

SECOND RENEWED MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE TEXAS DEPARTMENT OF TRANSPORTATION CONCERNING STATE OF TEXAS' PARTICIPATION IN THE PROJECT DELIVERY PROGRAM PURSUANT TO 23 U.S.C. 327

THIS SECOND RENEWED MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is entered into by and between the FEDERAL HIGHWAY ADMINISTRATION (hereinafter "FHWA"), an administration in the UNITED STATES DEPARTMENT OF TRANSPORTATION (hereinafter "USDOT"), and the State of Texas, acting by and through its TEXAS DEPARTMENT OF TRANSPORTATION (hereinafter "TxDOT"), and hereby provides as follows:

WHEREAS, Section 327 of Title 23 of the U.S. Code (U.S.C.) establishes the Surface Transportation Project Delivery Program (hereinafter "Program") that allows the Secretary of the United States Department of Transportation (hereinafter "USDOT Secretary") to assign, and States to assume, the USDOT Secretary's responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (hereinafter "NEPA"), and all or part of the USDOT Secretary's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to highway, public transportation, railroad, and multimodal projects within the State; and

WHEREAS, FHWA has promulgated regulations implementing the Program at 23 CFR Part 773; and

WHEREAS, TxDOT has participated in the Program since December 16, 2014; and

WHEREAS, on December 1, 2023, TxDOT submitted its Second Renewal Package to FHWA; and

WHEREAS, the USDOT Secretary, acting by and through FHWA, has considered TxDOT's Second Renewal Package and TxDOT's overall performance in the Program and has determined that TxDOT has met all the requirements for renewal of its participation in the Program for another ten-year term.

NOW THEREFORE, FHWA and the State of Texas, acting by and through TxDOT, agree as follows:

**PART 1.
PURPOSE OF MEMORANDUM OF UNDERSTANDING**

1.1 Approval of renewal application - This MOU officially approves TxDOT's application to renew participation in the Program and is the written agreement required pursuant to 23 U.S.C. 327(a)(2)(A) and 327(c). The FHWA's execution of this MOU is based on TxDOT's application dated December 1, 2023 (hereinafter "Second Renewal Package"), monitoring reports, consideration of any comments received during the comment period, and the State's overall performance in the Program since December 16, 2014. This MOU incorporates by reference the Second Renewal Package.

1.1.2 Third party actions - Pursuant to 23 U.S.C. 327(d), and subpart 3.3 of this MOU, third parties may challenge TxDOT's actions assigned under this MOU. Otherwise, this MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the State of Texas, its departments, agencies, or entities, its officers, employees, or agents. This MOU is not intended to, and does not, create any new right or benefit, substantive or procedural, enforceable at law or in equity by any third party against the United States,

its departments, agencies, or entities, its officers, employees, or agents.

- 1.1.3 Severability - The assignment of responsibilities under this MOU is made pursuant to the authority granted to the Secretary under 23 U.S.C. 327. Any provision of this MOU, or any portion of any provision, that is deemed to be illegal, unenforceable, or beyond the scope of the Secretary's authority shall be severed from this MOU, without affecting the validity of the remainder of the MOU. In such event, all other provisions or parts of provisions of this MOU shall remain in full force and effect.

PART 2. ASSIGNMENTS AND ASSUMPTIONS OF RESPONSIBILITY

- 2.1.1 Responsibilities assigned - Pursuant to 23 U.S.C. 327(a)(2)(A), and subject to subpart 2.2.3 below, FHWA hereby assigns, and TxDOT assumes, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq. with respect to the highway projects specified under subpart 2.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal highway projects.
- 2.1.2 Public disclosure - On the cover page of all environmental analyses prepared under the authority of this MOU, TxDOT shall insert the following language in a way that is conspicuous to the reader or include it in a CE project record:
- "The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated [TO BE FILLED], and executed by FHWA and TxDOT."
- 2.1.3 TxDOT shall disclose to the public and agencies, as part of agency outreach and public involvement procedures, including any notice of intent or scoping meeting notice, the disclosure in subpart 2.1.2 above.

