STEWARDSHIP AND OVERSIGHT AGREEMENT

ON PROJECT ASSUMPTION AND PROGRAM OVERSIGHT

BY AND BETWEEN THE

FEDERAL HIGHWAY ADMINISTRATION,

[STATE NAME] DIVISION OFFICE,

AND THE

[STATE NAME DOT/STA ORGANIZATION]

# SECTION I. BACKGROUND AND INTRODUCTION

The Federal-aid Highway Program (FAHP) provides for a federally-assisted State program. In enacting section 106(c) of title 23, United States Code (U.S.C.), as amended, Congress established authority for a State Department of Transportation (State DOT) to carry out certain project responsibilities traditionally handled by the Federal Highway Administration (FHWA) through a delegation from the Secretary of the United States Department of Transportation (“Secretary”). The authority in 23 U.S.C. 106(c) applies to projects that are subject to the requirements of title 23, U.S.C. (“title 23”) because the State DOT receives Federal funding or because the State DOT needs an FHWA action for the project even though the project may not use Federal funds. Congress also recognized the importance of a risk-based approach to FHWA oversight of the FAHP, establishing requirements in 23 U.S.C. 106(g). In addition to assumptions of responsibility, FHWA-State DOT Stewardship and Oversight Agreements cover certain oversight activities relating to the oversight requirements of 23 U.S.C. 106(g).

The FHWA may not assign its decision-making authority to a State DOT unless authorized by law.  The authorities FHWA assigns to a State DOT under 23 U.S.C. 106(c)(1) and (2) are listed in Attachment A of the applicable FHWA-State DOT Stewardship and Oversight Agreement.  A decision, determination, or action carried-out by a State DOT under the authority of a Stewardship and Oversight Agreement does not constitute an eligibility, participation, obligation, reimbursement, authorization, or compliance decision by or for FHWA.

For clarity, Attachment A also lists certain other actions FHWA may have allowed a State DOT to undertake based on delegation or assumption provisions in other Federal laws. As noted in those Attachment A listings, a State DOT exercise of those authorities is governed by separate agreements between FHWA and that State DOT.

For project responsibilities that are not assumed by a State DOT under 23 U.S.C. 106(c), and are not otherwise delegated or assigned in accordance with another Federal law, the FHWA may authorize a State DOT to perform work needed to reach the FHWA decision point, or to implement FHWA’s decision. However, such decisions themselves are reserved to FHWA.

# SECTION II. INTENT AND PURPOSE OF AGREEMENT

This Stewardship and Oversight Agreement (“Agreement”) establishes the roles and responsibilities of the FHWA [State name] Division Office and the [State name DOT/STA organization (abbreviation)] with respect to certain title 23 project approvals and related responsibilities, and FAHP oversight activities. Nothing in this Agreement affects the Secretary’s authority, or authority delegated to FHWA, to oversee compliance with Federal requirements. These authorities include but are not limited to 23 U.S.C. 114, under which the Secretary has the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.

This Agreement carries out 23 U.S.C. 106(c)(3), which requires FHWA and the State DOT enter into an agreement relating to the extent to which the State DOT assumes project responsibilities pursuant to section 106(c). This Agreement also documents certain oversight activities that FHWA and the [State name DOT/STA abbreviation] will use to efficiently and effectively deliver the FAHP.

Section IV of this Agreement covers assumption of project approvals on the National Highway System (NHS).  Section V covers assumption of project approvals off the NHS.

The Project Action Responsibility Matrix, attachment A to this Agreement, describes responsibilities that the [State name DOT/STA abbreviation] assumes from FHWA pursuant to 23 U.S.C. 106(c) and other legal authorities.

Upon execution of this Agreement, attachment A controls and, except as specifically noted in attachment A (including any amendment thereto done in accordance with section VIII) and sections IV and V of this Agreement, no other agreements, attachments, or other documents shall have the effect of delegating or assigning FHWA approvals to the [State name DOT/STA abbreviation] under 23 U.S.C 106(c), or have the effect of altering attachment A.

