

KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS
AGENDA STAFF REPORT

AGENDA DATE: August 15th, 2017

ACTION REQUESTED: Authorize the Chair's signature on the Interagency Agreement with FHWA authorizing the reimbursement of funds to Public Works for the Teanaway Hydraulic Improvement Project

BACKGROUND: In 2014, Public Works submitted an application to the Washington Federal Lands Access Program for Teanaway Road Hydraulics Improvements.

In 2016, Public Works executed the final agreement documents from the Federal Highway Administration (FHWA) department awarding \$2,432,074 of grant funds for said project.

Public Works successfully negotiated a change of scope with FHWA in August of 2016 to change the Hydraulic Improvement locations to address the top two identified maintenance and flood locations. Additionally, Public Works reached out to the Washington State Department of Fish and Wildlife to ensure the proposed project locations also addressed top priorities in the region for fish passage.

Following the realignment of the engineering division and the addition of survey capabilities Public Works requested in the spring of 2017 that the delivery method for the design and construction be altered. FHWA agreed to relinquish control of the project delivery and allow these efforts to be conducted in house by Public Works.

As a result, the new project is scoped to have a total cost of \$2,440,221 with the County responsible for \$329,430 in match funds. Public Works has recently finalized the Memorandum of Agreement with FHWA and received the Interagency Agreement (reimbursable agreement) from FHWA for signature. This agreement has been reviewed and approved by the County Legal team.

Once the Agreement has been executed Public Works will seek to execute task orders with the current on call engineering support staff to assist in the environmental permitting, hydraulic modeling and structural design needs for the project. Extensive public outreach and coordination

will ensue throughout the design and permitting of this project.

INTERACTION: Public Works

RECOMMENDATION: Move to authorize Chair Signature on the Interagency Agreement with FHWA authorizing the reimbursement of funds to Public Works for the Teanaway Hydraulic Improvement Project.

HANDLING: Return two (2) originals to Public Works to obtain FHWA Signature

ATTACHMENTS: Memorandum of Agreement, Interagency Agreement

LEAD STAFF: Lucas Huck, County Engineer

**BOARD OF COUNTY COMMISSIONERS
COUNTY OF KITTITAS
STATE OF WASHINGTON**

RESOLUTION NO. 2017 - _____

**TO AUTHORIZE THE CHAIR'S SIGNATURE ON THE INTERAGENCY
AGREEMENT WITH THE FEDERAL HIGHWAY ADMINISTRATION
WESTERN FEDERAL LANDS DIVISION FOR THE FUNDING OF THE
TEANAWAY ROAD HYDRAULIC IMPROVEMENTS PROJECT**

WHEREAS: Resolution number 2014 – 114 approved the application for funding from the Washington Federal Lands Access Program for the Teanaway Road Hydraulics Improvements; and

WHEREAS: Resolution number 2016 – 025 accepted Federal Highway Administration (FHWA) Federal Lands Access Program funding for the Teanaway Road Hydraulic Improvements in the amount of \$2,432,074; and

WHEREAS: Public Works successfully negotiated a change in the scope and delivery of the project with FHWA to allow the design and construction administration to be performed by Public Works and to change the project improvement locations in a manner that better aligns with County Road priorities and fish passage priorities as identified by the Washington State Department of Fish and Wildlife; and

WHEREAS: Public Works has executed the Memorandum of Agreement with FHWA for said project with a new project cost of \$2,440,221 with the County responsible for \$329,430 in match funds; and

WHEREAS: Public Works and the Prosecuting Attorney's office have reviewed the Interagency Agreement provided by FHWA for the reimbursement of funds for the Teanaway Road Hydraulic Improvements project; and

NOW, THEREFORE BE IT RESOLVED that the Board of County Commissioners, in the best interest of the public, does hereby authorize the Chair's signature on the Interagency Agreement for the funding of the Teanaway Road Hydraulic Improvements project.

DATED on this 15th day of August, 2017, at Ellensburg, Washington.

BOARD OF COUNTY
COMMISSIONERS
KITITAS COUNTY,
WASHINGTON

Paul Jewell, Chairman

Attest:

Clerk of the Board- Julie Kjorsvik

Laura Osiadacz, Vice-Chairman

Deputy Clerk of the Board- Mandy Buchholz

Obie O'Brien, Commissioner

**Federal Lands Access Program
Project Memorandum of Agreement
Amendment #1**

Project / Facility Name: WA Kittitas (1) Teanaway Road Hydraulics Improvements

Project Route: Teanaway Road

State: Washington

County: Kittitas

Owner of Federal Lands to which the Project Provides Access: Okanogan-Wenatchee National Forest Service (FS)

Entity with Title or Maintenance Responsibility for Facility: Kittitas County (County)

Type of Work: The project is to include:

- Preliminary Engineering including environmental studies to support an environmental decision
- Right of Way
- Construction Engineering / Contract Administration

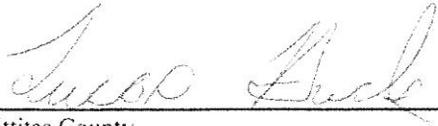
This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process and construction.

This agreement replaces Federal Lands Access Program Match Agreement dated: 03/10/2016 between FHWA-WFL and County.

