

**U.S. Department of Transportation
Federal Highway Administration
and the
Texas Department of Transportation**

**Stewardship/Oversight Agreement
For
Design and Construction**

/Original Signed By/

10/04/06
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10/13/06
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GLOSSARY

Control Document – Applicable standards, manuals, policies, procedures, standard specifications, etc., that are acceptable to FHWA for application in the design and construction of highways.

Core Functions – Activities that make up the main elements of the Division’s Federal-aid oversight responsibilities based on regulations and national policies. Core functions in the Division Office are Planning, Environment, Right-of-Way, Design, Construction, Finance, Operations, System Preservation, Safety, and Civil Rights. Core functions covered by this document include Design and Construction.

Delegated Projects – Projects that do not require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, inspections and final acceptance of Federal-aid projects on a project by project basis.

Full Oversight Projects – Projects that require FHWA to review and approve actions pertaining to design, plans, specifications, estimates, right-of-way certification statements, contract awards, inspections, and final acceptance of Federal-aid projects on a project by project basis.

Major Projects – Those projects receiving Federal financial assistance 1) with an estimated cost of \$500 million or more or 2) that has been identified by FHWA as being a Major Project as a result of special interest. Such other projects include: 1) those receiving Federal financial assistance, as designated by FHWA, that require a substantial amount of the State's program resources or have a high level of public or congressional attention and 2) those that have extraordinary implications for the national transportation system. Major Projects were previously called Mega Projects.

National Highway System (NHS) - The National Highway System, as defined in 23 CFR 470, includes the Interstate Highway System.

Oversight – The act of ensuring that the Federal highway program is delivered consistent with laws, regulations and policies

Risk Management – The systematic identification, assessment, planning, and management of threats and opportunities faced by FHWA projects and programs.

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

Transportation Infrastructure Finance and Innovation Act (TIFIA) - Federal credit program under which the Department of Transportation may provide credit assistance for surface transportation projects of national or regional significance.

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**FEDERAL-AID HIGHWAY PROGRAM
STEWARDSHIP/OVERSIGHT AGREEMENT
For
DESIGN & CONSTRUCTION**

I. PURPOSE

- A. Stewardship efforts include oversight and approval actions routinely performed by the Federal Highway Administration, Texas Division (FHWA) and/or the Texas Department of Transportation (TxDOT) to ensure the Federal-aid Highway Program (FAHP) is administered in regulatory compliance and in ways that enhance the value of program funds authorized by Congress. The purpose of this Stewardship/Oversight Agreement (Agreement) is to formalize these delegated responsibilities and agreements to address how the FAHP will be administered in Texas relative to design and construction. It provides a roadmap to effectively and efficiently execute the FAHP relating to programs/project delivery to include financial integrity. Furthermore, it provides for the delegation of certain project actions to TxDOT with specified exceptions as noted further in this document.
- B. Congress has charged the FHWA with administering the FAHP under Title 23, and other associated laws. FHWA's responsibility for administering this Program has been clearly outlined in the following legislation.
- 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.

These laws allow TxDOT to assume certain delegated responsibilities for FHWA in the design, construction, award and inspection of certain Federal-aid projects.

- C. On the broader program level, FHWA will continue to provide stewardship and oversight of the FAHP through a rigorous risk management process and through general actions and concurrences in its day-to-day activities, including improvements to program procedures, training, technical assistance, and developing and deploying new technologies, as well as routine program/project approval. Each of these activities contributes to the intent that the FAHP operates with integrity and for the public's maximum benefit. This Agreement acknowledges FHWA and TxDOT (including sub-recipients) are responsible for the effective and efficient use of Federal funds. Notwithstanding the Agreement, FHWA retains overall responsibility for all aspects of Federal-aid programs and an Agreement does not preclude FHWA's access to and review of a Federal-aid project at any time and does not replace the provisions of *Title 23, USC*.