# SECTION III.  PERMISSIBLE AREAS OF ASSUMPTION UNDER 23 U.S.C. 106(c)

FHWA has determined the activities and actions that are assumable under 23 U.S.C. 106(c). Those activities and actions are listed in a template issued by FHWA to create this Agreement and cover only activities or actions in the following areas:

1. Design, which includes preliminary engineering, engineering, and design-related services directly relating to the construction of a FAHP-funded project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services.
2. Plans, specifications and estimates (PS&E), which represents an array of actions and approvals required before authorization of construction and carried out during construction. The PS&E package includes standards, drawings, specifications, project estimates, certifications relating to completion of right-of-way acquisition and relocation, utility work, and railroad work.
3. Contract awards, which include procurement of professional and other consultant services and construction-related services to include advertising, evaluating, and awarding contracts.
4. Inspections, which include general contract administration, material testing and quality assurance, review, and inspections of Federal-aid contracts as well as final inspection/acceptance.
5. Approvals and related responsibilities affecting real property as provided in 23 CFR 710.201(h) and any successor regulation.

The [State name DOT/STA abbreviation] is to exercise any and all assumptions of the FHWA’s responsibilities in accordance with the Federal laws, regulations, policies, Executive orders, and procedures that would apply if the responsibilities were carried out by FHWA.  For all projects and programs carried out under title 23, the [State name DOT/STA abbreviation] will comply with title 23 and all applicable non-title 23 Federal-aid program requirements.

# SECTION IV. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS ON THE **NHS**

For projects under title 23 that are on the National Highway System (NHS), including projects on the Interstate System, the [State name DOT/STA abbreviation] may assume FHWA’s title 23 responsibilities for activities or actions assumable under 23 U.S.C. 106(c) if the FHWA [State name] Division Office determines that assumption of responsibilities is appropriate and the [State name DOT/STA abbreviation] agrees.

1. The activities or actions on the NHS assumed by the [State name DOT/STA abbreviation] under this Agreement are listed in Attachment A.
2. Activities or actions for which the [State name DOT/STA abbreviation] has assumed the FHWA’s responsibilities apply program-wide except when superseded by provisions in a stewardship and oversight plan adopted by the FHWA [State name] Division Office for a specific project. Additional discussion on FHWA project involvement is included in section VI.D of this Agreement.
3. In accordance with 23 U.S.C. 106(c)(4), the USDOT Secretary may define high-risk categories for Interstate projects on a national basis, a State-by-State basis, or a national and State-by-State basis. A State DOT may not assume responsibilities for Interstate projects in a designated category. Currently, FHWA has not designated any high-risk categories applicable to [State name] in accordance with 23 U.S.C. 106(c)(4). If the FHWA makes a future designation that applies to [State name], then that designation will immediately supersede the assumptions of responsibilities elsewhere in this Agreement.

# SECTION V. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS OFF THE NHS

For projects under title 23 that are not on the NHS, the [State name DOT/STA abbreviation] must assume FHWA’s title 23 responsibilities for activities or actions assumable under 23 U.S.C. 106(c) unless the [State name DOT/STA abbreviation] determines that assumption of responsibilities is not appropriate (23 U.S.C. 106(c)(2)).

1. The activities or actions off the NHS assumed by the [State name DOT/STA abbreviation] under this Agreement are listed in attachment A.
2. Activities or actions for which the [State name DOT/STA abbreviation] has assumed the FHWA’s responsibilities apply program-wide except when superseded by provisions in a stewardship and oversight plan for a specific project adopted by the FHWA [State name] Division Office. For non-NHS projects, the [State name DOT/STA abbreviation] must determine that superseding an assumption listed in attachment A for a specific project is appropriate. Additional discussion on FHWA project involvement is included in section VI.D of this Agreement.
3. Except as provided in 23 U.S.C.109(o), the [State name DOT/STA abbreviation] is to exercise FHWA’s approvals and related responsibilities on these projects in accordance with Federal laws, regulations, policies, Executive orders, and procedures that would apply if the responsibilities were carried out by FHWA.
4. In accordance with 23 U.S.C. 109(o), non-NHS projects shall be designed and constructed in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards, except that a local jurisdiction may use a roadway design guide recognized by the Federal Highway Administration and adopted by the local jurisdiction that is different from the roadway design guide used by the State in which the local jurisdiction is located for the design of projects on all roadways under the ownership of the local jurisdiction for which the local jurisdiction is the project sponsor, provided that the design complies with all other applicable Federal laws.