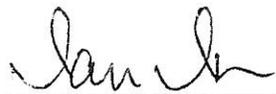
Parties to this Agreement: Kittitas County (County) and Federal Highway Administration, the Western Federal Lands Highway Division (FHWA-WFL).

The Program Decision Committee approved this project on 10/07/2016.

AGREED:



Kittitas County 7/24/17
Date



Western Federal Lands Highway Division, FHWA-WFL 7.26.2017
Date

A. PURPOSE OF THIS AGREEMENT:

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

If Federal Lands Access Program (FLAP) funds are used for the development or construction of this project, the County agrees to provide a matching share equal to 13.5% of the total cost of the project, as detailed more fully in Section J below. When agency other than FHWA-WFL will be expending FLAP funds, the parties agree to execute a separate obligating document. No reimbursement will be made for expenses incurred prior to execution of the obligating document.

B. AUTHORITY:

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

C. JURISDICTION AND MAINTENANCE COMMITMENT:

County Maintaining or Owning Agency has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:

County Maintaining or Owning Agency has coordinated project development with the Federal Land Management Agency. The Federal Land Management Agency support of the project is documented in the Project Proposal by endorsing the proposal.

Each party to this agreement who has a primary role in NEPA, design or construction should coordinate their activities with the Federal Land Management Agency.

E. PROJECT BACKGROUND / SCOPE:

The proposed project is along Teanaway Road at approximate Milepost (MP) 6.90 and at approximate MP 8.64 with approximate coordinates 47.25480, - 120.8754 and 47.27587, - 120.8821 respectively.

Objectives of the project

- To improve storm water drainage, fish passage, and clean water passage
- To reduce pavement damage during high water and roadway maintenance cost
- To improve safety through the section by providing a facility that safely accommodates vehicular traffic and bike/pedestrian for locals and visitors
- To reduce possible roadway closure during high water runoff and overtopping

SCOPE

- Remove existing undersized culverts and replace with the following (both locations are fish bearing stream and having roadside stability issues. Install bridge rail or guardrail):
- MP 6.9, Story Creek – Remove 9’x 3’ concrete box culvert; Install 19’W x10’Hx60’L concrete box culvert or appropriate structure as identified throughout the design
- MP 8.64, Lick Creek (MP 1.36 North Fork Teanaway Road) – Remove 36” CMP and 54” RCP; Rerouting stream channel dependent on hydraulic analysis - Creek is not flowing through the natural downstream channel which created flooding; Construct a single span 80’ long bridge or appropriate structure as identified throughout the design;
- Reconstruct roadway, repave, and restripe
- Install guardrail

F. PROJECT BUDGET:

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by County will fund this project as detailed in Section K. Exceeding the budget of one phase does not require this agreement to be amended if the overall budget is not exceeded.

Item	Total	Comments
Preliminary Engineering, (WFLHD)	\$40,000	PE previously completed by WFLHD
Preliminary Engineering including scoping and NEPA (PE)	\$434,835	
Stewardship and oversight	\$ 20,000	WFLHD S&O
Construction (CN)	\$1,514,710	
Construction Engineering (CE)	\$295,373	
Construction Modifications (CM) Contingency	\$135,303	Reserved for construction phase.
TOTAL	\$2,440,221	

G. ROLES AND RESPONSIBILITIES:

Kittitas County

- Will be responsible for project activities identified in Section P
- Will appoint a representative who will be the primary contact for FHWA-WFL's Project Manager
- Will provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion
- Will be responsible for the acquisition of any rights-of-way and / or easements necessary to complete the project
- Will be responsible for the costs associated with the utility relocation. Any applicable reimbursement to the utility company will be governed by State law and regulation, or Occupancy Permits in accordance with 23 CFR PART 645.103
- Will administer the project according to the WSDOT Local Agency Guideline Manual
- Will coordinate with WSDOT Local Programs Engineer regarding NEPA documentation and NEPA decision and provide documentation to FHWA-WFL
- Will provide quarterly project updates to FHWA-WFL
- Will provide written certification of the following: completion of NEPA, completion of ROW, the PS&E package includes appropriate elements and commitments, and the construction contract includes the appropriate contract clauses following guidelines in 2 cfr 200 appendix II-Contract Provisions for Non-Federal Entity contracts under Federal Awards
- Upon completion of construction, provide copies of final inspection demonstrating the project has been constructed in substantial conformity with the approved plans and specifications. COUNTY will provide written confirmation of its final acceptance of the constructed project

FHWA-WFL

- Will be responsible for stewardship and oversight activities as noted in Section P.
- FHWA-WFL will be responsible for FHWA decisions that may be not be delegated. These decisions are identified in Section P.
- Will review certification letter and if appropriate provide approval to bid and construct project.

H. ROLES AND RESPONSIBILITIES – MILESTONE SCHEDULE:

Responsible Lead	Product/Service	Schedule Start/Finish
County	30% Design	Sept 2017/ March 2018
County	NEPA documentation	Sept 2017/ March 2018
FHWA	NEPA Decision	Sept 2018/ Oct 2018
County	95% PS&E	Sept 2018/ Dec 2018
FHWA-WFL	Review 95% PS&E package and other documentation and return certification letter	30 days after FHWA-WFL receives 95% PS&E package
County	Advertise/Award	Jan 2019/ March 2019
County	Construction	May 2019/ Oct 2019

I. PROPOSED DESIGN STANDARDS:

Preferred design alternatives will be determined through the NEPA process.

