

STEWARDSHIP AND OVERSIGHT AGREEMENT

ON PROJECT ASSUMPTION AND PROGRAM OVERSIGHT

BY AND BETWEEN

FEDERAL HIGHWAY ADMINISTRATION WASHINGTON DIVISION

AND THE

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

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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 Washington State Department of Transportation (WSDOT) on the roles and responsibilities of FHWA and WSDOT with respect to Title 23 project approvals and related responsibilities, and FAHP oversight activities.

The scope of FHWA responsibilities, and the legal authority for WSDOT assumption of FHWA responsibilities, developed over time. The U.S. Secretary of Transportation (U.S. DOT Secretary) 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 U.S. DOT Secretary under Title 23 for design, plans, specifications, estimates, contract awards, and inspections with respect to the projects unless the U.S. DOT 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 that 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 Washington Division Office (FHWA Division) and WSDOT with respect to project approvals and related responsibilities, and to document the methods of oversight that will be used to efficiently and effectively deliver the FAHP.

The Project Action Responsibility Matrix, Attachment A to this S&O agreement and further described in Section VIII of this S&O agreement, identifies FHWA FAHP project approvals and related responsibilities WSDOT 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 WSDOT on a program-wide basis or have the effect of altering Attachment A.

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

- A. WSDOT 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 WSDOT and the FHWA Division determine that assumption of responsibilities is appropriate.
- B. Approvals and related activities for which WSDOT has assumed responsibilities as shown in Attachment A will apply program-wide unless project-specific actions for which the FHWA 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. WSDOT may not assume responsibilities for Interstate projects that are in high risk categories. (23 U.S.C. 106(c)(1))
- D. WSDOT is to exercise any and all assumptions of the U.S. DOT Secretary's 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

- A. WSDOT *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 *WSDOT* 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), WSDOT is to exercise the U.S. DOT Secretary's approvals and related responsibilities on these projects in accordance with Federal laws.
- C. WSDOT, at 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, highway safety manual protocols, practical design protocols , and construction standards.

SECTION V. ASSUMPTION OF RESPONSIBILITIES FOR LOCALLY ADMINISTERED PROJECTS

WSDOT may permit local public agencies (LPAs) to carry out WSDOT's assumed responsibilities on locally administered projects. WSDOT 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

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;
- Progress payments 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;
- Addition of any points of access to, or exit from the Interstate System
- 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);
- 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;
- 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

- A. In 23 U.S.C. 106(c), Congress directs that the U.S. DOT Secretary shall not assign any approvals or related responsibilities for projects on the Interstate System if the U.S. DOT Secretary determines the project to be in a high risk category. Under 23 U.S.C. 106(c)(4)(8), the U.S. DOT Secretary may define high risk categories on a national basis, State-by-State basis, or national and State-by-State basis.
- B. The FHWA Division has determined there are no high risk categories.

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

- A. In 23 U.S.C. 106(g), Congress directs that the U.S. DOT 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, 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. These techniques and processes will be used to carry out the requirements of 23 U.S.C. 106(g):

- Program Assessments;
- FIRE Reviews;
- Improper Payment Elimination and Recovery Act Reviews;
- Program Reviews;
- Certification Reviews;
- Recurring or periodic reviews such as the Compliance Assessment Program (CAP);
- Program Management
- 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 is not an all-inclusive list but rather a list of only some of the established tools, to assist in carrying out these tasks:

- Method for Communication and Conflict Resolution Plan
- WSDOT's Innovative Initiatives: Practical Design, Practical Solutions, Least Cost Planning
- Route Closure Notifications Process

- FHWA/WSDOT Construction Monitoring Plan
- WSDOT's Safety Strategies for Program Building
- FHWA Project of Division Interest/Project of Corporate Interest Guide
- FHWA Major Projects Guidance

E. Program Responsibility Matrix

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

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 FHWA Division and WSDOT have jointly established Stewardship and Oversight Indicators and Measures (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 WSDOT's assumption of responsibilities is functioning appropriately. Stewardship indicators are incorporated and used in the S&O to help assess performance in administering FAHP requirements and to help determine whether funds are being used effectively to improve the transportation system. The indicators also serve as a tool in conducting annual risk assessments, and may trigger program reviews or program management techniques such as project inspections and/or project document reviews.

