

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

SECTION I. BACKGROUND AND INTRODUCTION

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

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

- Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991;
- Transportation Equity Act for the 21st Century (TEA-21) of 1998;
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and
- Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 (P.L. 112-141).
- Fixing America's Surface Transportation (FAST) Act of 2015 (P.L. 114-94)

The FHWA may not assign or delegate its decision-making authority to a State Department of Transportation unless authorized by law. Section 106 of Title 23, United States Code (Section 106), authorizes the State to assume specific project approvals. For projects that receive funding under Title 23, U.S.C., and are on the National Highway System (NHS) including projects on the Interstate System, the State may assume the responsibilities of the Secretary of the U.S. Department of Transportation under Title 23 for design, plans, specifications, estimates, contract awards, and inspections with respect to the projects unless the Secretary determines that the assumption is not appropriate. (23 U.S.C. 106(c)(1)) For projects under Title 23, U.S.C. that are not on the NHS, the State shall assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspections unless the State determines that such assumption is not appropriate. (23 U.S.C. 106(c)(2))

For all other project activities which do not fall within the specific project approvals listed in Section 106 or are not otherwise authorized by law, the FHWA may authorize the WVDOH to perform work needed to reach the FHWA decision point, or to implement FHWA's decision. However, such decisions

themselves are reserved to FHWA.

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

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

SECTION II. INTENT AND PURPOSE OF S&O AGREEMENT

The intent and purpose of this S&O Agreement is to document the roles and responsibilities of the FHWA's West Virginia Division Office (WVFWA) and WVDOH with respect to project approvals and related responsibilities, and to document the methods of oversight which will be used to efficiently and effectively deliver the FAHP.

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

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

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

The WVDOH *may assume* the FHWA's Title 23 responsibilities for design; plans, specifications, and estimates (PS&E); contract awards; and inspections, with respect to *Federal-aid projects on the National Highway System (NHS)* if both the *WVDOH* and *FHWA* determine that assumption of responsibilities is appropriate.

- A. Approvals and related activities for which the WVDOH has assumed responsibilities as shown in Attachment A will apply program wide unless project specific actions for which the WVFWA will carry out the approval or related responsibilities are documented in accordance with applicable FHWA Risk-based Stewardship and Oversight guidance.
- B. The WVDOH may not assume responsibilities for Interstate projects that are in high risk categories. (23 U.S.C. 106(c)(1)) *(Information Note: High Risk Categories are discussed in Section III of the S&O Agreement Guidance.)*

- C. The WVDOH is to exercise any and all assumptions of the Secretary responsibilities for Federal-aid projects on the NHS in accordance with Federal laws, regulations and policies.

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

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

The WVDOH *shall assume* the FHWA’s Title 23 responsibilities for design, PS&Es, contract awards, and inspections, with respect to *Federal-aid projects off the NHS (non-NHS)* unless the *WVDOH* determines that assumption of responsibilities is not appropriate (23 U.S.C. 106(c)(2)).

- A. Except as provided in 23 U.S.C.109(o), the WVDOH is to exercise the Secretary’s approvals and related responsibilities on these projects in accordance with Federal laws.
- B. The WVDOH, in its discretion, may request FHWA carry out one or more non-NHS approvals or related responsibilities listed as “State” in Attachment A on a program-wide basis. For a project specific request, the State may request FHWA carry out any approval or related responsibility listed in Attachment A off the NHS. Such project-specific request shall be documented in accordance with applicable FHWA Risk-based Stewardship and Oversight guidance.
- C. Pursuant to 23 U.S.C. 109(o), non-NHS projects shall be designed and constructed in accordance with State laws, regulations, directives, safety standards, design standards, and construction standards.

SECTION V. ASSUMPTION OF RESPONSIBILITIES FOR LOCALLY ADMINISTERED PROJECTS

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

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

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

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

- A. Design, which includes preliminary engineering, engineering, and design-related services directly relating to the construction of a FAHP-funded project, including engineering, design, project development and management, construction project management and inspection, surveying, mapping (including the establishment of temporary and permanent geodetic control in accordance with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services.

