CHAPTER 5 - LOCAL AGENCY PROGRAM AGREEMENT AND FEDERAL AUTHORIZATION REQUESTS

5.1 OVERVIEW

A Local Agency Program (LAP) Agreement (Form No. 525-010-40) is a contractual agreement between a LAP Certified local agency (see Chapter 2 for additional information on LAP Certification) and the Florida Department of Transportation (FDOT) for Federal-Aid transportation projects. An agreement is prepared for each LAP project funded in the Adopted Five-Year Work Program and the MPOs Transportation Improvement Program (TIP) / State Transportation Improvement Program (STIP) approved by the Federal Highway Administration (FHWA) per 23 Code of Federal Regulations (CFR) 450.220(a)(b).

The agreement may cover all phases of work funded by the FDOT. The most common phases in LAP are planning, preliminary engineering, right of way acquisition, construction, and Construction Engineering and Inspection (CEI) services. Its purpose is to define the project location, scope and federal funding amount of a Federal-Aid project. The terms of the agreement between the FDOT and the LAP Certified Local Agency are determined by state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on a project.

(There are rare instances when a Joint Participation Agreement may be executed in lieu of a LAP Agreement. The District will advise a Local Agency when a Joint Participation Agreement may be the appropriate contractual mechanism for a federally funded project. For additional information regarding Joint Participation Agreements, reference Chapter 2 of the LAP Manual or contact the District LAP Administrator.)

A LAP Agreement is prepared in advance of requesting Federal-Aid Authorization for a LAP project. The criteria listed below must be met for all projects that are partially or fully funded with federal funds.

A. The project phase(s) must be included in FDOT’s Adopted Five Year Work Program.

B. The project phase(s) must be listed in FDOT’s federally mandated STIP (with the exception of planning and emergency repair phases).

C. If the project phase(s) is/are located in an area represented by an MPO, the project phase(s) must also be included in the MPO’s TIP.
D. State budget authority must be available for the project so it can be encumbered by the Comptroller's Office prior to contract execution.

E. A local agency must fund LAP projects in their Capital Improvements Plan (CIP) or agency budget to the total department programmed amount in the fiscal year the project appears in the Adopted Work Program. The agency must consider the project schedule and whether the agency's fiscal year differs from that of the FDOT. **FDOT fiscal year is July 1 to June 30.** FHWA fiscal year is October 1 to September 30.

F. A Federal-Aid Project Number (FAP No.) must be assigned to the project phase(s) included in each Federal Authorization Request.

G. A Local Agency Program Construction Checklist Form No. 525-010-44 must be prepared and approved for construction projects before authorization will be requested.


I. **The FHWA must approve the initial federal authorization and the FDOT must issue a Notice to Proceed (NTP) before any work can begin or any costs can be incurred on the project.** The federal award date must be included on the Agreement. **Exceptions are:**

   i. 1) **Emergency repairs performed immediately after a declared disaster to keep roads and bridges open to traffic.** See **Chapter 17** for further details on FHWA’s Emergency Relief Program.

   ii. 2) **Professional services procurement may be initiated but authorization must be received prior to the contract execution between the local agency and the consultant.** See **Chapter 18** for further details on Professional Services Procurement.

### 5.2 HOW TO PREPARE AND EXECUTE THE AGREEMENT

Prior to the FDOT fiscal year in which the Federal-Aid project is funded, the District LAP Administrator will confirm the project appears in the approved TIP/STIP and the Adopted
Work Program. A project that is added in the current FDOT fiscal year will also need to be adopted in both the TIP/STIP and the Work Program. Projects added to the Adopted Work Program in the first quarter of the FDOT fiscal year, July 1 to September 30, must be added to the 2nd year of the currently approved STIP during this three month period. This is because the new STIP reflecting the Work Program adopted July 1 will not be approved by FHWA until October 1. This should be considered during the project scheduling process.

