

EARLY DEVELOPMENT AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION AND
THE IDAHO TRANSPORTATION DEPARTMENT FOR
THE IDAHO GRANT ANTICIPATION REVENUE VEHICLES BOND PROGRAM

THIS EARLY DEVELOPMENT AGREEMENT ("EDA" or "Agreement"), made and entered into this 6th day of September 2007, by and between the IDAHO TRANSPORTATION DEPARTMENT (hereinafter "ITD") and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter "FHWA"):

WITNESSETH:

WHEREAS, the Idaho Grant Anticipation Revenue Vehicles Bond Program ("Program") was enacted into law in April 2005 to provide approximately \$1.2 billion to advance 260 miles of multilane or high performance roadways located on 13 corridors through the State of Idaho over the next six to ten years;

WHEREAS, on January 29, 2007, ITD submitted an application under Special Experimental Project Number 15 ("SEP-15") for specific waivers from the current requirements of title 23 of the United States Code and title 23 of the Code of Federal Regulations for procuring final design services and acquiring right-of-way for certain Program Projects prior to completion of the environmental review process;

WHEREAS, on October 6, 2004, FHW A announced, in the Federal Register at 60 Fed. Reg. 59983, a new special experimental project to explore alternative and innovative approaches to the overall project development process known collectively as SEP-15 pursuant to the authority in 23 U.S.C. § 502(b)(1)(B);

WHEREAS, SEP-15 is designed to permit tests and experimentation in the project development process for title 23 projects that are specifically aimed at attracting private investment and lead to increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams;

WHEREAS, under SEP-15, in order to facilitate tests and experimentation in the project development process, FHW A may grant modifications or deviations from the current requirements contained in title 23 of the United States Code and title 23 of the Code of Federal Regulations;

WHEREAS, on May 14, 2007, FHWA approved ITD's SEP-15 application; and

WHEREAS, under SEP-15, an EDA between ITD and FHW A is required in order to specify the conditions relating to the modifications or deviations from Federal requirements that are granted

for the Projects to be carried out pursuant to this Agreement as well as to identify the reporting requirements that will be used to evaluate the extent to which the modifications or deviations contributed to the success of the Program;

NOW THEREFORE, ITD and FHWA hereby agree as follows:

SECTION 1. SCOPE OF EARLY DEVELOPMENT AGREEMENT

This EDA is intended to identify and establish the parameters of the modifications or deviations from title 23 of the United States Code and title 23 of the Code of Federal Regulations, which shall hereinafter be referred to as the "Experimental Features," for advancing final design and for the advanced acquisition of right-of-way for the Projects. Nothing in this EDA shall be construed as a relinquishment of any Federal oversight or stewardship responsibility or a commitment of Federal-aid funds for any phase, other than procuring final design services and advancing final design activities, and acquiring right-of-way for the Projects.

SECTION 2. DEFINITIONS

2.1 NEPA

"NEPA" means the National Environmental Policy Act of 1969, codified at 42 U.S.C. §§ 4321, et seq.

2.2 Project(s)

"Project(s)" means an undertaking as described in Section 4(D) and Section 5(D).

2.3 Section 4(f)

"Section 4(f)" means section 4(f) of the U.S. Department of Transportation Act of 1966, codified at 49 U.S.C. § 303.

2.4 Uniform Act

"URA" means the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, codified at 42 U.S.C. § 4601 et. seq.

SECTION 3. GENERAL PROVISIONS

3.1 Applicability of Federal Law

A. All Federal laws, rules and regulations shall be applicable to any project using Federal funds, including, but not limited to, the requirements set forth in titles 23 and 49 of the United States Code, and titles 23 and 49 of the Code of Federal Regulations, the Uniform Act and the DOT's

implementing regulations found at 49 C.E.R. Part 24, and NEPA, except as otherwise provided herein.

B. With respect to title 23 of the United States Code and title 23 of the Code of Federal Regulations, ITD may use the Experimental Features described in Sections 4 and 5. ITD's use of such Experimental Features shall be deemed to be in full compliance with Federal law, rules and regulations.

3.2 Withdrawal of Approval for Experimental Features

FHW A's approval of any or all of the SEP-15 Experimental Features identified in Sections 4 and 5 may be withdrawn at any time by FHWA if FHWA determines that the Experimental Features are not in the public interest. Prior to any such withdrawal, FHWA will issue a written notice to ITD describing FHW A's findings and provide ITD a reasonable period of time to address FHW A's concerns. However, during such period of time, except as specified below, no further work shall be conducted based on the approval at issue until such time as FHW A determines that ITD has fully addressed FHWA's concerns. Upon withdrawal of approval of an Experimental Feature, the applicable requirements of title 23 of the United States Code and title 23 of the Code of Federal Regulations shall immediately apply. Notwithstanding the foregoing, any withdrawal of an approval under this paragraph only affects Federal funding eligibility for the Project, or elements thereof, to be carried out under Sections 4 and 5, not subject to a project agreement and shall not: (a) invalidate or require modification of any previously executed contracts entered into in reliance upon such approval; (b) affect the obligations of the parties under a previously executed contract; and (c) otherwise apply retroactively to any completed elements or activities.