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

SECTION VII. FEDERAL APPROVALS AND RELATED RESPONSIBILITIES THAT MAY NOT BE ASSUMED BY THE WVDOH

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

- A. Any approval or related responsibility not listed in Attachment A cannot be assumed by the State without prior concurrence by FHWA Headquarters. The following is a list of the most frequently-occurring approvals and related responsibilities that may not be assumed by the WVDOH:
 - Civil Rights Program approvals;
 - Environmental approvals, except those specifically assumed under other agreements. (23 U.S.C. 326 and 327; programmatic categorical exclusion agreements);
 - Federal air quality conformity determinations required by the Clean Air Act;
 - Approval of current bill and final vouchers;
 - Approval of federally-funded hardship acquisition, protective buying, and 23 U.S.C. 108(d) early acquisition;
 - Project agreements and modifications to project agreements and obligation of funds (including advance construction);
 - Planning and programming pursuant to 23 U.S.C. 134 and 135;
 - Special Experimental Projects (SEP-14 and SEP-15);
 - Use of Interstate airspace for non-highway-related purposes;
 - Any Federal agency approval or determination under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended, and implementing regulations in 49 CFR Part 24;
 - Waivers to Buy America requirements;
 - Approval of Federal participation under 23 CFR 1.9(b);
 - Provide pre-approval for preventive maintenance project (until FHWA concurs with WVDOH procedures);
 - Requests for credits toward the non-Federal share of construction costs for early acquisitions,

- donations, or other contributions applied to a project;
 - Functional replacement of property;
 - Approval of a time extension for preliminary engineering projects beyond the 10-year limit, in the event that actual construction or acquisition of right-of-way for a highway project has not commenced;
 - Approval of a time extension beyond the 20-year limit for right-of-way projects, in the event that actual construction of a road on the right-of-way is not undertaken;
 - Determine need for Coast Guard Permit;
 - Training Special Provision – Approval of New Project Training Programs; and
 - Any other approval or activity not specifically identified in Attachment A unless otherwise approved by the FHWA, including the Office of Chief Counsel.
- B. For all projects and programs, the WVDOT will comply with Title 23 and all applicable non-Title 23, U.S.C. Federal-aid program requirements, such as metropolitan and statewide planning; environment; procurement of engineering and design related service contracts (except as provided in 23 U.S.C. 109(o)); Civil Rights including Title VI of the *Civil Rights Act*, and participation by Disadvantaged Business Enterprises; prevailing wage rates; and acquisition of right-of-way, etc.
- C. This Agreement does not modify the FHWA’s non-Title 23 program approval and related responsibilities, such as approvals required under the Clean Air Act; National Environmental Policy Act, Executive Order on Environmental Justice (E.O. 12898), and other related environmental laws and statutes; the Uniform Act; and the Civil Rights Act of 1964 and related statutes.

SECTION VIII. PROJECT ACTION RESPONSIBILITY MATRIX

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

SECTION IX. HIGH RISK CATEGORIES

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

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

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

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

- A. In 23 U.S.C. 106(g), Congress directs that the Secretary shall establish an oversight program to monitor the effective and efficient use of funds authorized to carry out the FAHP. This program includes FHWA oversight of the State's processes and management practices, including those involved in carrying out the approvals and related responsibilities assumed by the State under 23 U.S.C. 106(c). Congress defines that, at a minimum, the oversight program shall be responsive to all areas relating to financial integrity and project delivery.
- B. The FHWA shall perform annual reviews that address elements of the WVDOH's financial management system in accordance with 23 U.S.C. 106(g)(2)(A). FHWA will periodically review the WVDOH's monitoring of sub-recipients pursuant to 23 U.S.C. 106(g)(4)(B).
- C. The FHWA shall perform annual reviews that address elements of the project delivery systems of the WVDOH, which elements include one or more activities that are involved in the life cycle of project from conception to completion of the project. The FHWA will also evaluate the practices of the WVDOH for estimating project costs, awarding contracts, and reducing costs. 23 U.S.C. 106(g)(2) and (3).
- D. To carry out the requirements of 23 U.S.C. 106(g), the FHWA will employ a risk management framework to evaluate financial integrity and project delivery, and balance risk with staffing resources, available funding, and the State's transportation needs. The FHWA may work collaboratively with the WVDOH to assess the risks inherent with the FAHP and funds management, and how that assessment will be used to align resources to develop appropriate risk response strategies. The WVFHWA, in consultation with WVDOH, will determine projects for higher level of WVFHWA involvement based on applicable FHWA guidance.

1. Method of Oversight

The WVDOH, FHWA, or both may initiate evaluations of the FAHP. All evaluations are intended to evaluate procedures and policies used in delivering the FAHP, along with identifying deficiencies and opportunities for improvement. Reviews should also be performed to evaluate compliance with the established procedures and policies. The FHWA will employ a risk management framework in consultation with the WVDOH to evaluate program areas to balance risk with consideration of staffing resources, funding within the FAHP, and transportation needs within the State.

