

6. Progress Billing

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6.1. Introduction

All progress billings shall be submitted to the Department of Transportation and Public Facilities (DOT&PF) by the local agency in accordance with the terms of the Agreement. Progress billings will be processed provided that:

- The State Legislature has provided budget authority
- The Agreement (Ch. 4) has been executed
- The work is authorized by DOT&PF
- Reimbursement does not exceed authorized amounts
- The invoice submitted contains the required information

The local agency is responsible for accurate billing upon completion of reimbursable work.

DOT&PF assigns a state project number on all federal aid projects. This number identifies the project. It should be used in addition to the federal aid project number when corresponding with DOT&PF.

Progress billings will be numbered sequentially and submitted not more than once per month. If the billing is prepared properly, payment should normally be received within three weeks of submittal. If payment is not received within one month, the agency should contact the DOT&PF project manager.

The Agreement will specify responsibility for DOT&PF expenses. For projects where the local agency will bear the expense for the match and non-federal-aid eligible expenses, the local agency will be billed as per the terms of the Agreement. The Agreement will specify:

- a) billing for the full amount upon execution of agreement
or
- b) billing once per month based on the established percentage of expenditures.

6.2. Progress Billing Procedures

6.2.1 Projects Administered by DOT&PF

State agency progress billings under a Reimbursable Services Agreement (RSA) shall be submitted on the DOT&PF form (Execute RSA; Agency Journal Entry) provided with supporting information attached. Submit municipal progress billings under a Memorandum of Agreement (MOA) on the DOT&PF form (Form 25A591; Attachment 6-A) provided with supporting information attached. Transmit the billing by cover letter to the DOT&PF Project Manager. The MOA will specify the content of the billing and the supporting information required.

6.2.2 Projects Administered by a Local Agency

State agency progress billings under a Reimbursable Services Agreement (RSA) shall be submitted on the DOT&PF form (Execute RSA; Agency Journal Entry) provided with supporting information attached. Municipal progress billings under a Transfer of Responsibility Agreement shall be submitted on the DOT&PF form (Form 25A591; Attachment 6-A) provided with supporting information attached. Transmit the billing by cover letter to the DOT&PF Project Manager. The Agreement will specify the supporting information required.

6.3. Identification of Federal Aid Participating and Nonparticipating Charges

Reimbursement of costs eligible for FHWA's participation are provided under Title 23 of the United States Code. The following is an overview of participating and nonparticipating charges by FHWA. See Attachment 6-E for a more detailed discussion.

a. Participating (Eligible for Federal Aid). The following criteria must be met for charges to be considered participating when charged directly to a federal aid project:

- The work must be programmed with FHWA.
- The costs must have been incurred after the date of FHWA authorization to proceed with the work.
- The costs must be wholly for the benefit of the project being charged, e.g., labor performed directly for that project, supplies used up in the course of a project, etc.

Examples of federal aid participations follow. This list is not limiting or all-inclusive.

1. Labor – to design, survey, prepare plans, appraise right-of-way, inspect construction activities, audit agreements, etc.
2. Travel and Per Diem – of employees involved in any participating activity related to the project.
3. Materials – incorporated into or consumed on a federally approved project.
4. Supplies – purchased and consumed entirely on a federally approved project. Supplies might include: cloth tapes, cylinder molds, drafting supplies, film including developing and printing, hubs, paint (marking spray), stakes, long distance telephone calls identified by project, royalty on materials
5. Equipment: Rental of equipment used only on the federal-aid project.
6. Services for material testing, document reproduction, mapping, computer, and equipment usage charges. If these services are performed by the local agency, allowable changes will be based upon rates determined by DOT&PF and approved by FHWA.

b. Nonparticipating. For specific projects, the following items are not eligible for federal aid participation unless the local agency has an approved indirect cost allocation plan in accordance with OMB Circular A-87:

1. Labor – for activities not directly related to the project nor programmed with FHWA. Labor activities pertaining to the general

operation of an agency are not eligible for federal participation

2. Travel and Per Diem – of employees performing activities classified as nonparticipating or unrelated to a specific federal aid project.
3. Materials: Not permanently installed on the project or wholly consumed on the project.
4. Supplies – purchased and consumed on a number of projects or for the general management or operation of the organizational unit (example would be in maintenance or in administration – signs, small tools, and used temporary traffic control devices.
5. Equipment Purchase and Repair – unless specifically approved by FHWA, e.g., engineering, safety, or office equipment and supplies.
6. Services not directly related to the federal-aid project services pertaining to the general operation of the agency.

Attachment 6A. Municipal Agreement (Form 25A591)

Federal Tax ID Number: _____	Progress Billing Project Title: _____ Federal Aid Project No. _____ AKSAS Project No. _____	Progress Bill No. _____ Final Progress Bill _____ Billing Period From: _____ To: _____
For Municipal Use:		

	(1) Total Eligible This Billing Period	(2) Participation Rate %	(3) Amount Requested This Period <u>Col 1 x Col 2</u> 100	(4) Amount Requested Prior Periods	(5) Total Requested To Date Col 3 + Col 4	(6) Amount Authorized Per Agreement	(7) Remaining Funds Col 6 – Col 5
(a) Preliminary Engineering							
(b) Right of Way							
(c) Utilities							
(d) Construction							
(e) TOTAL PROJECT:							

Amount Requested: _____

Submission of this request for payment certifies that in accordance with the laws of the State of Alaska and under the conditions of approval for the project identified above, actual costs requested have been incurred and are eligible for the purposes specified. Also, that no other requests have been presented to or payment made by the State of Alaska for those costs requested herein for reimbursement.

Municipal Authorized Signature

Title

Approved for Payment

Date

Attachment 6B. Instructions for Completing Form 25A591

This form only reflects the amounts requested and authorized for payment to the municipality. It does not include the costs for state services

Funding Set Up

The amount of federal funding set up for a project is based on the Agreement (Chapter 4). The funding set up for each line item is shown in column (6). Column (7) should be compared with column (6) to ensure that the amounts requested are within the funding amount set up by the local agency agreement.

Payments will not be made in excess of the amount in column (6). If the amount in column (5) exceeds the amount shown in column (6), a supplement to the local agency agreement must be submitted to reflect the revised cost before payment can be made.

Exception: On a progress bill marked as Final, the amounts in column (6) may exceed the amounts in column (7), provided the total of column (6) does not exceed the total of column (7). Only one billing will be accepted as final.

Data Required to Request Payment

As a minimum, only those line items for which payment is being requested need to be coded. The other lines can be left blank. Supporting documentation as required by the Agreement shall be attached.

Coding Instructions

Form 25A591 is arranged in the same manner as the Agreement though not all lines from the Agreement are shown. The lines for state services are not included because state costs are billed separately. Since the state services are not shown, the totals for PE, R/W, and Construction shown on Form 25A591 will not agree with those shown on the Municipal Agreement. The billing totals will reflect the total amount available to the municipality based on the Municipal Agreement.

The top portion of the form includes project identification information that needs to appear on each project billing form. This information includes: Federal Tax ID Number; AKSAS Number; Project Title; Federal Aid Project Number; Agreement Number; Progress Bill No.; Final Progress Bill; Billing Period From & To dates. Please provide dates

for the current billing period and indicate if the bill represents the final billing.