3.3 Access to Documents

As provided in 23 C.F.R. 1.5, ITD shall furnish, or make available, to FHWA such information as FHW A deems necessary to administer the Federal-aid program in connection with the Projects carried under the Experimental Features and ensure compliance with the applicable Federal requirements. Any records that a private party does not want to be made publicly available shall be reviewed by FHWA in accordance with the procedures outlined in the FHW A January 26, 2005, memorandum concerning "Pre-submission Evaluation of Information under the Freedom of Information Act." The confidentiality of any records obtained by FHWA shall be determined in accordance with 49 C.F.R. Part 7.

3.4 Order of Precedence

Except as otherwise specified herein, this EDA supersedes the January 29, 2007, ITD SEP-15 application and the May 14, 2007, FHWA SEP-15 acceptance letter. The January 29, 2007, ITD SEP-15 application and the May 14, 2007, FHWA SEP-15 acceptance letter are attached to this EDA as Exhibits A and B, and may be used for historical and interpretive purposes, *provided that* this EDA shall be given precedence to the extent there is any conflict. Any modifications to this EDA shall supersede any conflicting provisions of the January 29, 2007, ITD SEP-15 application, the May 14, 2007, FHWA SEP-15 acceptance letter and any prior modifications to the EDA.

SECTION 4. EXPERIMENTAL FEATURE - PROCUREMENT OF FINAL DESIGN SERVICES AND ADVANCEMENT OF FINAL DESIGN ACTIVITIES PRIOR TO COMPLETION OF NEPA

A. FHWA acknowledges and agrees to ITD's deviations from 23 D.S.C. § 112(b)(3)(B) and § 139(f)(4)(d) and 23 C.F.R. 771.113(a), as provided in the May 14, 2007, FHWA SEP-15 acceptance letter, for procuring final design services and advancing final design activities prior to completion of the NEPA process.

B. The purpose of 23 D.S.C. § 112(b)(3)(B) and § 139(f)(4)(d) and 23 C.F.R. 771.113(a) are to protect the integrity of the NEPA process and ensure there is an unbiased NEPA decision making process by prohibiting the initiation of final design activities until completion of the environmental review.

C. In order to ensure that the purpose of 23 D.S.C. § 112(b)(3)(B) and § 139(f)(4)(d) and 23 C.F.R. 771.113(a), as listed in section 4(B), are protected, the following conditions must be met:

(i) ITD may only procure final design services and begin final design activities that are common to all alternatives under consideration.

(ii) Procurement of final design services and initiation of final design activities may not bias the ongoing NEPA process and may not occur until the following events have occurred:

- (a) Publication of the draft environmental document for public comment;
- (b) Completion of public hearings on the document;
- (c) Close of the public comment period; and
- (d) Analysis by ITD of all comments and preliminary selection of a preferred alternative.

(iii) Final design on all other segments must be undertaken in accordance with FHWA regulations and after completion of the NEPA process.

D. This Experimental Feature may only be used to procure final design services and advance final design activities on the following projects:

- (a) I-84, Garrity Interchange to Meridian Interchange; (b)
- (b) I-84, Orchard Interchange to Vista Interchange;
- (c) I-84, Gowen Interchange to Eisenman Interchange (Isaacs Canyon); (d)
- (d) I-84, Cole Interchange to Broadway Interchange Soundwalls;
- (e) I-84, Cole Interchange to Orchard Interchange;
- (f) U.S. 95, Garwood to Sagle (Chilco Stage);
- (g) U.S. 95, Garwood to Sagle (Athol Stage); and
- (h) I-84, Vista Interchange to Broadway Interchange.

SECTION 5. EXPERIMENTAL FEATURE - ACQUISITION OF RIGHT -OF -WAY PRIOR TO COMPLETION OF NEP A

A. FHWA acknowledges and agrees to ITD's deviations from 23 U.S.C. § 108(c)(2), 23 C.F.R. 710.305, 710.503, and 771.113(a), as provided in the May 14, 2007, FHWA SEP-15 acceptance letter, to acquire right-of-way prior to the conclusion of the NEP A process.

B. The purpose of 23 U.S.C. § 108(c)(2); 23 C.F.R. 710.305, and 771.113(a) is to ensure that there is an unbiased NEPA decision-making process.

C. In order to ensure that the purpose of 23 U.S.C. § 108(c)(2); 23 C.F.R. 710.305 and 771.113(a), as listed in section 5(B), are protected, the following conditions must be met:

(i) FHWA, with ITD's participation, will at all times direct and control the NEPA process

(ii) ITD may only acquire parcels that are within the overlapping footprint of all the remaining build alternatives under consideration for the Project.

(iii) ITD may only acquire those properties available for sale voluntarily by the landowner.

(iv) ITD may not use eminent domain to acquire right-of-way until the environmental process is complete.

(v) Prior to acquisition of right-of-way, ITD must have appropriate safeguards in place to avoid the appearance of undue influence on property owners and perceptions of unfavorable treatment for those properties that are not acquired.

