Local Programs Procedures

LPP 03-01 Manual Update
Subject: Project Authorization/Federal-aid Agreement Combined into Single Action

Reference: *Local Assistance Procedures Manual*, Chapters 1, 2, 3, 4, 5, 7, 9, 12, 13, 15, 16 and 20; *Local Assistance Program Guidelines*, Chapters 8 and 11.

Effective Date: March 28, 2003 Approved: **Original Signed By**
TERRY L. ABBOTT, Chief
Division of Local Assistance

PURPOSE

The purpose of this LPP is to update chapters from the *Local Assistance Procedures Manual* (LAPM) and the *Local Assistance Program Guidelines* (LAPG) by removing references to the federal-aid project agreement (PR-2), the revised federal-aid project agreement (PR-2A), and the Obligation of Funds Document (FNM-76), in some instances replacing them with references to the new "Authorization to Proceed" (E-76). Other minor administrative changes have been made as well.

BACKGROUND

In 1997, Senate Bill 45 (SB 45) was passed and enacted new provisions regarding the timely use of funds for projects adopted into the State Transportation Improvement Program (STIP). Subsequently, the Federal-Aid Data System (FADS) was upgraded in June 2000 to conform to new Federal-aid processing requirements. Under the upgraded FADS, one form entitled "Authorization to Proceed" (E-76) replaces the PR-2, PR-2A, and FNM-76. The E-76 now acts as both project authorization and federal-aid project agreement.

PREVIOUS PROCEDURE

Project implementation is a varied and complex process. Some of the previous steps have included the federal-aid project agreement (PR-2), the revised the Federal-aid project agreement (PR-2A), and the Obligation of Funds Document (FNM-76).

NEW PROCEDURE

To support the FADS upgrade, the PR-2, PR-2A, and the FNM-76, were combined into one single action, the "Authorization to Proceed" (E-76).

SUMMARY OF CHANGES

The changes in this LPP include, but are not limited to:

- PR-2, PR-2A, and FNM-76 references deleted and replaced with E-76 references.
- References to Transportation System Management, Flexible Congestion Relief, and State/Local Transportation Partnership Program, deleted.
- Miscellaneous changes as indicated in the table below:

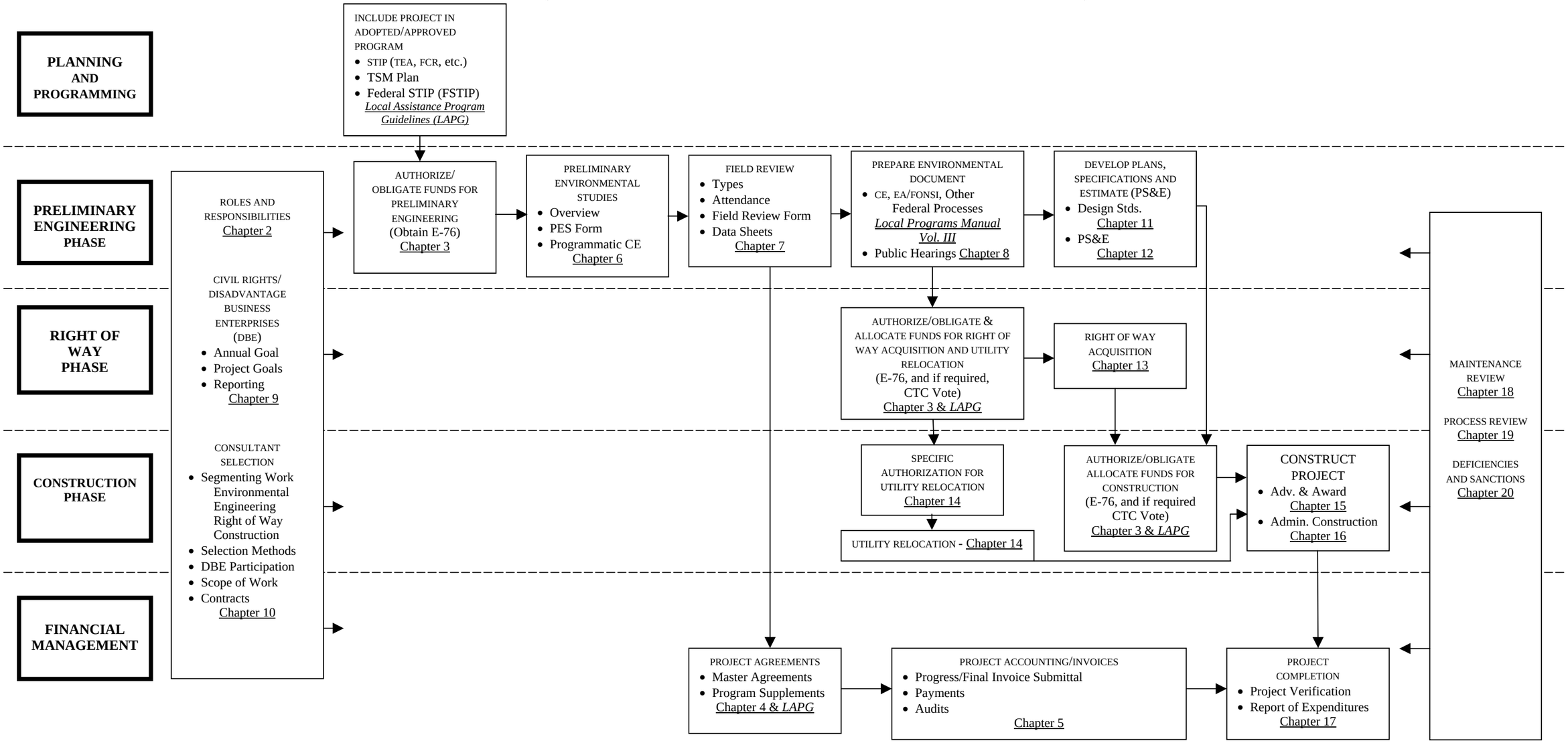
LAPM Item	Change
Page 3-9	Reference to LAPG Chapter 23, "Local Agency State Transportation Improvement Program Projects," added.
Page 4-1	Flow Chart 4-1 "Developing Local Federal-aid and State Fund Projects" reference to PR-2 removed.
Page 4-4	Added, "*No reimbursement payments can be made until the Program Supplement Agreement has been fully executed. Invoices shall not be submitted prior to this execution*."
Page 4-5	Section 4.4, "Process and Procedures" for agreements updated.
Page 4-7	Clarification of TEA-21 revision of Title 23 pertaining to project authorization, obligation of funds, and the execution of the federal-aid project agreement added.
Page 5-14	Section 5.5 "Expedited Payment Procedures," "Alternative Construction Progress Payment Procedure," item 7 removed. Replaced "*Federal Office of Management and Budget's Circular A-128*" with "*Federal Office of Management and Budget's Circular A-133*."
Pages 9-10, 9-34, 9-35	Changed Section *9.4* to Section *9.5*.
Page 9-32	Reference to Sections 4100-4144 of Subletting and Subcontracting Fair Practices Act changed to Sections 4100-4114.
Page 13-10	Section 13.5 "Request Authorization to Proceed (PE)," added "*In the event that right-of-way acquisition … under the terms of the agreement.*" "Preliminary Right of Way Activities," Project Agreement (PR-2) paragraph removed.
Page 16-18	Reference to Exhibit 16-P, "Monthly Employment Utilization Report" removed.
Page 20-2	Section 20.2 "Procedural Deficiencies," "*Continued submission of Invoices prior to execution of the Program Supplement and/or PR-2 (see Chapter 5, "Invoices," in this manual*)," removed.
Exhibit 16-P	Exhibit 16-P, "Monthly Employment Utilization Report," deleted. The form is no longer needed for submission to the FHWA
Exhibit16-Q	U.S. Department of Labor Office Addresses updated. Needed for reporting any violation of federal labor requirements.

REFERENCES

- 23 CFR 106(a)
- TEA-21
- LPPs 99-02, 01-04, and 01-06

PROJECT DEVELOPMENT FLOW CHART

(TYPICAL PROCEDURES FOR FEDERAL-AID PROJECTS)



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agencies additional responsibility and accountability for non-NHS projects. Many of the responsibilities delegated to Caltrans under Certification Acceptance and the Stewardship - Letters of Agreement were further delegated to the local project sponsors. Caltrans' preliminary engineering and construction review and approval activities ended and other activities involving environmental reviews, project authorization, Disadvantaged Business Enterprises, consultant selection, and agreement procedures were streamlined to eliminate duplication of effort and multiple reviews.

PROJECTS ON THE NATIONAL HIGHWAY SYSTEM (NHS)

Effective with the publication of this manual, the delegation of responsibilities to local agencies described above for non-NHS projects also applies for NHS projects. With the following exceptions (discussed in detail in the appropriate chapters of this manual), procedures are the same for both types of projects.

FIELD REVIEWS

Caltrans will make the decision whether to hold a field review for NHS projects that are not exempt from FHWA oversight (i.e., under "Certification Acceptance" or "nonexempt" per Figure 2-1 "FHWA Oversight"). Generally, a field review will only be required for major projects (over $10 million, involving unusual structures, or projects on a corridor involving more than one agency). NHS projects that are not considered "major" will not require the PS&E and construction administration approvals described below.

PS&E PROCEDURES FOR MAJOR NHS PROJECTS

When Caltrans requires a field review for major NHS projects, PS&E procedures (standards, agencies involved, use of consultants, project management, specifications, etc.) will be discussed. These procedures will be put in writing for Caltrans' approval before final design is initiated. With approval, the local agency will then certify their PS&E(s) for these projects the same as they do for non-NHS projects upon completion of the PS&E. Caltrans will not review the PS&E(s) unless requested and resources are available, or as part of a process review. NHS projects that are not considered "major" will not require this approval step.

DESIGN STANDARDS

Local agencies are required to use only AASHTO, 3R and other design standards approved for use on NHS projects. Locally-approved design standards are not allowed on NHS projects, however, the local agency may approve exceptions on a project by project basis.

METHOD OF CONSTRUCTION

Exceptions to competitive bid contracts must be approved by Caltrans for non- exempt projects.

RESTRICTED CONSTRUCTION CONTRACT PROVISIONS

Warranty clauses and the use of proprietary items are restricted on NHS projects.

CONSTRUCTION ADMINISTRATION FOR MAJOR NHS PROJECTS

When Caltrans requires a field review for major NHS projects, the local agency's

construction administration procedures (staging, agencies involved, use of consultants, project management, quality assurance, etc.) will be discussed. These procedures will be put in writing for Caltrans' approval before the Request for Authorization for Construction is approved. Caltrans will not review the construction administration unless requested and resources are available, or as part of a process review.

QUALITY ASSURANCE PROGRAMS

Local agencies shall use the Quality Assurance Program described in this manual for projects on the NHS. Caltrans will be responsible for performing Independent Assurance Sampling and Testing (IAST).

FINAL INSPECTION

The FHWA will make a final inspection of completed nonexempt projects.

2.7 FHWA RESPONSIBILITIES

As discussed above, the FHWA has the overall authority and responsibility for implementing and monitoring Federal laws, regulations and executive orders. For local projects that involve Federal funding, the FHWA's responsibilities typically involve Project Implementation and Process Review activities.

PROJECT IMPLEMENTATION

For all Federal-aid projects, the FHWA is responsible for the following project implementation activities:

- Obligation of Federal funds
- Approval of NEPA and other federally required environmental documents

For projects that are under Certification Acceptance per the stewardship agreements, the FHWA is also responsible for the following activities:

- Authorization to Proceed
- Specific Authorization for Utility Relocation
- Approval of Right of Way certifications (Right of Way Required)
- Final Inspection

OVERSIGHT

NHS - For projects on the NHS, the FHWA has overall responsibility for ensuring compliance with all Federal requirements.

Non-NHS - For all other projects, FHWA responsibility for ensuring compliance with Federal requirements is limited to non-Title 23 activities (environmental, right of way and civil rights).

While it is the FHWA's policy to rely primarily on their Program Review/Product Evaluation Program to carry out these responsibilities, other process review techniques, including project-specific activities may be used when appropriate.

FEDERAL-AID LOCAL ASSISTANCE RESPONSIBILITIES

ACTIVITY	**Projects on the National Highway System (NHS)** (Excluding Interstate[1])		**Projects not on the NHS**	COMMENTS
	Cert. Acceptance (New or Reconstruction > $1 million)	Exempt (< $1 million or 3R)	Exempt	
Prepare "Request for Authorization"	Local Agency	Local Agency	Local Agency	
Approve "Authorization to Proceed" (E-76) for each project phase	FHWA	State	State	Authorization must precede any reimbursable activities.
Obligate Funds	FHWA	FHWA	FHWA	
Prepare Agreements	State			
Execute Master Agreement/Program Supplements	Local Agency/State			
Prepare Invoices	Local Agency			
Approve Payment	State			
Conduct preliminary investigations and complete Preliminary Environmental Studies form (PES)	Local Agency			
Determine applicability of Programmatic CE	State			
Conduct and document appropriate technical studies and prepare NEPA document (CE,EA,EIS)	Local Agency			Complete PES and attend early coordination meeting before starting technical studies.
Review environmental documentation and NEPA document	State			
Approve/Process NEPA document and other required Federal environmental documentation	FHWA			

[1] Projects on or impacting the Interstate will require a project-by-project review by FHWA. For these and all projects on State highways, the agency should coordinate closely with the DLAE and District Project Development Manager to insure that all required authorizations/obligations and other reviews and approvals are obtained in a timely manner and in accordance with State highway development procedures. Early consultation with FHWA will aid in coordination for necessary involvement and needed approvals, if any.

FEDERAL-AID LOCAL ASSISTANCE RESPONSIBILITIES

ACTIVITY	**Projects on the National Highway System (NHS)** (Excluding Interstate[1])		**Projects not on the NHS**	COMMENTS
	Cert. Acceptance (New or Reconstruction > $1 million)	Exempt (< $1 million or 3R)	Exempt	
Decision to hold Field Review	State (See Comments)	Local Agency	Local Agency	State required Field Reviews limited to high cost, complex, corridor-type NHS projects.
Prepare Field Review Form	Local Agency	Local Agency	Local Agency	
Attend/Sign Field Review Form	Local Agency, State and FHWA	Local Agency	Local Agency	State and FHWA will attend all required NHS Field Reviews, and others when appropriate.
Decision on Type of Public Hearing	Local Agency			Formal or Open Forum
Approval to circulate EA/EIS	FHWA			Public hearings are held after the EA or Draft EIS has been approved.
Provide Civil Rights Assurances	Local Agency (In Master Agreement and Program Supplements)			
Complaint Investigations/Contractor Compliance	Local Agency			May be assisted by State
Local Agency Compliance Reviews	State/FHWA			
Approve Local Agency DBE Annual Goal	State			
Determine/Approve Project DBE Goal	Local Agency			
Select Consultant and approve contract	Local Agency			
Pre-award audit	State			Limited to Contracts >$250,000

[1] Projects on or impacting the Interstate will require a project-by-project review by FHWA. For these and all projects on State highways, the agency should coordinate closely with the DLAE and District Project Development Manager to ensure that all required authorizations/obligations and other reviews and approvals are obtained in a timely manner and in accordance with State highway development procedures. Early consultation with FHWA will aid in coordination for necessary involvement and needed approvals, if any.

CHAPTER 3 PROJECT AUTHORIZATION

3.1 PROJECT AUTHORIZATION

Prior to beginning reimbursable work, the project (or project phase) eligible for reimbursement from Federal funds must be formally authorized (approved) by the Federal Highway Administration (FHWA). For projects exempt from FHWA oversight and review (per the stewardship agreements), the FHWA has delegated this authority to Caltrans. However, the FHWA still obligates the Federal funds and signs the Authorization document for all Federal-aid projects.

The stewardship agreements provide delegations to Caltrans (and those to the local agencies) based on the categorizations of projects on Figure 2-1. Projects will be exempt (E) or nonexempt (N), from FHWA oversight. These codes (E or N) will be carried to the particular Federal-aid project number (see Exhibit 3-H, number 6).

After a project is selected and programmed in a Federal Highway Administration/ Federal Transit Administration (FHWA/FTA) approved Federal Statewide Transportation Improvement Program (FSTIP) for Federal funds, the local agency should contact the District Local Assistance Engineer (DLAE) to discuss when and how they wish to proceed with project implementation. The discussion should cover the timing and process for authorization and obligation of funds for each federally funded phase and allocation of funds by the California Transportation Commission, if required. If the project is on the NHS, the DLAE will also determine if a Field Review will be required (see Chapter 7).

The State's "Federal-Aid Data System" (FADS) database and the "Federal Management Information System" (FMIS) are integral systems used in the authorization process. The State must provide certain detailed information to the FMIS database in order to successfully obligate the Federal funds. The obligation of funds is automatic upon authorization <u>if</u> the data is correct <u>and</u> <u>if</u> the State has remaining fund apportionment appropriate for the project and obligation authority in the Federal fiscal year (likewise, local agencies may be competing with other local agencies for Federal funds). See "Advance Construction Authorization" topic below for procedures when no obligation authority remains. The "Authorization to Proceed," a report printed from the FADS system, shows the dates of authorization and obligation along with summary data about the project.

For declared emergencies approved by the FHWA for Emergency Relief (ER) funding, emergency repair work and preliminary engineering work may be initiated without prior authorization (see Chapter 11, "Disaster Assistance," of the *Local Assistance Program Guidelines).*

RESPONSIBILITIES

The local agency is responsible for initiating the request for authorization and CTC vote, if necessary, in a timely manner. If all the prerequisite requirements are satisfied, two weeks processing time should be allowed for Federal authorization for exempt projects. Another week or more may be required for nonexempt projects that require the FHWA to approve the "Request for Authorization to Proceed". Additional time may also be required near the beginning or end of the Federal fiscal year.

Before any authorization can be initiated, all projects (except ER) must be in a federally approved FTIP/FSTIP. ER projects must be included in the FTIP/FSTIP only if they involve substantial functional, location or capacity changes.

The following projects must also be included on the eligibility lists noted:

- Grade Crossing Improvement funds - California Public Utilities Commission (CPUC) approved list
- Transportation Enhancement Activity (TEA) funds - California Transportation Commission (CTC) approved list
- Flexible Congestion Relief funds - CTC approved STIP (if over $300,000)
- Highway Bridge Replacement & Rehabilitation (HBRR) funds - Caltrans' approved list for funding eligibility
- Hazard Elimination Safety (HES) funds - Caltrans' approved list
- Transportation System Management (TSM) - Caltrans' approved list
- Environmental Enhancement and Mitigation (EEM) - CTC approval list

REQUEST FOR AUTHORIZATION

Separate work authorizations and fund obligations are normally made for the preliminary engineering (PE), right of way, utility relocation, and construction phases if Federal funds are to be used in that phase of work. Authorization to proceed and obligation of funds within the phases is sometimes subdivided as well. The authorization and transfer of funds to the Federal Transit Administration (FTA) is also made with a Request for Authorization.

To initiate a Federal project authorization/obligation and add authorization/obligation for additional phases, each local agency must prepare the "Request for Authorization" package that provides the information needed by Caltrans and FHWA to process the request. The package includes the appropriate "Request for Authorization," Exhibits 3-A, B, C or D; the "Request for Authorization - Project Prefix Checklist," Exhibit 3-E; the "Finance Letter," Exhibit F; and the "Request for Authorization - Data Sheets," Exhibit 3-G. Information in this format can be input directly into the FADS computer files by Caltrans. The request package should be submitted directly to the appropriate Caltrans District Local Assistance Engineer (DLAE). If the package is complete, Caltrans will initiate the authorization process. The form will be returned to the local agency if there is missing data that cannot be quickly obtained by FAX, telephone, or other source.

<u>"Authorization to Proceed" must be obtained prior to starting an item of work for which an agency wishes to be federally reimbursed. Emergency Relief work is the exception (for restoration, as part of the emergency relief work, Authorization is required before advertising). In other words, work prior to Authorization is ineligible for reimbursement.</u>

PRELIMINARY ENGINEERING (PE) PHASE

Eligible preliminary engineering (PE) includes all location, design, and related work preparatory to the advancement of a project to physical construction. Preliminary right of way studies related to the environmental process, as described in Chapter 13, are considered part of the eligible preliminary studies and authorized as part of the PE Authorization to Proceed (E-76).