2.2 Assignments and Assumptions of Responsibilities to Comply with Federal Environmental Laws Other Than NEPA

- 2.2.1 Other federal environmental authorities - Pursuant to 23 U.S.C. 327(a)(2)(B), on the Effective Date, FHWA assigns and TxDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for environmental review, reevaluation, consultation, or other action pertaining to the review or approval of highway projects specified under subpart 2.3 required under relevant executive orders and all of the following Federal environmental laws related to highway projects:

Air Quality

- Clean Air Act, 42 U.S.C. 7401-7671q, with the exception of any conformity determinations

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901-4918
- FHWA noise regulations at 23 CFR 772

Wildlife

- Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531-1544
- Marine Mammal Protection Act, 16 U.S.C. 1361-1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a -757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661- 667d
- Migratory Bird Treaty Act, 16 U.S.C. 703 -712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668-668d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801-1891d

Historic and Cultural Resources

- National Historic Preservation Act of 1966 (NHPA), as amended, 54 U.S.C. 300101 et seq.
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa-470mm
- Archeological and Historic Preservation Act 54 U.S.C. 312501-312508
- Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001-3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201- 4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251-1387 (Sections 319, 401, 402, 404, and 408)
- Coastal Barrier Resources Act, 16 U.S.C. 3501-3510
- Coastal Zone Management Act, 16 U.S.C. 1451-1466
- Safe Drinking Water Act, 42 U.S.C. 300f- 300j-26
- General Bridge Act of 1946, 33 U.S.C. 525- 533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401-406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271-1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 23 U.S.C. 133(b)
- FHWA wetland and natural habitat mitigation regulations at 23 CFR 777
- Flood Disaster Protection Act, 42 U.S.C. 4001- 4130

Parklands and Other Special Land Uses

- Section 4(f), 23 U.S.C. 138 and 49 U.S.C. 303
- FHWA/FTA Section 4(f) Regulations at 23 CFR 774
- Land and Water Conservation Fund Act, 54 U.S.C. 200302-200310

FHWA and USDOT-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

2.2.2 Projects or responsibilities not assigned - As provided at 23 U.S.C. 327 (a)(2)(D), any highway project or responsibility of the USDOT Secretary or FHWA that is not explicitly assumed by TxDOT under this MOU remains the responsibility of the USDOT Secretary or FHWA. This provision shall not be interpreted to abrogate TxDOT's responsibilities to comply with the requirements of any Federal environmental law that apply directly to TxDOT independent of FHWA's involvement (through Federal assistance or approval).

2.2.3 Government-to-government consultation with Indian tribes - The USDOT Secretary's responsibilities for government-to-government consultation with Indian tribes as defined in 36 CFR 800.16(m) are not assigned to or assumed by TxDOT under this MOU. FHWA retains responsibility for all government-to-government consultation, including initiation of government-to-government consultation consistent with Executive Order 13175. A notice from TxDOT to an Indian tribe advising the tribe of a proposed activity is not considered "government-to-government consultation" within the meaning of this MOU. At the request of the tribe, FHWA may act as the main point of contact for a consultation related to NEPA or another federal environmental law relating to a project. In such cases, TxDOT will adhere to the results of any such consultation. This MOU does not prevent future agreements allowing TxDOT to administer government-to-government consultation, however, such agreements are administrative in nature and do not relieve the FHWA of its legal responsibility for government-to-government consultation.

2.2.4 Conformity determination - Nothing in this MOU shall be construed to permit TxDOT's assumption of the USDOT Secretary's responsibilities for conformity determinations required under Section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304 (23 U.S.C. 327(a)(2)(B)(iv)(II)). FHWA's Texas Division Office will restrict its review to only that data, analyses, applicable comments and responses, and other relevant documentation that enable FHWA to make the project-level conformity determination.

2.2.5 Section 4(f) Constructive Use - TxDOT will not make any determination that an action constitutes a constructive use of a publicly owned park, public recreation area, wildlife refuge, waterfowl refuge, or historic site under Section 4(f) without first consulting with FHWA and obtaining FHWA's approval of such determination.

2.3 Highway Projects

2.3.1 Highway projects covered - Except as provided by subpart 2.3.2 below, the

assignments and assumptions of the USDOT Secretary's and FHWA's responsibilities shall apply with respect to the environmental review, consultation, or other action pertaining to the environmental review or approval of the following classes of highway projects located within the State of Texas. The definition of "highway project" is found at 23 CFR 773.103, and for purposes of this MOU, "highway project" includes eligible preventative maintenance activities.

