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(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Dated: December 14, 2022.

**Ivan Marrero,**

*Division Administrator, Federal Highway Administration, Salt Lake City, Utah.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-2022-0013]

#### Revision of Stewardship and Oversight Agreement Template

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of revised Stewardship and Oversight Agreement template, request for comments.

**SUMMARY:** The FHWA has completed a revision to the Federal-State Stewardship and Oversight (S&O) Agreement template. The revised S&O Agreement template that is the subject of this notice is an updated version of a template issued by FHWA in 2015. The revisions address such issues as changes in applicable laws and the evolution of FHWA's risk-based stewardship and oversight program. The FHWA is requesting comments on the revised S&O Agreement template. The FHWA will publish a **Federal Register** notice announcing the final S&O Agreement template, including any changes FHWA makes in response to public comments.

**DATES:** The public comment period closes on February 21, 2023.

**ADDRESSES:** All comments should include the docket number that appears in the heading of this document and may be submitted in any of the following ways:

- *Electronically through the Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). This website allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

**Instructions:** You should identify the docket number at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Late comments will be considered to the extent practicable. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lloyd Rue, Office of Infrastructure, (202) 366-6125, office hours are from 8 a.m. to 4:30 p.m., MT, Monday through Friday, except Federal holidays, or Ms. Alla Shaw, Office of the Chief Counsel, (202) 366-1042, office hours are from 8 a.m. to 4:30 p.m., ET, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Offices are open Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This document and the revised S&O Agreement template may be viewed online under the docket number noted above through the Federal eRulemaking portal at: [www.regulations.gov](http://www.regulations.gov). Electronic submission and retrieval help and guidelines are available on the website. Please follow the online instructions.

In addition to being available in the electronic docket, the revised S&O Agreement template may also be viewed online at: [https://www.fhwa.dot.gov/federalaid/stewardship/Draft\\_stewardship\\_and\\_oversight\\_template.docx](https://www.fhwa.dot.gov/federalaid/stewardship/Draft_stewardship_and_oversight_template.docx).

An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at: <http://www.archives.gov/federal-register> and the U.S. Government Publishing Office's website at: <http://www.govinfo.gov/>.

Physical access to the docket is available at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE, Washington, DC 20950, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date and interested persons should continue to examine the docket for new material.

#### Background

In enacting 23 United States Code (U.S.C.) 106(c), as amended, Congress established authority for States to enter into agreements with FHWA under which the States carry out certain project responsibilities traditionally handled by FHWA. Congress also recognized the importance of a risk-based approach to FHWA oversight of the Federal-aid highway program (FAHP), establishing requirements in 23 U.S.C. 106(g). The S&O Agreement is a key element of FHWA's risk-based S&O approach. The S&O Agreements are formal instruments executed between each FHWA Division Office and its corresponding State department of transportation (State DOT). The S&O Agreement defines the roles and responsibilities of FHWA and the State DOT with respect to Title 23, U.S.C. project approvals and related responsibilities, and documents methods that will be used for FAHP oversight activities.

In response to Office of Inspector General recommendations,<sup>1</sup> FHWA revised its national S&O procedures to require use of a uniform template for developing an S&O Agreement and instituted a legal review of each S&O Agreement. In 2015, FHWA issued the template currently in use. Each of the 52 FHWA Division Offices and their respective State DOTs executed a new S&O Agreement based on the 2015 S&O Agreement template.

Since the issuance of the 2015 S&O Agreement template and implementation of the new S&O Agreements, statutes and regulations applicable to the FAHP have changed.

<sup>1</sup> "Improvements to Stewardship and Oversight Agreements Are Needed to Enhance Federal-aid Highway Program Management," OIG, DOT, Report Number MH-2013-001 (October 1, 2012), available online at <https://www.oig.dot.gov/library-item/28742>.

In addition, FHWA identified improvements for the 2015 template. For these reasons, FHWA initiated updates to the 2015 S&O Agreement template.

Finally, section 11307 of the Bipartisan Infrastructure Law (Pub. L. 117–58) directed the Secretary of Transportation to publish a template created by the Secretary for Federal-State S&O agreements in the **Federal Register** along with a notice requesting public comment on ways to improve the template. Accordingly, FHWA is making available the revised template and the 2015 template in the docket established for this notice. The 2015 template is included for reference, and it may also be viewed at <https://go.usa.gov/xtQcM>. The FHWA is requesting comments on the revised template, which FHWA believes addresses many concerns expressed by stakeholders since 2015.

### Discussion of Changes

Revisions to the 2015 S&O Agreement template include the removal of redundant language and outdated text; revisions to the project-level approval actions, listed in attachment A to the template, including revisions based on changes in Federal law that have occurred since March 2015; and reorganization of the template.

The revised S&O Agreement template is more concise. The text of the 2015 S&O Agreement template is 12 pages, excluding signature pages and the attachments. The text of the revised S&O Agreement template is 7 pages, excluding signature pages and the attachments.

The 2015 S&O Agreement template has 12 sections. The revised S&O Agreement template is now nine sections. The revised section headings are:

- Section I. Background and Introduction
- Section II. Intent and Purpose of Agreement
- Section III. Permissible Areas of Assumption Under 23 U.S.C. 106(c)
- Section IV. Assumption of Responsibilities for Federal-Aid Projects on the NHS
- Section V. Assumption of Responsibilities for Federal-Aid Projects off the NHS
- Section VI. FHWA Oversight Program Under 23 U.S.C. 106(g)
- Section VII. State DOT Oversight Responsibilities
- Section VIII. Agreement Execution and Modifications
- Section IX. Agreement Term and Termination

The title of the agreement is unchanged.