II. STATE AND DIVISION OFFICE ROLES AND RESPONSIBILITIES

- A. The TxDOT Executive Director, through the Headquarters Divisions, Program Offices, and District Offices, is responsible for TxDOT's stewardship and oversight of projects that are not under FHWA direct review and approval as covered by this Agreement. Each District Office has the responsibility for design, construction, and maintenance of transportation projects in its respective area. The TxDOT Headquarters Divisions and Program Offices establish operating policies and procedures, review information from the Districts, and retain certain approval actions.
- B. TxDOT is delegated FHWA's responsibilities for all project approval and oversight for Federal-aid projects (including Emergency Relief projects), except those designated as Federal Oversight projects. Projects selected for FHWA Oversight will be by agreement between TxDOT and the Texas Division Office. The Texas Division Office and TxDOT went through a rigorous risk analysis to develop the oversight criteria contained within this Agreement. The following two basic premises serve as the foundation for the oversight criteria contained herein; 1) maintain a presence in each TxDOT District to retain oversight on a number of projects to verify the effective and efficient use of Federal funds, and 2) maintain FHWA oversight responsibilities on those projects representing the largest investment of Federal-aid funds. The agreement also provides for the flexibility to increase or decrease the level of FHWA oversight within a TxDOT District. The criteria for selection of these projects are outlined in Appendix A – Federal Oversight Project Thresholds. Projects may also be selected for Federal Oversight if the proposed project is particularly complex, highly controversial, or involves innovative or unique design, construction, or administrative features. Furthermore, certain types of Federal-aid projects shall be excluded from the established thresholds shown in Appendix A, and, therefore, remain State Oversight. These are shown in Appendix B - Federal Oversight Project Exclusions. Once established, oversight responsibility for a project can change only by a formally documented agreement between TxDOT and the Texas Division Office.
- C. TxDOT is responsible for compliance with all laws and regulations for State oversight projects, and will monitor the programs and projects by making periodic reviews. Following the obligation of Federal funds by FHWA, the appropriate TxDOT Divisions shall issue Letters of Authority for projects. TxDOT will make construction and final inspections, and will accept all State oversight projects in accordance with guidelines published by the Construction Division. Federal-aid reimbursement for work performed will be made using FHWA's Federal-aid current billing and payment system.
- D. Major Projects, Project Management Plans and Financial Plans:
1. In the early development of each major Federal-aid project on the NHS, TxDOT shall submit to FHWA an initial Project Management Plan (PMP). The ultimate purpose of the PMP is to clearly define the roles, responsibilities, processes, and activities, which will result in the Major Project being completed on time, within budget, with the highest degree of quality and safety, and in a manner in which the public trust, support and

confidence in the project is maintained. The preparation of an initial PMP prior to initiating the project's environmental study is critical to ensure the project is delivered in an efficient and effective manner. The initial PMP shall be prepared by TxDOT and submitted to the FHWA Division Office. The PMP is to be a living document in which revisions will be issued as the project progresses in order to add, modify, or delete provisions that will result in the most effectively managed project. These revisions and updates to the PMP will occur prior to issuing the environmental decision, prior to authorization of Federal-aid funds for right of way acquisition, and prior to authorization of Federal-aid funds for construction. During construction, TxDOT continues to update the PMP to reflect the current status of the major project. PMP guidance is posted on the FHWA Major Project Web site <http://www.fhwa.dot.gov/programadmin/mega/index.htm>

2. In addition to the PMP, every Major Project also requires the development and submittal of a Financial Plan. A Financial Plan is a comprehensive document that reflects the Project's cost estimate and revenue structure and provides a reasonable assurance that there will be sufficient financial resources available to implement and complete the project as planned. A Financial Plan provides a description of how a project will be implemented over time by identifying project costs and the financial resources to be utilized in meeting those costs. The plan should clearly explain the assumptions about both cost and revenue upon which the plan is based. Financial Plans for Major Projects shall be prepared by TxDOT and submitted to the Texas Division. The Initial Financial Plan should be prepared as early in the project development process as practical. In all cases, the Initial Financial Plan must be submitted and approved by FHWA before authorization of Federal-aid funding for project construction. On a Design-Build project the Initial Financial Plan must be approved prior to FHWA concurrence in the issuance of a Request for Proposal (RFP). The Initial Financial Plan will provide information on the immediate and longer-term financial implications resulting from project initiation. Financial Plans are to be updated annually. The annual updates of the Financial Plan should provide information on actual cost, expenditure, and revenue performance in comparison to initial estimates as well as updated estimates of future year's obligations and expenditures. Identified funding shortfalls should be highlighted along with proposed resource solutions. TxDOT will provide FHWA an independent validation of the cost estimate anytime the annual update shows a cost increase of more than 5 percent, schedule slippage of more than 6 months or significant scope change from the previous Finance Plan or PMP update. Financial Plan guidance is undergoing revision and will be posted on the FHWA Major Project web site upon completion. Details for developing cost estimates can be found at <http://www.fhwa.dot.gov/programadmin/mega/cefina.htm>

3. SAFETEA-LU also requires that Projects in the \$100-500 million range have Financial Plans and Annual Updates prepared by the project owner. The Financial Plan should address the same items as those for Major Projects. The initial Financial Plan may be developed and approved at the earliest feasible point in the Project development process but it needs to be completed by the Project Owner prior to construction contract authorization and obligation of Federal-aid funds under the design-bid-build process and

prior to RFP approval for design-build projects. The greatest difference between these Financial Plans and those of Major Project is FHWA will not approve these financial plans but they will be subject to review by FHWA as part of its ongoing stewardship and oversight responsibilities.

