

**MEMORANDUM OF AGREEMENT (MOA)
FOR PAVEMENT AND REHABILITATION PROJECT PROGRAM
AMERICAN WITH DISABILITIES ACT AND RIGHT OF WAY CERTIFICATION COMPLIANCE BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION DELMAR DIVISION DELAWARE OFFICE (FHWA)
AND
THE DELAWARE DEPARTMENT OF TRANSPORTATION (DelDOT)**

Whereas, the Pavement & Rehabilitation Program (P&R Program) is critical to maintaining Delaware's roadways in a state of good repair; and,

Whereas, the P&R Program has historically been and primarily is a Non-Capital maintenance activity; and,

Whereas, the Americans with Disabilities Act (ADA) has expanded the scope of maintenance program projects for treatments that are considered to be alterations of the road surface, to require state and local governments to ensure that persons with disabilities have access to the pedestrian routes in the public right of way, and provide improvements to pedestrian facilities within and outside the limits of existing roadway pavements as part of those projects; and,

Whereas, the P&R Program includes such activities as defined in the "Department of Justice/Department of Transportation Joint Technical Assistance on Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing" and the corresponding glossary of terms (Exhibits 1 and 2, attached); and,

Whereas, the annual P&R Program includes paving locations statewide, which are grouped into multiple projects; with those budgeted for FY 2012-2014 in various phases of development from scoping through active construction; and,

Whereas, the P&R Program represents a significant portion of the annual DelDOT work program; and,

Whereas, compliance with the ADA may trigger the need for required typical project development activities, as applicable, for and including the acquisition of property interests necessary for right of way (R/W) to construct ADA compliant curb ramps, their supporting appurtenances such as pedestrian signals, relocate utilities/signage/signalization, make safety improvements or perform other project work; and,

August 6, 2014

Whereas, acquisition of the necessary property interests for R/W to accommodate curb ramps and pedestrian signals, relocation of utilities/signage/signalization, safety improvements or other project work must be done in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Act (Uniform Act) of 1970, as amended; and,

Whereas, compliance with the Uniform Act will ensure the fair and equitable treatment of Delaware's citizens in the acquisition of property interests for R/W necessary for P&R projects; and,

Whereas, the FHWA recognized procedural deficiencies in DelDOT's P&R Program for typically required project development activities for and including acquisition of R/W during the project development process, and has sought to compel DelDOT to improve these processes for R/W acquisition to be in compliance with 23 CFR §635.309 to eliminate those deficiencies and preserve Delaware's eligibility to receive federal funding for the P&R Program; and,

Whereas, new procedures improving compliance with 23 CFR §635.309, the Uniform Act and the ADA are welcomed by DelDOT, and important to the continuous process improvement of the P&R Program; and,

Whereas, this MOA acknowledges FHWA's and DelDOT's intent that the development of currently scheduled P&R Projects should not be interrupted, while the process is being improved.

Now therefore, in consideration of their mutual interest to enhance consistency in coordination, communication, and collaboration between their agencies, and compliance with federal law, FHWA and DelDOT do hereby agree to the following terms and conditions:

I. Intent & Purpose

This MOA will serve to memorialize a process that brings the P&R Program into compliance with federal law while facilitating a streamlined project development process commensurate with the need of DelDOT to continuously and efficiently manage and maintain Delaware's pavements in a state of good repair. This will be accomplished through short-term exceptions utilizing Level 3 R/W project certifications, and requirements for long-term compliance with the requirements and provisions of the ADA, the Uniform Act and 23 CFR §635.309, ultimately resulting in Level 1 R/W certification for all P&R projects.

II. Exception Procedures

A. For currently scheduled P&R Projects, FHWA will:

1. Grant specific exceptions to the stipulations for Level 3 R/W certifications shown in 23 CFR §635.309 to allow currently scheduled P&R projects to move forward where the necessary land and/or property interests for the project have not been identified or acquired. These specific projects are listed in the attached spreadsheet (Exhibit 3) highlighted in blue or green.
2. Allow DeIDOT to utilize a separate contract to complete ADA compliance construction work on projects.
3. Not participate in any additional project costs resulting from non-availability of R/W.