# SECTION VI. FHWA OVERSIGHT PROGRAM UNDER 23 U.S.C. 106(g)

The Secretary must establish an oversight program to monitor the effective and efficient use of funds authorized to carry out the FAHP (23 U.S.C. 106(g)). This includes FHWA oversight of the [State name DOT/STA abbreviation] processes and management practices, including those involved in carrying out the approvals and related responsibilities assumed by the [State name DOT/STA abbreviation] under 23 U.S.C. 106(c).

Section 106(g) requires, at a minimum, FHWA’s oversight program be responsive to all areas relating to financial integrity and project delivery. To carry out the requirements of 23 U.S.C. 106(g), FHWA uses a risk management framework to evaluate financial integrity, project delivery, and other aspects of the FAHP. The objective is to balance risk while considering staffing, budget resources, and the State’s transportation needs.

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] may use a variety of methods to identify, analyze, and manage risks and develop response strategies, such as oversight techniques, manuals and operating agreements, stewardship and oversight indicators, and FHWA project involvement.

## Oversight Techniques

Techniques the FHWA [State name] Division Office and the [State name DOT/STA abbreviation] may use to identify and analyze risks and develop response strategies include, but are not limited to, the following:

* program assessments;
* FHWA Financial Integrity Review and Evaluations (FIRE) reviews;
* program reviews;
* certification reviews;
* recurring or periodic reviews such as the FHWA Compliance Assessment Program (CAP);
* inspections of project elements or phases.

## Manuals and Operating Agreements

The [State name DOT/STA abbreviation] manuals, agreements and other control, monitoring, and reporting documents that are used on Federal-aid projects are listed in attachment B to this Agreement.

## Stewardship and Oversight Indicators

[*Drafting note: Select the paragraph that applies.*]

Option 1

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] have established stewardship and oversight indicators (indicators) to help monitor performance of responsibilities assumed under this Agreement. Stewardship and oversight indicators are those intended to provide evidence of how well a State DOT assumption of responsibilities is functioning. Stewardship and oversight indicators set targets, track trends, and may help determine when countermeasures and actions are implemented or adjusted. The indicators are agreed to as provided in attachment C.

Option 2

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] have not established stewardship and oversight indicators as part of this Agreement.

## FHWA Project Involvement

## The FHWA [State name] Division Office may select projects (individually or by type) for risk-based FHWA project involvement and stewardship and oversight activities. In some instances, the program-wide assumption by the [State name DOT/STA abbreviation] of FHWA's responsibilities under attachment A to this Agreement may be superseded by provisions in a stewardship and oversight plan for a specific project, per sections IV and V of this Agreement. The FHWA [State name] Division Office will document the additional activities in a stewardship and oversight plan for the affected project(s).

# SECTION VII. STATE DOT OVERSIGHT RESPONSIBILITIES

## Oversight of State DOT Performance of Assumed Responsibilities

This section addresses how 23 U.S.C. 106(c) assumed authorities are carried out by the [State name DOT/STA abbreviation]. The actions include monitoring to assure that the [State name DOT/STA abbreviation] is properly carrying out its responsibilities in accordance with this Agreement. The [State name DOT/STA abbreviation] is responsible for demonstrating to FHWA how it is carrying out its responsibilities in accordance with this Agreement. The [State name DOT/STA abbreviation] will provide information to the FHWA [State name] Division Office upon request.