Techniques the WVFHWA and WVDOH may use to identify and analyze risks and develop response strategies include the following:

Recurring Reviews

These reviews are required by FHWA regulations and/or guidance and include such reviews as the yearly National Bridge Inspection Review, the Civil Rights Baseline Assessment (every 3 years), Financial Integrity Review and Evaluation (FIRE) Reviews (yearly), Compliance Assessment Program (CAP) Review (yearly), certification reviews, etc. The scope, size and complexity of each review vary due to the program.

Program Assessments

Each WVFHWA Office Program Manager is responsible for developing and keeping current an

assessment of the current state of their assigned program, including a 3-5 year plan for advancing key elements of program improvement. Program Assessments identify strengths, weaknesses, opportunities, and threats and highlight best practices to continually improve the program. This Assessment is updated every other year or when needed and is a key component to the yearly risk assessment.

Process Reviews

These reviews are a thorough analysis of key program components and the processes employed by the WVDOT in managing programs. The reviews are conducted to: 1) ensure compliance with Federal requirements; 2) identify areas in need of improvement; 3) identify opportunities for greater efficiencies and cost improvement to the program; and 4) identify exemplary practices. Process reviews will be conducted based on the WVFHWA's annual risk assessment. High priority processes will be studied by review teams that may be selected jointly by the WVFHWA and the WVDOT.

Process reviews are the FHWA's primary tool for providing oversight for assumed projects. The size and intensity of the program review may vary, depending on the topic being reviewed. Further, wherever appropriate, the process review should include a financial component and involve members of the financial team to determine if appropriate internal controls exist within the program intended to detect and/or prevent possible fraud, waste or abuse of Federal-aid funds. This component includes documenting those internal controls, as well as reviewing the adequacy of the documentation to support the appropriate expenditure of Federal-aid funds.

Program Accountability & Results (PAR) Reviews

PAR Reviews are reviews with a limited sample in a very specific area used to determine quickly whether a program or process is working effectively and efficiently. PAR Reviews are issue oriented and results driven. They are generally focused on functional areas and can be viewed as a QA/QC effort. They may be used to follow-up on a process review or as part of the risk assessment process to help select process review topics.

Project Inspections

The process of visual examination or physical measurement of an item for comparison against applicable requirements. Inspections may occur during project development or project delivery. Project inspections are a valuable tool for determining adherence to applicable laws, regulations, and policies.

These techniques will be carried out in a manner consistent with applicable WVFHWA Standard Operating Procedures or other control documents relating to program assessments, FIRE, program reviews, CAP, etc. Regardless of the technique used, all reviews and inspections should be documented by a report.

E. Manuals and Operating Agreements

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

F. Stewardship and Oversight Indicators

The WVFHWA and WVDOH have jointly established Stewardship and Oversight Indicators (Indicators). The Indicators set targets, track trends, and implement countermeasures and actions when the data is moving away from the desired target direction. Indicators can provide documented evidence that the WVDOH assumption of responsibilities is functioning appropriately. Stewardship and Oversight Indicators should be reviewed on an annual basis. The Indicators are shown in Attachment C to this S&O Agreement.

SECTION XI. WVDOH OVERSIGHT AND REPORTING REQUIREMENTS

A. WVDOH Oversight and Reporting Requirements

The WVDOH is responsible for demonstrating to the FHWA how it is carrying out its responsibilities in accordance with this S&O Agreement. In order to fulfill this responsibility, the WVDOH will:

- Prepare and review project plans in accordance with Design Directive (DD) 200 (Project Development Process) and DD 202 (Field and Office Reviews for Initial Engineering and Final Design)
- Prepare right-of-way plans in accordance with DD-301
- Prepare RRR and Roadway Preventive Maintenance projects in accordance with DD's 604, 606, 609 and 817.
- Prepare and approve exceptions to approved design criteria in accordance with DD 605
- Conduct pavement designs and select pavement types and thicknesses in accordance with DDs 641, 646 and 647.
- Develop PS&Es in accordance with DD 706.
- Develop Engineers Estimates in accordance with DD 707.
- Evaluate bids in accordance with DD 711.
- Manage construction projects in accordance with WVDOH Construction Manual.
- Conduct materials acceptance testing, quality assurance and independent assurance sampling in accordance with WVDOH Materials Procedures.

