PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION FLORIDA DIVISION
AND
THE FLORIDA DEPARTMENT OF TRANSPORTATION
REGARDING THE REVIEW AND APPROVAL OF
SPECIFIC TYPES OF CHANGES IN INTERSTATE-SYSTEM ACCESS

THIS PROGRAMMATIC AGREEMENT ("PA"), made and entered into this 2 day of April 2015, by and between the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION ("FHWA") and the STATE of FLORIDA acting by and through its DEPARTMENT OF TRANSPORTATION ("State"), hereby provides as follows:

WITNESSETH:

Whereas, 23 U.S.C. 111(a) provides that all agreements between the Secretary of U.S. Department of Transportation and the State transportation department for the construction of projects on the Interstate System (hereafter I-System) must contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary; and

Whereas, the Secretary has delegated the responsibility for approving additions and/or modifications of access to, or exit from, the I-System to the FHWA Administrator through 49 CFR 1.48(b)(1) and the FHWA Administrator has delegated specific actions of this responsibility to FHWA Division Administrators through the FHWA Delegations and Organization Manual; and

Whereas, FHWA policy Access to the Interstate System, 74 Fed. Reg. 43743 (Aug. 27, 2009) describes the justification and documentation that is necessary to substantiate a proposed change in access to the I-System; and

Whereas, FHWA's Interstate System Access Informational Guide describes FHWA's procedures for processing I-System access requests; and

Whereas, section 1318(d) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) provides the Secretary with the authority to enter into programmatic agreements with the States that establish efficient administrative procedures for carrying out required project reviews; and

Whereas, FHWA may establish procedures to expeditiously and efficiently process and approve I-System access requests where States compile, review, and process information related to I-System access changes; and

Whereas, the Florida Department of Transportation (FDOT) has agreed to enter into an agreement with FHWA to process approvals for specific types of changes in I-System access; and

Whereas, the FDOT has agreed to conduct the necessary review and assessment of the justification and documentation (access report) substantiating the proposed change in access, and based on this assessment, make a determination whether the proposal meets requirements set forth in this agreement for approval; and

Whereas, FHWA remains legally responsible for the approval of all changes in I-System access; and

Whereas, I-System access changes also require compliance with transportation planning, air quality conformity, congestion management, and the National Environmental Policy Act (NEPA), which are addressed as processes outside this agreement;

Now, therefore, the FHWA and FDOT enter into this Programmatic Agreement (Agreement) for the processing of specific types of changes in I-System access subject to the following terms and conditions:

SECTION I. CHANGES IN I-SYSTEM ACCESS THAT THE STATE MAY REVIEW AND PROVIDE ENGINEERING AND OPERATIONAL ACCEPTABILITY DETERMINATION AND MAY RECEIVE EXPEDITED FHWA APPROVAL

A. This Agreement allows FDOT to conduct the necessary review and assessment of the justification and documentation substantiating certain proposed changes in I-System access, make a determination on the engineering and operational acceptability of proposed changes, and request expedited FHWA approval. FHWA's lack of objections to the FDOT's determination within the established time period would constitute FHWA's concurrence and the approval required under 23 U.S.C. 111(a). This Agreement does not delegate FHWA's approval responsibility under 23 U.S.C. 111(a) or FHWA's responsibilities under environmental or other Federal laws. This Agreement applies to all proposed I-System access requests covered by Section I.B., including privately funded actions.

B. FDOT will limit its processing and determinations of I-System change of access requests under this Agreement to:

    1. New and major modifications to existing freeway-to-crossroad (service) interchanges outside of Transportation Management Areas (TMAs);

    2. Modifications to service interchanges inside of TMAs and;

    3. Completion of basic movements at existing partial interchanges.

C. This agreement does not include:

    1. New or modified freeway-to-freeway (system) interchanges;

    2. New service interchanges inside of TMAs;

    3. New partial interchanges;

    4. Closure of individual access points that result in partial interchanges or closure of

entire interchanges and;

5. Locked gate access.

SECTION II. PROCESSING REQUIREMENTS FOR I-SYSTEM ACCESS REQUESTS

A. FDOT will justify and document the information that substantiates changes in I-System access in the form of an access report. The FDOT will then use this justification and documentation as a basis for a determination of engineering and operational acceptability. A determination of engineering and operational acceptability may only be given by FDOT upon verification that the justification and documentation successfully addresses requirements in FHWA's Policy on Access to the Interstate System, 74 Fed. Reg. 43743 (Aug. 27, 2009) (hereinafter "Policy").