The [State name DOT/STA abbreviation] represents that processes, procedures, and practices from manuals, agreements, and other documents listed in attachment B to this Agreement comply with applicable Federal requirements.

## Subrecipient Oversight

The [State name DOT/STA abbreviation] is responsible for ensuring that its subrecipients meet applicable Federal requirements (2 CFR 200.332). This includes but is not limited to providing adequate oversight of sub-recipients with respect to both the subaward and any 23 U.S.C. 106(c) assumed responsibilities the [State name DOT/STA abbreviation] delegates to a subrecipient. The [State name DOT/STA abbreviation] is responsible for determining that subrecipients of Federal funds are suitably staffed and equipped and have adequate project delivery systems and sufficient accounting controls to properly manage these funds (23 U.S.C. 106(g)).

# SECTION VIII. AGREEMENT EXECUTION AND MODIFICATIONS

A. Agreement Execution

This Agreement is effective when fully executed by the FHWA [State name] Division Administrator and authorized representative of the [State name DOT/STA abbreviation]. The [State name DOT/STA abbreviation] duly-authorized official shall execute this Agreement and then submit it to the FHWA [State name] Division Administrator, who shall sign this Agreement last.

B. Agreement Modifications

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] acknowledge that agreement modifications (minor revisions or amendments) are needed periodically. Either party may initiate a request to modify this Agreement.

1. Minor Revisions

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] may make minor revisions to this Agreement without an amendment. For purposes of this Agreement, a minor revision makes a technical correction, addresses non-substantive changes such as a change in points-of-contact or document names, or revises aspects of procedures that do not materially change the terms of this Agreement.  Changes to attachments B or C are considered minor revisions. Minor revisions are recorded in a change log by the FHWA [State name] Division Office. Minor revisions may be executed without FHWA legal sufficiency review or coordination with FHWA’s Office of Infrastructure.

1. Amendments

Modifications to this Agreement that exceed the definition of a minor revision in paragraph B.1. of this section shall require execution of an amendment to this Agreement. Amendments include any change to attachment A. The amendment shall follow the execution procedure set forth in paragraph A of this section. Amendments require FHWA legal sufficiency review and coordination with FHWA’s Office of Infrastructure.

## New Agreement

This Agreement will be replaced in its entirety and a new Agreement executed between the FHWA [State name] Division Office and the [State name DOT/STA abbreviation] when mutually agreed upon by the parties, or as requested by the FHWA Office of Infrastructure. New Agreements require FHWA legal sufficiency review and coordination with FHWA’s Office of Infrastructure prior to execution.

The electronic Agreement file shall contain the executed Agreement, any change logs, and amendments.

# IX. AGREEMENT TERM AND TERMINATION

1. This Agreement shall have a term of [insert term of no greater than six (6) years] years, effective on the date of the signature of the FHWA [State name] Division Administrator in accordance with section VIII(A) of this Agreement.
2. Before the expiration of the term of this Agreement, a new agreement must be executed by both parties or the Agreement will expire (refer to section VIII.C. and IX.D.).
3. The FHWA [State name] Division Office may terminate this Agreement at any time if the FHWA [State name] Division Office determines that this Agreement is no longer in the public interest. Except in an extraordinary circumstance where immediate action is needed, prior to termination, the FHWA [State name] Division Office will issue a written notice to the [State name DOT/STA abbreviation] describing the FHWA’s [State name] Division office concerns and give the [State name DOT/STA abbreviation] a reasonable period of time to submit a written response addressing the FHWA [State name] Division Office concerns. The FHWA [State name] Division Office shall review the [State name DOT/STA abbreviation] response and make a final determination within 30 business days of receipt of the [State name DOT/STA abbreviation] response. The FHWA [State name] Division Office will notify the [State name DOT/STA abbreviation] in writing of the final determination and the effective date of any termination.
4. Expiration or termination of this Agreement shall mean that the assumption of project approvals by the [State name DOT/STA abbreviation] as set forth in this Agreement and attachment A hereto is automatically revoked upon the date of expiration or termination and the [State name DOT/STA abbreviation] must immediately cease exercising any decision, determination, or action under the authority of this Agreement, including any amendments.

