



# FEDERAL LANDS HIGHWAY - STEWARDSHIP AND OVERSIGHT GUIDANCE

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*Risk-based Stewardship and Oversight Guidance*

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## Executive Summary

Public visibility on the use of federal tax dollars continues to increase requiring constant improvement on how we collectively institute Stewardship and Oversight (S&O) at the program and project levels. Due to the complexity of our programs and our relationships with a diverse group of partners, this document provides baseline guidance for most risk-based Stewardship and Oversight scenarios, while affording division leaders flexibility to make decisions locally for numerous unforeseen issues and opportunities that arise each year.

The Office of Federal Lands Highway (FLH) has and will continue to employ risk management principles and practices in the program office's S&O activities. The risk assessment tools and practices included in this document align with the agency's Risk-based Stewardship and Oversight (RBSO) program.

On a broader S&O level, FLH will continue to work with the partners to improve program procedures, provide technical assistance and training, and development/deployment of new technologies.

The following table provides an annual snapshot of FLH's formal review activities in any given year. The body of this document clearly addresses more.

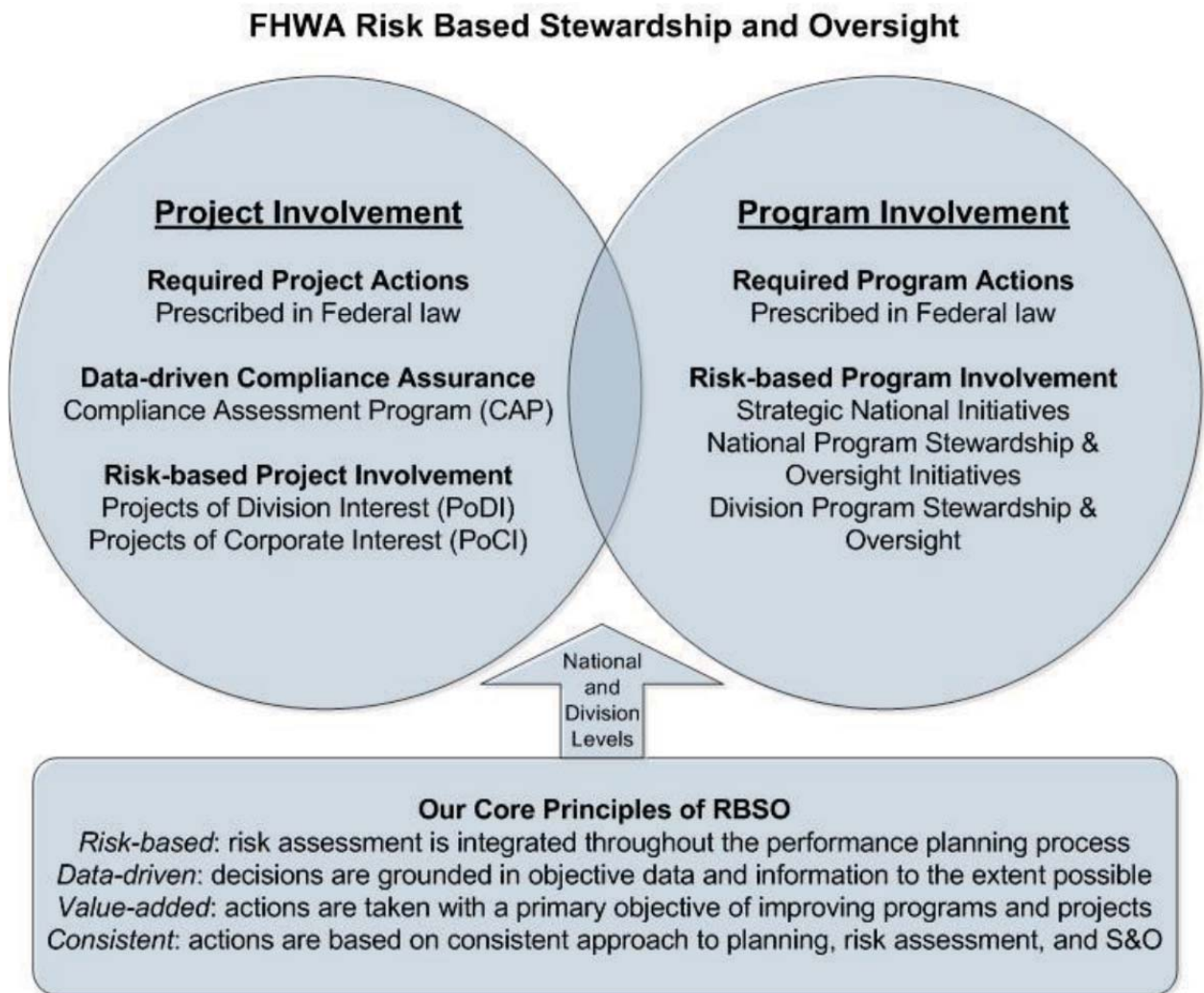
**Table 1 – FLH Review Activities**

Activity	Reviews/Year	Comments
<b>Annual Program Review</b>	1	3-4 year cycle by Program
<b>Bureau of Indian Affairs Regional Office, BIADOT, and DOI-OSG Review</b>	4	3-4 year cycle by regional office
<b>FHWA Agreement Tribes Review</b>	Project/Tribe site visits (1 minimum per major project)  6-8 tribal program/process reviews	Risk analysis tool used to identify tribes & projects. Tribal coordinators to meet annually with their tribes.  Initiated by FLH HQ
<b>Compliance Assessment Program (CAP)</b>	Statistically valid sample, randomly selected from the previous year's projects	Recurring annual review
<b>Projects of Corporate Interest (POCI)</b>	As appropriate	Identified annually at discretion of Associate Administrator & Division Director's. FHWA HQ approves/designates
<b>Projects of Division Interest (PODI)</b>	Selected based on risk-based criteria	Identified annually



## FLH Risk-based Stewardship and Oversight

Risk-based Stewardship and Oversight (RBSO) is FHWA's approach to integrating risk management into our performance planning process to identify S&O initiatives. It incorporates S&O initiatives at both the national and unit (Division) level, and for both programs and projects.



### Purpose

This document guides and establishes a consistent approach for implementing S&O across a diverse set of programs administered by FLH as well as projects administered by Federal Land Management Agencies (FLMA), State Transportation Agencies (STA) and local public agencies (LPA). The guidance aligns with the agency's RBSO approach. It puts RBSO in a FLH context.

## Scope

This document provides guidance on FLH's S&O activities for programs and projects utilizing funds appropriated to or transferred to FLH. The most common activities that represent the vast majority of situations FLH and our partners face are addressed in the sections below. FLH division offices and partners may elect to build upon these minimum requirements and craft additional procedures that align and comply with this document. Those will need to be managed on a case-by-case basis and should be approved by the Stewardship and Oversight Coordinator in the Office of Federal Lands Highway (HFL). Updates or reviews of this guidance will occur biennially, with major changes in legislation or when data indicates changes.

### Activities

- FLH delivery of Title 23 programs and projects, including Emergency Relief for Federally Owned (ERFO) Roads Program
- FLH delivery of non-Title 23 programs and projects
- Partner delivered Title 23 programs and projects, including ERFO
- FLH/Federal-aid office role in the delivery of the Federal Lands Access Program (FLAP)
- Tribal delivery of Tribal Transportation Program (TTP) and projects through Department of Interior's (DOI) Office of Self Governance (Compacts), Bureau of Indian Affairs (BIA) Program Agreements or P.L. 93-638 Self Determination contracts.
- BIA delivery of TTP projects through Direct Service Agreements
- Tribal delivery of TTP program through FHWA TTP Reference Funding Agreements
- National Bridge Inventory and National Bridge Inspection Standards (NBIS), compliance by federal agencies

This document will complement, but not duplicate the Financial Integrity Review and Evaluation (FIRE) tools or the Procurement Management Review (PMR). The FIRE and PMR reviews are required reviews that are in addition to the guidelines in this document. Nor does it supplant reviews required by the partner agencies. Findings from an S&O review may be used by others as part of their review efforts. The intent of the reviews outlined in this document is to examine S&O associated with program/project management, administration, and/or project delivery. The FIRE and PMR reviews focus on the financial and procurement administration of the program.

## Background

Congress charged the Federal Highway Administration (FHWA) with administering Federal highway funds in accordance with Title 23 and other associated laws and regulations. This responsibility remains consistent with each successive piece of highway legislation. The passage of Public Law 112-141, Moving Ahead for Progress in the 21<sup>st</sup> Century Act or "MAP-21" consolidated programs, added new partners, and created additional flexibilities. This transformational piece of legislation includes a performance management underpinning that must be considered in future review activities.

S&O is an inherent responsibility of FHWA, in collaboration with its federal and non-federal partners, for Title 23 funds. It is independent of whether FLH delivers the project or our partners do. What may

be different from project to project or program to program is the risk associated with the delivery and the oversight needed.

FLH oversees the program administration of the Federal Lands and Tribal Transportation Program (FLTTP). It consists of three component programs: the Federal Lands Transportation Program (FLTP); the Federal Lands Access Program (FLAP); and the Tribal Transportation Program (TTP). Our partners include other federal agencies, state departments of transportation, local public agencies, and Tribal governments. The programs and projects administered by FLH and its partners possess many unique S&O considerations, challenges, and opportunities as described below.

FLH delivers many Title 23 (FLTTP and Federal-aid) projects on behalf of our partners which positions it to provide engineering services while exercising S&O responsibilities under Title 23 requirements.

Not all Title 23 funds under FLH's purview are administered by FLH. Some Title 23-funded programs or projects are delivered by others through agreements between FLH and the delivery partner. In these cases, FLH is still responsible for ensuring projects are delivered in accordance with Title 23 and other associated laws and regulations, e.g., NEPA, Uniform Relocation Act.

FLH delivers projects for other agencies that are either funded solely with non-Title 23 resources or leveraged with Title 23 funds. These projects are often for entities whose core mission is not transportation related.

FLH administers funds supporting the Defense Access Roads (DAR) Program. The administration of this program presents multiple S&O scenarios for FLH, ranging from delivering projects using Department of Defense (DOD) appropriations to overseeing the allocation of DOD funds to FLH and Federal-aid division offices. FLH supports, yet the primary S&O responsibilities lie with the Military Surface Deployment and Distribution Command (SDDC).

FLH is responsible for S&O of the Tribal Transportation Program (TTP), which provides funding for transportation projects and activities to the 566 federally recognized Tribes in the United States. This program differs from other Title 23 programs in several ways. Its administration is covered by both Title 23 and Title 25. Although funded under Title 23, the program has traditionally been delivered by the DOI's Bureau of Indian Affairs (BIA), which worked with Tribes through various processes found under Title 25. The federally recognized tribes are deemed as "sovereign nations" and have a special government-to-government relationship with the federal government unlike any other governmental entity within the borders of the United States. With the enactment of SAFETEA-LU and subsequent adoption in MAP-21, Tribes meeting certain eligibility requirements can opt to enter into TTP Program Funding Agreements directly with FHWA for their share of TTP funding. As a result, the direct Stewardship and Oversight role of FLH has expanded in recent years to include Tribes as well as the BIA and the DOI's Office of Self Governance (OSG). The program has a goal of building tribal capacity so Tribes can take on more direct program responsibility. FLH accomplishes this through technical assistance and training to the Tribes.

Per Title 23 CFR Part 650, Subpart C, owners of highway bridges open to public travel are required to follow federal bridge inventory, inspection and reporting requirements. These requirements support the Department’s number 1 goal – public safety. A total of nineteen federal agencies currently own highway bridges that are open to the travelling public. FLH has been charged with an S&O role for ensuring all public bridge owners are aware of the legal requirements and are in compliance with National Bridge and Tunnel Inventory and inspection procedures stemming from the agency’s Office of Infrastructure.

## Program Oversight

Reviews/assessments of our programs will be conducted annually by program by the Federal Lands headquarters office on a national basis rather than cyclically by division. The scope of the review/assessment may vary, e.g. it may look at only specific phases such as environmental compliance or transportation planning or it could be more overarching.

The FLH S&O Coordinator will facilitate discussion on the selection of the program area and will coordinate/participate on the review team annually. He/she may lead some annual reviews but the Review Team Leader position is not exclusively limited to the FLH S&O Coordinator. The team will include members from the other FLH divisions, HFL, other FHWA offices, and/or partners. *FLH’s partner agencies are strongly encouraged to participate on the review team(s).*

**Table 2 – Program Options**

<b>Program</b>	<b>Projects Delivered by:</b>
<b>Federal Lands Transportation Program (FLTP)</b>	Federal Lands Highway
	National Park Service
	U.S. Fish and Wildlife Service
	U.S. Forest Service
	Bureau of Land Management
	U.S. Army Corps of Engineers
<b>Federal Lands Access Program (FLAP)</b>	Federal Lands Highway
	State Transportation Agency
	Local Public Agency
	Federal Land Management Agencies
	Tribes
<b>Tribal Transportation Program</b>	Federal Lands Highway
	Tribes
	Bureau of Indian Affairs
	Any Federal, State, or Local Public Entity
<b>Section 203/204 Planning Set-aside</b>	Federal Lands Highway
<b>Defense Access Roads Program (DAR)</b>	Federal Lands Highway
	Surface Deployment & Distribution Com.
<b>Emergency Relief for Federally Owned Roads Program (ERFO)</b>	Federal Lands Highway
	National Park Service
	U.S. Fish and Wildlife Service



	U.S. Forest Service
	Bureau of Land Management
	U.S. Army Corps of Engineers
	Bureau of Indian Affairs
	Other Federal Agencies
<b>Cooperative Transportation Innovation Program (CTIP)</b>	Federal Lands Highway
	Other Federal Agencies
<b>Every Day Counts Program (EDC)</b>	Federal Lands Highway
<b>Strategic Highway Research Program (SHRP)</b>	Federal Lands Highway

The review team will leverage resources from other offices within FHWA and partner agencies to promote independence and objectivity of reviews. FLH will consider a number of factors in determining which program and partner(s) will be reviewed including but not limited to FLH’s corporate and/or unit’s risk assessment(s), customer survey scores, funding availability, performance outputs/outcomes, request from a partner agency, results from an outside review (e.g., OIG, GAO), or Congressional interest. In addition, feedback from the Division’s Leadership Team, applicable partner agency, or FLH extended Leadership team will be used to determine the focus area and scope of review.