B. For currently scheduled P&R Projects, DeIDOT will:

1. Continue to address each condition for a Level 3 certification shown in 23 CFR §635.309 in its certification submitted to FHWA for approval, and include the date project construction is scheduled to be complete.
2. Clearly state in the advertisement for construction contract bid and award any parcel where the contractor cannot perform work on any item that impacts land and/or property interests where DeIDOT does not have legal right of occupancy and use.
3. Expedite completion of all required typical project development for and including the R/W activities within the project construction schedule, and issue a Level 1 certification when the R/W activities are completed.
4. Not utilize federal funding for any R/W activities, including but not limited to acquisition of any land and/or property interests needed for P&R projects.
5. Within one (1) year from the end of the project's construction schedule, complete all construction work needed for compliance with ADA requirements, including utility/signage/safety/signalization or other project work that cannot be completed due to non-completion of typical pre-advertisement project development for and including R/W activities.
6. Document the completion of the ADA requirements, utility/signage/safety/signalization or other project work where a separate contract is utilized and notify FHWA by reporting quarterly to the FHWA Area Engineer and FHWA Realty Specialist all the work completed under a separate contract referencing the project number the work was completed under and the original project number the work is related to.

C. For currently unscheduled P&R Projects, DelDOT will:

1. Develop a process and procedures (p/p) for all currently unscheduled P&R projects (as shown highlighted in yellow on the attached spreadsheet) to either complete all typical pre-advertisement project development for and including R/W activities under a separate contract prior to the P&R project advertisement, **OR** incorporate those activities into the associated project development for completion under the requirements and provisions of 23 CFR §635.309 prior to project advertisement.
2. Complete all typical pre-advertisement project development for and including R/W activities where necessary for completion of ADA requirements and relocation of utilities/signage/ signalization, safety improvements or other project work, by separate contract before advertisement.
3. Meet the requirements specified in 23 CFR §635.309 for a Level 2 or Level 3 R/W certification if the requirements for a Level 1 certification cannot be met prior to advertisement.
4. Submit the p/p to FHWA for approval at a minimum of 30 days prior to initiating project development for the P&R Program projects for FY 2015.
5. Meet the requirements of the approved p/p for all FY 2015 and future P&R projects not shown on the attached spreadsheet.
6. Complete construction of ADA required facilities, relocation of utilities/signage/signalization, safety improvements or perform other project work in relation to these as part of the P&R construction contract, or by separate contract for completion in tandem with the applicable P&R project schedule.

D. For currently unscheduled P&R Projects, FHWA will:

1. Review the p/p when submitted by DelDOT.
2. Review currently unscheduled project R/W certifications at the time they are submitted.

III. Time Extensions

Should DelDOT require an extension of time to meet conditions of a previously approved Level 3 R/W certification, DelDOT shall send written justification for the extension and support for a realistically substantiated date for physical occupancy and use of the property interest on or before expiration date of the condition in order for FHWA to consider the request.

IV. Applicability

This MOA does not negate or preclude the requirements of any other enacted legislation, or regulation affecting the highway project development or construction processes.

V. Amendment Procedures

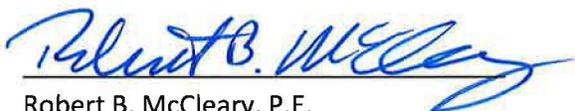
Either party to this MOA may request that it be amended, whereupon the parties will consult to consider such amendment. All changes shall be made in writing and signed by both parties.

VI. Effective Date

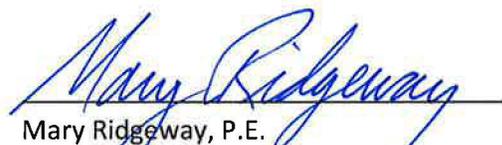
This MOA goes into effect with signature and date of both parties.

IN WITNESS WHEREOF, the FHWA and DeIDOT have affixed their signatures on the dates listed below indicating their desire to implement the terms of this MOA.

FOR THE DELAWARE DEPARTMENT OF TRANSPORTATION

 _____ 9/5/14
Robert B. McCleary, P.E. Date
Chief Engineer
Delaware Dept. of Transportation

FOR THE FEDERAL HIGHWAY ADMINISTRATION DELMAR DIVISION – DELAWARE OFFICE

 _____ 9/5/14
Mary Ridgeway, P.E. Date
Division Administrator
Federal Highway Administration
DelMar Division – Delaware Office