A space has been provided for a “Municipal Billing Identification” number. This space is for the municipality’s use and is not required to receive payment. You may enter any combination of alphabetic and numeric symbols. This number may be used to identify each billing on the Vendor’s Remittance Advice which is transmitted to agencies receiving Electronic Fund Transfers (EFT). The number will appear in the “Invoice Number” block on the Vendor’s Remittance Advice.

Line a Municipal work for PE
Eligible PE cost incurred by the municipality including staff expense and consultant fee.

Column (6) on this line shows the total amount of funds authorized for the municipality based on the Agreement. It does not include state services.

Line b Municipal Work for ROW
Eligible R/W cost incurred by municipality including staff expense, consultant fee, and R/W acquisition.

Column (6) on this line shows the total amount of federal funds Authorized for the municipality based on the Agreement.

Line c Utilities
Eligible utilities relocation costs.

Column (6) on this line shows the total amount of funds authorized for the municipality based on the latest version of the Agreement.

Line d Construction
Eligible construction expense incurred by the municipality including staff expense, consultant fees, and contractor payments.

Column (6) on this line shows the total amount of funds authorized for the municipality based on the latest version of the Agreement.

Line e Add the Total PE, Total R/W, and Total Construction.
Column (6) on this line shows the total amount of funds for all phases of work for the local agency based on the latest version of the Agreement.

Add Column (3) and Column (4) and enter the total in this Column. The total requested to date for PE, R/W, or Construction cannot exceed the amount authorized shown in Column (6), unless this is the Final Bill. The Final Bill project total Column (5) cannot exceed project total Column (6).

Amount Authorized Per Agreement
This is the total amount of funds authorized for each line item per the Agreement. This amount will be provided on the form.

Remaining Funds
Subtract Column (6) from Column (7) and enter the difference in this column. The difference represents the remaining funds available. The amount in this column should not be negative. If negative, a supplement to the Agreement must be prepared to receive full payment.

Sign and date the progress billing and distribute according to the instructions in section 6.2.2. All hard copy and final bill requests for payment must have an original signature in order to be processed. If you have any questions, please contact your DOT&PF Project Manager.

- Column (1) Total Expenditures Eligible for Federal Participation this Billing Period. The total includes Federal-aid and the match.
Record the total eligible expenditures this billing period for each item of work.
- Column (2) Percent of Participation
The current participation ratio will be provided. Enter "1" if DOT provides the match.
- Column (3) Amount Requested This Period
Column (3) can never exceed Column (1) times Column (2), but may be less than. Multiply Column (1) by Column (2) and enter in Column (3). This represents the amount of funds requested on this progress bill.
- Column (4) Funds Paid Prior Period
This represents the total amount of funds previously requested (Column (5) on the previous billing).
- Column (5) Total Requested to Date

Attachment 6C. DOT&PF Internal Billing Process and Coding

1. Establishing projects in State Accounting System – including Match funding:

Project Control/Support, HQ and Fiscal staff should refer to Policy and Procedure 06.01.011 for procedural assistance.

2. Request for reimbursement submitted by Local Agency – including support documentation:

The Local Agencies will submit requests for reimbursement (municipalities on Form 25A591, state agencies on Execute RSA or Agency Journal Entry) with appropriate supporting data to a State Project Manager for his/her review and recommendation for payment. The project manager will review the billing for reasonableness.

Upon approval by the State Project Manager, the request is forwarded to the regional fiscal office for payment.

3. Posting/Recording activity in AKSAS:

- Regional Fiscal Office: Refer to draft Policy and Procedure 06.01.011.

4. Reimbursement of State Services:

- Each time a TPBS bill is produced for the project phase containing DOT&PF staff activity, FHWA will be billed for the federal share and an accounts receivable (RC) representing the Match portion will be established indicating the need to bill the Local Agency for the Match or clear against the unearned revenue if Match received in advance.
- Having already been notified by the regional Project Control/Support office, the regional Fiscal Office should be monitoring these types of projects.

Regional Fiscal Office: Whenever a RC associated with one of these projects is identified (with asset account code 10111), the Fiscal office will send an invoice to the Local Agency connected to the particular project.

Refer to draft P&P 06.01.011 for additional information.

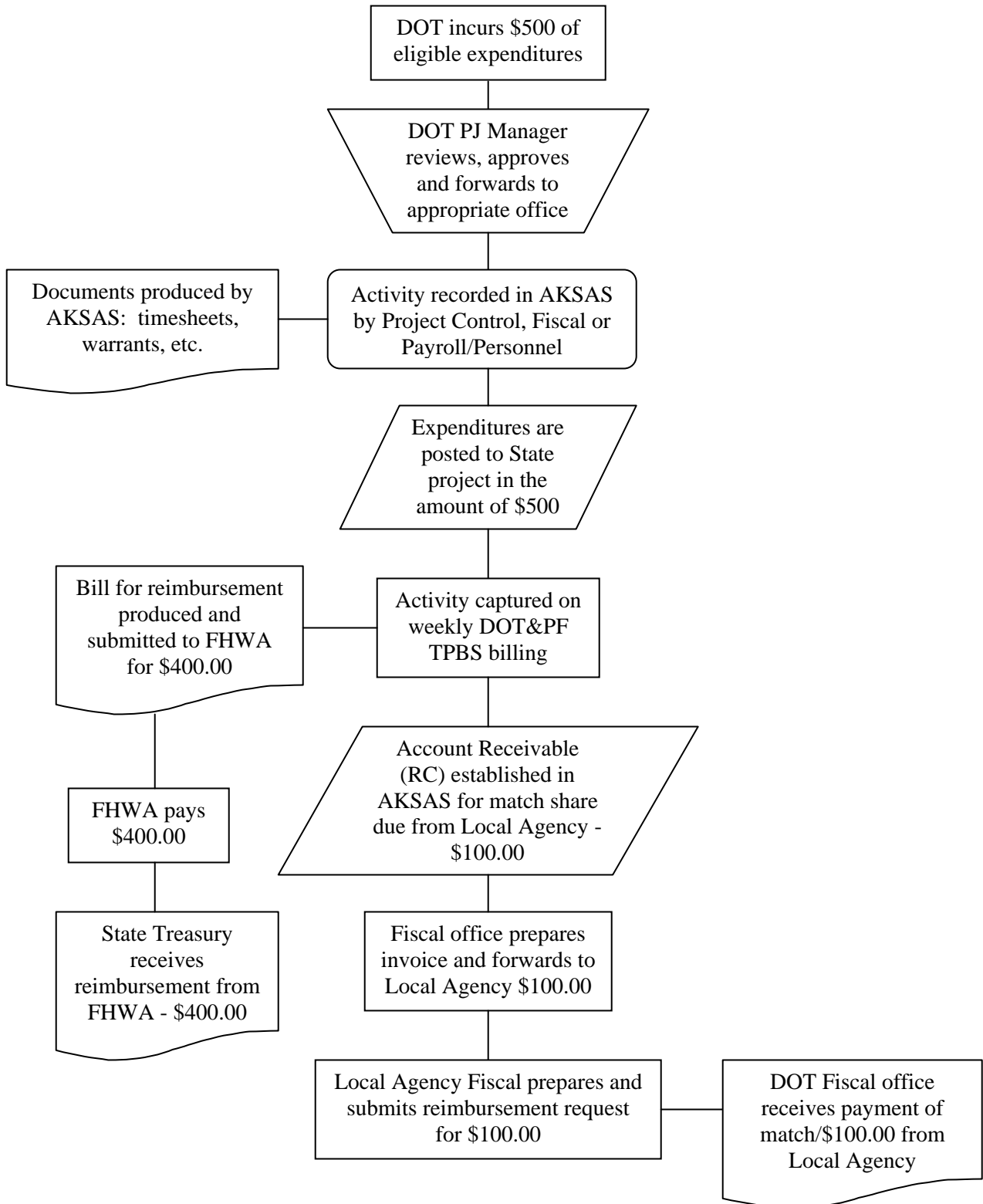
5. Flowcharts

The following flowcharts reflect several different project situations that a Local Agency and the DOT&PF could become engaged in. Please note that in each case the State is seeking reimbursement from the Local Agency on a regular basis. However, the Local Agency may chose to be billed for the full amount.

