



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

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Agenda item # 17

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: Mr. Merrill **Seconded By:** Mr. Kasprowicz
Action: Motion carried, unanimously

Title: Delegation of Authority for the Commissioner of Highways to Enter into Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating Funding and Administration of the Rockland Road Improvement Project (UPC#112945)

WHEREAS, VPA is a body corporate and political subdivision of the Commonwealth of Virginia vested with certain powers set forth in Title 62.1, Chapter 10 of the *Code of Virginia* (1950) as amended; and

WHEREAS, the Virginia Inland Port (VIP) is an intermodal container transfer facility in Front Royal, Virginia (Warren County) owned by VPA; and

WHEREAS, VPA sought, and was awarded, a FY 2018 BUILD Transportation Discretionary Grant from MARAD for a rail/highway grade separation and intersection realignment at Route 658 (Rockland Road) and the Norfolk Southern Railroad tracks serving the VIP (the "Project"); and

WHEREAS, VPA and VDOT have determined that VDOT is best suited to administer the Project; and

WHEREAS, VDOT and VPA have developed an interagency agreement that sets forth the responsibilities of the parties for funding and administration of the Project; and

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WHEREAS, § 33.2-214(C) of the *Code of Virginia* authorizes the Commonwealth Transportation Board to enter into agreements with local districts, commissions, agencies, and other entities created for transportation purposes.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to § 33.2-214(C) of the Code of Virginia, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into an Interagency Agreement with the VPA (attached hereto as Exhibit A), relating to funding and administration of the Rockland Road Improvement Project, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary.

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INTERAGENCY AGREEMENT
BETWEEN THE VIRGINIA PORT AUTHORITY
AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION
FOR U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION
(MARAD) BUILD GRANT FUNDING
FOR THE ROCKLAND ROAD IMPROVEMENT PROJECT

This Interagency Agreement (Agreement) between the Virginia Port Authority (VPA) and the Virginia Department of Transportation (VDOT) to provide federal grant funding for the Rockland Road Grade Separation Project (UPC 112945) (Project), pursuant to MARAD FY 2018 BUILD Grant No. 693JF71910015, as well as other funding, and for Project administration, is entered into on the date of last execution set forth below (VPA and VDOT collectively are the “Parties”).

WHEREAS, VPA submitted an application for funding dated July 19, 2018, under the Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grants program and entitled “Virginia Inland Port Terminal Optimization and Grade Separation Project” (“MARAD Grant Application”) under the provisions of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, March 23, 2018), regarding National Infrastructure Investments, as described in the Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2018, 83 FR 18651 (April 27, 2018); and

WHEREAS, in response to VPA’s MARAD Grant Application, MARAD awarded a FY 2018 BUILD Transportation Discretionary Grant in the amount of \$15,500,197 (“MARAD Grant Funds” or “Funding”), which grant is memorialized in an agreement between the U.S. Department of Transportation (USDOT) and VPA, dated and effective September 25, 2020, and will be administered by MARAD (MARAD Grant Agreement); and

WHEREAS, while the MARAD Grant Application sought funding for two project components relating to the Virginia Inland Port (VIP), with Component 1 (“Outside the Gate”) being a rail/highway grade separation and intersection realignment project on Rockland Road and Component 2 (“Inside the Gate”) being railyard improvements on VIP property, because VPA is utilizing Rail Enhancement Funds provided by the Department of Rail and Public Transportation for Component 2, and in accordance with the MARAD Grant Agreement, the total \$15,500,197 in MARAD Grant Funding will be used to fund Component 1, the Project that is subject to this Agreement; and

WHEREAS, the Project, Component 1 of VPA’s Grant Application, is currently estimated to cost approximately \$28,032,681, which is an amount greater than the sum of the \$15,500,197 of MARAD Grant Funds and the \$10,510,000 of funding allocated by the Commonwealth Transportation Board (CTB) in the Fiscal Year 2022-2027 Six-Year Improvement Program (“CTB Funds”), leaving a potential balance needed to complete the Project, currently estimated to be \$2,022,484 (“Remaining Balance”) that has not been allocated by the CTB; and

WHEREAS, VDOT and VPA will cooperate to identify other eligible partners and funding sources to provide the Remaining Balance that is needed to complete Component 1; and

WHEREAS, VPA and VDOT have determined that VDOT is best suited to administer all work necessary to complete the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. SCOPE OF WORK: The Project includes design and construction of a grade-separated crossing/bridge carrying state route 658 (Rockland Road) over the Norfolk Southern Railroad tracks, along with the realignment of Rockland Road's intersection with Fishnet Boulevard. This Project also includes the necessary right of way acquisition. Construction activities necessary to complete the grade separation and intersection realignment will include full site preparation and a temporary detour. The complete Project realignment will consist of new connection tie-ins, a bridge that will span the railroad, and relocation of all utilities. The Project will also include the following elements within the newly-acquired right-of-way: grading, drainage improvements, final paving, and project seeding.