Criteria		Comments
Standard	Roadway Design Manual AASHTO – A Policy on Geometric Design	
Functional Classification	Minor Collector	
Surface Type	Asphalt Concrete Pavement	
Design Volume	3500 ADT	

Design exceptions to standards, will be documented and sent to the FHWA-WFL

J. FUNDING:

The project is funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds provided by the County.

Funding Source	Amount	%	Comments
Federal Lands Access Funds	\$2,110,791	86.5%	
Local Matching Share (County)	\$329,430	13.5%	
Total Projected Costs	\$2,440,221		

K. MATCHING SHARE REQUIREMENTS:

The purpose of this section is to document the intent of County to meet its match requirement for the subject project as authorized under section 23 USC 201(b)(7)(B).

All FLAP expenditures associated with this project will need to be matched by a Non- Federal source, by other Federal funds other than those made available under Titles 23 and 49 of the United States Code, or by funds made available under 23 U.S.C. 202 and 203. The matching requirement under the FAST Act will be met by County.

County and other agencies have committed to the project. The forms of match shall be those consistent with the 'Federal-Aid Guidance Non-Federal Matching Requirements' and as approved by FHWA-WFL. In the state of Washington, 13.7 % of the total project cost.

This project is authorized to use a Tapered Match. Under this approach, the non-Federal match is imposed over the entire project rather than individual progress payments. Timing of all fund transfers are specified in the Funding Plan. Tapered Match is authorized because it will result in an earlier completion date.

Estimated costs and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of project work. Matching cash funds in FHWA-WFL receipt may need to be supplemented, or returned, once actual expenditures are determined. As noted under Modifications, if costs increase over the amount within this agreement. FHWA-WFL will consult with the agency(ies) providing Match before granting approval.

Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts shown which will reduce the federal share by the same amount. The Funding Plan is as follows:

Agency	Phase	Form	Due	Value	Comments
County	PE	<i>In-Kind</i>	08/15/2017	\$68,018	Value of In-kind work performed by County prior to 6/09/17 TBD
County	CN	<i>In-Kind</i>	01/15/2018	\$261,412	

L. PROJECT TEAM MEMBERS – POINT OF CONTACT:

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

NAME / TITLE	ORGANIZATION	TELEPHONE NO. / E-MAIL
Mark Cook, Director of Public Works	Kittitas County	509-962-7692/ mark.cook@co.kittitas.wa.us
Lucas Huck, County Engineer	Kittitas County	509-962-7690/ lucas.huck@co.kittitas.wa.us
Neal Christensen, Program Manager	Federal Highway Administration-Western Federal lands Highway Division	360-619-7780/ Neal.Christensen@dot.gov
Peter Field, Planning and Programming Branch Chief	Federal Highway Administration-Western Federal lands Highway Division	360-619-7619/ Peter.Field@dot.gov

M. CHANGES / AMENDMENTS / ADDENDUMS:

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

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

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

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

N. ISSUE RESOLUTION PROCEDURES MATRIX:

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

County	FHWA-WFL	Time
Lucas Huck, County Engineer	Neal Christensen, Program Manager	15 Days
Mark Cook, Director of Public Works	Peter Field, Planning and Programing Branch Chief	15 Days

O. TERMINATION:

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

P. PROJECT and STEWARDSHIP & OVERSIGHT ACTIVITIES:

Phase	Activity	COUNTY	USFS	FHWA-WFL
Planning & Programming Environment	Project agreement with scope, schedule, & budget Evidence of permits	Signed Project Agreement Provide	Signed Project Agreement	Signed Project Agreement File copy
Environment	Attend public meetings	Notify	Attend as determined by USFS	Attend as determined by FHWA-WFL File copy
Environment	FHWA NEPA decision	Provide following WSDOT LAG Manual		
Design	95% PS&E including contract clauses	Provide	File copy	Review
Design	Design exceptions	Draft		File copy
Design	ROW certifications	Provide		Review
Design	Utility/RR Agreements	Provide		Review
Acquisitions	Copy of award package	Provide	File copy	File copy
Acquisitions	Review contract modifications	Review		Review as determined by FHWA-WFL
Construction	Attend Pre-Construction meeting	Attend	Attend as determined by FLMA	Attend as determined by FHWA-WFL
Construction	Final Project Inspections	Attend	Attend as determined by FLMA	Attend as determined by FHWA-WFL
Construction	Copy of As-builts	Provide	File copy	File copy
Construction	Copy of final voucher	Provide		File copy
Construction	Contract Dispute (Claim)	Notify	Provide assistance as determined by FLMA	Provide assistance as determined by FHWA-WFL