The annual program reviews should provide a level of effort to ensure processes and practices meet requirements and are being consistently applied. They will also look at program management to validate processes exist to assess program metrics and goals. The team will also identify and document best practices.

### Typical Program Review

A typical review should involve no more than two weeks on the ground, including time for travel to active construction or recently completed projects. FLH and partner delivered projects will be selected using a judgmental sample, i.e., using Delphi or EEBAACS, as much as possible while also balancing other considerations, e.g., proximity of projects to one another, cost, and time. At a minimum, the mix of projects will include Title 23 (may include ERFO, congressionally designated projects) and non-Title 23 funded projects.

Information pertaining to possible team composition, potential review team focus areas, program/project review checklist items, and Inherently Federal Functions can be found in Appendices A through C.

The Review Team will conduct Entrance and Exit meetings with the host Division Directors (DD), Office Directors, and partner’s leadership. An initial draft report will be shared with the FLH Division and partner within 30 days from the last site visit in an effort to clarify information before the team finalizes it. The Division and partner will have 10 business days to provide clarifying comments to the team. In the absence of comments, the team will move forward to finalize the report.

Within 60 days from the last site visit, a final report will be generated and presented to the Division Director and partner directly with a courtesy copy provided to the Associate Administrator and Director, Office of Policy and Program Review. The team leader will coordinate a final briefing with both FLH and partner leadership. Ideally this will be done jointly via remote conferencing methods.

A process improvement/corrective action plan would be generated by the host division/office and partner within 45 days of the final report date. The Division Director/Office Director and partner will identify which findings and recommendations will be acted upon. Follow through will be monitored by the Division/Office leadership first and foremost followed by the appropriate FLH and partner program manager(s) (if applicable) and FLH S&O Coordinator.

The responsibility to monitor the status of process improvement/corrective actions will be assumed by the appropriate program managers/coordinators within FLH as well as with applicable partners. Beyond the FLH S&O Coordinator position it is expected that Program Managers and Coordinators at both Headquarters and Division Offices will assume greater responsibility in working with partners on S&O issues, e.g., participate on reviews, and manage process improvement/corrective action plans. The S&O Coordinator, within the Office of Policy and Program Review, will coordinate *approved* recommendations with applicable owners of improvement actions, as identified within the process improvement/corrective action plan(s), and will communicate with the Board of Directors regularly on their status. As this process matures, the S&O Coordinator will perform an analysis of report findings, approved recommendations, and follow-up actions to help the program office and partners ascertain if progress is being made and/or if trends are starting to appear that require closer examination. Analysis will also assist in defining subsequent scope(s) of reviews.

Review reports and corresponding process improvement/corrective action plans, will be posted centrally on FHWA's Integrated National Planning and Updating Tool ([INPUT](#)) site to allow for tracking and access by staff. This site will serve as a central repository. The reports will also be posted on the FLHNet for employee access. Reports will be shared with applicable partners to promote information exchange and support any subsequent actions that may be needed.

### **National Program Stewardship and Oversight (NPSO)**

The NPSO is a list of national reviews that support FHWA program level S&O activities. These reviews are designed to respond to the FHWA Corporate Risk Assessment, national initiatives detailed in the FHWA Strategic Implementation Plan (SIP), or national focus areas. The list encapsulates reviews conducted throughout the agency and fit one of the categories listed in the table below. Annually, the FHWA Program Management Improvement Team (PMIT) requests information from program offices. Although the divisions may be involved, HFL will take the lead on these efforts or serve as the initial focal point, typically the Associate Administrator or the Director, Office of Policy & Program Review. Providing the PMIT office with this information does not mean the PMIT office is responsible for leading the review(s). This provides an annual snapshot of most reviews – regardless of who leads them.

A minimum of one FLH program review/assessment will be considered for inclusion on the NPSO. They will generally be submitted for consideration in the annual FHWA Strategic Implementation Plan (SIP) as part of the NPSO section. The reviews included in the [NPSO](#) will be typically decided by September 30<sup>th</sup> of the current year for inclusion in the FHWA SIP for the upcoming performance year. For example a September 2014 submission would become part of the Performance Year 2016 SIP. Note: Calendar, fiscal, and performance years do not align.

Reviews of FLH may also appear on the NPSO at the discretion of FHWA leadership or as part of some national review.

**Table 3 – NPSO Reviews**

<i>Type</i>	<i>Description</i>
<b>National Program Review</b>	National-level reviews of key Federal Highway programs or processes. Reviews are risk-based, not recurring, and generally include examination of current federal, state and local agency practices to assess compliance with requirements, identify opportunities for improvement, and share successful practices
<b>National Program Assessments</b>	An assessment generally using standardized tools, surveys or questionnaires to determine the level of maturity, the level of compliance, or the status of implementation for a specific program area.
<b>HQ/RC Recurring and Required Reviews</b>	Reviews that are conducted by Headquarters or Resource Center offices on a recurring basis or as a result of requirements in legislation, regulation, or policy.
<b>HQ/RC Special Emphasis Initiatives</b>	Stewardship and Oversight initiatives by Headquarters or Resource Center for program areas requiring special emphasis or monitoring. Initiatives could include reviews, increased reporting, or additional controls based on risk or performance.
<b>DFS/PMI Team Special Emphasis Initiatives</b>	Stewardship and Oversight initiatives by the PMI Team for program areas requiring special emphasis or monitoring. Initiatives could include reviews, increased reporting, or additional controls based on risk or performance.

## **Tribal Transportation Program**

### **Tribal Transportation Program Delivered by or through the BIA**

The passage of the Indian Self-Determination and Education Assistance Act, P.L. 93-638 provided tribes the ability, except for federally inherent functions, (See Appendix C) to deliver projects (in whole or part) or take responsibility for their entire transportation program. Through P. L. 93-638 Title I contracts, a Tribe can perform contract work with its own personnel, or another service provider or

organization at its discretion. To maintain its trust responsibility, the BIA Regional Self-determination Office serves in an oversight role to monitor whether contract work is completed in accordance with the established requirements. Through P. L. 93-638 Title IV compacts, the Federal Government authorizes the Tribe to plan and administer its own programs, while DOI's Office of Self-Governance provides oversight.

The BIA recently designed Government to Government (G2G) Agreements, similar to FHWA Program Agreements, as a way to support provisions under MAP-21, the self-determination, self-governance, and financial integrity of Tribal governments, and to advance nation-to-nation relationships.

This section covers BIA delivered projects and tribes delivering projects under contract with the BIA. This includes BIA's 12 regional offices, and BIA DOT. Self-Governance tribes are covered in a subsequent section. Although funds for the TTP originate in the Highway Trust Fund (HTF), administration of the program is governed in part by 25 CFR 170, 900, and 1000.

The following process will be utilized:

1. The FLH Tribal Transportation Program Director will work closely with the TTP HQ team leader to determine which BIA Regional Office(s) BIA DOT, and/or Office of Self Governance will be reviewed that fiscal year. The purpose of the review will be to assess the planning, design, construction, contracting, maintenance, financial, S&O processes, and administrative activities that the BIA office is carrying out related to the TTP. In doing so, the team will review the use of the Title 23 funding and compliance with regulations, recommend improvements to the processes and procedures, and highlight best practices.
2. The HQ team leader will assemble a 3-7 member review team that has expertise in the various phases of program delivery (e.g., contracting, planning, programming, financial management). The team should include members from the BIA Division of Transportation as well as from other BIA Regions. This will ensure that the review is conducted as a collaborative joint-agency effort.
3. The team will interview appropriate staff from the BIA Division of Transportation and the Office of Self-Determination regarding their processes and procedures, sample project records and contracts, and check financial records. Tribal input from a representative of the region's tribes should also be obtained, either through personal interviews or pre-review questionnaires. Depending on the time of year and location, ground review of active or recently completed projects will also be considered as part of the review.
4. A formal draft report of the review will be generated by the team within 30 days following the site visit. The draft will be shared with the Tribal Transportation Program Director, the Chief of the BIA Division of Transportation and the BIA region itself asking for clarifications and/or corrections only.
5. The final report will be issued within 60 days following the site visit. A copy will be provided to the Associate Administrator and Director, Office of Tribal Transportation. The BIA region will then submit an improvement plan for each of the key findings, and the appropriate contact and timeline to address each finding, to FHWA and BIA leadership within 60 days from the receipt date of the report.

6. The region's improvement plan will then be monitored via semi-annual updates to FHWA and BIA Division of Transportation.

Depending on a team member's responsibilities within the review, upwards of 2 weeks of pre- and post-review work may be required. The typical review will involve one week at the BIA regional office (or could be BIADOT or DOI OSG). The frequency of these reviews will be 4 per year. Presently, there are 12 BIA regions; the recommended frequency will mean all regions are reviewed at least once in a 3-4 year cycle. A shorter cycle may be used for regions that have significant issues requiring additional oversight. See Table 4 below.

#### **FHWA Agreement Tribes Delivering Tribal Transportation Program Projects**

23 USC 202(b)(7) provides federally recognized Indian tribes with the option to enter into program agreements directly with FHWA to administer their Tribal Transportation Program. A Tribe with a FHWA Program Agreement in place has flexibility in using its tribal shares to fund projects from its FHWA approved Tribal Transportation Improvement Program (TTIP). As a result, the first line S&O responsibility is with FHWA.

The *Program Agreement*, signed by FHWA and a tribal government, identifies roles and responsibilities for both the FHWA and the tribe in administering the TTP. The *Tribal Transportation Program Delivery Guide* is a manual that provides procedural guidelines to eligible Tribes entering into a FHWA *Program Agreement*. This manual is intended to assist Tribal governments in the administration of the TTP, and sets out the required process and procedures used by the FHWA to carry out its S&O responsibilities for the TTP Program.

1. Stewardship and Oversight reviews, i.e. program reviews, of individual FHWA tribes will be initiated by the Tribal Transportation Program Director or Team Leaders. These reviews will be similar in format to the reviews performed by FLH on a BIA region. The review will be conducted by a multi-agency, multi-discipline team. The reviews will examine how effectively the tribe is performing its program duties and how the tribe is meeting its responsibilities identified in the agreement. The review will include various offices within the tribe who carry out the program. To ensure compliance and promote consistency, the reviews should also identify possible program improvements as well as share best practices. A report will be generated and shared with the tribe and its content will be entered into the tracking tool identified above. The TTP tribal coordinator will work with the tribe on any required follow-ups as well as the implementation of the recommendations.
2. Selection will be determined by using a risk analysis. A frequency of 6-8 tribal reviews should be carried out per year.
3. The reviews should also be used to identify opportunities for FLH to provide training, technical assistance, and capacity building for tribes.



### Tribal Transportation Program Set-asides

Under MAP-21, the TTP program includes multiple set-asides for program management and oversight, transportation planning, bridges, and safety totaling up to \$54M annually. These set-asides are managed, for the most part, at the HQ level within FLH and BIA. A single review of the processes and procedures supporting each of these set-aside areas will be conducted triennially by FLH’s Office of Policy and Program Review. The protocols and procedures above will continue to apply here however the Director of HFPR will serve as sponsor of this review while the Director of TTP will be the recipient of the review report – as a means to promote and leverage opportunities for greater objectivity and independence.

**Table 4 – Tribal Transportation Program Review Cycle**

Program Review Cycle: Tribal Transportation Program		
Scenario	Approach	Comments
<b>1. Tribes deliver the TTP through agreements with BIA or DOI’s Office of Self-Governance</b>	FLH Conducts 4 BIA/DOI Reviews annually.	Units to be reviewed include 12 BIA Regional Offices, BIADOT, and DOI-OSG. Result will be no more than a 4 year cycle of all offices. FLH reserves the right to visit a region sooner if conditions are warranted
<b>2. Tribes with agreements directly with FHWA/FLH</b>	Minimum of 1 on-site visit by FLH to each major project  Elevated risk projects – additional activities determined by risk analysis  6-8 tribal program/process reviews annually (done by HQ FL)	Each tribal coordinator will annually review each of their tribes.  Using risk analysis tools, TTP team will jointly determine FHWA tribes to be reviewed
<b>3. TTP Set-asides</b>	Will be done on a 3-4 year cycle	Some of these may be covered as part of other reviews mentioned above.

### Project Oversight

Project oversight consists of reviewing various aspects of project delivery and will include both a statistically valid sample of projects and risk-based reviews. The statistically based reviews are known

as Compliance Assessment Reviews (CAP). The risk-based reviews include Projects of Division Interest (PoDI) and Projects of Corporate Interest (PoCI).

