

Federal – Aid Highways

Stewardship and Oversight Agreement

between



and



August 2012



TITLE 23, UNITED STATES CODE

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STEWARDSHIP & OVERSIGHT AGREEMENT

I. INTRODUCTION

The Federal Highway Administration (FHWA) and the Pennsylvania Department of Transportation (PennDOT) hereby enter into this Stewardship & Oversight Agreement (hereafter referred to as “Agreement”) for the purpose of administering the Federal-aid Highway Program (FAHP) in Pennsylvania. This Agreement clarifies the stewardship and oversight roles and responsibilities of both the FHWA and PennDOT in implementing the FAHP. The Agreement is intended to result in the efficient and effective management of public funds and to ensure that the FAHP is delivered consistent with laws, regulations, policies, and good business practice in Pennsylvania. This Agreement defines select stewardship and approval roles for Federal-aid design and construction projects in Pennsylvania. It includes PennDOT’s assumption of certain FHWA oversight roles and approval responsibilities on specific categories of projects.

This Agreement categorizes Federal-aid design and construction projects as Federal-Oversight (FO), PennDOT-Oversight (PO) - National Highway System (NHS), or PennDOT-Oversight (PO) - Non-NHS on the basis of highway system, cost and level of risk. Further, it delegates to PennDOT certain non-project approval actions that would otherwise be taken by FHWA.

This Agreement provides for a risk-based approach where PennDOT and FHWA agree on how the FAHP will be administered in Pennsylvania, with specific actions to be taken by one or both parties. This Agreement is the documentation of the delegations, under 23 U.S.C. Section 106, from direct Federal-Oversight that are desired and accepted by PennDOT and recognized by FHWA. The delegation options of 23 U.S.C. Section 106 are desirable for PennDOT for the streamlining of processes. Delegations are desirable for FHWA because reduced project-level involvement allows for more effective application of resources. 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, U.S.C. While Federal law allows a State DOT to assume certain project approvals and authorities, FHWA is ultimately accountable for ensuring that the FAHP is delivered consistent with established Federal requirements and FHWA is ultimately accountable for all Federal-aid highway projects.

On the broader program level, FHWA will continue to provide stewardship and oversight of the FAHP through general actions and concurrences in its day-to-day activities, including improvements to program procedures, training, technical assistance, and development and deployment of 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.

II. STATUTORY BASIS

The principal statutory and regulatory basis for development, administration, and oversight of Federal-aid projects are Title 23, United States Code (U.S.C.) – Highways, and Code of Federal Regulations (CFR), in particular 23 CFR. The specific statutory basis for this agreement is Title 23 U.S.C., Section 106, Project Approval and Oversight.

It is recognized that the NHS (which includes the Interstate System) is of primary importance to the FHWA. Federal legislation relative to Interstate commerce and defense needs require that design standards, connectivity between States, and consistency for the motoring public be maintained on the NHS. FHWA retains overall oversight responsibility for all aspects of Federal-aid programs in Pennsylvania.

III. INTENT AND PURPOSE

The intent of this Agreement is to delegate FHWA's approval authority for preliminary engineering, construction contract administration, and right-of-way activities on or related to Federal-aid projects, consistent with enabling statutes and regulations, with specified exceptions for special interest project categories.

PennDOT will assume certain FHWA Title 23 oversight roles and approval responsibilities on PO projects, including locally administered projects. This includes responsibility for ensuring that staff has appropriate training and knowledge to make sure that programs and projects are developed in full conformance with Federal requirements and that necessary corrective action is taken when actions and approvals are found to be in non-compliance with applicable Federal requirements. FHWA is available for consultation in such matters or may unilaterally become involved in determining corrective action.

IV. OTHER PUBLIC AGENCIES

- A. Eligible public agencies (city, county) or other State agencies may be permitted by PennDOT to take project approval actions and administer Federal-aid design and construction projects if they have jurisdiction over the roadway in accordance with 23 CFR 635 – *Construction and Maintenance*. PennDOT is responsible for administration of all Federal-aid projects, and will assure local public agency knowledge of and compliance with State and Federal requirements. The requesting public agency may develop procedures which modify and/or supplement the procedures contained in this Agreement or otherwise published by PennDOT, as long as the public agency procedures are approved by PennDOT and FHWA, and the agency certifies that it will operate in compliance with them. PennDOT is responsible for providing FHWA with documentation of the results of their quality assurance program relative to oversight activities of other public agencies.

- B. For projects Involving the Pennsylvania Turnpike Commission (PTC), project approval authority is delegated to PennDOT for all type projects shown as PO in **Table 1**.

V. STANDARDS, SPECIFICATIONS, AND POLICIES

PennDOT will comply with the provisions of Title 23 U.S.C, 23 CFR - *Highways* and all appropriate Federal and State laws, regulations, standards, and directives. PennDOT will develop Federal-aid projects in accordance with the standards and guides identified in 23 U.S.C. 109, 23 CFR 625 – *Design Standards for Highways* (as well as other FHWA policies identified in the Federal Register, the Federal-aid Policy Guide and elsewhere) and/or PennDOT standards or manuals approved by FHWA. PennDOT manuals and guides are identified in **Appendix A**. Additions to **Appendix A** will occur as additional policies and guidance are developed, approved by FHWA, and implemented by PennDOT.

PennDOT agrees that any revisions or additions to policy and procedure statements, design manuals, letters containing policy, rules and regulations, specifications and standards affecting the development or administration of Federally funded projects will be submitted, with a formal transmittal letter, to the FHWA Division Office for approval and/or concurrence. Design standards for non-NHS projects do not require FHWA approval.

VI. PENNDOT ASSUMPTION OF CERTAIN FHWA RESPONSIBILITIES

It is agreed that PennDOT's assumption of certain responsibilities does not preclude FHWA access to and review of Federal-aid projects at any time, and that it does not replace the provisions of Title 23, U.S.C. with respect to the basic structure of the FAHP.

Nothing in this Agreement shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than Title 23, U.S.C. Such other Federal requirements include, but are not limited to, the National Environmental Policy Act (NEPA), Section 4(f) of the Department of Transportation Act of 1966, the Clean Air Act, the Clean Water Act, the Civil Rights Act of 1964, NHPA Section 106, Davis Bacon Act (40 U.S.C.), Brooks Act, Disadvantaged Business Enterprise (DBE) (49 CFR 26), and the Uniform Relocation Assistance and Acquisition Policies Act of 1970 as Amended (i.e., Uniform Act) (49 CFR 24).

At the time of FHWA's approval of funds for PennDOT-Oversight projects, it is understood that PennDOT has certified that eligibility and appropriate Federal requirements have been met or identified steps to be taken to ensure that requirements will be met. Notwithstanding this determination, FHWA continues to retain overall responsibility for all aspects of Federal-aid programs and, as such, shall be granted full access to review any aspect or record of a Federal-aid project at any time. In matters concerning questionable eligibility for Federal participation in the programming, development, and construction of Federal-aid projects, PennDOT will consult with FHWA or FHWA may choose to become involved in determining eligibility.