The 2015 S&O Agreement template included three attachments: (1) attachment A—Project Action Responsibility Matrix; (2) attachment B—Program Responsibility Matrix; and

(3) attachment C—Manuals, Agreements, Control, Monitoring, And Reporting Documents. The revised S&O Agreement template eliminates attachment B—Program Responsibility Matrix of the 2015 agreement template. The purpose of attachment B in the 2015 template was to identify FHWA and State DOT offices involved in carrying out various program-level actions under the FAHP. That detailed level of information is not necessary in this more focused and concise version of the S&O Agreement template.

The revised S&O Agreement template includes three attachments: (1) attachment A—Project Action Responsibility Matrix; (2) attachment B—Manuals, Agreements, Control, Monitoring, And Reporting Documents; and (3) attachment C—Stewardship and Oversight Indicators.

### Request for Comments

Although comments may address any part or provision of the template, FHWA is specifically requesting comments on the following:

- Whether revisions are needed to the template to delete standard terms requiring approval by the Secretary of the policies, procedures, processes, or manuals of the States, or other State actions, if Federal law (including regulations) does not specifically require an approval. The FHWA encourages commenters to specify each provision that should be revised.
- Opportunities to modify the template to allow adjustments to the review schedules for State practices or actions, including through risk-based approaches, program reviews, process reviews, or other means.
- Provisions of the template that describe how FHWA will perform oversight under 23 U.S.C. 106(g), such as reviewing State DOT practices or actions through risk-based approaches, program reviews, process reviews, or other means. The FHWA is interested in how commenters believe FHWA could improve these provisions in the template.
- Whether FHWA should allow the template to be modified by individual division offices and State DOTs to include State-specific provisions that do not otherwise conflict with the template and, if so, examples of what might be included in those provisions. The FHWA is particularly interested in whether commenters believe FHWA should allow the addition of such State-specific provisions under Section VI. FHWA Oversight Program Under 23 U.S.C. 106(g) and Section VII. State DOT Oversight Responsibilities and, if so, examples of additional provisions

commenters believe might be covered in these sections.

- Provisions of the template that describe project approval actions that are assumable by State DOTs. In particular, FHWA is seeking comments on whether those actions are adequately described or addressed, and whether there are additional project-level approval actions that commenters believe arise out of Title 23, U.S.C. or title 23, Code of Federal Regulations and that may be assumed by State DOTs under 23 U.S.C. 106(c).

- Provisions of the template that describes State responsibilities for oversight of subrecipients. A State DOT is responsible for project oversight (23 U.S.C. 106(g)(4)) for federally assisted projects using apportioned Federal-aid highway funds. The FHWA is interested in whether the provisions in section VII of the template in conjunction with other existing FHWA policies, regulations, guidance, and technical assistance are sufficient for State DOTs to adequately provide subrecipient oversight and how commenters believe FHWA could improve the provisions in the template.

- Procedures for future updates to the S&O Agreement template. Comments are sought on how frequently the S&O Agreement template should be updated and on how future revisions to the S&O Agreement template should be managed to ensure the S&O Agreement template remains reasonably up to date without creating an overly burdensome process.

- Procedures for processing updates to FHWA-State DOT S&O Agreements. Comments are sought on how FHWA should process and execute revisions to existing FHWA-State DOT S&O Agreements, amendments to existing FHWA-State DOT S&O Agreements and new FHWA-State DOT S&O Agreements.

### Further Proceedings

The FHWA is providing a 60-day comment period. After considering public comments in response to this notice, FHWA will publish a notice in the **Federal Register** that includes:

- The final S&O Agreement template, including any changes FHWA makes in response to public comments and any alternatives to those changes.

- A summary response to public comments, including the basis for FHWA's decision whether to revise the template in response to comments. This will include an explanation of the basis for retaining any requirement for FHWA approval of State policies, procedures, processes, or manuals, or other State actions if Federal law (including

regulations) does not specifically require the approval.

- An implementation plan and schedule for use of the new template.

**Stephanie Pollack,**

*Deputy Administrator, Federal Highway Administration.*

**Stewardship and Oversight Agreement on Project Assumption and Program Oversight By and Between the Federal Highway Administration, [State Name] Division Office, and the [State Name DOT/STA Organization]**

**Section I. Background and Introduction**

The Federal-aid Highway Program (FAHP) provides for a Federally-assisted State program. In enacting section 106(c) of title 23, United States Code (U.S.C.), as amended, Congress established authority for a State Department of Transportation (State DOT) to carry out certain project responsibilities traditionally handled by the Federal Highway Administration (FHWA) through a delegation from the Secretary of the U.S. Department of Transportation (“Secretary”). The authority in 23 U.S.C. 106(c) applies to projects that are subject to the requirements of title 23, U.S.C. (“title 23”) because the State DOT receives Federal funding or because the State DOT needs an FHWA action for the project even though the project may not use Federal funds. 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). In addition to assumptions of responsibility, FHWA-State DOT Stewardship and Oversight Agreements cover certain oversight activities relating to the oversight requirements of 23 U.S.C. 106(g).

The FHWA may not assign its decisionmaking authority to a State DOT unless authorized by law. The authorities FHWA assigns to a State DOT under 23 U.S.C. 106(c)(1) and (2) are listed in Attachment A of the applicable FHWA-State DOT Stewardship and Oversight Agreement. A decision, determination, or action carried-out by a State DOT under the authority of a Stewardship and Oversight Agreement (“Agreement”) does not constitute an eligibility, participation, obligation, reimbursement, authorization, or compliance decision by or for FHWA.