B. WVDOH Oversight of Locally Administered Projects

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

applicable to grantees making sub-awards, such as monthly reporting requirements under the Federal Funding Accountability and Transparency Act of 2006, PL 109-282 (as amended by PL 110-252).

3. The WVDOH acknowledges that it is responsible for sub-recipient awareness of Federal grant requirements management of grant awards and sub-awards, and is familiar with and comprehends pass through entity responsibilities (2 C.F.R 200.331 Requirements for Pass-thru Entities). The WVDOH shall ensure LPAs comply with the actions, programs, and processes contained in the documents included in Attachment B.

The WVDOH shall also execute project agreements with LPAs that outlines the requirements of a subrecipient of Federal funds and legally binds them to follow all applicable requirements. The executed agreement will require compliance with all applicable Federal requirements including, but not limited to, FHWA-1273.

4. The WVDOH shall assess whether a sub-recipient has adequate project delivery systems and sufficient accounting controls to properly manage projects. With respect to project delivery systems, WVDOH will ensure subrecipient compliance with the actions, programs, and processes contained in the documents included in Attachment B. WVDOH also will use the following actions:
 - Review of potential sub-recipient's ability to manage Federal funds during the Intent to Apply and Application process prior to recommendation for funding. This includes ensuring that the potential sub-recipient meets the requirement of responsible charge.
 - When necessary, a Private Land Use Agreement is also executed assuring public access to publicly-funded projects.
5. The WVDOH shall assess whether a sub-recipient is staffed and equipped to perform work satisfactorily and cost effectively, and that adequate staffing and supervision exists to manage the Federal project(s). This will include ensuring subrecipient compliance with the actions, programs, and processes contained in the documents included in Attachment B. WVDOH also will use the following:
 - The WVDOH offers usage of consultants previously selected through the competitive process and working for the WVDOH to design and when necessary, provide environmental documentation for NEPA. If an LPA wishes to hire their own consultant, they are required to submit their process to the WVDOH for certification to ensure that all Federal requirements are met in said process to select a consultant.
 - Potential project sponsors are required to complete the financial section of the Transportation Alternatives Program (TAP) Application showing that they can manage the funding if awarded to them.
 - When located on public right-of-way and wishing to use force account labor, a Force Account Request is required. This document outlines, in detail, the estimated savings and ability of the Local Public Agency (LPA) to provide the labor/materials for a project. This follows *FHWA Policy on Agency Force Account Use* 5060.1 dated March 12, 2012.

6. The WVDOH shall assess whether sub-recipient projects receive adequate inspection to ensure they are completed in conformance with approved plans and specifications. This will include ensuring subrecipient compliance with the actions, programs, and processes contained in the documents included in Attachment B and the following:
 - When using a consultant: It is a requirement of the WVDOH that construction inspection and oversight be incorporated into the scope of services.
 - When a consultant is not necessary: WVDOH project managers visit sites during construction to ensure all approved plans, specifications and materials are being utilized. The WVDOH also requires submittal of progress reports along with detailed invoices throughout the entire project.
7. The WVDOH shall ensure that when LPAs elect to use consultants for engineering services, the LPA, as provided under 23 CFR 635.105(b), shall provide a full-time employee of the agency to be in responsible charge of the project. The WVDOH's process to ensure compliance with this requirement is documented in the actions, programs, and processes contained in the documents included in Attachment B and includes the following:
 - The project application clearly states and asserts that the potential project sponsor must have a responsible charge for all projects.
 - WVDOH Program Managers, before determining an LPA eligible for funding, ensure that the requirements of responsible charge are met. If not, the application is deemed ineligible.
8. The WVDOH shall ensure that project actions will be administered in accordance with all applicable Federal laws and regulations. The WVDOH will use the following process on required approvals on sub-recipient, and approved on sub-recipient administered projects:
 - Consultants will either be selected in accordance with the WVDOH's Consultant Selection Procedures, a Pre-Approved Consultant from the WVDOH listing of LPA consultants or via a local consultant selection process approved by the WVDOH;
 - Environmental Documentation will be developed in accordance with WVDOH DD's and approved by WVDOH staff;
 - Design will be in accordance with approved WVDOH DD's and approved by WVDOH staff;
 - Right-of-way will be acquired in accordance with WVDOH approved Right-of-Way Manual;
 - Construction monitoring, including Quality Control/Quality Assurance (QC/QA) will be in accordance with WVDOH Materials Procedures;
 - Contract administration including the WVDOH's responsibility to approve a sub-recipient to pursue a contract procurement method other than competitive bidding will be in accordance with WVDOH Standard Specifications and WVDOH Contract Administration Manual.
9. The WVDOH shall document its oversight activities for LPA-administered projects and findings, and how it will share this information with the FHWA. The WVDOH will complete the following:
 - The WVDOH has a very limited LPA program that consists solely of projects funded with TAP funds. The Grants Administration section of the Planning Division has been

assigned the duty of providing oversight to these projects and provides guidance, training and technical assistance.

