Highways and Local Programs (H&LP) – Our Role in Your Project

Local agencies apply for federal transportation grants through our offices. Our goal is to help your agency successfully administer projects while meeting the requirements of the Stewardship Agreement between the Federal Highway Administration (FHWA) and Washington State Department of Transportation (WSDOT).

We have a Headquarters office located in Olympia that we refer to as Highways and Local Programs (HL&P) and we also have offices in each region which we call Region Local Programs offices. The people who work in each region will work directly with you throughout the process. The people at the Olympia H&LP office work as liaisons between FHWA and the Region/Local Agency people.

Once a grant is approved, your agency signs an agreement with us called a Local Agency Agreement (WSDOT Form 140-039) (Figure 1-1) that outlines roles of the agency and state from design through construction.

Through the Local Technical Assistance Program (LTAP) center, we provide training, brochures, and other help. You can access the LTAP center online at www.wsdot.wa.gov/localprograms/ltap. Your Region Local Program Office will help you manage funding issues, documentation requirements, and process reimbursement payments.

Course Goal

**Short Term** – Better accountability and an overview of process as well as a handbook for later reference. Detailed information in areas most mistakes are made.

**Long Term** – Less frustration, more knowledge, improved processes, more successful documentation reviews, and better stewardship of federal funds.

Documentation Reviews

We perform two types of documentation review:

1. **Region Local Programs Office** review of your records. They will review construction documentation during the construction of your project. These reviews will help keep things on the right path and give the reviewers ideas about training that may be helpful and pinpoint areas that may need to be improved before they are problems.

2. **Project Management Reviews (PMRs) Certification Acceptance agencies only.** H&LP staff from Olympia and Region Local Programs staff in your region will come to your office and review a project once every three years. This review covers the entire project from design through construction. A successful PMR is required to continue Certification Acceptance status for agencies.
Following the PMR, your agency has 30 days to review the findings and correct any deficiencies. If all deficiencies are corrected satisfactorily, the finding letter will say it was a good review. If you cannot correct the deficiencies, sanctions are likely. Possible sanctions include:

- Loss of funding (all or part) on un-corrected items.
- Corrective action plan and next project is also a PMR project.
- Demotion of your agency to probationary status.
- Loss of CA.

Other reviews may be performed by state auditors or FHWA.

**Certification Acceptance or CA**

When your agency and key personnel have the skill and experience to manage the work, CA authority can be granted. The process includes an application, interviews, and other documentation showing your ability as an agency. CA is granted following the process and culminates in a letter from H&LP granting CA status.

When CA status has been granted, a CA Agreement is completed that outlines the responsibilities of your agency while administering federal highway funds. The agreement is signed by the appropriate parties and becomes part of your agency’s CA file.

Look at the CA Agreement for your agency to identify who is responsible for signing and approving each part of the project. See Figure 1-2 for a CA Agreement. During a PMR, reviewers will look for the CA Agreement and check that the correct people signed the appropriate documents.

**Non-CA** – Your agency can still build a federally-funded project but is required to find an agency that has CA to be responsible for administration of part or all of the project. This might be another agency, a WSDOT Project Office, or Region Local Programs Engineer. The responsible agency must sign and approve key documents and will either provide personnel or require that you hire consultants to manage design and/or construction administration.

The format of this course roughly follows the Project Management Review Checklist found in Appendix 53.51 of the *Local Agency Guidelines* M 36-63. A copy of the checklist is in Part 7.
**Reference Material**

**Coordination of Contract Documents**

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence unless your contract is amended to change it:

1. Addenda
2. Proposal Form
4. Contract Plans
5. *Amendments to the Standard Specifications*

The above documents complement each other in describing a complete work. Any requirements in one part binds as if stated in all parts. If a conflict exists between these documents, an individual needs to understand the Order of Precedence (hierarchy) of these documents. See *Standard Specifications* Section 1-04.2.

**Other Documents**

Other documents/manuals which provide direction in contract administration and which the project office needs to be familiar with are:

- *Local Agency Guidelines* M 36-63 Chapters 51-53
- *Construction Manual* M 41-01
- *Qualified Products List* (The online version is the most current as is updated daily.)

These documents, manuals, and other publications can be found on the WSDOT Publications Services web page at [www.wsdot.wa.gov/publications/manuals](http://www.wsdot.wa.gov/publications/manuals).
Local Agency Agreement

Agency 
Address 

CFDA No. 20.205  
(Catalog of Federal Domestic Assistance) 
Project No. 
Agreement No. 