4. Transportation Infrastructure Finance and Innovation Act (TIFIA) Projects also require Financial Plans. Additional information on TIFIA can be found at the TIFIA website <http://tiffia.fhwa.dot.gov/home.html> and at the Major Projects Web site noted above.
5. Value Engineering, as with any Federal-aid project with an estimated cost over \$25 million, is required for major projects. The Division Administrator may require more than one Value Engineering analysis.

E. Design-Build Projects.

1. As stated in [Section 1503](#) of SAFETEA-LU, a State transportation department or local transportation agency can issue a request for proposal (RFP), proceed with awards of design-build contracts or issue notice to proceed prior to the completion of a NEPA process; however, the State or local agency shall receive concurrence from the Secretary before carrying out any of these activities. Section 1503 precludes the design-build contractor from proceeding with final design or construction of any permanent improvements prior to the completion of the NEPA. FHWA is currently revising its design-build regulations to accommodate the provisions of [Section 1503](#) of the SAFETEA-LU.
2. [SAFETEA-LU](#) allows the States to use the design-build contracting method for any project they deem necessary. States are no longer required to submit Special Experimental Project Number 14 (SEP-14) request to use the design-build contracting method.
3. For Federal oversight projects, TxDOT must get FHWA approval (via formal request) prior to releasing the RFP document. FHWA approval of the RFP document carries the same significance as PS&E approval.

F. Public, Private Partnerships.

1. Public, Private Partnership (3P) Projects involving Federal-aid funds typically require preparation of an Oversight Agreement unique to the specific project. This 3P Oversight Agreement defines the relationship between the Federal Highway Administration and those other agencies involved in the project. The 3P Project may be a recipient of a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, State Infrastructure Bank (SIB) loan, SEP-15 Public-Private Partnership, or other combination of Federal, State, local, and private monies. The 3P Project may also include Design-Build contracting procedures as described in 23 CFR 636.

2. Many Federal actions may be involved with any particular 3P project including approval of a SEP-15 for the Public-Private Partnership, approval of Request for Proposals (RFP), approval of an Environmental Document through the National Environmental Policy Act (NEPA) process, review of design schematics, and the processing of a TIFIA or SIB loan, (if applicable). Public-Private Partnership agencies are reminded certain Title 23 requirements dealing with transportation planning, procurement of professional services, disadvantaged business enterprise, wage rates advertising and award of bids, convict produced materials, and Buy America provisions and all non-Title 23 requirements apply to all Federal-aid projects.

3. TxDOT and the FHWA Texas Division will monitor activities and exercise controls as necessary within their respective areas of responsibility to ensure that all Federal-aid projects are carried out in compliance with applicable laws, regulations and standards. TxDOT will develop and document a plan to monitor sub-recipient activities to assure compliance with applicable Federal requirements. Sub-recipient monitoring will cover each program, function, or activity, and will include an assessment of the sub-recipient's ability to manage Federal-aid projects. FHWA may at any time have access to and review project phases and records under this agreement.

III. METHODS OF OVERSIGHT

- A. FHWA will employ a risk management framework in consultation with TxDOT to evaluate program areas to balance risk with consideration of staffing resources, funding within FAHP, and highway needs within the state. TxDOT will work collaboratively with FHWA to identify risks and make practical resources available to address FHWA's risk assessment findings. The following table highlights some potential risks that may affect an individual project's risk profile.

Design / Construction Risks
<ul style="list-style-type: none"> ● Permitting problems ● Design Changes ● Poor / Incomplete Design ● Cost Overruns ● Cash Flow Deficiencies ● Technology Risks ● Schedule Delays ● Litigation

- B. TxDOT and FHWA will monitor activities and exercise controls as necessary within their respective areas of responsibility to ensure all Federal-aid projects are carried out in compliance with applicable laws, regulations and standards. The monitoring of these activities is intended to evaluate procedures and policies used in delivering the FAHP, along with identifying deficiencies and opportunities for improvement. Furthermore, the monitoring activity will be both on a program-wide and project level basis, as necessary, using key processes such as (but not necessarily limited to) project reviews, program reviews,

stewardship assessment reviews (SARs), peer reviews, partnering activities, and task force activities. Other methods of monitoring projects and programs include reviewing TxDOT reports, attending monthly meetings, and performing the normal day-to-day interactions with the various agencies. Reviews may encompass the total operation or be limited to one or more segments; i.e., the project development phase, the contracting phase, or the construction phase. Further discussion of the key processes is provided below.