VII. STEWARDSHIP AND OVERSIGHT ACTIVITIES

In carrying out their roles and responsibilities, FHWA and PennDOT will perform several program or project oversight activities including, but not limited to, those described in this Agreement. The FHWA's stewardship and oversight activities will be documented in an annual "Program of Oversight Initiatives" (POI) report, developed by FHWA, which will be shared annually with PennDOT. This document provides details of how the Stewardship and Oversight activities are being implemented by FHWA.

Project Oversight - Project oversight refers to the activities performed at a project level by FHWA and PennDOT to ensure that projects are being designed and constructed in accordance with Federal and State requirements. The process for project oversight designations is described in Section VIII of this Agreement. FHWA oversight activities are included in Section VIII, and Appendices A and B. In addition to projects designated in **Table 1** as FO, FHWA also performs Program Assessment Reviews (PARs). PARs are periodic "spot checks" of PennDOT-Oversight design and construction projects and may include participation from PennDOT District Office staff. FHWA identifies these projects at random in coordination with PennDOT's District Offices. PARs are designed to focus on evaluating and improving current activities, and following-up on unresolved issues from previous reviews. PARs also give FHWA a general understanding of individual PennDOT Districts' oversight. In addition, project reviews help feed the selection process for future program reviews. FHWA may also utilize various other project review techniques, including participation in project-related meetings, participation in value engineering teams, partnering activities, and telephone contacts.

As determined by FHWA, PARs occur throughout the year in each PennDOT District. Findings of PARs are shared with PennDOT Central Office and the respective District as a means to monitor PennDOT's overall quality control and quality assurance processes.

Program Oversight – Program oversight refers to the activities performed at a program level by FHWA and PennDOT to assess the performance of the FAHP to ensure that Federal and State requirements are being followed. Program assessments include, but are not limited to, joint risk assessments, certifications, the Financial Integrity Review and Evaluation (FIRE) Program, self-assessments, Right-of-Way spot check reviews, and the Independent Oversight Program (IOP). These tools are based on the common concepts of identifying strengths, areas for improvement, opportunities, and sharing "best" practices. These assessments may be triggered by National strategies or initiatives to address specific program areas, as well as the desire to strive for continuous improvement of the FAHP.

The following is a detailed description of some techniques used in conducting program level stewardship and oversight of the FAHP:

A. Risk Assessment- FHWA and PennDOT will tri-annually perform joint risk assessments of various program areas for the purpose of prioritizing its program level oversight activities. This assessment will be jointly reviewed in the other years to determine if the risks identified have been addressed and no additional action is needed. The risk

assessment will include identification of risk responses that FHWA and PennDOT will undertake either individually or jointly. The risk response strategies will include identification of program reviews of Federal-aid projects and PennDOT processes. These program reviews will be captured in the Independent Oversight Program.

B. Financial Integrity Review and Evaluation (FIRE)- The FIRE Program is an oversight program to ensure that Federal-aid funds are properly managed and effectively used in accordance with Federal policies, and that safeguards are in place to minimize fraud, waste, and abuse. The FIRE program includes Funds Management, Federal-aid billing, Major projects, Project authorization, Modification and Voucher, and Locally Administered Projects. The FIRE program is a consistent process for identification and prioritization of risk events, and identification of strategies for risk mitigation.

C. Performance Indicators/Measures - Performance indicators will be established for the program areas within twelve months of the execution of this agreement. These performance indicators will be documented in **Appendix B**. The measures help assess performance in administering FAHP requirements and assist in determining whether funds are being effectively utilized to improve the transportation system. The indicators/measures also serve as a tool in conducting annual risk assessments.

PennDOT provides status reports on these measures to FHWA for review twice per year; mid-performance year (December) and end of performance year (June). In addition, the measures will be revised within 30 days after the beginning of the FHWA Performance Year. Maintaining, updating, and improving the performance indicators/measures are the continuous responsibility of FHWA and PennDOT. The responsibility for tracking each individual measure will be assigned during joint meetings and can be subject to modification or change, if both parties agree. Measures can be evaluated at any time by FHWA and PennDOT.

D. The Independent Oversight Program (IOP) - The IOP includes program reviews that are triggered by the joint risk assessment and/or by the performance indicators/measures that suggest a need for improvement, or by general recurring reviews of programs. In general, FHWA will use the IOP process to assess the capability and capacity of PennDOT in those areas where PennDOT has assumed FHWA's responsibilities. The IOP includes formal procedures for conducting reviews, developing reports, and tracking resolution of findings and recommendations. The reviews are conducted to:

- Assess compliance with Federal requirements.
- Identify opportunities for greater efficiencies and improvements to the program.
- Identify exemplary best practices.
- Identify areas that need attention and make recommendations for improvement.

The number of reviews and the review topics are jointly established annually by FHWA and PennDOT and are based on the results and recommendations of the program assessment which includes a risk assessment analysis. Reviews may be initiated by both

FHWA and PennDOT and are designed to include a multidisciplinary team from both agencies. Based on the outcome of the IOP, an action plan may be required to address the recommendations or corrective actions identified in the reviews. The action plan will be jointly monitored until the recommendations and corrective actions have been satisfactorily addressed. At the beginning of each FHWA performance year, FHWA will develop its schedule of reviews for the forthcoming year in coordination with PennDOT.

PennDOT-Oversight Responsibilities - PennDOT is committed to improving quality in all facets of its operations to ensure that highway programs and projects adequately meet the existing and future transportation needs and conditions in a manner conducive to safety, environmental requirements, durability, and economy of maintenance. Projects will be designed and constructed in accordance with standards best suited to accomplish this objective and to conform to the particular needs of each locality.

PennDOT's Quality Management Program provides guidelines for Quality Control and Quality Assurance that identifies project team responsibilities, including consultants, District Office, and Central Office, for overseeing production of quality products to accomplish project objectives and to conform to the particular needs of each locality.

A. Quality Control (QC) is the process performed by PennDOT (and/or its consultants and contractors) that ensure developed products comply with Federal and State requirements and standards. QC is the responsibility of the party producing the product or service. For example, a document (calculations, drawings, reports, etc.) produced by a designer is thoroughly checked by another qualified person to ensure utilization of accepted logics, practices, and correctness of all information.

B. Quality Assurance (QA) is the planned and systematic action performed by a party not involved in QC to provide adequate confidence that delegated approvals comply with Federal and State requirements and standards. An example is the performance of a limited, high-level review of each product to confirm quality, economy, and compliance with laws, regulations, and policies prior to final acceptance by PennDOT or prior to submission to external agencies for approval.

Quality assurance and quality control are assured through the Program Oversight activities described above. PennDOT Central Office has delegated project development and delivery activities to District Engineering Offices and committed to performing Quality Assurance Reviews. The results of the reviews are to be shared with FHWA on an annual basis. FHWA and PennDOT will jointly identify which QA reviews to include in the annual report within twelve months of the execution of this Agreement. The agreed upon reviews will be documented in **Appendix A**. Quality assurances relative to Financial Management are described in **Appendix A, Federal-aid Financial Procedures**.

