

**FEDERAL HIGHWAY ADMINISTRATION  
PUERTO RICO & US VIRGIN ISLANDS DIVISION OFFICE**

**UNITED STATES VIRGIN ISLANDS DEPARTMENT OF PUBLIC WORKS**

**MEMORANDUM OF AGREEMENT  
OVERSIGHT AND ADMINISTRATION OF FEDERAL-AID HIGHWAY PROJECTS**

**Purpose:**

To set forth agreement between the United States Virgin Islands Department of Public Works (VIDPW) and the Federal Highway Administration (FHWA) on the respective roles and responsibilities of each party in administering the Federal-aid Highway Program in the United States Territory of the Virgin Islands (St. Thomas, St. John, St. Croix).

**Scope:**

Whereas, Section 106 of Title 23 - United States Code (USC), as amended by Section 1305 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) of 1998, provides considerable flexibility to individual State Department of Transportation and FHWA Division offices in reaching agreement on responsibilities for design, plans, specifications, estimates, contract awards, and inspection of Federal-aid highway projects. While the VIDPW may assume certain project approval and authorities in accordance with 23 USC 106, FHWA is ultimately accountable for ensuring that the Federal-Aid Highway Program is delivered consistent with established requirements.

**VIDPW Responsibilities:**

Under Title 23, FHWA is ultimately accountable for all Federal-Aid highway programs; however, the VIDPW may assume responsibility for project-level activities associated with 23 USC 106 on certain projects in the Territorial Highway System. The VIDPW's responsibilities for the following types of projects are as follows:

1. FHWA will be involved in the planning, environmental, right way acquisition, project scoping and bridge type, size and location activities for all projects. Once the project scoping is complete, a joint determination will be made on the level of oversight for the design and construction of the project based on the complexity of the project. If the VIDPW assumes the oversight responsibilities for the project, this will include all reviews and approvals associated with the design and construction, including advertising, award of bids\* and final inspection of the Federal-aid project. Projects must comply with all Federal-aid requirements contained in Title 23 CFR.

**(\* VIDPW will be responsible for advertising and award of bids for all federal-aid transportation projects however, the VIDPW will require FHWA concurrence for all projects that the oversight responsibility has been designated to FHWA.)**

2. When another unit of the Territorial government (i.e. VI Port Authority, etc.) becomes the implementing agency of a construction project in which the VIDPW participates in the funding by allocation of Federal-Aid highway funds under Title 23, the VIDPW will

review and assure local action for compliance with all requirements of Federal and Territorial laws in accordance with Title 23. The VIDPW is not relieved of its responsibilities even though the project may be under the supervision of a public agency or organization. In accordance with 23 CFR 1.11, the VIDPW will ensure that the Territorial agency is well qualified and suitably equipped to perform the work. A third party agreement will be executed between the VIDPW and the Territorial governmental agency. The Territorial governmental agency shall agree to implement all Title 23, Title 49 and applicable federal requirements. The third party agreement will specify if FHWA will have project oversight responsibilities.

3. Compliance with Federal Requirements - Certain Title 23 requirements dealing with transportation planning, procurement of professional services, Disadvantaged Business Enterprise (DBE), wage rates, advertising and award of bids, convict produced materials, and Buy America provisions and all non-Title 23 requirements apply to all Federal-aid projects and approval responsibilities are not delegated to the VIDPW.

4. Federal Responsibilities – On projects with FHWA’s oversight, FHWA will continue to be responsible for the oversight of all Title 23 aspects of these projects including location and design, right-of-way and construction phases. FHWA Division Office personnel will review and approve project designs; approve Plans, Specifications and Estimates; will authorize bid advertisement and will concur in award; approve changes in contracts that exceed certain thresholds (change orders, supplemental agreements, time extensions, claims, etc.), and will conduct project inspections.

5. Other Project Involvement - The FHWA Division Office in consultation with the VIDPW may become actively involved with any Federal-aid transportation project, including those for which the VIDPW has assumed FHWA’s responsibilities, when unique circumstances arise or when program or process reviews are being conducted. Funding increase on all Emergency Relief (ER) Permanent Projects will need prior FHWA’s approval. All other provisions of this agreement will have full application to ER projects.

6. Technical Assistance - The FHWA Division Office is prepared to provide technical assistance to the VIDPW or Territorial transportation agencies on any aspect of an eligible Title 23 project including intermodal transportation projects. Technical assistance activities will be decided on a case-by-case basis in consultation with the VIDPW, other partners and the FHWA Division Office. The FHWA Division Office will continue to focus its time and effort in improving processes and procedures, in cooperation with the VIDPW.

7. Non-Title 23 Responsibility - FHWA will continue to assume responsibility for Federal actions required under laws outside of Title 23, such as:

- Activities for compliance with Section 102 (2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 et.seq.) and 23 CFR 771.

