

**AGREEMENT BETWEEN
THE INDIANA DEPARTMENT OF TRANSPORTATION
AND THE
FEDERAL HIGHWAY ADMINISTRATION - INDIANA DIVISION
FOR STEWARDSHIP AND OVERSIGHT
OF FEDERAL-AID FUNDED PROJECTS**

I. Purpose

Congress has charged the Federal Highway Administration (FHWA) with administering the Federal-Aid Highway Program under Title 23 United States Code (U.S.C.), and other associated laws. In addition, FHWA's responsibility for administering the Federal-Aid Highway Program has been clearly outlined in the following legislation: the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991; the Transportation Equity Act for the 21st Century (TEA-21) of 1998; and, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005. These laws allow States to assume certain delegated responsibilities for FHWA in certain National Environmental Policy Act approvals and in the design, construction, award and inspection of certain Federal-aid projects.

The FHWA and State Departments of Transportation and other highway program recipients have administered the Federal-Aid Highway Program jointly for many years. These parties have been tasked with carrying out the FAHP efficiently and effectively to help accomplish national and mutual or local goals – to maintain a national highway network, improve its operation and safety, and provide for national security while protecting and improving the human and natural environment. This Stewardship/Oversight Agreement formalizes these delegated responsibilities and provides the basis for the stewardship and oversight of Federal-Aid funds in Indiana.

“Stewardship” is defined as the efficient and effective management of the public funds that have been entrusted to FHWA and subsequently to the Indiana Department of Transportation (INDOT) and through INDOT to subrecipients, such as Local Public Agencies (LPAs) and Metropolitan Planning Organizations (MPOs). FHWA's stewardship involves all activities necessary to deliver the Federal-Aid Highway Program, such as leadership, technology deployment, technical assistance, problem solving, program administration and oversight. Stewardship efforts include oversight and approval actions, as well as many day-to-day actions that are routinely performed by either FHWA or INDOT to ensure that the FAHP is administered appropriately. FHWA stewardship activities, beyond oversight, include continuous process improvement initiatives, technical assistance, technology deployment, performance measurement, project involvement activities, and sharing best practices.

“Oversight” is a subset of stewardship and is defined as the act of ensuring that the Federal-Aid Highway Program is delivered consistent with laws, regulations and policies. FHWA oversight is conducted through a wide range and variety of mechanisms. These include stewardship reviews, risk assessments, program management activities, and project involvement activities.

When INDOT assumes project approval responsibilities, it must have mechanisms in-place to assure that all project actions will be carried out on FHWA’s behalf, according to laws, regulations, and policies and be able to produce evidence of compliance at any time. This applies to projects administered by INDOT, LPAs or other subrecipients. These mechanisms include the agreement required under Section 106, Title 23, United States Code, processes, procedures, and program manuals. FHWA will periodically conduct verification activities to assure that INDOT’s implementation of the FAHP conforms to laws, regulations and policies, that INDOT is carrying out its roles and responsibilities accordingly and that LPAs also meet these requirements. The FHWA oversight and independent verification activities are similar to the quality assurance portion of quality control/quality assurance programs prevalent in many construction and materials programs. FHWA will evaluate the risks/benefits in the implementation of federally funded programs and establish activities and reviews to develop confidence that INDOT’s mechanisms and activities are sufficient.

TEA-21 amended 23 U.S.C. §106 to provide considerable flexibility to the States in assuming increased responsibilities for the oversight of projects funded under the Federal-Aid Highway Program. However, while INDOT may assume project approval and oversight responsibilities for certain projects, FHWA ultimately remains accountable for ensuring that Federal-aid highway funds are expended consistent with established requirements.

At the end of the federal fiscal year, FHWA will utilize the outcomes of FHWA and Joint FHWA/INDOT activities and reviews to make and publish a determination of INDOT’s substantial compliance with Federal laws, regulations, policies and procedures.

II. Roles and Responsibilities of INDOT and the FHWA Indiana Division

To facilitate the implementation and accountability of this agreement, INDOT and FHWA will identify and maintain a point(s) of contact for carrying out the responsibilities of this agreement. In addition, the determination of a project(s) oversight responsibility will be made through a cooperative process between FHWA and INDOT. When new projects are programmed, INDOT Project Managers will coordinate with the appropriate FHWA Project Management Team Leader(s) to determine the oversight level of responsibility for the projects being programmed. This coordination will include a review of the previously determined oversight projects to assure accuracy and to determine the level of oversight of all new projects. Once the oversight determination has been made, a project shall be identified as FHWA Oversight or INDOT Oversight in the INDOT project management system. INDOT agrees to provide FHWA with read-only rights to the

INDOT project management system and allow FHWA to monitor development of FHWA and INDOT oversight projects.

When a project is selected for FHWA oversight, generally it will occur from the beginning of design through construction. Occasionally, a project may have oversight in only one phase (design or construction) of a project where there exists a Federal interest specific to that phase. This determination will be on a case-by-case basis at the time of the oversight responsibility meeting. For most of the projects, oversight will be defined as follows:

- a. **Interstate Projects** - On New Construction/Reconstruction, Resurfacing, Rehabilitation or Restoration (4R) projects (including Non-Preventative Maintenance Projects) with a total construction cost of greater than \$1 million, all project activities shall be developed with full FHWA oversight and approval according to Section 106 of Title 23 U.S.C. On all 4R projects with a total construction cost less than \$1 million, INDOT will assume all responsibilities in accordance with Section 106 of Title 23; however, FHWA retains preliminary plan approval of Type, Size and Location (TS&L) responsibility for all major and unusual bridges and structures on the National Highway System (NHS) as defined in FHWA Order 5520.1. For Resurfacing, Rehabilitation or Restoration (3R) projects on the Interstate with a construction cost greater than \$5 million dollars, INDOT will consult with FHWA to determine the appropriate level of oversight responsibility. All 3R projects on the Interstate less than \$5 million dollars, INDOT will assume all responsibilities in accordance with Section 106 of Title 23; however, FHWA retains preliminary plan approval of Type, Size and Location (TS&L) responsibility for all major and unusual bridges and structures on the National Highway System (NHS) as defined in FHWA Order 5520.1.
- b. **Other NHS Projects (not on the Interstate System)** – INDOT will assume all oversight responsibilities in accordance with Section 106, of Title 23 U.S.C. This applies to all design activities, Plan, Specification & Estimates (PS&E) approvals, concurrence in awards, and all construction inspection and maintenance activities. This precludes the need for any FHWA approval or concurrence in these stages; however, FHWA retains preliminary plan approval (TS&L) responsibility for all major and unusual bridges and structures on the NHS as defined in FHWA Order 5520.1. In addition, FHWA must still carry out its responsibilities for those areas outside of Title 23 U.S.C. and will conduct verification reviews using a risk management approach.
- c. **Non-NHS Projects** – INDOT will assume all oversight responsibilities for the design, award, construction, and inspection of projects not on the NHS. Non-NHS projects must comply with State laws, regulations, and standards, in lieu of many Title 23 U.S.C. requirements. Title 23 U.S.C. requirements that are applicable to **all** Federal-aid funded projects include, but are not limited to, transportation planning, procurement of engineering and architectural professional services (only if funded with federal funds or non-federally funded but used as soft match for the federally funded construction phase), Davis-Bacon wage rates, advertising for bids, award of contracts, use of convict produced materials, Buy America provisions, non-preferential contracting, etc.

- d. **Local Public Agency (LPA) Projects** - INDOT is responsible for assuring that **all** LPA Federal-aid projects comply with **all** applicable Federal and State requirements. INDOT is not relieved of this responsibility even though the project may be administered by the LPA. In accordance with 23 CFR 1.11, if an LPA will be administering a Federal-aid project, INDOT is responsible for ensuring that the LPA is qualified and equipped to administer the project. INDOT will meet their stewardship and oversight obligations for LPA projects by providing technical assistance to all LPAs during project development to ensure that projects are advanced in full demonstrated compliance with all applicable Federal and State requirements and to review and inspect LPA projects on a sufficient frequency to verify that the projects are being constructed in full compliance with all applicable requirements and that bills submitted for payment are appropriate and justified. In addition, INDOT and the LPAs will ensure that sufficient documentation is available upon request at all times to substantiate compliance with all federal requirements. INDOT and FHWA will work together to develop processes and procedures for LPAs to ensure that they are aware of all project requirements and to jointly review such processes, procedures and projects on an agreed upon frequency using risk management techniques.
- e. **Emergency Relief Projects** – INDOT is responsible for identifying, inspecting, documenting and assuring that all Emergency Relief (ER) Projects comply with **all** Federal and State requirements. ER projects for permanent repairs are subject to the project oversight criteria found in this agreement and to the following two conditions:
1. Any “betterment” to be incorporated into the project, for which ER funding is requested, must receive prior FHWA approval.
 2. The FHWA Division Office reserves the right to conduct final inspections on all ER projects.
- f. **Intelligent Transportation System (ITS) Projects** – INDOT is responsible for ensuring that all projects (INDOT and LPA Projects) are developed consistent with approved regional architectures and all Title 23 U.S.C. requirements and INDOT will ensure that all ITS components are integrated, such as a regional traffic management center. INDOT will ensure that the FHWA Division Office is apprised and consulted for all ITS projects on the Interstate System.
- g. **Projects involving Innovative Contracting & Innovative Financing**
- All projects on the NHS incorporating innovative contracting or innovative financing are subject to eligibility requirements for the specific project and will be designated as FHWA oversight projects. These may include projects using Special Experimental Program-15 (SEP-15) waivers, Public-Private-Partnerships, TIFIA loans, SIB loans, or Toll Agreements.

h. Major Projects

Major projects are defined in SAFETEA-LU are divided into two categories: Total Cost from \$100 million to \$500 million and those with a total cost over \$500 million. The NEPA decision for each project defines the project scope, limits and cost for each category of project.

Projects Costing \$100 - \$500 million – For projects which INDOT may wish to use federal funds that have estimated total cost (in the year of expenditure dollars) between these thresholds, INDOT must develop an Initial Finance Plan prior to commencing with construction regardless of funding source demonstrating how these projects will be funded. INDOT must update the Initial Finance Plan annually and be able to produce the plan upon request at any time. These projects will be designated as FHWA oversight projects pursuant to the oversight determination process described above.

Projects Costing greater than \$500 million – For projects which INDOT may wish to use federal funds that have estimated total cost (in the year of expenditure dollars) greater than \$500 million, INDOT must develop Project Management Plans (PMP) for each phase of the project. In addition, INDOT must develop an Initial Finance Plan prior to commencing with construction and update the Initial Finance Plan annually and submit these plans to FHWA for approval. These projects will be designated as FHWA oversight projects regardless of the system on which they occur.

III. Methods of Oversight

Stewardship Review Program:

FHWA Stewardship Reviews are reviews conducted for improving processes and programs and for validation and verification of compliance with federal requirements. These reviews play an integral role in fulfilling FHWA's Stewardship and Oversight responsibilities. Stewardship Review topics are typically generated by the FHWA Division's Annual Program Assessment updates which includes Risk-Assessments of the various program elements. FHWA Division staff work together with INDOT program staff on completing these annual updates and assessments.