VIII. OVERSIGHT DESIGNATION AND PROJECT CATEGORIES

- A. General Information - As provided for in Federal legislation, certain categories of Federal-aid projects are delegated to PennDOT for oversight responsibility. On PennDOT-Oversight projects, PennDOT will act on behalf of the U.S. Secretary of Transportation and FHWA in the development and approval of projects in accordance

with the provisions in this Agreement and applicable Federal regulations, with the expectation that it exercises similar judgment based on Federal laws, regulations, and FHWA policies.

Non-Title 23 requirements such as the NEPA, and Section 4(f) apply to both NHS and Non-NHS Federal-aid projects, and FHWA will review and approve the applicable actions for all FO and PO projects, except for those programmatically delegated to PennDOT. FHWA will also approve Right-of-Way (ROW) actions related to hardship and protective buying requests under the provisions of 23 CFR. Other Title 23 requirements (e.g., Metropolitan and Statewide Planning) apply to both NHS and Non-NHS projects. In addition, Title 23 requirements pertaining to contracts (for example, bid proposal content, including Davis Bacon, and DBE) and procurement procedures (competitive bidding, Brooks Act) apply regardless of whether the project is on or off the NHS.

- B. Risk-based Oversight Designations - Upon Statewide Transportation Improvement Program (STIP) approval, PennDOT will provide FHWA with a list of projects programmed for the upcoming three years based on the criteria included in **Table 1**. Immediately after, a project oversight meeting will be held with each PennDOT District, with FHWA, PennDOT Central Office, and District staff in attendance. The purpose of the meeting is for FHWA and PennDOT to specifically review the list of projects for each District and jointly make an oversight designation. FHWA, in consultation with PennDOT, will make risk-based oversight designation changes to meet FHWA and PennDOT goals, objectives, and identified risk areas, while at the same time considering FHWA workload. This may include changing projects deemed to be low-risk from Federal-Oversight to PennDOT-Oversight, and changing other projects not typically designated as Federal-Oversight to be designated as such because they meet the criteria in **Table 1, Part B**.

On interim years of the STIP, preferably at the beginning of the Federal fiscal year, a modified project oversight meeting will be conducted in each District with representatives from FHWA, PennDOT Central Office, and the PennDOT District. The focus of the meeting will be to review the most current list of projects that will advance to design or construction and make changes to the oversight designations based on modifications in project scope or cost. The meeting will also be used to assess and determine the oversight designation of projects that were added to the STIP after it was approved. Within two weeks of the project oversight meetings, PennDOT will submit meeting minutes and the agreed upon list of full oversight projects to the FHWA Division for final approval. Any changes to oversight designation that occur outside of the project oversight meetings must be documented in writing and formally approved by FHWA.

Federal-Oversight generally occurs from the beginning of preliminary engineering through construction of a project. In rare cases, a project may warrant Federal-Oversight of a specific phase where there exists a Federal interest specific to that phase. For example, FHWA may determine that a project warrants Federal-Oversight up to bid award, but not during the construction phase of the project. Phase-specific Federal-Oversight will be designated on a case-by-case basis at the time of the annual project

oversight meeting or as a project progresses through the phases of design to construction. On projects that are not initially FO, FHWA will only be involved in approval actions that occur within the duration of the phase that is being subject to Federal-Oversight. There may be cases when project conditions, costs, or risks increase or decrease prompting reconsideration of the oversight designation.

Table 1 identifies the general parameters for identifying those projects that will be designated FO and those that will be designated PO. The costs thresholds shown in **Table 1** are based on the estimated cost of construction (regardless of funding source, unless 100% State, and excluding construction engineering and right-of-way costs) as reported on the STIP. If the project scope or cost is modified as a result of the Design Field View of a project, FHWA will be consulted regarding any potential changes in the oversight designation. Any changes to oversight designation must be documented in writing and formally approved by FHWA.

- Table 1 -		
A. General Parameters for Project Oversight Designation ⁽¹⁾		
	Federal- Oversight (FO)	PennDOT- Oversight (PO)
Interstate		
<i>3R (Resurfacing, Restoration & Rehabilitation that meets AASHTO Design Criteria)</i>		X
<i>< \$1 Million⁽²⁾</i>		X
<i>\$1 to \$10 Million (Inherently Low Risk Projects, see definition Section VIII, Part D)</i>		X
<i>> \$10 Million (new or reconstruction)</i>	X	
<i>Interstate Completion (Appropriation 042) (3R projects that <u>do not meet</u> AASHTO Design Criteria)</i>	X	
NHS (except Interstate)		
<i>< \$20 million</i>		X
<i>≥ \$20 million</i>	X	
Miscellaneous		
<i>Appalachian Development Highway System (ADHS) Corridors Completion Projects</i>	X	
<i>Non-NHS</i>		X
<i>Discretionary Funding Source ⁽³⁾ (regardless of cost or system, ex. TIGER)</i>	X	
<i>Locally Administered Projects</i>		X ⁽⁵⁾⁽⁶⁾

**B. RISK-BASED PARAMETERS
POTENTIAL EXCEPTIONS TO ABOVE REGARDLESS OF SYSTEM OR
DOLLAR AMOUNT ⁽⁴⁾**

<i>Major or unusual structures</i>	X	
<i>Other Non-Standard Structures – See DM-4 Table 1.9-1</i>	X	
<i>Impact on identified freight corridors and facilities</i>	X	
<i>Extremely high ADT</i>	X	
<i>Bi-state projects</i>	X	
<i>Requiring an EIS or complex EA</i>	X	
<i>Complex traffic control</i>	X	
<i>Complex utility relocations and ROW</i>	X	
<i>New Alignment</i>	X	
<i>Innovative contracting methods</i>	X	
<i>Time to Construct > 2 construction seasons</i>	X	
<i>New or innovative construction methods</i>	X	
<i>Projects with earmarks</i>	X	
<i>High risk or complex ITS, e.g., involving software or standards development, new or emerging technologies or innovation</i>	X	

- (1) Dollar thresholds correspond to construction amount.
- (2) 23 USC 106(c)(4); includes 3R, construction and reconstruction.
- (3) Projects with discretionary funding will follow statutory law requirements.
- (4) Definitions of Risk-Based parameters is contained in **Appendix C**.
- (5) LPA projects require PO except where FO has been identified.
- (6) FHWA may elect to select at least one LPA per District for Federal Oversight.

C. Project Categories - General agency responsibilities pertaining to the categories of Federal-aid projects are described below. A detailed list of program and project approvals related to oversight activities is provided in **Appendix D**.

1. Federal-Oversight (FO)

FHWA will retain approval authority for major actions on this category of projects.

2. PennDOT-Oversight (PO) NHS

PennDOT operates under the authority of Pennsylvania Act 120 of 1970, and will administer Federal-aid PO projects on the NHS in compliance with all applicable Federal statutes, regulations, and Executive Orders. In addition, PennDOT agrees to accomplish the policies and objectives contained in or issued pursuant to Title 23, U.S.C.