- A. Projects requiring an EIS, both on the state highway system (SHS) and local government projects off the SHS that are funded by FHWA or require FHWA approvals
- B. Projects requiring an EA, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals
- C. Projects qualifying for a CE, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals
- D. Projects funded by other Federal agencies, or projects without any Federal funding, that also require FHWA approvals. For these projects, TxDOT would not assume the NEPA responsibilities of other Federal agencies. However, TxDOT may use or adopt other Federal agencies' NEPA analyses consistent with applicable laws

2.3.2 Exceptions to highway projects covered - The following are specifically excluded from the list in subpart 1.5 of highway projects and classes of highway projects:

- A. Any Federal Lands highway projects authorized under 23 U.S.C. 202 ("Tribal transportation program"), 203 ("Federal lands transportation program"), or 204 ("Federal lands access program") unless such projects will be designed and constructed by TxDOT.
- B. Any project that crosses State boundaries and any project that crosses or is adjacent to international boundaries [23 CFR 773.105(c)]. For purposes of this agreement, a project is considered "adjacent to international boundaries" if it requires the issuance of a new, or the modification of an existing, Presidential Permit by the U.S. Department of State.

PART 3. CERTIFICATIONS AND ACCEPTANCE OF JURISDICTION

3.1 Certifications

3.1.1 TxDOT hereby makes the following certifications:

- A. TxDOT has the legal authority to accept all the assumptions of responsibility identified in Part 2 of this MOU;
- B. TxDOT has the legal authority to take all actions necessary to carry out all of the responsibilities it has assumed under this MOU;
- C. TxDOT has the legal authority to execute this MOU;
- D. The State of Texas currently has laws in effect that are comparable to 5 U.S.C. 552, and those laws are located at Texas Government Code § 552.001, et seq. (the Texas Public Information Act); and

- E. The Texas Public Information Act provides that any decision regarding the public availability of a document under that Act is reviewable by a Texas court of competent jurisdiction.

3.2 State Commitment of Resources

- 3.2.1 Financial Resources - As provided at 23 U.S.C. 327(c)(3)(D), TxDOT will maintain the financial resources necessary to carry out the responsibilities it is assuming.
- 3.2.2 Personnel Resources - TxDOT currently has and will maintain adequate organizational and staff capability, including competent and qualified consultants where necessary or desirable, to effectively carry out the responsibilities it has assumed under this MOU.
- 3.2.3 NHPA Standards - When carrying out the requirements of Section 106 of the NHPA, TxDOT staff (including consultants) shall comply with 36 CFR 800.2(a)(1). All actions that involve the identification, evaluation, analysis, recording, treatment, monitoring, or disposition of historic properties, or that involve the reporting or documentation of such actions shall be carried out by or under the direct supervision of a person or persons who meet the Secretary of Interior's Professional Qualifications Standards (36 CFR Appendix A to Part 61). TxDOT shall ensure that all documentation required under 36 CFR 800.11 is reviewed and found adequate by a staff member or consultant who meets the Professional Qualifications Standards.
- 3.2.4 Environmental Toolkits - As part of its commitment of resources, TxDOT will continue to develop, implement and update its Environmental Compliance Toolkits guidance, which is not subject to FHWA approval unless required by statute or regulation, to support appropriate environmental analysis and decision-making under NEPA and associated laws and regulations. TxDOT recognizes it is solely responsible for the Environmental Compliance Toolkits guidance and procedures for compliance with responsibilities assigned in this MOU and for establishing policy and guidance to implement its program.

3.3 Federal Court Jurisdiction

- 3.3.1 As provided at 23 U.S.C. 327(c)(3)(B), and pursuant to Section 201.6035 of Title 6 of the Texas Transportation Code, TxDOT hereby expressly consents, on behalf of the State of Texas, to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the USDOT Secretary assumed by TxDOT under this MOU. This consent to Federal court jurisdiction shall remain valid after termination of this MOU, or FHWA's withdrawal of assignment of the USDOT Secretary's responsibilities, for any decision or approval made by TxDOT pursuant to an assumption of responsibility under this MOU. TxDOT understands and agrees that, in accordance with 23 U.S.C. 327, this acceptance constitutes a waiver of the State of Texas's immunity under the Eleventh Amendment to the U.S. Constitution for the limited purposes of carrying out the USDOT Secretary's responsibilities that have been assumed under this MOU.