# ATTACHMENT A - Project Action Responsibility Matrix

This matrix identifies FAHP project approvals and related responsibilities. The matrix specifies which actions are assumed by the [State name DOT/STA abbreviation] pursuant to this Agreement.

The [State name DOT/STA abbreviation] is responsible for ensuring all individual elements of the project are eligible for FAHP funding. Where the [State name DOT/STA abbreviation] assumes authority to make a decision, approval, determination or action, the [State name DOT/STA abbreviation] decision does not constitute an eligibility, obligation, reimbursement, authorization, or compliance decision by or for FHWA. Final decisions on those matters must be made by FHWA.

Table 1: Financial Management

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 1 | Review and accept financial plan and annual updates for Federal major projects [23 U.S.C. 106(h)] | FHWA | FHWA |
| 2 | Review cost estimates for Federal major projects [23 U.S.C. 106(h)] | FHWA | FHWA |
| 3 | Obligate funds/authorize Federal-aid project agreement (including advance construction authorization and conversion), modifications, and project closures (project authorizations) [23 U.S.C. 106(a)(2), 23 CFR 630.106, 630.703, 630.709] | FHWA | FHWA |
| 4 | Authorize to advertise for bids when all preconditions are met [23 CFR 635.112(a), 635.309] | FHWA or STATE | STATE |
| 5 | Approve reimbursements including authorizing current bill (23 U.S.C. 121) | FHWA | FHWA |
| 6 | Approval of reimbursement for bond-issue projects [23 U.S.C. 122, 23 CFR Part 140, Subpart F] | FHWA | FHWA |

Table 2: Environment

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 7 | EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations (Note: The FHWA may assign these NEPA actions and other environmental responsibilities to a State DOT as provided by 23 U.S.C. 327) | FHWA or Administered in accordance with 23 U.S.C. 327 MOU | FHWA or  Administered in accordance with 23 U.S.C. 327 MOU |
| 8 | ​Categorical exclusion approval actions [Note: The FHWA may assign this action and other FHWA environmental responsibilities to a State DOT as provided by 23 U.S.C. 326 and 327. The FHWA also may administratively delegate responsibility for categorical exclusion determinations to a State DOT through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and implementing regulations in 23 CFR 771.117(g)] | FHWA or Administered in accordance with applicable 23 U.S.C. 326 or 327 MOUs, or Programmatic Categorical Exclusion Agreement | FHWA or Administered in accordance with applicable 23 U.S.C. 326 or 327 MOUs, or Programmatic Categorical Exclusion Agreement |

Table 3: Preliminary Design

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 9 | Approval before utilizing a consultant to act in a management support role for the contracting agency [23 CFR 172.7(b)(5)(i)] | FHWA or Administered in accordance with procedures approved per 23 CFR 172.5(c) | FHWA or Administered in accordance with procedures approved per 23 CFR 172.5(c) |
| 10 | Approval of noncompetitive procurement method for engineering and design-related services [23 CFR 172.7(a)(3)] | FHWA or STATE | STATE |
| 11 | Approve exceptions to design standards  [23 CFR 625.3(f)] | FHWA or STATE | Not subject to  23 CFR 625.3(f) |
| 12 | Airport highway clearance coordination and respective public interest finding (if required)  [23 CFR 620.104] | FHWA or STATE | STATE |
| 13 | Approve project management plan for Federal major projects [23 U.S.C. 106(h)] | FHWA | FHWA |
| 14 | Approval of Interstate System access change  [23 U.S.C. 111] | FHWA | Not subject to 23 U.S.C. 111 |
| 15 | Determine the engineering and operational acceptability of points of ingress or egress with the Interstate System (justification reports) for new freeway-freeway interchanges (system), modification of freeway-freeway interchanges, and new partial interchanges or new ramps to/from continuous frontage roads that create a partial interchange [23 U.S.C. 111(e)] | FHWA | Not subject to  23 U.S.C. 111(e) |
| 16 | Determine the engineering and operational acceptability of points of ingress or egress with the Interstate System (justification reports) for new and modified freeway-to-crossroad (service) interchanges, and completion of basic movements at existing partial interchanges.  [23 U.S.C. 111(e)] | FHWA or Administered in Accordance with Programmatic Agreement | Not subject to  23 U.S.C. 111(e) |
| 17 | ​Approve innovative and public-private partnership projects in accordance with TE-045, SEP-14, SEP-15, or SEP-16. [23 U.S.C. 502(b)] | FHWA | FHWA |
| 18 | Approve any betterment to be incorporated into the project and for which emergency relief funding is requested (23 U.S.C. 125, 23 CFR 668.109) | FHWA | FHWA |
| 19 | Prior written approval of the Federal awarding agency for the direct charge of up-front acquisition cost of equipment (2 CFR 200.439) | FHWA | FHWA |

