibility for the particular injury-causing condition, under the law that governs such party(s).
- M. 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 legal authorities. Nothing in this Agreement shall be deemed to bind any Party to expend funds in excess of available appropriations.
- N. 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.
- O. 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.
- P. The Parties will abide by the provisions of 18 U.S.C. §1913 (Lobbying with Appropriated Monies).

- Q. 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.
- R. 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.
- S. This Agreement shall be in force and effect and shall remain in effect until the work, including payment, has been completed to the mutual satisfaction of all Parties. This Agreement will terminate when all transfers of funds are completed and all work associated with this Agreement has been approved by the Parties in writing.
- T. This Agreement is not a real estate agreement and shall not be construed to authorize or commit MCBQ/DoN to transfer or allow use of Federal property by any part to this agreement without separate authorization being obtained from MCBQ and DoN.

ARTICLE V: FUNDING LIMITATIONS

- A. It is the expectation of the Parties to this Agreement that all obligations of the Marine Corps, DSS, FHWA, and VDOT 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.
- B. The obligation of the Marine Corps, DSS, 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 Marine Corps, DSS, or the FHWA in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.
- C. 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.

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

MARINE CORPS BASE QUANTICO

David Maxwell
Colonel, U.S. Marine Corps
Commander

DEFENSE SECURITY SERVICE

Barry Sterling Date
Director, Business Enterprise
Chief Financial Officer

**DEPARTMENT OF TRANSPORTATION
COMMONWEALTH OF VIRGINIA**

Gregory A. Whirley, Sr. Date
Commissioner of Highways

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

Karen A. Schmidt Date
Director of Program Administration

Attachment A
Project Schedule

1. National Environmental Policy Act Documentation (Environmental Assessment – EA or Categorical Exclusion (CE))	December, 2012
4. Project MOA approval by VA Commonwealth Transportation Board Approval (CTB)	January, 2013
5. Award Design-Build Contract	April 2013
6. Issue Notice To Proceed	May 2013
7. Initiate Right of Way Acquisition	September, 2013
8. Final Design Approval	TBD
9. Start Construction	TBD
10. Complete Construction	June 2014

Attachment B
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 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.
- 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 design builder's CPM Schedule. The Plan shall describe the design builder'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. Stafford County shall have read-only access to the RUMS system for the purposes of monitoring right-of-way acquisition progress.
- 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 shall 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 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 any 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 Circuit 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 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 VDOT Central Office and respective VDOT 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.