A. VDOT will be responsible for:

- i. Performing or causing to be performed, all work necessary to construct the Project as set forth in the Scope of Work above;
- ii. Providing Project progress reports to VPA in support of any necessary reporting required by MARAD or any other Remaining Balance funding requirements;
- iii. Submitting invoices monthly to VPA for reimbursement of Eligible Project Costs, as defined in Section III herein for reimbursement of any MARAD Grant Funding or Remaining Balance funding;
- iv. Administering, in its discretion, the CTB Funds allocation to ensure it is credited to the Project after the MARAD Grant Funds are exhausted;
- v. Submitting final invoices for MARAD Grant Funds to VPA no less than 45 days prior to the Closeout Date of the Project provided in Section II;
- vi. Working with VPA to provide any documentation needed for close-out of the MARAD grant; and
- vii. Cooperating with VPA to secure the Remaining Balance funding.

B. VPA will be responsible for:

- i. Securing federal funds for this Project with MARAD and, in cooperation with VDOT, the Remaining Balance funding prior to Project advertisement;
- ii. Reviewing invoice reimbursement requests from VDOT for Eligible Project Costs;
- iii. Requesting reimbursement from MARAD for Eligible Project Costs incurred until such MARAD Funding is exhausted;
- iv. Reimbursing VDOT within 30 days of receipt of MARAD Grant Funds or, to the extent non-CTB Funds are applied to reimbursement, within 30 days of receipt of invoice;
- v. Monitoring all work associated with the Project and ensuring that all aspects of and work and activities relating to the Project, performed by VPA are in compliance with all MARAD Grant Fund requirements;
- vi. Consulting/coordinating with and obtaining responses and concurrence from MARAD for purposes of resolving questions or issues relating to Project compliance with all MARAD requirements, given VDOT's inexperience with regard to MARAD grant and project requirements;
- vii. Unless and until VPA receives a modification of the MARAD Grant Agreement in accordance with VDOT's alternative planned completion dates in II.D below, holding VDOT harmless from the impacts of any non-compliance with MARAD requirements;
- viii. Submitting required reporting to MARAD, including but not limited to reporting relating to Project progress as well as data required for measuring performance;

- ix. Obtaining MARAD's approval of this Agreement in final form prior to its execution by the Parties; and
- x. Closing out the MARAD grant.

II. MARAD GRANT PERIOD OF PERFORMANCE AND PROJECT MILESTONES:

- A. Eligible Project Costs incurred between the date of the MARAD Grant Agreement (September 25, 2020) and the Planned Period of Performance End Date (June 1, 2025) are eligible for reimbursement utilizing MARAD Grant Funds. Eligible Project Costs shall be reimbursed with other Remaining Balance funding if and once MARAD Grant Funding is exhausted or no longer available.
- B. The planned completion dates for MARAD-approved project milestones as provided in the MARAD Grant Agreement for this Project are as follows:
 - i. Planned Completion of Final Design: 05/19/2023
 - ii. Planned Right of Way Acquisition: 06/14/2023
 - iii. Planned PS&E Approval: 10/10/2023
 - iv. Planned Construction Contract Award: 12/30/2023 (*VDOT plans to award contract on 2/13/2024*)
 - v. Planned Construction Start Date: 12/30/2023 (*VDOT plans to start construction on 3/20/2024*)
 - vi. Planned Construction Substantial Completion Date: 04/01/2025 (*VDOT plans for the Project to reach substantial completion on 1/9/2026*)
 - vii. Planned Period of Performance End Date: 06/01/2025 (*For that portion of the Project to be reimbursed with MARAD Grant Funds*)
 - viii. Planned Project Closeout Date: 08/30/2025 (*For that portion of the Project to be reimbursed with MARAD Grant Funds*)
- C. VDOT acknowledges that the dates provided in Section II.B above are set forth in the MARAD Grant Agreement. The Parties acknowledge, however, that compliance with such dates is not achievable due to circumstances beyond the control of Parties and have set forth alternative planned completion dates below in Section II.D. VPA agrees that the changes to the planned completion dates in Section II.B are necessary and is seeking a modification to the MARAD Grant Agreement terms from MARAD in conformance with VDOT's alternative planned completion dates. Any changes to the planned completion dates will occur once VPA submits a modification request that is approved by MARAD.
- D. The alternative planned completion dates, based on the current VDOT schedule, are as follows:
 - i. (a) Furnish right-of-way and utilities plans, planned completion of final design for right-of-way acquisition: 10/3/2022
 - (b) Clear railroad agreements: 6/6/2023
 - ii. (a) Acquire right of way: 6/7/2023
 - (b) Utility relocations by others: 2/14/2024
 - iii. (a) Planned submission date: 6/13/2023
 - (b) Advertise Project: 8/8/2023
 - iv. Award Contract: 2/13/2024
 - v. (a) Administer contract start date: 3/20/2024
 - (b) Expected expenditures of MARAD Grant Funding: 1/30/2025
 - vi. Administer contract end date: 1/9/2026
 - vii. Expected last invoice for MARAD reimbursable work: 6/1/2025
 - viii. Central Office Closeout: 12/10/2026

