

**STEWARDSHIP AND OVERSIGHT AGREEMENT  
ON PROJECT ASSUMPTION AND PROGRAM OVERSIGHT  
BY AND BETWEEN  
FEDERAL HIGHWAY ADMINISTRATION, \_\_\_\_\_ DIVISION  
AND THE  
STATE OF \_\_\_\_\_ DEPARTMENT OF TRANSPORTATION**

*(Drafting Note: February 2015 Template Version, Amend as needed to reflect legal name of the State agency and for Section 508.)*

**SECTION I. BACKGROUND AND INTRODUCTION**

The Federal-aid Highway Program (FAHP) is a federally-assisted program of State-selected projects. The Federal Highway Administration (FHWA) and the State Departments of Transportation have long worked as partners to deliver the FAHP in accordance with Federal requirements. In enacting 23 U.S.C. 106(c), as amended, Congress recognized the need to give the States more authority to carry out project responsibilities traditionally handled by FHWA. 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). This Stewardship and Oversight (S&O) Agreement sets forth the agreement between the FHWA and the State of \_\_\_\_\_ Department of Transportation (State DOT) on the roles and responsibilities of the FHWA and the State DOT with respect to Title 23 project approvals and related responsibilities, and FAHP oversight activities.

The scope of FHWA responsibilities, and the legal authority for State DOT assumption of FHWA responsibilities, developed over time. The U.S. Secretary of Transportation delegated responsibility to the Administrator of the FHWA for the FAHP under Title 23 of the United States Code, and associated laws. (49 CFR 1.84 and 1.85) The following legislation further outlines FHWA's responsibilities:

- Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991;
- Transportation Equity Act for the 21st Century (TEA-21) of 1998;
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and
- Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 (P.L. 112-141).

The FHWA may not assign or delegate its decision-making authority to a State Department of Transportation unless authorized by law. Section 106 of Title 23, United States Code (Section 106), authorizes the State to assume specific project approvals. For projects that receive funding under Title 23, U.S.C., and are on the National Highway System (NHS) including projects on the Interstate System, the State may assume the responsibilities of the Secretary of the U.S. Department of Transportation under Title 23 for design, plans, specifications, estimates, contract

awards, and inspections with respect to the projects unless the Secretary determines that the assumption is not appropriate. (23 U.S.C. 106(c)(1)) For projects under Title 23, U.S.C. that are not on the NHS, the State shall assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspections unless the State determines that such assumption is not appropriate. (23 U.S.C. 106(c)(2))

For all other project activities which do not fall within the specific project approvals listed in Section 106 or are not otherwise authorized by 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.

The authority given to the State DOT under Section 106(c)(1) and (2) is limited to specific project approvals listed herein. Nothing listed herein is intended to include assumption of FHWA's decision-making authority regarding Title 23, U.S.C. eligibility or Federal-aid participation determinations. The FHWA always must make the final eligibility and participation decisions for the Federal-aid Highway Program.

Section 106(c)(3) requires FHWA and the State DOT to enter into an agreement relating to the extent to which the State DOT assumes project responsibilities. This Stewardship and Oversight Agreement (S&O Agreement), includes information on specific project approvals and related responsibilities, and provides the requirements for FHWA oversight of the FAHP (Oversight Program), as required by 23 U.S.C. 106(g).

## **SECTION II. INTENT AND PURPOSE OF S&O AGREEMENT**

The intent and purpose of this S&O Agreement is to document the roles and responsibilities of the FHWA's [INSERT STATE] Division Office (FHWA or Division) and [INSERT NAME OF THE STATE DOT] (State DOT) with respect to project approvals and related responsibilities, and to document the methods of oversight which will be used to efficiently and effectively deliver the FAHP.

The Project Action Responsibility Matrix, Attachment A to this S&O Agreement and as further described in Section VIII of this S&O Agreement, identifies FHWA FAHP project approvals and related responsibilities State DOT assumes from FHWA on a program-wide basis pursuant to 23 U.S.C. 106(c) and other legal authorities. Upon execution of this agreement, Attachment A shall be controlling and except as specifically noted in Attachment A, no other agreements, attachments, or other documents shall have the effect of delegating or assigning FHWA approvals to State DOT on a program-wide basis under 23 U.S.C 106 or have the effect of altering Attachment A.