For clarity, Attachment A also lists certain other actions FHWA may have allowed a State DOT to undertake based on delegation or assumption provisions in other Federal laws. As noted in those Attachment A listings, a State DOT exercise of those authorities is governed

by separate agreements between FHWA and that State DOT.

For project responsibilities that are not assumed by a State DOT under 23 U.S.C. 106(c), and are not otherwise delegated or assigned in accordance with another Federal law, FHWA may authorize a State DOT to perform work needed to reach the FHWA decision point, or to implement FHWA’s decision. However, such decisions themselves are reserved to FHWA.

**Section II. Intent and Purpose of Agreement**

This Stewardship and Oversight Agreement (“Agreement”) establishes the roles and responsibilities of the FHWA [State name] Division Office and the [State name DOT/STA organization (abbreviation)] with respect to certain title 23 project approvals and related responsibilities, and FAHP oversight activities. Nothing in this Agreement affects the Secretary’s authority, or authority delegated to FHWA, to oversee compliance with Federal requirements. These authorities include but are not limited to 23 U.S.C. 114, under which the Secretary has the right to conduct such inspections and take such corrective action as the Secretary determines to be appropriate.

This Agreement carries out 23 U.S.C. 106(c)(3), which requires FHWA and the State DOT enter into an agreement relating to the extent to which the State DOT assumes project responsibilities pursuant to section 106(c). This Agreement also documents certain oversight activities that FHWA and the [State name DOT/STA abbreviation] will use to efficiently and effectively deliver the FAHP.

Section IV of this Agreement covers assumption of project approvals on the National Highway System (NHS). Section V covers assumption of project approvals off the NHS.

The Project Action Responsibility Matrix, Attachment A to this Agreement, describes responsibilities that the [State name DOT/STA abbreviation] assumes from FHWA pursuant to 23 U.S.C. 106(c) and other legal authorities.

Upon execution of this Agreement, Attachment A controls and, except as specifically noted in Attachment A (including any amendment thereto done in accordance with section VIII) and sections IV and V of this Agreement, no other agreements, attachments, or other documents shall have the effect of delegating or assigning FHWA approvals to the [State name DOT/STA abbreviation] under 23 U.S.C 106(c), or have the effect of altering Attachment A.

**Section III. Permissible Areas of Assumption Under 23 U.S.C. 106(c)**

FHWA has determined the activities and actions that are assumable under 23 U.S.C. 106(c). Those activities and actions are listed in a template issued by FHWA to create this Agreement and cover only activities or actions 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. Plans, specifications and estimates (PS&E), which represents an array of actions and approvals required before authorization of construction and carried out during construction. The PS&E package includes 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(h) and any successor regulation.

The [State name DOT/STA abbreviation] is to exercise any and all assumptions of the FHWA’s responsibilities in accordance with the Federal laws, regulations, policies, Executive Orders, and procedures that would apply if the responsibilities were carried out by FHWA. For all projects and programs carried out under title 23, the [State name DOT/STA abbreviation] will comply with title 23 and all applicable non-title 23 Federal-aid program requirements.

**Section IV. Assumption of Responsibilities for Federal-Aid Projects on the NHS**

For projects under title 23 that are on the NHS, including projects on the Interstate System, the [State name DOT/

STA abbreviation] may assume FHWA's title 23 responsibilities for activities or actions assumable under 23 U.S.C. 106(c) if the FHWA [State name] Division Office determines that assumption of responsibilities is appropriate and the [State name DOT/STA abbreviation] agrees.

A. The activities or actions on the NHS assumed by the [State name DOT/STA abbreviation] under this Agreement are listed in Attachment A.

B. Activities or actions for which the [State name DOT/STA abbreviation] has assumed the FHWA's responsibilities apply program-wide except when superseded by provisions in a stewardship and oversight plan adopted by the FHWA [State name] Division Office for a specific project. Additional discussion on FHWA project involvement is included in section VI.D of this Agreement.

C. In accordance with 23 U.S.C. 106(c)(4), the DOT Secretary may define high-risk categories for Interstate projects on a national basis, a State-by-State basis, or a national and State-by-State basis. A State DOT may not assume responsibilities for Interstate projects in a designated category. Currently, FHWA has not designated any high-risk categories applicable to [State name] in accordance with 23 U.S.C. 106(c)(4). If the FHWA makes a future designation that applies to [State name], then that designation will immediately supersede the assumptions of responsibilities elsewhere in this Agreement.

#### **Section V. Assumption of Responsibilities for Federal-Aid Projects Off the NHS**

For projects under title 23 that are not on the NHS, the [State name DOT/STA abbreviation] must assume FHWA's title 23 responsibilities for activities or actions assumable under 23 U.S.C. 106(c) unless the [State name DOT/STA abbreviation] determines that assumption of responsibilities is not appropriate (23 U.S.C. 106(c)(2)).

A. The activities or actions off the NHS assumed by the [State name DOT/STA abbreviation] under this Agreement are listed in Attachment A.

B. Activities or actions for which the [State name DOT/STA abbreviation] has assumed the FHWA's responsibilities apply programwide except when superseded by provisions in a stewardship and oversight plan for a specific project adopted by the FHWA [State name] Division Office. For non-NHS projects, the [State name DOT/STA abbreviation] must determine that superseding an assumption listed in Attachment A for a specific project is

appropriate. Additional discussion on FHWA project involvement is included in section VI.D of this Agreement.

C. Except as provided in 23 U.S.C. 109(o), the [State name DOT/STA abbreviation] is to exercise FHWA's approvals and related responsibilities on these projects in accordance with Federal laws, regulations, policies, Executive Orders, and procedures that would apply if the responsibilities were carried out by FHWA.