In July of each year, the FHWA Division will coordinate with INDOT leadership on joint FHWA/INDOT reviews. It is expected that these reviews will be completed during the federal fiscal year, beginning on October 1st and a summary report of all reviews will be sent to INDOT at the conclusion of each fiscal year.

The FHWA Indiana division's Stewardship Review Program has the following objectives:

1. Strategically choose reviews based on risk/benefit evaluations, which are completed as part of the annual FHWA program assessments.
2. Ensure that the Federal-aid highway program is delivered consistent with laws, regulations, and policies.
3. To continually improve the processes and procedures that create consistent and cost effective quality in Indiana's transportation system.
4. Facilitate technology transfer activities internally and externally, including ready to implement technologies, best practices and other innovations (e.g. creative financing, contracting methods, context sensitive solutions, and accelerated construction techniques).

The FHWA Stewardship Review Program will consist of two categories of reviews: FHWA Reviews and Joint Reviews.

1. FHWA reviews will be initiated and conducted by the Division Office staff and generally will focus on program level stewardship. These reviews may result in incremental changes to procedures or improve program efficiency. If significant issues are found, they may also lead to a follow-up Process Improvement Review, which may be conducted as a Joint Review with INDOT.
2. Joint Reviews are chosen and completed together with INDOT and generally will address more significant, crosscutting or statewide issues. Process Improvement Reviews will be the typical review type for these reviews.

The Stewardship Review Program coverage is applicable to Title 23 and non-Title 23 activities on all Federal-aid projects. Some example review types include:

1. Process Improvement Reviews – These are comprehensive reviews that seek to make major improvements to key processes. These reviews require a deeper level of analysis and more follow up. An example would be environmental or right-of-way streamlining efforts.
2. Program Reviews – These reviews are required by regulation, such as planning certification reviews, Unified Planning Work Program review, work zone field review and the National Bridge Inspection Standards review.
3. Special Program Reviews – These reviews are designed to evaluate some special area of a program or a high level review to examine the overall program to see if it is functioning well and to help focus on problem areas for more detailed future reviews where risk is high.
4. Quality Assurance Reviews (QARs) – These reviews are compliance oriented reviews and examine how quality control procedures are being used per control and guidance documents such as: 1) environmental

preparation manuals, 2) INDOT design manual, 3) bid/contract documents such as specifications and drawings, and 4) General Instructions to Field Employees (GIFE) for construction. INDOT and FHWA will work to establish a QAR Program of reviews on a regular cycle for the following program areas: Consultant Selection, Planning, Environment, Design, Right-of-Way and Construction. A minimum of five (5) QARs will be identified each year and the focus of reviews will be based on an assessment of risk and where improvements may be needed.

5. Problem Solving Reviews – These reviews are quick and specific reviews, usually based on project issues that arise, such as forensic reviews based on failures.
6. INDOT Reviews or Task Forces– These are reviews or efforts that INDOT will conduct for improvement or validation. FHWA Division Staff are generally available to assist on these types of reviews or efforts on an as-needed basis.

INDOT and FHWA acknowledge the need for ongoing improvement in the quality of their products and services and commit to conducting these reviews by dedicating sufficient personnel and resources for a thorough examination of the topics to be conducted. The results of Joint Reviews will be recommendations presented to INDOT and FHWA management for consensus on changes to be implemented and will be tracked to ensure that agreed upon recommendations are fully implemented.

Project Reviews:

FHWA will conduct periodic reviews of FHWA Oversight projects during the design and construction phases of project delivery. These will be documented in the form of memos and reports that are provided to INDOT when issues are identified that require corrective action. INDOT commits to conduct recurring reviews of INDOT Oversight projects including those administered by LPAs and provide reports of such reviews, including findings, recommendations and actions taken to FHWA as these reviews occur. FHWA will conduct reviews of LPA projects as part of the QAR program.

IV. Control Documents

Control documents, as described in Appendix “A” are documents that establish project development or project implementation procedures. INDOT is responsible for maintaining and updating these documents, however, FHWA has final approval authority over those designated as such in the appendix. In addition, the following applies to these designate documents:

- a. The most current versions of approved documents are used.
- b. The approved version of the control documents contained in Appendix “A” will be adhered to in the development and administration of federal-aid funded projects.

- c. The FHWA review and approval of changes to control documents is a program-level activity. The application and implementation of procedures established in the control documents will be reviewed on a program basis as part of the joint FHWA/INDOT process improvement review program.

V. Performance Indicators

The goals of the FHWA Indiana Division place special emphasis on the “Vital Few” goals of the FHWA...to improve safety, environmental streamlining and stewardship, and congestion mitigation. These three areas represent the shorter-term (3 to 5 year) tactical element of the FHWA Strategic Plan and reflect customer demands at the National level. The FHWA Indiana Division’s Annual Performance Plan provides a roadmap for the results we want to affect within a given year and over time. The following are outcome measures tracked by the FHWA Indiana Division:

- **Fatality rate**
- **Total fatalities**
- **Serious injuries**
- **Bridge clearance**
- **Security – redundancy plans**
- **Smooth pavements**
- **Deficient/obsolete bridges**
- **Percent vehicle miles traveled above desired level of service**
- **Environmental Document (EA & EIS) development time**
- **Expansion projects advanced in the STIP**
- **Successful technology deployment**
- **Corrective actions for Indiana MPOs**
- **Percent of projects in the STIP advanced**
- **Advance projects while assuring balance with natural and human environment**
- **Maintain desired cost of project delivery**
- **Inactive Obligations**
- **Professional capacity building**
- **Overall customer satisfaction**

INDOT will develop and track a core group of Organizational Performance Indicators (OPIs) that will be used to improve overall system performance and accountability for the organization. FHWA and INDOT will work together to develop consistent and measurable performance measures to the maximum extent possible. INDOT will assist FHWA in gathering data for FHWA measures as well as the INDOT OPIs.