PART 4. APPLICABILITY OF FEDERAL LAW

4.1 Procedural and Substantive Requirements

- 4.1.1 Same procedural and substantive requirements - As provided at 23 U.S.C.

327(a)(2)(C), TxDOT is subject to the same procedural and substantive requirements as would apply if the responsibilities were carried out by FHWA including Federal statutes and regulations, Executive Orders issued by the President of the United States, USDOT Orders, FHWA Orders, and official guidance and policy.

- 4.1.2 Coordination with other agencies - TxDOT will seek early and appropriate coordination with Federal agencies concerning the laws, guidance, and policies that such other Federal agencies are responsible for administering and which relate to TxDOT's responsibilities under this MOU.
- 4.1.3 Interagency Agreements - Upon termination of this MOU, FHWA and TxDOT shall contact the relevant third party to any interagency agreement and determine whether the interagency agreement should be amended or reinstated as appropriate.

4.2 Rulemaking

- 4.2.1 As provided at 23 U.S.C. 327(f), nothing in this MOU permits TxDOT to assume any rulemaking authority of the USDOT Secretary. Additionally, TxDOT may not establish policy and guidance on behalf of the USDOT Secretary or FHWA for highway projects covered in this MOU. TxDOT's authority to establish State regulations, policy, and guidance concerning the State environmental review of State highway projects shall not supersede applicable Federal environmental review regulations, policy, or guidance established by or applicable to the USDOT Secretary or FHWA.

4.3 Effect of Assumption

- 4.3.1 For purposes of carrying out the responsibilities assumed under this MOU, and subject to the limitations contained in 23 U.S.C. 327 and this MOU, TxDOT shall be deemed to be acting as FHWA or the USDOT Secretary, as applicable, with respect to the environmental review, consultation, and other action required under those responsibilities.

4.4 Other Federal Agencies

- 4.4.1 As provided at 23 U.S.C. 327(a)(2)(E), nothing in this MOU preempts or interferes with any power, jurisdiction, responsibility, or authority of an agency other than the USDOT (including FHWA), under applicable statutes and regulations with respect to a project.

PART 5. LITIGATION

5.1 Responsibility and Liability

- 5.1.1 TxDOT solely responsible and solely liable - As provided at 23 U.S.C. 327(e), TxDOT shall be solely responsible and solely liable for carrying out, in lieu of and without further approval of FHWA, all of the responsibilities it has assumed under this MOU. The FHWA and USDOT shall have no responsibility or liability for the performance of the responsibilities assumed by TxDOT, including any decision or approval made by TxDOT in the course of participating in the Program.
- 5.1.2 Legal representation - TxDOT shall defend all claims brought in connection with its discharge of any responsibility assumed under this MOU. In the event of litigation, TxDOT shall provide qualified and competent legal counsel, including outside counsel if necessary. TxDOT shall provide the defense at its own expense, subject to 23 U.S.C. 327(a)(2)(G) concerning Federal-aid participation in attorney's fees for TxDOT's

counsel. TxDOT shall be responsible for opposing party's attorney's fees and court costs if a court awards those costs to an opposing party; or in the event those costs are part of a settlement agreement.

- 5.1.3 TxDOT will notify the FHWA's Texas Division Office and DOJ prior to settling any lawsuit, in whole or in part, and shall provide the FHWA and DOJ with a reasonable amount of time of at least ten (10) calendar days, unless a shorter time is dictated by the Court, which may be extended, if feasible based on the context of the lawsuit, up to a maximum of thirty (30) total calendar days, to review and comment on the proposed settlement. TxDOT will not execute any settlement agreement until: (1) FHWA and DOJ have provided comments on the proposed settlement; (2) FHWA and DOJ have indicated that they will not provide comments on the proposed settlement; or (3) the review period has expired, whichever occurs first.
- 5.1.4 Within seven (7) calendar days of receipt by TxDOT, TxDOT will provide notice to FHWA's Texas Division Office and DOJ of any court decision on the merits, judgment, and notice of appeal arising out of or relating to the responsibilities TxDOT has assumed under this MOU. TxDOT shall notify FHWA's Texas Division Office and DOJ within five (5) days of filing a notice of appeal of a court decision. TxDOT shall confer with FHWA and DOJ regarding the appeal at least forty-five (45) days before filing an appeal brief in the case.
- 5.1.5 TxDOT's notification to FHWA and DOJ in subparts 5.1.3 and 5.1.4, shall be made by electronic mail to FHWA_assignment_lit@dot.gov and NRSDOT.enrd@doj.gov, unless otherwise specified by FHWA and DOJ. FHWA and DOJ's comments under subpart 5.1.3 and 5.1.4 shall be made by electronic mail to jessica.gray@txdot.gov, thornton.wood@txdot.gov, and sierra.redding@txdot.gov unless otherwise specified by TxDOT. In the event that regular mail is determined necessary, mail should be sent to:

For DOJ: Assistant Attorney General for the Environment and Natural Resources Division at 950 Pennsylvania Avenue, NW, Room 2143, Washington, DC 20530.

For FHWA: Division Administrator, FHWA Texas Division, 300 East 8th Street, Room 826, Austin, TX 78701.

PART 6. INVOLVEMENT WITH FHWA

6.1 Generally

- 6.1.1 No project-level assistance - Except as specifically provided otherwise in this MOU, FHWA will not provide any project-level assistance to TxDOT in carrying out any of the responsibilities it has assumed under this MOU. Project-level assistance shall include any advice, consultation, or document review with respect to the discharge of such responsibility for a particular highway project. However, project-level assistance does not include process or program level assistance as provided in subpart 6.1.4, discussions concerning issues addressed in prior projects, interpretations of any applicable law contained in 23 U.S.C. or 49 U.S.C., interpretations of any FHWA or USDOT regulation, or interpretations of FHWA or USDOT policies or guidance.
- 6.1.2 No project-level intervention - The FHWA will not intervene, broker, act as intermediary, or be otherwise involved in any issue involving TxDOT's consultation or coordination with another Federal agency with respect to TxDOT's discharge of any of the responsibilities assumed under this MOU for any particular highway project.

However, the FHWA may attend meetings between TxDOT and other Federal agencies and submit comments to TxDOT and the other Federal agency upon request by either TxDOT or the other Federal agency and agreement by FHWA. The FHWA will notify both TxDOT and the relevant Federal agency prior to attending any meetings between TxDOT and such other Federal agency.

- 6.1.3 Complaints by other Federal agencies - The FHWA will review concerns regarding TxDOT's compliance with this MOU raised by other federal agencies. FHWA will notify TxDOT of the potential compliance issue and will work with both TxDOT and the relevant Federal agency to resolve the issue and, if necessary, take appropriate action to ensure compliance with this MOU.
- 6.1.4 Request for assistance - At TxDOT's request, FHWA may assist TxDOT in evaluating its environmental program and developing or modifying any of its processes or procedures to carry out the responsibilities it has assumed under this MOU.
- 6.1.5 Providing information to FHWA - As provided at 23 U.S.C 327(c)(4), TxDOT will provide to FHWA any information FHWA reasonably considers necessary to ensure that TxDOT is adequately carrying out the responsibilities assigned to TxDOT. TxDOT's obligations and responsibilities under 23 CFR 1.5 are not altered in any way by executing this MOU.

6.2 MOU Monitoring, Audit and Oversight

- 6.2.1 Monitoring events - As provided at 23 U.S.C. 327(h), the FHWA shall monitor TxDOT's compliance with this MOU. The monitoring will consist of at least one discrete monitoring event during the term of this MOU. The number and timing of the monitoring event(s) will be jointly determined by FHWA and TxDOT. The monitoring event(s) will be coordinated with TxDOT. FHWA will work with TxDOT to agree on the scope of a monitoring event in advance. FHWA will provide a reasonable opportunity for TxDOT to provide feedback on any draft written findings from a monitoring event prior to finalizing them.
- 6.2.2 Audit - As provided at 23 U.S.C. 327(g)(1)(C), FHWA shall conduct one audit during the first five years of the term of this MOU. There shall be no other audits during the term of this MOU. The purpose of the audit will be to ensure compliance with this MOU and with all Federal laws for which responsibility is assumed under this MOU. The audit will be carried-out by an audit team determined by FHWA in consultation with TxDOT. FHWA shall provide a reasonable opportunity for TxDOT to provide feedback on the draft audit findings prior to publishing them in the Federal Register. FHWA shall publish the draft audit findings in the Federal Register for public comment. Within 60 days after the end of the public comment period FHWA shall respond to public comments. The entire audit process, from initiation to completion (including public comment and responses to those comments) shall not exceed 180 days in duration.