D. In accordance with 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, except that a local jurisdiction may use a roadway design guide recognized by FHWA and adopted by the local jurisdiction that is different from the roadway design guide used by the State in which the local jurisdiction is located for the design of projects on all roadways under the ownership of the local jurisdiction for which the local jurisdiction is the project sponsor, provided that the design complies with all other applicable Federal laws.

#### **Section VI. FHWA Oversight Program Under 23 U.S.C. 106(g)**

The Secretary must establish an oversight program to monitor the effective and efficient use of funds authorized to carry out the FAHP (23 U.S.C. 106(g)). This includes FHWA oversight of the [State name DOT/STA abbreviation] processes and management practices, including those involved in carrying out the approvals and related responsibilities assumed by the [State name DOT/STA abbreviation] under 23 U.S.C. 106(c).

Section 106(g) requires, at a minimum, FHWA's oversight program be responsive to all areas relating to financial integrity and project delivery. To carry out the requirements of 23 U.S.C. 106(g), FHWA uses a risk management framework to evaluate financial integrity, project delivery, and other aspects of the FAHP. The objective is to balance risk while considering staffing, budget resources, and the State's transportation needs.

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] may use a variety of methods to identify, analyze, and manage risks and develop response strategies, such as oversight techniques, manuals and operating agreements, stewardship and oversight indicators, and FHWA project involvement.

#### *Oversight Techniques*

Techniques the FHWA [State name] Division Office and the [State name DOT/STA abbreviation] may use to identify and analyze risks and develop response strategies include, but are not limited to, the following:

- program assessments;
- FHWA Financial Integrity Review and Evaluations reviews;
- program reviews;
- certification reviews;
- recurring or periodic reviews such as the FHWA Compliance Assessment Program;
- inspections of project elements or phases.

#### *Manuals and Operating Agreements*

The [State name DOT/STA abbreviation] manuals, agreements and other control, monitoring, and reporting documents that are used on Federal-aid projects are listed in Attachment B to this Agreement.

#### *Stewardship and Oversight Indicators*

[Drafting note: Select the paragraph that applies.]

##### **Option 1**

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] have established stewardship and oversight indicators (indicators) to help monitor performance of responsibilities assumed under this Agreement. Indicators are those intended to provide evidence of how well a State DOT assumption of responsibilities is functioning. Indicators set targets, track trends, and may help determine when countermeasures and actions are implemented or adjusted. The indicators are agreed to as provided in Attachment C.

##### **Option 2**

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] have not established indicators as part of this Agreement.

#### *FHWA Project Involvement*

The FHWA [State name] Division Office may select projects (individually or by type) for risk-based FHWA project involvement and stewardship and oversight activities. In some instances, the programwide assumption by the [State name DOT/STA abbreviation] of FHWA's responsibilities under Attachment A to this Agreement may be superseded by provisions in a stewardship and oversight plan for a specific project, per sections IV and V of this Agreement. The FHWA [State name] Division Office will document

the additional activities in a stewardship and oversight plan for the affected project(s).

### Section VII. State DOT Oversight Responsibilities

- Oversight of State DOT Performance of Assumed Responsibilities. This section addresses how 23 U.S.C. 106(c) assumed authorities are carried out by the [State name DOT/STA abbreviation]. The actions include monitoring to assure that the [State name DOT/STA abbreviation] is properly carrying out its responsibilities in accordance with this Agreement. The [State name DOT/STA abbreviation] is responsible for demonstrating to FHWA how it is carrying out its responsibilities in accordance with this Agreement. The [State name DOT/STA abbreviation] will provide information to the FHWA [State name] Division Office upon request.

The [State name DOT/STA abbreviation] represents that processes, procedures, and practices from manuals, agreements, and other documents listed in Attachment B to this Agreement comply with applicable Federal requirements.

#### *Subrecipient Oversight*

The [State name DOT/STA abbreviation] is responsible for ensuring that its subrecipients meet applicable Federal requirements (2 CFR 200.332). This includes but is not limited to providing adequate oversight of subrecipients with respect to both the subaward and any 23 U.S.C. 106(c) assumed responsibilities the [State name DOT/STA abbreviation] delegates to a subrecipient. The [State name DOT/STA abbreviation] is responsible for determining that subrecipients of Federal funds are suitably staffed and equipped and have adequate project delivery systems and sufficient accounting controls to properly manage these funds (23 U.S.C. 106(g)).

### Section VIII. Agreement Execution and Modifications

#### *A. Agreement Execution*

This Agreement is effective when fully executed by the FHWA [State name] Division Administrator and authorized representative of the [State name DOT/STA abbreviation]. The [State name DOT/STA abbreviation] duly-authorized official shall execute this Agreement and then submit it to the FHWA [State name] Division Administrator, who shall sign this Agreement last.

#### *B. Agreement Modifications*

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] acknowledge that Agreement modifications (minor revisions or amendments) are needed periodically. Either party may initiate a request to modify this Agreement.

##### 1. Minor Revisions

The FHWA [State name] Division Office and the [State name DOT/STA abbreviation] may make minor revisions to this Agreement without an amendment. For purposes of this Agreement, a minor revision makes a technical correction, addresses non-substantive changes such as a change in points-of-contact or document names, or revises aspects of procedures that do not materially change the terms of this Agreement. Changes to Attachments B or C are considered minor revisions. Minor revisions are recorded in a change log by the FHWA [State name] Division Office. Minor revisions may be executed without FHWA legal sufficiency review or coordination with FHWA's Office of Infrastructure.

