

**PROJECT APPROVAL AND OVERSIGHT  
LETTER OF AGREEMENT  
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION  
AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION**

**I. General Policy**

The California Department of Transportation (Department) and the Federal Highway Administration (FHWA) agree to consolidate the current three Stewardship Agreements signed May 12, 1992, pursuant to Title 23, United States Code (U.S.C.), Section 106(c) and provision of stewardship provided the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). The Department continues to pursue acceptance of the maximum delegation permitted under Title 23, U.S.C.

**II. What This Agreement Does Not Cover**

The provisions of this agreement do not modify the FHWA's project approval and oversight responsibilities for activities required under the National Environmental Policy Act of 1969, and other related environmental laws and statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the Civil Rights Act of 1964 and related statutes. However, nothing in this agreement restricts the Department and FHWA from implementing efficiencies, including future delegations to further implement the provisions of this agreement.

**III. Applicability**

This FHWA delegation to the Department of authorization and oversight, applies to the following Federal-aid project categories:

- All Federal-aid highway projects not located on the National Highway System (NHS), (including Local Streets and Roads and State Highways);
- All non-Interstate NHS projects, (including new construction, reconstruction and Resurfacing, Rehabilitation and Restoration [3R]);
- All Interstate projects with an estimated construction cost less than \$1,000,000, (including new construction, reconstruction and 3R), and
- Interstate 3R projects with an estimated construction cost of \$1,000,000 or greater.

See Appendix A for definition of 3R.

The delegation is governed by the type of work, route designation (Interstate, NHS, and non-NHS routes), and cost. Delegations provided by this agreement are not governed by the category of Federal funds used. The cost used in this determination is the estimated construction cost included in the Project Initiation Document. Projects for which the authority is delegated to the Department are referred to as State-authorized projects, and are not subject to project-by-project reviews and oversight by FHWA. However, nothing in this agreement prohibits FHWA from observing State-authorized projects that have unique features or if unusual circumstances arise. It is the State's responsibility to assure that State-authorized projects conform to federal requirements.

#### **IV. Actions Delegated**

For State-authorized projects, the following activities are delegated to the Department:

##### **A. Pre-construction related**

1. Right-of-way acquisition, utility relocation and railroad crossing. The requirements of Title 23, U.S.C., Title 49, U.S.C. will be followed.
2. Design approval, design exception approval, Plans, Specifications and Estimates (PS&E) approval, and concurrence in award.

##### **B. Construction related**

1. Construction inspection, contract change order approval, contract claims settlement, final inspection, and project acceptance.

#### **V. Standards**

All projects shall be designed, constructed, operated and maintained in accordance with Title 23, U.S.C., Section 109, "Standards." At a minimum, the following design standards shall be uniformly implemented:

##### **A. Interstate Routes**

Projects will be designed in accordance with the most recent FHWA adopted version of the American Association of State Highway and Transportation Officials (AASHTO) "Policy on the Geometric Design of Highways and Streets" (Green Book) and FHWA's "A Policy on Design Standards – Interstate System." FHWA has determined that the Department's Highway Design Manual (HDM) substantially conforms to these requirements and is acceptable for use in project design.

##### **B. NHS Routes (new or reconstruction) (non-interstate)**

Projects will be designed in accordance with the AASHTO Green Book. FHWA has determined that the HDM substantially conforms to these requirements and is acceptable for use in project design.

C. NHS Routes (3R) (non-interstate)

Projects will be designed in accordance with FHWA approved standards developed by the Department. These standards, along with a description of the projects to which they apply, are currently found in the HDM, Topic 307.3, "two-lane Cross Sections for Resurfacing, Restoration and Rehabilitation (RRR) Projects," and in Design Information Bulletin 79, "RRR Design Criteria." Any subsequent updates or new standards published for 3R projects, once approved by FHWA, will be applicable to this stewardship agreement.

D. Non-NHS Routes

Non-NHS projects shall be designed, constructed, operated and maintained in accordance with Title 23, U.S.C., Section 109(o). As a minimum, the following Design Standards shall be uniformly implemented:

1. Local Streets and Roads

Local streets and roads projects will be designed, constructed, operated, maintained in accordance with state laws, regulations, directives, safety standards, design standards and construction standards.

2. 3R Projects on the State Highway System (Non-NHS)

- a) For 3R (except two-lane), reconstruction and new construction, design standards shall be met as indicated in the State HDM.
- b) For 3R on two-lane highways only, design standards shall be met as indicated in the "Geometric Design Criteria for 3R Projects," dated September 7, 2001, or subsequent approved revisions.

**VI. State-Authorized Projects**

Right-of-way approval, utility approval, railroad approval and related activities, design approval, design exception, PS&E approval, concurrence in award, and construction-related activities will be performed in accordance with state policies, practices, and standards; and in accordance with all requirements of Title 23, U.S.C.

Federal-aid program requirements, such as metropolitan and statewide planning, procurement of services and contracts, disadvantaged business enterprises, wage rates, acquisition of right-of-way, relocation and accommodation of utilities railroad work, etc., shall apply to all Federal-aid projects, including State-authorized projects.

For State-authorized projects that are developed and administered by local agencies, the Department shall provide necessary review and oversight to assure compliance with federal requirements.

## **VII. FHWA Approval Required**

Notwithstanding the other sections of this agreement, the FHWA will continue to have project approval responsibilities for the following:

- Approval of waivers to the Buy America requirements;
- Experimental contracting methods, such as design-build;
- Approval of additional access points on the Interstate system;
- Use of Interstate airspace for non-highway related purposes, and
- Approval of hardship acquisition and protective buying.