INDOT utilizes the project management capabilities of their systems to track and measure progress toward meeting project delivery schedules. FHWA and INDOT will work to ensure that realistic project schedules are set and then work to meet those schedules by tracking those measures. INDOT will provide periodic reports to FHWA on the status of OPI and Project Schedule measures and collaborate on

methods to improve on meeting agreed upon goals.

VI. Delegated Program and Project Responsibilities

Appendix “B” contains project action responsibilities as they are applied to INTERSTATE/NHS (FHWA Oversight), INTERSTATE/NHS (INDOT Oversight), and NON-NHS projects. INDOT will verify that all required actions are met satisfactorily. In addition, the following program areas describe the expectations of both INDOT and FHWA in delivering these programs:

A. Planning & Programming

Planning and programming is the initiation stage of the project selection and development process. The INDOT Planning Oversight Committee (IPOC) process has been established to manage scope and budget project programming. FHWA will participate in the IPOC process as a non-voting member. Planning and programming is broken down into two distinct elements, both leading to the establishment of project scope, budget and schedule: Statewide planning and Metropolitan planning.

- Statewide Planning is the responsibility of INDOT and includes, but is not limited to the following: the INDOT Statewide Long-Range Plan, Indiana Statewide Transportation Improvement Program (INSTIP), Roadway Inventory (EXOR/GIS database), Mapping Program, Functional Classification, Urban Area Boundaries, National Highway System modifications, the Traffic Monitoring Program, Highway Statistics Program, and the Highway Performance Monitoring System (HPMS) Program. The FHWA Project Management Teams issue eligibility findings for the CMAQ and Transportation Enhancement programs and coordinate/assist discretionary programs such as Scenic Byways, Recreational Trails, etc. The Indiana Division Administration Team takes the lead in conducting Motor Fuel Tax and Heavy Vehicle Use Tax (HVUT) reviews, but it is INDOT’s responsibility to ensure that reported figures are reasonable and reconciled with the Indiana Department of Revenue (IDOR).
- Metropolitan Planning is the responsibility of the 14 MPOs that are supported and monitored by INDOT and the FHWA Division Project Management Teams. To ensure that a cooperative process occurs at the MPO level, INDOT will establish a presence at all MPO Policy Board and Technical Committee meetings and strive to become MPO Policy Board voting members. Transportation Management Areas (TMAs, areas over 200,000 population) are monitored through joint FHWA/Federal Transit Administration (FTA) Certification Reviews conducted every four years. Similar on-site Planning Reviews are also accomplished for non-TMA MPOs and will be conducted jointly by FHWA and INDOT. INDOT will work with the FHWA Planning/ Environmental Specialists for review/approval of the MPO Unified Planning Work Programs (UPWPs) to assure outstanding planning issues are addressed and key deadlines are

met.

In addition, FHWA is responsible for initiating formal air quality conformity consultation and issuing conformity findings/determinations on MPO Transportation Plans and Transportation Improvement Programs (TIPs) in non-attainment or maintenance areas consistent with the requirements of the Environmental Protection Agency (EPA)/DOT regulations. Project level conformity is demonstrated by INDOT within the context of NEPA documents. Amendments to Plans and TIPs that affect regional transportation emissions require new conformity determinations and findings to be made by the MPO and the FHWA respectively. INDOT will ensure that a conformity-finding letter is obtained from FHWA before TIPs/projects can be approved or amended into the Indiana Statewide Transportation Improvement Program (INSTIP).

FHWA and INDOT will ensure that the Indiana Long-Range Plan is financially reasonable using appropriate financial projections. In addition, MPO Long-Range Plans in TMAs must demonstrate fiscal constraint using appropriate financial projections, inflation factors and cost estimates in the appropriate year of expenditure dollars.

B. Environment

FHWA has a direct oversight role in assessing the impacts of actions affecting the environment in accordance with the National Environmental Policy Act (NEPA). FHWA and INDOT will work to ensure that all environmental factors are given full consideration along with engineering, social, and economic factors in program and project decision-making and are documented in the appropriate environmental documents that pertain to the projects under consideration. Under environmental stewardship, INDOT is responsible for the environmental analyses for all federally funded transportation projects in State of Indiana, including LPA projects. Through direct involvement or through project or program reviews, FHWA assures that appropriate evaluations are conducted, approval actions are timely, and public involvement is a major element of INDOT's environmental activities.

FHWA retains formal approval of all environmental documents. The FHWA Indiana Division Administrator retains approval authority of each Record of Decision (ROD), Draft Environmental Impact Statement (EIS), Final EIS, and Supplemental EIS. The FHWA Indiana Division Administrator has delegated approval authority for Section 4(f) evaluations, Environmental Assessment/Finding of No Significant Impacts (EAs/FONSIs), Re-Evaluations, Programmatic 4(f) Evaluations and Categorical Exclusions (CEs) to the FHWA Planning & Environmental Specialists for review and approval. Certain CE approvals have been delegated by agreement to INDOT and are the responsibility of INDOT to document and process.

C. **Finance**

INDOT is responsible for funds management and accountability for all federal-aid highway dollars that are apportioned and obligated in the State of Indiana. This includes maintaining financial systems, policies and procedures that provide for the accountability of these funds.

The FHWA Financial Integrity Review and Evaluation (FIRE) program requires the Division complete the following tasks each year to provide adequate documentation and support of its stewardship activities, as well as to provide the basis for its annual certification required by the Federal Managers' Financial Integrity Act of 1992, Sections 2 and 4. These tasks include:

- A Grants Financial Management Process Review
- An Improper Payments Transaction Review;
- A Review of Inactive Projects with no activity of one year and unexpended balances of \$500,000 or more, Inactive Projects with no activity of two years and unexpended balances of \$50,000 or more, and Inactive Projects with no activity of three years an any unexpended balances;
- An Administrative Review;
- Resolution of any Single Audit findings; and
- Any Follow-up Audit Findings made by the Office of Inspector General.