### Compliance Assessment Program (CAP)

The purpose of the Compliance Assessment Program (CAP) is to help provide reasonable assurance that FLH projects comply with key federal requirements, therefore, they will be limited to Title 23 funded projects. The CAP helps provide this assurance by assessing a statistically valid sample of projects such that the results inform the FHWA, with an acceptable level of certainty, of the degree of compliance. The approach is objective, defensible, and will inform the development of Corporate and Unit risk assessments with statistically valid information and data. The CAP is one element of project Stewardship and Oversight and will supplement and strengthen the agency's movement toward being more data-driven and risk-based. The CAP will be implemented on a 3-year cycle that includes both a National-level and a Division-level assessment.

At the beginning of May each year a list of partner delivered FLAP and FLTP projects that have gone to construction during the previous 12 months will be queried. A random sample population will be selected for review by the FLH S&O Coordinator in coordination with the national program managers. The divisions will be afforded the opportunity to suggest replacement projects should some of them have issues that make them inappropriate for inclusion. The project list will come from the approved division Transportation Improvement Plans and the Project Management Information System (presently known as P6). This list will then become the universe of projects for CAP reviews. These reviews consist of checking documentation to ensure the basic federal requirements for authorizing a project have been met. The current process is for the partner agencies to provide copies of various documents to verify compliance.

The checklist for CAP reviews will be standardized in order to identify trends, identify gaps or weaknesses and allow the capability to draw conclusions across the entire population regarding compliance with federal requirements. A CAP review will consist of reviewing the documents requested in the checklist to verify compliance. The intent is for CAP reviews to be completed without the need for a field visit. They will typically involve a FLH HQ and a division staffer.

FHWA put the CAP reviews on a 3-year cycle (PY-15 is year 1 of the cycle) which allows Divisions to filter the project population to focus on their specific areas of concern in years 2 and 3. There is also the possibility FHWA may determine the need to conduct an Agency-level review of current or potential risks or key emphasis areas. In this case a Corporate Review Guide will be developed by the PMIT and should also be filled out for each CAP review. For years 2 and 3 of the cycle, the Director of the Office of Policy and Program Review along with the FLH Board of Directors (BOD) will identify the areas of concern and the checklist for the CAP reviews.

ERFO and TTP projects will not be part of the CAP program at this time. Both programs may be included in future versions of the S&O Guidance.

## Projects of Division Interest (PoDI)

This portion of the risk-based oversight will be fulfilled by the current FLH practice of determining risk on projects, regardless of who delivers them. Title 23 funded projects delivered by partners already require an S&O Checklist and Project Agreement. The use of these two documents, coupled with the Risk Analysis tool (Appendix D), satisfy the PoDI requirement of an S&O plan for each PoDI identified by the Divisions. PoDI projects will be identified annually at the beginning of the performance year by Division Directors. A partner delivered project that has an elevated risk level would be a candidate as a PoDI.

An FLH administered projects could be identified as a PoDI. Circumstances could arise where a project has the potential for greater risk because of high visibility, complex funding, or technical complexity. These types of FLH administered projects may be identified as PoDIs and would then require a written oversight plan for the project.

## Projects of Corporate Interest (PoCI)

Projects of Corporate Interest (PoCIs) are a subset of PoDIs. These are projects deemed to be so nationally or regionally significant; FHWA is willing to commit additional resources beyond those available at the individual Division level to help ensure successful delivery of the project. Project selection should be risk-based and the S&O activities should be directed toward addressing the identified risks. For partner delivered projects, this may require retaining certain project approval actions or directing S&O activities to a specific phase or element of the project.

FHWA's Program Management Improvement Team (PMIT) office will issue a call to all division offices, including FLH's three division offices, requesting submission of projects to be considered for inclusion on the PoCI list. FLH's Divisions are responsible for providing a response directly to the PMIT Office with a courtesy copy to the Associate Administrator and Director of Policy and Program Review. Divisions are at liberty to include projects delivered by FLH and/or partners. If a partner delivered project is going to be submitted, coordination with the partner is essential. The criterion for a PoCI is set high and is reviewed regularly.

In general, the process is as follows:

1. A call for identification of PoCI projects will be a part of the annual unit plan development process. A matrix or criteria listing will accompany the call in order to assist with project identification. Guidance will accompany the call.
2. If a FLH division office determines it has a project or projects for consideration, it makes a submission per the call's guidance.
3. If a project is selected, the division will assemble a cross-functional team (including partners and stakeholders) to perform a Strengths-Weaknesses-Opportunities-Threats (SWOT) analysis.
4. The division will coordinate with the PMIT to develop stewardship strategies for the project based in part on the SWOT. These strategies will help determine FHWA corporate level

investments in PoCI S&O. For FLH, the strategies should be included in the Project Agreement, (or Project Memorandum of Agreement).

5. The approved stewardship strategies will be incorporated into the division's unit plan for the upcoming performance year and subsequent years until the project is completed.
6. Implementation and monitoring may continue for the life of the project or selected phase(s).

Recognizing the extensive engineering expertise in FLH, it is possible FLH may receive requests to provide technical assistance for some phases of a PoCI project under the jurisdiction of the Federal Aid offices. Such requests should be coordinated with the FLH Associate Administrator.

### Partner Delivered Title 23 Projects

When a partner elects to deliver a Title 23 funded project, FLH must ensure the delivery processes for the partner meet requirements of Title 23. This is necessary in order for FLH to fulfill the S&O requirements of Title 23 appropriations.

1. When a partner requests FLTPP funds be allocated directly to them by FLH HQ, they must first have on file or submit a multi-year program of projects to FLH HQ. To support and align with the multi-year program of projects, they also need to submit a one year program obligation plan for the upcoming fiscal year to support their annual request. The document should be submitted during the 4<sup>th</sup> quarter of the current fiscal year for the upcoming year. The documents will be distributed to the FLH divisions before distribution of funds occurs. For construction funds, a project agreement between the partner and the appropriate FLH division office must be in place before the distribution occurs. Partners should update the annual request during the year when changes require additional funds or reprogramming of existing funds. FLH HQ will forward the updates to the divisions.
2. A risk analysis will be performed by FLH Division Offices regardless of whether the partner is another federal agency, state DOT, or other local public agency. (See Appendix D, for the minimum factors to consider.) The risk tool does not include weights and scores per factor. This can be added by the office based upon Division experience. The outcome of this assessment is to place the project into one of two risk categories: low or elevated. (Note: a project ranking as elevated may warrant review of who should deliver it.)
3. For all projects, the division POC will generate an S&O checklist. The checklist includes documents and deliverables expected from the partner, and defines roles and responsibilities of both FHWA and partner(s). The CAP core requirements will serve as the most basic S&O checklist and should be included in all projects. (See Appendix E for CAP core requirements) The items selected on the checklist are to be included as part of the written agreement with the partner. The actual checklist is to be kept by the POC for tracking purposes. (See the Appendix E for an example of a checklist.) A project with elevated risk will require more oversight and deliverables.

4. A written agreement will be executed between FLH and the partner for all projects. Items to consider when drafting an agreement can be found in the Appendix G. An example of a routine project agreement for a FLTP project is provided in Appendix H. (Note: For some entities the term “agreement” carries certain legal requirements. The title of the document may be changed in order to make it more applicable for its intended use.)

Projects routinely falling into the low risk category include but are not limited to parking lots, signage, striping, transportation enhancements, and chip seals. A generic project agreement for these type of projects will help document the uses of Title 23 resources entrusted to FLH without expending excessive resources for oversight by both program and partner staff(s). The use of a programmatic agreement may serve as an alternative to requiring a detailed project agreement for all low risk projects of a similar type (e.g. chip seals, parking lots). A condensed version of the project agreement could be used to cover project specific details (for example points of contact, project background). The programmatic agreement(s) should include specific criteria that are consistent across divisions and programs. Criteria may include dollar thresholds, project types (routine), or NEPA compliance type for example.

5. During the life of a project, the POC will ensure items on the written agreement or S&O checklist are being received and reviewed as necessary. The FLH role will vary depending on the risk. In some situations, FLH will approve the documents while other times we may simply give concurrence (see Appendix K - Glossary for definition of specific actions). The POC will be receiving the documents from the partner and coordinating FLH actions called for in the project agreement. Using a check list format that follows typical project development will aid the POC. They will sign-off when the documents or actions are received or completed. The following documents must be approved (\*not reviewed) by FLH Division Offices before the next phase of project development commences: NEPA document, design exceptions, ROW certification, Plans, Specifications, and Estimates (95%).
6. The extent of project inspections for high risk projects will be coordinated with the partner and defined in the agreement. FLH has the responsibility to adjust the frequency of inspections if conditions require it.

### **FHWA Agreement Tribes Delivering Tribal Transportation Projects**

The *Program Agreement*, signed by FHWA and a tribal government, identifies roles and responsibilities for both the FHWA and the tribe in administering the TTP.

Because the TTP is a statutorily driven formula tribal share program, the amount of funding that a tribe receives can vary from a few thousand dollars for the smallest recipient to over fifty million dollars for the largest recipient. The relationship between FHWA and a tribe is on a sovereign government to sovereign government basis. This is unique among the programs FHWA administers. For tribes working with FHWA, the following process will be utilized:



1. Stewardship and Oversight will be carried out by FLH TTP field staff.
2. Generally, every major project should have a site visit at least once during its life. Larger, more complex and/or higher risk projects should receive at least three site visits (e.g., pre-construction conference, mid-project, and final inspection). For very low dollar value, low risk projects, a site visit may not be warranted. The TTP Tribal Coordinators and the TTP Field Team Leader will annually undertake a high level risk analysis of each tribe and its projects to determine review/visit frequency. During the site visits, the Tribal Coordinators will carry out and document a standard project review as identified on the site visit checklist. It is expected that Tribal Coordinators will do a review of all their tribes on a three year cycle.
3. The site visit checklist, provided in the *Tribal Transportation Program Delivery Guide*, will be used to document the review and any findings or recommendations should be clearly identified. The document will be shared with the tribe and follow-up will be conducted to address deficiencies. The findings and approved recommendations requiring action will be entered into a TTP Review Tracking document which will serve as a single, internal repository for all TTP reviews.

### Federal Lands Access Program (FLAP): Project S&O Scenarios

The administration of the Access Program introduces many questions regarding FLH’s S&O role. Table 5 below includes the vast majority of possible scenarios that FLH may encounter. This program is cited under Chapter 2 in Title 23 and as such the final S&O responsibility on the use of these funds resides with the FLH. Regardless if FLH enters into agreements with states, counties and/or federal-aid offices to assist in the delivery of projects, it is incumbent upon FLH to oversee where and how the funds are being expended and be positioned to report on the outputs/outcomes based on the use of Access Program funds.

**Table 5 – S&O Scenarios for FLAP**

Stewardship & Oversight Scenarios for Access Program Projects		
Delivery Entity	Scenario	S&O Approach(es)
Federal Lands Division	1. STA, LPA, or FLMA is providing the match in cash. FLAP funds the balance of the project.	Federal Lands Division (FLD) executes a project MOA (see Appendix I for the approved format) and a funding agreement.
	2. STA, LPA, or FLMA is providing the match in some format other than cash, e.g., in-kind services. FLAP funds the balance of the project.	FLD executes a project agreement or MOU that includes the S&O checklist and a funding agreement. Depending on the type of match (e.g. acquiring ROW) FLH has a S&O role to play to ensure match meets Title 23 eligibility requirements and the proper value of the match.

Stewardship & Oversight Scenarios for Access Program Projects

Delivery Entity	Scenario	S&O Approach(es)
<b>State Transportation Agency (STA)</b> (Note: In the scenarios below, it is assumed that there will be three documents executed: a funding agreement, a reimbursable agreement, and project MOU.)	1. STA provides the match with cash and/or in kind services and FLAP funds provide the rest of the project funds.	FLH provides S&O. FLH executes a project MOA (see Appendix I) with STA. The S&O checklist is included in the agreement and FLH does a risk assessment on STA to determine whether additional items should be included. The checklist is included in the agreement to identify roles and responsibilities. The STA will be expected to follow standard Federal-aid highway requirements.
	2. STA provides match, FLAP funds provide a small contribution, but the majority of the funds are Title 23 Chapter 1 or other Federal funds, possibly TIGER.	<p>Transfer funds to Federal-aid division office and request they provide S&amp;O using existing FHWA guidelines for RBSO. FLH will collect metric data that supports FLH goals.</p> <p>FLH maintains a limited S&amp;O role with the Federal-aid office based on roles and responsibilities in the project agreement.</p> <p>FLH could retain overall S&amp;O responsibility after consultation with the Federal Aid Division office.</p>
<b>Local Public Agency (LPA)</b>	1. LPA provides the match by providing cash and/or in kind services with their forces. The LPA is in a state that has a STA certification for Title 23 funds. The LPA is certified. FLAP funds are providing the rest of the funds.	FLH provides S&O. FLH executes a project MOU (See Appendix I) with the LPA. FLH does a risk assessment on the LPA to generate an S&O checklist. Include the S&O checklist in the Project MOA for what items we are requiring from the LPA. Common Rule (Appendix J) requirements will apply.