Only eligible work performed after the authorization date for PE may be reimbursed. The preliminary studies portion of PE may be authorized prior to an optional or mandatory field review (see Chapter 7). This will allow reimbursement for consultants or other specialists who may be needed to obtain information required to complete the field review.

The project must have a completed field review form (see Chapter 7) and a federally approved environmental document prior to requesting authorization for the final design and right of way phases of work.

Preliminary engineering must lead to a construction project in a timely manner. If construction is not started in ten years, any funds expended must be returned to the Federal government.

RIGHT OF WAY

Eligible right of way work includes the preparation of right of way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition: review of appraisals; payments for real property acquired; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation assistance; and other related labor expenses (see 23 CFR 710.303 for details).

As noted above, some preliminary right of way activities may be performed in advance of approval of the environmental document and are authorized as part of PE. This is not true for the majority of right of way activities, e.g., negotiating with property owners, acquisition and relocation assistance (see Chapter 13, "Right of Way" of this manual). This work is included in the local agency's "Request of Authorization to Proceed with Right of Way."

Only eligible work performed after the authorization date for right of way may be reimbursed. A request for right of way must include the field review form and the FHWA-approved environmental document. If reimbursement for utility relocation will be requested, a separate "Request for Authorization to Proceed with Utility Relocation" for utility relocation under the Alternate Procedure must also be included (see Chapter 14, "Utility Facilities" of this manual).

<u>If Federal-aid reimbursement is sought for any phase of the project, all right of way activities must conform to Federal requirements. Failure to conform will jeopardize the Federal funding.</u>

CONSTRUCTION

Eligible construction costs include construction engineering; the actual cost to construct the highway itself including its appurtenant facilities and any removal, adjustment or demolition of buildings or major obstruction, and utility or railroad work that is a part of the physical construction of the project; and administrative settlement cost-contract claims. Construction engineering includes the supervision and inspection of construction activities; additional staking functions considered necessary for effective control of the construction operations; testing materials incorporated into construction; checking shop drawings; and measurements needed for the preparation of pay estimates. Construction engineering costs shall be itemized on the finance letter to be eligible for reimbursement.

ISTEA changed the limitation on Federal reimbursement for construction engineering as a percentage of total project construction costs. Under ISTEA, Federal reimbursement for construction engineering is limited to 15 percent of the total estimated construction costs of all projects financed with Federal-aid highway funds that fiscal year. This percentage applies to the total of all projects involving Federal funds and eliminates the project-by-project limitation of 15 percent. The estimated construction cost excludes the estimated costs of right of way, preliminary engineering and construction engineering.

In order to give local agencies flexibility in determining how their Federal apportionments will be spent, construction engineering costs in excess of 15 percent can now be obligated on individual local agency projects. Approval of costs in excess of 15 percent on specific projects, however, is subject to review for reasonableness by the District Local Assistance Engineer and approval by Division of Local Assistance Area Engineers.

Only eligible work performed after the authorization date for construction may be reimbursed. A request for construction must include the field review form and the FHWA-approved environmental document (if not previously sent), as well as a signed right of way/utilities certification; a finance letter; engineer's estimate; Plans, Specifications, and Estimates (PS&E) certification; and the PS&E package.

"Authorization to Proceed with Construction" must be obtained before advertisement (see Exhibit 3-J for an example of an E-76 "Exempt Project"). Projects advertised before authorization are not eligible for Federal reimbursement.

If Caltrans' source inspection services are to be requested, the request must be submitted before the local agency submits the "Request for Authorization to Proceed with Construction" (see "Source Inspection" in Section 16.14 of this manual).

PROCESSING

Upon receipt of the "Request for Authorization," district local assistance staff will input the data from the form directly into the electronic database. Upon completion of input, the project's electronic files are transmitted to headquarters Division of Local Assistance (DLA). Review by DLA focuses primarily on project eligibility for the fund type(s) requested, availability of Federal funding and coding requirements.

The DLA Area Engineer electronically transmits the project file to the FHWA in Sacramento. If the project is exempt from the FHWA oversight and approval, this date of transmittal establishes the authorization date for that project phase. For exempt projects, the FHWA accounting staff makes a quick review and forwards the electronic transmittal to the FMIS data files in Washington, D.C. Entry into the FMIS files establishes the obligation of funds for the project. For nonexempt projects, an E-76 must be prepared for review and authorization (actual signature) by the FHWA. As with exempt projects, the electronic file is used to transmit the data to Washington. Normally, exempt projects are processed more quickly than nonexempt since the FHWA reviewer is not involved in the authorization.

For a subsequent work-phase authorization, scope change, or cost increase, the agency submits an updated "Request for Authorization." The district processes the updated FADS information in the same manner as above.

AUTHORIZATION/OBLIGATION

The electronic file is monitored directly or via reports by the DLAE and DLA staff. When the DLAE determines that the project has been authorized and obligated, an Authorization to Proceed summary form (E-76) is printed which shows the authorization and obligation dates. This form is then sent to the local agency as verification that they may start that phase of project activity and be eligible for reimbursement by the State with Federal funds. If the project cannot be authorized and/or obligated, the local agency is informed and advised of what corrective actions are necessary. The DLAE also submits a copy of the E-76 to the appropriate MPO/RTPA for their information and use.

Costs incurred prior to authorization are never eligible for FHWA reimbursement (except for FHWA approved ER work). See discussions for each project phase elsewhere in this manual for actions that may jeopardize an entire project phase eligibility if not preceded by authorization. Eligible costs incurred after authorization may be invoiced for reimbursement **only after** the State/Agency Program Supplemental agreements are prepared and signed (see Chapter 4, "Agreements," for discussion of these agreements).

FUND BALANCES

Certain funds are apportioned to the MPO/RTPA by formula under State law. Through the FTIP/FSTIP process, these are distributed to local agencies for specific projects. Caltrans provides reports showing the obligation of funds summarized at the district and MPO/County level. These reports also show fund balances and list the individual city and county projects.

STATE-FUNDS - PROJECT MATCH OR CONTRIBUTION

The State may provide funds to match Federal-aid projects through legislation, such as the State Transportation Improvement Program (STIP) matching program or through project specific agreement, e.g. cooperative agreement.

Where the State is providing funds to match or supplement Federal funding, the details of this funding shall be provided with the Request for Authorization submittal. Sufficient information and cost breakdown shall be provided to segregate the State funding.

STATE PROGRAMS - FEDERAL-AID USE

The State may elect to use Federal-aid to fund programs initially proposed for State funds only (frequently called "Federalizing" a project). See Chapter 23 of the *Local Assistance Program Guidelines* for a specific discussion of federalizing STIP Projects. When a project uses Federal-aid funds, it must comply with all the applicable Federal-aid procedures described in this manual.

ADVANCE CONSTRUCTION AUTHORIZATION

At times, Federal funds may not be available currently for obligation, but may be anticipated with future budget or administrative actions. If a local agency wishes to proceed with its own funds and still establish an eligibility date for possible future

Federal reimbursement, it may use "Advance Construction Authorization." The "Request for Authorization" is completed and sent to the DLAE. If Federal funds are not available, the DLAE will ask the agency if it wishes to proceed under advance construction procedures. The agency must have sufficient funds available to cover project expenses until Federal reimbursement funds becomes available and must consider the risk that they may never become available.

The project is authorized and is identified by the letters "AC" in the prefix as well as the use of an appropriation code as shown on the last page of appropriation codes in Exhibit 3-I. This authorization establishes the date for the beginning of reimbursable activities. When and if Federal funds become available, the project is converted by Caltrans and obligation is established under a "true" Federal obligation code. After this is done, the necessary agreements can be processed and invoices can be prepared for reimbursement.

This procedure should be used only when an agency has sufficient funds to cover all the costs and when it is urgent that the project proceed to construction. "Advance Construction Authorization" procedures do not apply to emergency relief projects.

3.2 UNDERFUNDING POLICY

FHWA administrative rules require that Federal funds represent a substantial share of the eligible project costs. The FHWA will not authorize projects with Federal shares below 50 percent of the eligible cost. Caltrans will consider exempt projects with less than 50 percent on a project-by-project basis.

Exceptions to the above Federal funding limitations are permitted on the following types of underfunded projects:

- Advance construction projects
- Bond issue projects
- The preliminary location studies portion of the preliminary engineering and right of way phases

3.3 FTA TRANSFER PROCESS

Under the provisions of the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991 and the Clean Air Act, State and local agencies are encouraged to fund projects which promote the development, improvement or use of public mass transportation systems. ISTEA provides local agencies with an increased opportunity to select transit related projects to meet their regional transportation needs.

Section 134 (k) of Title 23 of the United States Code (USC) requires that ISTEA funds made available for public transit projects be transferred and administered in accordance with the requirements of the Federal Transit Act. The Act requirements have been codified in Title 49 of the USC, Chapter 53, "Mass Transportation." ISTEA funds apportioned to the Federal Highway Administration (FHWA) for "transit type" projects, typically administered by the Federal Transit Administration (FTA), must be transferred from jurisdiction of the FHWA to that of the FTA. Transit related highway projects, typically administered by the FHWA, remain under the jurisdiction of the FHWA.

REQUEST FOR AUTHORIZATION TO PROCEED WITH PRELIMINARY ENGINEERING (PE)

Local Agency Letterhead

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date:_____
(Federal Number)
(Project Description)
_____

Dear (DLAE Name):

In order to begin reimbursable preliminary engineering for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP (FSTIP).

Attached are the following documents that are required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Project Prefix Checklist (Exhibit 3-E)
- ☐ Completed Finance Letter (Exhibit 3-F)
- ☐ Completed Data Sheets (Exhibit 3-G)
- ☐ Copy of the FTIP/FSTIP sheet

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review form, or
- ☐ I will not be preparing the final design at this time. I will transmit the Field Review Form at a later date.

Environmental Document

- ☐ Approved Environmental Document
  Type of Document _____
  Approval Date _____
- ☐ I have not completed the environmental process and will not be preparing the final design at this time. I will transmit the Environmental Document at a later date.

Pre-Award Audit

- ☐ Completed Audit Disposition (Exhibit 10-K), or
- ☐ Audit Disposition was not completed because Federal-aid or State highway funding will not participate in a consultant contract, or
- ☐ Pre-award audit was not done because the consultant contract is for $250,000 or less, or
- ☐ I will not submit the Audit Disposition at this time. I will submit it to the DLAE prior to entering into a contract with the consultant(s).

I understand that invoice requests for payment will not be processed until an Authorization to Proceed (E-76) and a Program Supplement Agreement have been executed.

(Check which of the following applies)

- ☐ I plan to request reimbursement for costs as incurred. As indicated above, I have included a completed Field Review Form. I am also including the "Agreements Checklist" (Exhibit 4-A) request forms with this transmittal and request that the agreements be prepared now.
- ☐ I have not submitted the Field Review Form and "Agreements Checklist." I am aware that I will not be able to resubmit progress invoice until these documents are submitted and a Program Supplement Agreement is fully executed.

I will not submit any invoice request until I receive notification that an Authorization to Proceed E-76 and a Program Supplement Agreement have been executed.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administrator and the California Department of Transportation relative to the above designated project.

I understand that each succeeding phase of the project will require a separate authorization to be eligible for Federal reimbursement. I further understand that this Agency is responsible for costs in excess of the Federal funds obligated and all costs incurred before it has received FHWA "Authorization to Proceed" for that phase of the project.

Please advise us as soon as the authorization has been received. You may direct any questions to (Name_____) at (phone number).

Signed _____
Title _____
Agency _____

Attachments

REQUEST FOR AUTHORIZATION TO PROCEED WITH RIGHT OF WAY

Local Agency Letterhead

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date:_____
(Federal Number)
(Project Description)
_____

Dear (DLAE Name):

In order to proceed with the right of way work for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP (FSTIP).

Attached are the following documents that are required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Project Prefix Checklist, (Exhibit 3-E) or
- ☐ The Project Prefix Checklist was previously submitted and the funding types have not changed.
- ☐ Completed Finance Letter (Exhibit 3-F)
- ☐ Completed Data Sheets (Exhibit 3-G)
- ☐ Copy of the FTIP/FSTIP sheet

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review form, or
- ☐ The Field Review form was previously submitted on _____.

Environmental Document

- ☐ Approved Environmental Document
  Type of Document _____
  Approval Date _____
- ☐ The Environmental Document was previously submitted and approved.

I understand that invoice requests for payment will not be processed until an Authorization to Proceed (E-76) and a Program Supplement Agreement have been prepared and executed.

(Check which of the following applies)

- ☐ I plan to request reimbursement for costs as incurred. As indicated above, I have included a completed Field Review Form. I am also including the "Agreements Checklist" (Exhibit 4-A) request forms with this transmittal and request that the agreements be prepared now.
- ☐ I have not submitted the Field Review Form and "Agreements Checklist." I am aware that I will not be able to resubmit progress invoice until these documents are submitted and a Program Supplement Agreement is fully executed.

I will not submit any invoice requests until I receive notification that an Authorization to Proceed (E-76) and a Program Supplement Agreement have been executed.

CTC ALLOCATION

Check which of the following applies:

- ☐ A CTC allocation vote is not required, or
- ☐ The required CTC allocation has been scheduled for the _____ meeting, or
- ☐ The required CTC allocation was voted at the _____ meeting.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administrator and the California Department of Transportation relative to the above designated project.

I understand that this Agency is responsible for costs in excess of the Federal funds obligated and all costs incurred before it has received FHWA "Authorization to Proceed" with this phase of the project.

Please advise us as soon as the authorization has been received. You may direct any questions to (Name) at (phone number).

Signed _____
Title _____
Agency _____

Attachments

REQUEST FOR AUTHORIZATION TO PROCEED WITH CONSTRUCTION

Local Agency Letterhead

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date:_____
(Federal Number)
(Project Description)
_____

Dear (DLAE Name):

In order to advertise, award and administer the construction contract for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP(FSTIP).

Attached are the following documents that are required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Project Prefix Checklist (Exhibit 3-E), or
- ☐ The Project Prefix Checklist was previously submitted and the funding types have not changed.
- ☐ Completed Finance Letter (Exhibit 3-F)
- ☐ Completed Data Sheets (Exhibit 3-G)
- ☐ Copy of the FTIP/FSTIP sheet

Field Review Form (Exhibit 7-A)

- ☐ Completed Field Review form, or
- ☐ The Field Review form was previously submitted on _____.

Environmental Document

- ☐ Approved Environmental Document
  Type of Document _____
  Approval Date _____
- ☐ The Environmental Document was previously submitted and approved.

Right of Way Certification (Exhibits 13-A and B)

- ☐ Right of Way Certification, or
- ☐ The Right of Way Certification was submitted and accepted on _____.

PS&E Package and PS&E Certification

- ☐ Completed PS&E package and PS&E Certification, or
- ☐ The PS&E package and PS&E Checklist were submitted and accepted on _____ .

Local Agency Construction Contract Administration Checklist

- ☐ Local Agency Construction Contract Administration Checklist (Exhibit 15-A), or
- ☐ The Local Agency Construction Contract Administration Checklist was previously submitted and our procedures have not changed.

I understand that invoice requests for payment will not be processed until an Authorization to Proceed (E-76) and a Program Supplement has been prepared and executed.

(Check which of the following applies)

- ☐ I am including the "Agreements Checklist" request form with this transmittal and request that the agreements be prepared now.
- ☐ I will transmit the "Agreements Checklist" request form upon award of the construction contract.

I will not submit any invoice requests until I receive notification that an Authorization to Proceed (E-76) and a Program Supplement Agreement have been executed.

CTC ALLOCATION

Check which of the following applies:

- ☐ A CTC allocation vote is not required, or
- ☐ The required CTC allocation has been scheduled for the _____ meeting, or
- ☐ The required CTC allocation was voted at the _____ meeting.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administrator and the California Department of Transportation relative to the above designated project.

I understand that this Agency is responsible for costs in excess of the Federal funds obligated and all costs incurred before it has received FHWA "Authorization to Proceed" with this phase of the project.

Please advise us as soon as the authorization has been received. You may direct any questions to (Name) at (phone number).

Signed _____
Title _____
Agency _____

Attachments

E-76

EXAMPLE - EXEMPT PROJECT
AUTHORIZATION TO PROCEED

FEDERAL AID PROGRAM CALIFORNIA DEPARTMENT OF TRANSPORTATION
PROJ LOCATOR *01-HUM-0-RDEL*

PREFIX	*STPLER*	PROJECT LOCATION		
PROJECT NO.	*5396(003) I*	*WILDWOOD AVE (OLD HWY 101) + VAR LOCATIONS*		PREV. AUTH/AGREE DATE
SEQ NO	1			
DIST-EA	*01-280654L*	TYPE OF WORK		PE *08/30/01*
AGENCY	*RIO DELL*	*GATEWAY LANDSCAPING+ADA SIDEWALKS*		R/W
ROUTE	*CR*	FED. RR NOS		CON
TIP DATA:		PUC CODE(S)		
MPO/YEAR	*FSTIP*	EXEMPT FROM	*FHWA REVIEW*	APPR CODES *Q22*
DATE	*2000*	ENV STATUS	*2A*	LINE NOS *10*
SHEET	*VAR07*	R/W STATUS	_	WORK CLASS *I*
URBANIZED	*SAN DIEGO*	POPULATION	*1*	FUNC. CL. *UC13*
URB/RURAL	*URBAN AREA*	BRIDGE NOS	_	

PHASE		PROJECT COST	FEDERAL COST
	PREV. OBLIGATION	0	0
PE	THIS REQUEST	*66,364*	*58,400*
	SUBTOTAL	*66,364*	*58,400*
	TOTAL	*66,364*	*58,400*

PPNO - 01-N/A

STATE REMARKS
IN FSTIP AS PART OF LUMP SUM REGIONAL TEA PROGRAM, APPN/PSUEDO CODE Q22/BTB

	TOTAL COST	PART COST	FEDERAL FUNDS	LOCAL FUNDS
PE	*$ 66,364*	*$ 66,364*	*$ 58,400*	*$ 7,964*
CENG				
CON				
TOTAL	*$ 66,364*	*$ 66,364*	*$ 58,400*	*$ 7,964*

TOTAL FEDERAL FUNDS PROGRAMMED BY RTPA WERE *$ 603,248* FOR THIS PROJECT *($ 58,400 PE + 544,848 CON)*

PROJECT UNDERFUNDED. ACTUAL FED PARTICIPATION RATIO IS 88.00%

AUTHORIZATION TO PROCEED WITH PRE	PREPARED BY	*JOE DEAN*	ON *08/28/01*	*(707)44S-6397*
	PRELIM ENGINEERING REVIEWED BY	*JOHN DEER*	ON *09/04/01*	*(916)651-6872*
	AUHTORIZED BY	*JOHN DEER*	ON *09/04/01*	*(916)651-6872*
ELECTRONIC SIGNATURE DOCUMENT TYPE AUTH/AGREE	SIGNED BY	*JACK DOE*	ON *09/04/01*	*(619) 421 9898 FOR CALTRANS*
	OBLIGATED BY	*JIM DAN*	ON *09/04/01*	*FOR FHWA*
LATEST FHWA ELECTRONIC SIGNATURE FOR AUTH/AGREE	EXECUTED BY	*JOE DAY*	ON *09/05/01*	

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REQUEST FOR AUTHORIZATION TO PROCEED WITH UTILITY RELOCATION

Local Agency Letterhead

To: (DLAE Name)
District Local Assistance Engineer
Caltrans, Office of Local Assistance
(District Address)

Date:_____
(Federal Number)
(Project Description)
_____

Dear (DLAE Name):

In order to proceed with the right of way work for the above project, we request that you secure Federal authorization and obligate funds for this work. The amounts requested do not exceed the Federal funds provided to this agency in the approved Federal TIP/Federal Statewide TIP(FSTIP).