Table 4: Final Design

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 20 | Approve retaining right-of-way encroachments [23 CFR 1.23(b), 1.23(c)] | FHWA or STATE | STATE |
| 21 | Approve use of publicly owned equipment  [23 CFR 635.106] | FHWA or STATE | STATE |
| 22 | ​Concur in use of publicly furnished materials  [23 CFR 635.407(a)] | FHWA or STATE | STATE |
| 23 | Determine use of more costly signing, pavement marking and signal materials (or equipment) is in the public interest [23 CFR 655.606] | FHWA or STATE | STATE |
| 24 | Exception to designation of Interstate project as significant for work zones [23 CFR 630.1010(d)] | FHWA or STATE | Not subject to  23 CFR 630.1010(d) |
| 25 | Determination that a United States Coast Guard Permit is not required for bridge construction  [23 CFR 650.805, 650.807, 23 U.S.C. 144(c)] | FHWA | FHWA |

Table 5: Realty

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 26 | Completion of ROW clearance, utility, and railroad work concurrently with construction: Make feasibility/practicability determination for allowing authorization to advertise for bids or to proceed with force account construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)] | FHWA or STATE | STATE |
| 27 | Approve non-highway use and occupancy of real property interests [23 CFR 1.23(c), 710.405] | FHWA for Interstate  FHWA or STATE for  Non-Interstate | STATE |
| 28 | Approve disposal at fair market value of real property acquired with Federal-aid assistance, including disposals of access control [23 CFR 710.403(e), 710.409] | FHWA for Interstate  FHWA or STATE for Non-Interstate | STATE |
| 29 | Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156, 23 CFR 710.403(e)] | FHWA | FHWA |
| 30 | Conditional ROW certification, bid advertisement: Make public interest finding on whether State may proceed with bid advertisement even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)(3)(i)] | FHWA or STATE | STATE |
| 31 | Conditional ROW certification, construction - Make finding of exceptional circumstances that make it in the public interest to allow State to proceed with construction even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)(3)(ii)] | FHWA | FHWA |
| 32 | Approve hardship and protective buying  [23 CFR 710.503] | FHWA | FHWA |
| 33 | Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project [23 U.S.C. 323, 23 CFR 710.507] | FHWA | FHWA |
| 34 | Federal land transfers [23 CFR Part 710, Subpart F] | FHWA | FHWA |
| 35 | Functional replacement of property  [23 CFR 710.509] | FHWA | FHWA |
| 36 | Waiver of the policy of the availability of comparable replacement dwelling before displacement under specified circumstances  [49 CFR 24.204(b)] | FHWA | FHWA |