B. Before submitting an I-System access requests for expedited FHWA approval, FDOT will verify that the justification and documentation for the request satisfies the requirements of the eight points in FHWAs Policy by :

1. Demonstrating that the existing access and local street network do not meet the current need for access nor that they can be reasonably improved to meet the need for access;

2. Demonstrating that reasonable transportation system management, geometric design, or alternative improvements to the interstate do not meet the current need for access;

3. Having documented results of safety and operational analyses demonstrating that the proposed change in access will not have a significant adverse impact on the safety or operations of the Interstate [see Section II(A)];

4. Demonstrating that the access connects to a public road only and that it accommodates all traffic movements;

5. Demonstrating consistency with local and regional land use and transportation plans, as well meeting air quality conformity;

6. Providing recommendations for all of the proposed and desired access changes within the context of a longer-range system or network plan in a comprehensive corridor or network study for corridors where the potential exists for future multiple interchange additions;

7. Demonstrating that appropriate coordination has occurred between the development and any proposed transportation system improvements; and

8. Demonstrating that the proposal can be expected to be included as an alternative in the required environmental evaluation in accordance with the National Environmental Policy Act and any related requirement under law, regulation, or executive order.

C. FHWA's expedited final approval may proceed according to either a one-step or two step process:

1. One-step Process: Upon completion and approval of the environmental review and programming requirements, the FDOT submits the I-System access request for FHWA expedited approval after it verifies that the justification and documentation meets all the requirements listed in Section II (B). FDOT will allow the FHWA Division Office 5 business days to object to the determination. The FHWA Division Office's lack of objections to the FDOT's determination within this period will constitute FHWA's concurrence and the approval required under 23 U.S.C. 111(a).
   If FHWA objects to the determination it must contact the FDOT State Interchange Review Coordinator (SIRC) and document the basis of its objection.
2. Two-step Process: FDOT submits its determination of engineering and operational acceptability (Section II (B)) to the FHWA Division Office for expedited review before the completion of the environmental review and programming requirements. The FHWA Division Office will provide objections by official correspondence within 5 business days. The FHWA Division Office's lack of objections to the FDOT's determination within this period will constitute FHWA's concurrence with the engineering and operational acceptability determination.

   Upon completion of the other requirements in Section II.B., including environmental review and programming requirements, the FDOT will submit the request to the FHWA Division Office and allow 5 business days for FHWA Division objections to the request. The FHWA Division Office's lack of objections to the FDOT's determination within this period will constitute FHWA's concurrence and the approval required under 23 U.S.C. 111(a).

D. Only the FDOT Chief Engineer has the authority to make a determination, meeting acceptability or not meeting acceptability, that a request to change I-System access has met all the criteria for FHWA approval.

1. In the event the FDOT Chief Engineer is not available, the acting Chief Engineer has the authority to make a change in access acceptability determination.

E. FDOT may create and rely on electronic means to make available the notifications to the FHWA Division Office.

F. The notification of the FDOT's review and determination for each request for change in I-System access, whether electronic or written, will include:

1. the location and type of change in I-System access;

2. the location where information substantiating acceptability of the proposed change in I-System access may be accessed;

3. a verification that the required analysis, review and actions taken in considering and processing the modification comply with this agreement and the requirements specified in FHWA's Policy on Access to the Interstate System; and

4. the acceptability determination by the FDOT Chief Engineer or designee.

SECTION III. EXCLUSIONS TO ACTIONS PROCESSED UNDER THIS AGREEMENT SITUATIONS REQUIRING FHWA ACCESS REVIEW AND APPROVAL PROCESS

A. In special situations as determined by FHWA, a request for change in I-System access that meets the criteria in Section I.B. may be exempted from this programmatic agreement. In such situations FHWA will make the engineering and operational acceptability determination and provide the approval decision through the normal process.