## **VIII. Special Categories of Projects**

### **A. Intelligent Transportation Systems (ITS) Projects**

FHWA will provide oversight and review of major ITS projects on a project-by-project basis. A description of major ITS projects can be found in Title 23, Code of Federal Regulations (CFR) Section 940. FHWA will be consulted prior to beginning Systems Engineering Analysis and Design to determine if FHWA approval of the Systems Engineering Analysis is required. This determination will be based on project cost, technical complexity, and the degree of available expertise in systems engineering. FHWA is providing nationwide training and outreach in the formal systems engineering process. The Department will pursue the development of expertise in systems engineering process application. As this experience expands throughout the Department, FHWA's oversight and review will be minimized and ultimately delegated to the Department to the extent other project activities are delegated under this letter of agreement. If not delegated by January 2006, FHWA will execute a formal review process to assess the level of expertise that was developed by the Department up to that point in time. If the level of the Department's expertise is determined to be insufficient, FHWA and the Department will negotiate a new date for the next assessment for delegation.

### **B. Major Projects**

Under Title 23, U.S.C., Section 106(h), FHWA requires a project finance plan for projects receiving Federal-aid highway funds with a total cost estimate of \$1 billion or more (Major Projects). The plan must be developed by the project sponsor according to the provisions of the "FHWA Financial Plan Guidance," dated May 23, 2000. The initial finance plan, which must be accepted by FHWA prior to the first authorization for construction with Federal funds on the project, must be updated annually.

The FHWA will retain project approval and oversight responsibilities for Major Projects on the Interstate system. For Major Projects off the Interstate system, the project sponsor will comply with reporting requirements as determined by FHWA, including, but not limited to, updates on the project's milestones, major changes impacting the project, and all other information necessary to provide timely status reports on the project's progress. Additional FHWA oversight activities will be conducted as agreed upon between FHWA, the Department, and the project sponsor, if applicable.

C. Transportation Infrastructure Finance Innovation Act (TIFIA) Projects

Direct loans, lines of credit, and loan guarantees may be provided by the United States Department of Transportation to projects of national significance under the TIFIA of 1998. The application and selection process is outlined annually in the Federal Register. Oversight and the monitoring responsibilities for projects with TIFIA financial assistance will be specified in the credit agreement between the Department and the project sponsor for the individual TIFIA credit instruments. Additional FHWA oversight activities will be conducted as agreed upon between FHWA, the Department, and the project sponsor, if applicable.

D. Unusual Bridges and Structures

For unusual bridges and structures, FHWA oversight activities will be conducted as agreed upon between FHWA, the Department, and the project sponsor, if applicable.

1. Unusual Bridges Are:

- a) Bridges with difficult or unique foundation problems;
- b) New or complex designs with unique operational or design features;
- c) Bridges with exceptionally long spans (greater than 150 m); or
- d) Bridges designed with procedures that depart from currently recognized acceptable practices.

Examples of unusual bridges include cable-stayed, suspension, arch, segmental concrete, movable, or truss bridges; or bridges with major supporting elements of high performance or technologically advanced materials.

2. Unusual Structures

Unusual structures are tunnels, geotechnical structures featuring new or complex wall systems or ground improvement systems, hydraulic structures that involve complex stream stability countermeasures, and structures using atypical or unique designs or design techniques.

**IX. Technical Assistance and Technology Sharing**

Nothing in this agreement prevents the Department from requesting technical assistance from FHWA on any project. Likewise, FHWA can request involvement on any project that has potential for technology sharing with other States.

**X. FHWA Review of State-Authorized Projects**


FHWA remains responsible for ensuring compliance with federal requirements in the delivery of the Federal-aid highway program. FHWA will conduct its oversight responsibility through process reviews and program evaluations to confirm compliance.

These methods will normally be implemented jointly with the Department and will be the typical means by which FHWA will verify compliance with federal requirements.


All provisions of this agreement will remain in effect until specifically modified with the concurrence of both organizations.

APPROVED:

APPROVED:

  
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JEFF MORALES  
Director  
Department of Transportation

12/23/02  
Date

  
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GARY N. HAMBY  
Division Administrator  
Federal Highway Administration

12/26/02  
Date

## Resurfacing, Rehabilitation and Restoration (3R)

For the purpose of determining FHWA's or State's responsibility for project approval and oversight, "3R" is defined broadly to allow maximum delegation of project approval and oversight to the Department. 3R projects are projects, which extend the service life of highways, bridges, and related appurtenances; and/or restore safe, efficient travel on an existing facility. They are typically constructed within existing right-of-way, although minor acquisitions may be needed.

Instead of trying to define all of the types of projects that could fall under the broad area of 3R (Resurfacing, Restoring, Rehabilitation), a determination was made to define the smaller area reconstruction (for stewardship purposes only). To aid in the determination of the type of work, the following work will be considered reconstruction for stewardship purposes only:

- The addition of a lane (except climbing and auxiliary lanes).
- Significant change in horizontal and/or vertical alignment.
- Reconstruction of an interchange by adding moves, or relocating (widening ramps for storage or turning movements are not included).
- Replacement of an entire bridge or the major parts of an existing bridge (in such a manner that it is equivalent to a new bridge).
- Seismic retrofit projects for the following:
  - Major or unusual structure (major or unusual structures are defined by FAPG G 6012.1).
  - In excess of \$5 million per structure (work will be considered to have a substantial effect on the structural capacity of the structure).
- Major modifications to Traffic Management Centers.

If a project does not fall under at least one of the above areas and is not classified as "new" construction, the project will be treated as a 3R project for stewardship purposes.