If an agency chooses to “pay upfront”, the funds are deposited into a 64 series collocode and account code 22511 – unearned income. The DOT&PF fiscal office will then clear/liquidate the TPBS produced RC against the Unearned Income.

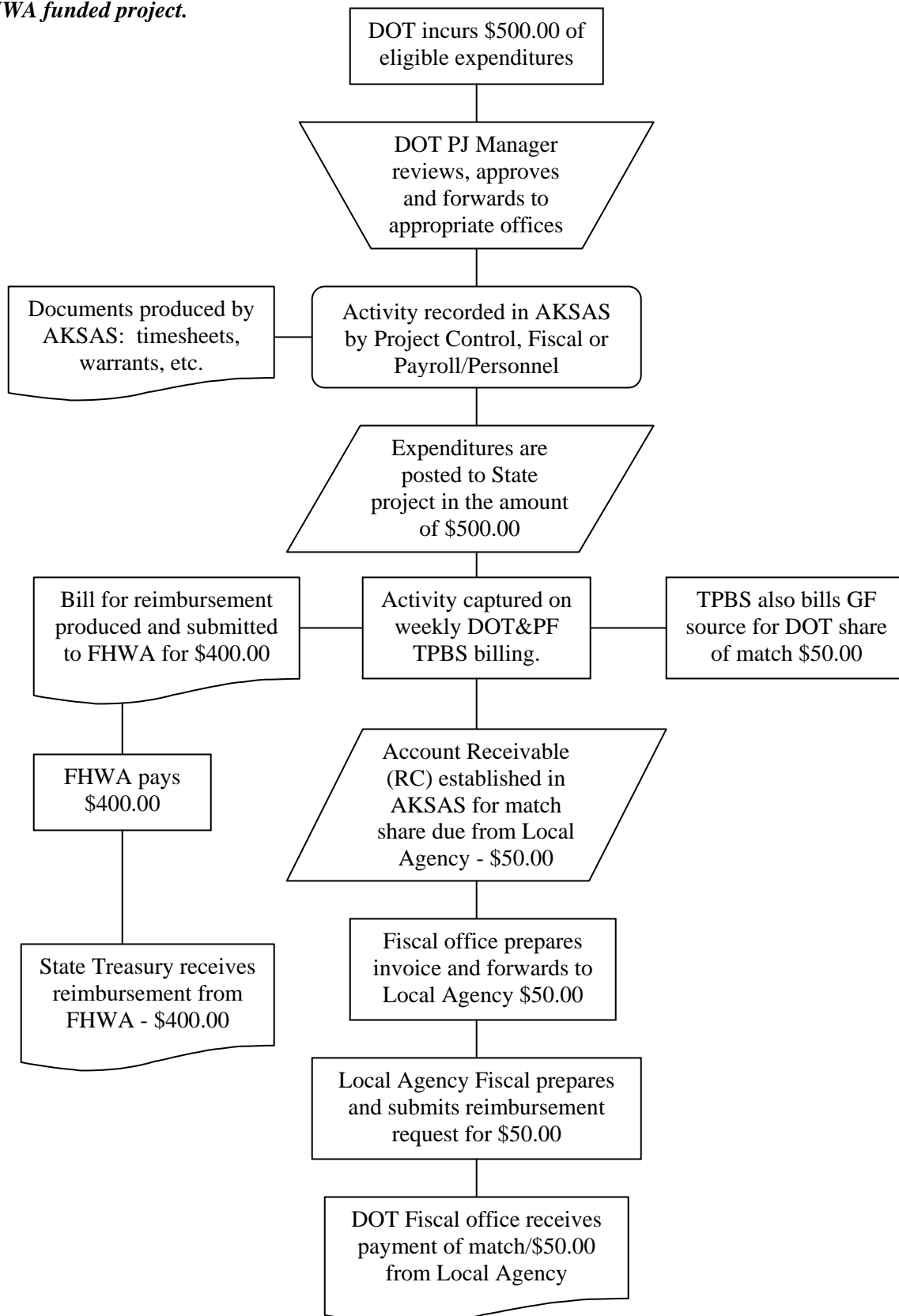
Attachment 6-D1 Reimbursement Flow Charts

Example of project that DOT is incurring all costs and Local Agency provides 100% of match on a 80/20 FHWA funded project. Local agency is billed monthly.