INDOT is responsible for providing documentation at the field and central office levels for completing these reviews. In addition, INDOT staff is responsible for ensuring that completed federally funded projects are closed out in a manner not to exceed the Inactive Project timeframes and that unexpended funds are deobligated and made available for other projects.

D. **Design**

INDOT is responsible for conducting or contracting design work associated with INDOT sponsored projects. In addition, INDOT is responsible for ensuring that all projects are designed in accordance with the applicable design standards pertaining to that project, including LPA projects. INDOT is responsible for ensuring that consultants are selected to conduct design work on INDOT and LPA projects based on qualifications-based principles contained in 23 CFR 172.

FHWA Transportation Engineers are responsible for design monitoring, review, and approvals for FHWA Oversight projects. Project reviews will take many forms including meetings with INDOT design staff and consultants (where applicable) to identify standards, discuss issues, review draft or completed portions of plans, and through field reviews (preliminary and final field check). INDOT Engineers are responsible for design monitoring, review, and approvals for INDOT Oversight projects, including those conducted by LPAs. FHWA and INDOT will cooperate in reviewing a

sufficient number of INDOT Oversight projects through the Stewardship Review process to ensure that all federal requirements are being complied with. In addition, FHWA and INDOT will develop and implement an acceptable oversight and monitoring approach for LPA project design work.

INDOT shall develop and submit for consideration all new or revised access justifications and design exception requests on the Interstate regardless of the funding source. FHWA will review such requests and respond to INDOT in a timely manner.

Included in design is the requirement for compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. INDOT and FHWA will ensure that all new construction projects that provide pedestrian facilities must incorporate accessible pedestrian features to the extent technically feasible, without regard to cost. In addition, INDOT will comply with the ADA and Section 504 by developing and updating a transition plan addressing the needs of persons with disabilities and then schedule the required pedestrian accessibility upgrades on State owned transportation facilities.

E. Right-of-Way (ROW)

The administration of the ROW function is primarily the responsibility of INDOT through the INDOT Office of Real Estate. This includes all aspects of the land acquisition process as follows: Abstracting, Appraising, Buying, Condemnation, Post Acquisition, Property Management, Records, Relocation, ROW Engineering, and State and Local Contracts. FHWA together INDOT ensure that Outdoor Advertising Control requirements are addressed and enforced.

All protective purchasing, hardship acquisition and advance acquisition of ROW shall be coordinated and approved by the FHWA Division Office in advance of executing any purchased using federal funds. All relinquishment and disposal of any ROW not incorporated into a project shall be coordinated and approved by the FHWA Division Office prior to disposal or sale. Any change in access control acquired using federal funds shall be coordinated and approved by the FHWA Division Office prior to granting any access breaks.

F. Safety

Safety is an integral part of the total highway engineering program, requiring consideration during planning, programming, project development, construction, construction operations and maintenance. Therefore, the general requirements for highway engineering safety are embedded into this agreement as part of other INDOT and FHWA Oversight requirements. Highway safety is also a comprehensive activity because it must be addressed through coordination and communication efforts with all disciplines that are responsible for highway engineering, vehicle and driver/occupant safety.

Highway Safety Improvement Program (HSIP) – INDOT will manage, enhance, and evaluate the overall HSIP in accordance with 23 CFR, Section 924, with quality improvement reviews by the FHWA Division on a three year cycle, or otherwise needed.

Reports - INDOT will annually submit required reports on the progress made and on the effectiveness of the highway safety program. These reports are comprised of the HSIP report (which includes the High Risk Rural Roads report), the highway-railway crossing report, and the 5% report. All of these reports are to be submitted on or before August 31st of each year.

Strategic Highway Safety Plan (SHSP) – INDOT has met the requirement to develop an SHSP prior to October 1, 2006. INDOT and FHWA will lead the implementation of the SHSP and work collaboratively to update and improve the plan On a bi-annual basis, or otherwise needed.

Crash Data Systems and Analysis – INDOT will and FHWA will actively participate in the Indiana Traffic Records Coordinating Committee (TRCC) to develop a comprehensive, state-wide data system. The data from this system will be able to be integrated with INDOT's roadway inventory so that all public roads will be included in the 5% report by 2009. FHWA will work in partnership with the National Highway Traffic Safety Administration (NHTSA) to ensure that all Federal requirements are met and will adopt a review cycle through the TRCC and by actively participating in the reviews.

Required Safety Programs – INDOT and FHWA will maintain a written agreement on how safety will be addressed on 3R and preventive maintenance projects in accordance with FHWA requirements. FHWA will review the use of the safety planning factor as part of our HSIP reviews and MPO certification process. FHWA and INDOT will perform process improvement reviews as needed of other safety program elements as needed, such as Safe Routes to School, High Risk Rural Roads, design standards, MUTCD compliance, work zones, etc.

Focused Safety Programs – As part of the SHSP, safety emphasis areas will be established based on safety data. FHWA and INDOT will ensure that action plans and strategies are developed and tracked for each emphasis area and where appropriate projects are implemented that will significantly reduce the number of fatal and serious injury highway crashes.