Table 6: PS&E and Advertising

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 37 | Approve PS&E [23 CFR 635.309(a)] | FHWA or STATE | STATE |
| 38 | Approve utility or railroad force account work  (23 CFR 140.916, 645.113, 646.216) | FHWA or STATE | STATE |
| 39 | Approve utility and railroad agreements  (23 CFR 140.916, 645.113, 646.216) | FHWA or STATE | STATE |
| 40 | Approve use of consultants by utility and railroad companies [23 CFR 645.109(b), 646.216(b)] | FHWA or STATE | STATE |
| 41 | Approve exceptions to maximum railroad protective insurance limits (23 CFR 140.916, 646.111) | FHWA or STATE | STATE |
| 42 | Approve use of guaranty and warranty clauses for projects other than design-build projects [23 CFR 635.413(b)] | FHWA or STATE | STATE |
| 43 | Recovery of railroad material - Approval of additional measures for restoration of areas affected by the removal of salvaged material for Railroad work (23 CFR 140.908) | FHWA or STATE | STATE |
| 44 | ​Approve use of lump sum payments to reimburse railroad for work by its forces [23 CFR 646.216(d)(3)] | FHWA or STATE | STATE |
| 45 | Waive Buy America provisions (23 CFR 635.410) | FHWA | FHWA |
| 46 | Training special provision - Approval of new project training programs [23 CFR 230.111(d), 230.111(e)] | FHWA | FHWA |

Table 7: Contract Advertisement and Award

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 47 | Approve cost-effectiveness determinations for construction work performed by contract awarded by other than competitive bidding or by force account (23 CFR 635.104, 635.204) | FHWA or STATE | STATE |
| 48 | Approve emergency determinations for construction work performed by contract awarded by other than competitive bidding or by force account (23 CFR 635.104, 635.204) | FHWA or STATE | STATE |
| 49 | Subrecipient project administration - Approve arrangements for local agency to serve as the supervising agency for the project (23 CFR 635.105) | FHWA or STATE | STATE |
| 50 | Approve advertising period less than 3 weeks [23 CFR 635.112(b)] | FHWA or STATE | STATE |
| 51 | Approve addenda during advertising period [23 CFR 635.112(c)] | FHWA or STATE | STATE |
| 52 | Concur in award of contract or rejection of all bids (23 CFR 635.114) | FHWA or STATE | STATE |
| 53 | Approval of design-build requests-for-proposals (RFP) and addenda for major changes to the RFP during solicitation period [23 CFR 635.112(i)(4)] | FHWA or STATE | STATE |
| 54 | Approve award to the next low bidder  [23 CFR 635.114(f)] | FHWA or STATE | STATE |

Table 8: Construction

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 55 | Approve contract changes and extra work  (23 CFR 635.120) | FHWA or STATE | STATE |
| 56 | Approve contract time extensions  [23 CFR 635.120, 635.121(b)] | FHWA or STATE | STATE |
| 57 | Concur in use of mandatory borrow/disposal sites (23 CFR 635.407) | FHWA or STATE | STATE |
| 58 | Approval of administrative settlements and contract claim awards and settlements  (23 CFR 140.505, 635.124) | FHWA or STATE | STATE |
| 59 | Concur in termination of construction contracts [23 CFR 635.125(b)] | FHWA or STATE | STATE |

Table 9: CM/GC and ID/IQ

| **#** | **ACTION** | **AGENCY RESPONSIBLE NHS** | **AGENCY RESPONSIBLE Non-NHS** |
| --- | --- | --- | --- |
| 60 | Approval of advertising for bids or proposals for a CM/GC construction services phase contract  [23 CFR 635.504(b)(6)] | FHWA or STATE | STATE |
| 61 | Determination of indirect cost rate for preconstruction services for a CM/GC project in accordance with [23 CFR 635.504(e)(2)] | FHWA or STATE | STATE |
| 62 | Approval of preconstruction price and cost/price analysis for preconstruction services for a CM/GC project [23 CFR 635.506(b)(2)] | FHWA or STATE | STATE |
| 63 | Approval of price estimate for construction costs for the entire project for CM/GC project [23 CFR 635.506(d)(2)] | FHWA or STATE | STATE |
| 64 | Approval of construction price analysis and agreed price for construction services of a CM/GC project or portion of the project  [23 CFR 635.506(d)(4)] | FHWA or STATE | STATE |
| 65 | Approval of CM/GC project preconstruction services contract award [23 CFR 635.506(e)] | FHWA or STATE | STATE |
| 66 | Concur in advertising an ID/IQ solicitation prior to completion of NEPA [23 CFR 635.605(a)(2)] | FHWA or STATE | STATE |
| 67 | Concur in awarding an ID/IQ contract prior to completion of NEPA [23 CFR 635.605(a)(3)] | FHWA or STATE | STATE |
| 68 | Approve a time extension of an ID/IQ contract [23 CFR 635.604(a)(6)(i)] | FHWA or STATE | STATE |