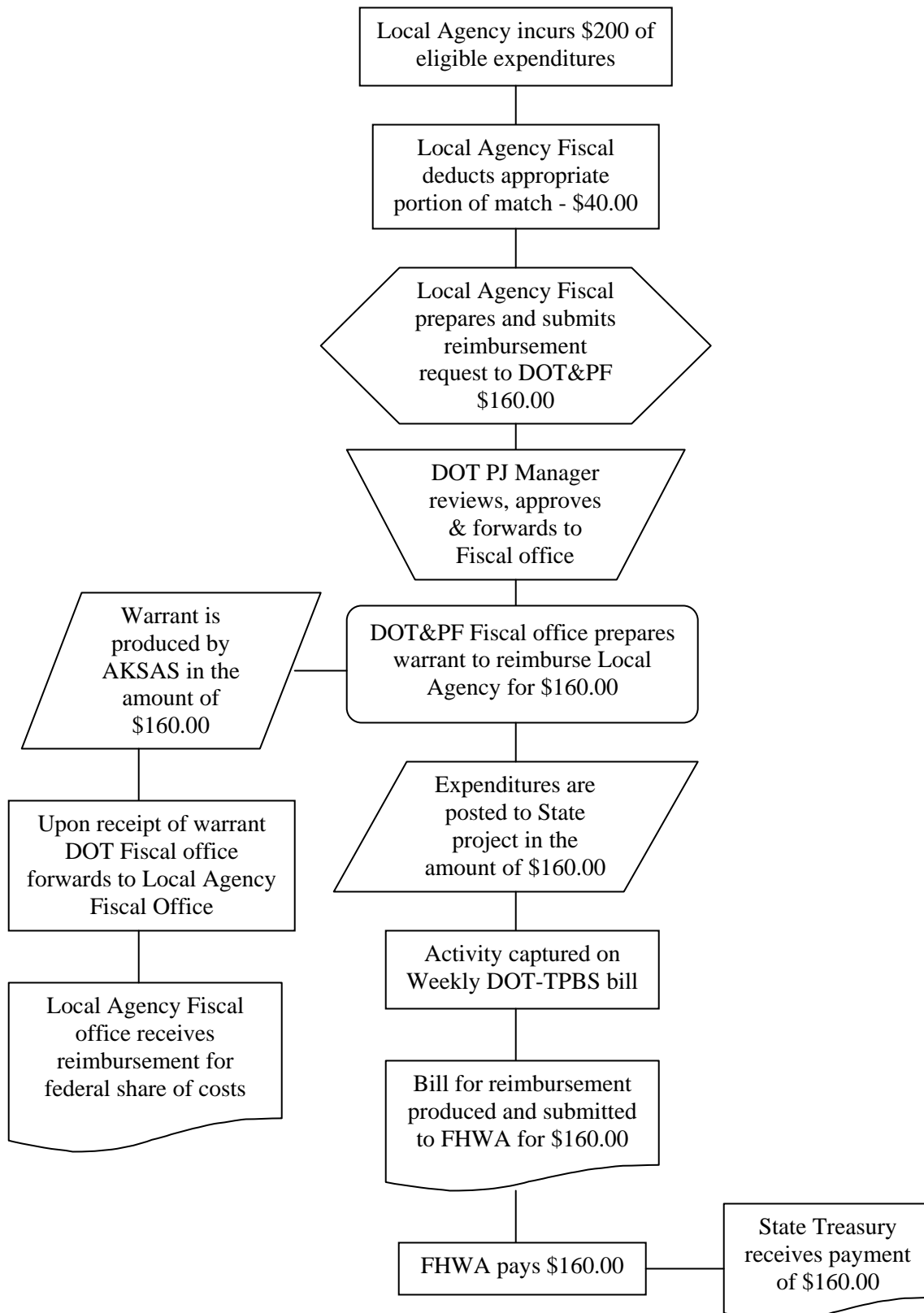
Attachment 6-D2

Example of project that DOT is incurring all costs and Local Agency provides 50% of match on a 80/20 FHWA funded project.



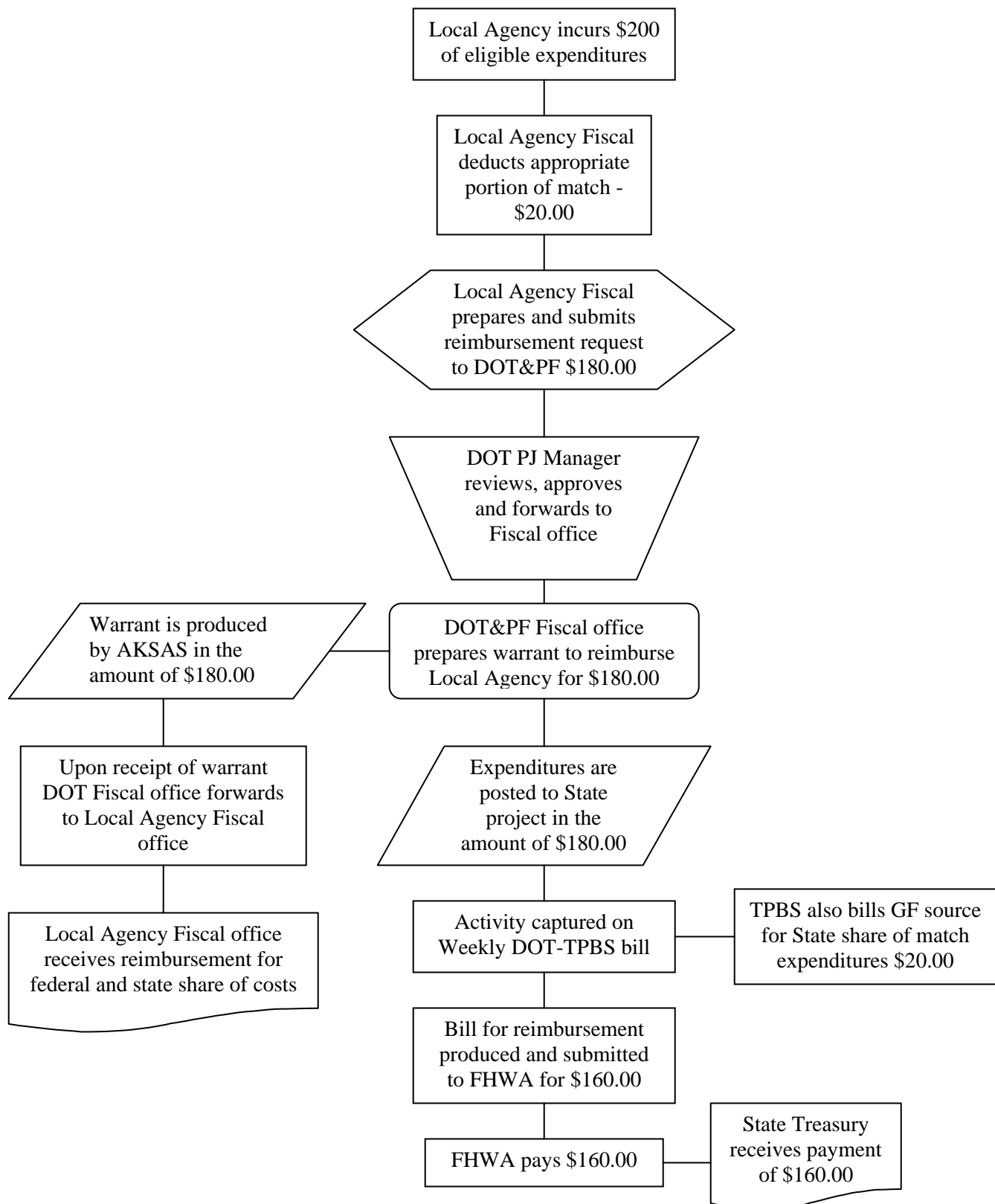
Attachment 6-D3

Example of project that Local Agency is incurring all costs and providing 100% of match on a 80/20 FHWA funded project.