- C. Project Reviews. Project reviews may focus on any aspect of the FAHP; however, project monitoring focuses on a goal that the project be completed on time, within budget, with highest degree of quality and safety. See section V.C.3b for discussions on Project Reviews.
- D. Program Reviews. Program reviews assist both TxDOT and FHWA with the implementation of the Federal-aid program. Program reviews establish or improve control processes and documents for functional areas of responsibility (environment, design, construction, etc.). In these activities, TxDOT often seeks the Texas Division's active participation. In many cases, industry, as well as other partners, may also be participants. We will take maximum advantage of these opportunities to enhance the overall efficiency of the program.
- E. Stewardship Assessment Reviews (SARs)
 - 1. The Texas Division utilizes an SAR Program to evaluate project development and construction activities. The primary purpose of the SAR program is to provide the FHWA Texas Division with a monitoring and control technique that documents procedures and processes and further assures FHWA that Federal-aid funds are being spent in accordance with Federal laws, regulations, and policies. In addition, SARs evaluate the effectiveness of the processes, procedures, and products developed by TxDOT in all phases of a project, as well as the internal operations of the FHWA Texas Division. Based in part on these reviews, assurances can be made that a program is being implemented as intended and is producing a product of expected quality. Stewardship Assessment Reviews can be conducted on a statewide, area-wide, or program basis. The SAR program coverage is applicable to Title 23 and non-Title 23 activities on all Federal-aid projects, regardless of route designation [i.e., National Highway System (NHS) or non-NHS] or Federal-aid funding category.
 - 2. SARs are generally selected as a result of the Risk Assessment Process conducted biannually. This Risk Process is a systematic process of consistent discovery and detection of potential risk events in all areas of the FAHP. SARs may also be initiated and conducted as necessary throughout the year if an emerging topic/issue is determined by the FHWA Division leadership team to be of significant risk to FHWA at the national, regional, statewide, or area-wide level. The FHWA Division Office staff will involve and discuss potential projects with their TxDOT counterparts prior to topic selection. With the limited number of resources (staff, budget, etc.) available to the FHWA Division Office, SARs will be conducted on an "as needed" basis. That is, there will not be a specified total number of SARs to be conducted per year in the FHWA Division Office, and accordingly, there will not be a specified number of SARs to be conducted in a

particular emphasis area (i.e., environment, design, construction, etc.) in a year.

3. The SAR topics should be strategically identified to achieve program goals, while balancing the associated risks, priorities, and available resources in the Division Office. The associated risks may include statutory requirements, evidence of non-compliance, lack of established procedures, quality and competencies of personnel, and the Division Office relationship with TxDOT. Benefits or payoffs should also be considered in the selection of SAR topics. Payoff issues include looking at the quality of the system, technical complexities, advancing innovative technologies, and cost-effective solutions.
 4. The SARs will be conducted using a joint Division Office/TxDOT team approach, typically with 3-4 members to a team. It is the goal of the Division Office to have TxDOT personnel as active members on each SAR team, recognizing that there may be times when, due to differing priorities or lack of available resources, this may not be possible. The TxDOT team member(s) should periodically brief TxDOT management of the status and findings of the SAR and encourage implementation of recommendations.
- F. Peer Reviews. The peer review is designed to have an outside team of invited qualified peer reviewers to meet with the host agency to discuss and review its management process. Information on the host agency and team members' policies and procedures are exchanged with the intent to improve the overall management process. The information gathered from the exchange is presented to agency management. This technique maintains the principles of voluntarism and confidentiality, and the selection of the team is normally performed by the host organization.
- G. Partnering Activities. Partnering is an effective management technique used to improve communications and enhance the resolution of conflicts during project development and construction. Active participation in partnering activities has resulted in high payoffs relative to improved communications and working relationships between FHWA, TxDOT, Resource Agencies, and industry.
- H. Task Force Activities. Texas Division staff may participate in numerous joint FHWA/TxDOT teams under the purview of value-added, re-engineering, or quality improvement. These activities, when used, have been shown to be an effective method of oversight, an opportunity to strengthen the FHWA/TxDOT partnership, and an effective means of adding value and effecting change to a program.
- I. Sub-recipient Activities. TxDOT will also monitor sub-recipient activities to assure compliance with applicable Federal requirements. Sub-recipient monitoring will cover each program, function, or activity, and will include an assessment of the sub-recipient's ability to manage Federal-aid projects.