III. ELIGIBLE PROJECT COSTS:

- A. Eligible Project Cost.** An Eligible Project Cost is a reasonable cost directly associated with, and necessary for, execution of the Scope of Work defined by this Agreement. Eligible Project Costs include, but are not limited to, reasonable costs incurred by VDOT for contractor or consultant expenses and VDOT internal costs. VPA will reimburse VDOT 100 percent of Eligible Project Costs that VDOT incurs in excess of the CTB's allocation of \$10,510,000.
- B. Source of Funding.** VPA will reimburse VDOT for the Eligible Project Costs to be funded with MARAD Grant Funds and any Remaining Balance funding. VPA agrees and verifies that any state match required for this Project has been satisfied and to the extent that the state match has not been satisfied by sums thus far made available by VPA pursuant to the MARAD Grant Agreement, VPA will provide the additional funds necessary to satisfy the state match. The Parties agree that, to the extent possible, the application of MARAD Grant Funds towards the reimbursement of Eligible Project Costs shall be prioritized in order to meet the MARAD Grant Agreement Planned Project Closeout Date.
- C. Invoicing.**
- i. No Project cost shall be eligible for reimbursement from MARAD Grant Funds that occurs prior to the date of the MARAD Grant Agreement (September 25, 2020).
 - ii. For reimbursement of Eligible Project Costs incurred by VDOT, VDOT will submit invoices to VPA on a monthly basis. Eligible Project Costs incurred after the MARAD Grant Agreement date of September 25, 2020, may be submitted after the Parties' execution of this Agreement.
 - iii. For all invoices, VDOT shall include documentation supporting the invoiced Eligible Project Costs and proof of payment by VDOT.
 - iv. VPA will approve or request additional information from VDOT regarding the supporting documentation for the invoice; the invoice will not be considered approved until VPA confirms the supporting documentation is adequate, which approval shall be promptly provided and not unreasonably withheld.
 - v. VPA will promptly invoice MARAD for federal reimbursement after final approval of the invoice and shall ensure that all reimbursement requests submitted to MARAD comply with all MARAD submission requirements and deadlines.
 - vi. VPA will reimburse VDOT within 30 days from receipt of MARAD Grant Funding. Upon receipt, VDOT will post the reimbursement as an expenditure credit for costs incurred.
 - vii. VDOT must submit all invoices for Eligible Project Costs to be reimbursed by MARAD Grant Funds by July 15, 2025. No reimbursements will be made to VDOT from MARAD Grant Funds after August 30, 2025.

IV. PROJECT BUDGET:

- A. Initial Estimated Cost.** The initial estimated cost for the Project is \$28,032,681.
- B. Monthly and Other Budget Updates.** Along with its monthly invoice for Eligible Project Costs, VDOT shall provide to VPA a quarterly progress report on the percentage of project completion and percentage of the budget expended to date.

V. MARAD REPORTING:

- A.** In order to enable VPA to comply with VPA's requirement to submit to MARAD Quarterly Project Progress Report and Recertification, VDOT shall submit to VPA no later than the

10th day after the end of each calendar quarter, and prior to Project Closeout, a report with the form and content consistent with Exhibit H of the MARAD Grant Agreement, Quarterly Project Progress Reports and Recertifications. Any changes to the activity completion dates of the Project should also be noted. VPA will submit to MARAD the Quarterly Project Progress Reports and Recertifications received from VDOT in accord with the MARAD Grant Agreement and no later than the 20th day of the month following each calendar quarter and at the Project closeout date.

- B. VPA will submit to MARAD the following Project Closeout Information as set forth in and in the manner required by the MARAD Grant Agreement no later than 90 days after the Planned Period of Performance End Date (06/01/2025): (i) the final Federal Financial Report (SF- 425), a certification or summary of Project expenses and any other information required by MARAD; and (ii) a report comparing the Project's final work, schedule, and budget to the statement of work, schedule and budget set forth in the MARAD Grant Agreement. VDOT will provide to VPA the information needed for VPA to comply with the Project Closeout information reporting requirement set forth in the MARAD Grant Agreement.