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102, A-87 and A-133, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name 
Length 
Termini 

Description of Work

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<th>Type of Work</th>
<th>(1) Estimated Total Project Funds</th>
<th>(2) Estimated Agency Funds</th>
<th>(3) Estimated Federal Funds</th>
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<td>b. Other</td>
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<td>r. Total Project Cost Estimate (e+j+q)</td>
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</table>

Agency Official 
By 
Title 

Washington State Department of Transportation 
By 
Director of Highways and Local Programs 

Date Executed 

Figure 1-1
Construction Method of Financing  (Check Method Selected)

State Ad and Award

☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of
$ ______________ at $ ______________ per month for ______________ months.

Local Force or Local Ad and Award

☐ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on ______________, Resolution/Ordinance No. ______________.

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and service necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State shall further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost therefor. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor’s Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in the federal Office of Management & Budget (OMB) circular A-87, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.
Part 1 Introduction

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency’s execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT’s DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentation, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

1. To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

2. To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.

3. To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.

4. To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.
In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:
(a) Cancel, terminate, or suspend this agreement in whole or in part;
(b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
(c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages
The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience
The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:
1. The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
2. The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
3. The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
4. The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action
For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
The approving authority certifies, to the best of his or her knowledge and belief, that:
1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1332, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Additional Provisions
Certification Acceptance Qualification Agreement

AGENCY __________________________ AGENCY NO. __________________

The agency agrees to comply with the following requirements when developing all Federal Highway Administration (FHWA) projects under __________________________ CA status.

1. Adherence to the Local Agency Guidelines and all policies and procedures promulgated by the Washington State Department of Transportation (WSDOT) which accomplish the policies and objectives set forth in Title 23, U.S. Code, Highways, and the regulations issued pursuant thereto.

2. The overall approval authorities and conditions will be as follows:
   a. The project prospectus will be reviewed and approved by the following official.
      ______________________________________________________
      Position Title Only
   b. The local agency agreement will be reviewed and approved by the following official or officials.
      ______________________________________________________
      Position Title Only
   c. The designs and environmental documents will be reviewed and approved by the following state of Washington registered Professional Civil Engineer.
      ______________________________________________________
      Position Title Only
   d. The hearing’s findings (if required) will be reviewed and approved by the following official or officials.
      ______________________________________________________
      Position Title or Titles Only
   e. The contract plans, specifications and estimate of cost will be reviewed and approved by the following state of Washington registered Professional Engineer.
      ______________________________________________________
      Position Title or Titles Only
   f. Agreements will be signed by the following responsible local official:
      (1) Railroad _____________________________________________
          Position Title Only
      (2) Utility ______________________________________________
          Position Title Only
      (3) Consultant ___________________________________________
          Position Title Only
      (4) Technical Services _____________________________________
          Position Title Only
   g. The award of contract will be signed by the following responsible local official.
      ______________________________________________________
      Position Title Only

Figure 1-2
h. All projects will be constructed in conformance with the Washington State Department of Transportation/American Public Works Association (WSDOT/APWA) current *Standard Specifications for Road, Bridge, and Municipal Construction* and such specifications that modify these specifications as appropriate. Multimodal enhancement projects shall be constructed in conformance with applicable state and local codes.

i. The contract administration will be supervised by the following state of Washington registered Professional Civil Engineer.

Position Title Only

j. Construction administration and material sampling and testing will be accomplished in accordance with the WSDOT *Construction Manual* and the *Local Agency Guidelines*.

3. The agency agrees that they have the means to provide adequate expertise and will have support staff available to perform the functions being subdelegated. The support staff may include consultant or state services.

4. The agency agrees that the signature on each project prospectus and local agency agreement will be consistent with section 2 above.

5. All projects under Certification Acceptance shall be available for review by the FHWA and the state at any time and all project documents shall be retained and available for inspection during the plan development and construction stages and for a three year period following acceptance of the project by WSDOT.

6. Approval of the local agency certification by the Director of Highways and Local Programs may be rescinded at any time upon local agency request or if, in the opinion of the Director of Highways and Local Programs, it is necessary to do so. The rescission may be applied to all or part of the programs or projects approved in the local agency certification.

Mayor or Chairman ___________________________ Date ___________________________

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Approved By: ___________________________

Director of Highways and Local Programs Date ___________________________