Attached are the following documents that are required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Project Prefix Checklist, (Exhibit 3-E) or
- ☐ The Project Prefix Checklist was previously submitted and the funding types have not changed.
- ☐ Completed Finance Letter (Exhibit 3-F)
- ☐ Completed Data Sheets (Exhibit 3-G)
- ☐ Copy of the FTIP/FSTIP sheet

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review form, or
- ☐ The Field Review form was previously submitted on _____.

Environmental Document

- ☐ Approved Environmental Document
  Type of Document _____
  Approval Date _____
- ☐ The Environmental Document was previously submitted and approved.

Utility Relocation

- ☐ The Alternate Procedure (Section 14.3) for utility relocation will be followed. The utility owners of utilities to be relocated are listed in the attached Data Sheets together with an estimate of the cost of relocation. If the utility relocation work is part of the construction contract, the Specific Authorization and Utility Agreement (if applicable) for each utility being relocated will be attached to the Right of Way Certification, which will be submitted along with the Request for Authorization to Proceed with Construction. If the utility relocation is not part of the construction contract, the Specific Authorization and Utility Agreement (if applicable) will be submitted and approved prior to beginning work (other than PE).

I understand that invoice requests for payment will not be processed until an Authorization to Proceed (E-76) and a Program Supplement Agreement have been executed.

(Check which of the following applies)

- ☐ I plan to request reimbursement for costs as incurred. As indicated above, I have included a completed Field Review Form. I am also including the "Agreements Checklist" (Exhibit 4-A) request forms with this transmittal and request that the agreements be prepared now.
- ☐ I have not submitted the Field Review Form and "Agreements Checklist." I am aware that I will not be able to resubmit progress invoice until these documents are submitted and a Program Supplement Agreement is fully executed.

I will not submit any invoice requests until I receive notification that an Authorization to Proceed (E-76) and a Program Supplement Agreement have been executed.

CTC ALLOCATION

Check which of the following applies:

- ☐ A CTC allocation vote is not required, or
- ☐ The required CTC allocation has been scheduled for the _____ meeting, or
- ☐ The required CTC allocation was voted at the _____ meeting.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administrator and the California Department of Transportation relative to the above designated project.

I understand that this Agency is responsible for costs in excess of the Federal funds obligated and all costs incurred before it has received FHWA "Authorization to Proceed" with this phase of the project.

Please advise us as soon as the authorization has been received. You may direct any questions to (Name) at (phone number).

Signed _____
Title _____
Agency _____

Attachments

CHAPTER 4 AGREEMENTS

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Exhibit	Description	Page Number
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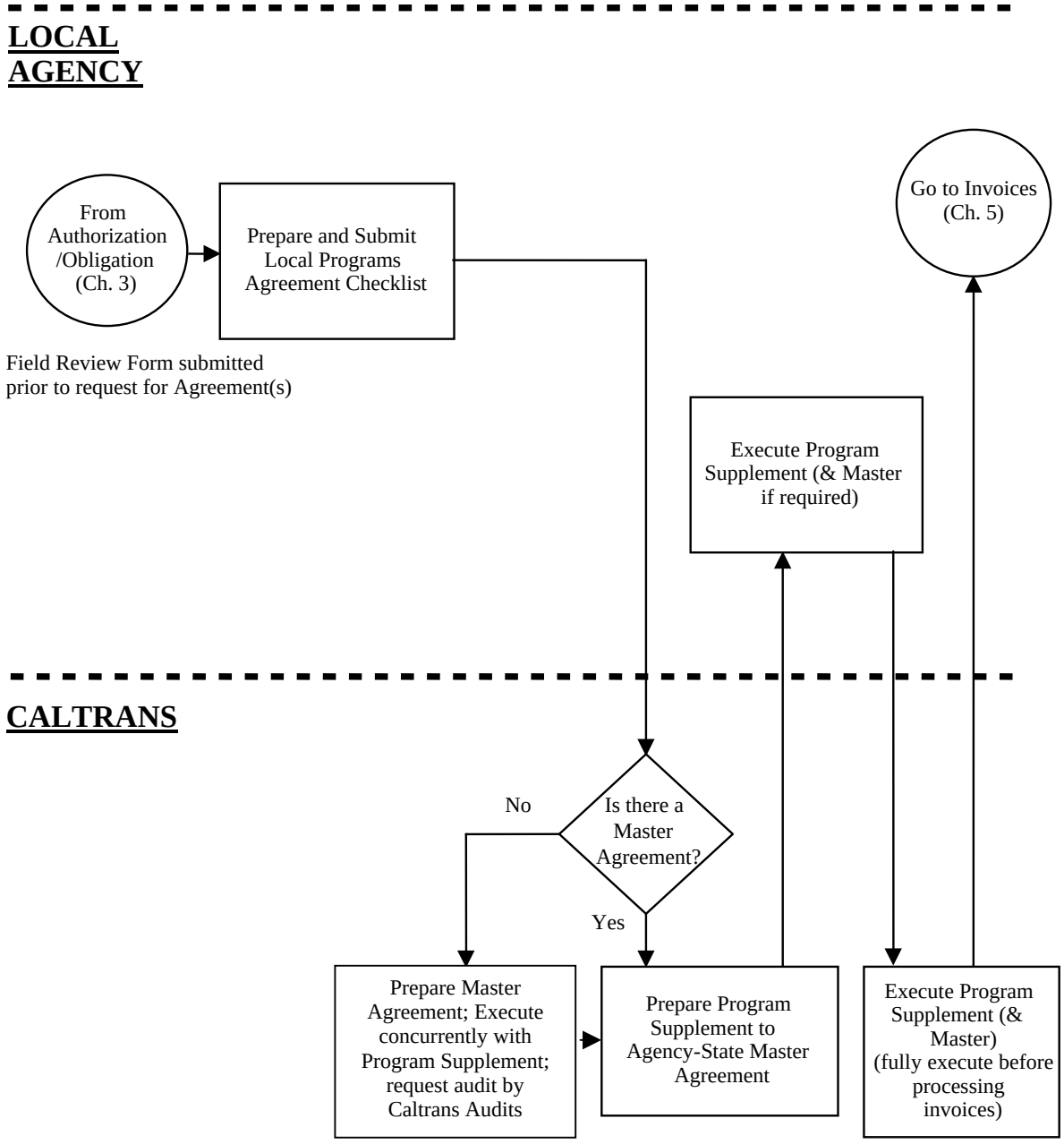
DEVELOPING LOCAL FEDERAL-AID AND STATE FUNDED PROJECTS



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CHAPTER 4 AGREEMENTS

4.1 INTRODUCTION

The Federal-aid Highway Program and most local programs funded from the State Highway Account are reimbursable programs. Agreements (contracts) must be executed in order to pay funds to the local agency. The Division of Local Assistance prepares and sends these agreements directly to the local agency. The agreements must be executed before any invoices for payment can be processed.

This discussion applies to all local agency projects receiving Federal-aid highway project funds administered by FHWA and State highway account funds administered by the Division of Local Assistance as discussed in this chapter.

4.2 GENERAL AGREEMENTS

Local (Administering)[1] **Agency-State Master Agreement (Master Agreement)-** An agreement between a city, county, or other local public agency and the State defining the general terms and conditions which must be met to receive Federal-aid or State funds for the following programs:

- Federal-aid Highway Program
- State-only Funded Projects

Referred to as the Master Agreement.

Program Supplement Agreement - A local agency-State agreement which amends the Master Agreement to describe the phases, costs and special conditions that apply to a specific project.

MASTER AGREEMENT

A Master Agreement is required with a local agency whenever Federal or State funds are to be used on a local project funded from the programs noted above.

In the Master Agreement, a local agency agrees to comply with all Federal and State laws, regulations, policies and procedures relative to the design, right of way acquisition, construction and maintenance of the completed facility. It is normally processed once with the agency when it begins its first Federal-aid or State funded project. The Local Agency-State Master Agreements are occasionally updated and re-executed to account for changes in laws and policies.

The titles for the Master Agreements vary with the program as follows:

1. Federal-aid Highway Program

   - Local Agency-State Agreement for Federal-aid Projects, or
   - Administering Agency-State Agreement for Federal-aid Projects[1]

[1] The latter title is being used for new or updated agreements executed after ISTEA.

2. State-only Funded Projects

- Administering Agency-State Agreement for State Funded Projects (with no federal funds)

PROGRAM SUPPLEMENT AGREEMENT

The supplement to the Master Agreement formalizes the financial responsibilities and provisions for a specific Federal-aid or State funded project in the categories defined above. This program supplement identifies the types and amounts of Federal, State and local funds used to finance the locally sponsored project. It is the contractual basis for the State to pay the local agency for work done.

Special covenants or clauses in the agreement define the agencies' specific responsibilities in implementing and maintaining the project. Others define State or local responsibilities for providing project funds.

No reimbursement payments can be made until the Program Supplement Agreement has been fully executed. Invoices shall not be submitted prior to this execution.

4.3 SPECIAL PROGRAM AGREEMENTS

Agreements are required for several programs which are prepared on a programmatic or project-by-project basis and do not follow the Master Agreement/Program Supplement pattern. These are briefly described below. Refer to the *Local Assistance Program Guidelines* for full details of the agreement process and conditions for these programs.

FEDERAL APPORTIONMENT EXCHANGE PROGRAM AND STATE MATCH PROGRAM AGREEMENT

This program is commonly called the Exchange/Match or Match and Exchange Program. Under the provisions of S&H Code 182.6 et seq., MPOs, RTPAs and counties are allowed to exchange certain portions of their Federal-aid funds for State highway account funds (see the Chapter 18 of the *Local Assistance Program Guidelines* for details).

The Division of Local Assistance (DLA) prepares the agreement for the maximum allowable amount that each agency can exchange and sends it for signature by the agency. Signed agreement is sent back to DLA. The agreement takes effect upon signature by appropriate DLA staff. If the agency does not wish to participate, they will send the agreement back with a letter notifying DLA to cancel the agreement.

BICYCLE TRANSPORTATION ACCOUNT AGREEMENT

Applications are submitted to the DLA for annual project selection. Upon selection, agreements for all projects for the year are prepared and submitted to the Accounting Service Center for the encumbrance of State funds and then processed for execution. The title for this agreement is "Local Agency-State Agreement, Bicycle Transportation Account Project."

PROPOSITION 116: BICYCLE PROJECT AGREEMENT

A fund allocation vote is required by the California Transportation Commission (CTC) for each project. When this is complete, Caltrans DLA prepares a Fund Transfer Agreement for execution by the local agency and State. The full agreement title is Fund Transfer Agreement, Clean Air and Transit Improvement Act of 1990 (Proposition 116) Bond Funds.

ENVIRONMENTAL ENHANCEMENT AND MITIGATION (EEM) PROJECT AGREEMENTS

After program adoption, a fund allocation vote (2nd vote) is required by the California Transportation Commission (CTC) for each project. When this is complete, Caltrans DLA prepares an "Applicant-State Agreement" for execution by the applicant and State. If acquisition of real property is to occur, an "Agreement Declaring Restrictive Covenants" is also required (see Chapter 20 of the *Local Assistance Program Guidelines* for agreement format and processing details).

4.4 PROCESS AND PROCEDURE

All project specific agreements are contingent on budget actions by the Federal and State governments.

Federal-aid projects must be authorized and have funds obligated before an agreement is prepared. For projects in the State Transportation Improvement Program (STIP), Transportation Congestion Relief Program (TCRP), Conservation Lands, Statewide Transportation Enhancements (STE) Program, and Environmental Enhancement and Mitigation (EEM) Program, an allocation vote is required by the CTC. Caltrans does not prepare the agreement until the authorization, obligation and vote allocation are complete.

An agreement is prepared only once for each project after the initial authorization/obligation. In certain cases, more than one agreement is required. In such instances, the DLA will identify the need and prepare a revised agreement.

INITIATION OF AGREEMENT

The local agency is responsible for preparing the "Local Agency Agreement Checklist" (Exhibit 4-A) and the "Field Review Form" (Exhibit 7-B) to initiate the preparation of the Local Agency/State agreement. The "Local Programs Agreement Checklist" (Exhibit 4-A) shall be prepared defining general and specific conditions (and required construction contract provisions) which need to be incorporated into the agreement. The Local Agency submits the "Local Agency Agreement Checklist" (Exhibit 4-A) and "Field Review Form" (Exhibit 7-B) to the DLA through the DLAE.

PROCESSING

After the funds have been obligated/allocated and upon receipt of the "Local Agency Agreement Checklist" (Exhibit 4-A) and "Field Review Form" (Exhibit 7-B), the DLA prepares the agreement. Once the requested funds have been encumbered by Local Programs Accounting, the DLA sends the agreement to the Local Agency for signature. The agreement must be signed by the Local Agency and returned to the DLA along with the signed and dated resolution as soon as possible. The "Local Agency Agreement Execution Checklist" (Exhibit 4-B) identifies key data or actions which should be provided in the agreement execution process. Any changes in funding or agreement language made by the Local Agency will void the agreement.

A Local Agency may pass a resolution for each agreement as it is presented or may pass a resolution authorizing an individual, e.g. public works director, to execute specific types of agreements as they occur. The latter method can save significant amounts of work and time and should be considered by any agency, which constructs a large number of Federal-aid, or State funded projects. In either case, the resolution should clearly indicate the title of the person who is authorized to sign and for which agreement(s) or agreement types.

Upon receipt of the signed agreement and resolution, the DLA must review and sign the agreement before it can be conformed and executed. A copy of the executed agreement is then sent to the Local Agency and Local Programs Accounting at which time invoices may then be submitted for payment.

4.5 FEDERAL-AID PROJECT AUTHORIZATION TO PROCEED (E-76)

Section 106(a) of Title 23 of the United States Code (USC), as revised under the Transportation Equity Act for the 21st Century (TEA-21), combined the project authorization, obligation of funds, and the execution of the federal-aid project agreement into a single action. To support TEA-21, the Federal-Aid Data System (FADS) was upgraded and implemented this new federal-aid processing requirement. Under the upgraded FADS, one electronic form entitled "Authorization to Proceed" (E-76) replaces the PR-2, PR-2A, and FNM-76. **The E-76 now acts as both project authorization and federal-aid project agreement with Caltrans**.

4.6 STATE HIGHWAY SYSTEM AND OTHER AGREEMENTS

Various types of agreements are required when working within the State highway right of way or with other State agencies. Included are: Grade Separation Fund, Cooperative, Joint Powers, Highway Powers, Highway Improvement, Escrow, Maintenance, Petroleum Violation Escrow Account (PVEA), and Contribution Agreements and Service contracts. These are not processed to agencies by DLA but are developed and processed as defined in other Caltrans manuals and documents. The local agency should not overlook the need for one or more of these agreements during project development.

RAILROAD SERVICE CONTRACTS

These contracts are required when a railroad company will perform work on a project.

When the work is funded with Grade Crossing funds, the contracts are made between Caltrans and a railroad company and are directly processed to the railroad.

The Program Supplement Agreements for these Federal-aid projects are processed as described previously.

4.7 REFERENCES

23 U.S.C. 630.301 et. Seq.
Section 106 (a) United Codes revised under TEA-21
Published Memos: Weaver/Kiff, 2/20/93, Everitt 5/28/93 & 1/5/95 (Exchange & Match procedures)

LOCAL AGENCY AGREEMENT CHECKLIST

Request for <u>Local Agency/State</u> agreement for Federal/State funding:

Project No. _____

A. Funds:

1. _____ Federal _____ TSM Match

2. _____ Bicycle Lane Acct.

3. _____ Prop. 116 Bicycle _____ EEM _____ TEA

Is a CTC Allocation vote required? _____ Yes _____ No (Normally req'd for line 3. Items)

Has it been scheduled/voted? _____ Yes _____ No Date _____
(circle one)

B. Agreement Type

_____ Master _____ Supplement _____ Revised Supplement _____ Special Program

C. Phases to be Covered: (For Obligation)

Funding: _____ PE _____ ROW _____ Const. _____ Other (specify) _____

D. Standard Conditions:

Who will:

___ Advertise ___ Award ___ Administer ___ Furnish RE ___ Maintain

L = Local Agency S = State O = Other (Specify)_____

E. Reimburse State for:

_____ Resident Engineer _____ Inspection _____ Other (specify) _____

F. Cooperative Agreement No. _____ (if any)

G. If multiple fund sources are to be used provide estimates and clarifying information defining covenant references needed in the agreement.

H. Describe any other special conditions applying to the project.

I. Agency Contact Person _____ Date _____ Phone _____

<u>Attach an updated finance letter.</u>

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MASTER AGREEMENT

ADMINISTERING AGENCY-STATE AGREEMENT
FOR
FEDERAL-AID PROJECTS

_____
District Administering Agency

Agreement No**.**

This AGREEMENT, made effective this _____ day of _____, 1996, is by and between the **Agency Name**, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through the California Department of Transportation (Caltrans), hereinafter referred to as "STATE."

WITNESSETH:

WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act of 1991 to fund programs which include, but are not limited to, the Surface Transportation Program (RSTP), the Congestion Mitigation and Air Quality Improvement Program (CMAQ), the Transportation Enhancement Activities Program (TEA), and the Bridge Replacement and Rehabilitation Program (HBRR) (collectively the "Programs"); and

WHEREAS, the Legislature of the State of California has enacted legislation by which certain Federal funds (RSTP and CMAQ) may be made available for use on local transportation facilities of public entities qualified to act as recipients of these Federal funds in accordance with the intent of Federal law; and

WHEREAS, before Federal-aid will be made available for a specific Program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement relative to prosecution of said project and maintenance of the completed facility.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any Program project unless and until a project-specific Program Supplement to this AGREEMENT for Federal-aid Projects, hereinafter referred to as "PROGRAM SUPPLEMENT," has been executed.

2. The term "PROJECT," as used herein, means that authorized project financed in part with Federal funds as further described in an "Authorization to Proceed" document executed by STATE, in the subsequent specific PROGRAM SUPPLEMENT.

3. The Financial commitment of STATE administered Federal funds will occur only upon the execution of this AGREEMENT, and the execution of each project-specific PROGRAM SUPPLEMENT and E-76.

4. ADMINISTERING AGENCY further agrees, as a condition to payment of funds obligated to a PROJECT, to comply with all the agreed-upon Special Covenants or Remarks attached to the PROGRAM SUPPLEMENT identifying and defining the nature of the specific PROJECT.

5. The PROGRAM SUPPLEMENT shall designate the party responsible for implementing the various phases of the PROJECT, the Federal funds requested, and the matching funds to be provided by ADMINISTERING AGENCY and/or STATE. Adoption of the PROGRAM SUPPLEMENT by ADMINISTERING AGENCY and approval by STATE shall cause such PROGRAM SUPPLEMENT to be executed and be a part of this AGREEMENT as though fully set forth herein. Unless otherwise expressly delegated in a resolution by the ADMINISTERING AGENCY's governing body, the PROGRAM SUPPLEMENT shall be approved and managed by the ADMINISTERING AGENCY's governing body.

6. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the *Local Assistance Procedures Manual*, hereafter referred to as REENGINEERED PROCEDURES) relating to the Federal-aid Program, all Title 23 Federal requirements, and all applicable Federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise designated in the approved PROGRAM SUPPLEMENT.

7. If PROJECT involves work on the State highway system, it shall also be the subject of a separate standard form of encroachment permit and, where appropriate, a cooperative agreement between STATE and ADMINISTERING AGENCY to determine how the PROJECT is to be constructed.

8. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with REENGINEERED PROCEDURES. The REENGINEERED PROCEDURES describe minimum statewide design standards for local agency streets and roads. The REENGINEERED PROCEDURES for projects off the National Highway System (NHS) allow the STATE to accept either the minimum statewide design standard**s** or ADMINISTERING AGENCY-approved geometric design standards. Also, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, and materials sampling and testing quality assurance programs that meet the conditions described in the REENGINEERED PROCEDURES.

9. When PROJECT is not on the State highway system but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the parties may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.

10. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. As provided in the REENGINEERED PROCEDURES, work may be performed by a consultant(s), provided a fully qualified and licensed employee of ADMINISTERING AGENCY is in responsible charge.