## **SECTION III. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS ON THE NATIONAL HIGHWAY SYSTEM**

*(Information Note: Assumption of Responsibilities on the NHS are discussed in Section II of the S&O Agreement Guidance.)*

- A. The State DOT *may assume* the FHWA's Title 23 responsibilities for design; plans, specifications, and estimates (PS&E); contract awards; and inspections, with respect to

*Federal-aid projects on the National Highway System (NHS) if both the State DOT and FHWA determine that assumption of responsibilities is appropriate.*

- B. Approvals and related activities for which the State DOT has assumed responsibilities as shown in Attachment A will apply program wide unless project specific actions for which the Division will carry out the approval or related responsibilities are documented in accordance with the FHWA Project of Division Interest/Project of Corporate Interest Guide (FHWA PoDI/PoCI Guide) located at:  
<http://www.fhwa.dot.gov/federalaid/stewardship/>
- C. The State DOT may not assume responsibilities for Interstate projects that are in high risk categories. (23 U.S.C. 106(c)(1))  
*(Information Note: High Risk Categories are discussed in Section III of the S&O Agreement Guidance.)*
- D. The State DOT is to exercise any and all assumptions of the Secretary responsibilities for Federal-aid projects on the NHS in accordance with Federal laws, regulations and policies.

#### **SECTION IV. ASSUMPTION OF RESPONSIBILITIES FOR FEDERAL-AID PROJECTS OFF THE NATIONAL HIGHWAY SYSTEM**

*(Information Note: Assumption of responsibilities off the NHS is discussed in Section II of the S&O Agreement Guidance.)*

- A. The State DOT *shall assume* the FHWA’s Title 23 responsibilities for design, PS&Es, contract awards, and inspections, with respect to *Federal-aid projects off the NHS (non-NHS)* unless the *State DOT* determines that assumption of responsibilities is not appropriate. (23 U.S.C. 106(c)(2))
- B. Except as provided in 23 U.S.C.109(o), the State DOT is to exercise the Secretary’s approvals and related responsibilities on these projects in accordance with Federal laws.
- C. The State DOT, in its discretion, may request FHWA carry out one or more non-NHS approvals or related responsibilities listed as “State” in Attachment A on a program-wide basis. For a project specific request, the State may request FHWA carry out any approval or related responsibility listed in Attachment A off the NHS. Such project-specific requests shall be documented in accordance with the FHWA PoDI/PoCI Guide.
- D. Pursuant to 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.

**SECTION V. ASSUMPTION OF RESPONSIBILITIES FOR LOCALLY ADMINISTERED PROJECTS**

*(Information Note: LPAs are discussed in Section II of the S&O Agreement Guidance.)*

The State DOT may permit local public agencies (LPAs) to carry out the State DOT's assumed responsibilities on locally administered projects. The State DOT is responsible and accountable for LPA compliance with all applicable Federal laws and requirements.

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

An assumption of responsibilities under 23 U.S.C. 106(c) may cover only activities in the following areas:

- A. 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.
- B. PS&E, which represents the actions and approvals required before authorization of construction. The PS&E package includes geometric standards, drawings, specifications, project estimates, certifications relating to completion of right-of-way acquisition and relocation, utility work, and railroad work.
- C. Contract awards, which include procurement of professional and other consultant services and construction-related services to include advertising, evaluating, and awarding contracts.
- D. Inspections, which include general contract administration, material testing and quality assurance, review, and inspections of Federal-aid contracts as well as final inspection/acceptance.
- E. Approvals and related responsibilities affecting real property as provided in 23 CFR 710.201(i) and any successor regulation in 23 CFR Part 710.

## **SECTION VII. FEDERAL APPROVALS AND RELATED RESPONSIBILITIES THAT MAY NOT BE ASSUMED BY THE STATE DOT**

*(Information Note: Responsibilities that may not be assumed are discussed in Section II of the S&O Agreement Guidance.)*

- A. Any approval or related responsibility not listed in Attachment A cannot be assumed by the State without prior concurrence by FHWA Headquarters. The following is a list of the most frequently-occurring approvals and related responsibilities that may not be assumed by the State DOT:
  - Civil Rights Program approvals;
  - Environmental approvals, except those specifically assumed under other agreements. (23 U.S.C. 326 and 327; programmatic categorical exclusion agreements);
  - Federal air quality conformity determinations required by the Clean Air Act;
  - Approval of current bill and final vouchers;
  - Approval of federally-funded hardship acquisition, protective buying, and 23 U.S.C. 108(d) early acquisition;
  - Project agreements and modifications to project agreements and obligation of funds (including advance construction);

