



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 225-2940

Agenda item # 8

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 6, 2017

MOTION

Made By: Mr. Whitworth, Seconded By: Mr. Garczynski

Action: Motion Carried, Unanimously

Title: Authorization for the Commissioner of Highways to Execute Federal Lands Access Program Project Agreements

WHEREAS, the federal Fixing America's Surface Transportation Act (Fast Act), provides for a Federal Lands Access Program, set forth in 23 USC 204, using federal transportation funds and state or local matching funds to improve transportation facilities that provide access to, are adjacent to, or are located within federal lands; and

WHEREAS, the Federal Highway Administration Eastern Federal Lands Highway Division (FHWA/ELFWD) has identified/selected 5 projects in Virginia for funding under the Federal Lands Access Program as identified on Attachment A; and

WHEREAS, the FHWA/EFLHD has requested that the Virginia Department of Transportation enter into an agreement for the management of each Federal Lands Access Program project that has been selected for funding; and

WHEREAS, VDOT and FHWA/EFLHD have prepared an agreement template, identified as Attachment B, outlining the general responsibilities and obligations of each party for project administration under the Federal Lands Access Program; and

WHEREAS, it is believed to be in the best interest of the Commonwealth to take advantage of the funding provided through the Federal Lands Access Program and execute the requested agreements; and

Resolution of the Commonwealth Transportation Board
Federal Lands Access Program Project Agreements
December 6, 2017
Page Two

WHEREAS, section 33.2-221 of the *Code of Virginia* empowers the Commonwealth Transportation Board to comply fully with federal-aid acts, to enter into all contracts or agreements with the United States government and do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress in the area of transportation.

NOW, THEREFORE, BE IT RESOLVED, the Commonwealth Transportation Board hereby approves the template agreement, included herein as Attachment B, and further authorizes the Commissioner of Highways or his designee to enter into agreements for those projects described in Attachment A, utilizing the template set forth in Attachment B, and with any changes necessary to effectuate funding under the Federal Lands Access Program for said projects.

CTB Decision Brief

Authorization for the Commissioner of Highways to Execute Federal Lands Access Program Project Agreements

Issue: A project agreement must be executed by the Federal Highway Administration (FHWA) Eastern Federal Lands Highway Division (FHWA/EFLHD) and the Virginia Department of Transportation (VDOT) in order to move forward with obligation of federal funds for each individual project being funded under the Federal Lands Access Program (FLAP) set out in 23 U.S.C. 204. Pursuant to section 33.2-221 of the *Code of Virginia*, the Commonwealth Transportation Board (CTB) must approve and authorize execution of said project agreements with FHWA/EFLHD.

Facts: The federal “Moving Ahead for Progress in the 21st Century Act” (MAP-21) created a new Federal Lands Access Program, set out in 23 U.S.C. 204, authorizing use of federal transportation funds and state or local matching funds for projects that improve access to federal lands. The federal Fixing America’s Surface Transportation Act (FAST Act) continues this program.

Proposed projects must be located on a public highway, road, bridge, trail or transit system that is located on, is adjacent to, or provides access to Federal lands for which title or maintenance responsibility is vested in a state, county, town, township, tribal, municipal, or local government.

Applications for qualifying projects in Virginia were submitted, and Eastern Federal Lands Highway Division has completed project selections under the Program. A list of the approved projects is set forth in Attachment A. Section 33.2-221 of the *Code of Virginia* empowers the CTB to comply fully with federal-aid acts, to enter into all contracts or agreements with the United States government and do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress in the area of transportation.

Each qualifying selected project requires an agreement with FHWA setting forth the terms for receiving and expending all funds associated with the individual project. An agreement template, which is included here as Attachment B, has been developed and will be completed as needed to address the specifics of each project. For projects involving facilities that are maintained by a locality or other local, state or federal entity, the party responsible for maintaining the facility will also be a party to the agreement.

Recommendations: VDOT recommends the CTB approve the standard agreement template and authorize the Commissioner of Highways or his designee to enter into individual project agreements, based on such template agreement and with such specific terms as are necessary for that respective project, for each of the projects specified in Attachment A of the Resolution for this program without having to present each individual agreement to the CTB for consideration and approval.

Action Required by CTB: Approve by majority vote the resolution providing the approval of the template agreement and authorization for the Commissioner or his designee to enter into agreements based on that template agreement for each individual qualified selected project that is recommended herein.

Result, if Approved: VDOT can proceed to enter into individual project agreements for the FLAP program and obligate the program funds as the approved projects are ready to proceed, thereby allowing project development to commence in a timely manner while minimizing the burden on the CTB.