IV. CONTROL DOCUMENTS

A. The TxDOT will comply with the policies and objectives of Title 23 through the enforcement of applicable laws, regulations, standards, and directives. Projects on the NHS System will be developed in accordance with federally approved standards. Projects implemented under this Agreement for the NHS will be developed in accordance with American Association of State Highway and Transportation Officials (AASHTO) Guidelines and the control documents listed below (latest versions), whose standards and procedures will apply to design and construction activities.

- TxDOT Roadway Design Manual
- TxDOT Project Development Process Manual
- TxDOT Project Development Policy Manual
- TxDOT Pavement Design Guide
- Texas Manual on Uniform Traffic Control Devices (MUTCD)
- TxDOT Traffic Engineering Standard Sheets (including Barricade & Construction (BC) sheets)
- TxDOT Standard Specifications
- TxDOT Special Provisions
- TxDOT Special Specifications
- TxDOT Departmental Material Specifications (DMS)
- TxDOT Construction Contract Administration Manual (CCAM)
- TxDOT Local Government Project Procedures (LGPP)
- TxDOT Alternate Procedures (consultant selection/utilities)
- TxDOT Bridge Design Manual
- TxDOT Quality Assurance Program for Construction
- TxDOT Manual of Testing Procedures
- TxDOT Hazard Elimination Program Manual (HSIP Program)

Modification to the above control documents or any other control documents related to construction or design requires FHWA Texas Division approval prior to implementation on NHS projects.

B. Non-NHS projects will be developed in accordance with applicable standards, guidelines, policies and procedures, as adopted by TxDOT.

V. DELEGATED PROGRAM AND PROJECT RESPONSIBILITIES

A. Notwithstanding this Agreement, FHWA retains overall responsibility for all aspects of Federal-aid programs. This Agreement does not preclude FHWA access to and review of a Federal-aid project at any time and does not replace the provisions of Title 23 of the U.S. Code (USC). Program and project responsibilities are discussed in the sections below.

B. TxDOT Responsibilities

1. TxDOT assuming FHWA review and approval authority does not alter the applicability of Federal laws on Federal-aid projects. It is agreed that Title 23 requirements pertaining to contract bid proposal contents (including Davis-Bacon and the Disadvantaged Business Enterprise program) and procurement procedures (competitive bidding) apply to projects where required by the implementing Federal regulation. Additionally, the provisions of this Agreement do not modify the FHWA's non-Title 23 program oversight and project approval responsibilities for activities such as required under the Clean Air Act, NEPA and other related environmental laws and statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the Civil Rights Act of 1964 and related statutes, unless expressly permitted by SAFETEA-LU Section 6004 and 6005. By signing this Agreement, TxDOT accepts responsibility for FHWA review and approval actions to the extent such review and approval is required by Federal law and regulation.
2. Once delegated, TxDOT assumes responsibility for all Title 23 approval actions relative to project level design (including approval of design exceptions, PS&E approval, and concurrence in award), and construction (including construction inspection, change order approval, claims settlement, sampling and testing activities, project acceptance, preparation and submission of required project data, i.e. FHWA 45 and 47 forms) for State oversight projects. It is understood certain actions and responsibilities on State oversight projects cannot be or are not delegated to TxDOT. Those project level actions requiring FHWA approval are listed in Section V.C.1. below.
3. For delegated projects or programs that are developed and administered by local agencies/governments (including Transportation Enhancement Projects), TxDOT shall provide the necessary review and approval to assure compliance with Federal requirements. TxDOT will be responsible for determining that sub-recipients of Federal funds have adequate staffing, project delivery systems, and sufficient accounting control. Furthermore, TxDOT is ultimately accountable to FHWA for ensuring compliance with Federal-aid requirements on such projects.