5.2.1 Project Scope, Schedule and Estimate

During this preparatory stage, the district LAP Administrator will request an updated project scope, schedule, and estimate to incorporate into the LAP Agreement (23 CFR 630 Subpart A and 2 CFR 200). The FDOT tracks Local Agency projects through the annual Consultant Acquisition Plan (CAP) and the (Construction) Letting Plan. The Plans are “locked” or final after July 1. It is essential the Districts and the Local Agencies schedule projects in the appropriate month, as both plans are monitored by Central Office, the Florida Transportation Commission (FTC) and the Governor’s Office.

In addition, the Adopted Work Program must reflect all funding sources—local, state, and federal funds as applicable. The total project phase cost must be programmed, regardless of the amount of federal funds on the project phase.

5.2.2 Requesting the Federal-Aid Number

The District LAP Administrator is responsible for requesting a Federal-Aid Project Number (FAP No.) from the District Federal-Aid Coordinator for each new LAP Project. This is done before drafting the LAP Agreement. The District Federal-Aid Coordinator must assign a Federal-Aid Project Number to the related financial project(s) phase(s) in the Adopted Work Program before the initial Federal Authorization is requested. If needed, additional related phase(s) may be added later during the life of the project by modifying the Federal authorization (see Sections 5.3 and 5.5).

*Federal aid project numbers should not be assigned any earlier than one calendar year before the FDOT fiscal year in which the project will be authorized.*

5.2.3 Agreement Content and Exhibits

The District LAP Administrator will draft the LAP Agreement incorporating the project scope, schedule and estimate as applicable. All LAP Agreements shall include:

- **Form No. 525-010-40 LAP Agreement** (master boilerplate)- identifies the state and federal project numbers, the type of funds, the agency vendor identification and DUNs numbers, the total funding amount, the beginning and end dates of the
agreement and the maintaining agency responsible for all improvements upon final acceptance of the project. In addition, the boilerplate contains all federal and state required contract language regarding payment, records retention and review, non-discrimination, Single Audit, etc. This language is standard to every LAP Agreement executed with the FDOT and cannot be altered.

- **Form No. 525-010-401 Exhibit 1: Single Audit Act** - provides the audit requirements for Federal Awards by clearly identifying the federal resources awarded to the agency, and information to help them determine their applicability to the Single Audit and other Federal grants policies. This form is mandatory for all Federal-Aid transportation projects. Contact the Office of Comptroller, Statewide Grants Section, for questions and assistance with Exhibit 1.

- **Form No. 525-010-40A Exhibit A: Project Description and Responsibilities** - identifies the project limits, scope, schedule, and any special considerations applicable. Special considerations are inclusive of, but not limited to, alternative funding agreements and participating and non-participating costs, or identifying any project requirements set forth that deviate from the LAP Manual.

- **Form No. 525-010-40B Exhibit B: Schedule of Funding** - records the total funds allocated to the project from local, state, and federal sources, the project phases funded, and the FDOT fiscal years in which the funds are available. A LAP Agreement may be executed for multiple project phases spanning multiple fiscal years, but a separate federal authorization request is required to initiate each phase of the project. The Local Agency will receive a separate Notice to Proceed (NTP) for each authorization. Work performed prior to the NTP date will not be eligible for reimbursement. *Note: Exhibit B represents the total estimated cost of the project. The FDOT reserves the right to adjust federal funding at the time of the local agency’s contract award to the actual contract award amount. See Section 5.4.3 for an expanded description of the FDOT procedure.*

- **Form No. 525-010-40C Exhibit C: FHWA Form 1273** - is a required exhibit for all construction phase projects, and is also required in all local agency Federal-Aid construction contracts, subcontracts, etc. Reference FHWA 1273 for detailed applicability.

- **Form No. 525-010-40D Exhibit D: Alternative Pay Method** - applicable to projects when a local agency is reimbursed without proof of payment. Reserved for emergencies and requires comptroller approval.

- **Form No. 525-010-40E Exhibit E: Title VI Assurances** - is required in all Federal-
Aid contracts and subcontracts, and is a required exhibit for all projects.

- **Form No. 525-010-40F Exhibit F: Agency Resolution** is an executed resolution by the agency and is a required exhibit for all projects.

- **Form No. 525-010-40G Exhibit G: State Funds Addendum** required when a project is partially funded with state grant program funds. Grant programs are identified on the Exhibit.