##### 2. Amendments

Modifications to this Agreement that exceed the definition of a minor revision in paragraph B.1. of this section shall require execution of an amendment to this Agreement. Amendments include any change to Attachment A. The amendment shall follow the execution procedure set forth in paragraph A of this section. Amendments require FHWA legal sufficiency review and coordination with FHWA's Office of Infrastructure.

#### *New Agreement*

This Agreement will be replaced in its entirety and a new Agreement executed between the FHWA [State name] Division Office and the [State name DOT/STA abbreviation] when mutually agreed upon by the parties, or as requested by the FHWA Office of Infrastructure. New Agreements require FHWA legal sufficiency review and coordination with FHWA's Office of Infrastructure prior to execution.

The electronic Agreement file shall contain the executed Agreement, any change logs, and amendments.

### IX. Agreement Term and Termination

A. This Agreement shall have a term of [insert term of no greater than six (6) years] years, effective on the date of the signature of the FHWA [State name] Division Administrator in accordance with section VIII(A) of this Agreement.

B. Before the expiration of the term of this Agreement, a new agreement must

be executed by both parties or the Agreement will expire (refer to section VIII.C. and IX.D.).

C. The FHWA [State name] Division Office may terminate this Agreement at any time if the FHWA [State name] Division Office determines that this Agreement is no longer in the public interest. Except in an extraordinary circumstance where immediate action is needed, prior to termination, the FHWA [State name] Division Office will issue a written notice to the [State name DOT/STA abbreviation] describing the FHWA's [State name] Division Office concerns and give the [State name DOT/STA abbreviation] a reasonable period of time to submit a written response addressing the FHWA [State name] Division Office concerns. The FHWA [State name] Division Office shall review the [State name DOT/STA abbreviation] response and make a final determination within 30 business days of receipt of the [State name DOT/STA abbreviation] response. The FHWA [State name] Division Office will notify the [State name DOT/STA abbreviation] in writing of the final determination and the effective date of any termination.

D. Expiration or termination of this Agreement shall mean that the assumption of project approvals by the [State name DOT/STA abbreviation] as set forth in this Agreement and Attachment A hereto is automatically revoked upon the date of expiration or termination and the [State name DOT/STA abbreviation] must immediately cease exercising any decision, determination, or action under the authority of this Agreement, including any amendments.

### Attachment A: Project Action Responsibility Matrix

This matrix identifies the Federal-aid highway program (FAHP) project approvals and related responsibilities. The matrix specifies which actions are assumed by the [State name DOT/STA abbreviation] pursuant to this Stewardship and Oversight Agreement ("Agreement") and certain other applicable authorities as specified in the tables in this Attachment A.

The [State name DOT/STA abbreviation] is responsible for ensuring all individual elements of the project are eligible for FAHP funding. Where the [State name DOT/STA abbreviation] assumes authority to make a decision, approval, determination or action, the [State name DOT/STA abbreviation] decision does not constitute an eligibility, obligation, reimbursement, authorization, or compliance decision by or for the Federal Highway Administration (FHWA). Final

decisions on those matters must be made by FHWA.

TABLE 1—FINANCIAL MANAGEMENT

| #       | Action  | Agency responsible NHS | Agency responsible non-NHS |
|---------|---|------------------------|----------------------------|
| 1 ..... | Review and accept financial plan and annual updates for Federal major projects [23 U.S.C. 106(h)].  | FHWA .....             | FHWA.                      |
| 2 ..... | Review cost estimates for Federal major projects [23 U.S.C. 106(h)] .....   | FHWA .....             | FHWA.                      |
| 3 ..... | Obligate funds/authorize Federal-aid project agreement (including advance construction authorization and conversion), modifications, and project closures (project authorizations) [23 U.S.C. 106(a)(2), 23 CFR 630.106, 630.703, 630.709]. | FHWA .....             | FHWA.                      |
| 4 ..... | Authorize to advertise for bids when all preconditions are met [23 CFR 635.112(a), 635.309].  | FHWA or STATE .....    | STATE.                     |
| 5 ..... | Approve reimbursements including authorizing current bill (23 U.S.C. 121) .....   | FHWA .....             | FHWA.                      |
| 6 ..... | Approval of reimbursement for bond-issue projects [23 U.S.C. 122, 23 CFR part 140, Subpart F].  | FHWA .....             | FHWA.                      |

TABLE 2—ENVIRONMENT

| #       | Action   | Agency responsible NHS   | Agency responsible non-NHS   |
|---------|--|--|--|
| 7 ..... | EA/FONSI, EIS/ROD, 4(f), 106, 6(f) and other approval actions required by Federal environmental laws and regulations (Note: The FHWA may assign these NEPA actions and other environmental responsibilities to a State DOT as provided by 23 U.S.C. 327).  | FHWA or Administered in accordance with 23 U.S.C. 327 MOU.   | FHWA or Administered in accordance with 23 U.S.C. 327 MOU.   |
| 8 ..... | Categorical exclusion approval actions [Note: The FHWA may assign this action and other FHWA environmental responsibilities to a State DOT as provided by 23 U.S.C. 326 and 327. The FHWA also may administratively delegate responsibility for categorical exclusion determinations to a State DOT through a programmatic agreement pursuant to Section 1318(d) of MAP-21 and implementing regulations in 23 CFR 771.117(g)]. | FHWA or Administered in accordance with applicable 23 U.S.C. 326 or 327 MOUs, or Programmatic Categorical Exclusion Agreement. | FHWA or Administered in accordance with applicable 23 U.S.C. 326 or 327 MOUs, or Programmatic Categorical Exclusion Agreement. |