G. ITS/Operations

FHWA and INDOT are responsible for assuring that all ITS systems comply with the appropriate Regional ITS architecture, that appropriate Systems Engineering Analyses are conducted and that there is sufficient oversight of ITS Integration Projects (earmarks). INDOT will involve FHWA in ITS projects that foster regional integration of ITS components such as a regional traffic management center or a major corridor project.

a) ITS Regional Architecture – INDOT will ensure that all projects that contain ITS elements meet Title 23 requirements for conformity with the National or applicable Regional ITS Architecture and use of approved ITS standards. FHWA will evaluate compliance with applicable standards for INDOT Oversight projects through a risk-based stewardship review program.

b) Systems Engineering Analysis – INDOT is responsible for ensuring that all ITS projects be based on a systems engineering analysis prior to receiving authorization to proceed to advertisement for construction. INDOT and FHWA agree to ensure that systems engineering analyses are incorporated into project development procedures and that INDOT is committed to the operations, management and maintenance of the overall system.

c) ITS Integration Projects (earmarks) – FHWA will provide oversight of these projects as the level of cost, risk, and complexity dictates.

H. Structures

Design procedures for structures are contained in the INDOT Bridge Manual. Changes in policy and major changes in procedures or process that affect structure projects on the NHS will be submitted to FHWA for approval.

Project activities related to design, construction, operation, and maintenance of structures will follow the general provisions of this agreement with the exception that major and unusual structures on the NHS as defined in FHWA Order 5520.1 will always be subject to full FHWA Oversight due to their high cost or complexity.

All Highway Bridge Replacement and Rehabilitation Program (HBRRP) projects remain subject to special eligibility requirements. Title 23 U.S.C. requirements for the inventory; inspection, and reporting of highway bridges are in no way altered by this agreement.

I. Pavement/Materials

FHWA and INDOT place a high priority on improving the mobility of Indiana travelers through the advancement of pavement and materials technology. To accomplish this, the core elements of the program include the advancement of issues related to the performance and durability of pavements, advancement of safety considerations, and advancement of cost-effectiveness principals.

FHWA's oversight is accomplished by active participation in Division Office Stewardship Reviews, Process Reviews, and various partnering activities with INDOT. FHWA and INDOT strive to maintain good working relationships with Industry representatives that include the Aggregates, Hot Mix Asphalt, and Portland Cement Concrete Associations.

Any material that is to be acquired using federal funds by INDOT or LPA, contractors or subcontractors that is of foreign origin shall have a request submitted to the FHWA Division Office for approval under a waiver of the

“Buy America” provisions of federal law. It is noted that such waivers are rare and INDOT and LPAs should make every effort to acquire materials in accordance with these provisions.

J. Civil Rights

INDOT is responsible for developing and maintaining the following program documents: the INDOT Title VI plan, the Disadvantaged Business Enterprise (DBE) Program Plan, the INDOT Affirmative Action Plan and the INDOT Equal Employment Opportunity (EEO) Contract Compliance Plan.

FHWA has oversight for the DBE and On-the-Job (OJT) Supportive Service programs, Minority Institute of Higher Education (MIHE) outreach, and the Construction Career Days (CCD) Program. Further, FHWA validates INDOT’s compliance with Title VI, Title VII and DBE programs through the Stewardship Review Program.

INDOT will submit the following reports to FHWA: PR-1392, EEO-4, DBE Semi-Annual 1405, Affirmative Action Plan Update, Title VI Plan Update, EEO Contract Compliance Reports, the Construction Career Days Summary Report, OJT Supportive Services Report, and the Annual Minority Institutes of Higher Education (MIHE) Report.

The FHWA tracks the INDOT Civil Rights program through a variety of means. FHWA accomplishes its oversight through DBE/EEO compliance reviews during construction inspections of FHWA Oversight Projects. FHWA and INDOT may also undertake “van tours” to Federal Aid projects to interview trainees/apprentices, women and minority workers to ensure they are being treated fairly on the jobs and being paid appropriately.

INDOT will ensure that the DBE Certification process is accomplished in accordance with federal requirements and will conduct sufficient Commercially-Useful-Function (CUF) reviews of DBE subcontractors on active construction projects to be statistically significant. In addition, INDOT will conduct all Third-Party complaints in a timely and responsible manner.


K. Construction

Many of the approval actions traditionally taken by FHWA will be assumed by INDOT on all NON-NHS projects and many NHS projects. Change Orders, Contract Modifications and Claim settlements on all FHWA Oversight projects require FHWA approval in accordance with the procedures outlined in the INDOT Construction Manual and General Instruction to Field Employees. Change Orders and Contract Modifications on INDOT Oversight and LPA projects do not require FHWA approval but will be documented and justified in the same manner as those for FHWA Oversight projects. Claim settlements on INDOT Oversight and LPA projects require prior approval by FHWA. In addition, INDOT agrees to provide sufficient personnel to inspect INDOT and LPA projects to ensure that work is completed in full compliance


with the project plans and specifications and all Title 23 federal requirements.

- L. **Consultant/Railroad & Utility Agreements** – INDOT is responsible for approving all consultant, railroad, and utility agreements on and off the NHS in accordance with the FHWA approved alternate agreement procedures. Changes in policy and standard agreement provisions for use on any consultant, railroad or utility agreements will be submitted to FHWA for approval.
- M. **Local Technical Assistance Program (LTAP)** – INDOT and FHWA ensure that adequate controls are in place to ensure that federal funds are utilized for the intended technical assistance and training to local cities and counties in accordance with federal requirements.

By signing this agreement, INDOT and FHWA agree to carry out their respective responsibilities in a true spirit of cooperation. INDOT agrees to remain in substantial compliance with all applicable laws, regulations, policies, standards, and procedures and agrees to document and keep current related policies; procedures and standards contained in INDOT control documents. INDOT agrees to oversee all subrecipients to ensure that subrecipients remain in substantial compliance with all federal requirements. Nothing in this agreement shall be construed to relieve either party from ultimate accountability for compliance with Federal laws and regulations with respect to the expenditure of Federal-aid highway funds in the State of Indiana, including those funds passed on to subrecipients. This agreement supersedes all preceding agreements and shall be effective the date it signed, and may be modified at any time by mutual agreement of the INDOT Commissioner and the FHWA Indiana Division Administrator.