- **Exhibit 2: Single Audit Act for State of Florida** required with the attachment of Exhibit G. Provides the audit requirements for all state awards.

- **Form No. 525-010-40L Exhibit L: Landscape Maintenance Agreement** applicable to projects with landscaping in the scope. This is not required for sod adjacent to roadways, sidewalks, or trails.

- **Form No. 525-010-40M Exhibit RL: Roadway Lighting Maintenance Agreement** applicable to projects with lighting in the scope.

- **Form No. 525-010-40R Exhibit R: Advance Project Reimbursement** applicable to projects that are advanced in the Adopted Work Program from the actual year funding is available. The local agency may not be eligible for reimbursement until the FDOT fiscal year in which the funding for the project is programmed.

- **Form No. 525-010-40T Exhibit T: Traffic Signal Maintenance Agreement** applicable to projects with traffic signal and/or traffic signal components installation in the scope.

### 5.2.4 Local Agency Responsibilities

The District LAP administrator drafts the LAP Agreement and it is reviewed by the District Legal Office for approval as needed. The District LAP Administrator forwards the LAP Agreement to the Local Agency for review, comment and approval. The Local Agency shall:

- Review the draft agreement content. Key elements of the agreement that should be carefully reviewed are:
  - Vendor Identification Number required for reimbursement by the FDOT
  - DUNS number required for federal awards per the [Federal Funding Transparency and Accountability Act](https://planning.fdot.gov/)
  - Expiration or end date of the agreement agrees with project schedule
  - Project scope includes all eligible activities for reimbursement. Items not identified in the scope will **not** be eligible for reimbursement under the agreement.
Previously identified non-participating items or special funding agreements should be identified in Exhibit A.

- Project limits and description
- Local, state, and federal fund amounts are accurate

Respond to the District LAP Administrator with comments in writing (electronic records are acceptable).

Acknowledge final approval of the LAP Agreement in writing once all comments have been addressed.

Submit the agreement to the Local Agency’s governing body (e.g. commission, council) for approval, resolution adoption and signature.

Provide a minimum of one hard copy of the agreement and the resolution with the original signatures and seals to the District LAP Administrator. If the local agency requires an original signature for its files, provide extra copies as required.

5.2.5 FDOT Responsibilities

After receipt of the partially executed LAP Agreement and per the schedule identified in the agreement, the District LAP Administrator shall:

- Send the federal authorization of funds request to the District Federal-Aid Coordinator with all required supporting material for FHWA review and approval. The District Federal-Aid Coordinator will provide the Federal Authorization approval to the District LAP Administrator. Additional information is provided in Section 5.3.
- Encumber the funds through the State Comptroller’s Office. The Comptroller’s Office will provide an encumbrance approval to be forwarded with the agreement for final signature. Note: Data entry of contract information in the FDOT Florida Accountability Contract Tracking System (FACTS) is required in order to obtain an approved encumbrance. A FACTS record is required for all encumbrance items, including future year and negative encumbrances.
- Forward the LAP Agreement to the District Legal Office with the authorization and encumbrance approvals for final review and approval.
- Forward the LAP Agreement to the District Transportation Development Director for final signature.
- Execute the Notice to Proceed (NTP).
- Forward one copy of the agreement, resolution, and NTP to the District Financial Services Office.
- Forward one copy of the agreement and the executed NTP to the Local Agency.
- Place the original hard copy of the Agreement and Resolution in the project file.
- Upload the pdf image of the LAP Agreement and NTP to the Florida Accountability Contract Tracking System (FACTS) and to LAPIT.
5.3 FEDERAL AUTHORIZATION REQUESTS

District LAP Administrators are responsible for notifying District Federal-Aid Coordinators of federal authorizations required for LAP projects. This responsibility includes ensuring all the required prerequisite criteria are met and supporting materials are available before asking the District Federal-Aid Coordinator to prepare the request. Requests should be submitted to the Federal-Aid Management Office at least 30 days prior to the date the approval is needed.

The Federal Aid Coordinators in each district, turnpike, and central offices where statewide programs are managed prepare Federal Authorization Requests (FARs) in FDOT's Federal Authorization Management System (FAMS) and electronically submit them to the Federal-Aid Management Office in Tallahassee.