11. The Congress of the United States, the Legislature of the State of California, and the Governor of the State of California, each within their respective jurisdiction, have prescribed certain employment practices with respect to work financed with Federal or State funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) whenever State funds finance part of the PROJECT, and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of work connected with the PROJECT shall incorporate Exhibits A (whenever State funds finance part of the PROJECT) and Exhibit B (with third party's name replacing ADMINISTERING AGENCY) as parts of such agreement.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a Federal-aid PROJECT shall be awarded until the necessary rights of way have been secured. Prior to the advertising for construction of the PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.

2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability which may result in the event the right of way for a PROJECT is not clear as certified. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of damages to real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of the PROJECT because utility facilities have not been removed or relocated, or because rights of way have not been made available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.

3. Subject to STATE approval and such supervision as is required in REENGINEERED PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from Federal funds for expenditures to purchase only necessary rights of way included in PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.

4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

5. Whether or not Federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in Chapter 5 of Title 23, U.S. Code. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least 90-days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of displaced persons for the PROJECT as provided in 23 CFR 740 H and 49 CFR 24.

6. In all real property transactions acquired for the PROJECT, following recordation of the deed or such other recorded instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, there shall also be recorded a separate document which is an "Agreement Declaring Restrictive Covenants." Said Agreement Declaring Restrictive Covenants will incorporate the assurances included within Exhibits A and B and Appendices A, B, C and D, as appropriate, when executed by ADMINISTERING AGENCY.

ARTICLE III - MANAGEMENT AND MAINTENANCE OF PROPERTY

1. ADMINISTERING AGENCY will maintain and operate the PROJECT property acquired, developed, rehabilitated, or restored for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the property may transfer this obligation and responsibility to maintain and operate the property to another public entity.

2. Upon ADMINISTERING AGENCY acceptance of the completed Federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting a portion of the work, the agency having jurisdiction over the PROJECT shall maintain the completed work in a manner satisfactory to the authorized representatives of STATE and the United States. If, within 90 days after receipt of notice from STATE that a PROJECT, or any portion thereof, under ADMINISTERING AGENCY's jurisdiction is not being properly maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future Federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of maintenance satisfactory to STATE and the Federal Highway Administration. The provisions of this section shall not apply to a PROJECT which has been vacated through due process of law.

3. The maintenance referred to in paragraph 2, above, includes not only the physical condition of the PROJECT but its operation as well. PROJECT shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as the project requires. Said maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

1. The PROJECT, or portions thereof, must be included in a federally-approved statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submittal of the "Request for Authorization."

2. State and Federal funds will not participate in PROJECT work performed in advance of approval of the "Authorization to Proceed." The parties shall execute a PROGRAM SUPPLEMENT between STATE and ADMINISTERING AGENCY subsequently incorporating the "Authorization to Proceed."

3. ADMINISTERING AGENCY may submit invoices in arrears for reimbursement of participating PROJECT costs on a monthly or quarterly progress basis once the PROJECT PROGRAM SUPPLEMENT has been executed by STATE and the project has been authorized and obligated by FHWA. The total of all amounts claimed, plus any required matching funds, must not exceed the actual total allowable costs of all completed engineering work, right of way acquisition, and construction.

4. Invoices shall be submitted on ADMINISTERING AGENCY letterhead and shall include this AGREEMENT number, Federal-aid project number, and Progress billing number for the PROJECT, and shall be in accordance with the LAPM.

5. The estimated total cost of PROJECT, the amounts of Federal-aid programmed, and the matching amounts agreed upon may be adjusted by mutual consent of the parties hereto in a Finance Letter/Detail Estimate and a E-76 document which are to be considered as part of this AGREEMENT. Federal-aid program amounts may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

6. When additional Federal-aid funds are not available, the ADMINISTERING AGENCY agrees that the payment of Federal funds will be limited to the amounts approved by the E-76, or its modification, and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY funds.

7. ADMINISTERING AGENCY shall use its own nonfederal-aid funds to finance the local share of eligible costs and all expenditures ruled ineligible for financing with Federal funds. STATE shall make the determination of ADMINISTERING AGENCY cost eligibility for Federal fund financing.

8. Any overpayment to ADMINISTERING AGENCY of amounts invoiced shall be returned to STATE by ADMINISTERING AGENCY upon written demand.

9. Should ADMINISTERING AGENCY fail to refund all moneys due STATE as provided hereunder or should ADMINISTERING AGENCY breach this Agreement by failing to complete PROJECT, then, within 30 days of demand, or within such other period as may be agreed to in writing between the parties hereto, STATE, acting through the State Controller, the State Treasurer, or any other public agency, may withhold or demand a transfer of an amount equal to the amount owed to STATE from future apportionment, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other funds and/or may withhold approval of future ADMINISTERING AGENCY Federal-aid projects.

10. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 9, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

ARTICLE V - RETENTION OF RECORDS/AUDITS

1. For the purpose of determining compliance with Public Contract Code Section 10115, et. seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et, seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 10532, ADMINISTERING AGENCY and any third party under contract with ADMINISTERING AGENCY shall retain all original records to the project financed with Federal funds and shall make records available upon request by Federal and State representatives. Following final settlement of the project costs with FHWA the records/documents may be microfilmed by the ADMINISTERING AGENCY, but in any event shall be retained for a period of three years from STATE payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer. ADMINISTERING AGENCY shall retain records/documents longer if required in writing by STATE.

2. Per the Single Audit Act of 1984, any ADMINISTERING AGENCY that receives $300,000.00 or more per fiscal year in Federal Financial Assistance shall have an audit performed by an independent audit firm per the Single Audit Act - (see OMB-A128, “Audits of State and Local Governments”).

ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer’s knowledge and belief, that:

A. No STATE or Federal appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or Federal contract including this Agreement, the making of any STATE or Federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or Federal contract, grant, loan, or cooperative contract.

B. 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 Federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this Agreement, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any party 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.

2. ADMINISTERING AGENCY also agrees by signing this document that the language of this certification will be included in all lower tier sub-agreements which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. Neither STATE nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE, its officers, and employees from all claims, suits or actions of every name, kind and description brought for, or on account of, injury (as defined in Government Code Section 810.8) occurring by reason of anything done, or omitted to be done, by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction delegated to ADMINISTERING AGENCY under this Agreement. STATE reserves the right to represent itself in any litigation in which STATE's interests are at stake.

2. Neither ADMINISTERING AGENCY nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done, or omitted to be done, by STATE under, or in connection, with any work, authority, or jurisdiction delegated to STATE under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully indemnify and hold ADMINISTERING AGENCY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done, or omitted to be done, by STATE under, or in connection with, any work, authority, or jurisdiction delegated to STATE under this Agreement. ADMINISTERING AGENCY reserves the right to represent itself in any litigation in which ADMINISTERING AGENCY's interests are at stake.

3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of STATE.

SAMPLE - PROGRAM SUPPLEMENT AGREEMENT

PROGRAM SUPPLEMENT NO. M003
to
ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 04-5375

Date: February 5, 2003
Location: 04-CC-0-PIHI
Project Number: STPL-5375(008)
E.A. Number: 04-923399
Locode: 5375

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 07/08/97 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the Administering Agency on (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

PROJECT LOCATION:

Along Oak Park Blvd. between Wendell Lane & Patterson Blvd.

TYPE OF WORK: Road Rehabilitation **LENGTH:** 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds		
	Q230	$40,723.00	LOCAL		OTHER
$390,000.00	Q240	$221,277.00	$128,000.00		$0.00

CITY OF PLEASANT HILL

By _____

Title _____

Date _____

Attest _____

STATE OF CALIFORNIA
Department of Transportation

By _____
Chief, Office of Project Implementation
Division of Local Assistance

Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer _____ **Date** _____ $262,000.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

04-CC-0-PIHI **02/05/2003**
STPL-5375(008)

SPECIAL COVENANTS OR REMARKS

1. The ADMINISTERING AGENCY will reimburse the STATE for the ADMINISTERING AGENCY share of costs for work requested to be performed by the STATE.

2. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the most current published Local Assistance Procedures Manual.

3. All project repair, replacement and maintenance involving the physical condition and the operation of project improvements referred to in Article III MAINTENANCE, of the aforementioned Master Agreement will be the responsibility of the ADMINISTERING AGENCY and shall be performed at regular intervals and as required for efficient operation of the completed project improvements.

4. The ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act and OMB A-133 if it receives a total of $300,000 or more in federal funds in a single fiscal year. The federal funds received under this project are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205, Highway Planning and Research. OMB A-133 superceded OMB A-128 in 1996. A reference to OMB A-128 in a Master Agreement (if any) is superceded by this covenant to conform to OMB A-133.

5. The ADMINISTERING AGENCY agrees that payment of Federal funds will be limited to the amounts approved by the Federal Highway Administration (FHWA) in the Federal-Aid Project Authorization/Agreement or Amendment/Modification (E-76) and accepts any resultant increases in ADMINISTERING AGENCY funds as shown on the Finance Letter, any modification thereof as approved by the Division of Local Assistance, Office of Project Implementation.

6. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer immediately after the project contract award. A copy of the award package shall also be included with the submittal of the ADMINISTERING AGENCY's first invoice for the construction contract to:

   Department of Transportation
   Division of Accounting
   Local Programs Accounting Branch, MS#33
   P. O. Box 942874
   Sacramento, CA 94274-0001

   Failure to do so will cause a delay in the State processing invoices for the construction phase. Please refer to Section 15.7 "Award Package" of the Local Assistance Procedures Manual and LPP 01-06.

CHAPTER 5 ACCOUNTING/INVOICES

The purpose of this chapter is to provide a local agency with the basic information required to obtain reimbursement for their expenditures on local Federal-aid and State funded projects. More information may be obtained from Local Program Accounting (LPA) through the District Local Assistance Engineer (DLAE), if required. Most payments made under these provisions are for expenditures paid by the local agency prior to claiming reimbursement from Caltrans. The exceptions to this reimbursement concept are:

State-Local Transportation Partnership Program (SLTPP) projects involving $300,000 or less in State funds receive the full State share of funding at the time of contract award. This lump sum payment is considered a "grant" and is reimbursed regardless of final cost. The local agency is responsible for ensuring that these funds are used consistent with the project application. Final inspection and accounting reconciliation are not performed.

SLTPP projects involving more than $300,000 in State funds can be reimbursed at 100 percent of incurred cost for the State share. Progress billings are reimbursed at 100 percent until the total State share is fully reimbursed. A final inspection (final inspection report and final report of expenditures required) and audit is required to establish actual eligible project costs within 6 months after the end of the fiscal year in which the project is completed.

Environmental Enhancement and Mitigation (EEM) projects in which there is a request for direct deposit of EEM funds into an escrow account. DLAE-approved invoices must be submitted to LPA within 30 days prior to closing escrow for the purchase of property.

Planning, Programming, & Monitoring (PPM) and Rideshare (RPRSL) projects. Caltrans has prepared a standard agreement for the distribution of these funds which allows lump sum "up front" payments to all agencies which programmed $300,000 or less per fiscal year. Agencies which receive over $300,000 will be paid on a reimbursed basis.

State Match and Exchange Program (X projects) and TEA Exchange Program (TX projects). These funds are advanced to the local agencies to be spent in accordance with the provisions in the local agency-state agreement. It is the responsibility of the Regional Transportation Planning Agencies (RTPA) to provide LPA and the DLAE with an annual report on these funds. The report, with an as-of date of June 30, is due August 1 of each year. It must show the amount of funds unspent, the amount spent that year by the RTPA, and amount given to each of the Cities and/or County. Failure to provide this report will result in future year exchanges being held in abeyance. The State Controller's Office (SCO) will review the actual expenditures to verify compliance with the State Law.

5.1 REQUIREMENT FOR REIMBURSEMENT

Local agency invoices are routinely processed for payment within twenty-five (25) days of the date LPA receives the invoices provided that:

- The State legislature and Federal government have provided budget authority and the project has met all program budget conditions, e.g. timely use of funds.

- The Program Supplement, project agreement, or some other required applicant-State agreement has been executed. These documents are agreements between the State and local agency (or applicant) which must be executed prior to the reimbursement of Federal and State funds for each project. It identifies the reimbursable phases of work as well as types and amounts of Federal, State, and local funds used to finance the project.

- If Federal funds are used on a project, an E-76 and Program Supplement Agreement must be executed prior to LPA processing invoice reimbursement to the local agencies. This is necessary to allow Caltrans to be reimbursed by FHWA for Federal funds paid on the local agency's invoices. Therefore, the local agency must provide the DLAE with the required documents so that the project agreement can be executed with the FHWA.

- If you are claiming reimbursement of indirect costs, you must have an Approval Letter for the fiscal year involved from Caltrans Audits & Investigations before you can request reimbursement for those costs. If a project involves more than one fiscal year, separate approvals are needed for each fiscal year. Complete the Indirect Costs Calculation section on the Invoice and enter the Indirect Costs to Date on the first page of the invoice.

- If Emergency Relief funds are used on a project, all restoration work must be done at the normal reimbursement ratio for the highway facility on which the ER project is located (88.53% on local highways). Emergency Opening work necessary to restore essential services that is accomplished within 180 days calendar days following the incident period will be reimbursed at 100%. See Chapter 11, Local Assistance Program Guidelines, for additional details.

- If a Federal project is not funded at its full pro-rata share, the reimbursement ratio shown on the invoice must be at the lower rate. The reimbursable ratio is computed by dividing the amount of Federal funds authorized for the project, by the total costs or the total participating costs, whichever is less. For example, STPL-XXXX(XXX) has a normal pro-rata share of 88.53%; the total costs of the project are $100,000, the total participating costs are $80,000, and the total Federal funds are $60,000 for Federal Appropriation Code Q24. Using this data, the invoice should reflect a reimbursable ratio of 75%. On the <u>final invoice</u>, the reimbursable ratio may float up to 88.53% to allow all of the Federal funds to be used.

- Reimbursements requested do not exceed authorized amounts. If an invoice labeled "progress invoice" requests all of the funds available on the current executed documents, LPA will consider the invoice a "final" invoice. Since the "final" invoice requires District approval, LPA will return the invoice to the local agency to follow the prescribed final payment procedures.

- The invoice submitted contains the required information and if a final invoice, it is accompanied by the required final reports and approved by the DLAE or other designated authorities.

- Local agencies may submit invoices for reimbursement of participating project costs monthly. Amounts claimed must reflect the cost of completed work. Local agencies must claim all reimbursable work within 180 days of project completion, or prior to the expiration date of the project agreement, whichever comes first.

Since this alternative procedure requires extra work by Caltrans and thus adversely affects other agency processing, it will be used only for the **construction phase** of projects and should be used only as a last resort. Recent construction contract administration process reviews have found that some local agencies were not invoicing Caltrans for money that was due to them in a timely manner. Local agencies that have money due to them from local assistance projects or programs, but have not invoiced in a timely manner, will not be eligible to use this procedure since this would not demonstrate a cash flow problem.

Local Program Accounting will process a local agency's invoice based on estimated payments to the contractor in the same manner as normal reimbursement billings are paid. The invoice format for this alternative construction progress payment is shown in Exhibit 5-H. Local agencies should follow the following procedures when requesting use of these alternative payment procedures:

1. The governing board for the local agency must pass a resolution requesting use of this procedure for a specific project. The resolution must include the reasons for the request and a statement that all other options have been considered and that the project cannot be implemented, or will be delayed, unless this procedure is used. The local agency must also provide a written schedule of estimated monthly construction payments for the project. This resolution and estimated payment schedule should accompany the local agency's Request for Authorization to the DLAE for the construction phase of their project no later than 45 days prior to the first month's payment to the contractor. Earlier submittals will gladly be accepted. The DLAE will forward the estimated payment schedule to LPA through the Division of Local Assistance.

2. After approval of the Request for Authorization and execution of the Program Supplement (which must include language allowing payment based on estimated costs), an invoice requesting payment for the first month's estimated payment (less local match funds), may be submitted to LPA. This invoice can be submitted anytime within 30 calendar days prior to the date of the first month's payment to the contractor. This will allow payment to made to the local agency at approximately the same time they are required to pay the contractor. The "Accelerated Payment of Invoices through the State Controller's Office" procedures in this section cannot be used in series with this procedure.

3. The estimated payment amount shown on second and subsequent invoices must reflect the most current estimated payment to the contractor. In addition, the invoices will reflect the difference between the estimated payment claimed on the prior invoice and the actual payment made to the contractor.

4. The local agency must provide a final invoice and a final report of expenditures, showing actual project costs (including claims) within 180 days of project completion. This final invoice, the final report of expenditures, and final inspection forms must be sent to the DLAE for written approval. For Environmental Enhancement & Mitigation (EEM) projects, the final invoice and final report must be submitted 60 days prior to the expiration of the Budget Authority.

5. If Caltrans has overpaid, a check for the amount of overpayment by Caltrans, along with a copy of the final invoice, must be sent to LPA within 30 calendar days of the final invoice approval by Caltrans.

6. Failure by a local agency to adhere to all terms of this procedure will result in termination of the alternative payment procedure for that project.

5.6 FINAL EXPENDITURE REPORTS

Within six months of project completion, the local agency is responsible for preparing and submitting to the DLAE the final report documents which collectively constitute the Report of Expenditures. For EEM projects, the final report (including the final invoice) must be submitted 60 days prior to the expiration of the Budget Authority. These report documents provide key information required to initiate timely project closure and payment. The Report of Expenditures is signed by the responsible person in charge of the project for the local agency. After the DLAE reviews and approves the "Report of Expenditures," including the final invoice, he/she will forward them to LPA for processing of the final reimbursement. Additional information can be found in Chapter 17 "Project Completion."

If the final invoice is returned to the local agency for error revision, the final invoice must be re-dated when resubmitted to the District or LPA.

5.7 AUDIT OF LOCAL AGENCY EXPENDITURES

The agency shall maintain written source document records that account for agency costs and payments made to consultants, vendors and contractors. Contract records must be retained by the local agency for a minimum period of three years from the date of final payment.

Local agency expenditures for all local assistance programs are subject to financial and compliance audits by the SCO and Caltrans Office of External Audits (OEA). The OEA's evaluation of a local agency's system of controls will determine if an on-site audit of the local agency's records (underlying the reported project) is necessary.

The auditors typically discuss any audit citation with the local agency before finalizing their audit reports. The local agency should provide any clarifications or raise any objections to the audit findings at this meeting.

Local agency expenditures for the Natural Disaster program may be audited by the Audits Division of the SCO or OEA because of the variety of funding sources and the need to determine the eligibility of expenditures for each funding source. Local Program Accounting coordinates the audit requests and receipt of audit reports with the audits units within SCO and OEA.

Local agencies are also subject to the audit requirements of the Federal Office of Management and Budget's Circular A-133. A single audit is required if an agency receives more than $300,000 in Federal funds from all sources. Normally, project audits are not necessary if the expenditures for a project are covered by a single audit report accepted by the appropriate Federal agency.

- Initial submittal of the PES form (completed, and with supporting information attached) for Caltrans and/or FHWA approval (see Chapter 6, "Environmental Procedures")
- Submittal of the Agreements Checklist requesting a Supplemental Agreement

FIELD REVIEWS ATTENDED BY CALTRANS AND THE FHWA

For projects on the NHS, early review and discussions should be held with the DLAE and the FHWA engineer. Similar early discussions should occur for HBRR funded (Bridge) projects to ensure funding eligibility.

If a field review is required, Caltrans and the FHWA will attend. Caltrans and the FHWA may also attend optional field reviews if requested. The local agency shall fill out the Field Review Form as completely as possible prior to the field review, and send a copy with a location map to each of the interested parties attending the field review. This allows the participants to come to the meeting prepared to discuss the specific issues and methodologies which can lead to successful project implementation. The earliest date for the field review should be two weeks after the receipt of the draft Field Review Form by the district. Copies for the FHWA, Division of Local Assistance, and Office of Structure Design must be submitted to the district for further transmittal.

Caltrans has delegated design exception approval authority to the City/County Public Works Director (see Chapter 11, "Design Standards" of this manual). However, proposed design exceptions should be identified and discussed at the field review.

