

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
and
STATE OF MAINE
DEPARTMENT OF TRANSPORTATION**

**AGREEMENT
FOR THE
STEWARDSHIP AND OVERSIGHT
OF THE
FEDERAL-AID PROGRAM**

**FEDERAL HIGHWAY ADMINISTRATION
AND
MAINE DEPARTMENT OF TRANSPORTATION**

**FEDERAL-AID HIGHWAY PROGRAM
STEWARDSHIP AND OVERSIGHT AGREEMENT**

I. PURPOSE AND SCOPE

This Agreement between the Maine Department of Transportation (MaineDOT) and the Federal Highway Administration Maine Division (Division) sets forth the roles, responsibilities and expectations of both parties in the administration and oversight of Federal-aid highway projects and programs in the State of Maine. As a condition of accepting Federal-aid highway funds, MaineDOT agrees to follow all applicable project and program requirements and understands and agrees that appropriate flexibility is concurrent with accountability.

23 USC §106 Project Approval and Oversight provides MaineDOT and the Federal Highway Administration Maine Division (Division) flexibility to share stewardship and oversight responsibilities for the Federal-aid highway program.

The purpose of this Agreement is to utilize the flexibility allowed by *23 USC §106*, to streamline program delivery and to better document stewardship of the Federal-aid highway program in Maine. The Agreement builds on the partnership that has evolved through daily administration of the program. It recognizes the need to define both agencies' roles, responsibilities and expectations. FHWA seeks to assist MaineDOT in spending Federal-aid funds appropriately and in the public interest. Toward that end, the Division will make use of available regulatory flexibility when in the public interest. The Division commits that it will provide an explanation of the rationale and decision-making process when flexibility does not exist.

The MaineDOT and the Division agree that the Federal-aid highway program is a State Administered-Federally Assisted program and that the achievement of national and state goals depends on MaineDOT's ability to manage the program. Both agencies also understand that the Federal Highway Administration is accountable to Congress and the public for the stewardship of Federal-aid funds and that the Division cannot delegate its overall responsibility for the Federal-aid highway program in Maine. This Agreement does not preclude the Division access to and review of Federal-aid projects at any time, and does not replace the provisions of Title 23 U.S.C.

The MaineDOT and the Division agree to adhere to the provisions and responsibilities included herein. The MaineDOT and the Division further agree to carry out their responsibilities in a cooperative spirit and to commit the resources needed to effectively implement this Agreement. Both agencies acknowledge their joint responsibility for the administration of the Federal-aid highway program. In addition, MaineDOT and the Division agree that timely identification and sharing of potential issues and timely responses are required for efficient operations.

To support this Agreement, enhance the efficiency of operations, and to further both agencies'

stewardship in pursuit of missions and goals, the Partnership Agreement defines and details the operational processes and procedures by which we conduct business. This Partnership Agreement covers stewardship and oversight of program areas, including: planning; environment; design; right of way; bridge; civil rights; safety; construction, materials, and contract administration; and full oversight projects. Both agencies' roles and responsibilities are detailed in each section. The Partnership Agreement serves as a companion document to this Agreement, however, it may be modified as mutually deemed necessary without altering this Agreement.

The MaineDOT agrees that in assuming certain Title 23 approval authorities, it will ensure that projects are developed and implemented in full compliance with Federal requirements and that corrective action will be taken when actions and approvals are found to be in non-compliance with applicable Federal requirements. The Division is available for consultation in such matters or may initiate program review and evaluation efforts at its discretion.

The MaineDOT recognizes its responsibility and accepts authority for managing Federal aid funds for much of the program. Inherent in this assumption is that the MaineDOT accepts the additional risk commensurate with its authority. Non-compliance with Federal requirements can have consequences in terms of Federal-aid participation. These consequences are usually determined on a case by case basis, but a few basic guiding principles are available:

- MaineDOT determines which projects it wishes to pursue for Federal-aid participation; the Division determines eligibility.
- When MaineDOT complies with Federal laws and regulations and its own controls (Standard Specifications, billing systems, etc.) Federal reimbursement is typically provided.
- Federal reimbursement is only allowable under authority provided by Congress. This authority is expressed through legislation or implementing regulations. When conditions of legislation or regulations are not satisfied on a particular project or program, the authority to use Federal funding is lost. Non-participation is not a punitive action.