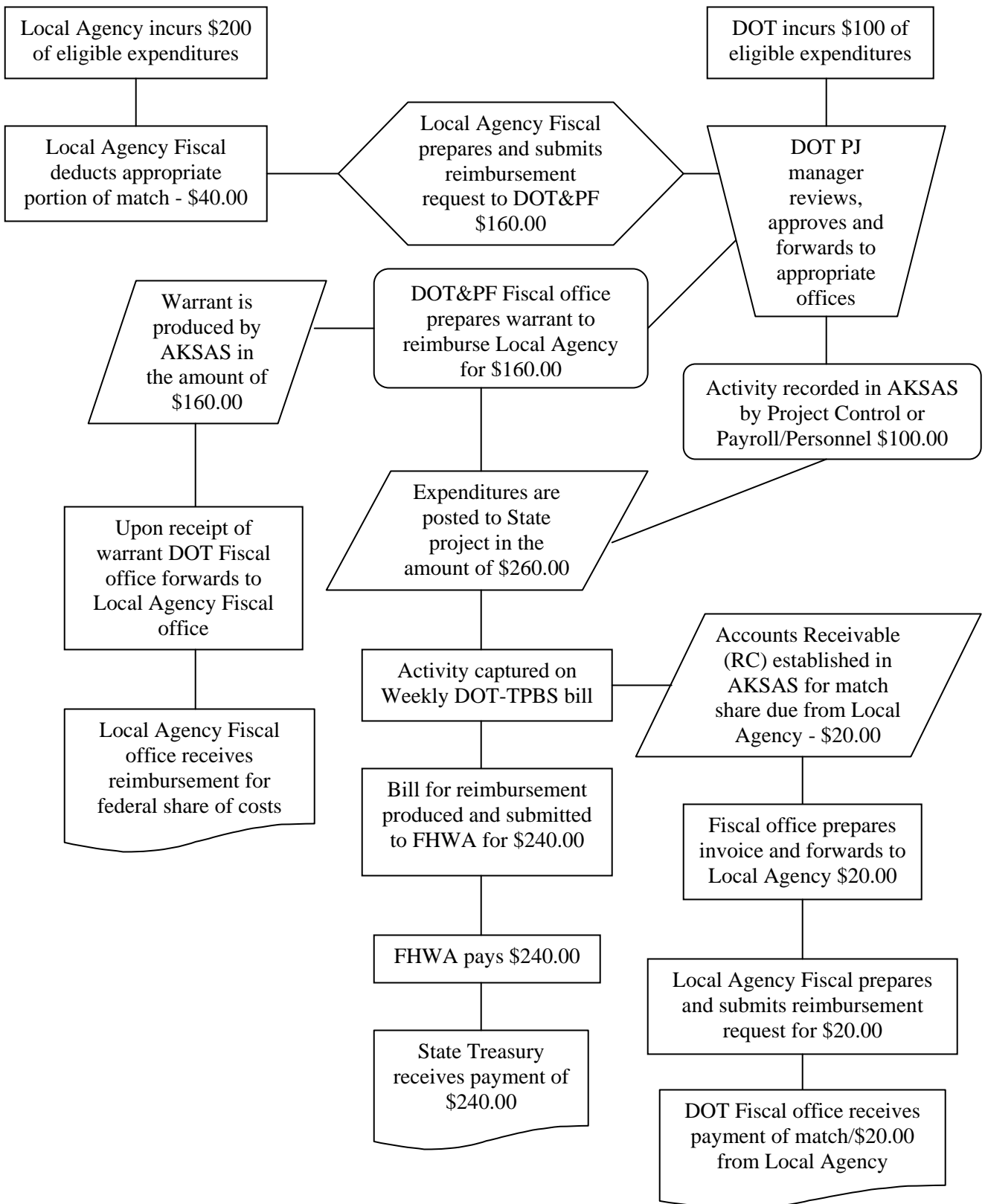
Attachment 6-D4

Example of project that Local Agency is incurring all costs and providing 50% of match on a 80/20 FHWA funded project.



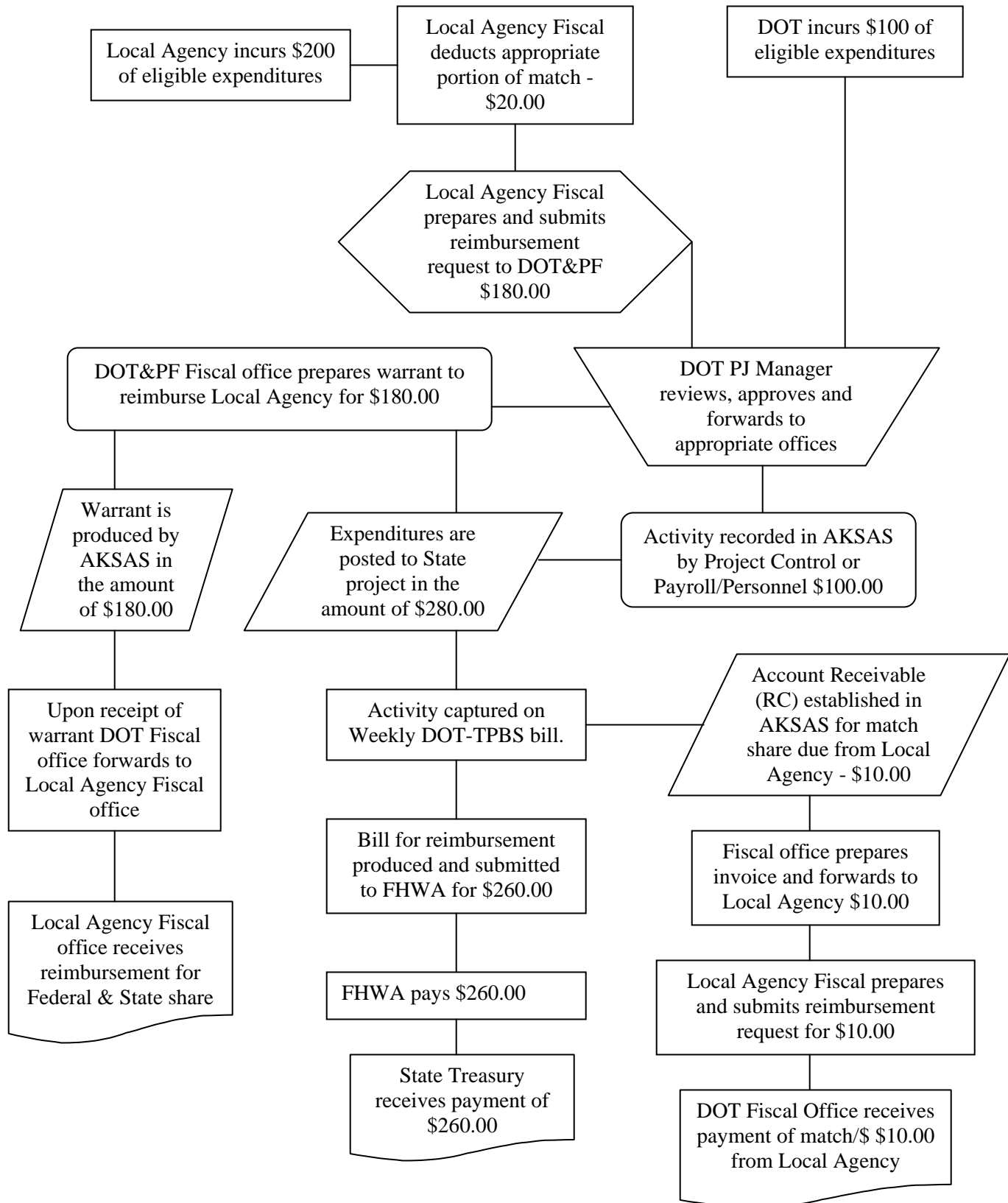
Attachment 6-D5

Example of project with Local Agency & DOT incurring costs and Local Agency is providing 100% of match on a 80/20 FHWA funded project



Attachment 6-D6

Example of project with Local Agency & DOT are incurring costs and Local Agency is providing 50% of match on a 80/20 FHWA funded project.