TABLE 3—PRELIMINARY DESIGN

| #        | Action   | Agency responsible NHS   | Agency responsible non-NHS   |
|----------|--|--|--|
| 9 .....  | Approval before utilizing a consultant to act in a management support role for the contracting agency [23 CFR 172.7(b)(5)(i)].   | FHWA or Administered in accordance with procedures approved per 23 CFR 172.5(c). | FHWA or Administered in accordance with procedures approved per 23 CFR 172.5(c). |
| 10 ..... | Approval of noncompetitive procurement method for engineering and design-related services [23 CFR 172.7(a)(3)].  | FHWA or STATE .....  | STATE.   |
| 11 ..... | Approve exceptions to design standards [23 CFR 625.3(f)] .....   | FHWA or STATE .....  | Not subject to 23 CFR 625.3(f).  |
| 12 ..... | Airport highway clearance coordination and respective public interest finding (if required). [23 CFR 620.104] .....  | FHWA or STATE .....  | STATE.   |
| 13 ..... | Approve project management plan for Federal major projects [23 U.S.C. 106(h)] .....  | FHWA .....   | FHWA.  |
| 14 ..... | Approval of Interstate System access change [23 U.S.C. 111] .....  | FHWA .....   | Not subject to 23 U.S.C. 111.  |
| 15 ..... | Determine the engineering and operational acceptability of points of ingress or egress with the Interstate System (justification reports) for new freeway-freeway interchanges (system), modification of freeway-freeway interchanges, and new partial interchanges or new ramps to/from continuous frontage roads that create a partial interchange [23 U.S.C. 111(e)]. | FHWA .....   | Not subject to 23 U.S.C. 111(e).   |
| 16 ..... | Determine the engineering and operational acceptability of points of ingress or egress with the Interstate System (justification reports) for new and modified freeway-to-crossroad (service) interchanges, and completion of basic movements at existing partial interchanges. [23 U.S.C. 111(e)].  | FHWA or Administered in Accordance with Programmatic Agreement.                  | Not subject to 23 U.S.C. 111(e).   |
| 17 ..... | Approve innovative and public-private partnership projects in accordance with TE-045, SEP-14, SEP-15, or SEP-16. [23 U.S.C. 502(b)].   | FHWA .....   | FHWA.  |
| 18 ..... | Approve any betterment to be incorporated into the project and for which emergency relief funding is requested (23 U.S.C. 125, 23 CFR 668.109).  | FHWA .....   | FHWA.  |

TABLE 3—PRELIMINARY DESIGN—Continued

| #        | Action   | Agency responsible NHS | Agency responsible non-NHS |
|----------|--|------------------------|----------------------------|
| 19 ..... | Prior written approval of the Federal awarding agency for the direct charge of up-front acquisition cost of equipment (2 CFR 200.439). | FHWA .....             | FHWA.                      |

TABLE 4—FINAL DESIGN

| #        | Action   | Agency responsible NHS | Agency responsible non-NHS         |
|----------|--|------------------------|------------------------------------|
| 20 ..... | Approve retaining right-of-way encroachments [23 CFR 1.23(b), 1.23(c)] .....   | FHWA or STATE .....    | STATE.                             |
| 21 ..... | Approve use of publicly owned equipment [23 CFR 635.106] .....   | FHWA or STATE .....    | STATE.                             |
| 22 ..... | Concur in use of publicly furnished materials [23 CFR 635.407(a)] .....  | FHWA or STATE .....    | STATE.                             |
| 23 ..... | Determine use of more costly signing, pavement marking and signal materials (or equipment) is in the public interest [23 CFR 655.606].     | FHWA or STATE .....    | STATE.                             |
| 24 ..... | Exception to designation of Interstate project as significant for work zones [23 CFR 630.1010(d)].   | FHWA or STATE .....    | Not subject to 23 CFR 630.1010(d). |
| 25 ..... | Determination that a United States Coast Guard Permit is not required for bridge construction [23 CFR 650.805, 650.807, 23 U.S.C. 144(c)]. | FHWA .....             | FHWA.                              |

TABLE 5—REALTY

| #        | Action  | Agency responsible NHS  | Agency responsible non-NHS |
|----------|---|---|----------------------------|
| 26 ..... | Completion of ROW clearance, utility, and railroad work concurrently with construction: Make feasibility/practicability determination for allowing authorization to advertise for bids or to proceed with force account construction prior to completion of ROW clearance, utility and railroad work [23 CFR 635.309(b)]. | FHWA or STATE .....   | STATE.                     |
| 27 ..... | Approve non-highway use and occupancy of real property interests [23 CFR 1.23(c), 710.405].   | FHWA for Interstate<br>FHWA or STATE for Non-Interstate ..... | STATE.                     |
| 28 ..... | Approve disposal at fair market value of real property acquired with Federal-aid assistance, including disposals of access control [23 CFR 710.403(e), 710.409].  | FHWA for Interstate<br>FHWA or STATE for Non-Interstate.      | STATE.                     |
| 29 ..... | Approve disposal at less than fair market value of federally funded right-of-way, including disposals of access control [23 U.S.C. 156, 23 CFR 710.403(e)].   | FHWA .....  | FHWA.                      |
| 30 ..... | Conditional ROW certification, bid advertisement: 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)(i)].   | FHWA or STATE .....   | STATE.                     |
| 31 ..... | Conditional ROW certification, construction—Make finding of exceptional circumstances that make it in the public interest to allow State to proceed with construction even though ROW acquisition/relocation activities are not complete for some parcels [23 CFR 635.309(c)(3)(ii)].                                     | FHWA .....  | FHWA.                      |
| 32 ..... | Approve hardship and protective buying [23 CFR 710.503] .....   | FHWA .....  | FHWA.                      |
| 33 ..... | Requests for credits toward the non-Federal share of construction costs for early acquisitions, donations or other contributions applied to a project [23 U.S.C. 323, 23 CFR 710.507].  | FHWA .....  | FHWA.                      |
| 34 ..... | Federal land transfers [23 CFR part 710, subpart F] .....   | FHWA .....  | FHWA.                      |
| 35 ..... | Functional replacement of property [23 CFR 710.509] .....   | FHWA .....  | FHWA.                      |
| 36 ..... | Waiver of the policy of the availability of comparable replacement dwelling before displacement under specified circumstances [49 CFR 24.204(b)].   | FHWA .....  | FHWA.                      |