B. Circumstances or conditions that may exempt the programmatic agreement and require FHWA access review and approval include:

1. Projects requiring environmental impact statements under the National Environmental Policy Act;

2. Issues relating to National Policy, substantial controversy or;

3. Any other project as required by FHWA.

SECTION IV. STATE PERFORMANCE REQUIREMENTS

A. **Processing I-System access changes under this Agreement: identification, record keeping, and review of effects.** For projects that FDOT determines meet the criteria specified in Section I of this Agreement, FDOT will:

1. Document its determination that a project meets engineering and operability acceptability as specified in Section II (A).

2. Include in the engineering and operability acceptability documentation the following certification: "FDOT has determined that this type of I-System access does not have the potential to adversely impact the safety and performance of the I-System."

3. Document compliance with the transportation planning, air quality conformity, environmental review requirements specified in Section II (B).

   a. Documentation that shows all requirements and considerations specified in Section II (B) may be compiled in a single Interstate justification report.
   b. Compliance with the environmental review requirements should indicate the NEPA class of action and date of CE determination, FONSI, or ROD.

4. The FDOT Chief Engineer acceptability determination specified in Section II(C) including signature, printed name, title, and date of the determination.

B. FDOT will maintain electronic and/or paper project records and records pertaining to

FDOT administration of its review and acceptability determination process for individual requests for I-System access change. FDOT will provide FHWA with copies of any project records FHWA may request. FDOT will retain those records for a period of no less than three (3) years after completion of project construction. This 3-year retention provision does not relieve FDOT of its project or program recordkeeping responsibilities under 49 CFR 18.42 or any other applicable laws, regulations, or policies.

C. **Non-transferability.** FDOT may not transfer or assign any of the responsibilities administratively delegated to FDOT under this Agreement. FDOT may utilize contractors and others to assist FDOT in carrying out its responsibilities.

D. Required resources, qualifications, expertise, standards, and training.

1. FDOT will maintain adequate organizational and staff capability and expertise to effectively carry out the provisions of this Agreement. This includes, without limitation:

    a. Using appropriate technical and managerial expertise to perform the functions set forth under this Agreement.

    b. Devoting adequate financial and staff resources to carry out the review and processing of projects under this Agreement.

2. The State may procure through consultant services some or all of the engineering, environmental and other technical expertise needed to carry out its processing and certifications under this Agreement.

E. State Quality Control

1. FDOT agrees to carry out regular quality control activities to ensure that the subject review, analysis, processing, and determination complies with the agreed to State DOT policies, procedures, and programmatic agreement.

2. At a minimum, FDOT will monitor its processes relating to engineering and operational acceptability and all documentation specified in Section IV (a), and check for errors and omissions. FDOT will take corrective actions as needed. FDOT will document its quality control activities and any needed corrective actions taken.

3. If FDOT implements training to meet the capability requirements of this Agreement or as a corrective action, FHWA and FDOT will cooperate to bring training courses, from time to time, to FDOT Offices.

F. State monitoring and reporting on its performance of the Agreement. FHWA and FDOT will cooperate in monitoring performance under this agreement and each party shall modify its practices as needed to assure quality performance by FDOT and the FHWA.

1. FDOT will submit to FHWA (electronically or in hard copy) a report summarizing its performance under this Agreement annually from the effective date of this Agreement. The report will:

a. summarize the results of all of the changes in access to the I-System that were processed and approved under the terms of this agreement;
b. summarize the changes in access the FDOT plans to process in the coming year;
c. assess the effectiveness and verify that all changes in access to the I-System processed through this agreement were evaluated and processed in a manner consistent with the terms of the agreement; and
d. identify any areas where improvement is needed and what measures FDOT is taking to implement those improvements. The report will include actions taken by FDOT as part of its quality control efforts under Section IV (E).

2. If requested by either party, FHWA and FDOT will schedule a follow-up meeting at which the parties will discuss the report, FDOT's performance of this Agreement, and the FHWA's monitoring activities.