Options: Approve, Deny, or Defer

Public Comments/Reactions: N/A

Attachment B

FEDERAL LANDS ACCESS PROGRAM PROJECT MEMORANDUM OF AGREEMENT

Project / Facility Name:

Project Route:

State: Virginia

County, City, or Town:

Owner of Federal Lands to which the Project Provides Access:

Entity with Title or Maintenance Responsibility for Facility:

Type of Work: *(short description of project, e.g.)*

<i>ROW</i>
<i>Utilities</i>
<i>NEPA</i>
<i>Preliminary Eng.</i>
<i>Repair, Rehabilitation, Reconstruction Construction</i>
<i>Construction Eng.</i>

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this Agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement: *(list Division office, county, state, road district, ...who owns the facility or is cooperating in delivering, funding, or maintaining the project)*

The Program Decision Committee approved this project on _____ (date).

AGREED:

Commissioner of Highways, VDOT Date

Facility Owner Date
(County, parish, road district, etc., may not be needed or may have multiple signatures)

Division Engineer or Director of Program Administration, EFLHD Date
(May be their acting "For" if they are out of the office)

(Include any other agency or tribe who will be listed in the roles and responsibilities section of this Agreement)

Attachment B

A. PURPOSE OF THIS AGREEMENT

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis, design, right-of-way, utilities, acquisition and construction as appropriate for this programmed project, and to ensure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program funds are used for the development or construction of this project, the [INSERT THE STATE / AGENCY(CIES) PROVIDING THE MATCH] agrees to provide a matching share equal to [INSERT THE APPLICABLE PERCENTAGE PER 23 USC 120] of the total cost of the project, as detailed more fully in Section J below. *(If an agency(cies) other than FHWA will be expending Access funds, INSERT THE FOLLOWING: Before the expenditure of any funds for which reimbursement will be sought from FHWA, the parties agree to execute a separate obligating document. No reimbursement will be made for expenditures made prior to having an obligating document in place.)*

(There may be supplemental agreements in addition to this agreement, such as a separate agreement addressing the matching share, or agreements addressing different phases of the project as appropriate.)

B. AUTHORITY *(By what authority are the parties allowed to enter into this agreement? May include what authority the other parties are invoking.)*

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204 and [INSERT THE STATE OR LOCAL AUTHORITY AS APPROPRIATE].

C. JURISDICTION AND MAINTENANCE COMMITMENT

The [INSERT "STATE" and/or "LOCAL JURISDICTION"] has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION

The [INSERT EITHER THE STATE, THE LOCAL AGENCY, OR BOTH] has coordinated project development with the [INSERT THE APPLICABLE FLMA]. The [INSERT THE APPLICABLE FLMA] support of the project is documented [INSERT THE APPLICABLE REFERENCE]. Each party to this agreement who has a primary role in NEPA, design, or construction shall coordinate their activities with the [INSERT THE APPLICABLE FLMA].

Attachment B

- E. PROJECT BACKGROUND/SCOPE** *(Note: To the extent that some or all of the material required in Sections D. through L. are contained in an Application Document, a Work Plan, Contracts, or some other document, such document(s) may be incorporated into this document by reference and attached hereto in lieu of repeating the information in this document. Clear language incorporating relevant material must be included in this document whenever this approach is taken. Care should be taken to avoid incorporating material that may represent proffers or commitments to which FHWA does not agree.)*

(Provide short history of the purpose and need for the project. Better define project location, - mileposts, intersection to intersection... Should expand upon the type of work listed on the signatory page. What will the end product look like?)

(Preliminary purpose and need to be stated here.)

- F. PROJECT BUDGET** *(This section may be abbreviated with only a tentative project cost based on the application pending a more in-depth scoping of the proposed project. If so, a more detailed budget thereafter should be developed and approved by the parties or the Programming Decisions Committee, as appropriate.)*

Item	Estimate (\$)	Comments
ROW		
Utilities		
NEPA		
Preliminary Eng.		Could be split
Construction		
Construction Eng.		
Contingency		
Total		Should equal the programmed amount

- G. ROLES AND RESPONSIBILITIES** *(Keep the roles and responsibilities at the agency or entity level. The project team member representing the agency/entity is responsible for ensuring that it meets its commitments. The Roles and Responsibility Table should include all signatory entities to the agreement. Can list the individual's roles and responsibilities in the table listing the team members.) The following is an example of what the roles and responsibilities may look like.*