Attachment 6E. FHWA Participating and Nonparticipating Activities

I. Participating Functions. Classifications of work programmed with FHWA and eligible for federal aid:

- a. **Preliminary Engineering.** The work of locating and designing, making surveys and maps, sinking test holes, making foundation investigations, preparing plans, specifications and estimates, centerline, right-of-way plan preparation and other related preliminary work and incidental construction staking, to the extent such staking is necessary to review construction plans, and related general engineering preparatory to the letting of a contract for construction. The work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right-of-way cost estimates, legal, and other costs incidental to the location and design of a highway project necessitating the acquisition of right-of-way thereon up to but not including the appraisal of individual parcels for acquisition purposes.

These engineering costs are generally incurred prior to the date of construction PS&E approval or the date construction plan changes are completed prior to the beginning of construction. The date of contract award is the cutoff for charging to preliminary engineering.

During the construction phase of a project, when a major change takes place that requires additional design or PE effort, the appropriate job can be reopened for the purpose of charging to the PE phase on a case-by-case basis after approval from FHWA.

Also, any construction staking done in advance of the award should be charged to construction engineering, not PE.

- b. **Acquisition of Rights-of-Way.** The continuation of preparation of right-of-way plans; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management

of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses.

- Excess land (appraised value) including uneconomic remnants.
- Improvements (appraised salvage value).
- Right-of-way acquired after certification by the local agency that right-of-way necessary for a designated federal aid highway project has been acquired.
- Judgments in condemnation cases not appealed when the attorney's closing report indicates a basis for appeal. The amount in excess of the review appraiser's determination of value is nonparticipating.
- Landowners:
 - o Attorneys' fees;
 - o Witness fees;
 - o Expert witness fees; or
 - o Similar costs to a landowner based on value of the services rendered to him which are paid by the local agency in connection with acquisition of rights-of-way, regardless of whether such costs are included in court judgments or court costs in litigated condemnation cases, e.g., statutory evaluation allowance.

- c. **Construction Engineering.** The work of supervising construction activities; the inspection of construction and related mechanical aspects (e.g., staking necessary to review construction plans together with those staking activities necessary for the local agency to control construction operations); testing of materials incorporated into construction, checking shop drawings and measurements for and preparations of pro-

gress and final estimates, and as-built drawings. Construction engineering costs are generally incurred only after approval of the PS&E, a contract number is issued, and also incurred prior to:

- Completion date of the final contract pay estimate and its submission to the contractor;
- The final date of charges for required material testing; or
- Completion date of the separation of contract cost by code type, location, etc., whichever is applicable to that portion of the construction engineering phase involved.

- d. Highway Planning. The orderly and continuing assembly and analysis of information about highways, such as the history of highway development and their extent, dimensions and conditions, use, economic and social effects, costs, and future needs.
- e. Administrative Settlement Costs-Contract Requests. Services related to the review and defense of requests against federal aid projects.
- f. Miscellaneous Functions. Costs incurred for other activities which are properly attributable to, and for the benefit of, federal aid projects but are not assignable to any of the previously defined functions.

II. **Standards for Selected Items of Costs.** The following are standards for determining the allowability of selected items of cost. In general, costs must be reasonable, necessary, and allocable to the specific project. The allowability of the selected items of cost is subject to the general policies and principles stated above.

a. Salaries and Wages

- 1. Subject to appropriate authorization requirements, federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either

directly or indirectly, in project-related activities.

- 2. Salaries, wages, and related payroll expenses of a local agency for maintenance, general administration, supervision and other overhead are not eligible for reimbursement except as provided for in Section II e 2.

b. Travel and Transportation

- 1. Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence essential to the prosecution of the project and performed in accordance with prescribed procedures.
- 2. Reimbursement may be made for use of privately owned automobiles and per diem or subsistence incurred in conformance with the established reimbursement policy of the local agency.

c. Employee Leave and Holidays

- 1. A local agency may request reimbursement for costs of leave, e.g., annual, sick, military, jury, etc., that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the local agency, must be equitably distributed to all activities, and the pro rata costs distributed to a federal aid project must be representative of the amount that is earned and accrued while working on the project.
- 2. Compensatory leave granted by a local agency in lieu of payment of overtime to eligible employees may be requested for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.
- 3. Costs for other leave of a similar nature which may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

d. Social Security, Retirement, and Other Payroll Benefits.

1. Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in federal aid projects.
2. The costs for such benefits must be a liability of the local agency and must meet the criteria set forth in paragraph 1 of c above.

e. General Administration and Other Overhead Costs Are Not Allowed Unless Local Agency Has An Approval OMB A-87 ICAP Plan.

1. General administration, supervision, and other unallowable overhead costs of a local agency are those considered necessary for the management, supervision, and administrative control of a suitable equipped, staffed, and operational agency. Examples of such unallowable costs may include, but are not limited to, the following types of personnel, related payroll benefit costs, and other administrative or support services (refer to CFR 23,1.11):
 - Directors, department heads, legal, accounting, budgeting, personnel, and procurement units.
 - Related clerical, secretarial, and other support services for officials and personnel listed immediately above.
 - Management, supervision, and administrative overhead costs incurred by other units or departments of the state, local agencies, or governmental organizations.
2. Costs incurred for services rendered by employees generally classified as administrative may, however, be considered eligible for reimbursement for:
 - A highway planning unit, in the ratio of time spent on the partici-

pating portion of work in the unit to the total unit's working hours; and

- Other operating units if such employees are assigned for specific identifiable periods of time to perform project-related activities in the same manner as other operating personnel.

f. Use of Cost Accumulation Centers and Cost Distribution Methods.

1. Cost accumulation centers, i.e., cost centers, cost pools, or other acceptable cost accumulation methods, may be used to capture related types of costs for later distribution to all projects or other benefiting activities for which work was performed during the accounting period. The accounting and cost distribution procedures must be in accordance with paragraph (2) of this section for types of costs incurred under the following general criteria:
 - Salaries, wages, and related payroll benefit costs may be incurred during a payroll accounting period which affects a number of projects and, therefore, may not be easily adaptable to charging directly to individual projects due to such factors as (i) incompatibility of time increments for individual projects; (ii) an inordinate amount of time or an additional number of documents to provide separate project coding; (iii) a documented reduction of overhead costs in the elimination of processing source and coding required, increased electronic data processing applications, and additional accounting requirements.
 - Small cost items may be incurred which affect several projects and would result in a disproportionate amount of time and number of documents for separate project accounting in relation to the amount of costs involved.

- Items of costs may otherwise be eligible for reimbursement but, due to their nature and the small amounts involved, they are not being requested for reimbursement, since the additional overhead costs required for separate project coding and effective internal controls are not cost beneficial relative to separate project reimbursable amounts.
 - Cost items must be directly attributable to and properly allocable to projects to which they are distributed. They must not lose their identity, i.e., type, amount, purpose for which incurred, whether federally participating, input source, etc.
2. The use of separate cost accumulation centers for comparably related types of costs is a prerequisite to the use of percentages, or other acceptable distribution methods, for cost distribution to benefiting projects or other activities. The accounting procedures and methods of distribution used must have prior concurrence of the FHWA, be representative of average actual costs, and must assure that (1) costs are uniformly and equitably distributed to all projects and activities for which work was performed during the accounting period irrespective of source of funds, (2) provisions are established for an adequate segregation of costs and separate distribution methods for similarly related types of costs, (3) actual costs and liabilities are fully accounted for and controlled, and (4) that reviews are made periodically, and the rates or other distribution methods are adjusted at least once annually by any over or underdistributed accumulated costs from the cost accumulation center for the preceding accounting period.
 3. Percentages representative of average actual costs may be used to distribute leave, social security, and other payroll benefits. Such rates are based on prior

cost experience adjusted by anticipated known factors which will affect overall costs during the current year, e.g., scheduled salary increases, changes in anticipated in insurance premiums, etc.

g. Audit Expense

AUTHORITY: 23 U.S.C. 121 and 315; 49 CFR 1.48(b).