C. FHWA Division Office Responsibilities

1. FHWA delegates to TxDOT project approvals for all State oversight of Federal-aid projects, as defined elsewhere in this Agreement (see Appendices A & B). However, as mentioned above, certain actions and responsibilities on State oversight projects cannot be or are not delegated to TxDOT. The FHWA retains authority for the following actions on Federal oversight projects in addition to those noted under Division Office Roles and Responsibilities:
 - All Federal responsibilities for planning and programming oversight specified in 23 USC 134 and 135 (Statewide Transportation Improvement Plan and amendments)
 - Federal air quality conformity determinations required by the Clean Air Act
 - Obligation of funds

- Waivers to Buy America requirements
- Civil Rights program approvals
- Environmental approvals except those specifically delegated under Sections 6004 and 6005 of SAFETEA-LU (National Environmental Policy Act actions)
- Addition and changes of access points on the Interstate Highway System
- Use of Interstate airspace for non-highway-related purposes
- Uniform Relocation Assistance Act (Hardship acquisition and protective buying)
- Modifications to project agreements
- Final vouchers
- Civil Rights actions
- Experimental features on National Highway System (NHS) projects
- Fund transfers to other agencies
- Advance Construction and conversion to Federal funding
- Approval of financial plans for Mega projects
- Participation in costs incurred before FHWA authorization
- Approval of innovative contracting techniques that require evaluation under the current Special Experimental Projects No. 14 (SEP-14) criteria (project specific, non-traditional contracting methods)
- Approval of innovative contracting techniques that require evaluation under the current Special Experimental Projects No. 15 (SEP-15) criteria (Public-Private Partnerships)
- Design exceptions on all Federal oversight projects and all projects on the Interstate Highway System regardless of funding source
- All schematics on the NHS with the exception of preventive maintenance, freeway safety and 3R type projects.

2. Design

- a) The Texas Division will use various techniques, as mentioned earlier in this Agreement, which may include project reviews, program reviews, SARs, telephone contacts, participation in value engineering activities, and participation in design concept conferences.
- b) Project reviews are conducted by FHWA Area Engineers, Major Project Engineers and Urban Programs Engineers (FHWA Engineers) on Federal Oversight projects as a tool in providing reasonable assurance that these projects are designed in accordance with applicable standards. FHWA Engineers will review design documents for Federal Oversight projects during routine visits to their TxDOT Districts of responsibility. This review of PS&E's, environmental documents, schematics, etc. early in the life of the project reduces the number of comments during the later stages of project development i.e. at preliminary and final PS&E. For State Oversight projects, the FHWA Texas Division's involvement will generally be directly related to environmental determinations and requests for technical assistance, and through SARs on selected functional areas.

- c) Project reviews can take many forms which include meetings with TxDOT design staff and consultants (where applicable) to identify standards and discuss issues, review draft or completed portions of plans, and through field reviews. For Federal oversight projects, reviews are conducted throughout project development so that expeditious approvals can be made by the Texas Division when the schematics and PS&Es are submitted by TxDOT. Review frequencies are not specified but are determined by the FHWA Engineers in consultation with their District Engineer. However, FHWA Engineers are expected to maintain a general knowledge of major proposed and active projects in their assigned geographic areas. FHWA Engineers are responsible for PS&E review and approval on Federal oversight projects. The engineering staff occasionally serves on multi-disciplined value engineering teams to improve project design, construction and cost effectiveness.
- d) Technical Assistance. A significant role of the FHWA Engineers and Technical Specialists is to provide technical assistance on design activities to TxDOT and other partners. Technical assistance includes, but is not limited to, current and emerging construction methods and techniques, interpretation of Federal contract administration requirements, funding eligibility issues, innovative design, and innovative contracting.
- e) Documentation. Reports are prepared for each project review. The format and content of the report is left to the discretion of the FHWA Engineers and FHWA District Engineers. However, as a minimum, the report should cover who participated in the review, when the review was conducted, items of significance noted during the reviews, decisions made, agreements reached and any other information needed for future reference. Texas Division reports should be prepared and distributed to the TxDOT Design and Environmental Divisions, the TxDOT District, and other affected parties, and sent to the project file. Additionally, design review data shall also be entered into the Division's Project Tracking System. Reports prepared by TxDOT or consultants (i.e. meeting minutes) may be used as part of our documentation if they are reviewed and validated.

3. Construction

- a) The Texas Division's stewardship program for construction uses various techniques, as mentioned earlier in this Agreement, including project reviews, program reviews, SARs, telephone contacts, and participation in partnering activities. For the purposes of this section on construction projects, the topic of Project Reviews is discussed in more detail below.
- b) Project Reviews (and/or Construction Project Inspections)
 - (1) Focus of Reviews.