- The Grant Administration Manual describes the processes, documents, and approvals necessary to administer federal-aid funds. By agreeing to accept federal-aid funds, the local unit of government certifies that they understand their role and responsibility in carrying out the federal-aid program.
- The Grants Administration section assures compliance by reviewing every project during the development process. All environmental clearances are obtained for the local entity by the WVDOT. Right-of-way certificates and purchases are reviewed by WVDOT Right-of-Way personnel to ensure conformance with the Uniform Act. All PS&Es are reviewed by the PS&E unit within the Grants Administration Section.
- Inspection reviews are performed during construction and a final inspection is performed and documented prior to acceptance.
- At the conclusion of each year, the Grants Administration Section will provide the WVFHWA Division Office with a summary report on all local projects that were funded in the past calendar year along with providing a description of their oversight activities.

SECTION XII. IMPLEMENTATION AND AMENDMENTS

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

EXECUTION BY THE FHWA WEST VIRGINIA DIVISION OFFICE

Executed this 31st day of July, 2020.



Brian Hogge
FHWA West Virginia Division Administrator

EXECUTION BY THE WEST VIRGINIA DIVISION OF HIGHWAYS

Executed this 31st day of July, 2020.



Byrd White
Secretary West Virginia Department of Transportation
Commissioner West Virginia Division of Highways



Jimmy Wriston, P. E.
Deputy Secretary West Virginia Department of Transportation
Deputy Commissioner West Virginia Division of Highways

ATTACHMENT A
PROJECT ACTION RESPONSIBILITY MATRIX

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

The WVFHWA, in consultation with WVDOH, will determine projects for higher level of WVFHWA involvement based on applicable FHWA guidance.

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

PROJECT ACTION RESPONSIBILITY MATRIX		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
Ensure project in Statewide Transportation Improvement Program (STIP)/ Transportation Improvement Program (TIP)	STATE	STATE
Identify proposed funding category	STATE ⁽¹⁾	STATE ⁽¹⁾
Obligate funds/approve Federal- aid project agreement, modifications, and project closures (project authorizations) (Note: this action cannot be assumed by State)	FHWA	FHWA
Authorize current bill (Note: this action cannot be assumed by State)	FHWA	FHWA
Review and Accept Financial Plan and Annual Updates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
Review Cost Estimates for Federal Major Projects over \$500 million [23 U.S.C. 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
Develop Financial Plan for Federal Projects between \$100 million and \$500 million. [23 U.S.C. 106(i)]	STATE	STATE
All EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations. (Note: this action cannot be assumed by STATE except under 23 U.S.C. 327)	FHWA ⁽²⁾	FHWA ⁽²⁾
Categorical Exclusion approval actions (Note this action cannot be assumed by the State except through an assignment under 23 U.S.C. 326 or 327, or through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and 23 CFR 771.117(g))	FHWA ⁽²⁾	FHWA ⁽²⁾