- Planning and programming pursuant to 23 U.S.C. 134 and 135;
  - Special Experimental Projects (SEP-14 and SEP-15);
  - Use of Interstate airspace for non-highway-related purposes;
  - Any Federal agency approval or determination under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended, and implementing regulations in 49 CFR Part 24;
  - Waivers to Buy America requirements;
  - Approval of Federal participation under 23 CFR 1.9(b);
  - Provide pre-approval for preventive maintenance project (until FHWA concurs with State DOT procedures);
  - Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations, or other contributions applied to a project;
  - Functional replacement of property;
  - Approval of a time extension for preliminary engineering projects beyond the 10-year limit, in the event that actual construction or acquisition of right-of-way for a highway project has not commenced;
  - Approval of a time extension beyond the 20-year limit for right of way projects, in the event that actual construction of a road on the right-of-way is not undertaken;
  - Determine need for Coast Guard Permit;
  - Training Special Provision – Approval of New Project Training Programs; and
  - Any other approval or activity not specifically identified in Attachment A unless otherwise approved by the FHWA, including the Office of Chief Counsel.
- B. For all projects and programs, the State DOT will comply with Title 23 and all applicable non-Title 23, U.S.C. Federal-aid program requirements, such as metropolitan and statewide planning; environment; procurement of engineering and design related service contracts (except as provided in 23 U.S.C. 109(o)); Civil Rights including Title VI of the *Civil Rights Act*, and participation by Disadvantaged Business Enterprises; prevailing wage rates; and acquisition of right-of-way, etc.
- C. This Agreement does not modify the FHWA’s non-Title 23 program approval and related responsibilities, such as approvals required under the Clean Air Act; National Environmental Policy Act, Executive Order on Environmental Justice (E.O. 12898), and other related environmental laws and statutes; the Uniform Act; and the Civil Rights Act of 1964 and related statutes.

## **SECTION VIII. PROJECT ACTION RESPONSIBILITY MATRIX**

Attachment A, Project Action Responsibility Matrix, to this S&O Agreement identifies FAHP project approvals and related responsibilities. The Matrix specifies which approvals and related responsibilities are assumed by the State under 23 U.S.C. 106(c) or other statutory or regulatory authority, as well as approvals and related responsibilities reserved to FHWA.

## **SECTION IX. HIGH RISK CATEGORIES**

*(Information Note: High risk categories are discussed in Section III of the S&O Agreement Guidance.)*

- A. In 23 U.S.C. 106(c), Congress directs that the Secretary shall not assign any approvals or related responsibilities for projects on the Interstate System if the Secretary determines the project to be in a high risk category. Under 23 U.S.C. 106(c)(4)(B), the Secretary may define high risk categories on a national basis, State-by-State basis, or national and State-by-State basis.
- B. The Division has determined there are no high risk categories.

*Alternative Provision:*

FHWA has established the following high risk categories:

*(Information Note: Determination of High Risk Categories must be coordinated with the Office of Program Administration)*

**[LIST HIGH RISK CATEGORY OR CATEGORIES]**

**SECTION X. FHWA OVERSIGHT PROGRAM UNDER 23 U.S.C. 106(g)**

*(Information Note: The FHWA Oversight Program is discussed in Section IV of the S&O Agreement Guidance.)*

- A. In 23 U.S.C. 106(g), Congress directs that the Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out the FAHP. This program includes FHWA oversight of the State's processes and management practices, including those involved in carrying out the approvals and related responsibilities assumed by the State under 23 U.S.C. 106(c). Congress defines that, at a minimum, the oversight program shall be responsive to all areas relating to financial integrity and project delivery.
- B. The FHWA shall perform annual reviews that address elements of the State DOT's financial management system in accordance with 23 U.S.C. 106(g)(2)(A). FHWA will periodically review the State DOT's monitoring of sub-recipients pursuant to 23 U.S.C. 106(g)(4)(B).
- C. The FHWA shall perform annual reviews that address elements of the project delivery systems of the State DOT, which elements include one or more activities that are involved in the life cycle of project from conception to completion of the project. The FHWA will also evaluate the practices of the State DOT for estimating project costs, awarding contracts, and reducing costs. 23 U.S.C. 106(g)(2) and (3).
- D. To carry out the requirements of 23 U.S.C. 106(g), the FHWA will employ a risk management framework to evaluate financial integrity and project delivery, and balance

risk with staffing resources, available funding, and the State's transportation needs. The FHWA may work collaboratively with the State DOT to assess the risks inherent with the FAHP and funds management, and how that assessment will be used to align resources to develop appropriate risk response strategies

Techniques the Division and State DOT may use to identify and analyze risks and develop response strategies include the following:

- Program Assessments;
- FIRE Reviews;
- Program Reviews;
- Certification Reviews;
- Recurring or periodic reviews such as the Compliance Assessment Program (CAP); and
- Inspections of project elements or phases.

