

TABLE OF CONTENTS

SECTION 1: Real Property Acquisition Oversight.....(3 - See Separate Document)

Section 1 outlines the process, roles, and responsibilities of FRA and FTA in completing reviews of documentation of Real Property acquired for Multimodal-Funded Major Capital Projects to confirm that Real Property acquisitions and the relocations of displaced persons comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (Uniform Act), 42 U.S.C. § 4601 et seq., and its implementing regulations at 49 CFR Part 24.

SECTION 2: Project Management Oversight and Engineering.....(15)

Section 2 outlines the process, roles, and responsibilities of FRA and FTA in performing project management oversight and engineering review activities on Multimodal-Funded Projects.

Section 2: Project Management Oversight and Engineering

1. Purpose

Section 2 outlines the process, roles, and responsibilities of FRA and FTA in performing project management oversight and engineering activities on Multimodal-Funded Projects.

FRA and FTA developed the following Standard Operating Procedures (SOP) to provide direction and guidance to agency staff who are performing project management oversight and engineering responsibilities on Multimodal-Funded Projects. The procedures contained herein are intended to supplement existing resources, such as DOT, FRA, and FTA regulations, circulars, grant agreements, and other guidance, but are not intended to establish any new or modify any existing requirements for Project Sponsors. This SOP harmonizes FRA and FTA engineering and project management oversight activities for Multimodal-Funded Projects, which will streamline different and or duplicative oversight activities for project sponsors and the Federal agencies by identifying a Lead Federal Oversight Agency.

2. Applicability/Scope

2.1 This SOP outlines Federal agency staff roles and responsibilities in performing engineering reviews and project management oversight of Multimodal-Funded Projects. FRA and FTA Recipients will benefit from a coordinated approach to simplify processes and eliminate duplicative, agency-specific requirements.

2.2 Nothing in this SOP should be interpreted to abrogate the obligations or responsibilities of FRA, FTA, or any Recipient. Compliance with provisions of this SOP will always be voluntary by the agencies and subordinate to federal law and regulations. This SOP does not have the force and effect of law, is not meant to bind FRA, FTA, or Recipients, and is not intended to confer any benefits or create any rights.

3. Definitions

The following terms are defined for the implementation of this SOP:

3.1 Lead Federal Oversight Agency: The Federal Agency that is providing funding towards a Multimodal-Funded project and is responsible for coordinating and establishing expectations with the Project Sponsor, leading and conducting oversight, and ensuring overall project compliance with both FRA and FTA federal requirements for the Multimodal-Funded Project.

3.2 Multimodal-Funded Project: A single project for which both FRA and FTA will provide or potentially provide assistance.¹ A project can also be considered a Multimodal-Funded Project if either the FRA or FTA Administrator determines it to be a Multimodal-Funded Project.

¹ FRA and FTA potentially will provide financial assistance when project sponsors have indicated via communication or other documentation (e.g., project agreement or financial plan) that they would seek funding from FRA and FTA or when there is otherwise a reasonable expectation of funding by FRA and FTA.

3.3 Non-Lead Federal Oversight Agency: The Federal Agency that is providing funding towards a Multimodal-Funded Project but is not the Lead Federal Oversight Agency. The Non-Lead Federal Oversight Agency will be involved throughout the process and may provide supporting reviews and recommendations. The Non-Lead Federal Oversight Agency will monitor findings of reviews undertaken by the Lead Federal Oversight Agency and provide input where necessary. The Non-Lead Federal Oversight Agency will still carry out grant management responsibilities for its grants to the Multimodal-Funded Project as documented in its grant agreement (i.e. Milestone Progress Reports, Federal Financial Reports, Grant Amendments and Budget Revisions, Compliance with Disadvantaged Business Enterprise Program, etc.).

3.4 Project Partner: A state or local agency, or private entity, that is not the Project Sponsor, but will contribute or has contributed resources to the project. Resources include financial, force account, materials, in-kind contributions, or any other contributions that further the project.

3.5 Project Sponsor: The entity responsible for developing, planning, and constructing a Multimodal-Funded Project, and that may also be seeking or receiving Federal financial assistance.

3.6 Recipient: A direct recipient of Federal financial assistance.

4. Standard Procedures

4.1 Lead Federal Oversight Agency Identification: FRA and FTA will select a Lead Federal Oversight Agency that will lead and conduct project management oversight reviews for each Multimodal-Funded Project consistent with this SOP.