TABLE 6—PS&amp;E AND ADVERTISING

| #        | Action  | Agency responsible NHS | Agency responsible non-NHS |
|----------|---|------------------------|----------------------------|
| 37 ..... | Approve PS&E [23 CFR 635.309(a)] .....  | FHWA or STATE .....    | STATE.                     |
| 38 ..... | Approve utility or railroad force account work (23 CFR 140.916, 645.113, 646.216) ..  | FHWA or STATE .....    | STATE.                     |
| 39 ..... | Approve utility and railroad agreements (23 CFR 140.916, 645.113, 646.216) .....  | FHWA or STATE .....    | STATE.                     |
| 40 ..... | Approve use of consultants by utility and railroad companies [23 CFR 645.109(b), 646.216(b)].   | FHWA or STATE .....    | STATE.                     |
| 41 ..... | Approve exceptions to maximum railroad protective insurance limits (23 CFR 140.916, 646.111).   | FHWA or STATE .....    | STATE.                     |
| 42 ..... | Approve use of guaranty and warranty clauses for projects other than design-build projects [23 CFR 635.413(b)].   | FHWA or STATE .....    | STATE.                     |
| 43 ..... | Recovery of railroad material—Approval of additional measures for restoration of areas affected by the removal of salvaged material for Railroad work (23 CFR 140.908). | FHWA or STATE .....    | STATE.                     |

TABLE 6—PS&E AND ADVERTISING—Continued

| #        | Action  | Agency responsible NHS | Agency responsible non-NHS |
|----------|---|------------------------|----------------------------|
| 44 ..... | Approve use of lump sum payments to reimburse railroad for work by its forces [23 CFR 646.216(d)(3)]. | FHWA or STATE .....    | STATE.                     |
| 45 ..... | Waive Buy America provisions (23 CFR 635.410) .....   | FHWA .....             | FHWA.                      |
| 46 ..... | Training special provision—Approval of new project training programs [23 CFR 230.111(d), 230.111(e)]. | FHWA .....             | FHWA.                      |

TABLE 7—CONTRACT ADVERTISEMENT AND AWARD

| #        | Action   | Agency responsible NHS | Agency responsible non-NHS |
|----------|--|------------------------|----------------------------|
| 47 ..... | Approve cost-effectiveness determinations for construction work performed by contract awarded by other than competitive bidding or by force account (23 CFR 635.104, 635.204). | FHWA or STATE .....    | STATE.                     |
| 48 ..... | Approve emergency determinations for construction work performed by contract awarded by other than competitive bidding or by force account (23 CFR 635.104, 635.204).          | FHWA or STATE .....    | STATE.                     |
| 49 ..... | Subrecipient project administration—Approve arrangements for local agency to serve as the supervising agency for the project (23 CFR 635.105).                                 | FHWA or STATE .....    | STATE.                     |
| 50 ..... | Approve advertising period less than 3 weeks [23 CFR 635.112(b)] .....   | FHWA or STATE .....    | STATE.                     |
| 51 ..... | Approve addenda during advertising period [23 CFR 635.112(c)] .....  | FHWA or STATE .....    | STATE.                     |
| 52 ..... | Concur in award of contract or rejection of all bids (23 CFR 635.114) .....  | FHWA or STATE .....    | STATE.                     |
| 53 ..... | Approval of design-build requests-for-proposals (RFP) and addenda for major changes to the RFP during solicitation period [23 CFR 635.112(i)(4)].                              | FHWA or STATE .....    | STATE.                     |
| 54 ..... | Approve award to the next low bidder [23 CFR 635.114(f)] .....   | FHWA or STATE .....    | STATE.                     |

TABLE 8—CONSTRUCTION

| #        | Action  | Agency responsible NHS | Agency responsible non-NHS |
|----------|---|------------------------|----------------------------|
| 55 ..... | Approve contract changes and extra work (23 CFR 635.120) .....  | FHWA or STATE .....    | STATE.                     |
| 56 ..... | Approve contract time extensions [23 CFR 635.120, 635.121(b)] .....   | FHWA or STATE .....    | STATE.                     |
| 57 ..... | Concur in use of mandatory borrow/disposal sites (23 CFR 635.407) .....                                     | FHWA or STATE .....    | STATE.                     |
| 58 ..... | Approval of administrative settlements and contract claim awards and settlements (23 CFR 140.505, 635.124). | FHWA or STATE .....    | STATE.                     |
| 59 ..... | Concur in termination of construction contracts [23 CFR 635.125(b)] .....                                   | FHWA or STATE .....    | STATE.                     |