Source: 49 FR 45578, Nov. 19, 1984, unless other noted.

Project related audits performed in accordance with generally accepted auditing standards (as modified by the Comptroller General of the United States) and applicable federal laws and regulations are eligible for federal participation.

The local agency may use other state, local public agency, and federal audit organizations as well as licensed or certified public accounting firms to augment its audit force.

Audits performed in accordance with the requirements of 23 CFR Part 12, audits of third party contract costs, and other audits providing assurance that a recipient has complied with FHWA regulations are all considered project related audits. Audits benefiting only nonfederal projects, those performed for local agency management use only, or those serving similar nonfederal purposes are not considered project related.

1. Federal funds may be used to reimburse a local agency for the following types of project related audit costs:
 - Salaries, wages and related costs paid to public employees in accordance with Section II a;
 - Payments by the local agency to any federal, state or local public agency audit organization; and
 - Payments by the local agency to licensed or certified public accounting firms.
2. Audit costs incurred by a local agency shall be equitably distributed to all

benefiting parties. The portion of these costs allocated to the Federal Aid Highway Program which are not directly related to a specific project or projects shall be equitable distributed, as a minimum, to the major FHWA funding categories in that state.

h. Contract Requests.

AUTHORITY: 23 U.S.C. 121, 315; 49CFR 1.48(b); and OMB Circular A-102, attachment G, Standard 2(h) and (i).

Source 44 FR 59233, Oct. 15, 1979, unless otherwise noted.

Settlement costs are costs related to the defense and settlement of contract requests including, but not limited to, salaries of a contracting officer or their authorized representative, attorneys, and/or members of state boards of arbitration, appeals boards, or similar tribunals. These costs are allocable to the findings and determinations of contract requests, but they do not include administrative or overhead costs.

1. Federal funds may participate in administrative settlement costs which are:
 - Incurred after notice of request;
 - Properly justified under the terms of the contract;
 - Directly allocable to a specific federal aid or federal project;
 - For employment of special counsel for review and defense of contract requests, when
 - (a) Recommended by the State Attorney General or local agency legal counsel; and
 - (b) Approved in advance by the FHWA Division Administrator.
 - For travel and transportation expenses, if in accord with established policy and practices.

2. No reimbursement shall be made if it is determined by FHWA that there was negligence or wrongdoing of any kind by local agency officials with respect to the request.

III. Utility Relocations, Adjustments, and Reimbursement.

a. Eligibility

1. When requested by the local agency federal funds may participate, at the pro rata share applicable, in an amount actually paid by a local agency for the costs of utility relocations. Federal participation is subject to the provisions of §645.103(d) of 23 CFR and may be made under one or more of the following conditions when:
 - The local agency certifies that the utility has the right of occupancy in its existing location because it holds the fee, an easement, or other real property interest, the damaging or taking of which is compensable in eminent domain;
 - The utility occupies privately or publicly owned land, including public road or street right-of-way, and the local agency certifies that the payment is made pursuant to a law authorizing such payment in conformance with the provisions of 23 U.S.C. 123; and/or
 - The utility occupies publicly owned land, including public owned road and street right-of-way, and is owned by a public agency or political subdivision of the state, and is not required by law or agreement to move at its own expense, and the local agency certifies that it has the legal authority or obligation make such payments.
2. When the local agency has the authority to participate in project costs, federal funds may not participate in relocation of utility facilities when state law prohibits the local agency from making

payment for relocation of utility facilities.

3. When the local agency does not have the authority to participate in project costs, federal funds may participate in payments made by a political subdivision for relocation of utility facilities. Such payment may be made when the local agency certifies that the payment is based upon the provisions of this part and does not violate the terms of a use and occupancy agreement, or legal contract, between the utility and the local agency.
4. Federal funds are not eligible to participate in any costs for which the utility contributes or repays the local agency except for utilities owned by the political subdivision on projects which qualify under the provisions of (3) of this part in which case the costs of the utility are considered to be costs of the local agency.
5. The FHWA may deny federal fund participation in any payments made by a local agency for the relocation of utility facilities when such payment do not constitute a suitable basis for federal fund participation under the provisions of Title 23, U.S.C.
6. The rights of any public agency or political subdivision of a state under contract, franchise or other instrument or agreement with the utility, pertaining to the utility's use and occupancy of publicly owned land, including public road and street right-of-way, shall be considered the rights of the local agency in the absence of state law to the contrary.
7. In lieu of the individual certifications required by a-1, the local agency may file a statement with the FHWA setting forth the conditions under which the local agency will make payments for the relocation of utility facilities. The FHWA may approve federal fund participation in utility relocations proposed by the local agency under the

conditions of the statement when the FHWA has made an affirmative finding that such statement and conditions form a suitable basis for federal fund participation under the provisions of 23 U.S.C. 123.

8. Federal funds may not participate in the cost of relocations of utility facilities made solely for the benefit or convenience of a utility, its contractor, or a highway contractor.
9. When the advance installation of new utility facilities crossing or otherwise occupying the proposed right-of-way of a planned highway project is underway, or scheduled to be underway, prior to the time such right-of-way is purchased by or under control of the local agency, arrangements should be made for such facilities to be installed in a manner that will meet the requirements of the planned highway project. Federal funds are eligible to participate in the additional cost incurred by the utility that are attributable to, and in accommodation of, the highway project provided such costs are incurred subsequent to FHWA authorization of the work. Subject to the other provisions of this regulation, federal participation may be approved under the foregoing circumstances when it is demonstrated that the action taken is necessary to protect the public interest and the adjustment of the facility is necessary by reason of the actual construction of the highway project.
10. Federal funds are eligible to participate in the costs of preliminary engineering and allied services for utilities, the acquisition of replacement right-of-way for utilities, and the physical construction work associated with utility relocations. Such costs must be incurred by or on behalf of a utility after the date the work is included in an approved program and after the FHWA has authorized the local agency to proceed in accordance with 23 CFR 630,

Subpart A, Federal Aid Programs
Approval and Project Authorization.

b. Cost Development and Reimbursement.

1. Developing and recording costs. All utility relocation costs shall be recorded by means of work orders in accordance with an approved work order system except when another method of developing and recording costs, such as lump-sum agreement, has been approved by the local agency and the FHWA. Except for work done under contracts, the individual and total costs properly reported and recorded in the utility's accounts in accordance with the approved method for developing such costs, or the lump-sum agreement, shall constitute the maximum amount on which federal participation may be based.
2. Direct labor costs. See Section IIa.
3. Labor surcharges. See Section IIa.
4. Material and supply costs. Materials and supplies, if available, are to be furnished from company stock except that they may be obtained from other sources near the project site when available at a lower cost. When not available from company stock, they may be purchased either under competitive bids or existing continuing contracts under which the lowest available prices are developed. Minor quantities of materials and supplies and proprietary products routinely used in the utility's operation and essential for the maintenance of system compatibility may be excluded from these requirements. The utility shall not be required to change its existing standards for materials used in permanent changes to its facilities. Costs shall be determined as follows:
 - Materials and supplies furnished from company stock shall be billed at the current stock prices for such new or used materials at the time of issue.