4.1.1 FRA and FTA will select a Lead Federal Oversight Agency based on the following considerations, but not limited to:

- 4.1.1.1 FRA and FTA's relative funding levels;
- 4.1.1.2 The Cognizant Federal Agency (as that term is defined in Section 1 of this SOP) for real property acquisition oversight;.
- 4.1.1.3 The Lead Federal Agency (as defined in 23 U.S.C. § 139) for the environmental review process;
- 4.1.1.4 Ownership and operation of infrastructure;
- 4.1.1.5 Relationship the project has with other FRA or FTA projects;
- 4.1.1.6 The entity that manages the major contracts of a project; and
- 4.1.1.7 Other relevant factors.

4.1.2 Generally, for Multimodal-Funded Projects funded, or likely to be funded, through FTA's Capital Investment Grants (CIG) Program, FTA will typically be identified as the Lead Federal Oversight Agency.

4.1.3 Generally, for Multimodal-Funded Projects that do not meet FTA's definition of a Major Capital Project,² and that are not funded or likely to be funded through FTA's CIG Program, FRA will typically be

² FTA defines a Major Capital Project as a project that involves the construction, expansion, rehabilitation, or modernization of a fixed guideway that has a total project cost of \$300 million or more and receives Federal funds of \$100 million or more; and is not

identified as the Lead Federal Oversight Agency.

4.1.4 FRA and FTA will document the identification of the Lead Federal Oversight Agency for each Multimodal-Funded Project in a Memorandum of Understanding (MOU) (template attached as Appendix 1).³

4.1.5 FRA and FTA will identify the Lead Federal Oversight Agency as early as possible in the project life cycle.

4.2 Lead Project Sponsor Identification: In cases where there is more than one Project Sponsor, Project Sponsors and Project Partners should identify a Lead Project Sponsor.

4.2.1 The Lead Project Sponsor is required by regulation, guidance, or applicable grant agreement to coordinate with other Recipients and relevant Project Partners to collect and submit all the necessary documents that are required for oversight to the Lead Federal Oversight Agency.

4.2.2 The Lead Project Sponsor is required by regulation, guidance, or applicable grant agreement to provide a comprehensive Project Management Plan (PMP), comprehensive financial plan, and comprehensive project status reporting and other materials consistent with the requirements of both agencies.

4.3 Key Responsibilities of the Lead Federal Oversight Agency: The Lead Federal Oversight Agency will coordinate directly with the Lead Project Sponsor. Some of the key responsibilities of the Lead Federal Oversight Agency include the following:

4.3.1 Tracking project deliverables as changes occur throughout the project lifecycle.

4.3.2 Communicating with the Lead Project Sponsor regarding the documents that will be required for oversight reviews at various phases of the project.

4.3.3 Sharing appropriate documentation provided by the Lead Project Sponsor and developed by the Lead Federal Oversight Agency with the Non-Lead Federal Oversight Agency in a timely manner as necessary for input and comments.

4.3.4 Reviewing and approving, as applicable, documents and reports, and making programmatic decisions with input from the Non-Lead Federal Oversight Agency where necessary.

4.3.5 Leading oversight meetings and ensuring that key stakeholders are invited, as needed.

4.3.6 Presenting and briefing any project management oversight and engineering related information to

exclusively for the acquisition, maintenance, or rehabilitation of vehicles or other rolling stock; or a project the Administrator determines to be a major capital project because project management oversight will benefit the Federal government or the recipient, and the project is not exclusively for the acquisition, maintenance, or rehabilitation of rolling stock or other vehicles. Typically, this means a project that: involves new technology; is of a unique nature for the recipient; or involves a recipient whose past record indicates the appropriateness of extending project management oversight.

³ FRA and FTA may modify the MOU template attached as Appendix 1 by written agreement without amending or re-executing this SOP.

USDOT senior leadership and other stakeholders as necessary.

4.3.7 Carrying out grant management responsibilities for its grants to the Multimodal-Funded Project.

4.3.8 Other duties as agreed with the Non-Lead Federal Oversight Agency.

4.4 Key Responsibilities of the Non-Lead Federal Oversight Agency: The Non-Lead Federal Oversight Agency will have the following key responsibilities:

4.4.1 Providing input for any reviews, as may be required or requested by the Lead Federal Oversight Agency.

4.4.2 Making available any subject matter experts to support any reviews as needed and/or as may be required or requested by the Lead Federal Oversight Agency.

4.4.3 Supporting the Lead Federal Oversight Agency in developing any presentation or briefing materials for senior management or conferences, as appropriate.

4.4.4 Making subject matter experts available as appropriate to ensure that all federal requirements of the Non-Lead Federal Oversight Agency, especially those unique to the Non-Lead Federal Oversight Agency, have been sufficiently and satisfactorily addressed. Generally, the Non-Lead Federal Oversight Agency may rely on the oversight performed by the Lead Federal Oversight Agency, but the Non-Lead Federal Oversight Agency may lead some agency-specific required or regulatory reviews, in coordination with the Lead Federal Oversight Agency.