TABLE 9—CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) AND INDEFINITE DELIVERY/INDEFINITE QUANTITY (ID/IQ) CONTRACTING

| #        | Action  | Agency responsible NHS | Agency responsible non-NHS |
|----------|---|------------------------|----------------------------|
| 60 ..... | Approval of advertising for bids or proposals for a CM/GC construction services phase contract [23 CFR 635.504(b)(6)].                                  | FHWA or STATE .....    | STATE.                     |
| 61 ..... | Determination of indirect cost rate for preconstruction services for a CM/GC project in accordance with [23 CFR 635.504(e)(2)].                         | FHWA or STATE .....    | STATE.                     |
| 62 ..... | Approval of preconstruction price and cost/price analysis for preconstruction services for a CM/GC project [23 CFR 635.506(b)(2)].                      | FHWA or STATE .....    | STATE.                     |
| 63 ..... | Approval of price estimate for construction costs for the entire project for CM/GC project [23 CFR 635.506(d)(2)].                                      | FHWA or STATE .....    | STATE.                     |
| 64 ..... | Approval of construction price analysis and agreed price for construction services of a CM/GC project or portion of the project [23 CFR 635.506(d)(4)]. | FHWA or STATE .....    | STATE.                     |
| 65 ..... | Approval of CM/GC project preconstruction services contract award [23 CFR 635.506(e)].  | FHWA or STATE .....    | STATE.                     |
| 66 ..... | Concur in advertising an ID/IQ solicitation prior to completion of NEPA [23 CFR 635.605(a)(2)].   | FHWA or STATE .....    | STATE.                     |
| 67 ..... | Concur in awarding an ID/IQ contract prior to completion of NEPA [23 CFR 635.605(a)(3)].  | FHWA or STATE .....    | STATE.                     |
| 68 ..... | Approve a time extension of an ID/IQ contract [23 CFR 635.604(a)(6)(i)] .....   | FHWA or STATE .....    | STATE.                     |

**Attachment B (Drafting Example):  
Manuals, Agreements, Control,  
Monitoring, And Reporting Documents**

*State department of transportation (State DOT) manuals, agreements and other control, monitoring, and reporting documents that are used on Federal-aid projects. (The following provides examples of the types of manuals, guidelines and procedures that will be listed in Attachment B and the type of information needed for each document. The format is optional and the items listed are not all inclusive or applicable to all States.)*

**Example for Construction Specifications**

- Standard Specifications
  - Elements that require the Federal Highway Administration (FHWA) approval:
    - Specifications that will be used on the National Highway System (NHS). (23 CFR 625.3)

**Example State DOT Manuals That Will Be Used on Federal-Aid Projects**

- Highway Design Manual—information and guidance to design road projects.
  - Elements that require FHWA approval:
    - Roadway design standards for 3R and preventative maintenance projects on the NHS. [23 CFR 625.3, 625.4(a)(3)]
  - Elements required by Federal law or regulation included in this manual that do not require FHWA approval:
    - Erosion and Sediment Control Guidelines (23 CFR 650.211)
- Right of Way Manual—right-of-way organization, policies, and procedures. Describes functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation and eminent domain, property management, and relocation assistance.
  - Elements that require FHWA approval:
    - All elements. Right-of-way organization, policies, and procedures (23 CFR 710.201)

**Additional Manuals, Agreements, Control, Monitoring, and Reporting Documents**

- Noise Analysis and Abatement Policy (23 CFR part 772)
- Programmatic Agreement for Processing Interstate Access Requests (MAP-21, Section 1505)
- Asset Management Plan [23 U.S.C 119(e)(5)]

- Value Engineering Policy and Procedures [23 CFR 627.1]
- Quality Assurance Program [23 CFR 637.205]
- Construction Manager/General Contractor (CM/GC) procurement procedures [23 CFR 635.504(c)]
- Pavement Design Policy [23 CFR part 626]

**Attachment C (Drafting Example):  
Stewardship and Oversight Indicators**

*Indicators used to monitor assumptions of responsibility per section VI. C. of this Agreement. (This list is provided as an example. The format is optional and the items listed are not all inclusive or applicable to all states.)*

**Example Stewardship and Oversight Indicator**

- Fiscal year Disadvantaged Business Enterprise (DBE) overall participation rate.
  - Percent of DBE goal achieved.
  - Average number of bidders per project per type of work per year.
  - Percent of projects with low bid within +/- 10 percent of Engineer's Estimate.
  - Percentage of projects that are awarded within 120 days of authorization.
  - Number of National Bridge Inspection Standards metrics that are fully compliant.
  - Percent of environmental mitigation commitments completed.
  - Average number of days between the date of project final acceptance by State department of transportation and project close out date in the Financial Management Information System (FMIS).
  - Percent of projects closed out with final costs within 110 percent of award amount.
  - Percent of projects closed out with final time expended within 135 percent of original contract time.
  - Percent of current year projects in the State Transportation Improvement Program advanced as scheduled.
  - Percent of projects with right-of-way (ROW) acquired by acquisition due date.
  - Number of projects with conditional ROW certifications.
  - Number of disposals of excess ROW below fair market value.
  - Number of non-Interstate access breaks and/or encroachments approved.
  - Number of modifications to project end dates in FMIS.
  - Expenditures determined to be ineligible for Federal participation.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[Docket No. FRA-2010-0061]

**Union Pacific Railroad's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** This document provides the public with notice that, on December 12, 2022, Union Pacific Railroad (UP) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

**DATES:** FRA will consider comments received by January 10, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

**ADDRESSES:**

*Comments:* Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA-2010-0061. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

**FOR FURTHER INFORMATION CONTACT:**

Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816-516-7168, email: [Gabe.Neal@dot.gov](mailto:Gabe.Neal@dot.gov).

**SUPPLEMENTARY INFORMATION:** In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making