The FHWA must approve the federal authorization prior to advertisement of construction contracts. For consultant phases (i.e. design or CEI), the FHWA must approve the federal authorization prior to contract execution.

The District Federal-Aid Coordinators notify appropriate staff when federal project authorizations are approved. The federal award date must be included on page 1 of the LAP Agreement boilerplate, per 2 CFR 200.

Please refer to the Federal Aid portion of the Work Program Instructions for complete instructions on the specific steps and time frames necessary to obtain initial federal authorizations for all types of transportation projects. Additional information may also be found in FDOT Procedure No. 350-050-005 Federal Project Authorizations.

5.4 LOCAL AGENCY PROGRAM SUPPLEMENTAL AGREEMENT

The LAP Supplemental Agreement (Form No. 525-010-32) is the contractual mechanism for making any change to the original LAP Agreement. When the Local Agency becomes aware a change is required, it should immediately contact the District LAP Administrator. The District LAP Administrator will prepare a Supplemental Agreement in accordance with the policies and procedures detailed in this section.

Changes may arise due to a variety of reasons. Examples of valid changes include, but are not limited to:

- Funding amount
- Scope
- Project limits
- Project phases
These conditions may affect FHWA’s decision to reimburse specific pay items or work activities in the contract. The Local Agency must provide detailed justification for all changes; some examples are change orders or bid tabulations. Requests for Supplemental Agreements must be submitted and approved prior to the expiration of the LAP Agreement.

5.4.1 Supplemental Agreements without Funding Changes

Supplemental Agreements that do not require an increase or decrease in the project funding follow the same steps identified in Section 5.3 minus the encumbrance of funds. A request to modify the federal authorization is required if the type of work identified in the original authorization changes. FDOT does not require a Resolution to be executed for Supplemental Agreements without funding changes, but Local Agency policy may vary.

The Local Agency must submit detailed justifications for scope changes, including project limits to the District LAP Administrator. Not all scope changes are eligible for federal reimbursement, even if there are sufficient funds on the LAP Agreement to pay for those changes. Participating and non-participating changes are identified in the FDOT Construction Project Administration Manual (CPAM) Section 7.3.11 and 23 CFR 635.120.

5.4.2 Supplemental Agreements with Funding Changes

Changes to the project funding must be made in agreement with this manual and the Work Program Instructions. Projects that exceed the agreement amount at the time that the contract is awarded must receive written approval from FDOT (via an additional Federal Authorization Request to modify the initial Federal Authorization) for the additional federal funds required. The Local Agency must explain and justify all changes and funds increases or decreases. Occasionally, a Local Agency contract will be awarded for less than the originally estimated amount. In this case, the FDOT must reduce the total federal authorization per the federal requirements as detailed in Section 5.4.3.

5.4.3 Contract Award Adjustment Procedure

In accordance with appropriations law (31 USC 1501) all federal obligations (authorizations) must be supported by documentary evidence, such as a contract. In addition, 23 CFR 630.106(a)(4) and Section 4.00 “Project Estimate and Disbursement Schedule” of the LAP Agreement provide additional authority for the FDOT to adjust the LAP Agreement amount via Supplemental Agreement if the agency contract is awarded for less than the LAP Agreement amount. This process is not applicable to agency contracts awarded at greater than the LAP Agreement amount or to projects funded by federal earmark.
The Supplemental Agreement must be executed within 90 days per 23 CFR 630.106 (a)(3-4). The 90 day time clock begins when the FDOT concurs with the agency’s recommendation to award. The first three steps are repeated for each contract award.

1) Agency submits bid tabulation and recommendation of award to FDOT.
2) FDOT concurs with award.
3) FDOT determines if there is a difference between the authorized funding amount of the LAP Agreement and the local agency’s contract award amount.

The difference between the LAP Agreement amount and the contract award amount will determine the district’s responsibility to adjust the federal funding authorized under the LAP Agreement via a Supplemental Agreement per 23 CFR 630.106. Three options are available to the Districts as described on the next page.
Option 1: A Supplemental Agreement is **not** required if the difference between the amount of authorized federal funds under the LAP Agreement and the Local Agency contract award amount is less than 10% of the total Local Agency contract award amount and less than $250,000.