Stewardship & Oversight Scenarios for Access Program Projects

Delivery Entity	Scenario	S&O Approach(es)
	<p>2. LPA provides the match by providing cash and/or in kind services with their forces. The LPA is in a state that has a STA certification for Title 23 funds and the LPA is <b>not</b> certified. FLAP funds are providing the rest of the funds.</p>	<p>A. FLH investigates why the LPA is not certified and its ability to deliver through consultation with STA, Fed-Aid division, and PDC. If the feedback confirms the LPA has the engineering expertise and financial management capabilities, FLH does: a risk assessment on the LPA to generate an S&amp;O checklist, executes a project agreement with the LPA. Use standard project MOA (see Appendix I) and include Common Grant Rule. (Appendix J).</p> <p>B. If feedback suggests the LPA does not possess delivery expertise, FLH <u>will deny</u> the request and explore alternative delivery options in consultation with the PDC.</p>
	<p>3. LPA provides the match by providing cash and/or in kind services with their forces. The LPA is in a state that does not have a STA certification for Title 23 funds. FLAP funds are providing the rest of the funds.</p>	<p>A. FLH investigates why the LPA is not certified and its ability to deliver through consultation with STA, Fed-Aid division, and PDC. If the feedback confirms the LPA has the engineering expertise and financial management capabilities, FLH does: a risk assessment on the LPA to generate an S&amp;O checklist, executes a project agreement with the LPA. Use standard project MOA (see Appendix I) and include Common Grant Rule. (Appendix J).</p> <p>B. See B in section above.</p>
<p><b>Federal Land Management Agency (FLMA)</b></p>	<p>FLTP and/or agency funds are used to meet the match. FLAP funds are used to support either a single project and/or two or more project segments that provide seamless access to/inside FLTP partner's land.</p>	<p>FLH provides S&amp;O. FLH does a risk assessment on the FLMA to generate an S&amp;O checklist. Include the S&amp;O checklist in the agreement for what items we are requiring from the FLMA. FLH executes a project agreement with the FLMA. Use standard project agreement form.</p>

Allowable FLAP match items are per 23 USC 120 and FHWA Federal-Aid Guidance Non-Federal matching Requirements. The individual PDC can reduce or limit the match options per its operating procedures.

### **National Bridge Inventory (NBI) and National Bridge Inspection Standards (NBIS)**

All Federal, State, County, local Government, and/or tribal owners of a public highway bridge must comply with Title 23 CFR Part 650, Subpart C regardless of the funds used to construct and maintain the bridge. Nineteen federal agencies own highway bridges that are open to the public. They range from the General Services Administration with one bridge to the US Forest Service with over 3700 bridges. Some of these agencies are FLH's traditional federal land management partners, e.g., NPS, USFS, and FWS while others, e.g., Smithsonian, NSA, and NASA, are not. Some agencies utilize the FLH Bridge section to perform the inspections and to collect and report data into NBIS, while other agencies use their own staff or hire consultants to accomplish the work.

A January 4, 1995 FHWA policy memorandum states "FLHO will act as the central collection point for Federal agency NBI data submittals to help ensure the timely submission of data and overall data submission uniformity." Compliance with Federal laws and regulations on bridge inventory, inspections, and reporting resides with the facility owner – first and foremost. The bridge owner has the first level of S&O responsibility. FLH is positioned to support a program level of S&O over the Federal landscape and this is the role we will employ. This is similar to Federal-aid Division Offices providing oversight to a state DOT.

As described earlier, where FLH is conducting full bridge inspection services on an agreement basis with an agency, this puts FLH in the role of supporting both first and program level S&O. FHWA's Office of Bridge Technology will oversee FLH's bridge inspection processes to provide an independent and objective assessment of FLH's services and compliance procedures.

Presently, federally owned, public bridges fall into three general categories:

- FLH provides all bridge inspection services, collects and reports data into NBIS, and performs asset management services on behalf of the partner.
- FLH provides bridge inspection services on some or all of the agency's bridges, but the owning agency coordinates the reporting of data into NBIS.
- The agency retains all responsibility for inspection and complying with the NBI and NBIS. This is accomplished with their own staff or consultants.

Regardless of where an agency falls, the ultimate goal is to have a system in place that assures the public bridges are safe to travel over or under. FLH's S&O for federally owned public bridges in the NBI will ultimately align with FHWA's approach with state DOTs. This approach is spelled out in the

October 26, 2010 [Memorandum](#) from the FHWA Office of Bridge Technology to the Division Engineers and Division Administrators.

In order to encourage and facilitate agencies' compliance, several factors must be recognized:

- FLH is working with 19 Federal public bridge owners
- Transportation is not a core mission area for most of the agencies unlike a state DOT
- For some of the agencies, their bridge population is dispersed across the nation, unlike a state which has its bridges in a confined geographical area
- Physical access to secure areas has to be approved and scheduled

The following processes will be used to bring federal agencies into compliance:

1. Provide leadership to facilitate a high standard of quality and compliance of federal agencies' NBI data and ensure timely submission of it on an annual basis.
2. Continue and expand the existing program of outreach and education to the federal agencies on the requirements of the NBIS.
3. Assist agencies in developing their bridge program to meet regulatory requirements.
4. Provide technical assistance to federal agencies as requested.
5. Conduct intermediate level assessments each year based upon a risk assessment. The plan is to complete all intermediate assessments within 5 years.
6. In-depth assessments will be done as warranted based upon findings from the intermediate assessments.
7. Minimum level assessments will be done each year on all federal agencies not receiving a higher level assessment that year.
8. Request the FHWA Office of Bridge Technology, in coordination with Federal-aid division office bridge staff, conduct an independent review of FLH's inspection and reporting services based on timeframes reflected in FHWA's bridge oversight guidance.



Table 6 – FLMA Bridges

Federal Agency	FLH Performs the Bridge Inspections	Number of Bridges on Record (2014 NBI Submittal data)
Bureau of Indian Affairs	N	914
Tribes	N	20 (431 in the National Tribal Transportation Facility Inventory)
Fish & Wildlife Service	N	312
National Park Service	Y	1313
Air Force	N	275
Army and Army Corps of Engineers – Military side	N	957
Army Corps of Engineers – Civilian side	1 bridge	248
Bureau of Land Management*	Y	443 (re-evaluating public designation on some bridges)
Bureau of Reclamation	N	331
Forest Service	N	5545
Navy/Marines	N	201
Tennessee Valley Authority	N	38
Agricultural Research Service	Y	4
Department of Energy	N	8
General Services Administration	Y	1
Metro Washington Airports Authority	Y	50
NASA	Y	6
National Security Agency	Y	2
Pentagon	Y	4
Smithsonian – National Zoo	Y	3

\*The BLM contracts with FLH to do some inspections. Some of the bridges are not designated for public use at this time.

### FLH’s Stewardship of Non-Title 23 Funded Projects

Projects under this category are solely funded with non-Title 23 resources. FLH is regularly asked to deliver projects for partners using their funds. The request can come from a core program partner (e.g. the NPS requesting a project to be built using Title 16 and/or entrance fee funds) or some other eligible entity needing a transportation facility delivered.

For these projects the primary S&O responsibility resides with the partner agency, i.e., the agency receiving appropriations directly from Congress is ultimately responsible. However, as federal

employees and experts in the area of highway design, construction, project management and other engineering/transportation services, we will be good stewards of all funds entrusted to us regardless of the source. We deliver value for the funds expended and provide the requestor the full benefit of our expertise. Before accepting the work, the FLH Division will perform a risk analysis to assure there is sufficient and timely funding and to assess if the work fits with our abilities while considering the standards to be used. The FLH Division Office's Planning and Programs Branch should lead this effort. (See Appendix F for factors to consider.)

There may be situations where requests have to be declined because the risk or likelihood of unsuccessful delivery is too high for FLH to accept. The Division Director (or other if delegated) will make this decision. In some instances, if the project is a high dollar threshold/or is politically sensitive, consultation with the Associate Administrator and/or Executive Director may be warranted.

Assuming the request is accepted by the FLH Division office, a point of contact (POC) is assigned to the project. They will draft an agreement between FLH and the requestor. It is signed by the appropriate personnel from all involved parties. The term "agreement" in this context is to be broadly construed. It may be a memorandum of agreement, a grant agreement, reimbursable agreement, or some other vehicle. It may consist of several agreements or documents. Appendix G has a list of components to consider or include in an agreement. In some situations the requestor may have an agreement template with standard clauses that they want to use; this should be reviewed by division legal counsel prior to using it. Guidance is also provided in the FLH Project Development and Design Manual (PDDM). Transfer of funds and funding limitation are a critical part of this process.

The project will be delivered according to the project agreement and funding agency requirements.

Review of Non-Title 23 projects may be completed as a separate review or included with other reviews if applicable. They typically would not be part of a CAP review due to different non-Title 23 requirements.

## **Future Improvement**

Two of FLH's four core business lines are program administration and project delivery. Understanding FLH's S&O role under each of these business lines is critical to our success. This document addresses many S&O areas. As programs mature, experience gained, and best practices developed, this guidance will evolve.

## Appendices

## Appendix A – Typical Review Team Composition and Review Areas

### **Annual Review/Assessment Team Composition**

- Team should be no more than 5-7 core members, including team lead and partners
- Team may have a single lead or co-leads (e.g. S&O coordinator and national program manager)
- Review purpose will determine skill set needed

May include:

- Partner agency representative
- Environmental Specialist
- Project Delivery Specialist
- Construction Specialist
- Financial specialist
- Materials, QA Specialist
- Acquisition or Contracting Specialist
- FLH TTP Tribal Coordinator
- Planning and Programs Specialist

### **Duties of Review Team Leader or Co-leaders** (not an exhaustive list)

- Develops draft team charter and a preliminary schedule with direction from review sponsor(s)
- Develops list of skills needed from potential team members
- Leads the development of the review guide(s) for the team
- Works with sponsor(s) to secure team members
- Is the liaison between the team and sponsors
- Organizes team meetings and ensures minutes/notes are kept and distributed
- If not facilitating meetings, ensures that facilitation is available
- Ensures scope, schedule, and budget are adhered to
- Is responsible for ensuring deliverables meet requirements (expectations of sponsor(s))
- Can typically expect to do more than an equal share of the workload

### **Possible Areas for Program/Process Review**

Planning & Programs	Design
Contracting	Construction supervision and records
Contract change orders	Materials sampling and testing (QC/QA)
Laboratory qualifications	Workmanship
Project closeout	Maintenance
PE, CE, overhead charges	Payrolls
Bridge inspection program	NEPA/environmental compliance
Tracking of matching funds	

## Appendix B – Generic Program/Process Review Guide

Phase or Activity	Outstanding/ Notable Best Practice	Satisfactory	Needs Improvement	Documentation Description
<b><i>Planning &amp; Programming</i></b>				
Long term program of projects development processes – Process for STIP/TIP				
Program stability – “shelf” projects available. Processes for development				
Funding allocation process				
Tracking of matching funds (Access Program)				
Project agreement requirements documentation				
Maintaining agency identified				
Fiscal management processes – de-obligation, metrics evaluation and monitoring, funding approval processes				
<b><i>Environment</i></b>				
Was the appropriate NEPA action completed prior to the date of authorization, i.e. Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE) determination?				
Business processes and practices for developing NEPA documents				
NEPA commitments tracking – process for				

Phase or Activity	Outstanding/ Notable Best Practice	Satisfactory	Needs Improvement	Documentation Description
ensuring commitments are reflected in design/construction				
<b>Adoption Practices</b>				
NEPA Document release and approval process (including public notification)				
<i>Design</i>				
Design Standards/Geometrics to be used				
Design exception approval process				
Design development business practices (ex: PDDM)				
Quality Assurance process – internal reviews/self-audits				
Review ROW and utility certifications/procedures and railroad work prior to the date of authorization				
<i>Acquisitions</i>				
Funds certification process				
Contracting Officer Warrants certification				
FAR adherence (including contract close-out requirements)				
<i>Construction</i>				
Specifications				
Construction business practices (ex: FLH				

<b>Phase or Activity</b>	<b>Outstanding/ Notable Best Practice</b>	<b>Satisfactory</b>	<b>Needs Improvement</b>	<b>Documentation Description</b>
<b>Construction Manual)</b>				
<b>Quality Assurance process – internal reviews/self-audits</b>				
<b>Contract modification/change order documentation</b>				
<b>Construction Documentation processes (as-built, record keeping, etc.)</b>				
<b>Materials testing results and certifications</b>				
<i><b>Project Closeout</b></i>				
<b>Financial reconciliation</b>				
<b>Dispute resolution</b>				
<b>Fund de-obligation</b>				

The FHWA [CAP Core and Technical Guides](#) can be used to identify additional items for review.



## Appendix C – Inherently Federal Functions

The assumption of the Secretary’s responsibilities by nonfederal partners for designs, PS&E, contract awards, and inspections does not include any responsibilities with respect to planning, conformity, environment, or the authorization of Federal funds. Also, these responsibilities do not include the following actions:

- Civil Rights Program approvals;
- Environmental approvals, except those specifically assumed under other agreements. (23 U.S.C. 326 and 327);
- Federal air quality conformity determinations required by the Clean Air Act;
- Progress payments and final vouchers;
- Hardship acquisition and protective buying, and early acquisitions under 23 U.S.C. 108(d);
- Project agreements and modifications to project agreements obligation of funds (including advance construction);
- Planning and programming pursuant to 23 USC 134 and 135;
- Special Experimental Projects (SEP-14 and SEP-15);
- Use of Interstate airspace for non-highway-related purposes;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended;
- 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 costs for early acquisitions, donations, or other contributions applied to a project;
- Functional replacement of property;
- Approval of a time extension 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, in the event that actual construction of a road on the right-of-way is not undertaken;
- Determine need for Coast Guard Permit;
- Equal Employment Opportunity (EEO) Contract Compliance Review Approval;
- Training Special Provision – Approval of New Project Training Programs; and
- Any other activity not specifically identified in Appendix A unless otherwise approved by the Office of Program Administration.