PROJECT ACTION RESPONSIBILITY MATRIX		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
Consultant Contract Selection	STATE ⁽³⁾	STATE ⁽³⁾
Sole source Consultant Contract Selection	STATE ⁽³⁾	STATE ⁽³⁾
Approve hiring of consultant to serve in a “management” role (Note: this action cannot be assumed by State) [23 CFR 172.9]	FHWA	FHWA
Approve consultant agreements and agreement revisions (Federal non-Major Projects) [23 CFR 172.9]	STATE	STATE
Approve consultant agreements and agreement revisions on Federal Major Projects [23 CFR 172.9] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve exceptions to design standards [23 CFR 625.3(f)]	STATE	STATE
Interstate System Access Change [23 USC 111] (Note: this action cannot be assumed by State)	FHWA	N/A
Interstate System Access Justification Report [23 USC 111] (Note: action may be assumed by State pursuant to 23 USC 111(e))	FHWA*	N/A
Airport highway clearance coordination and respective public interest finding (if required) [23 CFR 620.104]	STATE	STATE
Approve Project Management Plan for Federal Major Projects over \$500 million [23 USC 106(h)] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve innovative and Public- Private Partnership projects in accordance with SEP-14 and SEP- 15 (Note: this action cannot be assumed by State)	FHWA	FHWA
Provide pre-approval for preventive maintenance project (until FHWA concurs with STATE procedures) (Note: this action cannot be assumed by State)	FHWA	FHWA
Provide approval of preliminary plans for unusual/complex bridges or structures on the Interstate. [23 USC 109(a) and FHWA Policy]	FHWA ⁽⁴⁾	N/A
Provide approval of preliminary plans for unusual/complex bridges or structures (non-Interstate). [23 USC 109(a) and FHWA Policy]	STATE ⁽⁴⁾	STATE
Approve retaining right-of-way encroachments [23 CFR 1.23 (b) & (c)]	STATE	STATE

PROJECT ACTION RESPONSIBILITY MATRIX		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
Approve use of local force account agreements [23 CFR 635.104 & 204]	STATE	STATE
Approve use of publicly owned equipment [23 CFR 635.106]	STATE	STATE
Approve the use of proprietary products, processes [23 CFR 635.411]	STATE	STATE
Concur in use of publicly furnished materials [23 CFR 635.407]	STATE	STATE
Make feasibility/practicability determination for allowing authorization of construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]	STATE	STATE
Make public interest finding on whether State may proceed with bid advertisement even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)(3)]	FHWA for Interstate; STATE for Non-Interstate	STATE
Ensure compliant ROW certificate is in place [23 CFR 635.309(c)]	STATE	STATE
Approve Hardship and Protective Buying [23 CFR 710.503] (If a Federal-aid project) (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve Interstate Real Property Interest Use Agreements [23 CFR 710.405] (Note: this action cannot be assumed by State)	FHWA	N/A
Approve non-highway use and occupancy [23 CFR 1.23(c)]	FHWA for Interstate; STATE for Non-Interstate(3)	STATE (3)
Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve disposal at fair market value of federally funded right-of-way, including disposals of access control [23 CFR 710.409] (Note: 23 CFR 710.201 authorizes FHWA and STATE to agree to scope of property-related oversight and approvals for all actions except those on the Interstate System)	FHWA for Interstate; STATE for Non-Interstate(3)	STATE (3)
Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project (note: this action cannot be assumed by State)	FHWA	FHWA
Federal land transfers [23 CFR 710, Subpart F] (Note: this action cannot be assumed by State)	FHWA	FHWA

PROJECT ACTION RESPONSIBILITY MATRIX		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
Functional replacement of property [23 CFR 710.509] (Note: this action cannot be assumed by State)	FHWA	FHWA
Accept Transportation Management Plans (23 CFR 630.1012(b))	STATE	STATE
Approval of System Engineering Analysis (for ITS) [23 CFR 940.11]	STATE	STATE
Approve PS&E [23 CFR 630.201]	STATE	STATE
Authorize advance construction and conversions [23 CFR 630.703 & 709] (Note: this action cannot be assumed by State)	FHWA	FHWA
Approve utility or railroad force account work [23 CFR 645.113 & 646.216]	STATE	STATE
Approve utility and railroad agreements [23 CFR 645.113 & 646.216]	STATE	STATE
Approve use of consultants by utility companies [23 CFR 645.109(b)]	STATE	STATE
Approve exceptions to maximum railroad protective insurance limits [23 CFR 646.111]	STATE	STATE
Authorize (approve) advertising for bids [23 CFR 635.112, 309]	STATE	STATE
Approve cost-effectiveness determinations for construction work performed by force account or by contract awarded by other than competitive bidding [23 CFR 635.104 & .204]	STATE	STATE
Approve emergency determinations for contracts awarded by other than competitive bidding [23 CFR 635.104 & .204]	STATE	STATE
Approve construction engineering by local agency [23 CFR 635.105]	STATE	STATE
Approve advertising period less than 3 weeks [23 CFR 635.112]	STATE	STATE
Approve addenda during advertising period [23 CFR 635.112]	STATE	STATE
Concur in award of contract [23 CFR 635.114]	STATE	STATE
Concur in rejection of all bids [23 CFR 635.114]	STATE	STATE
Approval of Design-Build Requests-for-Proposals and Addenda [23 CFR 635.112]	STATE	STATE
Approve changes and extra work [23 CFR 635.120]	STATE	STATE