- VI. **THIRD PARTY PROCUREMENT:** VDOT must follow all third-party procurement requirements applicable to projects funded using MARAD Grant Funding and communicated to VDOT by VPA. VPA shall serve as liaison with MARAD and shall be responsible for communicating issues and/or questions relating to MARAD procurement and contracting requirements raised by VDOT and shall obtain information, satisfactory responses, and resolution from MARAD. VDOT shall not be responsible and VPA shall hold VDOT harmless for any Project delays, and/or any resulting MARAD Grant funding losses attributable to Project delays resulting from delayed or inaccurate information and/or delayed resolution of procurement and/or contracting issues from MARAD or VPA.
- VII. **AMENDMENT:** No amendment to this Agreement will be effective unless it is in writing and signed by both Parties.
- VIII. **MISCELLANEOUS:** The duties and obligations of VPA and VDOT pursuant to this Agreement are subject to appropriation by the General Assembly and allocation by the Commonwealth Transportation Board and the availability of funding for the Project.
- IX. **PARTIES SUBJECT TO MARAD GRANT AGREEMENT:** Other than the modified dates provided in Section II above, this Agreement shall be subject and subordinate to the MARAD Grant Agreement attached hereto and incorporated by reference herein, and to all of its terms, covenants, conditions, provisions and agreements, except as otherwise set forth in this Agreement. The Parties shall adhere to the requirements of the MARAD Grant Agreement in their performance of this Agreement.

[Signatures follow on next page]

The Parties have caused this agreement to be executed, each by its duly authorized officer as of the day, month and year set forth below.

VIRGINIA DEPARTMENT OF
TRANSPORTATION

VIRGINIA PORT AUTHORITY

Signature

Signature

Title

Title

Date

Date

DRAFT

Commonwealth Transportation Board (CTB)

Decision Brief

Delegation of Authority for the Commissioner of Highways to Enter into Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating to Funding and Administration of the Rockland Road Improvement Project (UPC#112945)

Issue: VDOT seeks from the Commonwealth Transportation Board (CTB) approval of and authority for the Commissioner to enter into an Interagency Agreement between VDOT and the VPA for funding and administration of a rail/highway grade separation and intersection realignment project at Route 658 (Rockland Road) and the Norfolk Southern Railroad tracks near VPA's Virginia Inland Port facility (the "Project") in Warren County. The VPA was awarded a BUILD Grant for the Project by the Maritime Administration and because VDOT is administering the Project, VPA and VDOT must enter into an agreement so that Grant funds may be used to reimburse VDOT for work on the Project.

Facts:

- The Virginia Inland Port (VIP) is an intermodal container transfer facility in Front Royal, Virginia (Warren County) owned by VPA.
- The Project will provide for a grade separated interchange near the VIP consisting of a bridge 220 feet long and 42 feet wide, with (2) 12-foot travel lanes and (2) 8-foot paved shoulders. This bridge would be tall enough for double-stacked freight containers to pass underneath and long enough to accommodate a future third track. Improvements are also planned for the roadway approaches on Route 658, Route 705 (Fishnet Boulevard), and nearby entrances.
- In the existing condition, vehicles must stop at the intersection multiple times per day for indefinite periods of time due to train activity. The Project's grade-separated crossing over the railroad tracks would eliminate the wait time for these vehicles
- VPA sought, and was awarded, a FY 2018 BUILD Transportation Discretionary Grant from MARAD for the Project and has requested that VDOT administer the Project. Accordingly, VDOT and the VPA have developed an agreement that sets forth the responsibilities of the parties relating to administration and funding for the Project, which

CTB Decision Brief

Delegation of Authority for the Commissioner of Highways to Enter into an Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating to Funding and Administration of the Rockland Road Improvement Project (UPC#112945)

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agreement is required in order for MARAD Grant funds to be used to reimburse VDOT for work performed on the Project.

- Section 33.2-214(C) of the Code of Virginia authorizes the Commonwealth Transportation Board to enter into agreements with local districts, commissions, agencies, and other entities, such as the VPA, created for transportation purposes.

Recommendations: VDOT recommends that the CTB delegate to the Commissioner the authority to execute the Agreement with VPA, attached hereto as Exhibit A, relating to the funding and administration of the Rockland Road Improvement Project, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary.

Action Required by CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: The Commissioner will be authorized to execute an Agreement between VDOT and VPA as described above, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary.

Options: Approve, Deny or Defer