INTERAGENCY AGREEMENT		1. IAA NO. DTFH7017E30011		PAGE 1 OF 2	
2. ORDER NO.		3. REQUISITION NO. HFLWRA1700000098PR		4. SOLICITATION NO.	
5. EFFECTIVE DATE See Block 26c		6. AWARD DATE		7. PERIOD OF PERFORMANCE	
8. SERVICING AGENCY Kittitas County, WA ALC: DUNS: 010202547 +4: 411 North Ruby, Suite 1 Ellensburg WA 98926 POC Scott Casey TELEPHONE NO. (509) 962-7523			9. DELIVER TO Federal Highway Administration Western Federal Lands Highway Div. 610 East Fifth Street Vancouver WA 98661-3801		
10. REQUESTING AGENCY Western Federal Lands Highway Div ALC: 69050001 DUNS: 139768597 +4: Federal Highway Administration Western Federal Lands Highway Divis 610 East Fifth Street Vancouver WA 98661-3801 POC Neal Christensen, P.E., Program Mgr TELEPHONE NO. 360-619-7780			11. INVOICE OFFICE Federal Highway Administration Western Federal Lands A/P Branch, AMZ-150 PO Box 268865 Oklahoma City OK 73125		
12. ISSUING OFFICE Federal Highway Administration Western Federal Lands Highway Div. 610 East Fifth Street Vancouver WA 98661-3801			13. LEGISLATIVE AUTHORITY FEDERAL LANDS ACCESS PROGRAM (23. U.S.C. 204)		
			14. PROJECT ID SEE BLOCK 18		
			15. PROJECT TITLE SEE BLOCK 18		
16. ACCOUNTING DATA See Schedule					
17. ITEM NO.	18. SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT
00001	WA KITTITAS (1) Teanaway Road Hydraulics Improvements Period of Performance: Effective Date (26c) to December 31, 2020 RA Funding Accounting Info: 1517532015011 531.PE.K200.53 1753000000 25304 Funded: \$366,817.00 Continued ...				366,817.00
23. PAYMENT PROVISIONS			24. TOTAL AMOUNT \$1,915,488.00		
25a. SIGNATURE OF GOVERNMENT REPRESENTATIVE (SERVICING)			26a. SIGNATURE OF GOVERNMENT REPRESENTATIVE (REQUESTING)		
25b. NAME AND TITLE		25c. DATE	26b. CONTRACTING OFFICER Angy Liljedahl		26c. DATE

IAA NO
DTFH7017E30011

ORDER NO

PAGE 2 OF 2

00002 RA Funding 1,253,298.00

Accounting Info:
1517532015011 531.CN.K200.53 1753000000 25304
Funded: \$1,253,298.00

00003 RA Funding 295,373.00

Accounting Info:
1517532015011 531.CE.K200.53 1753000000 25304
Funded: \$295,373.00

The obligated amount of award: \$1,915,488.00. The
total for this award is shown in box 24.

Statement of Work for Reimbursable Agreement

WA Kittitas (1), Teanaway Road Hydraulics Improvements

I. INTRODUCTION (project work summary and location)

The proposed project is along Teanaway Road at approximate Milepost (MP) 6.90 and at approximate MP 8.64 with approximate coordinates 47.25480, -120.8754 and 47.27587, -120.8821 respectively.

Objectives of the project

- To improve storm water drainage, fish passage, and clean water passage
- To reduce pavement damage during high water and roadway maintenance cost
- To improve safety through the section by providing a facility that safely accommodates vehicular traffic and bike/pedestrian for locals and visitors
- To reduce possible roadway closure during high water runoff and overtopping

SCOPE

- Remove existing undersized culverts and replace with the following (both locations are fish bearing stream and having roadside stability issues):
- MP 6.9, Story Creek – Remove 9'x 3' concrete box culvert. Install 19'W x 10'H x 60'L concrete box culvert or appropriate structure as identified throughout the design;
- MP 8.64, Lick Creek (MP 1.36 North Fork Teanaway Road) – Remove 36" Corrugate Metal Pipe (CMP) and 54" Reinforced Concrete Pipe (RCP), and re-route stream channel dependent on hydraulic analysis - Creek is not flowing through the natural downstream channel, which created flooding. Construct a single span 80' long bridge or appropriate structure as identified throughout the design;
- Reconstruct roadway, repave, and restripe;
- Install guardrail

If Right-of-Way and/or easement acquisition is necessary to complete the project, Kittitas County will be responsible for the acquisition. Federal Highway Administration-Western Federal Lands (FHWA-WFL) will reimburse Kittitas County their portion of the approved and applicable acquisitions costs.

If utility relocation is necessary to complete the project, Kittitas County will be responsible for the relocation. Any applicable reimbursement to the utility company will be governed by State law and regulation, or Occupancy Permits in accordance with 23 CFR PART 645.103. FHWA -WFL will reimburse Kittitas County their portion of the approved and applicable relocation costs.

II. STATEMENT OF WORK

This agreement provides for funding of a progression of project activities. Initially only preliminary design is eligible for reimbursement. Final design, utility relocation, right of way acquisition will not be eligible for reimbursement until an environmental decision document has been completed and approved by FHWA-WFL. If FHWA-WFL's environmental decision document indicates significant impacts or identifies the preferred alternative to be a "no-build" alternative, then this reimbursable agreement will be terminated with no eligibility for funding post environmental decision activities. Construction will not be eligible for reimbursement until the Final PS&E package is approved.