4.4.5 Participating in project management oversight and engineering meetings for the Multimodal-Funded Project pending agreement with the Lead Federal Oversight Agency. Any questions or comments for the Project Sponsor related to project management oversight or engineering review for the Project will be routed through the Lead Federal Oversight Agency.

4.4.6 Carrying out grant management responsibilities for its grants to the Multimodal-Funded Project.

4.4.7 Other duties as agreed with the Lead Federal Oversight Agency.

4.5 Scope of Review and Review Process: In general, the scope of oversight and engineering reviews and review process will be guided by the following:

4.5.1 The Lead Federal Oversight Agency will communicate and coordinate with the Lead Project Sponsor to obtain the relevant documents for review.

4.5.2 Lead Federal Oversight Agency shall lead the review and approval process of the different requirements.

4.5.3 Scope of review shall include both the Non-Lead Federal Oversight Agency and Lead Federal Oversight Agency requirements, as well as requirements imposed by the Department of Transportation.

4.5.4 Non-Lead Federal Oversight Agency shall have the opportunity to review and comment on any

proposed scope and schedule of review related to their requirements to make sure that their requirements have been appropriately captured.

4.5.5 In the event the Lead Federal Oversight Agency and the Non-Lead Federal Oversight Agency disagree on any scope or process issues, after a good faith effort to resolve the differences, they may elevate the issue to the FRA and FTA Senior Executive Service leadership to resolve the disagreement.

4.6 Communication and Information Sharing: Sharing of information and communication between the Lead Federal Oversight Agency and the Non-Lead Federal Oversight Agency will generally follow the guidelines below:

4.6.1 Both the Lead Federal Oversight Agency and the Non-Lead Federal Oversight Agency shall designate staff level leads (the staff level leads might change from phase to phase during the project lifecycle) who will be the main point of contact in discussing and sharing any oversight reports and communication.

4.6.2 The staff level leads will notify each other as to who needs to be copied on specific email communications or will be responsible for making sure that any communication reaches the appropriate people in each agency.

4.6.3 More detailed implementation guidance outside of this SOP will be maintained by FTA and FRA.

5. References

- 5.1 49 U.S.C. ch. 53
- 5.2 49 U.S.C. subtit. V
- 5.3 2 CFR Part 200
- 5.4 49 CFR Part 633
- 5.5 49 CFR 1.89
- 5.6 49 CFR 1.91
- 5.7 FRA Monitoring Procedures
- 5.8 FTA Oversight Procedures
- 5.9 FTA Master Agreement

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6. SOP Execution

THE FEDERAL TRANSIT ADMINISTRATION

By: _____ Date _____
FTA Authorized Agent

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6.0 SOP Execution Continued

THE FEDERAL RAILROAD ADMINISTRATION

By: _____ Date _____
FRA Authorized Agent

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APPENDIX 1

MEMORANDUM OF UNDERSTANDING
between
The Federal Railroad Administration
and
The Federal Transit Administration
To Coordinate Oversight of the _____ Project
A Multimodal-Funded Project

1. PURPOSE

The purpose of this Memorandum of Understanding (MOU) between the Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA) is to set forth a cooperative framework to permit FRA and FTA to carry out mutually agreed oversight for the _____ Project, a multimodal-funded project. FRA and FTA may each hereinafter be referred to as a “Party” and collectively as the “Parties.”

2. RECITALS

- 2.1 WHEREAS, FRA is an operating administration of United States Department of Transportation (DOT) and is delegated authority to carry out the provisions of 49 U.S.C. Subtitle V as described in 49 C.F.R § 1.89(a).
- 2.2 WHEREAS, FTA is an operating administration of the DOT and is delegated authority by 49 C.F.R. § 1.91(a) to carry out the provisions of 49 U.S.C. Chapter 53 with regard to funding public transportation projects.
- 2.3 WHEREAS, FRA and FTA recipients would benefit from a uniform policy regarding oversight compliance for multimodal-funded projects.
- 2.4 WHEREAS, the Parties are both undertaking funding and oversight responsibilities on the _____ Project (Project), a multimodal-funded project with _____ as Lead Project Sponsor.
- 2.5 FINALLY, the Parties agree to enter into this MOU for the purpose of establishing a cooperative framework for oversight on the Project.