6.3 Record Retention

- 6.3.1 TxDOT will retain project files and general administrative files pertaining to its discharge of the responsibilities it has assumed under this MOU in accordance with 2 CFR 200.334 (three years from the date of submission of the final Federal expenditure report) and the State of Texas Records Retention Schedule, whichever is longer.

6.4 Federal Register

- 6.4.1 For any documents that are required to be published in the Federal Register, such as the Notice of Intent under 23 CFR 771.123(a) and Notice of Final Agency Action under 23 U.S.C. 139(l), TxDOT shall transmit such document to the FHWA's Texas Division Office and the FHWA will cause such document to be published in the Federal Register on behalf of TxDOT and will submit such document to the Federal Register within 5 calendar days of receipt of such document from TxDOT. To the extent that the operating procedures of the Government Printing Office and the Federal Register permit, TxDOT will take over the procedures described above from the FHWA Texas Division Office.

6.5 Participation in Resource Agency Reports

- 6.5.1 TxDOT agrees to provide data and information requested by the FHWA Office of Project Development and Environmental Review and resource agencies for the preparation of national reports to the extent that the information relates to determinations, findings, and proceedings associated with projects processed under this MOU. Such reports include but are not limited to:
- A. Information on the completion of and duration to complete environmental documentation of all NEPA types (EIS, EA, CE);
 - B. Archeology Reports requested by the National Park Service;
 - C. Endangered Species Act Expenditure Reports requested by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
 - D. NEPA Litigation Reports requested by CEQ;
 - E. Environmental Conflict Resolution reports requested by the Office of Management and Budget and CEQ;
 - F. Project status and information for EAs and EISs for use on the searchable website maintained under section 41003(b) of the FAST Act [Fixing America's Surface Transportation Act, 42 U.S.C. 4370m-2(b) and 23 U.S.C. 139(o)] (Federal Permitting Dashboard) to be submitted in accordance with current and any future reporting standard issued by USDOT pursuant to such provisions.

6.7 Certification of NEPA Compliance

- 6.7.1 Before executing any Federal-aid project agreement for a physical construction contract, a design-build contract, or a contract for final design services, TxDOT will continue to provide to the FHWA Texas Division as part of the Federal Project Authorization Agreement (FPAA) process the NEPA clearance date for the project as recorded in TxDOTCONNECT. This will serve as TxDOT's certification that TxDOT has fulfilled all responsibilities under this MOU in accordance with relevant Federal laws, regulations, and policies.

PART 7. WITHDRAWAL OF ASSIGNED RESPONSIBILITIES

7.1 FHWA-Initiated Withdrawal of Assigned Projects

- 7.1.1 FHWA may withdraw all or part of the USDOT Secretary's responsibilities assigned to TxDOT for any highway project if:
- A. TxDOT fails to comply with a material term of this MOU or applicable federal

laws or policies, and after being given reasonable notice and opportunity to correct, TxDOT does not take satisfactory corrective action;

- B. The highway project or highway projects involve significant or unique national policy interests for which TxDOT's assumption of the USDOT Secretary's responsibilities would be inappropriate; or
- C. TxDOT cannot satisfactorily resolve an issue or concern raised in a government-to-government consultation process, as provided in subpart 2.2.3.

7.1.2 Upon the FHWA's determination to withdraw assignment of the USDOT Secretary's responsibilities under subpart 7.1.1, FHWA will notify TxDOT of FHWA's determination including the reasons for its determination. Upon receipt of this notice, TxDOT may submit any comments that resolve the reasons for the determination or objections to the FHWA within thirty (30) calendar days, unless FHWA agrees to an extended period of time. Upon receipt of TxDOT's comments or objections, FHWA will make a final determination within 30 calendar days, unless extended by FHWA for cause, and notify TxDOT of its decision. In making its determination, FHWA will consider TxDOT's comments or objections, the effect the withdrawal of assignment will have on the Program, the amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest. Following its final determination, when FHWA withdraws assignment for any project or projects, FHWA will assume sole responsibility and liability for the decisions and approvals it has re-assumed for the project or projects based on such determination. However, TxDOT will remain responsible for other decisions and approvals for the project or projects, which FHWA has not reassumed responsibility or liability for, such as decisions and approvals beyond the scope of the USDOT Secretary's responsibilities under NEPA and related Federal environmental laws.