These techniques will be carried out in a manner consistent with applicable Division Standard Operating Procedures or other control documents relating to program assessments, FIRE, program reviews, CAP, etc.

The following techniques and processes will be used to carry out the requirements of 23 U.S.C. 106(g):

**[DOCUMENT THE OVERSIGHT TECHNIQUES AND PROCESSES HERE, INCLUDING THE ROLES AND RESPONSIBILITIES OF THE STATE DOT AND DIVISION, OR REFERENCE OTHER CONTROL DOCUMENTS, STANDARD OPERATING PROCEDURES, ETC.]**

E. Program Responsibility Matrix

Attachment B to this S&O Agreement is the Program Responsibility Matrix example that identifies all relevant FHWA program actions, and Division and State DOT program contact offices.

*(Drafting Note: Refer to the FHWA internal Sharepoint site for the latest updated version which can be incorporated into the agreement as [Attachment B](#). The Matrix should only be modified to reflect the Division and State DOT contacts.)*

F. Manuals and Operating Agreements

State DOT manuals, agreements and other control documents that have been approved for use on Federal-aid projects are listed in Attachment C to this S&O Agreement.

G. Stewardship and Oversight Indicators

The Division and State DOT may jointly establish Stewardship and Oversight Indicators (Indicators). The Indicators should set targets, track trends, and implement



countermeasures and actions when the data is moving away from the desired target direction. Indicators can provide documented evidence that the State DOT assumption of responsibilities is functioning appropriately. Stewardship and Oversight Indicators should be reviewed on an annual basis. If utilized, the Indicators shall be incorporated by reference to this S&O Agreement.

*(Drafting Note: The State DOT and the Division should consider incorporating stewardship/oversight indicators as an integral part of joint Federal/State stewardship/oversight activities in the S&O Agreement.)*

## **SECTION XI. STATE DOT OVERSIGHT AND REPORTING REQUIREMENTS**

*(Information Note: The FHWA Oversight Program is discussed in Section IV of the S&O Agreement Guidance.)*

### **A. State DOT Oversight and Reporting Requirements**

*(Drafting Note: The S&O Agreement should address how assumed authorities will be carried out by the State DOT. It should include the reports, reviews, data, staffing information, performance assurances, etc., that will provide documented assurance that the State DOT is properly carrying out its responsibilities in accordance with this S&O Agreement, and how this information will be shared with the Division. The S&O Agreement also can include business service standards that would provide an expectation for how long it would take to provide reports, reviews, and findings along with the expectation to implement corrective actions when necessary.)*

The State DOT is responsible for demonstrating to the FHWA how it is carrying out its responsibilities in accordance with this S&O Agreement. In order to fulfill this responsibility, the State DOT will [LIST ACTIVITIES, CONTROL DOCUMENTS, ETC.]

### **B. State DOT Oversight of Locally Administered Projects**

*(Drafting Note: The S&O Agreement will document the role of the State DOT in communicating, educating, and validating the Federal requirements with LPAs.)*

- B.1. State DOT's are required to provide adequate oversight of sub-recipients including oversight of any assumed responsibilities the State DOT delegates to a LPA.
- B.2. Pursuant to 23 U.S.C. 106(g)(4), the State DOT shall be responsible for determining that sub-recipients of Federal funds have adequate project delivery systems for locally administered projects and sufficient accounting controls to properly manage such Federal-aid funds. The State DOT is also responsible for ensuring compliance with reporting and other requirements applicable to grantees making sub-awards, such as monthly

reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, PL 109-282 (as amended by PL 110-252).

- B.3. The State DOT acknowledges that it is responsible for sub-recipient awareness of Federal grant requirements management of grant awards and sub-awards, and is familiar with and comprehends pass through entity responsibilities (2 C.F.R 200.331 Requirements for Pass-thru Entities). The State DOT shall carry out these responsibilities using the following actions, programs, and processes:

*(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation State officials maintain.)*

**[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]**

- B.4. The State DOT shall assess whether a sub-recipient has adequate project delivery systems and sufficient accounting controls to properly manage projects, using the following actions, programs, and processes:

*(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)*

**[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]**

- B.5. The State DOT shall assess whether a sub-recipient is staffed and equipped to perform work satisfactorily and cost effectively, and that adequate staffing and supervision exists to manage the Federal project(s), by using the following actions, programs, and processes:

*(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)*

**[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]**

- B.6. The State DOT shall assess whether sub-recipient projects receive adequate inspection to ensure they are completed in conformance with approved plans and specifications, by using the following actions, programs, and processes:

*(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)*

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.7. The State DOT shall ensure that when LPAs elect to use consultants for engineering services, the LPA, as provided under 23 CFR 635.105(b), shall provide a full-time employee of the agency to be in responsible charge of the project. The State DOT's process to ensure compliance with this requirement is documented by the following actions, programs, and processes:

*(Drafting Note: The S&O Agreement may refer to the process the State DOT utilizes to accomplish this and the necessary documentation they maintain.)*

[DOCUMENT THE ACTIONS, PROGRAM AND PROCESSES HERE OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL]

- B.8. The State DOT shall ensure that project actions will be administered in accordance with all applicable Federal laws and regulations. The State DOT will use the following process on required approvals on sub-recipient projects [DESCRIBE PROCESS OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL], and approved on sub-recipient administered projects.

*Drafting Note: The activities for ensuring compliance, at a minimum, oversight should cover these areas:*

- a. Consultant selection and management;
- b. Environment;
- c. Design;
- d. Civil Rights;
- e. Financial management including audits and indirect cost allocation plans;
- f. Right-of-way;
- g. Construction monitoring, including Quality Control/Quality Assurance (QC/QA); and
- h. Contract administration including the State DOT's responsibility to approve a sub-recipient to pursue a contract procurement method other than competitive bidding.

- B.9. The State DOT shall document its oversight activities for LPA-administered projects and findings, and how it will share this information with the FHWA. [DESCRIBE THE STATE DOT ACTIONS, PROGRAMS, AND PROCESSES OR REFERENCE CONTROL DOCUMENT, E.G., LPA MANUAL].

## SECTION XII. IMPLEMENTATION AND AMENDMENTS

- A. This S&O Agreement will take effect as of the effective date of the signature of the FHWA [INSERT STATE] Division Administrator, who shall sign this S&O Agreement last.
- B. The Division and State DOT agree that updates to this Agreement will be considered periodically on a case-by-case basis or when:
- Significant new legislation, Executive orders, or other initiatives affecting the relationship or responsibilities of one or both parties to the S&O Agreement occurs;
  - Leadership, or leadership direction, changes at the State DOT or FHWA; or
  - Priorities shift as a result of audits, public perception, or changes in staffing at either the State DOT or Division Office.
- C. The Division and State DOT agree that changes may occur to the contents of the Attachments to this S&O Agreement and documents incorporated by reference into the S&O Agreement. Except as provided in paragraph XII.D and E, changes to the Attachments and documents incorporated by reference will not require the Division and State DOT to amend this S&O Agreement. The effective date of any revisions to one of these documents shall be clearly visible in the header of the revised document. This Agreement and any revised document shall be posted on the Division's S&O Agreement internet site within five (5) business days of the effective date.
- D. Any changes to the high risk categories must be documented by an amendment to this S&O Agreement.
- E. Any changes to the Project Action Responsibility Matrix must be approved by the FHWA Office of Infrastructure in writing and documented by an amendment to this S&O Agreement. (*Drafting Note: The Project Action Responsibility Matrix is generally Attachment A.*)

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**EXECUTION BY THE FHWA [INSERT STATE] DIVISION OFFICE**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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Signature

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[INSERT NAME]  
Division Administrator

**EXECUTION BY THE [INSERT NAME OF STATE DOT]**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
[INSERT NAME]

\_\_\_\_\_  
Title

**ATTACHMENT A**  
**PROJECT ACTION RESPONSIBILITY MATRIX**  
**(As of February 6 2015)**

*[Drafting Notes (to be deleted before the S&O agreement is signed):*

*The Division should refer to the FHWA internal Sharepoint site for the latest updated version of this table.*

*The following matrix identifies Federal-aid highway program (FAHP) project approvals and related responsibilities. The matrix specifies which ones are subject to State assumption under the provisions of 23 U.S.C. 106(c) or other statutory or regulatory authority, as well as those which are reserved to FHWA.*

*In the column entitled “Projects on the NHS” if an item is marked “FHWA or State,” it means the State may assume the specified approval and related responsibilities if the Division determines the assumption is appropriate. For projects on the NHS, the FHWA may retain any approval or related action in any box marked “FHWA or State”, as deemed appropriate by the Division, by choosing to enter “FHWA” for that box. If the FHWA retains any approval or related action in any box marked “FHWA or State”, the project is a PoDI, and will require a PoDI plan.*