PROJECT ACTION RESPONSIBILITY MATRIX		
ACTION	AGENCY RESPONSIBLE	
	PROJECTS ON THE NHS	PROJECTS OFF THE NHS
Approve contract time extensions [23 CFR 635.120]	STATE	STATE
Concur in use of mandatory borrow/ disposal sites [23 CFR 635.407]	STATE	STATE
Accept materials certification [23 CFR 637.207]	STATE	STATE
Concur in settlement of contract claims [23 CFR 635.124]	STATE	STATE
Concur in termination of construction contracts [23 CFR 635.125]	STATE	STATE
Waive Buy America provisions [23 CFR 635.410] (Note: this action cannot be assumed by State)	FHWA	FHWA
Final inspection/acceptance of completed work [23 USC 114(a)]	STATE	STATE
Approval of Disadvantaged Business Enterprise (DBE) Project Contract Goal set by the WVDOH under 49 CFR 26.51(d). [49 CFR 26.51(e)(3)]	STATE	STATE
Acceptance of Bidder's Good Faith Efforts to Meet Contract Goal [49 CFR 26.53] or of Prime Contractor's Good Faith Efforts to Find Another DBE Subcontractor When a DBE Subcontractor is Terminated or Fails to Complete Its Work [49 CFR 26.53(g)] (Note: this action cannot be performed by the FHWA)	STATE	STATE
Equal Employment Opportunity (EEO) Contract Compliance Review [23 CFR Part 230, Subpart D]).	STATE	STATE
Training Special Provision – Approval of Project Goal for training slots or hours [23 CFR Part 230, Subpart A]	STATE	STATE
Training Special Provision – Approval of New Project Training Programs (Note: this action cannot be assumed by State) [23 CFR 230.111(d), (e)]	FHWA	FHWA

FOOTNOTES:

- (1) State is responsible for ensuring that all individual elements of the project are eligible. FHWA will check that the scope of the project as described in submitted project agreement is eligible for the category of funding sought. All final eligibility and participation determinations are retained by FHWA.
- (2) If there is a 23 U.S.C. 326 or 325 assignment or PCE agreement, decisions are handled in accordance with those assignments or agreements.
- (3) State's process and modifications to, or variation in process, require FHWA approval.
- (4) Unusual/Complex bridges and structures are those that the WVFHWA determines to have unique foundation problems, new or complex designs, exceptionally long spans, exceptionally large foundations, complex hydrologic (including climate change and extreme weather events) aspects,

complex hydraulic elements or scour related elements, or that are designed with procedures that depart from currently recognized acceptable practices (i.e., cable-stay, suspension, arch, segmental concrete, moveable, truss, tunnels, or complex geotechnical walls or ground improvement systems).

* In the matrix, actions marked with an asterisk (“FHWA*”) are those that FHWA has retained but that could have been assumed by the State through FHWA discretion (on the NHS) or by right (off the NHS).

ATTACHMENT B
MANUALS AND OPERATING AGREEMENTS

WVDOH Manuals

Consultant Services Manual Design Directives

Value Engineering Manual

Standard Details, Volumes I, II & III

Bridge Design Manual

Bridge Inspection Manual Drainage Manual

Traffic Engineering Directives Sign Fabrication Details Workzone Traffic Control Manual

Adjustment and Relocation of Utilities Manual Contract Award Manual

Construction Manual Standard Specifications Supplement Specifications

Erosion and Sediment Control Manual STIP Operating Guidelines

Grants Administration Manual Scenic Byways Manual Research Manual

Materials Procedures.

Operating (Programmatic) Agreements

Programmatic CE Process Section 7 Consultation MOU NEPA/404

Section 106 Programmatic Agreement

ATTACHMENT C

Stewardship and Oversight Indicators

Below is a list of performance indicators/measures that will be submitted to FHWA and WVDOT respectively on a semi-annual basis (unless otherwise stated in the table). With reporting dates of October 31st and March 31st.

In addition to these indicators there are a number of performance measures that are collected through other mutual FHWA/WVDOH programs, including the FIRE Program, National Bridge Inventory Program (NBIP), and Transportation Performance Management Program. These measures are collected in various forms and do not need to be included in the bi-annual reports required within this agreement. These measures include but are not limited to: timely obligation, prompt closeout, Single Audit Review, NBIP 23 metrics, safety, pavement condition, bridge condition, system performance, freight movement, traffic congestion, and on-road mobile source emissions.