PennDOT will assume the responsibilities assigned to the FHWA under Title 23 for Federal-aid projects as permitted by the ISTEA, TEA-21, SAFETEA-LU, and MAP-21, and as indicated in this agreement.

3. PennDOT - Oversight Non-NHS

PO - Non-NHS projects are those not located on the National Highway System. Procedures for PO - Non-NHS projects are similar to those for PO - NHS projects in the sense that delegation removes FHWA from approval of design and construction activities and contract administration actions. PennDOT is responsible for ensuring compliance with applicable Federal and State requirements regarding design and construction of Non-NHS projects.

- D. Oversight Designation for Special Types of Projects – Projects characterized by the parameters described below are defined as Special Types. Oversight varies depending on the cost threshold, risk, and facility.

1. Inherently Low Risk Interstate Projects

Interstate projects less than \$10 million are designated as inherently low risk oversight projects and designated as PO NHS projects. This category includes those that are routine, low risk projects and that are generally non-controversial in which PennDOT has a high-level of experience and documented procedures and processes in place for ensuring compliance with federal requirements. These projects would not include complex or unique engineering features, would not traditionally involve major changes in scope or cost, would satisfy design standards, and would not jeopardize the safety or operation of the Interstate System. Complex projects that are classified as “major projects,” or involve new partners (public/private partnerships), or involve new, innovative contracting methods, or are viewed as high risk, are not considered inherently low risk oversight projects. In addition, certain other Interstate projects greater than \$10 million may be designated as inherently low risk oversight projects on a case by case basis. The designation of these other Interstate projects as inherently low risk must be agreed upon by FHWA and PennDOT in writing and supported with agreed upon scopes of work.

2. Major Projects and Projects with Costs Between \$100 and \$500 Million

All Major Projects and projects with costs between \$100 and \$500 million will be designated as FO projects, regardless of the oversight designation criteria included in **Table 1**. In accordance with Section 1904 of SAFETEA-LU, all projects with costs greater than \$100 million require a financial plan. A financial plan should be consistent with FHWA guidance. Projects with costs greater than \$500 million are designated as Major Projects. In addition to the financial plan, a Major Project requires a Project Management Plan, and cost validations. The FHWA Division Office must be consulted when a Major Project is being considered.

3. Intelligent Transportation Systems (ITS) Projects

Normally ITS projects follow the same oversight designation criteria as depicted in **Table 1**. However, Non-facility specific ITS/operations projects, such as Traffic

Management Center (TMC) projects, require a joint determination by FHWA and PennDOT of oversight responsibilities. Projects must conform to system engineering requirements in 23 CFR Part 940 – *Intelligent Transportation System Architecture and Standards* and 49 CFR - *Transportation*, as appropriate.

4. Local Public Agency (LPA) Administered Projects

LPA administered projects will follow the oversight designation criteria as depicted in **Table 1**. During the project oversight meetings, FHWA may elect to select at least one LPA project in each District to be designated as a FO project, if practicable, using the risk-based parameters in **Table 1**. The LPA FO project(s) will be identified and selected by FHWA during the project oversight meetings with the Districts. All Federal-aid projects on the NHS are subject to quality assurance procedures (23 CFR 637 – *Construction Inspection and Approval*) including LPA administered projects. For projects off the NHS, PennDOT and the LPAs should use established procedures approved by PennDOT and FHWA. PennDOT's LPA procedures used for Federally Funded NHS projects must comply with applicable Federal requirements.

IX. BUSINESS SERVICE STANDARDS

Business Service Standards (BSS) provide an expectation for how long it will take to provide reports and findings along with the expectation of a response concerning corrective actions from PennDOT. FHWA and PennDOT will jointly develop BSS within twelve months of the execution of this Agreement. The BSS will be documented in **Appendix E**. These standards may be revisited annually. BSS will be developed relative to action on responses to audit findings, processing financial instruments, approval of PS&E packages, agreement on Risk Response Strategies, and quality assurance documentation of the LPA program.

X. IMPLEMENTATION

The pertinent PennDOT policies and procedures for accomplishing the intent of the requirements of the FO, PO-NHS, and PO - Non-NHS projects are listed in the Appendices to this Agreement.

This Agreement supersedes all previously executed Stewardship and Oversight Agreements between the FHWA and PennDOT. This Agreement will take effect upon execution and will apply immediately to all new Federal-aid projects and all existing Federal-aid projects under design. Federal-aid projects under construction will retain their current oversight designation through completion, unless FHWA and PennDOT mutually agree to change that designation.

The parties agree that there shall be periodic revisions of this Agreement to reflect changes in Federal and State laws, regulations, policies, and requirements.

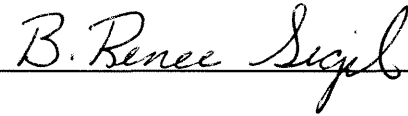
AGREEMENT EXECUTION DATE:

8/24/12

APPROVED AND EXECUTED:



Barry J. Schoch, P.E.
Secretary
Pennsylvania Department of
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B. Renee Sigel
Division Administrator
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APPENDIX A – FHWA/PENNDOT – OVERSIGHT AGREEMENT POLICIES

The FHWA/PennDOT Stewardship and Oversight Agreement (Agreement) presents the current procedures for the administration of the Federal-aid Highway program in Pennsylvania. The general intent of the Agreement is to delegate much of FHWA's approval authority to PennDOT for certain preliminary engineering, construction contract administration, and right-of-way activities on or related to Federal-aid projects.

1. Project Development Process (Including Public Involvement in the Development of Projects and Title VI Requirements as Related to Minority Group Participation)

Procedures for project development and public involvement are established in PennDOT Design Manuals and Environmental Handbooks. These guidelines are provided in the following:

- a. *Design Manual, Part 1, Transportation Program Development and Project Delivery Process* (Pub. 10) (includes DM-1, 1A, 1B, 1C, and 1X).
- b. *Project Level Public Involvement Handbook* (Pub. 295).
- c. *Transportation Enhancement Implementation Manual*.
- d. *Recreational Trails Program Programmatic Agreement between PennDOT, DCNR, and FHWA dated March 2005*.
- e. *Scenic Byways Guidance* (www.bywaysonline.org).
- f. *Pennsylvania Act 120 of 1970* (This Act requires the Department of Transportation to prepare and submit a fiscally constrained multi-modal program of transportation improvements which it recommends be undertaken during the next 12 years to the State Transportation Commission every two years.)
- g. *Overview of PennDOT Local Project Processes: A Guide to Getting Started on a Local Project with PennDOT* (Pub. 535).
- h. *Local Bridge Program Delivery Guide* (Pub. 541).
- i. *Procedures for the Administration of Locally Sponsored Projects* (Pub. 39).
- j. *Right-of-Way Manual* (Pub. 378) *Relocation Program From the Conceptual Stage Until Initiation of Negotiations for the Project*, Chapter 4.02.