This Agreement supersedes the "Agreement for the Partnering and Shared Oversight of Federal-Aid Projects", which was signed on May 19, 1999 and amended on August 4, 2004.

II. DEFINITIONS

Stewardship – The efficient and effective management of the public funds that have been entrusted to the MaineDOT and the Maine Division.

Oversight – The act of ensuring that the Federal-aid highway program is delivered consistent with laws, regulations, and agency policies.

Full Oversight Projects – Projects that require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification, contract awards, inspections, and final acceptance of Federal-aid projects on a project by project basis.

Delegated Projects – Projects that do not require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification, contract awards, inspections,

contract modifications and final acceptance of Federal-aid projects on a project by project basis. This term supersedes the term “exempt project” used in previous agreements.

Final Voucher – A final voucher represents the final claim, submitted by the State for a single completed project accepted by the FHWA. The approval of the final voucher does not eliminate the FHWA's right to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

Project Agreement – A contractual obligation of the Federal Government for the payment of the Federal share of project costs. The agreement will include a description of the project, the Federal-aid project number, the work covered, total cost and amount of Federal-aid funds, the Federal share of funds, signature of State and Federal officials and any other provisions set out by 23 U.S.C. 106 and or 23 CFR.

III. PROGRAM OVERSIGHT

The Federal Highway Administration is implementing risk management concepts nationally. Each year, the Division conducts a risk assessment to determine the areas and the level of risk to the Federal-aid highway program in Maine. The Division will coordinate the results of the assessment with the MaineDOT and will use the results to guide stewardship and oversight activities. The Division will use the most current version of the FHWA Risk Management Framework guidance.

The Division will perform process reviews in areas that rank high on risk assessments. Although the Division may undertake reviews independently, MaineDOT will generally be asked to participate. Other FHWA Divisions, the Resource Center, or Headquarters may also provide team members. The MaineDOT and the Division will each identify a sponsor for the review.

The FHWA Administrator issued FHWA Order 4560.1a establishing the Financial Integrity Review and Evaluation (FIRE) Program as a review and oversight program that each Division Office is required to perform in support of FHWA’s annual certification of internal and financial controls. There are five components of the FIRE Program that jointly involve MaineDOT and the Division Office. (1) A financial management review will be conducted annually. The selection of the review will be based on the risk assessment that is completed every year. (2) The risk assessment portion of the FIRE Program has been integrated into the overall Risk Management Framework. (3) A quarterly review of inactive projects in accordance with 23 CFR 630 Subpart A will be completed. The Division Office will work with MaineDOT to determine the validity of the obligated amount for all projects that appear on the Financial Management Information System (FMIS) report Q40. (4) Federal-aid billing reviews will be done periodically to verify eligibility and accuracy of costs billed to FHWA. (5) The annual Single Audit with MaineDOT’s corrective action plan for any findings will be submitted by MaineDOT to the Division Office for review. A management decision will be issued from the Division Office Financial Manager addressing each FHWA program related finding.

The Division is prepared to provide, with its own staff or from elsewhere in FHWA, technical assistance to MaineDOT or local transportation agencies. Technical assistance activities will be decided on a case-by-case basis in consultation with MaineDOT, other partners and the Division. The Division will continue to focus time and effort on improving processes and procedures, in cooperation with the MaineDOT.

IV. MAINEDOT AND DIVISION PROJECT RESPONSIBILITIES:

This Section sets forth roles and responsibilities for Full Oversight and Delegated projects.

Full Oversight Projects:

Division responsibility The Division retains review and approval authority for Title 23 actions pertaining to scoping/planning, design, plans, specifications, estimates, right-of-way certification, contract awards, inspections, contract modifications and final acceptance of Federal-aid projects. The Division retains review and approval authority for non-Title 23 requirements including, but not limited to planning, environmental, right of way, wage rates and civil rights laws. The Division will conduct its oversight through regular project monitoring and involvement.