3. AUTHORITIES

- 3.1 49 U.S.C. ch. 53
- 3.2 49 U.S.C. subtit. V
- 3.3 2 CFR Part 200
- 3.4 49 CFR Part 633
- 3.5 49 CFR 1.89
- 3.6 49 CFR 1.91
- 3.7 FRA Monitoring Procedures
- 3.8 FTA Oversight Procedures
- 3.9 FTA Master Agreement

4. DEFINITIONS

The following terms are defined for the implementation of this MOU:

- 4.1 Lead Federal Oversight Agency:** The agency responsible for coordinating and establishing expectations with the Project Sponsor, leading and conducting oversight, and ensuring overall project compliance with both FRA and FTA federal requirements.
- 4.2 Multimodal-Funded Project:** A single project that both FRA and FTA will provide or potentially will provide assistance.⁴ A project can also be considered a Multimodal-Funded Project if either the FRA or FTA Administrator determines it to be a Multimodal-Funded Project.
- 4.3 Non-Lead Federal Oversight Agency:** The Federal Agency that is not the Lead Federal Oversight Agency. The Non-Lead Federal Oversight Agency will be involved throughout the process and may provide supporting reviews and recommendations. The Non-Lead Federal Oversight Agency will monitor findings of reviews undertaken by the Lead Federal Oversight Agency and provide input where necessary. The Non-Lead Federal Oversight Agency will still carry out grant management responsibilities for its grants to the Multimodal-Funded Project as documented in its grant agreement (i.e. Milestone Progress Reports, Federal Financial Reports, Grant Amendments and Budget Revisions, Compliance with Disadvantaged Business Enterprise Program, etc.).
- 4.4 Project:** (Give Project Description)
- 4.5 Project Partner:** A state or local agency, or private entity, that is not the Project Sponsor, but will contribute or has contributed resources to the project. Resources include financial, force account, materials, in-kind contributions, or any other contributions that further the project.
- 4.6 Project Sponsor:** The entity responsible for developing, planning, and constructing a Multimodal-Funded Project, and that may also be seeking or receiving Federal financial assistance.
- 4.7 Recipient:** A direct recipient of Federal financial assistance.

5. AGREEMENT BETWEEN THE PARTIES

To avoid duplication or inconsistencies in oversight policies for multimodal-funded projects, the Parties heretofore agree to the following:

⁴ FRA and FTA potentially will provide financial assistance when project sponsors have indicated via communication or other documentation (e.g., project agreement or financial plan) that they would seek funding from FRA and FTA or when there is otherwise a reasonable expectation of funding by FRA and FTA.

- 5.1 The Parties agree that _____ (FTA or FRA) will be the Lead Federal Oversight Agency for the Project.
- 5.2 The Parties agree that the Lead Federal Oversight Agency will initiate and conduct oversight for the Project on behalf of the Parties.
- 5.3 The Non-Lead Federal Oversight Agency will ensure that the Party acting as the Lead Federal Oversight Agency has access to all of the information, documents, and correspondence necessary to conduct its oversight responsibilities, to the extent permitted by law.
- 5.4 The Lead Federal Oversight Agency will coordinate oversight with the Project Sponsor, Project Partners, and the Party.
- 5.5 The Parties may rely on the Lead Federal Oversight Agency's review of a Project Sponsor's compliance with all federal requirements, to include Buy America, the Davis Bacon Act, the Uniform Act and 2 CFR part 200, as well as others, to meet each mode's grant management requirements. Each Party reserves the right to take additional oversight measures or actions at any time as it deems appropriate on the Project.
- 5.6 The Parties agree to provide oversight consistent with the Standard Operating Procedure on Project Management Oversight and Engineering for Multimodal-Funded Projects.

6. ADMINISTRATION OF THIS AGREEMENT

- 6.1 This MOU shall become effective upon the last signature date set below (the Effective Date). This MOU shall expire _____ (e.g. two years after the Revenue Service Date for the Project is achieved or when the last grant for the Project is closed), unless otherwise earlier vacated by the Parties.
- 6.2 FRA and FTA may amend this MOU in writing by mutual agreement at any time.
- 6.3 Either Party may terminate this MOU at any time with written notice to the other Party.
- 6.4 Nothing in this MOU abrogates the obligations or duties of either FRA or FTA. Compliance with provisions of this MOU is subordinate to federal law in the event of a conflict.
- 6.5 No Commissioner, director, officer, agent, or employee of either Party, shall be charged personally with any liability or held liable under any term or provision of this MOU, or of any other agreement, document, or instrument executed in connection therewith, or any supplement, modification, or amendment to this MOU, or to such other agreement, document, or instrument, or because of its or their execution or attempted execution, or because of any breach or attempted or alleged breach thereof.

6.6 Any obligation of funds by the Parties, consistent with this MOU, is subject to the availability of funds through the authorization and appropriation of funds by the U.S. Congress. No provision in this MOU will be interpreted to require obligation or awarding of funds in violation of the Anti-Deficiency Act, Section 1341 of Title 31, United States Code. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

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THE FEDERAL TRANSIT ADMINISTRATION

By: _____ Date _____
FTA Authorized Agent

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THE FEDERAL RAILROAD ADMINISTRATION

By: _____ Date _____
FRA Authorized Agent

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