2. Application of Appropriate Design and Construction Standards

Appropriate design and construction standards are provided by the application of the following:

- a. *Manual on Uniform Traffic Control Devices* (MUTCD).
- b. *Design Manual, Part 2, Highway Design* (Pub. 13M).
 - Design criteria in *Design Manual, Part 2 (DM-2)* meets and in some cases exceeds the criteria in the AASHTO Green Book. For any designs on NHS projects that do not meet the criteria in DM-2, but conform to the minimum criteria in the AASHTO Green Book, a design exception is not required to be

approved by FHWA, but will require Bureau of Project Delivery (BOPD) approval.

- c. *Design Manual, Part 3, Plans Presentation* (Publication 14M).
- d. *Design Manual, Part 4, Structures* (2 Volumes),(Pub. 15M).
- e. *Design Manual, Part 5, Utility Relocation* (Publication 16M).
- f. *Standards for Roadway Construction, Series RC-1M – RC-100M* (Pub. 72M).
- g. *Standards for Bridge Design, BD-600M Series* (Pub. 218M).
- h. *Standards for Bridge Construction, BC-700M Series* (Pub. 219M).
- i. *Pavement Policy Manual* (Pub. 242).
- j. *Traffic Control – Pavement Markings and Signing Standards, TC-8600 and TC-8700 Series* (Pub. 111M).
- k. *Traffic Standards - Signal, TC-8800 Series* (Pub. 148).
- l. *Traffic Signal Design Handbook* (Pub. 149).
- m. *Handbook of Approved Signs* (Pub. 236M).
- n. *Guidelines for the Design of Local Roads and Streets* (Pub. 70M).
- o. *Title 67 – Transportation, PA Code - Pennsylvania Department of Transportation - Rules and Regulations.*
- p. *Specifications* (Pub. 408) with applicable Bulletins.
- q. *Bid Package Preparation and Policies Manual* (Pub. 51).
- r. *Geotechnical Engineering Manual* (Pub. 293).
- s. *Right-of-Way Manual* (Pub 378).
- t. *Grade Crossing Manual* (Pub 371).

PennDOT will apply design and construction standards for new construction, reconstruction, resurfacing (except maintenance resurfacing), restoration, or rehabilitation of highways on the NHS in accordance with 23 CFR Part 625 – *Design Standards for Highways*.

3. PennDOT’s Highway and Railroad Safety Programs

PennDOT will administer a Highway Safety Improvement Program on a continuing basis according to 23 CFR Part 924 – *Highway Safety Improvement Program*.

PennDOT will apply design and construction standards for new construction, reconstruction, resurfacing (except maintenance resurfacing), restoration, or rehabilitation of highways on the NHS in accordance with the standards listed in Item 2 above, the *Grade Crossing Manual* (Pub. 371), and in accordance with 23 CFR Part 625 – *Design Standards for Highways*.

PennDOT will administer a federal-highway railroad grade crossing safety program, and other associated railroad crossing projects, on a continuing basis and in compliance with 23 CFR Part 646 – Railroads, 23 CFR Part 140 - Reimbursement, subpart I – Reimbursement for Railroad Work, 23 CFR Part 172 - Administration of Engineering and Design Related Service Contracts and 23 CFR Part 924 - Highway Safety Improvement Program.

4. Quality Control/Quality Assurance of Construction and Materials

The quality of construction is assured through the application of the following:

- a. *Specifications* (Pub. 408) with applicable Bulletins.
- b. *Field and Laboratory Testing Manual* (Pub. 19).
- c. *Project Office Manual* (Pub. 2).
- d. *Quality Assurance Manual* (Pub. 25).
- e. *Finals Unit Manual* (Pub. 11).
- f. *Approved Construction Materials, Bulletin 15* (Pub. 35).
- g. *Construction Manual* (Pub. 8).

PennDOT Engineering Districts are responsible for managing construction projects and operations according to policies and procedures detailed in Pub. 408 - *Specifications*, and Pub. 8 - *Construction Manual*. The Districts are held accountable for a level of performance through a Quality Assurance program administered by the Bureau of Project Delivery, Innovation and Support Services Division. The Quality Assurance program provisions, including review frequencies and compliance levels, are specified in Pub. 25 - *Quality Assurance Manual*. Compliance is determined and information obtained to determine performance levels. Specific training is developed to achieve compliance. Deficiencies are addressed according to severity as specified in Pubs. 8 - *Construction Manual* and 25 - *Quality Assurance Manual*.

The economy of construction is assured through the PennDOT's competitive bidding procedures and through value engineering policies.

5. Signing, Pavement Marking and Traffic Control Devices

Provisions for adequate signing, pavement marking, and traffic control devices are provided through application of the following PennDOT's publications and according to the Manual on Uniform Traffic Control Devices:

- a. *Temporary Traffic Control Guidelines* (Pub. 213).
- b. *Official Traffic Control Devices* (Pub. 212).
- c. *Traffic Signal Design Handbook* (Pub. 149).
- d. *Pennsylvania's Traffic Calming Handbook* (Pub. 383).
- e. *Guide to Roundabouts* (NCHRP 672).
- f. *Traffic Engineering Manual* (Pub. 46).
- g. *Traffic Control – Pavement Markings and Signing Standards* (Pub.111M).
- h. *Traffic Standards – Signals* (Pub. 148).
- i. *Handbook of Approved Signs* (Pub. 236M).
- j. *Intelligent Transportation Systems Design Guide* (Pub. 646).

6. Economic, Social and Environmental Impacts

Minimization of adverse economic, social, and environmental impacts is accomplished through adherence to the procedures in the following PennDOT's guidance:

- a. *Project Level Public Involvement Handbook* (Pub. 295).
- b. *Design Manual, Part 1B, Post TIP NEPA Procedures* (Pub. 10).
- c. *Agricultural Resources Evaluation Handbook* (Pub. 324).
- d. *Project Level Air Quality Handbook* (Pub. 321).
- e. *Needs Study Handbook* (Pub. 319).
- f. *Geotechnical Waste Management* (Pub. 292).
- g. *Waste Site Evaluation Procedures Handbook*(Pub. 281).
- h. *Wetland Resources Handbook* (Pub. 325).
- i. *Project Level Highway Traffic Noise Handbook* (Pub. 24).
- j. *Section 4(f) Handbook* (Pub. 349).
- k. *Community Impact Assessment Handbook* (Pub 217).
- l. *Tribal Consultation Handbook* (Pub. 591).
- m. *Threatened and Endangered Species Desk Reference* (Pub. 546).
- n. *Indirect and Cumulative Effects Desk Reference* (Pub. 640).
- o. *Right-of-Way Manual* (Pub. 378), Relocation Program from the Conceptual Stage until Negotiations for the Project, Chapter 4.02.
- p. *Every Voice Counts, PennDOT's Environmental Justice Guidance.*

7. Equal Employment Opportunity

PennDOT's policy with respect to equal employment opportunity and non-discrimination is as provided in the following:

- a. Executive Order 1988.1, Affirmative Action and Contract Compliance.
- b. Executive Order 11246 (as amended), Notice of Requirements for Affirmative Action to ensure Equal Employment Opportunity.
- c. Title 23 U.S.C., Subchapter C - *Civil Rights, Part 230 External Programs.*
- d. *Right-of-Way Manual* (Pub 378).
- e. CC-4297, Nondiscrimination and Equal Employment Clauses for all contracts.
- f. CC-4297A, Nondiscrimination Clause.
- g. *Conducting Business with the Pennsylvania Department of Transportation* (Pub. 4).