SECTION V. FHWA OVERSIGHT ACTIVITIES

Monitoring by FHWA and FDOT will include consideration of the technical competency and organizational capacity of FDOT, as well as FDOT's performance of its functions, including the State's assessment of a proposed change to the I-Systems engineering and operational acceptability. Performance considerations will include, without limitation, the quality and consistency of FDOT's access change determinations, adequacy and capability of the resources applied by FDOT, and the quality and consistency of FDOT's administration of its processing of access change requests under this agreement.

A. At a minimum, the FHWA Division Office will review documentation for access change request determinations under this Agreement as part of its oversight activities, for each 12 month period. The results of that review will be considered at the time this Agreement is considered for renewal.

B. The FHWA Division Office will review the FDOTs report on I-System access changes processed in the previous year for consistency and adherence to Agreement requirements. The FHWA Division Office also will discuss with the FDOT, as appropriate, the changes in I-System access the FDOT identifies as planned for the coming year.

C. The FHWA Division Office will submit the verified report to the FHWA Office of Infrastructure. The Office of Infrastructure will compile and promote the results and successful practices that are identified in the report.

D. Nothing in this Agreement shall prevent FHWA from undertaking other monitoring or oversight actions, including audits, with respect to FDOT's performance under this Agreement. FHWA, at its sole discretion, may require FDOT to perform such other quality assurance activities, including other types of monitoring, as may be reasonably required to ensure compliance with applicable Federal laws and regulations.

E. This agreement does not supersede processes established for projects of Focused Federal Oversight. FDOT agrees to cooperate with FHWA in all oversight and quality assurance activities.

SECTION VI. DISPUTE RESOLUTION

A. The FHWA Division Office and FDOT will attempt to resolve conflicts and disputes regarding the terms of this Agreement or its implementation at the staff level whenever possible. Conflicts and disputes that cannot be resolved will be elevated progressively up to FHWA Administrator and FDOT Secretary until resolved as per FHWA Division Office and FDOT Partnering Issues Resolutions Protocol. The FHWA Administrator and FDOT Secretary will be the final authorities over disputes arising out of this Agreement.

B. The FHWA Office of Chief Counsel and the FDOT Office of General Counsel will be involved in all disputes arising out of the interpretation of the terms of this Agreement or disputes that involve legal implications.

SECTION VII. TERM, RENEWAL, AND TERMINATION

A. This Agreement will have a term of five (5) years, beginning on the date of the last signature. FDOT will maintain an executed copy of this Agreement and make it available to the public.

B. This Agreement is renewable for additional terms of five (5) years each if FDOT requests renewal and the FHWA determines that FDOT has satisfactorily carried out the provisions of this Agreement. In considering any renewal of this Agreement, the FHWA will evaluate the effectiveness of the Agreement and its overall impact on the change in I-system access report review and approval process.

C. At least six (6) months prior to the end of each five year term, FDOT and the FHWA will meet to discuss the results under the Agreement and consider amendments to this Agreement. This meeting may be combined with a meeting to discuss performance under the monitoring provisions in Section V of this Agreement.

D. With written concurrence from both parties the terms of this agreement may be continued an additional 6 months until such time as this Agreement is renewed or an amendment or new agreement can be developed.

E. Either party may terminate this Agreement at any time by giving at least 30 days written notice to the other party.

SECTION VIII. AMENDMENTS AND ADMINISTRATIVE MODIFICATIONS

A. Either party to this Agreement may request that it be amended or administratively modified to reflect non-substantive changes, whereupon the parties will consult to consider such an amendment.

B. If the parties agree to amend this Agreement, then the FHWA and the FDOT may execute an amendment with new signatures and dates of the signatures. The term of the Agreement will remain unchanged unless otherwise expressly stated in the amended Agreement.

SIGNATURES

Execution of this Agreement and implementation of its terms by both parties provides evidence that both parties have reviewed this Agreement and agree to the terms and conditions for its implementation. This Agreement is effective upon the date of the last signature below.

Division Administrator
Federal Highway Administration

Date: 4/2/15

Secretary
Florida State Department of Transportation

Date: 4-2-15