## Appendix D – Risk Analysis Factors to Consider for Partners Delivering Title 23 Funded Projects

(Note: This is not an exhaustive list. The format can be changed to fit a division’s data systems. POC will use their professional judgment.)

<b>Factor</b>	<b>Low Risk Example</b>	<b>Elevated Risk Example</b>	<b>Comments (POC can insert their comments here)</b>
<b>Project Funding Level</b>	<\$1M	>\$1M	Value can be set for the program, e.g. FWS projects tend to be smaller in size than PRP. Partner experience with large transportation projects would impact this figure.
<b>Single or multiple funding streams</b>	1-2 types of funds	3 or more	Different funds may have different allowable uses and tracking/reporting requirements
<b>Political Interest</b>	Local interest only	Statewide, regional, and/or Congressional	A road accessing the main entrance to a major park unit would have elevated interest.
<b>Complex scheduling</b>	Single season	Overlapping work window restrictions expected	This is often tied to environmental complexity
<b>Project Urgency</b>	Normal project timelines	Pressure to have the project expedited	This is often tied to Political Interest
<b>Complex engineering features</b>	Nothing unusual	Will require specialized work	May have a limited pool of contractors who can do the work
<b>Complex geological features</b>	Nothing unusual	Area has slide issues	Potential for differing site or large cost overruns
<b>ROW required</b>	None, or only a small number of landowners to deal with	Many landowners, possible condemnation	Can consider temporary construction easements in the same category as ROW
<b>Utility issues</b>	above ground phone & power, only	Main trunk fiber optic line buried within	If major relocations are required, may look at breaking project into two parts – one dealing with utilities only and the second to do

<b>Factor</b>	<b>Low Risk Example</b>	<b>Elevated Risk Example</b>	<b>Comments (POC can insert their comments here)</b>
	temporary relocation needed	construction limits	the transportation component
<b>Railroad issues</b>	None	Crossing or building above an active line	This can add to scheduling and work window issues
<b>Safety implications/design exceptions</b>	Minor	Will require design exceptions	State DOT have an approved process for design exceptions
<b>Partner's experience delivering T-23 projects</b>	Has delivered projects of similar size/complexity successfully before	First time or previously had problems	
<b>LPA Title 23 certification</b>	LPA is SDOT certified to handle T-23 funds	Is not certified, has unresolved issues on its single audit	Note: not all SDOT's have T-23 certification programs. Not all LPA's have applied for certification where it exists.
<b>Environmental complexity</b>	Cat. Ex.	E.A or E.I.S.	NEPA Classification
<b>Innovative or risky contracting method</b>	Sealed bids	Has elements of cost reimbursement	Risk also has to do with the entities experience with the method
<b>TTP additional factors:</b>			Generally funds going to the tribes will be handled using existing program processes. Would be rare under existing programs that T-23 non-TTP funds would be going to tribes.
<b>Unresolved Audit findings</b>	None	multiple	
<b>New FHWA tribe</b>	No	Yes	May be new to the process, expectations, and requirements
<b>Remoteness/access issues</b>	Have road access, legal	Barging in materials	Limits competition, adds complexity to scheduling deliveries.

Factor	Low Risk Example	Elevated Risk Example	Comments (POC can insert their comments here)
	loads	and equipment, roads less than standard loads	
<b>Tribal forces doing work</b>	No or tribe has regularly done this type of work	Yes, have not done this type of work before	Some tribes do this regularly and have robust accounting systems, QC/QA
<b>Final Rating</b>			<i>POC makes a recommendation to Planning &amp; Programs Branch Chief: Low or Elevated Risk.</i>

## Appendix E – Stewardship and Oversight Check List – Partner Delivered Projects

Notes: Phases or Activities marked with an asterisk (\*) must be included in every S&O check list and project agreement.

The “X’s” are not intended to be definitive here. They are to show how Low vs Elevated Risk Project would compare against each other.

It should be noted that FLH’s role is not to perform regular, in-depth technical/engineering review to critique the partner’s work. It is an S&O review to ensure the requirements of Title 23 are being met.

Phase or Activity	Low Risk Project	Elevated Risk Project	Partner Role	FLH Role	Comments
<b>Planning &amp; Programs</b>					
Evidence that project is on an approved program of projects	X	X	Provide	Review/concur	For funds disbursed by a division, they may know this already
*Evidence of being on a TIP or STIP	X	X	Provide	Review/concur	
Design Standards/Geometrics to be used identified		X	Provide	Review/concur	Generally standards used by transportation agencies will be acceptable.
Design exception approval agency identified			Provide	Review/concur	If the partner is a State DOT, they would follow their process, no FLH involvement
Evidence of funding allocation		X	Provide	File copy	
Project agreement with scope, schedule, & budget	X	X	Provide	Approve	FLH would be a signatory. Would be involved in the drafting to define what S&O deliverables it will receive
Maintaining agency identified		X	Provide	File copy	Many times the entity doing the work is also the maintainer
Identify when funds will be de-obligated and returned (x days from project closeout)		X	Provide	File copy	

Phase or Activity	Low Risk Project	Elevated Risk Project	Partner Role	FLH Role	Comments
<b>Environment</b>					
Lead Federal agency identified	X	X	Provide	concur	FHWA must be a co-lead agency on an EIS
Anticipated NEPA action					
Copy of/review of Draft documents	X	X	Provide	Review/concur	FLH should review to insure they can be adopted by FLH
Copy of proposed level of NEPA documentation	X	X	Provide	File copy	(CE, EA, or EIS)
Evidence of permits	X	X	Provide	File copy	
Review of Public Notices		X	Provide	File copy	
Attend public meetings			Schedule, invite	Attend	FLH should attend if serving as a co-lead on an EIS regardless of project risk designation
* NEPA document	X	X	Provide	Adopt or develop parallel document	FHWA approval needed
<b>Design</b>					
Review 30% PS&E			Provide	Review/concur	
Review 70% PS&E		X	Provide	Review/concur	
Review 95% PS&E	X	X	Provide	Review/approve	Are required contract provisions included – Common Rule or Fed Aid?
Review or approve design exceptions	X	X	Provide	Review/approve	If the partner is a State DOT, they would follow their process
*Review ROW certifications	X	X	Provide	Review/approve	If ROW is acquired, it must follow Uniform Federal Relocation Act

Phase or Activity	Low Risk Project	Elevated Risk Project	Partner Role	FLH Role	Comments
<b>*Utility/Railroad Agreements</b>	X	X	Provide	Review/approve	FLH needs certification
<b>Acquisitions</b>					
<b>Approval of proprietary products</b>		X	Provide	Review/approve	State DOT's already have approved lists. FLMA have to follow FARs
<b>*Review contract package for required clauses (Civil Rights, Davis-Bacon, Buy America/American, etc.)</b>			Provide	Review/approve	Would not need to do this if the partner is another federal agency or State DOT following Fed Aid procedures.
<b>*Concur in award of contract</b>			Provide	Review/concur	Generally would only get involved if additional funds required
<b>Receive copy of award package</b>	X	X	Provide	File copy	FLH should have a copy of the package in its files in case inquiries are received
<b>Review or approve contract modifications</b>			Provide	Review depends upon nature of CM	Need to assure non-eligible work is not being paid for with program funds
<b>Construction</b>					
<b>Attend Pre-Construction meeting</b>			Schedule	Attend	
<b>Project Inspections</b>			Schedule	Attend	Define which ones you will be doing.
<ul style="list-style-type: none"> <li>• <b>Monthly</b></li> </ul>					Is there a full time employed public employee in responsible charge for administering the project?
<ul style="list-style-type: none"> <li>• <b>Mid-construction</b></li> </ul>		X			



Phase or Activity	Low Risk Project	Elevated Risk Project	Partner Role	FLH Role	Comments
• Final	X	X			Projects above \$xxx or type FLH should attend the final regardless of risk level. Final could be done electronically with photos.
Copy of As-built			Provide	File copy	Generally only request these if project adjacent to or along a corridor FLH is working on or if FLH does asset management. Used for updating system info
Materials Testing QA/QC Plan		X	Provide	Review/concur	If doing a field review, be sure to verify it is being followed.
Copy of final voucher			Provide	File copy	
Contract Dispute (Claim)			Notify	Provide assistance if requested	Need to be aware if additional funds are needed

## Appendix F – Risk Analysis Factors to Consider for FLH Accepting Non-Title 23 Funded Projects

(Note: This is not an exhaustive list. The format can be changed to fit a division’s data systems.)

<b>Factor</b>	<b>Low Risk Example</b>	<b>Elevated Risk Example</b>	<b>Comments</b> (FLH reviewer can insert their comments here)
<b>Project Funding Level</b>	Appears adequate	Appears insufficient	How will overruns be handled?
<b>Well defined scope of work</b>	Yes	No	
<b>Political Interest</b>	Local interest only	Statewide and/or Congressional	
<b>Work fits with FLH expertise set</b>	Yes	No, transportation is not the major component	Has a lot of vertical work for example
<b>Adequate time (design, compliance, and construction)</b>	Yes	No, appears overly aggressive	
<b>FLH resources available</b>	Yes	No	Would require major shifting of resources from existing core programs
<b>Design standards</b>	FLH has used before	Unfamiliar with	Proposed standards are not typical highway construction
<b>Does FLH have authority to do the work</b>	Yes	Unclear	
<b>Is there a FLH interest in the work</b>	Yes	No or unclear	
<b>Environmental issues</b>	Nothing unusual	Yes, numerous or complex	e.g. has contaminated soil
<b>Other concerns</b>			(List them for clarity)
<b>Recommendation</b>			<i>Recommend accept or reject request. This is forwarded to the division leadership for a decision.</i>

## Appendix G – Project Agreement Elements

(Elements required will vary depending upon project scope. See Appendix H for an example of a FLTP Project Agreement Template)

Project name(s)	Other project nomenclature
Who is a party to the agreement	Design standards/geometrics
Signature/date block	ROW/railroad/utilities
Project background/description	Construction
Authority for agreement	Roles/responsibilities of participants
Purpose of agreement	Maintenance of facility
Scope	Agreement amendment process
Schedule/milestones	Identify points of contact
Deliverables	Dispute resolution/escalation process
Budget (PL, PE, CE, CN)	Any agency standard provisions
Funding sources identified	Agreement duration
Funding match type (Access Program)	Project closeout process & timeframes

## Appendix H – Project Agreement (Template) with Stewardship and Oversight

*(This template is designed for a FLTP project)*

**Project Name:** *(may have several names)*

**Project Route:** *(may have several route #)*

**State:**

**Park, Forest, Refuge, County:** *(where is the work being done)*

**Type of Work:** *(repair/rehabilitation, 4R, Category 1, 3R ...)*

**Length:** *(overall length of the work)*

**Parties to this Agreement:** *(list Division office, county, state, refuge, park, forest, FLMA, DSC, road district, ... who owns the road or is involved in delivering, funding, or maintaining of the project of the project)*

---

This agreement describes specific project requirements to be fulfilled and duties to be performed by all parties to produce or supply the services and products as agreed to below.

---

**AGREED:**

---

Federal Land Management Agency Date  
*(may have multiple lines, signatories)*

---

State DOT Representative Date  
*(may not be needed)*

---

Local Public Agency Date  
*(county, road district, etc., may not be needed or may have multiples)*

---

Division Director or Director of Program Administration (FLH division) Date  
*(may be their acting "For" if they are out of the office)*

**PROJECT AGREEMENT AUTHORITY**

*By what authority are we allowed to enter into this agreement?*

**PROJECT BACKGROUND**

*Short history of the road or why is the project being done?*

**OVERALL PROJECT SCOPE**

*The purpose of this project is to do what? Better define project location, - mileposts, intersection to intersection... Should expand upon the description on the signatory page.*

The scope of this project consists of: (can insert a table with a preliminary listing of quantities and cost estimate if available– see example below. Want to get a feel for the major items and project estimate. Entity doing the work will provide this information. This could be provided separately as part of the documentation requested in the last section of this document.)