ATTACHMENT B (drafting example) -  
Manuals, Agreements , Control, Monitoring, And Reporting Documents

*State DOT* *manuals, agreements and other control, monitoring, and reporting documents that are used on Federal-aid projects. (The following provides examples of the types of manuals, guidelines and procedures that will be listed in attachment B and the type of information needed for each document. The format is optional and the items listed are not all inclusive or applicable to all States.)*

## **Example for Construction Specifications**

* Standard Specifications
  + Elements that require FHWA approval:
    - Specifications that will be used on the NHS. (23 CFR 625.3)

## **Example SDOT Manuals that will be used on Federal-aid Projects**

* Highway Design Manual - information and guidance to design road projects.
  + Elements that require FHWA approval:
    - Roadway design standards for 3R and preventative maintenance projects on the NHS. [23 CFR 625.3, 625.4(a)(3)]
  + Elements required by federal law or regulation included in this manual that do not require FHWA approval:
    - Erosion and Sediment Control Guidelines (23 CFR 650.211)
* Right of Way Manual - right-of-way organization, policies, and procedures. Describes functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance.
  + Elements that require FHWA approval:
    - All elements. Right-of-way organization, policies, and procedures (23 CFR 710.201)

## **Additional Manuals, Agreements , Control, Monitoring, And Reporting Documents**

* Noise Analysis and Abatement Policy (23 CFR Part 772)
* Programmatic Agreement for Processing Interstate Access Requests (MAP-21, Section 1505)
* Asset Management Plan [23 U.S.C 119(e)(5)]
* Value Engineering Policy and Procedures [23 CFR 627.1]
* Quality Assurance Program [23 CFR 637.205]
* Construction Manager/General Contractor (CM/GC) procurement procedures [23 CFR 635.504(c)]
* Pavement Design Policy [23 CFR Part 626]

ATTACHMENT C *(drafting example)* -  
Stewardship And Oversight Indicators

*Indicators used to monitor assumptions of responsibility per section VI. C. of this Agreement. (This list is provided as an example. The format is optional and the items listed are not all inclusive or applicable to all states).*

## **EXAMPLE S&O INDICATOR**

* Fiscal year (FY) Disadvantaged Business Enterprise (DBE) overall participation rate.
* Percent of Disadvantaged Business Enterprise (DBE) goal achieved.
* Average number of bidders per project per type of work per year.
* Percent of projects with low bid within +/- 10% of Engineer’s Estimate.
* Percentage of projects that are awarded within 120 days of authorization.
* Number of National Bridge Inspection Standards metrics that are fully compliant.
* Percent of environmental mitigation commitments completed.
* Average number of days between the date of project final acceptance by State DOT and project close out date in FMIS.
* Percent of projects closed out with final costs within 110% of award amount.
* Percent of projects closed out with final time expended within 135% of original contract time.
* Percent of current year projects in STIP advanced as scheduled.
* Percent of projects with ROW acquired by acquisition due date.
* Number of projects with conditional ROW certifications.
* Number of disposals of excess ROW below fair market value.
* Number of non-Interstate access breaks and/or encroachments approved.
* Number of modifications to project end dates in FMIS.
* Expenditures determined to be ineligible for Federal participation.