 Karl B. Browning
 Commissioner
 Indiana Department of Transportation

2/2/07
 Date


 Robert F. Tally Jr., P.E.
 Division Administrator – Indiana
 Federal Highway Administration

1/30/07
 Date

VII. Appendices

APPENDIX "A" INDOT CONTROLLING POLICY, PROCEDURES AND DOCUMENTS

| CONTROL ITEM | SUBMIT CHANGES TO FHWA FOR APPROVAL |
|---|-------------------------------------|
| INDOT Design Manual (including Bridge Volume) | All Changes |
| Geotechnical Procedures Manual | Policy and Procedural Changes |
| Recurring Special Provisions | All Changes |
| Standard Specifications | All Changes |
| Supplemental Specifications | All Changes |
| Standard Drawings | All Changes |
| Pavement Design Manual | Policy and Procedural Changes |
| General Instructions to Field Employees (GIFE) | Policy and Procedural Changes |
| Construction Memorandums | Policy and Procedural Changes |
| Failed Materials | Policy and Procedural Changes |
| Indiana MUTCD | All Changes |
| Indiana Utility Accommodation Policy | All Changes |
| Indiana Test Methods - Materials | All Changes |
| Sampling and Testing Materials Manual | All Changes |
| Independent Assurance, Laboratory and Technician Qualification Programs and Sampling and Testing Programs | All Changes |
| Statewide and or Regional ITS Architectures | Major Changes |
| INDOT Noise Policy | All Changes |
| INDOT Public Involvement Policies and Procedures | All Changes |
| INDOT Waterways Permits Manual | Policy and Procedural Changes |
| INDOT Cultural Resources Manual | Policy and Procedural Changes |
| INDOT Procedural Manual for Preparing Environmental Studies | Policy and Procedural Changes |

**APPENDIX “B”
PROJECT ACTION RESPONSIBILITY**

| Approval Action | AGENCY RESPONSIBLE | | |
|--|--|---|---------------------|
| | INTERSTATE/NHS PROJECTS (FHWA Oversight) | INTERSTATE/NHS PROJECTS (INDOT Oversight) | Non-NHS PROJECTS |
| PROGRAMMING | | | |
| Verify project in INSTIP/TIP | FHWA | INDOT | INDOT |
| Verify eligibility for federal aid | FHWA | INDOT | INDOT |
| Public interest finding with respect to airport-highway clearance (23 CFR 620.104) | FHWA | INDOT ⁽³⁾ | NA ⁽³⁾ |
| Conformity with Regional or Statewide ITS Architecture | FHWA | INDOT | INDOT |
| PRELIMINARY DESIGN | | | |
| Project Concept Statement | INDOT | INDOT | INDOT |
| Consultant Selection (Design Contract Management Manual) | INDOT | INDOT | INDOT |
| Approve exceptions to design standards [23 CFR 625.3(f)] | FHWA | INDOT ⁽¹⁾ | INDOT |
| Interstate System Access Change | FHWA | FHWA | NA |
| Type, Size and Location (TS&L) for New Bridge Construction and major rehabilitations | FHWA | INDOT | INDOT |
| Approve preliminary plans for major and unusual structures [23 USC 109(a)] | FHWA | FHWA | INDOT |
| DETAILED DESIGN | | | |
| Approve use of publicly owned equipment (23 CFR 635.106) | FHWA | INDOT | INDOT |

| Approval Action | AGENCY RESPONSIBLE | | |
|--|--|---|------------------|
| | INTERSTATE/NHS PROJECTS (FHWA Oversight) | INTERSTATE/NHS PROJECTS (INDOT Oversight) | Non-NHS PROJECTS |
| Approve the use of patented and proprietary products, processes (23 CFR 635.411) [FDM19-1-5] | FHWA | FHWA | INDOT |
| Concur in use of publicly furnished materials (23 CFR 635.407). | FHWA | INDOT | INDOT |
| Approve project pavement design details (23 CFR 626.3) | INDOT ⁽⁷⁾ | INDOT ⁽⁷⁾ | INDOT |
| PS&E AND ADVERTISING | | | |
| Approve plans, specifications and estimates (23 CFR 630.205) | FHWA | INDOT | INDOT |
| Authorize advance construction and conversions (23 CFR 630.703 & 709) | FHWA | FHWA | FHWA |
| Authorize utility or railroad force account work (23 CFR 645.113 & 646.216) | FHWA | FHWA | FHWA |
| Approve utility and railroad agreements (23 CFR 645.113 & 646.216) | INDOT | INDOT | INDOT |
| Approve use of consultants by utility companies [23 CFR 645.109(b)] | INDOT | INDOT | INDOT |
| Approve exceptions to maximum railroad protective insurance limits (23 CFR 646.111) | INDOT | INDOT | INDOT |
| Exempt bridge from Coast Guard permit requirements (23 CFR 650.805) | FHWA | FHWA | FHWA |
| Authorize advertising for bids (23 CFR 635.112) | FHWA | FHWA | FHWA |
| Approve hiring of consultant to serve in a "management" role [23 CFR 172.5(a)] | INDOT | INDOT | INDOT |
| Approve consultant agreements (23 CFR 172.7 - 172.9) | INDOT | INDOT | INDOT |
| Approve Design-Build Program Provisions (23 CFR 636) | FHWA | FHWA | INDOT |
| Approve Performance Related Provisions (23 CFR 637.207) | FHWA | FHWA | INDOT |
| Approve Warranty Provisions (23 CFR 635.413) | FHWA | FHWA | INDOT |