**Option 1 Example:**

LAP Agreement = $1 million  
Local Agency Contract Amount = $950,000  
10% Threshold amount = $95,000  
Difference = $50,000  
Supplemental Agreement is not required.

If Option 1 is applicable:

a. The authorized funds on the LAP Agreement in excess of the Local Agency contract award amount may be utilized for changes in work as approved by District staff.

b. **If an Agency authorizes or performs a change of work prior to receiving District LAP Administrator concurrence, the change will not be eligible for reimbursement. The agency will incur the entire cost of the changes per Chapter 23 of the LAP Manual.**

c. Premium costs as defined by the FHWA Florida Division Office are not eligible for reimbursement. Participating and non-participating costs shall be identified in writing and provided with the Districts concurrence for changes in work.

d. Any remaining funds will be released once the contract is closed.

Option 2: A Supplemental Agreement is required if the difference between the amount of authorized federal funds under the LAP Agreement and the Local Agency contract award amount is greater than or equal to $250,000 (**23 CFR 630.106**).

**Option 2 Example:**

LAP Agreement = $1 million  
Local Agency Contract Amount = $700,000  
Difference = $300,000  
Supplemental Agreement is required.

If Option 2 is applicable:

a. A Supplemental Agreement will be executed to adjust the authorized federal funds under the LAP Agreement to match the Local Agency contract award amount.
b. The Supplemental Agreement should be executed within 90 days from the date the agency’s recommendation to award the contract is concurred with by the District. If the agency cannot receive governing body approval within 90 days, justification and an execution schedule must be submitted to the District LAP Administrator.

c. All change orders added to the agency contract will require review and approval by FDOT (per standard construction administration and oversight procedure, Chapter 23).

d. If changes are approved, eligible, and federal funds are available, the District LAP Administrator will prepare an additional Supplemental Agreement for agency execution.

e. Modification of the initial FHWA authorization will be required for any additional federal funds added to the LAP Agreement.

Option 3: A Supplemental Agreement is required if the difference between the amount of authorized federal funds under the LAP Agreement and the Local Agency contract award amount is greater than 10% and less than $250,000.

Option 3 Example: LAP Agreement = $1 million
Local Agency Contract Amount = $800,000
10% Threshold amount = $80,000
Difference = $200,000
Supplemental Agreement is required.

If Option 3 is applicable:

a. A Supplemental Agreement will be executed to adjust the LAP Agreement amount.

b. The District may adjust the federal authorization to match the Local Agency contract award amount or adjust the original authorization to an amount not to exceed 10% of the local agency’s contract award amount.

c. A variety of factors may influence how the District proceeds with adjusting the federal authorization; including, but not limited to- district budget, project scope, and/or funding agreements between the district and the agency.

d. The Supplemental Agreement should be executed within 90 days from the date the agency’s recommendation to award the contract is concurred with by the District. If the agency cannot receive governing body approval within 90 days, justification and an execution schedule must be submitted to the district LAP staff.

e. The authorized funds on the LAP Agreement in excess of the Local Agency contract award amount may be utilized for changes in work as approved by District staff.
f. If an Agency authorizes or performs a change of work prior to receiving District LAP Administrator concurrence, the change will not be eligible for reimbursement. The agency will incur the entire cost of the changes per Chapter 23 of the LAP Manual.

g. Premium costs as defined by the FHWA Florida Division Office are not eligible for reimbursement. Participating and non-participating costs shall be identified in writing and provided with the Districts concurrence for changes in work.

h. Any remaining funds will be released once the contract is closed.

i. If the Local Agency requests additional funds from the District due to changes in work, district LAP staff will prepare an additional Supplemental Agreement for agency execution if the changes are eligible for federal participation and federal funds are available at the time of request.

j. Modification of the initial FHWA authorization will be required for any additional federal funds added to a LAP Agreement.

5.5 MODIFYING THE FEDERAL AUTHORIZATION

Modification of the federal authorization is required when a project’s funding amount and/or type of work changes or when additional work program phases are added to the project.