Attachment B

Responsible Party	Product/Service/Role	Comments
FLH Division	<p><i>Insert FHWA's role. What is FHWA responsible to deliver? Include mention of S&O if FHWA is not doing the PE, CN, and CE. Use bullet listing, e.g.</i></p> <ul style="list-style-type: none"> • <i>Prepare environmental documents and make project decisions based on the NEPA documents</i> • <i>Subject to the NEPA decision,</i> <ul style="list-style-type: none"> ○ <i>Obtain permits required for Federally constructed projects</i> ○ <i>Prepare right-of-way plans and legal descriptions of parcels to be acquired.</i> ○ <i>Prepare the PS&E</i> ○ <i>Construct the project</i> 	
State DOT	<p><i>Insert State's role. What is the State responsible to deliver? e.g.,</i></p> <ul style="list-style-type: none"> • <i>Attend reviews and meetings</i> • <i>Provide available data</i> • <i>Review plans and specifications</i> 	
Local Public Agency/Tribe	<p><i>Insert the local public agency's role. What is the local agency responsible to deliver? e.g.,</i></p> <ul style="list-style-type: none"> • <i>Obtain permits other than those required for Federal constructed projects</i> • <i>Coordination and costs associated with utilities</i> • <i>Acquire right of way</i> • <i>Attend reviews and meetings</i> • <i>Provide data on traffic, accidents, material sources, etc.</i> • <i>Review plans and specifications at each phase of the design</i> • <i>Assume responsibility of the NPDES permit after project completion</i> • <i>Provide long term maintenance and operation of the facility</i> 	

Attachment B

Responsible Party	Product/Service/Role	Comments
<i>Only include another agency or Tribe if they are signatories to this Agreement</i>	<i>If another agency will have a role or responsibility, list it here. Ex. If a FLMA or a Tribe will contribute toward the match requirement, they should be signatories to this Agreement and their role listed here.</i>	

H. ROLES AND RESPONSIBILITIES – SCHEDULE *(This section may be abbreviated with only a tentative project schedule based on the application pending a more in-depth scoping of the proposed project. If so, a more detailed schedule thereafter should be developed and approved by the parties or the Programming Decisions Committee, as appropriate.)*

Responsible Lead	Product/Service/Role	Schedule Start-Finish	Comments
<i>List the responsible entity, not individuals</i>	<i>Insert tasks appropriate for the project. List major milestones. This is not a detailed work plan. Schedule may change due to environmental process</i>	<i>May break down into several phases such as preliminary, intermediate, and final design</i>	
<i>Ex: FHWA</i>	<i>NEPA</i>		
<i>Ex: Local or state</i>	<i>ROW Acquisition</i>		

I. PROPOSED DESIGN STANDARDS Final design standards will be determined through the NEPA process.

Criteria		Comments
Standard	<i>Ex. AASHTO Very Low Volume</i>	<i>Add if needed May have other standards depending on type of facility</i>
Functional Classification		
Surface Type		
Design Volume		

Attachment B

J. FUNDING

Fund Source	Amount	Comments
<i>Title 23 program funds-what type?</i>		<i>May have multiple lines.</i>
<i>Local Matching Share – which entity? May have more than one entity providing funds or other in-kind contribution</i>		<i>Cash or in-Kind Contribution</i>
<i>What is the source of the matching funds? Besides funds from the State, funds authorized for the Tribal Transportation Program (23 U.S.C. 202) and the Federal Lands Transportation Program (23 U.S.C. 203) may be used to meet the match requirement. Also, other Federal funds not authorized under titles 23 or 49, may be used toward the match requirement.</i>		
<i>Other funds-type?</i>		<i>Are additional funds being provided for non-eligible items?</i>
TOTAL		<i>Should match programmed amount</i>

K. MATCHING SHARE REQUIREMENTS Matching or cost sharing requirements may be satisfied following the obligation of funds to the project by: allowable costs incurred by the State or local government, cash donations, the fair and reasonable value of third party in-kind contributions (but only to the extent that the value of the costs would be allowable if paid for by the party responsible for meeting the matching share), including materials or services; however no costs or value of third party contributions may count towards satisfying the matching share requirements under this agreement if they have or will be counted towards meeting the matching share requirements under another federal award.