The number of highway construction trainees and their training program is controlled by PennDOT Strike-Off Letters and conforms to Federal requirements.

PennDOT is firmly committed to fulfilling its goals for participation of DBE's in all contracts and projects involving Federal-aid funds. The DBE Program will be administered in accordance with 49 CFR Part 26 – *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.*

8. Competitive Bidding and Payment of Prevailing Wage Rates on Construction Contracts

Competitive bidding procedures are provided in PennDOT policy letters and will conform to Federal requirements. Procedures governing the payment of prevailing wage rates on construction contracts are included in PennDOT Publication 408 - *Specifications* and in PennDOT Publication 2 - *Project Office Manual*.

9. Design and Construction Claim Settlements

Design claim settlements will be processed in accordance with procedures identified in Publication 93 - *Policy and Procedures for the Administration of Consultant Agreements*.

Construction claim settlements will be processed in accordance with Publication 2 - *Project Office Manual*.

10. Federal-Aid Procurement and Contract Provisions

- a. Consultant Agreements – PennDOT provides the required Federal-aid procurement and administration of Consultant Agreements as prescribed in 23 CFR, Part 172 – *Administration of Engineering and Design Related Service Contracts* through PennDOT Publication 93- *Policy and Procedures for the Administration of Consultant Agreements*, Publication 442 – *Specification for Consultant Agreements*, and ECMS *Standard Agreement Provisions and Attachments*.
- b. Engineering Contracts - PennDOT provides the required Federal-aid contract provisions as prescribed in 23 CFR, Part 172 - *Administration of Engineering and Design Related Contracts* as prescribed in Publication 93 - *Policy and Procedures for the Administration of Consultant Agreements*, Publication 442 – *Specification for Consultant Agreements* , and ECMS *Standard Agreement Provisions and Attachments*.
- c. Construction Contracts - PennDOT provides the required Federal-aid contract provisions as prescribed in 23 CFR, Part 633, Subparts A and B - *Required Contract Provisions* and 23 CFR 635 – *Construction and Maintenance, Subpart A – Contract Procedures*, through ECMS and in Publication 51 – *Bid Package Preparation and Policies Manual*.
- d. Non-competitive Procurement - PennDOT provides the required Federal-aid procurement requirements as prescribed in 23 CFR 635 – *Construction and Maintenance, Subpart B – Force Account Construction* in Publication 51 – *Bid Package Preparation and Policies Manual*.

11. Retention of Records

PennDOT retains records on Federal-aid projects in accordance with 49 CFR Part 18 – *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* (The Common Rule). Involved local governments and other third party contractors are also required to retain records as specified above.

12. State Transportation Improvement Program

In conformance with the requirement of 23 CFR 450 – *Planning Assistance and Standards*, PennDOT will submit to the FHWA and the Federal Transit Administration (FTA) the Statewide Transportation Improvement Program (STIP) of projects which it intends to implement over the succeeding four year period. The STIP will be updated every two years, and will include all approved Metropolitan Planning Organization (MPO) and Rural Planning Organization (RPO) Transportation Improvement Programs (TIP's). Amendments and administrative actions to the STIP and to the metropolitan and rural TIPs can occur at any time during the life of these documents. Only after the STIP or its amendments are approved by the FHWA and/or the FTA can federal funds be obligated for individual transportation projects that are shown in the current Federal fiscal year in the STIP and included in the document.

13. Local Agency Procedures

Administration of Federal-aid projects shall be in accordance with PennDOT's current version of *Procedures for the Administration of Locally Sponsored Projects* (Pub. 39), and any revision thereto.

PennDOT has the oversight responsibility for the design and construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by or under the supervision of a county, city, or other Local Public Agency (i.e. Local Project Sponsor). When work is to be performed under a contract awarded by a Local Public Agency, PennDOT has the responsibility of ensuring that all Federal requirements, including those prescribed in 23 CFR Part 635 – *Final Rule General Material Requirements*, have been met.

Right-of-Way Activities - PennDOT must monitor local public agency right-of-way activities as required by 23 CFR 710.201. - *State Responsibilities* as defined in Pub 98 – *A Guide for Local Public Agency Acquisition of Right-of-Way*.

Consultant Agreements - PennDOT provides the required Federal-aid procurement and administration of Consultant Agreements as prescribed in 23 CFR, Part 172 through PennDOT Publication 93, Publication 442 and *ECMS Standard Agreement Provisions and Attachments*.

Quality Assurance - As part of the IOP process, Central Office in conjunction with FHWA will include a sampling of LPA projects for quality assurance audits.

14. Federal-Aid Financial Procedures

- a. Electronic Data Transfer - Current electronic data transfer techniques will be utilized wherever appropriate. When PennDOT desires to initiate formal authorization of a project, the critical fiscal data will be uploaded directly from PennDOT to the FHWA Fiscal Management Information System (FMIS) Warehouse. Simultaneously, PennDOT will submit a request for authorization to FHWA as set forth below.
- b. Project Authorization and Project Agreement – A signed PennDOT Request for Authorization will be submitted to FHWA for all Federal-aid projects.

PennDOT will electronically verify that the fiscal authorization has occurred by reviewing the FMIS transaction and EDS status logs.

PennDOT will assure that necessary environmental studies and approvals have occurred prior to submitting any request for authorization.

PennDOT agrees and is bound by all the provisions contained in 23 CFR 630.112 - *Agreement Provisions*. The project specific data contained in the Request for Authorization is sufficient for FHWA to place all projects under Project Agreement at the time of authorization; no further FHWA Project Agreement or PennDOT Agreement Estimate is required unless there is a modification to the Agreement. PennDOT's Request for Authorization will serve as a concurrent request to place the project under Project Agreement in FHWA's FMIS system.

When project funding adjustments are required due to bid adjustments or cost overruns/underruns, PennDOT will submit a signed Request for an Amended Project Authorization with supporting information necessary for FHWA to adjust the Project Agreement amount. All funding adjustments must be supported by an estimate maintained in PennDOT's files for all phases being requested.

Inactive Federal-aid Project Review: The FHWA Division Office shall work with the PennDOT to conduct and document the results of quarterly reviews of inactive projects in accordance with 23 CFR 630 - *Agreement Provisions, Subpart A, Project Authorizations and Agreements*. Projects that are not properly documented may be subject to de-obligation upon coordination with PennDOT.

- c. Financial Management –. The FIRE program includes Funds Management, Federal-aid billing, Major projects, Project authorization, Modification and Voucher, Locally Administered Projects. The FIRE program is a consistent process for identification and prioritization of risk events, and identification of strategies for risk mitigation. At least one Financial Management process review is conducted through the Independent Oversight Program. Findings are tracked. Any corrective action are communicated to PennDOT, and monitored by FHWA until completed.