- Materials and supplies not furnished from company stock shall be billed at actual costs to the utility delivered to project site.
- A reasonable cost for plant inspection and testing may be included in the costs of materials and supplies when such expense has been incurred. The computation of actual costs of materials and supplies shall include the deduction of all offered discounts, rebates, and allowances.
- The cost of rehabilitating rather than replacing existing utility facilities to meet the requirements of a project is reimbursable, provided the rehabilitation costs do not exceed replacement costs.

Materials recovered from temporary use and accepted for reuse by the utility shall be credited to the project at process charged to the job, less a 10 percent consideration for loss in service life. Materials recovered from the permanent facility of the utility that are accepted by the utility for return to stock shall be credited to the project at current stock prices of such used materials. Materials recovered and not accepted for reuse by the utility, if determined to have a net sale value, shall be sold to the highest bidder by the local agency or utility following an opportunity for local agency inspection and appropriate solicitation for bids. If the utility practices a system of periodic disposal by sale, credit to the project shall be at the going prices supported by records of the utility.

Federal participation may be approved for the total costs of removal when such removal is required by the highway construction or the existing facilities cannot be abandoned in place for aesthetic or safety reasons. When the utility facilities can be abandoned in place but the utility or highway contractor elects to remove and recover the

materials, federal funds shall not participate in removal costs that exceed the value of the materials removed.

The actual and direct costs of handling and loading materials and supplies at company stores or material yards, and of unloading and handling recovered materials accepted by the utility at its stores or material yards are reimbursable. In lieu of actual costs, average rates representative of actual costs may be used if approved by the local agency and the FHWA. These average rates should be adjusted at least once annually to take into account known anticipated changes and correction for any over or under applied costs for the preceding period. At the option of the utility, 5 percent of the amounts billed for the materials and supplies issued from company stores and material yards, or the value of recovered materials will be reimbursed in lieu of actual or average costs for handling.

5. Equipment costs. The average or actual costs of operation, minor maintenance, and depreciation of utility-owned equipment may be reimbursed. Reimbursement for utility-owned vehicles may be made at average or actual costs. When utility-owned equipment is not available, reimbursement will be limited to the amount of rental paid (1) to the lowest qualified bidder, (2) under existing continuing contracts at reasonable costs, or (3) as an exception by negotiation when paragraph (1) and (2) of this section are impractical due to project location and schedule.
6. Transportation costs. The utility's cost, consistent with its overall policy, of necessary employee transportation and subsistence directly attributable to the project is reimbursable.

Reasonable costs for the movement of materials, supplies, and equipment to the project and necessary return to storage including the associated cost of loading and unloading equipment is reimbursable.

7. Billings. After the FHWA approves the executed local agency/utility agreement, the utility may be reimbursed through the local agency by progress billings for costs incurred. Cost for materials stockpiled at the project site or specifically purchased and delivered to the utility for use on the project may also be reimbursed on progress billings following approval of the executed local agency/utility agreement.

The utility shall provide one final and complete billing of all costs incurred, or of the agreed-to lump-sum, at the earliest practicable date. The final billing to the FHWA shall include a certification by the local agency that the work is complete, acceptable, and in accordance with the terms of the agreement.

All utility cost records and accounts relating to the project are subject to audit by representatives of the state and federal government for a period of three years from the date final payment has been received by the utility.

IV. Reimbursement for Railroad Work.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48, unless otherwise noted.

SOURCE: 40 FR 16057, April 9, 1975, unless otherwise noted.

- a. Applicability. This subpart, and all references hereinafter made to "projects," applies to federal aid projects for the elimination of hazards of railroad highway crossings, and other projects which use railroad properties or which involve adjustments required by highway construction to either railroad facilities or facilities that are jointly owned or used by railroad and utility companies.
- b. Reimbursement Basis
 1. General. On projects involving the elimination of hazards of railroad highway crossings, and on other projects where a railroad company is not

obligated to move to change its facilities at its own expense, reimbursement will be made for the costs incurred in making changes to railroad facilities, required in connection with a federal aid highway project, as hereinafter provided.

2. Eligibility. To be eligible, the costs must be:

- For work which is included in an approved program;
- Incurred subsequent to the date of authorization by the FHWA;
- Incurred in accordance with the provisions of 23 CFR, Part 646, Subpart B; and
- Properly attributable to the project.

c. Labor costs (See Section II)

d. Materials and Supplies (See Section IIIb4.)

e. Equipment. (See Section IIIb5.)

f. Transportation. (See Section IIIb6.)

g. Credits for Improvements.

1. Credit shall be made to the project for additions or improvements which provide higher quality or increased service capability of the operating facility, and which are provided solely for the benefit of the company.
2. Where buildings and other depreciable company structures integral to operation of rail traffic must be replaced, credit shall be made to the project as set forth in 23 CFR 646.216(c)(2).
3. No credit is required for additions or improvements which are:
 - Necessitated by the requirements of the highway project.
 - Replacement which, although not identical, are equivalent standard.
 - Replacements of devices or materials no longer regularly

manufactured and the next highest grade or size is used.

- Required by governmental and appropriate regulatory commission requirements.

4. Protection. The cost of essential protective services which, in the opinion of a railroad company, are required to ensure safety to railroad operations during certain periods of the construction of a project, is reimbursable provided an item for such services is incorporated in the railroad agreement or in a work order issued by the local agency and approved by FHWA.

h. Maintenance and Extended Construction. The cost of maintenance and extended construction is reimbursable to the extent provided in 23 CFR 646.216(f)(4), and where included in the State Railroad Agreement or otherwise approved by the state and FHWA.

i. Lump Sum Payments. Where approved by FHWA, pursuant to 23 CFR 646.216(d)(3), reimbursement may be made as a lump sum payment, in lieu of actual costs.

j. Billings. (See Section III b 7.)

V. Other Costs Allowable Subject to FHWA's Approval.

Although some category of expenditures are not mentioned specifically in Part 140, "Reimbursement," of 23 CFR as eligible for federal participation, should the local agency wish to seek federal participation it is allowed to request approval from the FHWA prior to billing. The expenditures that relate to the federal aid project should be well identified through proper documentation.

VI. Other Unallowable Costs.

- Bad debts. Any losses arising from uncollectible accounts and other requests and related costs are not allowable.
- Contingencies. Contributions to a contingency reserve or any similar provisions for unforeseen events are unallowable.

- Contributions and Donations. Unallowable.
- Entertainment. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.
- Fines and Penalties. Costs resulting from violations of or failure to comply with federal, state, and local laws and regulations are unallowable.
- Governor's Expenses. The salaries and expense of the office of the governor of a state or the chief executive of a political subdivision are considered a cost of general state or local government and are unallowable.
- Interest and Other Financial Costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by federal legislation.
- Legislative Expenses. Salaries and other expenses of the state legislature or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.
- Underrecovery of Costs Under Grant Agreements. Any excess of cost over the federal contribution under one grant is unallowable under other grant agreements.