| Approval Action | AGENCY RESPONSIBLE | | |
|---|--|---|---------------------|
| | INTERSTATE/NHS PROJECTS (FHWA Oversight) | INTERSTATE/NHS PROJECTS (INDOT Oversight) | Non-NHS PROJECTS |
| Approve Quality Assurance Procedures (23 CFR 637.207) | FHWA | FHWA | INDOT |
| Approve Independent Assurance, Laboratory and Technician Qualification Programs and Sampling and Testing Programs. (23 CFR 637.209) | FHWA | FHWA | INDOT |
| Approve experimental projects and work plans | FHWA | INDOT | INDOT |
| Approve Special Experimental Projects (SEP 14 & 15) and work plans. | FHWA | FHWA | FHWA |
| ENVIRONMENT | | | |
| All NEPA approval actions required by Federal laws and regulations. (23 CFR 771) | FHWA ⁽⁴⁾ | FHWA ⁽⁴⁾ | FHWA ⁽⁴⁾ |
| Section 106 (historic) Findings | FHWA ⁽⁸⁾ | FHWA ⁽⁸⁾ | FHWA ⁽⁸⁾ |
| Section 4(f) Evaluation Approvals | FHWA ⁽⁸⁾ | FHWA ⁽⁸⁾ | FHWA ⁽⁸⁾ |
| Section 7 (Endangered Species) Consultation | FHWA ⁽⁹⁾ | FHWA ⁽⁹⁾ | FHWA ⁽⁹⁾ |
| RIGHT-OF-WAY | | | |
| Authorize Right-of-Way activities (23 CFR 710 Subpart B) (If a federal-aid project) | FHWA | FHWA | FHWA |
| Accept Right-of-Way certificate as a condition of PS&E approval [23 CFR 635.309(b)(c)]. | FHWA | INDOT | INDOT |
| Approve Hardship and Protective Buying [23 CFR 710 Subpart E] (If federal-aid (If a federal-aid project) | FHWA | FHWA | FHWA |
| Approve air space agreements [23 CFR 710 Subpart D] | FHWA | FHWA | NA ⁽³⁾ |
| Approve non-highway use and occupancy [23 CFR 710 Subpart D] | FHWA | FHWA | NA ⁽³⁾ |
| Approve disposal of federally funded right-of-way [23 CFR 710 Subpart D] | FHWA | FHWA | NA ⁽³⁾ |
| CONSTRUCTION | | | |
| Approve cost effectiveness and emergency determinations for contracts awarded by other than competitive bidding (23 CFR 635.104 & .204) | FHWA | INDOT | INDOT |
| Approve construction engineering by local agency (23 CFR 635.105) | INDOT | INDOT | INDOT |

| Approval Action | AGENCY RESPONSIBLE | | |
|--|--|---|------------------|
| | INTERSTATE/NHS PROJECTS (FHWA Oversight) | INTERSTATE/NHS PROJECTS (INDOT Oversight) | Non-NHS PROJECTS |
| Approve advertising period less than three weeks (23 CFR 635.112) | FHWA | FHWA | INDOT |
| Approve addenda during advertising period (23 CFR 635.112) | FHWA | INDOT | INDOT |
| Concur in award of contract (23 CFR 635.114) | FHWA | INDOT ⁽²⁾ | INDOT |
| Concur in rejection of all bids (23 CFR 635.114) | FHWA | INDOT ⁽²⁾ | INDOT |
| Approve changes and extra work (23 CFR 635.120) | FHWA | INDOT | INDOT |
| Approve contract time extensions (23 CFR 635) | FHWA | INDOT | INDOT |
| Concur in use of mandatory borrow/disposal sites (23 CFR 635.407) | FHWA | INDOT | INDOT |
| Accept materials certification (23 CFR 637.207) | INDOT | INDOT | INDOT |
| Concur in Failed Material Adjudication | INDOT ⁽⁷⁾ | INDOT ⁽⁷⁾ | INDOT |
| Concur in settlement of contract claims (23 CFR 635.124) | FHWA ⁽⁶⁾ | INDOT | INDOT |
| Concur in termination of contracts (23 CFR 635.125) | FHWA | INDOT ⁽²⁾ | INDOT |
| Waive Buy America provisions (23 CFR 635.410) | FHWA | FHWA | FHWA |
| Final inspection/acceptance of completed work [23 USC 114(a) and 23 USC 121] | INDOT ⁽⁵⁾ | INDOT | INDOT |
| CIVIL RIGHTS | | | |
| All approval actions required by Federal laws and regulations. | FHWA | FHWA | FHWA |
| Footnotes: (1) Exceptions for vertical clearance are subject to coordination with the Military Traffic Management Command for the "26,000 mile priority network" (mainly; the Interstate). Coordination may be accomplished through the FHWA. (2) Informational copy to FHWA. (Record keeping and reporting) (3) Approvals, if any, will be those required by State laws, regulations, policies, and procedures. However, this does not relieve the INDOT from responsibility for these areas, nor from compliance with non-Title 23 Federal requirements that remain applicable. (4) Approval for certain Categorical Exclusions has been delegated by agreement. (5) Responsibility delegated to INDOT (6) INDOT must notify FHWA of COR meetings and furnish minutes of the meetings to FHWA (7) Information copy of actions to be submitted to FHWA. (8) Eligibility determinations and "No Historic Properties Affected" Findings and "No Adverse Effect" findings are to be made by INDOT as per the Programmatic Agreement. (9) "Informal" Section 7 consultation by INDOT, "Formal" consultation by FHWA. | | | |