FHWA-WFL may amend or terminate this agreement to adjust to project development, environmental, or construction needs.

A. Preliminary Design

1. Design

1.1. Perform a site survey as necessary to support the design and environmental compliance needs of the project.

1.2. Prepare and submit a preliminary plan package to FHWA-WFL. The preliminary plan package shall reflect the work as described in the Project Description above. Any deviations from the described work must be approved in writing by FHWA-WFL. Include a preliminary cost estimate with the preliminary plan package.

2. Environmental Compliance

Note: Federally funded projects must fully comply with all requirements of the National Environmental Policy Act (NEPA). An appropriate range of reasonable alternatives will be evaluated for this project based on its scope and extent. Amendments to the scope of this may be required upon completion of the environmental clearance document and decision.

2.1. Coordinate environmental compliance efforts with WSDOT local programs regional staff and FHWA-WFL environmental staff. Utilizing the information provided through work performed under this reimbursable agreement, Kittitas County will follow WSDOT Local Agency Guideline (LAG) environmental process and coordinate with WSDOT and FHWA-WFL on the environmental decision document.

2.2. Support FHWA-WFL in environmental compliance efforts, coordinate, develop and complete tasks including resource surveys, studies and assessments for documentation

2.2.1. National Historic Preservation Act (NHPA)

- 2.2.1.a. Coordinate with WSDOT local programs regional staff and FHWA-WFL environmental staff regarding Section 106 of the National Historic Preservation Act (NHPA) compliance and tribal consultation. FHWA-WFL or WSDOT local program staff acting on behalf of FHWA-WFL will complete consultation with the SHPO under Section 106 of the NHPA.
- 2.2.1.b. Kittitas County, through a qualified archeologist, shall perform resource surveys of the area of potential effect (APE) for the project area in compliance with Department of Interior guidelines. If the APE includes land owned or controlled by the federal government, then obtain a permit from the federal land management agency to conduct resource surveys in accordance with the Archaeological Resources Protection Act. Prepare and submit to FHWA-WFL a report documenting Section 106 findings and recommendations that complies with applicable State Historic Preservation Office (SHPO) standards for use in Section 106 consultation.
- 2.2.1.c. FHWA-WFL or WSDOT local program staff acting on behalf of FHWA-WFL will complete consultation with the SHPO under Section 106 of the NHPA.

2.2.2. Wetlands

- 2.2.2.a. Kittitas County, through a qualified wetland biologist, will determine the presence or absence of wetlands or other waters of the U.S. within the project area. Wetlands believed to be under the jurisdiction of the U.S. Army Corps of Engineers (USACE) should be identified. This may include but is not limited to referencing the National Wetland Inventory or local wetland inventory, NRCS soil survey maps, and field observations.
- 2.2.2.b. If no potential wetlands are observed within the project area, these findings can be documented in a short report submitted to FHWA-WFL.
- 2.2.2.c. If potential wetlands exist in the project area, delineate and document wetlands in accordance with the USACE 1987 Wetland Delineation Manual and submit the information to FHWA-WFL.

2.2.3. Threatened & Endangered (T&E) Species and Essential Fish Habitat (EFH)

- 2.2.3.a. Kittitas County will obtain updated T&E species lists for the project area from the US Fish and Wildlife Service (USFWS) and, if appropriate, NOAA Fisheries Service. Kittitas County through a qualified biologist, will determine the need to perform threatened and endangered species and essential fish habitat studies within the project area.

2.2.3.b If the biologist has determined that there are no T&E species or EFH within the project area or the proposed project would have no effect to any T&E species or no adverse effect on EFH within the project area, the biologists/botanist shall prepare and submit to FHWA-WFL a written finding documenting the finding and the basis for their conclusion.

2.2.3.c If the biologist has determined that there are T&E species within the project area and the project may affect these species, prepare and submit to FHWA-WFL a Biological Assessment (BA) following USFWS and/or NOAA guidelines.

2.2.3.d If the project may affect threatened or endangered species, FHWA-WFL or WSDOT local program staff acting on behalf of FHWA-WFL will perform Section 7 consultation as appropriate with USFWS and NOAA Fisheries Service. If appropriate, include consultation for EFH.

2.2.4. Other Environmental Issues

2.2.4.a Kittitas County will identify and address other environmental issues such as consistency with the Coastal Zone Management Act, floodplains, and hazardous materials

2.2.4.b Submit other environmental surveys, studies, and assessments as needed to support environmental compliance to FHWA-WFL.

B. Final Design

1. Design

1.1. Do not initiate final design activities until FHWA-WFL is in possession of an independent environmental decision document.

1.2. If the NEPA decision is to construct a project, prepare and submit final plans, specifications, and construction estimate package. The final design package shall reflect the work as described in the environmental decision document. Any deviations from the described work must be approved in writing by FHWA-WFL.

2. ROW Acquisition

2.1 Do not initiate right of way acquisition activities until FHWA-WFL is in possession of an independent environmental decision document.