(vi) ITD must have safeguards in place to ensure that no activities take place on the acquired properties that could produce an environmental impact.

(vii) Only general property management activities to keep the property in good condition relative to the surrounding area may be undertaken.

(viii) The Uniform Act, including the relocation provisions, must be adhered to on all acquisitions.

(ix) ITD will not be required to obtain concurrence from the Environmental Protection Agency pursuant to 23 C.F.R. 710.501(c)(2) but it must show that the acquisition of properties under this Experimental Feature did not influence the NEP A decision.

(x) No parkland or historical property (or other sites subject to section 4(f)) may be acquired prior to completion of the NEP A process.

D. This Experimental Feature may only be used to acquire parcels for the following projects:

- (a) US-95, Garwood to Sagle;
- (b) SH-16/I-84 to South Emmett;
- (c) I-84/ Ten Mile Interchange; and
- (d) I-84/ Karcher Interchange to Five Mile Road

SECTION 6. EVALUATION CRITERIA

6.1 Purpose

The purpose of this section is to describe the evaluation criteria that ITD shall use in evaluating the Experimental Features.

6.2 Time Impacts and Results

A. For each Project carried out under Section 4(D), ITD shall:

(i) compare the actual schedule for delivery of the Project with the estimated schedule based on a traditional Final Design process; and

(ii) quantify the value of early Final Design for each Project.

B. For each Project carried out under Section 5(D), ITD shall:

(i) compare the actual schedule for delivery of the Project with the estimated schedule based on a traditional right-of-way acquisition process; and

(ii) quantify the value of early acquisition of right-of-way.

6.4 Cost Impacts and Results

A. For each Project carried out under Section 4(D) analyze the cost of Final Design under the terms of this EDA compared to the cost of Final Design for similar ITD projects.

B. For each Project carried out under Section 5(D) analyze the cost of right-of-way for the Project compared to the acquisition of right-of-way for similar ITD projects.

6.5 Impacts to the Environmental Process

A. For each Project carried out under Section 4(D), ITD shall analyze the impacts or benefits of procuring Final Design Services and advancing Final Design activities prior to completion of the NEPA process.

B. For each Project carried out under Section 5(D), ITD shall analyze the impacts or benefits of acquiring right-of-way prior to completion of the NEPA process.

SECTION 7. REPORTING

7.1 Purpose

The purpose of this section is to describe the reporting requirements for each Project carried out under this Agreement.

7.2 Independent Report

ITD shall contract with an independent third party to prepare a report for each Project.

7.3 Submission of Reports

ITD will submit a report on each Project to FHWA within 180 days following completion of Final Design for Projects under Section 4(D) and within 180 days following completion of the NEPA process for Projects under Section 5(D).

7.4 Procurement of Final Design Services and Advancement of Final Design Activities

For each Project carried out under Section 4(D), the report shall include:

- (A) an overall evaluation of the Final Design process;
- (B) a description of lessons learned, including problems and suggestions for improvement to the Final Design process; and
- (C) a recommendation of any statutory or regulatory changes.

7.5 Acquisition of Right-of-Way Prior to Completion of NEPA

For each Project carried out under Section 5(D), the report shall include:

- (A) an overall evaluation of the NEPA and right-of-way acquisition processes used for the Project;
- (B) a description of lessons learned, including problems and suggestions for improvement of the right-of-way acquisition processes;
- (C) the collection and evaluation of stakeholder (State and local government entities, property owners and tenants, and participants in the environmental evaluation process) observations about the experiments carried out pursuant to this EDA; and
- (D) a recommendation of any statutory or regulatory changes.

SECTION 8. MISCELLANEOUS PROVISIONS

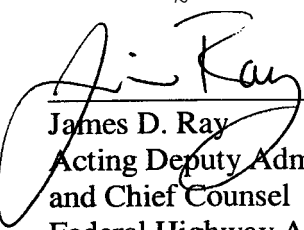
8.1 Amendments

This EDA may be amended at any time by written agreement of FHW A and ITD. Amendments to this EDA may include, but are not limited to, the addition or deletion of SEP-15 experimental features, modification of evaluation criteria, and modification of reporting requirements. The FHW A Idaho Division Administrator shall have the authority to amend this EDA for FHW A, subject to the concurrence of ITD and the SEP-15 Steering Committee.

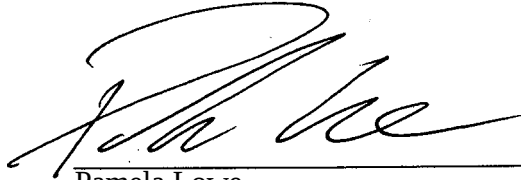
8.2 Original Copies

This EDA shall be prepared in duplicate so that each signatory has an original copy.

IN WITNESS THEREOF, the parties hereto have caused this EDA to be duly executed in duplicate as of the day and year first written above.



James D. Ray
Acting Deputy Administrator
and Chief Counsel
Federal Highway Administration



Pamela Lowe
Director
Idaho Transportation Department