The Field Review Form should be updated and signed by the local agency, district, and FHWA representatives, as appropriate, at the field review even if some of the questions remain unanswered. Information determined after the field review is to be provided by the local agency as a supplement to the Field Review Form and may require FHWA concurrence.

OPTIONAL FIELD REVIEWS NOT ATTENDED BY CALTRANS OR THE FHWA

If the field review is optional and Caltrans and the FHWA will not be attending, the local agency may complete the Field Review Form without a formal or informal review or meeting, An on-site visit by the project engineer and project manager is recommended as good practice to verify the data and information used to complete the forms. The forms should be transmitted to the DLAE as soon as they are complete.

7.6 FIELD REVIEW DATA

SCOPE

The project must be defined in sufficient detail to accurately specify where it is, why it is necessary and what will be done. This process of project definition began with the planning and programming process. Now, further details are needed to clarify the limited FSTIP information with the specific project location, system and conditions as they currently exist and as they will be upon project completion. If the scope changes significantly from the approved FSTIP description, now or at any time during project development, a FSTIP amendment may be necessary. Items 1 to 5 on the "Field Review Form" (Exhibit 7-B) and Exhibits 7-C ("Roadway Data"), 7-D ("Major Structure Data"), 7-E ("Railroad Grade Crossing Data"), vicinity maps, typical

section(s), alternative sketches, signal warrants, and collision diagrams, as appropriate, provide data related to the general scope of the project. For non-roadway projects, the Field Review Form and attachments would be modified as appropriate for the project activity and scope, e.g., site plans, work plans, building sketches.

ENVIRONMENTAL PROCESS

All Federal-aid projects must undergo a documented environmental review and receive a federally approved environmental document before proceeding to final design, right of way acquisition or construction. The documentation of how the decision was made to perform a particular technical study or recommend a specific class of action (CE, EA, EIS) under NEPA is equally as important as environmental approval. Environmental requirements and procedures for processing required technical studies and the NEPA document are discussed in Chapter 6 of this manual. Specific information regarding the format and content of required technical studies and NEPA documents (CE, EA, EIS) is contained in the *Local Assistance Environmental Manual.*

The "Preliminary Environmental Study (PES) Form," Exhibit 6-A is designed to identify:

- The existing condition of the project area
- The potential existence of sensitive environmental resources within the project area
- Required technical studies
- The responsible or regulatory agencies where early coordination or consultation is necessary or where approvals and permits are needed

RIGHT OF WAY

The need to acquire right of way or relocate utilities can significantly affect project development, especially costs and scheduling. Activity within Caltrans right of way requires coordination and an encroachment permit. Federal laws and regulations must be followed if there is FHWA participation in any project phase, whether in R/W phase or only in the construction phase**.** The acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (42 US Code 4801, et. seq.). Item 7 of the "Field Review Form" (Exhibit 7-B) highlights the possible right of way activities with a cost estimate breakdown. The need for utility relocation should be identified.

PROJECT COST

Good initial estimates are needed to define whether there are sufficient funds available to implement the project. Item 7 of the Field Review Form provides for an overview by phase and anticipated Federal participation. Item 8 can be used to further break this down by Federal fund type and State funding. State or local funds are normally required to match the Federal funds. To the greatest extent possible, FHWA funded projects should be funded at the full Federal participating ratio (see Chapter 3, "Project Authorization," Section 3.2, "Underfunding Policy").

PROJECT ADMINISTRATION

The agency submitting the request is normally responsible for administering all phases of the project. If another arrangement is expected, this should be noted. If the agency plans to hire a consultant to assist with any phase, this should be noted. This

allows the agency to work sufficient time into their schedule for consultant selection (see Chapter 10, "Consultant Selection"). If the State is expected to administer any phase or to review the PS&E, hold early discussions with the appropriate Caltrans district to ensure that the required staff is available when needed. A cooperative agreement is needed to define work and cost sharing responsibilities.

PROJECT SCHEDULE

A Federal project is normally scheduled for a specific year in the FHWA approved FSTIP document. While the funds are usually carried forward into new FTIP and FSTIP adoptions, this is at the discretion of the MPO. For State funded projects, the specific program guidelines define the year or years the program funds are available. The delivery schedule for advertising should be reviewed to see if the project can be developed in a timely manner. The items discussed above define some of the critical steps in this effort. For federally funded projects, if there will be significant delays, the agency should work with the MPO to reschedule the work through a current FSTIP amendment or into the next FSTIP. State program guidelines define the appropriate actions for the State funded projects. In non-MPO areas, contact the Caltrans District FSTIP coordinator for necessary amendments.

7.7 SUBMITTAL OF FIELD REVIEW FORM

As soon as formal or informal discussions and review are complete, the local agency prepares the final Field Review Form and attachments (see Section 7.5 above for the latest times for completion). If a field review is required for NHS projects, all appropriate forms and attachments shall be completed. If the field review is optional, the two page Field Review summary (Exhibit 7-B) must be completed, as a minimum. See the brackets ("[ ]") notation under Item 12 of Exhibit 7-B for additional attachments.

The local agency consults with the district regarding the number of copies to be sent. The district forwards a Field Review Form (two if a bridge is involved) with the required attachments to the Division of Local Assistance. The local agency may wish to provide copies to their MPO and other interested parties.

The project engineer and project manager should periodically review the Field Review Form and data to ensure that the project development is proceeding as initially proposed or that significant changes have been approved.

The field review document must be completed and submitted prior to or concurrently with the first occurrence of either step below:

- Initial submittal of the PES form (completed, and with supporting information attached) for Caltrans and/or FHWA approval (see Chapter 6, "Environmental Procedures")
- Submittal of the Agreements Checklist requesting a Supplemental Agreement

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Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts (one way is to include the policy statement in each contract solicitation).

DBE LIAISON OFFICER

Each local agency must designate a DBE liaison officer who shall have direct independent access to the local agency's Chief Executive Officer concerning DBE program matters. This person shall be responsible for the duties as described in Exhibit 9-A.

BIDDERS LIST

Each local agency will be required to create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote to the local agency on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, date established, and annual gross receipts of firms.

A local agency may include in its bidding process a clause requiring prime bidders to report the names/addresses, and other pertinent information, of all firms who quote to them on subcontracts as a way to establish their bidders list. Also, a survey of consulting firms and contractors, that were awarded DOT-assisted contracts in the past, may be used to obtain bidders list data.

CONTRACT PROVISIONS

Contract Assurance

DBE regulations require the following contract assurance statement in every DOT-assisted contract and subcontract:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate."

Prompt Payment for Satisfactory Performance

This contract clause requires the prime contractor to pay subcontractors for satisfactory performance of their contract no later than a specific number of days from receipt of each payment the local agency makes to the prime contractor.

Prompt Payment of Retainage

This clause must require the prompt release of retainage payments from the prime contractor to the subcontractor within a specified number of days after the subcontractor's work is satisfactorily completed.

MONITORING AND ENFORCEMENT MECHANISMS

This section is for the local agency to explain the means it will use to ensure compliance with the DBE regulations by all participants.

OVERALL GOAL PROCESS

Establishing an overall goal is a two-step process. The overall goal must be segregated into race-neutral and race-conscious components. The information to be considered for analysis in establishing the goal is discussed in detail under Section 9.5, "Annual Overall Goal."

TRANSIT VEHICLE MANUFACTURERS

If the local agency is an FTA recipient, the local agency must require in its DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements elsewhere in this chapter.

GOOD FAITH EFFORTS

A good faith effort must be documented if a bidder's proposal does not meet the contract goals or if a substitution is needed where a non-DBE subcontractor is the only ready, willing, and able subcontractor to perform the work and the contract goal is not otherwise met. More information is discussed in Section 9.6, "Good Faith Efforts" of this manual.

9.5 ANNUAL OVERALL GOAL

PROCESS

The amount of the overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the federal fiscal year beginning October 1 for federal-aid contracts. Submittals will be to the Caltrans DLAE, using Exhibit 9-B of this chapter. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

As part of establishing an overall goal, the local agency must provide for public participation. This public participation must include consultation with minority, women's and general contractor groups; community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the local agency's efforts to establish a level playing field for the participation of DBEs.

With that consultation referenced, the local agency will submit the draft overall goal information (amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation) by June 1 to the Caltrans DLAE for preliminary comments. With Caltrans' preliminary comments incorporated, the local

XI Business Development Programs (§26.35)

[Name of Local Agency Recipient] does not have a business development or mentor-protégé program. If the *[Name of Local Agency Recipient]* identifies the need for such a program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to the DLAE for approval.

XII Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

[Name of Local Agency Recipient] ensures that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

[Note –This language is to be used verbatim, as it is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms *under "Publications."]*

Prompt Payment

[Name of Local Agency Recipient] ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Satisfactory Performance
The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from *[Name of Local Agency Recipient*]. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *[Name of Local Agency Recipient]*. This clause applies to both DBE and non-DBE subcontractors

Release of Retainage
The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *[Name of Local Agency Recipient]*. This clause applies to both DBE and non-DBE subcontractors.

XIII Monitoring and Enforcement Mechanisms (§26.37)

The *[Name of Local Agency Recipient]* will assign a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

After Contract Award

After the contract award the *[Name of Local Agency Recipient]* will review the award documents for the portion of items each DBE and first tier subcontractor will be performing and the dollar value of that work. With these documents the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

Preconstruction Conference

A preconstruction conference will be scheduled between the RE and the contractor or their representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, the local agency will require the contractor to submit a completed "Subcontracting Request," Exhibit 16-B of the LAPM or equivalent. When the RE receives the completed form it will be checked for agreement of the first tier subcontractors and DBEs. The RE will not approve the request when it identifies someone other than the DBE or first tier subcontractor listed in the previously completed "Local Agency Bidder DBE Information," Exhibit 15-G. The "Subcontracting Request" will not be approved until any discrepancies are resolved. If an issue cannot be resolved at that time, or there is some other concern, the RE will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the "Local Agency Bidder DBE Information" will be compared to those listed in the completed Exhibit 16-I of the LAPM or equivalent. Differences must be resolved by either making corrections or requesting a substitution.

Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act (FPA). Local agencies will require contractors to adhere to the provisions within Subletting and Subcontracting Fair Practices Act (State Law) Sections 4100-4114. FPA requires the contractor to list all subcontractors in excess of one half of one percent (0.5%) of the contractor's total bid or $10,000, whichever is greater. The statute is designed to prevent bid shopping by contractors. The FPA explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority.

The RE will give the contractor a blank Exhibit 17-F, "Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors" and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

Construction Contract Monitoring

The RE will ensure that the RE's staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor's response, the RE will take appropriate action: The DBE Liaison Officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a

commercially useful function. Any substantive issues will be forwarded to the Caltrans Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly truck document, the contractor will be required to submit documentation to the RE showing the owner's name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which DBE participation will be claimed. The trucks will be listed by California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

Providing evidence of DBE payment is the responsibility of the contractor.

Substitution

When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the RE/Contract Manager agrees to the substitution, the RE/Contract Manager will notify, in writing, the DBE subcontractor regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration.

If there is any doubt in the RE/Contract Manager's mind regarding the requested substitution, the RE/Contract Manager may contact the DLAE for assistance and direction.

Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

1. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
2. The date of payment and the total dollar figure paid to each of the firms.
3. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed, the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on the form "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" (Exhibit 17-F) and will be submitted to the DLAE attached to the Report of Expenditures. The RE will compare the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form to the contractor's completed "Local Agency Bidder-DBE-Information" (Exhibit 15-G) and, if applicable, to the completed "Subcontracting Request" (Exhibit 16-B). The DBEs shown on the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier

Subcontractors" form should be the same as those originally listed unless an authorized substitution was allowed, or the contractor used more DBEs and they were added. The dollar amount should reflect any changes made in planned work done by the DBE. The contractor will be required to explain in writing why the names of the subcontractors, the work items or dollar figures are different from what was originally shown on the completed "Local Agency Bidder-DBE-Information" form when:

- There have been no changes made by the RE.
- The contractor has not provided a sufficient explanation in the comments section of the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form.

The explanation will be attached to the completed "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form for submittal. The RE will file this in the project records.

The local agency's Liaison Officer will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE informed of changes that affect the contract. The RE will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The DLAE will use the PS&E checklist to monitor the *[Name of Local Agency Recipient]*'s commitment to require bidders list information to be submitted to the *[Name of Local Agency Recipient]* from the awarded prime and subcontractors as a means to develop a bidders list. This monitoring will only take place if the bidders list information is required to be submitted as stipulated in the special provisions.

[Name of Local Agency Recipient] will bring to the attention of the DOT through the DLAE any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. *[Name of Local Agency Recipient]* also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

XIV Overall Goals (§26.45)

Amount of Goal

[Name of Local Agency Recipient]'s overall goal for the federal fiscal year FY _____(FY 2001 or later) is the following: ___% of the federal financial assistance in DOT-assisted contracts. This overall goal is broken down into ____% race-conscious and ____% race-neutral components.

Methodology

Before working on this section, refer to the two step process and choice of methods in Section 9.5, "Annual Overall Goal."

Breakout of Estimated Race-Neutral and Race-Conscious Participation

Before working on this section, refer to race-neutral and race-conscious in Section 9.5, "Annual Overall Goal."

Process

Starting with the federal fiscal year 2002, the amount of overall goal, the method to calculate the goal, and the breakout of estimated race-neutral and race-conscious participation will be required annually by June 1 in advance of the federal fiscal year beginning October 1 for DOT-assisted contracts. Submittals will be to the Caltrans' DLAE. An exception to this will be if FTA or FAA recipients are required by FTA or FAA to submit the annual information to them or a designee by another date. FHWA recipients will follow this process:

Once the DLAE has responded with preliminary comments and the comments have been incorporated into the draft overall goal information, the *[Name of Local Agency Recipient]* will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the *[Name of Local Agency Recipient]'*s principal office for 30 days following the date of the notice, and informing the public that comments will be accepted on the goals for 45 days following the date of the notice. The notice must be published in general circulation media and available minority-focused media and trade association publications. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The overall goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process and *[Name of Local Agency Recipient]'*s responses. This will be due by September 1 to the Caltrans DLAE. The DLAE will have a month to make a final review so the *[Name of Local Agency Recipient]* may begin using the overall goal on October 1 of each year.

If there is a design build please refer to Appendix B of this Model DBE Program.

XV Contract Goals (§26.51)

[Name of Local Agency Recipient] will use contract goals to meet any portion of the overall goal *[Name of Local Agency Recipient]* does not project being able to meet by the use of race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be

performed by the subcontractor(s). The goal will then be incorporated into the contract documents. Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

XVI Transit Vehicle Manufacturers (§26.49)

If DOT-assisted contracts will include transit vehicle procurements, *[Name of Local Agency Recipient]* will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. *[Name of Local Agency Recipient]* will direct the transit vehicle manufacturer to the subject requirements located on the Internet at http://osdbuweb.dot.gov/programs/dbe/dbe.htm.

XVII Good Faith Efforts (§26.53)

Information to be Submitted

[Name of Local Agency Recipient] treats bidders'/offerors' compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal is meeting all the requirements of the advertisement and solicitation.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information to *[Local Agency Recipient's address]* no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening:

1. The names and addresses of known DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 which is attached.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: *[Name individuals or committee who performs this function.]*

[Name of Local Agency Recipient] will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before a commitment to the performance of the contract by the bidder/offeror is made.

GUIDELINES FOR CIVIL RIGHTS COMPLIANCE REVIEWS OF LOCATION PROCEDURES

GENERAL

In accordance with Title VI and Title VIII of the Civil Rights Act of 1964 and 1968, local agencies are required to follow certain location procedures on federal-aid highway projects. This guideline may be used to suggest areas for review.

1. As a result of the choice of highway locations or the procedures used in arriving at the choice, has the Agency, State, or Federal Highway Administration received any civil rights complaints? If so, what were the complaints and what has been done to resolve them?

2.a. To what extent does the agency employ minority staff personnel in the location program under review? Are these personnel involved in the following:

- Developing and comparing alternatives,
- Assessing impacts, and
- When used, operating through consultant contracts?

Are they involved in any other related areas? If not, what is being done to recruit and hire minority personnel?

2.b. What training or education sessions are conducted to increase the skills of minorities as well as non-minorities? Are promotional opportunities available for minorities? Does the Agency fill professional as well as nonprofessional positions with minorities? If not, what is being done to rectify these situations?

3. Does the Agency choose consultant firms without discrimination on the basis of race, sex, color, or national origin? Is there evidence that minority consultant and consultants with minority staffs offered equal employment opportunity? How many of these firms have contracts and what type are they?

4. Does the process for preparation of Environmental Impact Statements, or do the Environmental Impact Statements themselves, reflect any indication of a violation of any of the provisions of Title VI or Title VIII? If so, elaborate.

LOCATION DETERMINATION

When reviewing the process leading to location determination on a specific project, the following questions are to be used:

1.a. To what extent has the agency or consultant compiled the following information for use in the location determination?

1.b. The racial character of the portion of the area through which the alternate locations pass, including the approximate number by race of persons and families affected by each alternate (affected means all persons directly displaced or located in areas

directly adjoining the road.)

1.c. The social and economic character of the area through which alternates pass, including levels of income, whether the area is commercial or residential, and the approximate number of minority and non-minority owners of businesses and residences in the area.

1.d. The racial character of the people employed in the area affected by each alternate.

2. How was the racial and ethnic data used to identify possible problem areas and adverse impacts, such as relocation difficulties or possible changes in minority income capabilities, mobility, or community cohesion? What efforts have been made to rectify these problem areas and minimize the adverse impacts?

3. Will a minority area be bypassed or separated from contiguous areas by an of the alternatives, and if so, what effect will this have on the minority community? To what extent will it perpetuate patterns of segregation?

4. How will each of the alternates affect the use of various community facilities and services such as hospital, libraries, shopping areas, fire stations, police installations, schools, churches, parks and recreation centers by minority groups in the area?

5. To what extent will each of the locations produce an adverse effect of residential, commercial and industrial development existing or planned within minority communities?

6. What attempt has the Agency made to satisfy minority community planning goals and needs? To what extent were the goals and needs determined utilizing input from the minority community?

7. Have the gradeline, safety considerations, cross-street treatment, pedestrian overpasses, and other design features been established for alternatives to the same degree in minority areas as in nonminority areas?:

8. Is access to and from the various alternates provided without discrimination?

9. Would the alternates have an effect on traffic volumes on adjacent streets within minority communities? To what extent has the Agency studied the effect of increased or decreased traffic on residences and businesses?

10. To what extent have aesthetics, noise, and air quality been considered within minority communities?

11. Has all the above information been adequately tabulated and mapped for use in the location determination?

CHAPTER 13 RIGHT OF WAY

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QUALIFICATION LEVELS

The local agency can receive one of three levels of qualification which reflect the ability of the agency to perform the various right of way functions. These levels are:

Level 1: Staff is qualified to do functional work in one or more areas. These areas will be shown in the qualification approval. However, due to limited experience, the size of the staff or at the request of the agency, the approval is granted for only one specific project.

Level 2: Staff is qualified to do functional work in more than one area but not in all. There is sufficient staff available to perform the work on more than one project.

Level 3: Staff is qualified to do functional work in all areas and is large enough for all required review and approval activities.

QUALIFICATION TERM

Level 1 agencies must be reviewed prior to every project for the specific work to be done.

Levels 2 and **3** are granted for a three-year term. Prior to the expiration of the term, Caltrans Right of Way Local Assistance staff will contact the agency to review the agency's qualifications. This will include an inspection of some of the files on Federal-aid projects, review of the current organization chart, copies of resumes for new staff members, etc. Following this review, the qualification will be renewed, upgraded, downgraded or withdrawn.

CALTRANS AUDITS OFFICE

Caltrans Audits Office (CAO) will help evaluate a local agency before the agency is approved for qualification. This audit evaluation by CAO will cover cost accumulation, accounting procedures, and billing processes to ensure compatibility with Caltrans' fiscal system and an awareness of Federal reimbursement requirements where necessary. Follow-up reviews will be made as necessary to ensure this capability is maintained. When District Right of Way Local Programs receives a request from a local agency for prequalification, it should notify the Division of Right of Way Local Programs Branch in writing and ask that CAO perform the audit evaluation.