2.2 The County will be responsible for the acquisition of any rights-of-way and/or easements necessary to complete the project. Prior to reimbursement for construction, the County will certify to FHWA-WFL that all rights of way and/or

easements required for the project will have been acquired under appropriate State Department of Transportation requirements and Federal Uniform Act requirements. Submit a copy of certifications with the final design plans, specifications, and estimate package.

3. Utility Relocation

- 3.1 Do not initiate utility relocation activities until FHWA-WFL is in possession of an independent environmental decision document.
- 3.2 Kittitas County will be responsible for the relocation of any utilities necessary to complete the project. In accordance with 23 CFR PART 645.103; any applicable reimbursement to the utility company will be governed by State law and regulation, or Occupancy Permits. Utility relocation costs will be paid for by the Kittitas County. The Kittitas County will be reimbursed for their portion of the relocation costs. Prior to reimbursement for any construction, the Kittitas County will certify to FHWA-WFL that all utility relocation will be coordinated in advance of the construction project. Submit a copy of certifications with the final design plans, specifications, and estimate package.

4. Permits

- 4.1 The agency overseeing the construction will identify all permits necessary for construction and submit a list of permits to FHWA-WFL.
- 4.2 Submit copies of all completed applications for necessary permits to FHWA-WFL.
- 4.3 Obtain permits necessary for construction. Submit copies of approved permits with the final design plans, specifications, and estimate package.

Advertisement

- 5.1. Do not initiate construction advertisement activities until FHWA-WFL is in possession of an independent environmental decision document.
- 5.2. Provide notification to FHWA-WFL once the contract has been awarded.

C. Construction

1. Do not initiate construction activities until FHWA-WFL is in possession of an independent environmental decision document.
2. Construct and administer the project in conformance with the FHWA-WFL environmental decision document.

3. Submit before, during, and post construction photographs to FHWA-WFL to document project progress.
4. Submit a copy of the final construction acceptance letter.

D. Summary of Deliverables

Task	Reference Paragraph	Delivery Due On or Before Date
B. PRELIMINARY DESIGN		
1. DESIGN		
<ul style="list-style-type: none"> • Submit a copy of the preliminary plan package and preliminary cost estimate 	II.C.1.2	March 31, 2018
2. ENVIRONMENTAL COMPLIANCE		
<ul style="list-style-type: none"> • If applicable, submit a cultural resources report for FHWA-WFL review. 	II.C.2.2.1.b	With Preliminary Plan Package
<ul style="list-style-type: none"> • Submit a report or memorandum identifying the presence or absence of jurisdictional wetlands 	II.C.2.2.2.b II.C.2.2.2.c	With Preliminary Plan Package
<ul style="list-style-type: none"> • If applicable, submit a report documenting T&E and EFH species findings to FHWA-WFL. 	II.C.2.2.3.b II.C.2.2.3.c	With Preliminary Plan Package
<ul style="list-style-type: none"> • If applicable, submit other environmental surveys, studies, and assessments as needed to support environmental compliance to FHWA-WFL. 	II.C.2.2.4.b	With Preliminary Plan Package
C. FINAL DESIGN		
1. DESIGN		
<ul style="list-style-type: none"> • Submit final plans, specifications, and construction estimate. 	II.D.1.2	Dec 31, 2018
2. ROW ACQUISITION		
<ul style="list-style-type: none"> • Submit certification of rights-of-way and/or easements to FHWA-WFL <i>-or- include certification that all work will occur within existing right-of-way as part of the administrative record.</i> 	II.D.2.2	With Final PS&E
3. UTILITY RELOCATION		
<ul style="list-style-type: none"> • Submit certification of Utility Relocation 	II.D.3.2	With Final PS&E
4. PERMITS		
<ul style="list-style-type: none"> • Submit a list of all permits necessary for construction to FHWA-WFL 	II.D.4.1	With Preliminary Plan Package
<ul style="list-style-type: none"> • Submit copies of all completed applications for necessary permits to FHWA-WFL. 	II.D.4.2	With Final PS&E
<ul style="list-style-type: none"> • Submit copies of approved permits. 	II.D.4.3	With Final PS&E
5. ADVERTISEMENT		
<ul style="list-style-type: none"> • Submit Notice of Contract Award to FHWA-WFL 	II.D.5.3	Upon Award/ (March, 31 2019)
D. CONSTRUCTION		
<ul style="list-style-type: none"> • Submit before, during, and post construction photographs to FHWA-WFL 	II.E.3	Ongoing

Task	Reference Paragraph	Delivery Due On or Before Date
<ul style="list-style-type: none"> Submit copy of the Final Construction Acceptance Letter 	II.E.4	Upon Completion of Construction / (Oct. 31, 2019)

Note:

- Kittitas County will submit a progress report with each invoice indicating dates covered, work that has been completed within the invoice coverage dates, and anticipated dates of major project milestones (i.e. survey completion, preliminary design completion, construction start, and construction completion).
- Submit electronic pdf files of all deliverables to FHWA-WFL.

E. Cost Budget

The cost of the work to be reimbursed by FHWA-WFL is Not to Exceed the amount in block 24 of the cover page, unless an amendment to the Agreement is made in writing and agreed to by both parties. Kittitas County shall submit all invoices to FHWA-WFL for actual and reasonable costs incurred for reimbursement. See Section IV, D. Method of Billing and Proper Submission of Invoices.