Maintaining, updating, and improving the indicators are the continuous responsibility of the FHWA Division and WSDOT. Attachment D provides a summary of all the FHWA Division stewardship indicators.

It is important to note that these "stewardship/oversight indicators" are distinct from the more comprehensive "performance measures" required under MAP-21 that are being developed through the rulemaking process.

SECTION XI. STATE AND LOCAL PUBLIC AGENCY OVERSIGHT REQUIREMENTS AND REPORTING REQUIREMENTS

A. State DOT Oversight and Reporting Requirements:

WSDOT is responsible for demonstrating to FHWA that it is carrying out its responsibilities in accordance with this Agreement. In order to fulfill this responsibility, the WSDOT, at minimum will:

- Provide stewardship and oversight activities on Federal-aid projects as described in the “Project Action Matrix”;
- Provide stewardship and oversight activities on FHWA programs as described in the “Program Action Matrix”;
- Follow the process as outlined in the “WSDOT Environmental Manual” to prepare environmental documentation for Federal-aid projects, in order to ensure compliance with NEPA and other applicable laws. As well as perform the responsibilities as described in the Section 106 Statewide Programmatic Agreement, and in letters to the USFWS and NMFS designating WSDOT as non-Federal representative.
- Prepare project plans in accordance with the Division approved “WSDOT Design Manual”, “WSDOT Bridge Design Manual”, “WSDOT Geotechnical Design Manual”, “WSDOT Hydraulics Manual”, “WSDOT Standard Plans” and other various manuals.
- Conduct construction activities as set forth in the project’s construction documents, “FHWA and WSDOT Construction Monitoring Plan”, in accordance with WSDOT’s Construction Manual; and Division approved “WSDOT Standard Specification for Road, Bridge and Municipal Construction”.
- Ensure nondiscrimination in all of their programs and activities by conducting Equal Employment Opportunity (EEO) contractor training reviews, assigning and monitoring training goals, establishing Disadvantaged Business Enterprise (DBE) goals and monitoring participation. Follow the process outlined in “EEO Assurances”, WSDOT DBE Program Plan”, “Title VI Program/Limited English Proficiency Implementation Plan”, “ADA Self-evaluation and Transition Plan” and other applicable manuals and policies.
- Ensure that all bridges within its borders, including county and municipal owned bridges are inspected in accordance with the National Bridge Inspection (NBIS) and are maintained as part of the National Bridge Inventory (NBI).
- Ensure that the appraisal, acquisition, relocation and property management, as well as the principal activities used to acquire real property for the construction, operation, and maintenance of federal-aid projects is completed in conformance with the Uniform Relocation Act by following the procedures outlined in “WSDOT Right of Way Manual”.

WSDOT will maintain individual Federal-aid project files that will include documentation of all required FHWA actions and WSDOT’s assumed project approvals

as set forth in this Agreement. WSDOT will provide FHWA access to the project files when requested.

B. State DOT Oversight of Locally Administered Projects

B.1. State DOT's are required to provide adequate oversight of subrecipients 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 subrecipients 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: WSDOT ensures this through their Local Agency Guidelines Manual (LAG) Manual and their certification acceptance program.

B.4. The State DOT shall assess whether a sub-recipient has adequate project delivery systems and sufficient accounting controls to properly manage projects. WSDOT ensures this through their Local Agency Guidelines Manual (LAG) Manual and their certification acceptance program.

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). WSDOT ensures this through their LAG Manual and their certification acceptance program.

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. WSDOT ensures this through their LAG Manual and their certification acceptance program.

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. WSDOT ensures this through their LAG Manual and their certification acceptance program.