WITHDRAWAL OF QUALIFICATION

It is important to note that the qualification status can be withdrawn if deficiencies are found and not corrected or if the staffing and experience levels change so that the local agency can no longer meet the minimum requirements. At the time each agency is notified of its qualification level, the agency is told to inform Caltrans if there are any major personnel changes which would impact its ability to perform the respective right of way functions.

APPRAISAL REVIEW QUALIFICATION

On Federal-aid projects, a formal review of the appraisal is necessary in order to establish the Fair Market Value for the property (see 49 CFR 24.104.). The review appraiser must have a valid license issued by the State Office of Real Estate Appraisers (OREA). The review appraiser must determine that the appraisal meets applicable requirements and

make any necessary corrections or revisions. If the review appraiser is unable to recommend approval of the appraisal, the reviewer may develop additional documentation to support what is felt to be the appropriate value. The reviewer must state the basis for the value conclusion.

If the local agency receives a qualification status, Level 1 or 2, without having the staff or means to perform the appraisal review function, the local agency shall hire either a qualified licensed consultant (see below, "Local Agency Selection of Consultants") **or** another local agency qualified to perform the appraisal review function. Note: Only the local agency can determine the just compensation to be paid. Another agency or consultant cannot do so.

NON-QUALIFIED LOCAL AGENCIES--OPTIONS

Local agencies that are not qualified to perform any or all of the respective right of way functions necessary for the project must either hire another local agency which is qualified to perform those functions, or retain a consultant(s) who meets the consultant selection criteria discussed below.

In summary, non-qualified local agencies have the following choices in hiring consultants:

- Contract with a qualified local agency
- Contract with a private consultant(s) to perform one or more right of way specialties: Appraisals, Relocation Assistance, etc.
- Contract with a Right of Way Project Management consultant
- Utilize a mixture of local agency staff and the resources available above at items 1, 2 or 3
- Contract with a "Turn Key" consultant

SELECTION OF CONSULTANTS

The authority for selection of private sector consultants to perform right of way functions on Federal-aid projects has been delegated to the local agencies. The selection process will be administered by the local agency, using the Consultant Criteria and Selection Guide prepared by Caltrans to establish recommended minimum experience levels and to evaluate the qualifications of prospective consultant firms (see Exhibit 13-C). After completing the selection process and contracting with a consultant whose performance was good, the local agency would be able to utilize this same consultant to perform similar jobs without needing to repeat the selection process if no more than a two year period has elapsed.

When substantially different right of way services are needed, it is incumbent on the local agency to repeat the consultant selection process in choosing a consultant.

Competitive bidding is the cornerstone of financially successful projects. Seeking bids from qualified firms will ensure that the local agency is getting the most reasonable price. Prior to soliciting bids, careful consideration should be given to defining the scope of the consultant's work, and estimating both the cost of the consultant's contract and determining the type of contract. There are typically four kinds of contracts used: (a) actual cost plus fixed fee; (b) cost per unit of work; (c) specific rates of compensation; and (d) lump sum.

Real property rights that are acquired for a local agency project must be sufficient for all activities necessary for the construction of the project and for the ongoing operation and maintenance of the facility when completed. It is the responsibility of the local agency to determine the property rights that will be necessary for each project and that these rights are sufficient for the project.

Procedures to program projects can be found in Chapter 1, "Introduction and Overview," and Chapter 2, "Financing the Federal-aid Highway Program," in the *Local Assistance Program Guidelines*. Questions concerning project programming should be referred to the DLAE.

REQUEST FOR AUTHORIZATION TO PROCEED

After a project is selected and programmed in an FHWA-approved statewide Transportation Improvement Program (FSTIP), the local agency should then contact the Caltrans DLAE to obtain authorization to receive Federal funds. The authorization must precede any activities for which reimbursement will be requested. When the project requires the relocation of utility facilities, the request must include a listing of each affected utility company together with an estimate of the cost of relocation for each company and a request for approval of the use of the Alternate Procedure. The local agency is responsible for initiating the Request for Authorization (Preliminary Engineering) through Caltrans to FHWA. For additional details, please refer to Chapter 3, "Project Authorization," of this manual.

The project authorization obligates FHWA to reimburse allowable project costs and confirms that Federal funds are available in the amount requested for that project. However, this is subject to the condition that acquisition of right of way may only commence after the necessary requirements have been met, including environmental clearance.

The local agency must prepare a "**Request for Authorization**" package (see Chapter 3, Exhibits 3-A through 3-D of this manual) and certify to the accuracy of all the data on the forms. Separate work authorizations and fund obligations are normally made for preliminary engineering, right of way, and construction if Federal funds are to be used for these phases of the project. The authorization to proceed must be obtained prior to starting an item of work for which the agency will seek reimbursement.

The Request for Authorization is submitted electronically to FHWA through the "Federal-Aid Data System" (FADS). When the DLAE determines that the project has been authorized and obligated, an "Authorization to Proceed" is printed which shows the authorization and obligation dates. This form is then sent to the local agency as verification that they may begin with that phase of the project and subsequently be eligible for reimbursement. If the project cannot be authorized, the local agency is informed and advised what corrective actions are necessary.

AUTHORIZATION TO BEGIN RIGHT OF WAY WORK (E-76)

Each phase (capital/support) or function (appraisals, acquisition, utility relocation, etc.) of right of way claimed for reimbursement must be programmed and authorized by an E-76 prior to beginning that phase or function. An E-76 may program multiple phases.

Before obtaining authorization for appraisal activities, the project should have environmental clearance. However, authorization can be obtained without environmental clearance if the following are completed:

- The draft EIS has been circulated
- The public hearing process is complete
- The project is non-controversial
- A preferred alternative was selected

Only under exceptional circumstances will the agency be allowed to acquire property prior to environmental clearance. For example, the agency may acquire property in advance of the normal schedule if the owner claims hardship or the property must be protected from future development. Appropriate documentation must accompany the request to FHWA for approval of advance acquisition. When making advance acquisitions, ensure that the intent of the Uniform Act and the environmental process are not circumvented.

13.5 PRELIMINARY RIGHT OF WAY ACTIVITIES

REQUEST AUTHORIZATION TO PROCEED (PE)

Separate work authorizations and fund obligations are normally made for preliminary engineering (PE), right of way (including utilities) and construction phases if Federal funds are to be used in each of these phases. For preliminary and construction engineering, only eligible work performed after the authorization date may be reimbursed. Preliminary engineering work may be authorized prior to the Field Review. (For additional details see Chapter 7 of this manual). This will allow reimbursement for consultants or other specialists who may be needed to complete the Field Review. Preliminary engineering must lead to a construction project in a timely manner.

In the event that right-of-way acquisition for, or actual construction of a road for which this preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the Department will be required to repay the FHWA the sum or sums of Federal funds paid to the highway agency under the terms of the agreement.

PRELIMINARY STUDIES

At this early stage in the development process, it is crucial to correctly evaluate the project requirements, i.e., the limits, location (including existing utilities), scope, costs, and whether any additional right of way will be required. Each agency should establish a process for accumulating this data which will play an integral part in successfully completing the Field Review, environmental documents and the Plans, Specifications and Estimates (PS&E) for the project.

FIELD REVIEWS

Formal field reviews, which may include FHWA and Caltrans representatives, are not required on local agency transportation projects **off** of the National Highway System (NHS) (for additional details, see Chapter 2, "Roles and Responsibilities," of this manual). However, field reviews are a suggested practice for all complex projects. A representative from FHWA should be consulted for all projects that are not exempt from FHWA oversight. All requests for FHWA participation should be coordinated through the DLAE.

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operating right of way. When subsequent projects are proposed which affect the airspace leasehold areas or pose a problem for the lessee's use of the site, provision must be made in the contract to minimize this conflict. If airspace leasehold area is required for the project, the lease must be canceled and arrangements for the lessee's relocation must be made prior to certifying the project.

COMPLIANCE WITH THE RELOCATION ASSISTANCE PROGRAM

The Uniform Act prescribes certain benefits and protections for persons displaced by local projects which are funded in whole or in part with Federal money. Among other benefits the Uniform Act provides are relocation payments for residential displacees and for businesses, farms, and non-profit organizations. The Act also provides certain protections such as requiring the availability of replacement housing for residential displacees, minimum standards for such housing, and assurances that displacees have sufficient time in which to choose their replacement properties. Finally, the Act provides for certain "advisory services" for displacees. Each of these legal requirements must be satisfied and then addressed in the Right of Way Certification.

COOPERATIVE AGREEMENTS

Cooperative Agreements are defined as any formal agreement between Caltrans and a local agency for a project on the State Highway System wherein the parties share in the development activities. If there are Cooperative Agreements covering responsibilities or obligations for the respective portions of the project, these agreements must be listed on the certification form.

ENVIRONMENTAL MITIGATION

When an environmental document indicates that mitigation is required, these mitigation measures must be listed on the Certification form, including the date by which any the purchase of any environmental parcels will be completed. For example, while wetland and floodplain impacts are mainly the responsibility of the project engineering and environmental personnel, the mitigation measures may require right of way involvement in the acquisition of replacement wetlands. These parcels must be identified. It is important for the Right of Way staff to work closely with their engineering and environmental counterparts.

ACCEPTANCE OF RIGHT OF WAY CERTIFICATION

When there are right of way issues involved, the local agency will certify that the issues have been resolved. Because local agencies are now certifying their own projects, it should be stressed that the authorized official or designated alternate executing the Certification must be certain that the proper right of way procedures have been followed and that the requirements of the Uniform Act have been met.

All local agencies may certify their own projects but it is of crucial importance to adhere to Federal standards so that the Federal funds for the project will not be jeopardized. This emphasizes the gravity for nonqualified agencies in the selection of qualified consultants or in contracting with a qualified agency to perform the respective right of way functions.

Upon receipt, the District Right of Way Coordinator will review the certification to see that each item has been completed in compliance with Federal and State laws and regulations and, if applicable, the date by which the right of way will be cleared. If all of the right of way issues have been dealt with in a satisfactory manner, both duplicate originals will be accepted and a signed original copy will be returned to the local agency.

If there are irregularities in the certification and it cannot be accepted as submitted, the Right of Way Coordinator will return the certification to the local agency with an explanation as to why it cannot be accepted and the steps that are necessary for acceptance.

Certifications 1 and 2 will be accepted in the district. Certifications 3 and 3Ws will be forwarded to Caltrans headquarters for review and approval.

13.13 REIMBURSEMENT/FISCAL POLICY

PURPOSE

This section contains critical requirements and basic principles relating to the eligibility of Right of Way transactions for Federal reimbursement. From this overview, the local agency should be able to understand the overall Federal and State requirements. Detailed procedures are found in Chapter 5, "Accounting," of this manual.

REIMBURSEMENT PROCESS OVERVIEW--CALTRANS

Caltrans receives FHWA funds on a reimbursement basis. This means Caltrans must first obtain Authorization to Proceed (E-76), incur costs, and bill the FHWA for payment before receiving payment. Federal funds are received by Caltrans as reimbursement for federally eligible expenditures.

As noted above, the normal sequence of events to obtain prior Federal Authorization and reimbursement through Caltrans is:

A. Obtain authorization to begin work. Federal authorization is gained by obtaining an E-76, "Approval to Proceed" which means funding is available. Only eligible expenditures incurred for work after the date FHWA approves the request are reimbursable.

B. Reimbursement is limited to the amount shown on the E-76. However, the amount can be revised. If necessary, execute a revised E-76 with FHWA. The revised E-76 is used to increase or decrease the Federal funding limit shown on previous agreements.

C. Submit progress payment invoices during the course of the work and a final invoice upon completion, along with the other documents discussed below.

D. Final Voucher Project with FHWA after work is completed. Caltrans may audit project charges to ensure that FHWA is billed for all federally eligible expenses. When Caltrans has billed FHWA for all expenses, it sends vouchering documents to FHWA and closes out the project.

In summary, project costs incurred prior to approval of the E-76 are ineligible for Federal reimbursement. Charges incurred for eligible costs after the E-76 is signed are federally reimbursable. Actual Federal reimbursement is not made until an E-76 is approved and executed. Progress payments are made during the course of construction. Upon completion of a project, Caltrans may audit the charges and close out the project.

If the local agency wants Federal participation for hardship and acquisitions, Federal approval must be obtained in advance of the environmental document. If approval is not obtained, the local agency should be aware that the acquisition must comply with the Uniform Act in order to be eligible for reimbursement for other project costs.

REPORTING COSTS

The FHWA has approved Caltrans' cost accounting and cost coding systems. The FHWA has agreed which Caltrans activities and expenditures are eligible for reimbursement for each phase of work. These agreements are incorporated into Caltrans' accounting system, coding instructions, and manuals--serving as a model for local agencies.

The local agency must be able to separate all costs and code them as eligible or ineligible. Caltrans will review this break down to ensure only eligible costs are reimbursed.

Right of Way costs are recorded in Caltrans' accounting system in two categories.

- Capital Outlay
- Incidental (Support)

Capital Outlay consists of those Right of Way costs necessary to acquire and clear right of way for the construction of the project. All Capital Outlay costs must be charged to a specific project. In order to meet the FHWA requirements, capital Right of Way costs must be documented in sufficient detail to determine eligibility. This includes transactions for land, improvements, damages, utility relocation, demolition and clearance, relocation assistance, condemnation deposits and income and expense relating to sale of improvements.

Incidental costs include personnel and operating expenses of the Right of Way functions which produce the Capital Outlay payments. The term "Incidental Cost" is used by the FHWA, and "Support Cost" is used by Caltrans.

Caltrans uses a six-digit expenditure authorization (EA) number to segregate the cost categories for reporting purposes. The final digit phase of the expenditure authorization identifies the type of cost. For example, Phase 9 is for Capital Outlay, and Phase 2 is for Incidental Costs for Right of Way support expenditures. A Federal Project number is also assigned to each project and must be noted on all project documents.

PROGRESS PAYMENTS

Procedures for submitting invoices for payment are discussed at considerable length in Chapter 5 of this manual. Reference should be made to this chapter for an explanation of these procedures and sample invoice forms.

REIMBURSEMENT OF LOCAL AGENCY'S EXPENDITURES

Reimbursement of local agency's costs on Federal-Aid projects follows the same requirements as for Caltrans-State funded projects. The major difference between State funded and assistance funded projects is project expenditures for local projects are not entered initially into Caltrans mainline accounting system. They are accounted for and maintained within the local agency's project and fiscal system. The local agency is responsible for correctly identifying and segregating reimbursable costs as prescribed by Federal and State requirements.

Caltrans will assign to the local agency specific expenditure authorizations (Phase 2 and 9) for each category of right of way costs related to a project. Local agency's invoices must segregate their costs within these expenditure authorizations. If the project is assigned a "single phase" expenditure authorization, all costs shall be charged to the single phase expenditure authorization, the cost segregation detail shown on invoices, and the Final Report of Right of Way Expenditures.

Local agencies submit individual project claims to Caltrans periodically. Caltrans is responsible for obtaining reimbursement from FHWA for the local agencies. This is accomplished through Caltrans' CBARS. Project claims are entered into Caltrans' accounting system and become part of the Current Bill submitted to the FHWA. Caltrans makes payment of the funds to the local agency from the highway account and Caltrans then receives reimbursement from FHWA through the Current Bill. Whenever possible, reimbursement for final right of way costs should be claimed at the time they are known rather than waiting for the final project costs.

REIMBURSEMENT INVOICES/PROGRESS PAYMENT REQUEST

Procedures for submitting invoices for payment are discussed at considerable length in Chapter 5 of this manual. Reference should be made to this chapter for an explanation of these procedures and sample invoice forms.

In summary, local agency invoices for reimbursement of right of way costs are submitted on local agency letterhead following the exhibits shown in Chapter 5. Invoices must include all of the following information for each Federal-Aid project:

- Local Agency/State Agreement Numbers
- Federal-Aid Project Number
- Invoice Number (note whether "Progress" or "Final")
- Federal Reimbursement Ratio
- Federal-Aid Agreement Amount (the amount of estimated Federal share the agency will receive for each capital and incidental phase of the project)
- Cost breakdown for Incidental and Capital Costs as follows:
    1. Total Cost to Date
    2. Non participating Cost to Date
    3. Participating Cost to Date
    4. Participating Cost Shown on Previous Invoice
    5. Amount of Current Claim
    6. Invoice Total
    7. Final or Progress Claim

When the project is complete, a summary of the progress payments is submitted on a Final Report of Right of Way Expenditures (see discussion and sample invoice in Chapter 17). This claim should be submitted when final right of way costs are known in order to expedite the audit of the claim and reimbursement. This report is due within six months of completion of acquisition. The final Report shall also include the following:

- Parcel List
- Final maps (those attached to the Right of Way Certification if not previously sent)
- Breakdown of Right of Way Costs

The total participating costs should equal the "Participating Costs to Date" as shown on the Final Progress Payment Request (Form FM 1592A).

FINAL VOUCHERING

The last phase of a Federal-Aid participating project is the final vouchering and closing of the project. After the project has been completed, a final voucher must be prepared and submitted to the FHWA as an E-76 by the Division of Accounting. The final voucher is a segregated summary of the project's total costs and a determination of the final Federal share. Caltrans Division of Accounting uses the local agency's Final Report as the basis for the final voucher. The Final Report of right of way expenditures must follow the Detail Estimate submitted to the FHWA.

RECORD RETENTION

Local Agency-State Agreements provide for retention of records. Ordinarily this is a three-year period after FHWA payment of the final voucher or a four-year period from the date of the final payment under the contract, whichever is longer. Caltrans will notify the local agency of the beginning date for record retention.

All documents and papers related to the project must carry the Federal-Aid project number for identification.

FEDERAL POLICIES SPECIFICALLY RELATED TO THE REIMBURSEMENT OF RIGHT OF WAY COSTS

The eligibility of right of way acquisition costs is determined by the right of way lines. Generally, costs for parcels inside the right of way lines are eligible, those outside are ineligible. However, there are some exceptions to the general rule that must be dealt with on an individual basis: e.g., an improvement which needs to be removed would be eligible for reimbursement.

The following are current Federal policies that are to be used for claiming right of way costs for Federal Reimbursement

A. Acquisitions

Federal participation in right of way costs requires two prior authorizations from the FHWA. In order to obtain this authorization it is necessary to identify the costs, parcels to be acquired, and the phase for which authorization is being requested. Costs to be reimbursed with Federal funds for eligible parcel acquisition reimbursement, initiation of acquisition (first written offer) cannot begin until the E-76 has been approved by the FHWA.

The following describes the three basic parcel types as related to the proposed right of way line:

- A Core Parcel is one which is acquired in its entirety (full take) whether or not the parcel lies entirely within the proposed right of way lines.
- An Excess Parcel is that portion of a property not within the right of way lines that is acquired even though it is not needed for construction or maintenance of the highway facility. These costs are not always eligible for reimbursement.
- A Non-Core Parcel is one which is not required in its entirety (part take) leaving the grantor with ownership of an adjacent remainder.

Federal-Aid authorization/agreement is required for both "Full Take" and "Partial Take" acquisitions.

B. Acquisition of Uneconomic Remnants

If prior FHWA approval has been secured, Federal funds can participate in the acquisition costs of uneconomic remnants.

C. Acquisition of Property Specifically for Exchange

Acquisition of property specifically for exchange occurs where the agency agrees to obtain property for the grantor in exchange for the required right of way. This occurs primarily in connection with public utilities or other public agencies where substitute property is acquired by the local agency to replace property required for the project. Both properties must be appraised. The costs of such acquisition are chargeable directly to the Right of Way Capital Outlay expenditure authorization. This type of acquisition is treated as acquisition of replacement property. Without prior Federal approval, reimbursement cannot be obtained.