- d. Innovative Finance –

State Infrastructure Bank (SIB): The State Infrastructure Bank (SIB) was authorized through the National Highway System Act of 1995 and was established in

Pennsylvania in 1997. SIBs are codified in United States legal code Title 23 Highways, Chapter 6 Infrastructure Finance, Section 610.1 Loans generated through the SIB Program Loans from the original principal are subject to federal procedures and periodic review per the Cooperative Agreement signed June 5, 1998. Use of state funds for the SIB are not subject to federal procedures and periodic review.

Toll Credits: FHWA will approve the use of toll credits. To receive this approval, PennDOT must provide (1) a certification by the Secretary of Transportation or a designated deputy that the toll authority project outlays meet FHWA soft match requirements as specified in FHWA guidance and 23 CFR, and (2) a certification that the required Maintenance of Effort (MOE) has been met the period of expenditure. FHWA may periodically review a sample of toll authority expenditures (either on-site or through a records review) to assure the projects meet 23 CFR eligibility requirements.

15. Planning Activities

Title 23 USC - *Highways* specifies that the planning functions cannot be delegated to the State Department of Transportation. FHWA retains authority for all Federal responsibilities for planning and programming specified in 23 USC 134 - *Metropolitan Transportation Planning* and 135 – *Statewide Transportation Planning*. In addition, this also applies to the Federal air quality conformity determinations required by the Clean Air Act. However, for all delegated programs or projects, PennDOT shall oversee and ensure compliance with the metropolitan and statewide planning requirements, including but not limited to: project eligibility for the proposed funding source, fiscal constraint, air quality conformity, public involvement, STIP, and long range transportation plans requirements.

APPENDIX B – PERFORMANCE INDICATORS/MEASURES

Performance indicators will be established for the program areas within twelve months of the execution of this agreement.

APPENDIX C - DEFINITIONS FOR RISK-BASED OVERSIGHT PARAMETERS

Major or unusual structures - A major structure is defined as a bridge estimated to cost \$15 million or more. This criterion also applies to individual units of separated dual bridges. An unusual structure is one with non-standard or unusual foundation issues, new or complex designs involving irregular structures or operational features, or bridges for which the design standards or criteria may not be applicable. Use of new products and experimental or demonstration projects are also considered as unusual structures.

Other non-standard structures - These structures include stayed girder bridges, segmental bridges, any structure having a clear unsupported length in excess of 150 000 mm {500 ft.}, steel structures with skew < 70°, curved girders, or fracture critical structures.

Impact on identified freight corridors and facilities – Impact on freight corridors include roadways, rail lines, and waterways that are essential to efficient movement of goods to, from, and within a particular region of the state. The regional corridors and facilities are included in the *Pennsylvania Mobility Plan, Pennsylvania State of the System Report*.

Extremely high ADT – Daily traffic volume, which due to its amount and composition of traffic, results in level of service E or F for a period greater than three consecutive hours per day or ADT exceeding 150,000 vehicles per day.

Extremely high congestion and delay – Existing roadway with Level of Service (LOS) E or F for a period greater than three consecutive hours per day.

Bi-State projects– Bi-State projects involve the Commonwealth of Pennsylvania as well as one of its adjacent neighboring states in the identification of cross-boundary issues and strategies as they relate to the enhancement of each state’s transportation network.

Project requiring an EIS or complex EA – An EA is prepared to evaluate if the short and long-term effects of a proposed project or alternative will significantly affect the quality of the locations environment. It also includes identifying ways to minimize, mitigate, or eliminate these effects and/or compensate for their impact. If the impacts are determined to be insignificant, a Finding of No Significant Impact (FONSI) is prepared and is made a part of the decision. If the impacts are determined to be significant, the proposed action may be rejected, modified, or require the preparation of an Environmental Impact Statement (EIS).

The EIS includes all projects resulting in significant adverse impacts. EIS projects tend to be complex with significant impacts to a variety of environmental resources. Potential projects would include new limited-access highway; highways constructed on new alignment; construction or extension of fixed guideway systems expected to cause major shifts in travel and land use patterns; or construction involving extensive demolition, displacement of many individuals or businesses, or substantial disruption to local traffic patterns. An EIS would be required for projects that significantly affect properties protected under Section 4(f); are opposed on environmental grounds by a federal, state, or local agency, or by a considerable number of affected persons; significantly affect sensitive natural, cultural, or scenic resources; significantly disrupt established communities; significantly raise noise levels in sensitive areas such as schools, hospitals, or residential areas; significantly decrease air quality or violate a

State Implementation Plan (SIP) for Air Quality; significantly affect water quality or a sole source aquifer or a public water supply system; or significantly increase energy consumption.

Complex Traffic Control significant project – This type project is one that, alone or in combination with other concurrent projects nearby is anticipated to cause sustained work zone impacts (as defined in §630.1004) that are greater than what is considered tolerable based on State policy and/or engineering judgment.

Complex utility relocations and ROW - A complex network of public/private utilities, whose relocation threatens mobility, increases safety risks, adversely affects nearby residents or businesses, and adds project delay and expense. Relocation results in the need to acquire right-of-way from more than 20 property owners or at a cost greater than \$1,000,000.

New alignment - The purposeful and justifiable location of a travelway along a previously undeveloped corridor greater than ½ mile in length designed to connect logical termini while avoiding as many vital community and natural resources as possible.

Innovative contracting methods - Contracting methods that provide a means of motivating contractors to provide quality transportation facilities while minimizing travel delays and maintaining a competitive bidding process.

Construction duration exceeding two construction seasons – Construction of a project where its duration exceeds that part of two calendar years when construction is ongoing.

New or innovative construction methods - The procedures and techniques utilized during construction designed to deploy innovation aimed at shortening project delivery, enhancing the construction safety of the roadway, and protecting the environment.

Projects with earmarks – Projects with funds provided by the Congress where the purported congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient, or otherwise curtails the ability of the executive branch to manage its statutory and constitutional responsibilities pertaining to the funds allocation process.

Locally administered project - For the purpose of the Agreement, a locally administered project is a Federal-aid project in which an entity other than PennDOT is a sub-recipient, and this entity is administering the particular phase being authorized, i.e., PE, ROW, or Construction. These would include projects where the non-traditional entity will either perform the work itself or enter into a contract for services or construction.