*For the column marked “Projects off the NHS”, the State must assume all items marked “State” unless the State determines the assumption of a particular item by the State is not appropriate and requests FHWA take responsibility for the action. In such cases, the box should read “FHWA”.*

*If FHWA retains an action the State could have assumed (on the NHS) or has a right to assume (off the NHS), the affected projects become PoDI projects.<sup>1</sup> Matrix users may find it easier to identify such situations if you mark such instances in the matrix with a note or asterisk (\*). Divisions also may wish to include in Attachment A’s introduction information about where readers can find a list of PoDI projects and copies of PoDI plans.*

*Except as expressly stated in notes to the matrix below, the State cannot assume any item marked only as “FHWA” in either column. Any item marked only “FHWA” is reserved to FHWA because it is outside the scope of 23 U.S.C. 106(c), or otherwise is reserved to FHWA by law. While FHWA may not delegate decision-making authority to a State unless authorized by law, FHWA may authorize a State DOT to perform work needed to reach the decision point, or to implement the decision.]*

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<sup>1</sup> *The following are considered PoDI projects: Major Projects (>\$500M); Appalachian Development Highway Projects; TIGER Discretionary Grant Projects; NHS Projects with Retained FHWA Project Approval; Non-NHS Projects with Retained FHWA Project Approval; and Projects Selected by FHWA for Risk-based Stewardship & Oversight. Regardless of retained project approval actions, any Federal-aid Highway Project either on or off the NHS that the Division identifies as having an elevated level of risk can be selected for risk-based stewardship and oversight and would then be identified as a PoDI. Please see “Projects of Division Interest (PoDI)/Projects of Corporate Interest (PoCI) Guidance (available at <http://www.fhwa.dot.gov/federalaid/stewardship/>)*

The following matrix identifies Federal-aid highway program (FAHP) project approvals and related responsibilities on a program-wide basis. The matrix specifies which actions are assumed by the State under the provisions of 23 U.S.C. 106(c) or other statutory or regulatory authority, as well as those which are reserved to FHWA. Projects classified as PoDI projects are not covered by the matrix, as those projects will be governed by a separate PoDI plan that specifies FHWA and State responsibilities for the project.

[Drafting Note: This paragraph is optional, intended to help users better understand that FHWA retention of approvals in these cases means the affected projects are PoDIs. If you don't want to do this, just delete the paragraph.] In the matrix, actions marked with an asterisk (“FHWA\*”) are those that FHWA has retained but that could have been assumed by the State through FHWA discretion (on the NHS) or by right (off the NHS). Projects requiring those actions are PoDI projects because of FHWA’s retained authority. Those projects will be governed by a separate PoDI Plan.

The State DOT is responsible for ensuring all individual elements of the project are eligible for FAHP funding, but all final eligibility and participation determinations are retained by FHWA.

**PROJECT ACTION RESPONSIBILITY MATRIX (as of February 6, 2015)  
(Excluding PoDIs, which are subject to separate PoDI Plans)**

ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
<b>PROGRAMMING (All phases)</b>	Ensure project in Statewide Transportation Improvement Program (STIP)/Transportation Improvement Program (TIP)	STATE	STATE
	Identify proposed funding category	STATE(1)	STATE(1)
<b>FINANCIAL MANAGMENT (All phases)</b>	Obligate funds/approve Federal-aid project agreement, modifications, and project closures (project authorizations) (Note: this action cannot be assumed by State)	FHWA	FHWA
	Authorize current bill (Note: this action cannot be assumed by State)	FHWA	FHWA
	Review and Accept Financial Plan and Annual Updates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA



ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Review Cost Estimates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
	Develop Financial Plan for Federal Projects between \$100 million and \$500 million. [23 U.S.C. 106(i)]	STATE	STATE
<b>ENVIRONMENT (All phases)</b>	All EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations. (Note: this action cannot be assumed by STATE except under 23 U.S.C. 327)	FHWA(2)	FHWA(2)
	Categorical Exclusion approval actions (Note this action cannot be assumed by the State except through an assignment under 23 U.S.C. 326 or 327, or through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and 23 CFR 771.117(g))	FHWA(2)	FHWA(2)
<b>PRELIMINARY DESIGN (Design Phase)</b>	Consultant Contract Selection	FHWA or STATE (3)	STATE (3)
	Sole source Consultant Contract Selection	FHWA or STATE (3)	STATE (3)
	Approve hiring of consultant to serve in a “management” role (Note: this action cannot be assumed by State) [23 CFR 172.9]	FHWA	FHWA
	Approve consultant agreements and agreement revisions (Federal non-Major Projects) [23 CFR 172.9]	FHWA or STATE	STATE
	Approve consultant agreements and agreement revisions on Federal Major Projects [23 CFR 172.9] (Note: this action cannot be assumed by State)	FHWA	FHWA
	Approve exceptions to design standards [23 CFR 625.3(f)]	FHWA or STATE	STATE

ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Interstate System Access Change [23 USC 111] (Note: this action cannot be assumed by State)	FHWA	N/A
	Interstate System Access Justification Report [23 USC 111] (Note: action may be assumed by State pursuant to 23 USC 111(e))	FHWA or STATE	N/A
	Airport highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104]	FHWA or STATE	STATE
	Approve Project Management Plan for Federal Major Projects over \$500 million [23 USC 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
	Approve innovative and Public-Private Partnership projects in accordance with SEP-14 and SEP-15 (Note: this action cannot be assumed by State)	FHWA	FHWA
	Provide pre-approval for preventive maintenance project (until FHWA concurs with STATE procedures) (Note: this action cannot be assumed by State)	FHWA	FHWA
<b>DETAILED / FINAL DESIGN (Design Phase)</b>	Provide approval of preliminary plans for unusual/complex bridges or structures on the Interstate. [23 USC 109(a) and FHWA Policy]	FHWA (4)	N/A
	Provide approval of preliminary plans for unusual/complex bridges or structures (non-Interstate).[23 USC 109(a) and FHWA Policy]	FHWA or State (4)	STATE
	Approve retaining right-of-way encroachments [23 CFR 1.23 (b) & (c)]	FHWA or STATE	STATE
	Approve use of local force account agreements [23 CFR 635.104 & 204]	FHWA or STATE	STATE
	Approve use of publicly owned equipment [23 CFR 635.106]	FHWA or STATE	STATE

ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Approve the use of proprietary products, processes [23 CFR 635.411]	FHWA or STATE	STATE
	Concur in use of publicly furnished materials [23 CFR 635.407]	FHWA or STATE	STATE
<b>RIGHT-OF-WAY (Design and Operational Phases)</b>	Make feasibility/practicability determination for allowing authorization of construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	FHWA or STATE	STATE
	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)]	FHWA for Interstate FHWA or STATE for Non-Interstate	STATE
	Ensure compliant ROW certificate is in place [23 CFR 635.309(c)]	FHWA or STATE	STATE
	Approve Hardship and Protective Buying [23 CFR 710.503] (If a Federal-aid project) (Note: this action cannot be assumed by State)	FHWA	FHWA
	Approve Interstate Real Property Interest Use Agreements [23 CFR 710.405] (Note: this action cannot be assumed by State)	FHWA	N/A
	Approve non-highway use and occupancy [23 CFR 1.23(c)]	FHWA for Interstate FHWA or STATE for Non-Interstate (3)	STATE (3)
	Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156] (Note: this action cannot be assumed by State)	FHWA	FHWA

ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Approve disposal at fair market value of federally funded right-of-way, including disposals of access control [23 CFR 710.409] (Note: 23 CFR 710.201 authorizes FHWA and STATE to agree to scope of property-related oversight and approvals for all actions except those on the Interstate System)	FHWA for Interstate FHWA or STATE for Non-Interstate (3)	STATE (3)
	Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project (note: this action cannot be assumed by State)	FHWA	FHWA
	Federal land transfers [23 CFR 710, Subpart F] (Note: this action cannot be assumed by State)	FHWA	FHWA
	Functional replacement of property [23 CFR 710.509] (Note: this action cannot be assumed by State)	FHWA	FHWA
<b>SYSTEM OPERATIONS AND PRESERVATION (Design Phase)</b>	Accept Transportation Management Plans (23 CFR 630.1012(b))	FHWA or STATE	STATE
	Approval of System Engineering Analysis (for ITS) [23 CFR 940.11]	FHWA or STATE	STATE
<b>PS&amp;E AND ADVERTISING (Design Phase)</b>	Approve PS&E [23 CFR 630.201]	FHWA or STATE	STATE
	Authorize advance construction and conversions [23 CFR 630.703 & 709] (Note: this action cannot be assumed by State)	FHWA	FHWA
	Approve utility or railroad force account work [23 CFR 645.113 & 646.216]	FHWA or STATE	STATE
	Approve utility and railroad agreements [23 CFR 645.113 & 646.216]	FHWA or STATE	STATE
	Approve use of consultants by	FHWA or STATE	STATE

ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	utility companies [23 CFR 645.109(b)]		
	Approve exceptions to maximum railroad protective insurance limits [23 CFR 646.111]	FHWA or STATE	STATE
	Authorize (approve) advertising for bids [23 CFR 635.112, 309]	FHWA or STATE	STATE
<b>CONTRACT ADVERTISEMENT AND AWARD (Design Phase)</b> <b>All contracts to be done by competitive bidding unless otherwise authorized by law</b>	Approve cost-effectiveness determinations for construction work performed by force account or by contract awarded by other than competitive bidding [23 CFR 635.104 &.204]	FHWA or STATE	STATE
	Approve emergency determinations for contracts awarded by other than competitive bidding [23 CFR 635.104 &.204]	FHWA or STATE	STATE
	Approve construction engineering by local agency [23 CFR 635.105]	FHWA or STATE	STATE
	Approve advertising period less than 3 weeks [23 CFR 635.112]	FHWA or STATE	STATE
	Approve addenda during advertising period [23 CFR 635.112]	FHWA or STATE, whichever approved PS&E	STATE
	Concur in award of contract [23 CFR 635.114]	FHWA or STATE	STATE
	Concur in rejection of all bids [23 CFR 635.114]	FHWA or STATE	STATE
	Approval of Design-Build Requests-for-Proposals and Addenda [23 CFR 635.112]	FHWA or STATE	STATE
<b>CONSTRUCTION (Construction Phase)</b>	Approve changes and extra work [23 CFR 635.120]	FHWA or STATE	STATE
	Approve contract time extensions [23 CFR 635.120]	FHWA or STATE	STATE
	Concur in use of mandatory borrow/disposal sites [23 CFR 635.407]	FHWA or STATE	STATE
	Accept materials certification [23 CFR 637.207]	FHWA or STATE	STATE

ACTION		AGENCY RESPONSIBLE	
		PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Concur in settlement of contract claims [23 CFR 635.124]	FHWA or STATE	STATE
	Concur in termination of construction contracts [23 CFR 635.125]	FHWA or STATE	STATE
	Waive Buy America provisions [23 CFR 635.410] (Note: this action cannot be assumed by State)	FHWA	FHWA
	Final inspection/acceptance of completed work [23 USC 114(a)]	FHWA or STATE	STATE
<b>CIVIL RIGHTS (All phases)</b>	Approval of Disadvantaged Business Enterprise (DBE) Project Contract Goal set by the State DOT under 49 CFR 26.51(d). [49 CFR 26.51(e)(3)]	FHWA or STATE	STATE
	Acceptance of Bidder's Good Faith Efforts to Meet Contract Goal [49 CFR 26.53] or of Prime Contractor's Good Faith Efforts to Find Another DBE Subcontractor When a DBE Subcontractor is Terminated or Fails to Complete Its Work [49 CFR 26.53(g)] (Note: this action cannot be performed by the FHWA)	STATE	STATE
	Equal Employment Opportunity (EEO) Contract Compliance Review Approval [23 CFR Part 230, Subpart D)].	FHWA or STATE	STATE
	Training Special Provision – Approval of Project Goal for training slots or hours [23 CFR Part 230, Subpart A]	FHWA or STATE	STATE
	Training Special Provision – Approval of New Project Training Programs (Note: this action cannot be assumed by State)[23 CFR 230.111(d), (e)]	FHWA	FHWA

**FOOTNOTES:**

1. State is responsible for ensuring that all individual elements of the project are eligible. FHWA will check that the scope of the project as described in submitted project

agreement is eligible for the category of funding sought. All final eligibility and participation determinations are retained by FHWA.

2. If there is a 23 U.S.C. 326 or 325 assignment or PCE agreement, decisions are handled in accordance with those assignments or agreements.
3. State's process and modifications to, or variation in process, require FHWA approval.
4. Unusual/Complex bridges and structures are those that the Division determines to have unique foundation problems, new or complex designs, exceptionally long spans, exceptionally large foundations, complex hydrologic (including climate change and extreme weather events) aspects, complex hydraulic elements or scour related elements, or that are designed with procedures that depart from currently recognized acceptable practices (i.e., cable-stay, suspension, arch, segmental concrete, moveable, truss, tunnels, or complex geotechnical walls or ground improvement systems)