Costs and third party contributions counting toward satisfying a cost sharing or matching requirement must be verifiable from the records of the party responsible for meeting the matching requirements. The records must demonstrate how the value of third party in kind contributions was derived. Voluntary services sought to be applied to the matching share will be supported by the same methods that the party to this agreement uses to support allocability of personnel costs. Any donated services provided by a third party will be valued at rates consistent with those ordinarily paid by employers for similar work in the same labor market. Supplies furnished will be valued at their market value at the time of donation. Donated equipment or space will be valued at fair rental rate of the equipment or space. All records associated with

Attachment B

valuations or costs under section K shall be accessible and be maintained for three years following project close-out.

(When FHWA is delivering the project, include also in this section how and when the local matching share will be provided. Cover the strategy for tracking the local matching share, including documentation and recordkeeping associated with in-kind contributions. Address the need for or incorporate a commitment to cover additional matching amount that may be required if there are cost increases due to contract modifications or claims, including FHWA administrative costs for the CMs or claim. If FLH is not delivering, then the tracking strategy and requirements would be included in the S&O Section of the agreement.)

L. PROJECT TEAM MEMBERS - POINTS OF CONTACT

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement. *(This table would list the representatives of the entities that signed the agreement. It may not be the same individuals who signed the agreement. The individuals will be the ones doing the day-to-day tasks to develop the project. Some entities may have more than one member on the team.)*

Name/Title	Organization	Address/Phone Number/Email
	Local public agency	<i>Can add another column to detail the individual's project related responsibilities.</i>
	State	
	Others	
<i>(May have a PM, lead designer, ..)</i>	<i>FHWA Division</i>	<i>This is the person who will receive the requested documents and perform/oversee the FHWA role. This would be the project manager & others if FHWA is developing the project. It may be some other position if one of the signatory entities is doing the project development.</i>

M. CHANGES/AMENDMENTS/ADDENDUMS

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; changes that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in the composition of the project team members does not require the agreement to be amended.

Attachment B

It is the responsibility of the project team members to recognize when changes are needed and to make timely notification to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

FHWA	(partner 1)	(partner 2)	Time
Project Manager or POC <i>Name, title, contact info</i>	<i>This line should most likely be the project team members</i>		<i>X days</i>
<i>Branch Chief</i>			
<i>Director</i>			
<i>Division Engineer</i>			

O. TERMINATION

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal Access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

P. STEWARDSHIP & OVERSIGHT ACTIVITIES

Item	Responsible Party	FLH Role
<i>If FLH is not responsible for the project delivery, tracking & reporting the local match and other stewardship and oversight requirements must be accounted for in this section</i>		

(Based upon the risk assessment (complexity of the undertaking and capabilities and past performance of the entity who is the delivery partner), the FLH POC would fill in this table with the items that they feel are necessary for S&O. They would pull items from the Oversight Checklist – Partner Delivered Title 23 table. (Source: Federal Lands Highway Program Oversight Guidance, September 7, 2012). The FLH role is not to perform a technical review of the delivery agency’s work, but rather to ensure Title 23 compliance (or other laws as applicable). If items are not delivered timely or in such poor condition that it brings into question the ability to deliver, the issue needs to be elevated to all participants to the agreement.

If FLH is responsible for the development and delivery, and a partner is providing only the local match funding in cash, with no ROW or utilities issues, this section may not be needed.)

Attachment A

Federal Lands Access Program Project 2017 Selections

FLAP#	Project Title/Description	Project Scope	Location	VDOT District	Administered By	FLAP Funding Request
VA025	Multi-Use Trail connecting Booker T. Washington National Monument and Village Center of Westlake on Smith Mountain Lake.	Design and construction of approximately two-miles of multi-use trail.	Franklin County	Salem	Franklin Co	\$617,412
VA026	Diamond Terrapin Crossing Prevention	Install concrete barrier along specific sections of US-13 within the Fisherman Island National Wildlife Refuge, including the installation of educational kiosks at two locations.	Northampton County	Hampton Roads	Chesapeake Bay-Bridge Tunnel Authority	\$296,000
VA028	South River Bridge Replacement on the Chessie Nature Trail in Rockbridge County	Design and construction of pedestrian bridge, replacing previous bridge washed out during Hurricane Isabel in 2003.	Rockbridge County	Staunton	Virginia Military Institute	\$218,882
VA029	Shared-Use Path connecting the Museum of the Confederacy in Appomattox and the Appomattox Courthouse National Historic Park	Design and construction of approximately 1.5 miles of shared-use path adjacent to Route 24.	Appomattox County	Lynchburg	VDOT	\$576,000
VA030	High Knob Recreation Area Access Improvements	Improvements along Route 619.	City of Norton	Bristol	City of Norton	\$3,565,000
TOTAL						\$5,273,294