- (a) Project reviews are designed to focus primarily on evaluating and improving current activities and following-up on unresolved issues from previous reviews. If possible, issues should be resolved at the time of the review. Each FHWA Area Engineer and FHWA Technical Specialist will devise a method of insuring proper follow-up.
 - (b) Project reviews also give the Texas Division a general understanding of individual TxDOT Districts' oversight. For example, in many cases project reviews feed the selection process for future SARs. The Texas Division may also use various other project review techniques, including participation in project related meetings, participation in value engineering teams, partnering activities, and telephone contacts.
- (2) Review Types. Specific types of project reviews include (but are not necessarily limited to) the following:

- Process Review/Product Evaluation
- Inspections-in-Depth
- Project Inspection
- Final Inspection
- Specialty Reviews

More detailed information on each type of review can be found in Section 3 of FHWA's Construction Program Management and Inspection Guide, August 2004 (<http://www.fhwa.dot.gov/construction/cpmi04tc.htm>).

- (3) Review Objectives. Some of the objectives of project reviews conducted on Federal oversight projects are listed below.

- Obtain assurance that the project has been completed in reasonably close conformity with approved plans, specifications, estimates, and authorized changes
- Monitor the quality of construction
- Identify and/or share best practices with other TxDOT Districts
- Acquire information on problems and construction changes
- Assess TxDOT's abilities and effectiveness in managing and controlling Federal-aid construction projects
- Promote the development and implementation of quality management programs
- Offer technical and procedural advice
- Report on special or innovative construction materials, methods, procedures, new equipment, and other technological innovations
- Professional development of FHWA and TxDOT review personnel
- Establish contact and communications with project staff

- Become familiar with project
- Attend partnering workshops and project progress meetings
- Monitor and evaluate progress of work
- Provide support and encouragement for project personnel
- Focus Division resources on critical construction features and practices
- Follow up on previous inspection findings
- Discuss/document claims
- Lessons learned

(4) Items for Review. According to the Construction Program Management and Inspection Guide referenced above,

“Many items can be reviewed during a construction inspection, and the list of possible concerns about each item reviewed is also extensive. The amount of detail to be covered depends on the scope of the inspection and the time available. All data gathering and analysis should relate to the objectives of the inspection.”

Some of the main items to be considered in conducting the reviews are listed in Section 4 of the Guide under the topic on Inspection and Review Activities (refer also to Appendices C and D of the guide). It is not necessary that all items be covered on every project review. The degree of project review activity, in general, is based on risk, comfort level, and resources to conduct reviews.

(5) Review Frequency. Federal-oversight, construction projects shall be reviewed/inspected in the field by the appropriate Area Engineer during active operation(s) at a rate agreed upon by the FHWA Area Engineer and FHWA District Engineer.

c) Technical Assistance. A significant role of the FHWA Area Engineers and Technical Specialists is to provide technical assistance on construction activities to TxDOT and other partners. Technical assistance includes, but is not limited to, current and emerging construction methods and techniques, interpretation of Federal contract administration requirements, funding eligibility issues, quality of workmanship, and highlighting best practices. Personnel from the FHWA Division Office, Technical Assistance Section, may perform project field reviews, as frequently as necessary. These reviews can be with or without the accompaniment of the appropriate FHWA Area Engineer.

d) Project Review Reports.

(1) The format and content of project review reports (and/or Construction Inspection Reports) is left to the discretion of the FHWA Area and District Engineers. However, a report form is provided in the FHWA Texas Division’s Project Tracking System that should be used for uniformity.

- (2) The report should focus on items of significance noted during reviews, agreements reached with TxDOT on items such as change orders, best practices observed that could be shared, or other discussions that need to be documented. Details of routine review activities may be included at the Area Engineer's discretion. Purposes of the project review reports are further detailed in the list below.
 - (a) Document Project History and Compliance
 - (i) Provide permanent file evidence (historical record) that inspections are being made as required by Federal regulations.
 - (ii) Provide a basis for acceptance of completed work
 - (iii) Document field conditions, contractor performance, and TxDOT's project management
 - (iv) Document FHWA's role, observations, findings, resolution of identified problems, claims, and any other topics of interest
 - (b) Convey Information to the Reader. The report should cover the following areas.
 - (i) Activities taking place on the project during the inspection
 - (ii) Observations and actions taken regarding quality and progress of work
 - (iii) Comments on the adequacy of the project administration by the contracting agency's representatives (staffing, supervision, documentation, measurement and payment of contract items, material issues, etc.)
 - (iv) Adequacy of addressing traffic control, safety, and environmental issues
 - (v) TxDOT's handling of change or extra work including proper justification for the work and adequacy of supporting documentation
 - (vi) Information on special or unusual technical topics
 - (vii) Followups from previous reports
- (3) Reports that only contain routine review activities do not, necessarily, need to be distributed outside of the Texas Division and can just be sent to the file. Reports of inspections containing significant findings should be prepared within two weeks of the inspection and transmitted to the TxDOT Construction Division and to the TxDOT District office. Each Area Engineer should determine whether additional distribution within FHWA and TxDOT is desired. Construction inspection data shall also be entered into the Division's Project Tracking System.
- (4) FHWA Area Engineers are encouraged to note new types of equipment, material usage or processing, new construction methods and devices, or unusual construction operations and to coordinate with the Research and Technology Transfer Engineer as appropriate. The Research and Technology Transfer Engineer and Area Engineers will work together to develop a special report outlining the operations, use, associated problems or advantages, cost factors, and performance.