Main Road Items	Quantity	Unit	Price	Total Cost	Cost per Mile
Crack routing and sealing	31,070	LF	\$ 3.50	\$ 108,750.00	\$ 17,740.62
Imported Material	425	CY	\$ 25.00	\$ 10,630.00	\$ 1,734.09
Asphalt Concrete Pavement	14,171	Ton	\$ 85.00	\$ 1,204,520.00	\$ 196,495.92
Subexcavation	2,000	LF	\$ 25.00	\$ 50,000.00	\$ 8,156.61
Shoulder Stabilization	7,920	LF	\$ 100.00	\$ 792,000.00	\$ 129,200.65
Rock Scaling	11,110	SY	\$ 30.00	\$ 333,300.00	\$ 54,371.94
Concrete Barrier Rail - Remove/Reset	360	LF	\$ 50.00	\$ 18,000.00	\$ 2,936.38
Concrete Barrier Rail	360	LF	\$ 200.00	\$ 72,000.00	\$ 11,745.51
Remove Guardrail	34,600	LF	\$ 10.00	\$ 346,000.00	\$ 56,443.72
Guardrail	34,600	LF	\$ 65.00	\$ 2,249,000.00	\$ 366,884.18
Guardrail - End Sections	34	EA	\$ 5,000.00	\$ 170,000.00	\$ 27,732.46
Permanent Signing	50	EA	\$ 520.00	\$ 26,000.00	\$ 4,241.44
Removal of Signs	50	EA	\$ 100.00	\$ 5,000.00	\$ 815.66
Permanent Markings, White	64,730	LF	\$ 0.12	\$ 7,770.00	\$ 1,267.54
Permanent Markings, Yellow	64,730	LF	\$ 0.10	\$ 6,470.00	\$ 1,055.46
Culvert Replacements	1,700	LF	\$ 100.00	\$ 170,000.00	\$ 27,732.46
Fish Passage Culvert MP 3.38	45	LF	\$ 2,500.00	\$ 112,500.00	\$ 18,352.37
Fish Passage Culvert MP 4.62	140	LF	\$ 1,900.00	\$ 266,000.00	\$ 43,393.15
Fish Passage Culvert MP 5.80	80	LF	\$ 1,750.00	\$ 140,000.00	\$ 22,838.50
Schedule				\$ 3,000.00	
Temporary Traffic Control				\$ 30,000.00	
Erosion Control				\$ 25,000.00	
			Subtotal 1:	\$ 6,145,940.00	\$ 1,002,600.33
Contractor QA/QC	2%			\$ 122,918.80	
Sampling & Testing	5%			\$ 307,297.00	
Survey	3%			\$ 184,378.20	
Contingency	30%			\$ 1,843,782.00	
			Subtotal 2:	\$ 8,604,316.00	
Mobilization	10%			\$ 860,431.60	
			Subtotal 3:	\$ 9,464,747.60	
Inflation Costs /Year (3 Years)	4%			\$ 1,135,769.71	
<b>Total Estimated Cost (2013)=</b>				<b>\$ 10,601,000.00</b>	

**DESIGN STANDARDS**

Criteria		Comments
Standard	<i>Ex. AASHTO Very Low Volume</i>	<i>Add if needed</i>
Functional Classification		
Surface Type		
Design Volume	vpd	

**FUNDING**

Fund Source	Amount	Comments
<i>Title 23 program funds-what type?</i>		<i>Add if needed</i>
<i>Other funds-type? May not have any</i>		
<i>Other funds-type?</i>		
<b>TOTAL</b>		

**POINTS OF CONTACT**

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each parties role and responsibility for this agreement. *(this table would list the representatives of the entities that signed the agreement. It may not be the same individuals who signed the agreement.)*

Organization	Name / Phone Number
FLMA	
FLH Division Office	<i>This is the person who will receive the requested documents and do/ensure the FLH role.</i>

**STEWARDSHIP & OVERSIGHT ACTIVITIES**

Item	Responsible Party	FLH Role

*Based upon the risk assessment and who the delivery partner is, the FLH POC would fill in this table with the items that they feel are necessary for S&O. They would pull them from the Oversight Checklist – Partner Delivered Title 23 table. The FLH role is not to do a technical review of the delivery agency’s work, but rather to ensure Title 23 compliance. If items are not delivered timely or in such poor condition that it brings into question the ability to deliver, the issue needs to be elevated in all participants to the agreement.*



## Appendix I – Federal Lands Access Program Project Memorandum of Agreement

**Project / Facility Name:** *(may have several names)*

**Project Route:** *(may have several route #'s)*

**State:**

**County(ies):** *(or Parish, Township, Borough, etc.; place where the project is physically located)*

**Owner of Federal Lands to which the Project Provides Access:**

**Entity with Title or Maintenance Responsibility for Facility:**

**Type of Work:** *(short description of project, e.g.)*

<i>ROW</i>
<i>Utilities</i>
<i>NEPA</i>
<i>Preliminary Eng.</i>
<i>Repair, Rehabilitation, Reconstruction</i>
<i>Construction</i>
<i>Construction Eng.</i>

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this Agreement sets forth the respective responsibilities as the project proceeds through the project development process.

**Parties to this Agreement:** *(list Division office, county, state, road district, ...who owns the facility or is cooperating in delivering, funding, or maintaining the project)*

The Program Decision Committee approved this project on \_\_\_\_\_(date).

**AGREED:**

---

State Department of Transportation, Title  
*(May not be needed)*

Date

---

Facility Owner

Date

*(County, parish, road district, etc., may not be needed or may have multiple signatures)*

---

Division Director or Director of Program Administration, \_FLHD

Date

*(May be their acting "For" if they are out of the office)*

*(Include any other agency or tribe who will be listed in the roles and responsibilities section of this Agreement)*

**A. PURPOSE OF THIS AGREEMENT**

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental analysis, design, right-of-way, utilities, acquisition and construction as appropriate for this programmed project, and to ensure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program funds are used for the development or construction of this project, the [INSERT THE STATE / AGENCY(CIES) PROVIDING THE MATCH] agrees to provide a matching share equal to [INSERT THE APPLICABLE PERCENTAGE PER 23 USC 120] of the total cost of the project, as detailed more fully in Section J below. *(If an agency(cies) other than FHWA will be expending Access funds, INSERT THE FOLLOWING: Before the expenditure of any funds for which reimbursement will be sought from FHWA, the parties agree to execute a separate obligating document. No reimbursement will be made for expenditures made prior to having an obligating document in place.)*

*(There may be supplemental agreements in addition to this agreement, such as a separate agreement addressing the matching share, or agreements addressing different phases of the project as appropriate.)*

**B. AUTHORITY** *(By what authority are the parties allowed to enter into this agreement? May include what authority the other parties are invoking.)*

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204 and [INSERT THE STATE OR LOCAL AUTHORITY AS APPROPRIATE].

**C. JURISDICTION AND MAINTENANCE COMMITMENT**

The [INSERT “STATE” and/or “LOCAL JURISDICTION”] has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

**D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION**

The [INSERT EITHER THE STATE, THE LOCAL AGENCY, OR BOTH] has coordinated project development with the [INSERT THE APPLICABLE FLMA]. The [INSERT THE APPLICABLE FLMA] support of the project is documented [INSERT THE APPLICABLE REFERENCE]. Each party to this agreement who has a primary role in NEPA, design, or construction shall coordinate their activities with the [INSERT THE APPLICABLE FLMA].

- E. PROJECT BACKGROUND/SCOPE** *(Note: To the extent that some or all of the material required in Sections D. through L. are contained in an Application Document, a Work Plan, Contracts, or some other document, such document(s) may be incorporated into this document by reference and attached hereto in lieu of repeating the information in this document. Clear language incorporating relevant material must be included in this document whenever this approach is taken. Care should be taken to avoid incorporating material that may represent proffers or commitments to which FHWA does not agree.)*

*(Provide short history of the purpose and need for the project. Better define project location, - mileposts, intersection to intersection... Should expand upon the type of work listed on the signatory page. What will the end product look like?)*

*(Preliminary purpose and need to be stated here.)*

- F. PROJECT BUDGET** *(This section may be abbreviated with only a tentative project cost based on the application pending a more in-depth scoping of the proposed project. If so, a more detailed budget thereafter should be developed and approved by the parties or the Programming Decisions Committee, as appropriate.)*

Item	Estimate (\$)	Comments
ROW		
Utilities		
NEPA		
Preliminary Eng.		Could be split
Construction		
Construction Eng.		
Contingency		

Item	Estimate (\$)	Comments
Total		<i>Should equal the programmed amount</i>

**G. ROLES AND RESPONSIBILITIES** *(Keep the roles and responsibilities at the agency or entity level. The project team member representing the agency/entity is responsible for ensuring that it meets its commitments. The Roles and Responsibility Table should include all signatory entities to the agreement. Can list the individual's roles and responsibilities in the table listing the team members.) The following is an example of what the roles and responsibilities may look like.*

Responsible Party	Product/Service/Role	Comments
FLH Division	<p><i>Insert FHWA's role. What is FHWA responsible to deliver? Include mention of S&amp;O if FHWA is not doing the PE, CN, and CE. Use bullet listing, e.g.</i></p> <ul style="list-style-type: none"> <li>• <i>Prepare environmental documents and make project decisions based on the NEPA documents</i></li> <li>• <i>Subject to the NEPA decision,</i> <ul style="list-style-type: none"> <li>○ <i>Obtain permits required for Federally constructed projects</i></li> <li>○ <i>Prepare right-of-way plans and legal descriptions of parcels to be acquired.</i></li> <li>○ <i>Prepare the PS&amp;E</i></li> <li>○ <i>Construct the project</i></li> </ul> </li> </ul>	
State DOT	<p><i>Insert State's role. What is the State responsible to deliver? e.g.,</i></p> <ul style="list-style-type: none"> <li>• <i>Attend reviews and meetings</i></li> <li>• <i>Provide available data</i></li> <li>• <i>Review plans and specifications</i></li> </ul>	

Responsible Party	Product/Service/Role	Comments
Local Public Agency/Tribe	<p><i>Insert the local public agency's role. What is the local agency responsible to deliver? e.g.,</i></p> <ul style="list-style-type: none"> <li>• <i>Obtain permits other than those required for Federal constructed projects</i></li> <li>• <i>Coordination and costs associated with utilities</i></li> <li>• <i>Acquire right of way</i></li> <li>• <i>Attend reviews and meetings</i></li> <li>• <i>Provide data on traffic, accidents, material sources, etc.</i></li> <li>• <i>Review plans and specifications at each phase of the design</i></li> <li>• <i>Assume responsibility of the NPDES permit after project completion</i></li> <li>• <i>Provide long term maintenance and operation of the facility</i></li> </ul>	
<p><i>Only include another agency or Tribe if they are signatories to this Agreement</i></p>	<p><i>If another agency will have a role or responsibility, list it here. Ex. If a FLMA or a Tribe will contribute toward the match requirement, they should be signatories to this Agreement and their role listed here.</i></p>	

**H. ROLES AND RESPONSIBILITIES – SCHEDULE** *(This section may be abbreviated with only a tentative project schedule based on the application pending a more in-depth scoping of the proposed project. If so, a more detailed schedule thereafter should be developed and approved by the parties or the Programming Decisions Committee, as appropriate.)*

<b>Responsible Lead</b>	<b>Product/Service/ Role</b>	<b>Schedule Start-Finish</b>	<b>Comments</b>
<i>List the responsible entity, not individuals</i>	<i>Insert tasks appropriate for the project. List major milestones. This is not a detailed work plan. Schedule may change due to environmental process</i>	<i>May break down into several phases such as preliminary, intermediate, and final design</i>	
<i>Ex: FHWA</i>	<i>NEPA</i>		
<i>Ex: Local or state</i>	<i>ROW Acquisition</i>		

**I. PROPOSED DESIGN STANDARDS**

Final design standards will be determined through the NEPA process.

<b>Criteria</b>		<b>Comments</b>
Standard	<i>Ex. AASHTO Very Low Volume</i>	<i>Add if needed May have other standards depending on type of facility</i>
Functional Classification		
Surface Type		
Design Volume		

**J. FUNDING**

<b>Fund Source</b>	<b>Amount</b>	<b>Comments</b>
<i>Title 23 program funds-what type?</i>		<i>May have multiple lines.</i>
<i>Local Matching Share – which entity? May have more than one entity providing funds or other in-kind contribution</i>		<i>Cash or in-Kind Contribution</i>
<i>What is the source of the matching funds?</i>  <i>Besides funds from the State, funds authorized for the Tribal Transportation Program (23 U.S.C. 202) and the Federal Lands Transportation Program (23 U.S.C. 203) may be used to meet the match requirement. Also, other Federal funds not authorized under titles 23 or 49, may be used toward the match requirement.</i>		
<i>Other funds-type?</i>		<i>Are additional funds being provided for non-eligible items?</i>
<b>TOTAL</b>		<i>Should match programmed amount</i>

**K. MATCHING SHARE REQUIREMENTS**

Matching or cost sharing requirements may be satisfied following the obligation of funds to the project by: allowable costs incurred by the State or local government, cash donations, the fair and reasonable value of third party in-kind contributions (but only to the extent that the value of the costs would be allowable if paid for by the party responsible for meeting the matching share), including materials or services; however no costs or value of third party contributions may count towards satisfying the matching share requirements under this agreement if they have or will be counted towards meeting the matching share requirements under another federal award.

Costs and third party contributions counting toward satisfying a cost sharing or matching requirement must be verifiable from the records of the party responsible for meeting the matching requirements. The records must demonstrate how the value of third party in kind contributions was derived. Voluntary services sought to be applied to the matching share will be supported by the same methods that the party to this agreement uses to support allocability of



personnel costs. Any donated services provided by a third party will be valued at rates consistent with those ordinarily paid by employers for similar work in the same labor market. Supplies furnished will be valued at their market value at the time of donation. Donated equipment or space will be valued at fair rental rate of the equipment or space. All records associated with valuations or costs under section K shall be accessible and be maintained for three years following project close-out.

*(When FHWA is delivering the project, include also in this section how and when the local matching share will be provided. Cover the strategy for tracking the local matching share, including documentation and recordkeeping associated with in-kind contributions. Address the need for or incorporate a commitment to cover additional matching amount that may be required if there are cost increases due to contract modifications or claims, including FHWA administrative costs for the CMs or claim. If FLH is not delivering, then the tracking strategy and requirements would be included in the S&O Section of the agreement.)*

**L. PROJECT TEAM MEMBERS - POINTS OF CONTACT**

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party’s role and responsibility for this agreement. *(This table would list the representatives of the entities that signed the agreement. It may not be the same individuals who signed the agreement. The individuals will be the ones doing the day-to-day tasks to develop the project. Some entities may have more than one member on the team.)*

Name/Title	Organization	Address/Phone Number/Email
	Local public agency	<i>Can add another column to detail the individual’s project related responsibilities.</i>
	State	
	Others	
<i>(May have a PM, lead designer, ...)</i>	FHWA Division	<i>This is the person who will receive the requested documents and perform/oversee the FHWA role. This would be the project manager &amp; others if FHWA is developing the project. It may be some other position if one of the signatory entities is doing the project development.</i>

**M. CHANGES/AMENDMENTS/ADDENDUMS**

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; changes that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in the composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notification to their management in order to avoid project delivery delays.