Projects will be selected for Full Oversight based on the following:

1. Any project requiring Full Oversight by virtue of such designation by law or regulation will be selected for Full Oversight.
2. Projects will generally be selected for Full Oversight based on mutual agreement with due consideration given to cost, project complexity, unique features, and/or public and environmental sensitivity.
3. FHWA will also conduct program-level oversight of design and construction by selecting project managers who will have all of their projects subject to Full Oversight activities for a given year; this will happen in both the design and construction phases.

Notwithstanding the above recognition that projects and project managers will be selected by mutual agreement, both agencies acknowledge that FHWA does have overall responsibility for the Federal-aid program and may select projects at its sole discretion.

Full Oversight activities are shown in the following table:

	Item	Citation	Maine DOT Responsibility	Division Responsibility
Phase I: Project Level Planning and Environment	Project Authorization and Agreements (includes HBP eligibility)	23 CFR 630A 23 CFR 650D	Request Authorization; Initiate Project Agreement	Determine funding eligibility; Resolve any eligibility issues
	Alternatives	23 CFR	Develop	Review and concur

	Development & Design Standards	620.103 (b) 23 CFR 625.3 23 CFR 771	reasonable alternatives based on AASHTO design criteria and other environmental considerations	in proposed design criteria and alternatives
	Project Level Planning and Environment Development	23 CFR 771 23 CFR 1.5	Coordinate with the Division during project development including scoping, planning, and meetings	Coordinate and review project level criteria with Maine DOT
Phase II: Design	Design Development	23 CFR 1.5	Notify FHWA of design meetings, public meetings, and public hearings	Participate in project level meetings to address FHWA and Maine DOT project level concerns
	PDR and PS&E Packages	23 CFR 625.3 (f) 23 CFR 630 Subpart B	Develop <u>final</u> design in accordance with standard specifications and applicable design standards; Develop special provisions; Request concurrence in PS&E package from FHWA	Review and concur in design exceptions, special provisions, proprietary products, Buy America, and engineer's estimate
	Innovative Contracting	23 CFR 636; SEP 14	Coordinate with FHWA Division Office on a case by case basis	Coordinate with Maine DOT Office on a case by case basis
	Authorization for Construction (prior to advertising)	23 CFR 630 Subpart I 23 CFR 635 Subpart C	Complete and submit ROW and utility certifications, complete NEPA	Review and ensure ROW utilities certification, ensure NEPA is completed (include environmental commitments)
Phase III: Construction	Construction Development	23 CFR 1.5	Coordinate with FHWA on	Attend project-level meetings, as

			Preconstruction meetings, pre placement meetings, etc. Provide FHWA an email copy of all minutes.	appropriate.
	Traffic Control Plans	23 CFR 630 Part I	Provide copy to the FHWA engineer for approval.	Review and approve project-level traffic control plan.
	Major Contract Changes	23 CFR 635.120	Obtain advance approval for all major changes from the FHWA engineer.	Make determination on acceptability of proposed changes.
	Contract Claims	23 CFR 635.124	Coordinate with FHWA engineer on all contract claim resolutions. Obtain FHWA approval for any agreements.	Make determination on acceptability of proposed claims resolutions.
	Construction Inspections	23 CFR 635	Participate with FHWA engineer on construction inspections.	Conduct and document a minimum of two inspections per project per season.
	Quality Control Plan Approval	23 CFR 635 and 637	Obtain FHWA approval for the Plan prior to construction activities.	Make determination on acceptability of Quality Control Plan.

Delegated Projects:

MaineDOT Responsibility The MaineDOT assumes review and approval authority for Title 23 actions pertaining to design, plans, specifications, estimates, right-of-way certification, contract awards, inspections, contract modifications and final acceptance of Federal-aid projects. The MaineDOT agrees that it will comply with the requirements of all applicable Federal laws on Federal-aid projects in Maine.

Specific MaineDOT responsibilities for delegated projects include:

- Approve Design Exceptions

- Approve PS&E
- Request Project Agreements, Modifications and Final Vouchers through FMIS
- Concur in Award
- Approve Consultant Agreement
- Approve Utility and Railroad Agreements
- Terminate Federal-aid Contract
- Interim and Final Construction Inspections
- Approve Contract modifications
- Contract Claims Resolution
- Oversee Sampling and Testing
- Accept Project
- Consult with FHWA in Public Interest Findings for State Force Account Projects
- Consult with FHWA in Public Interest Findings for Negotiated and Sole Source Contracts
- Consult with FHWA in Public Interest Findings for Proprietary Items
- Consult with FHWA in Public Interest Findings for State Furnished Materials
- Consult with FHWA in Contract Claims Settlements that are precedent-setting or in excess of \$100,000.