D. Functional Replacement

This involves the replacement of real property in public ownership, either lands or facilities, or both, acquired for a highway project with other lands or facilities which will provide equivalent utility. FHWA has specific procedures which must be followed and requirements which must be met if the costs for a functional replacement property are to be reimbursed. These procedures are discussed in detail in 23 CFR 712.604, 605 and 606.

E. Condemnation Deposits and Interest Thereon

The amounts deposited in court in connection with the condemnation of a parcel are reimbursable. Subsequent progress billings must account for differences between the original amount deposited and the amount of the final settlement or award.

When settlements include interest, such interest payments can only be claimed for Federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of an award in excess of the original deposit from the date of the original deposit until date of settlement or award. If court procedures prevent immediate delivery of the excess amount due following settlement or award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the local agency has appealed an award.

Federal participation is not allowed in interest costs based on appraised fair market value of the property, when a Right of Entry has been secured except in cases of unusual circumstances and with prior approval of the FHWA.

Interest on amount of award over the deposit is an eligible expense with certain limits. Interest is not eligible for Federal reimbursement for non-participating costs such as acquired excess land, goodwill awards, or awarded defendant court costs.

F. Klopping

Klopping Damages (frustrated development rights) are always ineligible costs. The only damages that are eligible are those created by the before and after values to the remaining property.

G. Goodwill

Awards or settlements involving loss of goodwill, interest on goodwill and defendant's costs in a goodwill action are all ineligible for Federal reimbursement. Costs to appraise goodwill and/or try a goodwill action are also ineligible for reimbursement.

H. Personal Property

As a general rule, costs for the purchase of personal property are ineligible for Federal reimbursement. An exception would be where it is necessary to acquire the furniture of a furnished apartment.

I. Defendant's Costs in Connection with Condemnation Action

Federal participation is not allowed when the local agency is ordered to pay for the costs of a property owner's attorney fees, appraiser fees, expert witness fees or similar costs which are incurred by the property owner in connection with acquisition of rights of way, through condemnation proceedings or awarded as court costs in litigated cases.

J. Utility Relocations

The following conditions must exist for utility relocation costs to be eligible for reimbursement:

- An E-76 for "preliminary engineering – utility" must be approved before any preliminary utility design work is commenced.
- An E-76 for "utility alternate procedure" together with a listing of each affected utility company and an estimate of the cost of relocation for each company must be approved before any relocation work can commence for any of the affected utilities. See 23 CFR 645.119 (e)(2). AND
- An FHWA Specific Authorization (form RW 13-15) must be approved by Caltrans for each relocation before any relocation construction work can commence for each specific utility company listed on the E-76. The Specific Authorization must be supported by a Report of Investigation, Utility Agreement, Notice to Owner and other documentation as outlined in Chapter 13 of the *Right of Way Manual.* See 23 CFR 645.119 (a) & (b) and 23 CFR 645.113 (g).
- The FHWA Approval of Utility Agreement (also form RW 13-15) must be approved by Caltrans before reimbursement is requested from the FHWA. See 23 CFR 645.119 (a) & (b) and 23 CFR 645.117 (i)(1).
- See Chapter 14 of this manual and Chapter 13 of the *Right of Way Manual* for details. Everyone involved with the relocation of utility facilities should be thoroughly familiar with the provisions of 23 CFR 645, Subpart A.

- Immediately after Caltrans approves the utility agreement, authorized expenditures by the utility company can be reimbursed. No audit is necessary and receipts for payments are not required by the FHWA before progress payments are made.
- Final payments can be reimbursed only when costs for the utility work covered by the agreement are supported by evidence of payment by the local agency with fully itemized billings.
- Cost must be identified to each agreement.

K. Demolition and Clearance

The Federal government will participate in demolition costs of improvements on or within the right of way lines, provided the improvements involved are demolished subsequent to the authorization date of the project. This can occur regardless of whether or not the Federal government participated in the cost of acquisition of the improvements. But, if Federal funds did not participate in acquisition, then demolition must be separately authorized. The Federal government may also participate in clearance and demolition costs on improvements on a parcel outside the right of way provided it was acquired solely for an exchange and is eligible for Federal participation.

When a demolition contract includes improvements not eligible for participation, a separate bid item should be established in the bid proposal for the ineligible improvements so that the costs may be segregated.

When improvements purchased with Federal participation are sold for salvage, Federal funds are to be credited with the proceeds of the sale.

It should be stressed that whenever possible, improvements should be sold with the excess land rather than demolished to provide an income rather than incur an expense.

L. Relocation Assistance Program (RAP)

Federal and State laws require that relocation assistance be provided to any person, business, or farm operation displaced because of the acquisition of real property by a public entity for public use. Basically there are two programs:

- The Relocation Advisory Assistance Program which aids in locating suitable replacement properties.
- The Relocation Payments Program which provides payments for certain costs in relocating.

Local agencies must comply where Federal funds are to be used for the acquisition or construction for the proposed project. RAP is a complex program and will not be covered here. Caltrans *Right of Way Manual* provides detailed instructions on eligibility.

M. Disposition of Excess Lands

For accounting purposes, excess land is defined as that portion of any acquisition of right of way that lies outside the established right of way line and is not needed for the construction or maintenance of the highway facility. The only exceptions are the acquisition of property for replacement housing purposes, and the acquisition of property specifically for the purpose of exchange with another governmental agency or utility company.

The disposition of excess land is accomplished in a number of ways--competitive bid sales, fair market value exchanges, or inclusion into the right of way in a new project. Each method can produce variations in eligibility for reimbursement where a Federal-Aid project is involved.

RIGHT OF WAY CERTIFICATION
LOCAL ASSISTANCE PROJECT
(OFF STATE HIGHWAY SYSTEM)

CITY OF _____

(OR)

COUNTY OF _____

Please note: This form is intended for use on local assistance projects, off system, where Federal funds are used and where right of way or rights in real property are required.

ONLY THE PARAGRAPHS RELATING TO THE SPECIFIC PROJECT SHOULD BE USED

PROJECT: _____
Federal Program (if available)

RIGHT OF WAY CERTIFICATION NO. _____

(Insert 1, 2, or 3 for the type of Certification being made)

_____
Project Location

_____
General Description

1. STATUS OF REQUIRED RIGHT OF WAY

The acquisition of right of way is not required. All work proposed is within existing right of way acquired for a previous construction project.

OR

Right of way (has been) (will be) acquired in accordance with applicable policy and procedure covering the acquisition of real property. (City) (County) (has) (will have) legal and physical possession and right to enter on all land as follows: (Note: Parcels shown in Items A-F should total the number shown in item B.1.)

A. Total number of parcels required. _____

1. Parcels acquired (escrow closed or Final Order of Condemnation recorded.)
_____*

2. Parcels covered by Order for Possession.
_____*

Parcel No.	Owner	Effective Date

3. Parcels covered by Right of Entry
_____*

Parcel	Owner	Type**	Effective Date	Date Funds Made Available to Owner++

*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.
** Either RE or RE in approved RC (Right of Way Contract)
++ If no entry is made in this column a full explanation is required.

4. Parcels covered by a Right of Entry executed prior to appraisal. _____

Parcel No.	Owner	Effective Date

5. Parcels covered by Resolution of Necessity only. _____*

(Used only rarely in a Cert. No. 3 situation where the project must be advertised, the Resolution of Necessity has been adopted but the Order of Possession has not yet been served.)

Parcel No.	Owner	City/County Resolution Date	Anticipated OP Effective Date

6. Parcels covered by other acquisition documents as follows: (Explain) _____*
This section is meant to cover acquisitions where the document is a license, permit, etc., not otherwise covered by Paragraph a, b, c, d, or e above.)

Location (P.M./K.M.)	Owner	Type Document	Effective Date	Expiration Date

7. No. of Parcels with a value in excess of $500,000 _____

Dual Appraisals for each parcel? _____ Yes _____ No

B. Construction Permits, etc., required. _____*

Location (P.M./K.M.)	Owner	Type Document	Effective Date	Expiration Date

2. STATUS OF ACCESS CONTROL

A. Conventional Highway, not required

(OR)

B. Freeway/Expressway

(OR)

*Note: Detail should be added showing expiration dates of documents with fixed termination dates, such as temporary easements.

- District - The subdivision of the Department of Transportation organized to administer the affairs of the Department relating directly to the local agency; also referred to as Transportation District.

- DLA - Division of Local Assistance (Caltrans headquarters unit only)

- DLAE - District Local Assistance Engineer - District Engineer responsible for liaison with local agencies.

- E-76 - Federal-aid Program Document titled: "Authorization to Proceed" Form

- EA - Expenditure Authorization number

- EEO - Equal Employment Opportunity

- ER - Emergency Relief

- Exempt Project - A classification for federal-aid projects which are exempt from FHWA review and oversight required by *Title 23 Code of Federal Regulations*. For exempt federal-aid projects the FHWA and Caltrans exercises the maximum degree of delegation of authority to local agencies (see Chapter 2, Section 2.4, "Stewardship - Letters of Agreement").

- Finance Letter - A document required by Local Program Accounting (see Exhibit 15-N) and submitted by the administering agency to Caltrans with information required as backup for the federal-aid/State project agreement.

- FTIP - Federal Transportation Improvement Program

- FSTIP - Federal Statewide Transportation Improvement Program

- FHWA - Federal Highway Administration

- HPMS - Highway Performance Monitoring System

- Headquarters - The Headquarters office of the Department of Transportation; also referred to as Transportation headquarters (1120 "N" Street, Sacramento, CA 94274-0001).

- ISTEA - Intermodal Surface Transportation Efficiency Act of 1991

- Invoice - A detailed list of expenditures that an administering agency requests reimbursement for with federal funds, pursuant to the Local Agency-State Agreement (see Chapter 5, Exhibit 5-B, "Sample Federal-aid Invoice with Two Appropriations & Different Reimbursement Rates")

- LRH - Last Resort Housing

- Local agency - A city, county, or other local public agency

- Local Agency-State Agreement - Agreement between the State and local agency. Generally refers to the Master agreement and all supplemental agreements (Program Supplements) to the master agreements. These agreements are required for the State to provide reimbursement to the local agency for all federal-aid projects.

- Locode - Numeric identifier for each local agency or administering agency (assigned by the Division of Local Assistance).

- LPP - Local Programs Procedures. A distribution of procedures from the Division of Local Assistance. Each Procedure is numbered sequentially with the prefix being the year of distribution.

- MBE - Minority Business Enterprise

- MPO - Metropolitan Planning Organization

- MWBE - Minority Women-owned Business Enterprise

- NHS - National Highway System - A specially Designated Highway System established by the Intermodal Surface Transportation and Efficiency Act of 1991 and adopted by the United States Congress.

- Office Engineer - Chief of the Headquarters or District Office of Office Engineer. The office engineering unit is responsible for insuring that the PS&E is complete, biddable and buildable

- PS&E - Plans, Specifications, and Estimate

- PE - Preliminary Engineering. Location, design, and related work preparatory to the advancement of a project to physical construction.

- Prequalification - The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from whom the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its 1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures.

- RAP - Relocation Assistance Program

DETAIL ESTIMATE INSTRUCTIONS

1. File
   - fill in project identification
     example: Dist-County-Rte-City: 07-LA-0-LA
   - Federal-aid Project #: STPL-5006(023)
   - Federal-aid Program: Surface Transportation Program, population > 200,000

2. Project Location
   - Fairly detailed (list intersections or project limits, etc.) Should agree with Authorization to Proceed

3. Construction Authorization Date
   - FHWA/Caltrans authorization date on the Authorization to Proceed

4. Type
   - General type of work (signalization, widening, construct four-lane divided street, etc.) Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38)

5. P.E. Authorization
   - FHWA/Caltrans authorization date on the Authorization to Proceed

6. Right of way Authorization
   - FHWA/Caltrans authorization date on the Authorization to Proceed

7. Right of way Costs
   - Total for project

8. Utility Authorization
   - FHWA/Caltrans authorization date on the Authorization to Proceed

9. Work Type Code
   - Determine the major roadway improvement work type Y codes or structure section codes from Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38) and place all work incidental thereto under this general code, except the following work which requires separated coding:
     - Each structure (X codes from: Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38)
     - Utilities as construction item (Code Y060)
     - Utilities as right of way items (Code ROWA)
     - Landscaping - other than erosion control (Code Y003)
     - Major work performed as part of an outside agreement (i.e., sewers, railroad grad-crossing protective devices - Y codes from Chapter 3 "Project Authorization," Exhibit 3-F-(Item 38)
     - Trainees Y080

       Some examples of work type codes are:

       Traffic Signals -Y031
       Channelization -Y008
       Widening Roadwork -I000 (Bituminous Concrete)
       -J000 (Portland Cement Concrete)
       Bridges -X231 (Highway over Highway, Steel Girder)
       Trainees -Y080

10. Length
    - Length in kilometers (to nearest 0.1) is required for roadway codes and for bridge codes
    - Measured along center line

- Not required for "Miscellaneous" codes

11. Item Estimate
    - List Each bid item per sample format
    - Separate by "work type code" as noted above in item # 9. (should be same as preliminary estimate)
    - Place nonparticipation work directly following participating work of similar codes
    - Separate as "not part of Federal-aid Project" that work which is beyond project limits of federal participation but is being done under the same contract

12. State/Agency Furnished Materials
    - List each item and cost of all items or expenses that are to be furnished by other than contractor
    - Should agree with items listed in Special Provisions and Plans

13. Contingencies
    - Generally 5% to 10%
    - FHWA does not want supplemental work segregated from contingencies
    - If large amount of supplemental work, 10% may be exceeded, but contingencies should always be at least 5%
    - Separate for each code, etc.

14. Construction Engineering
    - Separate for each code, etc.
    - Indicate staking, construction trailer, etc., if claimed for reimbursement

15. Detail Estimate Summary
    - Summary generally broken down only between P.E., Construction, and Right of way
    - Work Type Codes and nonparticipating involved, must be outlined in summary
    - Calculate P.E., Construction (by code) and Right of way separately at appropriate reimbursement ratio
    - Federal funds share of phase cannot be more than the fund reimbursement ratio times the participating costs. (Always round down to the nearest dollar).

16. Federal Participation Calculation
    - Use contract items only

17. Reimbursement Ratio (Federal) (See list in Chapter 3, "Project Authorization")
    - Use current ratio
    - Project ratio if under funded

18. Program Code(s) (Federal) NOTE: Formerly known as Appropriation Code(s)
    - Program code(s) applicable to the program(s) involved (see list in Chapter 3, "Project Authorization")

19. Revised Detail Estimate or Modification
    - Required when federal funds are to be changed from what was previously under agreement
    - Changes can be accomplished by updating item costs, supplemental work, contingencies, etc.
    - Change Title to "Revised Detail Estimate."
    - Must remain consistent with FTIP/FSTIP rules
    - Wording to be changed in Item 2 by adding "To be used as basis <u>for modification</u> of agreement for federal-aid project."
    - Remaining instructions are unchanged

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16.3 PROJECT SUPERVISION AND INSPECTION

INTRODUCTION

Construction engineering is eligible for federal-aid reimbursement if it is identified and programmed in the "Authorization to Proceed." A fifteen percent (15%) limitation on construction engineering is required for the federal-aid program on a statewide basis. For more information on programming construction engineering see Chapter 3, "Project Authorization."

For exempt projects, FHWA has assigned the responsibility of contract administration and construction inspection to Caltrans. This responsibility is conveyed to Caltrans by way of an E-76, which is executed for each federal-aid project. For all local federal-aid projects, further delegation of responsibility is made by Caltrans to the agency administering the project by way of the State/local agreements called master agreements and program supplements. This delegation is based on the following conditions:

- All federal requirements shall be met on work performed under a contract awarded by a local public agency.
- Force account work shall be in full compliance with Chapter 12, "PS&E," Section 12.2, "Method of Construction."
- Local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work.
- Local public agency shall provide a full-time employee of the agency to be in responsible charge of the project that employs consultants for construction engineering services.

Such an arrangement does not relieve the Caltrans of overall project responsibility. Caltrans shall review local agency project staffing by periodic process reviews to assure compliance.

PROJECT STAFFING

Adequate construction personnel shall be provided to ensure adequate field control, conformance with the contract specifications, accurate contract payments to the contractor, and that quality transportation facilities are constructed. Local agencies shall include in the project records the names and titles of all staff assigned to each federal-aid project.

The documentation of project staffing is essential in making a determination of the adequacy of the local agency's construction staffing.

PROCEDURES

The administering agency must designate a qualified engineer who is empowered to administer the contract. The agency may employ a consultant to provide construction engineering services such as inspection or survey work, however, the agency must provide a full-time employee to be in charge of and have administrative

control of the project. A consulting firm that is on retainer as City Engineer is considered as a full-time publicly employed engineer.

Contractors, including those operating in joint venture, are required under the contract to designate in writing a person or persons authorized to supervise the work and to act for the contractor on the project. The administering agency's engineer is to assure that this information is on file. The addresses and local telephone numbers of such persons should be included.

The work must be inspected to assure compliance with the contract. Deviations must promptly be brought to the contractor's attention. Material samples must be taken and tests performed as noted in Section 16.14 of this chapter or in accordance with the local agencies own Quality Assurance Program. A record must be made of the engineer's and inspector's activities, as noted in Section 16.7 of this chapter.

The activities of the engineer and inspector may vary considerably depending on the terms of the contract; such as, end result specifications; method specification; types of measurement and payment clauses; experience of the contractor; complexity of the work; adequacy of the plans and specifications; protection of the public; and other factors. The local agency shall assign the necessary personnel to the project to assure that all the requirements of the contract are being fulfilled.

The primary responsibility for assuring the contractor's compliance with the Disadvantaged Business Enterprise (DBE) commitments approved prior to award rests with the local agency's DBE Liaison Officer and Resident Engineer (RE). The Resident Engineer should ascertain that no one other than the approved DBE contractors are performing the work, and that DBE subcontractor substitutions have been approved in advance.

When a problem arises, the Resident Engineer may request assistance or clarification from the District Local Assistance Engineer (DLAE). The DLAE shall evaluate staff availability and determine if assistance can be provided. It is recommended that Chapter VI of the Caltrans *Construction Manual* be reviewed for more specific activities relating to roadwork. For structure work the State's *Bridge Construction Records and Procedures Manual* contains much technical reference material.

The local agency's DBE Liaison Officer and his/her reporting manager are to be immediately advised of any circumstances wherein a contractor appears to be violating the approved DBE commitments. The Liaison Officer shall investigate and recommend any corrective action needed. The RE is responsible for resolving contractor violations by verifying that corrective action was completed. If corrective action can not be achieved then termination of the contract should be pursued. Noncompliance with the DBE requirements may result in withholding of funds by Caltrans or by the administering agency on the items already completed if permitted in the Special Provisions of the contract (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of this manual).

16.4 PRE-CONSTRUCTION CONFERENCE AND PARTNERING

PARTNERING

Partnering is a relationship between the local agency and the contractor, formed in order to effectively complete the contract to the benefit of both parties. The purpose of this relationship is to maintain cooperative communication and to mutually resolve

4. If the Contractor does not comply, consider ordering the shut-down the affected operation(s). Document the condition(s) and your order in writing. If the operation is ordered to be shut-down proceed in the same manner as described for an imminent hazard.

3. **Minor or Non-Serious** -- These are conditions that could result in minor injuries or that may be classified as a threat to health.

   When an non-serious or minor condition is found to exist the Resident Engineer should take the following steps:

   1. Advise the Contractor verbally of the condition and the need for correction.

   2. If the Contractor complies, document the incident in the contract's Safety Diary.

   3. Protect State and consultant employees from exposure.

   4. If the Contractor fails to correct the condition or permits its repeated occurrence, the Construction Safety Coordinator should be notified.

CITATIONS & INFORMATION MEMORANDUM

Cal/OSHA issues citations if, during an inspection, they observe an employee exposed to an unsafe or unsanitary condition. Citations may also be issued in situation where an employee exposure can be shown to have occurred even though it was not observed during the course of the inspection. Every citation will identify the violation and the gravity of the violation (serious, general or regulatory).