**N. ISSUE RESOLUTION PROCEDURES MATRIX**

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

<b>FHWA</b>	<b>(partner 1)</b>	<b>(partner 2)</b>	<b>Time</b>
Project Manager or POC <i>Name, title, contact info</i>	<i>This line should most likely be the project team members</i>		<i>X days</i>
<i>Branch Chief</i>			
<i>Director</i>			
<i>Division Engineer</i>			

**O. TERMINATION**

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal Access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

**P. STEWARDSHIP & OVERSIGHT ACTIVITIES**

Item	Responsible Party	FLH Role
<i>If FLH is not responsible for the project delivery, tracking &amp; reporting the local match and other Stewardship and Oversight requirements must be accounted for in this section</i>		

*(Based upon the risk assessment (complexity of the undertaking and capabilities and past performance of the entity who is the delivery partner), the FLH POC would fill in this table with the items that they feel are necessary for S&O. They would pull items from the Oversight Checklist – Partner Delivered Title 23 table. (Source: Federal Lands Highway Program Oversight Guidance, September 7, 2012). The FLH role is not to perform a technical review of the delivery agency’s work, but rather to ensure Title 23 compliance (or other laws as applicable). If items are not delivered timely or in such poor condition that it brings into question the ability to deliver, the issue needs to be elevated to all participants to the agreement.*

*If FLH is responsible for the development and delivery, and a partner is providing only the local match funding in cash, with no ROW or utilities issues, this section may not be needed.)*

## Appendix J – Common Grant Rule: Title 23 Requirements Applicable to Non-Certified Local Public Agency Delivered Projects

### ATTACHMENT 1

#### A. GENERAL TERMS AND CONDITIONS

Background. To promote accelerated and efficient delivery of projects that benefit Federal Land Management Agencies, the Secretary has exercised his discretion under 23 U.S.C. § 201(a) and § 204(a)(3) to apply Title 23 U.S.C. Chapter 1 requirements (Federal Aid requirements) to Federal Lands Access Projects delivered by State Departments of Transportation (DOTs) and local public agencies that are evaluated and certified by State DOTs to deliver Federal Aid projects. In instances where a local public agency is not certified to deliver Federal-aid projects and Federal Lands Access projects are delivered by the local public agency cooperatively with Federal Lands Highway Division office oversight, the government-wide Common Rule (2 CFR 200) will be applied. This cooperative relationship will enable the FLH to identify any federal law issues in cooperation with the local public agency which may arise in the project development and delivery process.

1. The Agreement provides funds on a reimbursable basis to the Servicing Agency for the project described in the Access Program Project Memorandum of Agreement.
2. The Government's liability to make payments to the Servicing Agency under the Agreement is limited to those funds obligated by the Government under the Agreement as indicated herein and by any subsequent amendments agreed to in writing by all parties.
3. The Servicing Agency agrees to abide by and comply with all terms and conditions of the Agreement and to abide by, and comply with, all requirements of applicable law, including those specified in this Attachment, which are considered as an integral part of the Agreement.
4. In the case of any inconsistency or conflict between the specific provisions of the Agreement and this Attachment, such inconsistency or conflict shall be resolved by giving preference to the Agreement.
5. The Servicing Agency shall be responsible for ensuring that the Project is designed and/or constructed in accordance with the Agreement, and all applicable Federal laws, regulations and policies of the Federal Highway Administration ("FHWA" also referred to herein as the "Government").
6. Reimbursement of costs incurred pursuant to the Agreement will be made pursuant to and in accordance with 2 CFR Part 200 and the provisions of such regulations and procedures as the Government may prescribe. Determination of allowable costs incurred by the Servicing Agency under the Agreement shall be made in accordance with applicable government-wide cost principles under 2 CFR 200. Closeout of the Agreement shall be based upon a determination that all applicable administrative actions and all required work of the Agreement have been completed in accordance with 2 CFR Part 200. Upon the Government's review of all financial, performance, and other reports required as a condition of the Agreement, the Government may make any upward or downward adjustments to the allowable costs in accordance with 2 CFR 200.

7. The Servicing Agency agrees to carry out and complete the Project without undue delays and in accordance with the terms of the Agreement, including the Project Schedule set out in the Agreement, or in the Access Program Project Memorandum of Agreement if no Schedule is included in this Agreement, and comply with such regulations and procedures as the Government may prescribe.

8. The Servicing Agency agrees to retain all documents relevant to the Project for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The Servicing Agency agrees to furnish the Government, upon request, all documents and records pertaining to the Project.

9. The Government is subject to the Freedom of Information Act (FOIA). The Servicing Agency should therefore be aware that all materials submitted by the Servicing Agency related to the Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

10. The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this the Servicing Agency's work under the Agreement. The Government will be responsible for damages or injuries caused by the negligence of its own employees, to the extent permitted under the Federal Tort Claims Act, 28 U.S.C. 2671-2680.

11. To the extent that the State has not already enacted legislation regarding texting while driving, the Government encourages the Servicing Agency to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at [http://www.dot.gov/sites/dot.dev/files/docs/FAPL\\_2010-01.pdf](http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf)) This includes, but is not limited to, the Servicing Agency:

- a. considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- b. conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- c. encouraging voluntary compliance with the agency's text messaging policy while off duty.

The Servicing Agency is encouraged to insert the substance of this clause in all contracts and subcontracts.

## **B. APPLICABLE FEDERAL LAWS AND REGULATIONS**

By entering into the Agreement, the Servicing Agency assures, certifies, and agrees to comply with all applicable Federal laws, regulations, policies, guidelines, and requirements as they relate to the use of Federal funds for this Project including, but not limited to, the following:

### **General Federal Legislation**

- Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- Hatch Act - 5 U.S.C. §§ 1501, et seq.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§ 4601, et seq.
- National Historic Preservation Act of 1966 – 16 U.S.C. § 470, et seq.
- Archaeological Resources Protection Act – 16 U.S.C. 470aa, et seq.
- Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001, et seq.
- National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. §§ 1271, et seq.
- Federal Water Pollution Control Act, as amended - 33 U.S.C. §§ 1251-1376
- Clean Air Act – 42 U.S.C. § 7401, et seq.
- Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d *et seq.*
- Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1855
- Farmlands Protection Policy Act of 1981 – 7 § U.S.C. 4201
- Noise Control Act of 1972 – 42 U.S.C. § 4901, et seq.
- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. §§ 6901, et seq.
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. §§ 9601-9657
- Safe Drinking Water Act -- 42 U.S.C. §§ 300f-300j-6
- Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 -- 42 U.S.C. § 6901, et seq.
- Migratory Bird Treaty Act 16 U.S.C. § 760c-760g
- The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- Buy America Act – 23 U.S.C. § 313 (see [http://www.fhwa.dot.gov/construction/contracts/buyam\\_qa.cfm](http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm))
- Nondiscrimination – 23 U.S.C. § 140

### **General Federal Regulations**

- Suspension and Debarment – 2 CFR Parts Part 180
- Non-procurement Suspension and Debarment – 2 CFR Part 1200
- External Programs – 23 CFR Part 230
- Manual on Uniform Traffic Control Devices – 23 CFR Part 655
- Environmental Impact and Related Procedures – 23 CFR Part 771
- Procedures for Abatement of Highway Traffic and Construction Noise – 23 CFR Part 772
- Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 CFR Part 774
- DOT’s oversight of DOJ’s ADA regulations for non-transit programs, including the ADA Accessibility Guidelines, required by the DOJ regulations at – 28 CFR Part 35
- Procedures for predetermination of wage rates – 29 CFR Part 1
- Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 CFR Part 3
- Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 CFR Part 5
- Permitting Requirements under the National Pollutant Discharge Elimination System – 40 CFR Part 122.
- Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 CFR Parts 60, et seq.
- Uniform administrative requirements, cost principles, and audit requirements for Federal Awards – 2 CFR Part 200
- New Restrictions on Lobbying – 49 CFR Part 20
- Nondiscrimination in Federally Assisted Programs of the Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964 – 49 CFR Part 21
- Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 CFR Part 24
- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 CFR Part 25
- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 CFR Part 26
- Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 CFR Part 27
- Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 CFR Part 28
- Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 CFR Part 30
- Government-wide Requirements for Drug-Free Workplace (Financial Assistance) – 49 CFR Part 32
- DOT's implementing ADA regulations for transit, including the ADA Accessibility Guidelines in Part 37, Appendix A – 49 CFR Parts 37 and 38
- Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 CFR Part 40
- 23 C.F.R. Part 710 applies unless otherwise agreed to by FHWA

The Servicing Agency, when contracting for work to be performed under this Agreement, will include in the prime contract the applicable provisions required under 2 CFR 200.326.

The Servicing Agency, when contracting for construction services, shall ensure that all laborers and mechanics employed by contractors or subcontractors on the construction work shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with sections 3141, 3146, and 3147 of title 40.

### **C. ASSURANCES AND CERTIFICATIONS**

#### **TITLE VI ASSURANCE (Implementing Title VI of the Civil Rights Act of 1964, as amended)**

#### **ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With  
Disabilities Act, as amended)

49 CFR Parts 21, 25, 27, 37 and 38

#### **The United States Department of Transportation (USDOT)**

#### **Standard Title VI/Non-Discrimination Assurances**

#### **DOT Order No. 1050.2A**

By entering into the Agreement, the Servicing Agency (also herein referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal funds from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);



- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

### **General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Servicing Agency hereby gives assurance that it will promptly take any measures necessary to ensure that:

*“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FHWA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Servicing Agency, so long as any portion of the program is Federally assisted.

### **Specific Assurances**

More specifically, and without limiting the above general Assurance, the Servicing Agency agrees with and gives the following Assurances with respect to its receipt of funds for this project:

1. The Servicing Agency agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Servicing Agency will insert the following notification in all solicitations for bids and requests for proposals for work or materials, regardless of funding source:
  - a. *“The Servicing Agency, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*
3. The Servicing Agency will insert the clauses of Appendix A of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Servicing Agency will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Servicing Agency receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Servicing Agency receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Servicing Agency will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Servicing Agency with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Servicing Agency or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal funds were extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Servicing Agency retains ownership or possession of the property.
9. The Servicing Agency will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other parties funded in whole or part from the funds provided under this Agreement will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Servicing Agency agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing the Agreement, the Servicing Agency also agrees to comply (and require any sub- recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. The Servicing Agency also recognizes that it must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. The Servicing Agency must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way.

Additionally, the Servicing Agency must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Servicing Agency gives this ASSURANCE in consideration of and for obtaining any Federal funds, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation.

This ASSURANCE is binding on the Servicing Agency, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the funds provided under this Agreement.

#### APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-funded programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Servicing Agency or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Servicing Agency or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Servicing Agency will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Servicing Agency or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Servicing Agency to enter into any litigation to protect the interests of the Servicing Agency. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### APPENDIX B

#### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Servicing Agency under the terms of the Agreement:

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

#### APPENDIX C

#### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Servicing Agency pursuant to the provisions of this Agreement:

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX D

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;  
Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## **A. ASSURANCE OF DISCLOSURE OF LOBBYING ACTIVITIES**

### Certification for Contracts, Grants, Loans, and Agreements

The person signing this Agreement for the Servicing Agency certifies, to the best of his or her knowledge and belief, that:

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 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 grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

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 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 grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts and contracts under grants, loans and grant agreements) and that all subcontractors 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 is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, title. 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.

## **B. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Servicing Agency certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Servicing Agency's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The Servicing Agency's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs;and,



- d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the Agreement be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the Agreement, the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4.b. from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to FHWA. Notice shall include the order number of the Agreement.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
  - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
  - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.
8. The Servicing Agency *may*, but is not required to, provide the site for the performance of work done in connection with the Agreement. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the Agreement. If the Servicing Agency does so, the Servicing Agency shall identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the Agreement.

**C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS --  
PRIMARY COVERED TRANSACTIONS**

**2 CFR Parts 180, 1200, 48 CFR Part 9, and 49 CFR Part 32**

These assurances and certifications are applicable to all construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200, and 48 CFR Part. 9.

By entering into this Agreement the Servicing Agency is providing the assurances and certifications for First Tier Participants and Lower Tier Participants as set out below.

**1. Instructions for Certification – First Tier Participants:**

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier

covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph a.2. of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient and subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**D. ASSURANCE OF ADEQUATE FINANCIAL SYSTEMS AND CONTROL OF PROJECT COSTS**

1. The Servicing Agency will be reimbursed in accordance with the terms of this Agreement.

2. The Servicing Agency shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for expenses incurred after execution of a project agreement.

3. The Servicing Agency shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.

4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
5. Financial Management System: By signing this Agreement, the Servicing Agency verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 2CFR Part 200.302. The Servicing Agency's failure to comply with these requirements may result in Agreement termination.
6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 2 CFR Part 200. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

## **E. TRANSPARENCY ACT REQUIREMENTS**

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act” or “the Act”) and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 CFR Part 170), the Servicing Agency is required to report as required under the Act: The Servicing Agency shall also report information for its prime contractor.