Division Responsibility The Division has delegated review and approval authority for Title 23 actions pertaining to design, plans, specifications, estimates, right-of-way certification, contract awards, inspections, contract modifications and final acceptance of these projects. The Division continues to retain review and approval authority for non-Title 23 requirements including, but not limited to planning, environmental review, right of way acquisition, wage rates, and civil rights laws.

The Division's oversight of delegated projects will typically be through program level activities, such as Process Review/Program Evaluation (PR/PE), Continuous Process Improvement (CPI), etc. However, the Division may involve itself in any Federal-aid project when actions and approvals are found to be in non-compliance with applicable Federal requirements. The MaineDOT may also request Division assistance.

Specific Division responsibilities for delegated projects include:

- Approve Breaks in Interstate Access Controls
- Approve STIP Amendments
- Approve NEPA Documents and Section 4f and Section 106 Actions
- Approve Special Experimental Project (SEP 14) Innovative Contracting Procedures
- Approve Project Agreements, Modified Project Agreements, and Final Vouchers
- Obligate Federal Funds
- Approve Payments for bond and other debt instrument financing, *23 USC 122*
- Determine when USCG permit is not required
- Approve Buy America Waivers

V. FUNDING

For all projects, the MaineDOT will request the obligation of Federal funds from the FHWA and submit information required to support the obligation through the Financial Management Information System (FMIS). The FHWA will promptly obligate the funds and set the date of Federal participation for the work authorized. In all cases, FHWA approval of the project authorization request and obligation of funds must occur before the work begins. The funds obligated should be adequate to cover all work authorized.

VII. LOCALLY ADMINISTERED PROJECTS

23 USC §106 Project Approval and Oversight states that the States shall be responsible for determining that subrecipients of Federal funds under Title 23 have adequate project delivery systems for projects and sufficient accounting controls to properly manage Federal funds. The US Secretary of Transportation through the FHWA is charged to periodically review the monitoring of subrecipients by the States. In addition, the Division will periodically assess and report on the effectiveness of the MaineDOT processes and procedures for locally administered projects (LAP) to ensure they are carried out in accordance with Federal requirements. The Division will incorporate projects administered by local agencies into the review scope of all program reviews, as appropriate.

The MaineDOT agrees to maintain and implement the necessary processes and procedures to ensure locally administered projects are reliably carried out in accordance with Federal requirements. The MaineDOT also agrees that nothing contained herein shall relieve it from accountability for compliance with Federal laws and regulations with respect to the expenditure of Federal-aid highway funds in the State of Maine, including those funds passed through to local governments.

The MaineDOT understands that the Division will claim repayment from MaineDOT, rather than the subrecipient, for items of non-complying work that are determined to be ineligible. The MaineDOT may at its discretion seek repayment from the subrecipients.

VIII. RECORD RETENTION

MaineDOT will retain project records to support all activities including the estimated cost of construction. Such records shall be available for review and retained for a period of 3 years after payment of the final voucher. Electronic records are acceptable to meet documentation retention requirements.

IX. BUSINESS STANDARDS

Face-to-face, meetings, email, and telephone communication will be frequent and routine. When the Division provides an “official” response via email, it will be noted in the email and MaineDOT will be asked to keep a copy of that email in the file for documentation purposes. Letters may be sent when the issue is significant enough to warrant and they will be used to transmit all process

review reports and other reports/items of a non-routine nature.

X. TERMINATION

This agreement will be in force upon signing by MaineDOT and the Division and will remain in effect until either party terminates it. In the event that either party wishes to terminate the Agreement, the termination action will be documented either once a new Agreement is executed, or when interim provisions are implemented that will remain in effect until such time as a new Agreement is executed.

Division Administrator
Federal Highway Administration

Date: _____

Commissioner
Maine Department of Transportation

Date: _____