VI. SUMMARY

By signing this agreement, TxDOT and the Texas Division document the delegation and acceptance of oversight options provided under current legislation, and identify policies and procedures that govern or are applicable to Federal-aid projects. Nothing in this agreement shall be construed to relieve the Texas Division from ultimate responsibility and accountability for compliance with Federal laws and regulations with respect to the expenditure of Federal-aid highway funds.

TxDOT and the Texas Division enter into this agreement and agree to carry out their respective responsibilities in a true spirit of cooperation. Nothing in this plan is intended to preclude TxDOT from requesting assistance with respect to any program or project regardless of the oversight status.

This agreement supersedes all previous oversight agreements on the subjects of Design and Construction and will become effective the date of signing by both parties. This agreement will remain in effect until FHWA and TxDOT agree to revise the agreement.

APPENDIX A

Federal Oversight Project Thresholds

Federal-aid projects on the National Highway System (NHS), meeting the values in the table below, shall be Federal oversight. The value will be established based on the estimated cost of the contract when TxDOT Districts develop their one-year letting schedules for approval. Oversight responsibility will not change on projects where the estimated cost goes above or below the established threshold subsequent to being placed on the one-year letting schedule. Further, combining several projects into one contract for letting purposes will not change established oversight responsibility. FHWA will continue to review and approve all schematics on the National Highway System regardless of project cost, with the exception of preventive maintenance, freeway safety and 3R type projects. FHWA will also review all design exception requests submitted with these schematics.

Federal Oversight Project Thresholds for Districts Shown		
≥ \$4 million	≥ \$10 million	≥ \$30 million
Abilene	Amarillo	Austin
Atlanta	Beaumont	Dallas
Brownwood	Bryan	Fort Worth
Childress	Corpus Christi	Houston
Lufkin	El Paso	Pharr
Odessa	Laredo	San Antonio
Paris	Lubbock	
San Angelo	Waco	
Tyler		
Wichita Falls		
Yoakum		

If the number of projects on the preliminary one-year letting schedule qualifying for Federal oversight (for any individual District) exceeds four, FHWA shall have the option to select which projects they will exercise oversight responsibilities on for that individual District. If the number is less than three, FHWA shall have the option to select additional projects in the affected District(s) for Federal oversight. This determination shall be made during FHWA’s review of the one-year letting schedule. Prior to publishing the final schedule, TxDOT shall provide FHWA a draft list of projects and allow FHWA 10 work days for review of same. The review copy of the 12 Month Letting Schedule will be ready for distribution in June (approximately) for the coming year. Certain types of projects, as described in Appendix B, will generally be exempt from Federal oversight unless oversight is specifically retained as per the above described procedure.

APPENDIX B

Federal Oversight Project Exclusions

The following types of Federal-aid projects shall be excluded from the established \$ thresholds shown in Appendix A, and, therefore, remain State Oversight.

NHS Preventive Maintenance

This type project includes all NHS roadways, including Interstate Highways. Preventive Maintenance projects consist of work proposed to preserve, rather than improve, the structural integrity of the pavement and/or structure. Examples of preventive maintenance activities include ACP overlays (maximum 2” thick, excluding level-up); PFC; seal coats; cleaning and sealing joints and cracks; patching concrete pavement; shoulder repair; scour countermeasures; cleaning and painting steel members to include application of other coatings; steel beam repair, repair or replacement of slopes and/or riprap, restore drainage systems; cleaning and sealing bridge joints; microsurfacing; bridge deck protection; milling or bituminous level-up; clean, lubricate and reset bearings; clean rebar/strand and patch structural concrete and seal cracks.

NHS Freeways Safety Projects

This type project includes improvements to safety appurtenances on existing mainlanes and frontage roads of all freeways, including Interstate Highways. Work is limited to roadside safety, shoulder texturing, refurbishing existing signing and pavement markings, maintenance or replacement of existing impact attenuators, MBGF upgrade, installation, repair or replacement of longitudinal barrier. The roadway typical section is not changed. Design is in accordance with established department safety criteria and standards.