The Department must prepare Federal Authorization Requests to modify the federal authorization to account for these changes in the total cost of the federal project (and for any adjustments between participating and non-participating costs). The requests must include justification for initiating changes to the project.

The Federal Aid Coordinators input these modifications to FDOT’s Federal Authorization Management System (FAMS) and electronically submit them to the Federal Aid Management Office in Tallahassee for review and later electronic transmittal to FHWA for approval.

5.6 TIME EXTENSIONS

LAP Agreements have defined beginning and end dates. The beginning date is the date of final contract execution by the FDOT and the end date is determined by the project scope and schedule. A Local Agency is only eligible for reimbursement of project costs from the date the NTP is issued by the FDOT to the date the agreement expires. If the Local Agency cannot complete the project prior to the expiration date of the LAP Agreement, the Local Agency must submit a request for time extension prior to the expiration of the agreement. A request for time extension shall include a detailed justification for the delay. Upon receipt of the request for a time extension, the District LAP Administrator shall review
and approve the justification and may request additional information as needed to process the Time Extension.

Time extensions are granted at the discretion of the FDOT and only require FHWA approval on Projects of Division Interest (PODis) or Projects of Corporate Interest (POCIs). Time Extension requests are approved by the District LAP Administrator and the District Transportation Development Director, and a Contract Status Change Request must be processed through the District Financial Services Office. When the project end date reported in the FAMS must be extended due to a time extension request, FHWA must review and approve the modification in the FAMS.

Any work performed after the expiration of a LAP Agreement will not be eligible for reimbursement.

5.7 TERMINATION OF AGREEMENT

Per Section 2.02 of the LAP Agreement, the expiration of the agreement shall be the termination of the project.

A LAP Agreement may be terminated prior to the expiration date at the request of the Local Agency or at the behest of the FDOT per the LAP Agreement terms and conditions. LAP Agreements terminated by the FDOT may occur for various reasons, including but not limited to:

- Per Section 2.01 of the LAP Agreement, termination may occur if the Local Agency does not submit quarterly invoices. Financially inactive federal projects risk the loss of State appropriation authority.
- Per Section 3.07 of the LAP Agreement, termination may occur when non-compliance with provisions of law of FHWA requirements is not correctable.
- Per Section 8.00 of the LAP Agreement, termination may occur if Local Agency performance is unsatisfactory.

The District LAP Administrator may terminate the agreement per Section 8.00 of the LAP Agreement. The District LAP Administrator will prepare a notice of termination and submit to the Local Agency in writing.
5.8 RESOURCES

Form No. 525-010-40 Local Agency Program Agreement

Form No. 525-010-401 Exhibit 1: Single Audit Act

Form No. 525-010-40A Exhibit A: Project Description and Responsibilities

Form No. 525-010-40B Exhibit B: Schedule of Funding

Form No. 525-010-40C Exhibit C: FHWA Form 1273

Form No. 525-010-40D Exhibit D: Alternative Pay Method

Form No. 525-010-40E Exhibit E: Title VI Assurances

Form No. 525-010-40F Exhibit F: Agency Resolution

Form No. 525-010-40G Exhibit G: State Funds Addendum

Exhibit 2: Single Audit Act (for State Awards). This form will be provided by the District LAP Administrator.

Form No. 525-010-40L Exhibit L: Landscape Maintenance Agreement

Form No. 525-010-40M Exhibit RL: Roadway Lighting Maintenance Agreement

Form No. 525-010-40R Exhibit R: Advance Project Reimbursement

Form No. 525-010-40T Exhibit T: Traffic Signal Maintenance Agreement

Form No. 525-010-32 Local Agency Program Supplemental Agreement

Procedure No. 375-030-035 FDOT Florida Accountability Contract Tracking System (FACTS)

FDOT Procedure No. 350-050-005 Federal Project Authorizations

Local Agency Program Information Tool (LAPIT)

Federal Funding Transparency and Accountability Act
FDOT Construction Project Administration Manual (CPAM) Section 7.3.11

FDOT Work Program Instructions