APPENDIX D – PROJECT ACTION MATRIX

Oversight Agreement Project Action Matrix				
ACTIVITY	Basis of Delegation	NHS Projects (FO)	NHS Projects (PO)	Non-NHS (PO)
Design, Right-of-Way, Utility, and Construction Authorizations	-----	FHWA	FHWA	FHWA
Design Exceptions	PennDOT (Pub. 10)	FHWA ⁽¹⁶⁾	PennDOT ^(3, 16)	PennDOT
Engineering and Construction Engineering Agreements (Original and Supplements), Open End Consultant Agreements (Original and Supplements) and Work Order Approvals	PennDOT (Pub. 93) 23 CFR 172	PennDOT ^{(1)(1a)}	PennDOT ^{(1)(1a)}	PennDOT ^{(1)(1a)}
Approvals and Authorization of Protective Buying or Hardship Acquisition	----	FHWA	FHWA	FHWA
Approval of R/W Certificate	PennDOT (R/W Manual)	PennDOT ⁽²⁾	PennDOT ⁽²⁾	PennDOT ⁽²⁾
Authorization of Last Resort Housing	PennDOT (Pub. 378)	PennDOT	PennDOT	PennDOT
Revisions to Access Control or Revised Access Points or New Access Points (Interchanges)	PennDOT (Pub. 10 & Pub. 378)	PennDOT ⁽³⁾	PennDOT ⁽³⁾	PennDOT ⁽³⁾
Donation Credits for Funds, Services, and Materials & Donation Credits for Right-of-Way	23 USC Section 323 49 CFR, Section 24	FHWA	FHWA	FHWA
PS&E Approvals and Addenda	Oversight Agreement	FHWA	PennDOT	PennDOT
Concurrence in Award	Oversight Agreement	FHWA	PennDOT	PennDOT
Construction Inspection	Oversight Agreement	FHWA	PennDOT	PennDOT
Approve Work Orders and Time Extensions	Oversight Agreement	FHWA ⁽⁵⁾	PennDOT	PennDOT
Final Inspection and/or Final Acceptance	PennDOT (Pub. 8)	FHWA	PennDOT	PennDOT
Construction Claim Reviews/Settlements	Oversight Agreement	FHWA	FHWA ⁽⁶⁾	PennDOT

ACTIVITY	Basis of Delegation	NHS Projects (FO)	NHS Projects (PO)	Non-NHS (PO)
Cancellation, Severance, Termination, or Default of Construction Contracts	Oversight Agreement	FHWA	PennDOT	PennDOT
Warranty Specifications	---	FHWA	FHWA	PennDOT
Structure Reviews & Approvals ⁽¹¹⁾	PennDOT (Pub. 15M)	PennDOT ⁽⁸⁾	PennDOT	PennDOT
ITS/Operations ⁽¹²⁾	Oversight Agreement	FHWA	PennDOT	PennDOT
Signing/Traffic Signal Approvals	PennDOT (Pubs. 111, 148, 149)	PennDOT ⁽¹³⁾⁽¹⁴⁾	PennDOT ⁽¹³⁾⁽¹⁴⁾	PennDOT ⁽¹³⁾⁽¹⁴⁾
Pavement Design	PennDOT (Pub. 242)	FHWA	PennDOT	PennDOT
NEPA Approvals	PennDOT (Pub. 294)	FHWA ⁽¹⁰⁾	FHWA ⁽¹⁰⁾	FHWA ⁽¹⁰⁾
Proprietary/Patented Items	Oversight Agreement	FHWA	PennDOT	PennDOT
Agency Force Account Method of Construction (includes work accomplished by utility and railroad company forces)	Oversight Agreement	FHWA ⁽¹⁷⁾	PennDOT	PennDOT
Construction Contracting by a method other than competitive bidding (negotiated contract method)	Not Applicable (23CFR)	FHWA	FHWA	FHWA
Work Zone Alternatives Analysis	PennDOT (Pub. 46)	FHWA	PennDOT	PennDOT
Value Engineering	PennDOT (Pub. 10)	PennDOT ⁽¹⁸⁾	PennDOT ⁽¹⁹⁾	PennDOT ⁽¹⁹⁾
Road Users Liquidated Damages	PennDOT (Pub. 51)	PennDOT	PennDOT	PennDOT

ACTIVITY		
	Basis of Delegation	Oversight
ROW Joint Use Lease Approval	PennDOT (R/W Manual)	PennDOT ⁽³⁾
Limited Access Highway Utility Occupancy Permit	PennDOT (DM-5)	PennDOT ⁽⁴⁾
Limited Access Highway Occupancy Permit	PennDOT (Pub. 282)	PennDOT ⁽¹⁵⁾
Disposal of Excess ROW from Federal-aid ROW or Construction Projects	PennDOT (R/W Manual & PA for Disposal of Real Property and Lease Agreements/Renewals)	PennDOT ⁽³⁾
New/Experimental Products- Product Evaluations/Approvals-General	Annual Work Program	FHWA ⁽⁷⁾
Federal Lands Highway Program Approvals	SAFETEA-LU, Section 6004	PennDOT ⁽⁹⁾
Emergency Relief	FHWA ER Manual	FHWA
Highway/Railroad Crossings	Oversight Agreement	PennDOT
Funded Agency Positions	SAFETEA-LU	PennDOT
Research	Annual Work Program	FHWA
Recreational Trails	Programmatic Agreement	PennDOT
Bridge Preservation	Programmatic Agreement	PennDOT
Cultural Resources	Programmatic Agreement	PennDOT

- 1) The justification for use of consultant services in management roles must be approved by FHWA when Federal-aid highway funds participate in the contract. Agreements and supplements do not require FHWA approval.
- 1a) Use of noncompetitive negotiation method of procurement (sole source, emergency, etc.) requires FHWA approval when federal funds are involved.
- 2) FHWA approves all Right-of-Way Conditional Certifications.
- 3) FHWA approval is required for actions affecting the Interstate System.

- 4) FHWA's prior concurrence is required when:
 - a) The proposed installation is not in accordance with 23 CFR or PennDOT Design Manual, Part 5.
 - b) Longitudinal installation of private lines are proposed.
- 5) Per Project Office Manual.
- 6) Until written procedures for Construction Claim Reviews/Settlements are approved by FHWA, approval authority for PO NHS is with FHWA.
- 7) FHWA approval of project specific specifications is also required.
- 8) Consultation with FHWA per DM-4 Approval Matrix is required.
- 9) NEPA & 4(f) approvals retained by FHWA.
- 10) PennDOT approval of Categorical Exclusion Evaluations (CEE's) is as specified in Pub. 294.
- 11) Exceptions to HBP program eligibility criteria must be approved by FHWA.
- 12) Projects must conform to systems engineering requirements in 23 CFR Part 940 and 49 CFR. Non-facility specific ITS/operations projects require a joint determination, by FHWA and PennDOT of oversight responsibilities.
- 13) Projects must conform to MUTCD or FHWA approval is required.
- 14) FHWA approves the initial project/funding request (4232- Federal Authorization); Systems Engineering/Concept of Operations document; Proprietary Item request; Federal-aid safety funded traffic signal projects; and federally funded Adaptive Traffic Signal projects.
- 15) FHWA approval required for Permanent HOPs involving Interstates.
- 16) Refer to Appendix A,2.b for designs that meet AASHTO, but not DM-2.
- 17) PennDOT approves work accomplished by utility and railroad company forces on FO projects.
- 18) FHWA invited to participate in VE study and FHWA sent a copy of VE report.
- 19) FHWA receives copy of VE final report.

APPENDIX E – BUSINESS SERVICE STANDARDS

FHWA and PennDOT will jointly develop
BSS within twelve months of the
execution of this Agreement.