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 process outlined in the LAG Manual for required approvals on sub-recipient projects, and on sub-recipient administered projects. The activities for ensuring compliance oversight should covers but are not limited to the following 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.

WSDOT provides oversight through their Local Programs Division. This dedicated staff manages the program by providing guidance, training, and technical assistance to the Local Agencies.

The Local Agency Guidelines (LAG) manual describes the processes, documents, and approvals necessary to administer federal-aid projects by local transportation agencies. The manual also outlines WSDOT's oversight and review activities. The Division reviews and approves twice a year the LAG Manual to ensure it complies with FHWA Order 5020.2 (Stewardship and Oversight of Federal-Aid Projects Administered by Local Public Agencies, August 14, 2014).

By agreeing to accept federal aid funds, the local agency understands its roles and responsibilities with respect to carrying out the federal aid program. WSDOT is permitted to delegate certain activities, under its supervision, to local agencies (cities, counties, private organizations, or other state agencies) under federal regulation 23 CFR 1.11 and 635.105; however, WSDOT accepts responsibility for delegated activities.

WSDOT has a certification process that allows local agencies to administer a federal aid project based on past performance, current staffing, overall capability, and knowledge of FHWA and state requirements. The certification acceptance process is outlined in Chapter 13 of the Local Agency Guidelines Manual (LAG).

WSDOT is also required to conduct verification activities to assure that local agency federal aid projects are implemented in conformance with federal aid requirements.

WSDOT conducts Project Management Reviews (PMR) to assess whether the certified agency administered the project in accordance with federal aid requirements. A PMR reviews all phases of a project from environmental, consultant services, design, to construction. WSDOT and the Division jointly develop the checklists for the PMRs. The Division includes items identified as part of our risk assessment process and items listed as stewardship indicators. The PMR review is conducted at a minimum every three years on the local agency's project with the most risk associated with it and the local agency's certification acceptance is reevaluated.

WSDOT has retained some project level approval actions and conducts various reviews such as, construction inspections, billing reviews, and work-zone traffic control reviews. In addition WSDOT conducts documentation and a final inspection on every local agency federal aid project.

WSDOT submits annually a Stewardship Report that summaries their verification activities, PMRs, other reviews, and stewardship indicators. The annual Stewardship Report addresses any findings or issues, as well corrective action plans if needed.

SECTION XII. IMPLEMENTATION AND AMENDMENTS

- A. This S&O Agreement is effective as of the date of the FHWA Washington Division Administrator's signature, who shall sign this S&O Agreement last.
- B. The FHWA Division and WSDOT 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 WSDOT or FHWA; or
 - Priorities shift as a result of audits, public perception, or changes in staffing at either WSDOT or the FHWA 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.

EXECUTION BY THE FHWA WASHINGTON DIVISION OFFICE

Executed this 3rd day of March, 2015.

Daniel M. Mathis

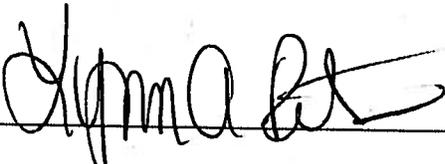
Signature

Daniel M. Mathis

Division Administrator

**EXECUTION BY THE WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION**

Executed this March day of 03, 2015



Signature

Lynn A. Peterson

Secretary of Transportation

ATTACHMENT A PROJECT ACTION RESPONSIBILITY MATRIX

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. 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.

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 Projects of Division Interest (PoDIs)¹ projects because of FHWA’s retained authority. Those projects will be governed by a separate PoDI Plan that specifies FHWA and State responsibilities for the project.

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.

¹ *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>).*

PROJECT ACTION RESPONSIBILITY MATRIX (Excluding PODI AND POCI Projects, which are governed by PODI/POCI Plans)		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority	Assumption of FHWA Responsibilities under 23 U.S.C. 106(c) or other statutory or regulatory authority
PROGRAMMING (All phases)		
Ensure project in Statewide Transportation Improvement	STATE	STATE