### **1. Reporting Obligations**

- a. Applicability. Unless the Servicing Agency (hereinafter in this section referred to as “you”) are exempt as provided in paragraph 4. of this section, you must report each action that obligates \$25,000 or more in Federal funds for a prime contract to an entity (see definitions in subsection 5. of this section).
- b. Where and when to report.
  1. You must report each obligating action described in subsection 1.a. of this section to <http://www.fsrs.gov>.
  2. For contractor information, report no later than the end of the month following the month in which the contract was executed. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- c. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

### **2. Reporting Total Compensation of Executives.**

- a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

1. the total Federal funding authorized to date under this award is \$25,000 or more;
  2. in the preceding fiscal year, you received—
    - i.* 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii.* \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii.* The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- b. Where and when to report. You must report executive total compensation described in subsection 2.a. of this section:
1. As part of your registration profile at <https://www.sam.gov>
  2. By the end of the month following the month in which this award is made, and annually thereafter.

### **3. Reporting of Total Compensation of Prime Contractor's Executives.**

- a. Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each prime contractor receiving funds for which reimbursement will be sought, you shall report the names and total compensation of each of the prime contractor's five most highly compensated executives for the prime contractor's preceding completed fiscal year, if—
1. in the prime contractor's preceding fiscal year, the contractor received—
    - i.* 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii.* \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
  2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue

Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

b. Where and when to report. You must report the prime contractor's executive total compensation described in subsection 3.a. of this section:

1. To <http://www.fsrs.gov>.
2. By the end of the month following the month during which you executed the prime contract. For example, if a prime contract is executed on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the prime contractor by November 30 of that year.

#### **4. Exemptions.**

If, in the previous tax year, you or the prime contractor had gross income, from all sources, under \$300,000, you are exempt from the requirements to report prime contracts and the total compensation of the five most highly compensated executives of any prime contractor.

#### **5. Definitions. For purposes of this section:**

- a. Entity means all of the following, as defined in 2 CFR Part 25:
  1. A Governmental organization, which is a State, local government, or Indian tribe;
  2. A foreign public entity;
  3. A domestic or foreign nonprofit organization;
  4. A domestic or foreign for-profit organization;
  5. A Federal agency, but only as a contractor or subcontractor to a non-Federal entity.
- b. Executive means officers, managing partners, or any other employees in management positions.
- c. Total compensation means the cash and noncash dollar value earned by the executive during the Servicing Agency's or prime contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  1. Salary and bonus.
  2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.



3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation which is not tax-qualified.
6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

#### **E. SINGLE AUDIT INFORMATION FOR SERVICING AGENCIES**

To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, the Servicing Agency agrees to maintain records that identify adequately the source and application of FHWA funds.

## Appendix K – Glossary

Approve – The reviewing or receiving entity is agreeing what has been submitted meets the requirements specified by agreement, regulation, or law. Without approval, the submitter cannot proceed to the next phase without risk of losing federal funds for the project.

Concur – The reviewer is indicating general acceptance of the document or agreement with the decision/direction as a whole. There may be parts they do not agree with, but the submitting entity may continue to the next phase.

Delivered by others – A scenario where a Title 23 program/project is planned and performed by a Federal agency, State Transportation Agency, local public agency, or Indian Tribal government with funding provided by FLH through agreements.

DELPHI – Department of Transportation has adopted DELPHI as the official accounting system for all DOT agencies. DELPHI is not an acronym.

FLH Point of Contact (POC) – The designated FLH employee responsible for developing and administering the S&O plan for a project. The individual may use the expertise of others to accomplish some of the tasks in the S&O Plan.

FLH Extended Leadership Team – Consists of the FLH Associate Administrator, Division Directors, and Board of Directors.

Federal agency – Any Federal agency, other than the FHWA, that assumes program/project delivery responsibilities through an agreement with FLH.

FIRE – Financial Integrity Review and Evaluation Program. Part of the Federal Managers' Financial Integrity Act. Ensures agency programs are operated in, and resources are used consistent with agency missions, in compliance with laws and regulations, and with minimal potential for waste, fraud, and mismanagement.

Host Division Office – The FLH division office under review.

Indian Tribal Government – Any one of the 566 federally recognized Indian tribes, pueblos, Rancherias, or Alaska Native villages.

Local public agency(LPA) – Any city, county, township, borough, or similar government entity that assumes project delivery responsibilities through an agreement with FLH.

MAP-21 – Moving Ahead for Progress in the 21<sup>st</sup> Century Act, 2012, PL 112-141. It is the current highway legislation.

Non-Title 23 – Can refer to laws and regulations that are not part of Title 23 but must be complied with (e.g. NEPA). It can also refer to funds from agencies that are not part of DOT or from the High Trust Fund.

Office of Self Governance – An office within the Office of the Assistant Secretary – Indian Affairs, Department of the Interior, that is responsible for developing tribal self governance. It is not part of the BIA.

Oversight – The act of ensuring that the Federal highway programs and projects are delivered consistent with laws, regulations, and policies.

PR2FH – A tool used to transfer funds to a FHWA Federal-aid Division Office where it is can then be easily transferred to a State DOT through a Federal-aid agreement.

*Programmatic Agreement* – An agreement that covers a class or type of projects under a single umbrella agreement. It could be done in conjunction with a project agreement. The programmatic agreement could be used to list standard requirements and would be referenced in the project agreement.

*Project Agreement (PA)* – A signed agreement between FLH and one or more partner agencies that include scope, schedule, and budget for the project as well as the roles and responsibilities of each party. A PA is typically required for every project regardless of which agency is leading delivery. In some cases, the PA and the funding agreement may be merged into a single document.

*Reimbursable Agreement (RA)* – A funding agreement between FLH and the delivery agency that identifies the scope, schedule, and budget for the project and the terms and conditions for payment.

*Risk Analysis* – A subjective review of common risk factors to determine if risk exists and whether it is low or high probability of occurrence. It does not include prioritizing risks or developing mitigation plans. This definition is for the context of this document.

*Risk Based Stewardship and Oversight (RBSO)* – A multi-tiered system developed by FHWA to provide Stewardship and Oversight of the Federal-aid Highway Program under MAP-21.

*Review* – FLH is provided a copy of the document and afforded a reasonable timeframe to provide comments for consideration. It can vary from cursory to in-depth depending on the type of document being reviewed or the phase of the project. Unless the reviewer provides notice of objections or concerns in a timely manner, acceptance will be assumed by the submitter.

*State Department of Transportation (State DOT, SDOT)* – Any State Department of Transportation or State Highway Agency that assumes task or project delivery responsibilities through an agreement with FHWA/FLH.

*Stewardship* – The efficient and effective management of the public funds that have been entrusted to the FHWA/FLH.

*Stewardship and Oversight Checklist (S&O Checklist)* – A project-specific checklist that identifies all activities that will be performed by FLH during delivery of the project to satisfy S&O responsibilities. The checklist should also identify actions required by others to support FLH's S&O activities. The checklist should be developed prior to any funds transfer to the delivering partner/agency and included as part of the project agreement.

*Title 23* – Refers to 23 United States Code (USC) and by extension Code of Federal Regulations (CFR), authorizing legislation for the Federal Lands Highway and ERFO Programs.

*Tribe* – In the context of this document, it refers to any of the official designations applied to federally recognized tribal entities. This includes: tribe, nation, Alaska native village, association, rancheria, pueblo, band, town, mission, consortium, or community.

## Appendix L – Abbreviations

ACB	Administrative Capacity Building
AFA	Annual Funding Agreement
AO	Awarding Official
AOTR	Awarding Official’s Technical Representative
BIA	Bureau of Indian Affairs
BIADOT	Bureau of Indian Affairs Department of Transportation
BIAM	Bureau of Indian Affairs Manuals
BLM	Bureau of Land Management
CA	Certification Acceptance
CAP	Compliance Assessment Program
CFLHD	Central Federal Lands Highway Division
CFR	Code of Federal Regulations
CM	Contract Modification
CO	Contracting Officer
COE	Construction Operations Engineer or Corps of Engineers (aka USACOE)
COTR	Contracting Officer’s Technical Representative
CSTIPS	Control Schedule Transportation Improvement Program System
DA	Division Administrator
DAR	Defense Access Road
DD	Division Director (formerly Division Engineer)
Delphi	DOT/FLH financial software
DFS	Director of Field Services
DOD	Department of Defense
DOI	Department of the Interior
DOT	Department of Transportation
DSC	Denver Service Center
EEBACS	Engineer’s Estimating, Bidding, Award and Construction System
EFLHD	Eastern Federal Lands Highway Division
ER	Emergency Relief
ERFO	Emergency Relief-Federally Owned
FAR	Federal Acquisition Regulations
FFA	Federal Funding Agreement
FFS	Federal Financial System
FHWA	Federal Highway Administration
FIRE	Financial Integrity Review and Evaluation
FLMA	Federal Land Management Agency
FLH	Federal Lands Highway
FLAP	Federal Lands Access Program (aka Access Program)
FLTP	Federal Lands Transportation Program

FLTTP	Federal Lands and Tribal Transportation Program
FMFIA	Federal Managers Financial Integrity Act
FMIS	Financial Management Information System
FPPS	Federal Personnel Payroll System (U.S. Department of the Interior)
FS	Forest Service
FWS	Fish and Wildlife Service
GAO	General Accountability Office
HCC	Office of the Chief Counsel (FHWA)
HFL	Headquarters office for Federal Lands Highway
HPP	High Priority Project
HTF	Highway Trust Fund
ITG	Indian Tribal Governments
ITIMS	Integrated Transportation Information and Management Systems
ISDEAA	Indian Self-Determination and Education Assistance Act, PL 93-638
ISTEA	Intermodal Surface Transportation Efficiency Act, 1991
LPA	Local Public Agency
L RTP	Long Range Transportation Plan
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century Act, 2012, PL 112-141
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NASA	National Aeronautics and Space Administration
NBI	National Bridge Inventory
NBIS	National Bridge Inspection Standards
NEPA	National Environmental Policy Act
NOFA	Notice of Funds Availability
NPS	National Park Service
NSA	National Security Administration
OIG	Office of Inspector General
OMAD	Missile Defense Road
OMB	Office of Management and Budget
OSG	Office of Self-Governance, part of DOI
P&P	Planning and Programming
PCAS	Project Cost Accounting System
PDDM	Project Development and Design Manual
P.L., PL	Public Law
PM&O	Program Management and Oversight
PMIT	Program Management Improvement Team (FHWA)
PMR	Procurement Management Review
PoCI	Projects of Corporate Interest
PoDI	Projects of Division Interest
PRAE	Project Related Administrative Expenses
PRP	Park Roads and Parkways

PTATS	Park Roads and Parkways Transportation Allocation and Tracking System
PS&E	Plans, Specification and Estimates
RA	Reimbursable Agreement
RBSO	Risk Based Stewardship and Oversight
RFA	Reference Funding Agreement
RIFDS	Road Inventory Field Data System
RRP	Refuge Road Program
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 2005
SDDC	Surface Deployment and Distribution Command (part of DOD)
SDOT	State Department of Transportation
SF	Standard Form
SHA	State Highway Agency
STA	State Transportation Agency
STAA	Surface Transportation Assistance Act, 1982
STIP	Statewide Transportation Improvement Plan
TEA-21	Transportation Equity Act for the 21st Century, 1998
TIP	Transportation Improvement Program
TTP	Tribal Transportation Program (formerly called the Indian Reservation Road Program or IRR)
TTAP	Tribal Technical Assistance Program
TTIP	Tribal Transportation Improvement Program
US	United States
USACOE	United States Army Corps of Engineers (aka COE)
USC	United States Code
VPD	Vehicles per day
WFLHD	Western Federal Lands Highway Division

## Appendix M – References

1. [USDOT, FHWA, Office of Federal Lands Highway. \*Stewardship/Oversight Agreement Guidance\*. June 21, 2006.](#)
2. [Memorandum: Updating Section 1904 of SAFETEA-LU Oversight Program Guidance Activities, June 9, 2009.](#)
3. [Interagency Agreement between the US Fish and Wildlife Service and the Federal Highway Administration relating to Public Roads on the National Wildlife Refuge System, 1999.](#)
4. [Partnering Agreement between the US Fish and Wildlife Service National Wildlife Refuge system and the Federal Highway Administration Office of Federal Lands Highway For Stewardship and Oversight of the National Wildlife Refuge System Transportation Program, 2006.](#)
5. [Partnering Agreement between the US Department of Agriculture Forest Service and the Federal Highway Administration Office of Federal Lands Highway For Stewardship and Oversight of the Transportation Program, 2007](#)
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7. [Stewardship and Federal Highway Programs, January 8, 2003](#) Appendix A of Construction Program Management and Inspection Guide, August 2004
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10. [2011 ERFO Disaster Assistance Manual](#)
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12. Conducting Reviews That Get Results. NHI Course #31011, January 2004
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15. [Federal Lands Highway Project Development and Design Manual](#)
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17. Indian Roads Reservation Program Delivery Guide, FHWA-WFL/TD-08-005
18. Federal Bridges in the National Bridge Inventory, January 4, 1995
19. FHWA Bridge Program Manual, Chapter 2, National Bridge Inspection Standards, May 2010  
<http://intra.fhwa.dot.gov/bridge/blc/bpm.htm>
20. Office of Bridge Technology Memorandum, National Bridge Inspection Standards Annual Compliance Review, dated October 26, 2010 <http://intra.fhwa.dot.gov/bridge/101026.cfm>
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22. [Compliance Assessment Program guides](#)