In addition to the authority to issue citations, Cal/OSHA has the authority to prohibit entry into an unsafe area or to use unsafe equipment (Labor Code Section 6325) when an imminent hazard exists. The violation of this type of order is a misdemeanor

When an actual exposure can not be demonstrated, but a condition is found to exist that would be a violation if an exposure where to occur, then Cal/OSHA may issue an "Information Memorandum." To allow an employee to be exposed to a condition identified in an Information Memorandum constitutes a willful violation of the Safety Orders.

Should a Contractor receive a Citation, shut down order (yellow tag) or an Information Memorandum the Construction Safety Coordinator should be notified. The Resident Engineer should react to the Cal/OSHA action as outlined in the previous section. The level of action shall be based on the severity as determined by Cal/OSHA.

16.11 LABOR COMPLIANCE

INTRODUCTION

Labor compliance regulations apply to all projects both on and off the NHS system.

PROCEDURES

The administering agency (defined in Chapter 15) is responsible to designate a labor compliance officer to enforce the contract provisions and ensure that all labor compliance requirements are performed and documented in the project file. Generally, labor compliance requirements are discussed at the pre-construction conference.

Labor compliance requirements shall be monitored by Caltrans through a process review or a mini process. Process review teams should include representatives from Caltrans District Local Assistance and a District Labor Compliance Officer. Coordination for the process review is the responsibility of the DLAE.

When labor compliance problems are discovered by the administering agency they should be reported to DLAE for statistical purposes. The local agency is responsible for determining the appropriate action required to remedy or address the problem. When labor compliance problems are discovered by process review, they should be documented in the process review report with a recommendation for correction of the problem. The report shall be submitted to Headquarters Division of Local Assistance, Attention: Process Review Committee. The committee shall review the report and recommendations for statewide consistency and implement approved recommendations.

The administering agency must maintain sufficient records to ensure contractor/subcontractor compliance with wage and apprenticeship sections of the contract. Specific actions required, include but are not limited to:

- Preparing inspector's daily reports which note employee, labor classifications, hours worked, and equipment working on the project. Ideally, the number of employees, names, classifications, and hours worked should be noted on each daily report. See "Resident and Assistant Engineers Daily Report" (forms CEM-4501 and HC-10A4) Exhibit 16-C, (first and second page). If this is not possible, then as a minimum, the data must be reported in at least one diary during the week.

- Conducting spot interviews with employees on the project. A form similar to, or State Form HC-0031 should be used (Exhibit 16-N, "Employee Interview: Labor Compliance/EEO").

- Maintaining written evidence of apprentices employed on the project.

- Ensuring that the contractor submits certified payrolls and/or owner operator listings (as appropriate) for their work and from all subcontractors or equipment rental companies who perform work on the project. Every laborer or mechanic performing work on the project must appear on either a certified payroll or owner operator list.

- Spot checking the payrolls or listings to ensure that at least the applicable Davis-Bacon or State prevailing wage rates as referred by the Special Provisions are paid.

- Cross checking reports, interviews, payrolls and wage rates in order to determine the contractor's and subcontractor's compliance. Comparing all force account or day labor work to certified payrolls. Employees' names, classifications, and wage rates should match.

- Ensuring that the contractor posts all specified posters, notices, wage determinations, etc. at the job site.

- Applying necessary sanctions against the prime contractor for failure to submit payrolls or noncompliance with the labor standard requirements. Sanctions must be in conformance with current Department of Transportation policy as described in the *Construction Manual, Chapter IX, Section 9-01, "Labor Compliance."*

- Reporting any apparent violation of State or federal labor requirements to the Caltrans District Labor Compliance Officer immediately upon discovery. In the case of local agency contracts that are 100 percent federally funded, violations should also be reported to the US Department of Labor, a listing of their office addresses is shown in Exhibit 16-Q. This information shall be maintained by the District Labor Compliance Officer and is to be forwarded on form FHWA-1494 semi-annually, to the Caltrans Headquarters Construction Office. Caltrans Headquarters Construction is responsible for summarizing the information statewide and submitting it to FHWA. The local agencies may contact the District Labor Compliance Officer for advice, training, and assistance as needed, or the following for labor compliance cases at the California Department of Industrial Relations, Division of Labor Standards Enforcement:

Southern California
Public Works Contracts
Division Of Labor Standards Enforcement
6150 Van Nuys Blvd., Rm. 100
Van Nuys, Ca 91401
(818) 901-5538

Northern California
Public Works Contracts
Division of Labor Standards Enforcement
2424 Arden Way, Rm. 340
Sacramento, Ca 95825
(916) 263-2842

16.12 EQUAL EMPLOYMENT OPPORTUNITY

INTRODUCTION

Equal Employment Opportunity (EEO) requirements apply to all federal-aid construction contracts and all related subcontracts of $10,000 or more.

PROCEDURES

A proactive approach to avoid problems with EEO requirements is to discuss the requirements of the contract at the preconstruction conference. This discussion should include the necessary posters required at the job site.

The administering agency must maintain sufficient records to ensure that the contractor complies with the EEO requirements of his contract as well as adequate records of its own internal employment procedures. These records are to fulfill the requirements of Title VI of the 1964 Civil Rights Act.

The administering agency must establish an internal EEO reporting system which monitors both contractors under the provisions of Executive Order 11246 as amended, and itself for compliance with Title VI of the 1964 Civil Rights Act. The local agency shall be reviewed by the DLAE and EEO Coordinator for compliance with Title VI of the 1964 Civil Rights Act. This review shall be conducted in accordance with the process review procedures outlined in Chapter 19, and reported to the FHWA

The EEO requirements of the contract may include specific affirmative action programs. In addition, various reports by the contractors and/or the local agency must be forwarded to the Caltrans District Labor Compliance Officer for transmittal to the FHWA. Such reports include the following:

- PR-1391, (Exhibit 16-O, "Federal-Aid Highway Construction Contractors Annual EEO Report") - Report of employment showing ethnic and sex composition of each craft classification annually during July. Prepared by the contractor and by each subcontractor if their work exceeds $10,000. This reporting requirement is only for federal-aid projects that are active during the month of July. If the project is completed in June or the project does not begin construction until August then no PR-1391 report needs to be filed. This form is submitted to the District Labor Compliance Officer through the DLAE.

- Other reports developed by the local agency for Title VI or required of the local agency by the State.

The administering agency shall ensure that contractors comply with the EEO requirements of their contract by conducting periodic compliance reviews of the contractor at the home office and/or project file. To assist with compliance reviews, Exhibit 16-X contains a list of 16 essential affirmative action steps, the efforts required to implement them, and the record that should be maintained to document the contractor's efforts. Exhibit 16-Y contains an EEO compliance review that should be used by the administering agency.

The district may assist a local agency in informing the contractor of EEO requirements. The district may also provide the local agency with training and assistance in checking EEO compliance of the contractor.

16.13 CONTRACT CHANGE ORDERS

PROCEDURES

Any change of the approved plans or specifications or work required which was not included in the contract must be covered by a contract change order. All change orders are to be approved by the administering agency in advance of any work being done on the change. **CAUTION: Additional** federal funds required for change orders may be jeopardized if work is done before authorization is received from Caltrans (see Chapter 4 of this manual for more information on project authorization). To receive authorization for additional federal funds the administering agency shall submit the following to the DLAE:

- A letter explaining the change order

- A revised detailed estimate

- Written approval for additional federal funds for the change order from the RTPA/MPO

Approval must be received in writing for the additional federal funds from the DLAE before the change order is approved by the administering agency. All information regarding approved change orders shall be retained in the project construction records.

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U. S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
EMPLOYMENT STANDARDS ADMINISTRATION

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CHAPTER 20 DEFICIENCIES AND SANCTIONS

20.1 INTRODUCTION

As outlined in earlier chapters, Caltrans will no longer be involved in most project level reviews and approval activities. The Process Review is now Caltrans' primary method of ensuring that Federal and State requirements are met, (see Chapter 19, "Process Reviews"). During a process review of a local agencies project files or project site, errors and/or deficiencies could be found. If that happens, Federal and/or State funds may be withdrawn from a project depending on the severity and circumstance of the deficiency.

It is important to note that the formal process review is not the only method of discovering project deficiencies. Errors or deficiencies are discovered occasionally as part of the normal routine of processing of project submittals by the District Local Assistance Engineers or Division of Local Assistance Area Engineers.

This chapter is intended to assist local agencies who are involved in developing local assistance projects by providing examples of the deficiencies that have been found in the past and the possible ramifications for those errors or deficiencies. It should be understood that the examples given are by no means all inclusive. The key to avoiding possible sanctions is to follow the procedures outlined in this manual, the *Local Assistance Program Guidelines* and the *Local Assistance Environmental Manual*, and if you have any questions to consult your District Local Assistance Engineer.

Section 20.4, "Local Assistance Dispute Resolution Process," of this chapter also provides means for local agency to appeal a sanction that they feel has been has been imposed upon them unfairly or to when feel the penalty is to harsh for the error or deficiency. This appeal process is not limited to just appeal of sanctions; it can be used by local agencies when they are not satisfied with the decision they receive from a district office.

20.2 DEFICIENCIES

PROCEDURAL DEFICIENCIES

A Procedural Deficiency is defined as a finding that a local agency's practices and procedures fail to demonstrate sufficient familiarity for acceptable levels of conformance with procedures and required certifications defined in the Local Assistance Manuals. In addition to jeopardizing Federal and/or State funding on completed or ongoing projects, certifications for future projects may be conditioned or not accepted until the deficiencies are corrected.

Examples of some of the most common procedural deficiencies (found by Caltrans) are:

- Continued submission of Request for Authorization that contains errors and omissions (see Chapter 3, "Authorization," in this manual).

- Continued submission of Preliminary Environmental Studies form that contains errors and omissions (see Chapter 6, "Environmental," in this manual).

- Continued submission of PS&E Certifications that contains errors and omissions (see Chapter 12, "PS&E," in this manual).

- Continued submission of Right of Way Certifications that contains errors and omissions (see Chapter 13 "Right of Way," and Chapter 14, "Utilities," in this manual).

- Continued submission of Local Agency Contract Award Checklist that contains errors and omissions (see Chapter 15, "Advertise and Award Project," in this manual).

- Failure of the local agency to comply with their approved DBE program, particularly with regard to policy, utilization of DBEs, monitoring and reporting (see Chapter 9, "DBE," in this manual).

MAJOR PROJECT DEFICIENCY

A Major Project Deficiency is defined as an error of commission or omission which violates Federal or State law or regulation, and that if uncorrected, would prevent Federal or State participation in all or a portion of the project.

Examples of some of the most common (found by Caltrans and FHWA) of Major Project Deficiencies (Federal) are:

- Failure to initiate an environmental reevaluation after environmental clearance, when changes in the scope of the project are proposed, or when new project environmental impacts surface due to changes in law or investigations, shall result in loss of all or part of the Federal funding for the project (see Chapter 6, "Environmental Procedures," in this manual).

- Failure to fulfill mitigation commitments and adherence to restrictions in the environmental document shall result in a loss of all or part of Federal funding for the project (see Chapter 6, "Environmental Procedures," in this manual).

- Right of Way activities in violation of the Uniform Relocation Assistance and Real Properties Policy Act, as amended, can result in all or partial loss of project funding. Project funding losses can result even if there are not Federal funds in Right of Way but only in other phases (see Chapter 13, "Right of Way," in this manual).

- Force Account/Day Labor work, without proper justification, is not reimbursable (see Chapter 12, "PS&E," in this manual).

- For Emergency Relief projects, billing for emergency opening but actually doing permanent restoration work can result in a loss of all or part of the Federal funding for the project (see Chapter 11, "Disaster Assistance," in the *Local Assistance Program Guidelines*).

When the acquisition of the real property qualifies for the voluntary sale provisions of the Act, no relocation assistance payments are to be provided to the grantor(s) being displaced from the property because of the project.

Tenants being displaced because of the project are entitled to all relocation assistance benefits under the Act. Grantor(s) being displaced from the property due to the project are entitled to all relocation assistance benefits under the Act, when the acquisition does not meet the requirements for a voluntary sale.

When a transportation enhancement project involves acquisition of land and the administering agency desires to have transportation enhancement activities funds deposited into an escrow account, step-by-step procedures for this exception to the usual process are as follows:

- "Authorization to Proceed" is received for Right of Way phase for state share of TEA and EEM
- Program Supplemental Agreement includes clauses so warrants can be payable to an escrow agent and so that different funding sources are clearly identified with their pro-rata share of costs
- Caltrans executes E-76 with FHWA, required before invoices can be paid. Finance letter required from the administering agency to begin the process.
- Escrow opens
- Administering agency prepares invoice
- Administering agency signs agreement declaring restrictive covenant, for example, on a scenic view shed
- Administering agency submits invoice, grant deed (not recorded) and agreement declaring restrictive covenant (not recorded) to Caltrans District Local Assistance
- Caltrans District Right of Way approves invoice and drafts further instructions to escrow
- Caltrans pays escrow (a memo explaining the expedite to the State Controller's Office may be required. Expedite requests cost $18.50 for a five-day turn-around and $50.00 for a three-day turn-around costs to be paid by administering agency.)
- Escrow closes
- Escrow records grant deed and agreement declaring restrictive covenant and sends recorded documents to DLAE
- Copies are distributed
- Final detailed estimate is made
- Final audit is performed.

Construction Phase

The construction phase steps generally include project advertising, bid opening, award, daily reporting, labor compliance, contract change orders and project completion. In order to ensure Federal fund eligibility, projects shall not be advertised for construction until receipt of "Authorization to Proceed", see Chapter 15 "Advertise/Award Project" in the *Local Assistance Procedures Manual*.

The CTC's allocation of construction capital funds and the administrating agency receipt of "Authorization to Proceed" are required before the construction phase is eligible for reimbursement. CEQA and NEPA approvals are required prior to the construction phase CTC allocation vote.

To initiate the construction phase, the administering agency provides the following information to Caltrans District Local Assistance:

- Request for allocation vote to Caltrans District Local Assistance
- Verification that project is in the Federal-approved State Transportation Improvement Program (FSTIP), available from the RTPA
- Right of Way Certification
- PS&E certification and complete PS&E.
- Copy of the approved environmental document (if not sent earlier)
- Completed "Request for Authorization"

Note: all of the above are part of Local Agency PS&E Certification, see Chapter 12, "PS&E" in the *Local Assistance Procedures Manual.*

After awarding the construction contract, the administering agency submits the Award Package and requests for a revised E-76 to reflect award information. The E-76 request should be sent along with Award Package, which includes the following information:

- Disadvantaged Business Enterprise/Woman-Owned Business Enterprise (DBE/WBE) information
- Good Faith Effort statement of DBE/WBE participation if DBE/WBE goals are not met
- List of all bidders in order of ranking from lowest to highest bid and the total of each bid
- Tabulated list showing the engineer's cost estimate and at least the three lowest bidders plus the successful low bidder in an item-by-item breakdown
- Engineer's estimate and the percentage the successful bid is over or under this estimate
- Responsible low bidder's proposal
- Finance letter
- Detailed estimate

Note: all of the above are part of Local Agency Contract Award Checklist, see Chapter 16, " Administer Contract" in the *Local Assistance Procedures Manual.*

For project completion, before the Caltrans District Local Assistance does a project completion review. The administering agency provides a Report of Expenditures to Local Assistance within six months of project completion. This report includes:

- Final invoice
- Final detail estimate
- Change order summary
- Liquidated damages/contractor's claims
- Date of project completion
- DBE/WBE final report
- Project certification.

Project Completion Timeline

Caltrans expects Project Administrators to start their projects by holding the field review, executing the agreements and beginning preliminary engineering during the fiscal year they are programmed in the STIP, either 1997/98 or 1998/99. Projects should be ready for the second vote within four years and completed within five years from July 1 of their programmed year. An accelerated

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Emergency Relief reimbursement eligibility for work that has not progressed to the construction stage by the end of the second fiscal year following the year of the disaster may be terminated. Local agency costs incurred and reimbursed (preliminary engineering, right of way, etc.) for terminated projects must be refunded to the Federal government. In cases where this deadline is not met, the local agency may request a time extension through their DLAE, with proper justification. DLAE will process the request and forward it to FHWA for approval/disapproval.

Caltrans will process necessary project documents on an expedited basis to permit prompt reimbursement of local agency funds.

SEQUENCE OF ER ACTIONS TO BE PERFORMED

The following checklist indicates the sequence that ER actions are performed, and the related documents submitted to the OLP for review and transmitted to FHWA. Note: see flow chart at the beginning of this chapter.

1. The **local agency performs and prepares records of emergency repairs** to minimize the extent of damage, protect remaining facilities, and restore essential travel.

2. The **local agency identifies damaged locations**, that are Federal-aid Highways, work performed and the associated cost for emergency repairs to date for each location, and prepares a listing.

   Note: See Section 2.3 "FHWA Oversight" in the *Local Assistance Procedures Manual* for "Stewardship - FHWA Oversight" project classification.

3. The **local agency** coordinates with Caltrans DLAE to **arrange for the Federal/State review team**. The local agency provides personnel familiar with the locations and history of work performed to date. The local agency representative is expected to be an active team member.

4. **Federal/State/local agency** team reviews sites and **prepares Damage Assessment Form**.

5. The **local agency completes** any identified remaining **emergency opening work and submits Request for Authorization** (see Chapter 3 "Project Authorization" in the *Local Assistance Procedures Manual*) to Caltrans - DLAE.

6. **Caltrans prepares and submits Program of Proposed ER Projects** to FHWA for approval.

7. **Caltrans submits either an Authorization to Proceed (E-76) (for exempt projects), or a Request for Authorization to Proceed (for nonexempt projects), and a Detail Estimate for emergency opening work for each project site** to FHWA and receives funding approval.

8. **Caltrans sends the local agency a Program Supplemental Agreement for each project site.**.

9. **Local agency executes Program Supplemental Agreement** and sends it back to Caltrans - DLA. Local agency submits invoices for work completed.

10. **Caltrans reviews completed project site and submits Form FHWA-1446C to FHWA for all Certification Acceptance (CA) Projects**. Otherwise local agency completes Final Inspection Form (FIF) and submits to Caltrans. Caltrans then verifies project completion.

11. The **FHWA performs final inspection for CA projects only** (per stewardship agreement).

Additional steps for projects with Permanent Restoration.

12. The **local agency develops PS&E for** any identified **permanent restoration work**. This action should be coordinated with Caltrans where complex designs are utilized; consultant services are desired; the estimated cost exceeds the DAF estimate; or the Local agency desires a different repair strategy from that written in the DAF report.

13. The **local agency submits PS&E certification** (see Chap 12, "PS&E" in the *Local Assistance Procedures Manual*)**, R/W certification to Caltrans and Request for Authorization** for identified items of permanent restoration work**. National Highway System (NHS) projects require submittal of the full PS&E and R/W certification to Caltrans - DLAE**.

14. **Caltrans**:

    - **DLAE approves PS&E on NHS projects**
    - **OLP submits Request for Authorization** to the FHWA;
    - Receives FHWA's Authorization to Proceed; and
    - **DLAE sends copy of Authorization to Proceed to local agency**. (Note that any restoration work proposed to be performed by the local agency will be based on a finding of cost effectiveness established on information provided by the local agency.)
    - **OLP sends Program Supplemental Agreement to local agency**.

15. The **local agency advertises project** and open bids (see Chap 15, "Advertise and Award Project" in the *Local Assistance Procedures Manual*).

16. **Local Agency executes Program Supplemental Agreement** and returns it to Caltrans - OLP.

17. The **local agency awards contract, submits Contract Award Checklist to DLAE**, proceeds with construction contract and submits invoices.

18. Upon completion of projects, **Caltrans reviews project location** and **submits Form FHWA-1446C to FHWA for all Certification Acceptance (CA) Projects**. Otherwise local agency completes Final Inspection Form (FIF) and submits to Caltrans. Caltrans then verifies project completion. See Chapter 17 "Project Completion" in the *Local Assistance Procedures Manual* for complete details on final inspections.

19. The **FHWA performs final inspection** of the restoration work **for CA projects only** (per stewardship agreement).

20. The **local agency prepares final billing** and submits it to Caltrans.