7.2 TxDOT-Initiated Withdrawal of Assignment of Projects

- 7.2.1 TxDOT may request FHWA to withdraw all or part of the USDOT Secretary's and/or FHWA's responsibilities assigned to TxDOT for any highway project(s).
- 7.2.2 Upon TxDOT's decision to request FHWA to withdraw the assignment of the USDOT Secretary's and/or FHWA's responsibilities under subpart 8.2.1, TxDOT shall informally notify FHWA of its desire for FHWA to withdraw assignment of such responsibilities. After informally notifying FHWA of its desire, TxDOT will provide FHWA written notice of its desire, including the reasons for wanting FHWA to withdraw assignment of the responsibilities for a highway project. Upon receipt of this notice, the FHWA will have 30 calendar days, unless extended by FHWA for cause, to determine whether it will withdraw assignment of the responsibilities requested. In making its determination, FHWA will consider the reasons TxDOT desires FHWA to withdraw assignment of the responsibilities, the effect the withdrawal of assignment will have on the Program, amount of disruption to the project concerned, the effect on other projects, confusion the withdrawal of assignment may cause to the public, the potential burden to other Federal agencies, and the overall public interest.

PART 8. TERM, TERMINATION, RENEWAL

8.1 Term

8.1.1 This MOU has a term of 10 years effective upon the date of final execution by both parties.

8.2 Termination by the FHWA

8.2.1 As provided at 23 U.S.C. 327(j)(1), FHWA may terminate TxDOT's participation in the Program, in whole or in part, if:

- (a) FHWA determines that TxDOT is not adequately carrying out the responsibilities assigned to TxDOT;
- (b) FHWA provides to TxDOT:
 - (i) a notification of the determination of noncompliance;
 - (ii) a period of not less than 120 days to take such corrective action as FHWA determines to be necessary to comply with this MOU; and
 - (iii) on request of the Governor of Texas, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subpart 8.2.1(a) above; and
- (c) TxDOT, after the notification and period provided under subpart (b) above, fails to take satisfactory corrective action, as determined by the Secretary.

8.3 Termination by TxDOT

8.3.1 Notice of Termination - As provided at 23 U.S.C. 327(j)(2), TxDOT may terminate its participation in the Program at any time by providing to FHWA a notice by not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as FHWA may provide.

8.3.2 Transition period - In the event of a termination by TxDOT, FHWA and TxDOT shall develop a plan to transition the responsibilities that TxDOT has assumed back to FHWA and the USDOT Secretary, as applicable, so as to minimize disruption to projects, minimize confusion to the public, and minimize burdens to other affected Federal, State, and local agencies. The plan shall be approved by both FHWA and TxDOT.

8.4 Validity of TxDOT Actions

8.4.1 Any environmental approvals made by TxDOT pursuant to the responsibilities TxDOT has assumed under this MOU shall remain valid after termination of TxDOT's participation in the Program or withdrawal of assignment by FHWA.

8.5 Renewal

This MOU is renewable in accordance with 23 U.S.C. 327 and implementing regulations, as in effect at the time of the renewal.

PART 9. AMENDMENTS

9.1 Generally

9.1.1 This MOU may be amended at any time by mutual written agreement by TxDOT and

FHWA.

9.1.2 To the extent that TxDOT seeks to amend its application (including this MOU) to request additional projects, classes of projects, or more environmental review responsibilities, such amendment shall be subject to the procedures of 23 CFR 773.113(b).

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed in duplicate as of the date of the last signature written below.

FEDERAL HIGHWAY ADMINISTRATION

By: _____ Dated: _____

[NAME]
Administrator
Federal Highway Administration

STATE OF TEXAS

By: _____ Dated: _____

Marc D. Williams, P.E.
Executive Director
Texas Department of Transportation