	To Kittitas County	To FHWA-WFL	Funds in reserve	Total
PE	\$366,817	\$60,000		\$426,817
CN	\$1,253,298			\$1,253,298
CE	\$295,373			\$295,373
CM	\$0		\$135,303	\$135,303
total	\$1,915,488			\$2,110,791

Note: The funds in reserve are available to the County if approved by FHWA-WFL and when this agreement is amended. Exceeding the budget of one phase does not require this agreement to be amended if the overall budget is not exceeded.

III. TERM OF AGREEMENT – Period of Performance

The terms and conditions of this agreement shall become effective with and upon execution by the FHWA-WFL Contracting Officer and shall remain in effect for the Period of Performance through December 31, 2020, unless modified in writing by mutual agreement or terminated by either party upon thirty (30) days written notice. Full credit shall be allowed for each party's reimbursable costs and all non-cancelable obligations properly incurred up to the effective date of termination.

IV. FINANCIAL ADMINISTRATION

A. **Total Agreement Amount**: See block 24 of the cover page for funds obligated by this agreement.

B. **Reimbursable Payment**

The servicing agency will receive payment on a reimbursable basis, upon receipt of invoice of costs incurred and authorized. The servicing agency is limited to recovery of actual costs only, to include back-up data with each request for payment. Back-up data includes all documents needed to support the requested reimbursement, such as record of contract payments, receipts, payrolls, and so on.

C. **Prompt Payment**

The Government considers payment as being made the day a check is dated or the date of an electronic funds transfer (EFT). All days referred to in this clause are calendar days. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make the payment on the following working day without incurring a late payment penalty. The due date for making payments by the designated payment office is the 30th day after the designated billing office receives a proper invoice from the agency, or the 30th day after Government acceptance of services performed or supplies delivered. The Prompt Payment regulations do not require the Government to pay interest penalties if based on improper submission of invoices and incorrect EFT information provided by the Servicing Agency. The Government will compute any interest penalty in accordance with the Office of Management and Budget prompt payment regulations (5 CFR Part 1315).

D. **Method of Billing and Proper Submission of Invoices:**

The Government shall pay the Servicing Agency, upon the submission of proper invoices, the prices stipulated in the agreed upon cost budget for services rendered or supplies delivered, as stated in Section II, E. Cost Budget. All invoices and final payments should reference the Agreement number, Project reference/title, and the COR's name and be sent to one of the following addresses:

US MAIL

Western Federal Lands A/P Branch, AMZ-150

PO Box 268865

Oklahoma City, OK 73125

FedEx

Western Federal Lands A/P Branch,

AMZ-150

6500 S. MacArthur Blvd.

Oklahoma City, OK 73169

Invoices may also be sent in .PDF format by electronic mail to 9-AMC-AMZ-WFLInvoices@faa.gov. The subject line of the message must include Agreement Number, Project reference/title, and invoice number. If the invoice is NOT Prompt Net 30, Terms should also be identified in the subject line, (for example, Prompt Net 14).

The following correct information constitutes a proper invoice and is required as payment documentation:

- 1) Name of Organization
- 2) Invoice Date
- 3) Agreement Number
- 4) Vendor Invoice Number
- 5) Organization Invoice Amount
- 6) Description and quantity of goods and services rendered
- 7) Performance Period
- 8) Shipping and payment terms
- 9) Other substantiating documentation required by the Agreement

E. **Administrative Fee:** Unless otherwise explicitly stated in this Agreement, FHWA-WFL shall not be liable for any additional administrative fees.

F. Submission of FINAL INVOICE and Closeout of the RA

If FHWA-WFL does not receive a FINAL invoice within 6 months after FHWA-WFL first requests a FINAL invoice submission, the Agreement will be closed and any remaining funds de-obligated. This time period may be waived by the Requesting Agency CO if the Servicing Agency provides a reasonable basis for the waiver.

FHWA-WFL will send the Notice of Agreement Closeout upon receipt of the final invoice. Upon receipt of the Notice of Agreement Closeout, Servicing Agency will have two months to return the Notice of Agreement Closeout. If FHWA-WFL does not receive a signed Notice of Agreement Closeout within 2 months of Servicing Agency's receipt, the Agreement will be closed and any remaining funds de-obligated.

V. KEY OFFICIALS

REQUESTING AGENCY – FHWA/Western Federal Lands Highway Division (WFLHD)

Contact: Neal Christensen, PE, Contracting Officer's Representative (COR)

Voice: (360) 619-7780

Fax: (360) 619-7945

Email: Neal.Christenssen@dot.gov

Financial Contact: Non-Federal Audrey Herzman

Voice: (360) 619-7756

Fax: (360) 619-7945

Email: Audrey.Herzman.ctr@dot.gov

SERVICING AGENCY- Kittitas County

Kittitas County Public Works Programs Contact

Name: Mark Cook

Address: 411 North Ruby, Suite 1

City, State, Zip: Ellensburg, WA, 98926
Telephone: 509-962-7523
Email: Mark.Cook@co.kittitas.wa.us
Fax: 509-962-7663

Kittitas County Public Works Finance and Grants and Agreements Contact
Agency's DUNs number: 01-020-2547
Name: Scott Casey
Address: 411 North Ruby, Suite 1
City, State, Zip: Ellensburg, WA, 98926
Telephone: 509-962-7523
Email: Scott.Casey@co.kittitas.wa.us
Fax: 509-962-7663

Kittitas County Public Works Project Contact
Name: Lucas Huck
Address: 411 North Ruby, Suite 1
City, State, Zip: Ellensburg, WA, 98926
Telephone: 509-962-7690
Email: Lucas.Huck@co.kittitas.wa.us
Fax: 509-962-7663

VI. MODIFICATIONS

Any modifications to the Agreement must be made in writing and agreed to by both parties. Such authorizations are not binding unless they are in writing and signed by personnel authorized to bind each of the agencies.