ID	PERFORMANCE INDICATOR/ MEASURE	GOAL (PER YEAR)	AGREED/ PROPOSED (REPORT CYCLE) Calendar Year	LEAD REPORTING AUTHORITY	SUPPORTING JUSTIFICATION FOR PERFORMANCE INDICATOR/MEASURE AND OTHER COMMENTS
1	DBE Participation – Percent of Total DBE Participation	>8.66	Bi-Annual	WVDOT/ Civil Rights	The purpose of this measure is to determine the level of progress in achieving DBE participation. Calculated by dividing the “Total DBE Participation (Dollars)” by the “Total Dollar Value of Prime Contracts Completed”.
2	Inactive Obligations – Percent of obligated but unexpended balance for all inactive projects compared to total annual apportionments.	<2%	Quarterly	FHWA/ Financial	An inactive obligation is an eligible transportation project with unexpended Federal obligations for which no expenditures have been charged against the Federal funds within the past 12 months or more. Mandated in 23 CFR; helps gauge effective administration of Federal funds and project management. Dollar amount of projects identified as inactive (shown in FMIS Q reports) divided by annual State apportionment (shown in annual apportionment Notice dated Oct 1 st).
3	PS&E Response Time – Average FHWA response time for PS&E comments	<10	Bi-Annual	FHWA/ Construction	This measure tells us how long it takes area engineers to provide PS&E comments from the date final PS&E package are received. This is calculated by taking the average number of days between PS&E package received and date comments submitted to the WVDOT.
4	Change Order Response Time – Average number of days for the FHWA to process a Change Order	<10	Bi-Annual	FHWA/ Construction	This measure gives us an indication of efficiency of the FHWA to process a Change Order. This is calculated from the time it is submitted to FHWA until it is signed by them.
5	Engineer’s Estimate – Percent of projects with low bid within +/- 10% of Engineer’s Estimate. (Contract Award vs. Engineering Estimate)	50%	Bi-Annual	FHWA/ Construction	The purpose of this measure is to assess the accuracy of the low bid vs. Engineer’s Estimate. FHWA’s guidance states that low bid should be within +/- 10% of the Engineer’s Estimate for at least 50% of the projects.
6	Schedule Growth – % of Federal-aid construction projects with work completed by contract completion date.	>90%	Bi-Annual	WVDOT/ Construction	Assesses the ability to predict project completion dates, taking into account work windows, working days, weather, and work type. This serves the public by completing projects on predicted date.

ID	PERFORMANCE INDICATOR/ MEASURE	GOAL (PER YEAR)	AGREED/ PROPOSED (REPORT CYCLE) Calendar Year	LEAD REPORTING AUTHORITY	SUPPORTING JUSTIFICATION FOR PERFORMANCE INDICATOR/MEASURE AND OTHER COMMENTS
7	Cost Growth – The percentage of total Final Contractor Payment to the total Contract Award amount.	<10%	Bi-Annual	FHWA/ Construction	Assesses the quality of the design, PS&E, and effective project management. For all Federal-aid construction projects > \$1 million closed during the FY, calculate the aggregate percent of project cost change by subtracting the project cost at time of letting (low bid amount) from the project contract cost at the time of final project closeout and dividing that number by the project low bid amount.
8	Agreement – Time to process the agreement in Engineering Division per project.	90%	Bi-Annual	WVDOT/ Consultant Services	Gives an indication of the health for the consultant management process. % of agreements completed by an established completion date
9	Supplemental – Number of unplanned supplemental per project	<1	Bi-Annual	WVDOT/ Consultant Services	Provides an indication on how well work was planned.
10	Incident Clearance Time – Average incident clearance time.	TBD	Bi-Annual	WVDOT Traffic Engineering	Secondary crashes and long delays are more likely when incidents are not cleared properly, particularly during peak traffic hours and/or in high volume routes. The purpose of this measure is to assess the efficiency of incident response service and work towards reducing clearance time.
11	Incident Duration Time – Number of incident lasting over 120 minutes.	TBD	Bi-Annual	WVDOT Traffic Engineering	Secondary crashes and long delays are more likely when incidents are not cleared properly, particularly during peak traffic hours and/or in high volume routes. The purpose of this measure is to assess the efficiency of incident response service and work towards reducing clearance time. This value is determined by counting the number of incidents with clearance times greater than 120 minutes.