VII. AGREEMENT COMPLETION

When the Requesting Agency has accepted all deliverables, the Servicing Agency will provide a written project evaluation and final accounting of project costs to the requesting agency contact.

VIII. TERMINATION

This Agreement may be terminated upon 30 calendar days written notice by either party. If this agreement is terminated by the Servicing Agency, its liability shall extend only to the release of its work products and related materials to the Requesting Agency by the effective date of termination. If this agreement should be terminated by the Requesting Agency, its liability shall extend only to pay for the actual and reasonable costs of the items/services rendered and the costs of any non-cancelable obligations incurred in accordance with the terms of this agreement prior to the effective date of termination, or final costs agreed upon by both parties. If the Servicing Agency incurs costs due to the Requesting Agency's failure to give the requisite notice of its intent to terminate the Agreement, the Requesting Agency shall pay any

actual costs incurred by the Servicing Agency as a result of the delay in notification, provided such costs are directly attributable to the failure to give notice. Otherwise, the Agreement will terminate upon the expiration date as stated in Section III. Term of Agreement – Period of Performance unless the period of performance is extended by amendment to the agreement and as agreed by both parties.

IX. GENERAL TERMS AND CONDITIONS

A. GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

B. APPLICABLE FEDERAL LAWS AND REGULATIONS

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

General Federal Legislation

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

General Federal Regulations

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

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

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

C. ASSURANCES AND CERTIFICATIONS

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

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

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

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

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

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

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and

“Regulations,” respectively.

General Assurances

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

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

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

Specific Assurances

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

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

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

By signing the Agreement, the Servicing Agency also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. The Servicing Agency also recognizes that it must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. The Servicing Agency must keep

records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way.

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

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

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

APPENDIX

A

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

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

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Servicing Agency will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Servicing Agency or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Servicing Agency to enter into any litigation to protect the interests of the Servicing Agency. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

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

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

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

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

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

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

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

APPENDIX

C

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

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

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

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

APPENDIX D

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

Pertinent Non-Discrimination Authorities:

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

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

A. ASSURANCE OF DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

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

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts and contracts under grants, loans and grant agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, title. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

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

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

**C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS
2 CFR Parts 180, 1200, 48 CFR Part 9, and 49 CFR Part 32**

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

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

1. Instructions for Certification – First Tier Participants:

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

- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

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

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

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph a.2. of this certification; and

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

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

3. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is

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

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

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

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

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

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

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

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

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

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

4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.

5. Financial Management System: By signing this Agreement, the Servicing Agency verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management

system requirements of 2CFR Part 200.302. The Servicing Agency's failure to comply with these requirements may result in Agreement termination.

6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 2 CFR Part 200. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

E. TRANSPARENCY ACT REQUIREMENTS

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

1. Reporting Obligations

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

2. Reporting Total Compensation of Executives.

- a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 1. the total Federal funding authorized to date under this award is \$25,000 or more;
 2. in the preceding fiscal year, you received—
 - i. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. You must report executive total compensation described in subsection 2.a. of this section:

- 1. As part of your registration profile at <https://www.sam.gov>
- 2. By the end of the month following the month in which this award is made, and annually thereafter.

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

a. Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each prime contractor receiving funds for which reimbursement will be sought, you shall report the names and total compensation of each of the prime contractor's five most highly compensated executives for the prime contractor's preceding completed fiscal year, if—

1. in the prime contractor's preceding fiscal year, the contractor received—

- i. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

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

1. To <http://www.fsr.gov>.

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

4. Exemptions.

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

5. Definitions. For purposes of this section:

- a. Entity means all of the following, as defined in 2 CFR Part 25:
 1. A Governmental organization, which is a State, local government, or Indian tribe;
 2. A foreign public entity;
 3. A domestic or foreign nonprofit organization;
 4. A domestic or foreign for-profit organization;
 5. A Federal agency, but only as a contractor or subcontractor to a non-Federal entity.
- b. Executive means officers, managing partners, or any other employees in management positions.
- c. Total compensation means the cash and noncash dollar value earned by the executive during the Servicing Agency's or prime contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 1. Salary and bonus.
 2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 5. Above-market earnings on deferred compensation which is not tax-qualified.
 6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

E. SINGLE AUDIT INFORMATION FOR SERVICING AGENCIES

To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit

Requirements for Federal Awards”, the Servicing Agency agrees to maintain records that identify adequately the source and application of FHWA funds.

