CHAPTER 4

STATE-LOCAL AGREEMENTS
Contents

4.1 INTRODUCTION.................................................................................................................. 3
4.2 STATE-LOCAL AGREEMENTS.......................................................................................... 3
  4.2.1 Agreement Types........................................................................................................... 3
  4.2.2 Agreement Process ....................................................................................................... 3
  4.2.3 Marchiselli Program .................................................................................................... 4
  4.2.4 Composition of State-Local Agreements ................................................................... 5
  4.2.5 Completing the State-Local Agreement .................................................................... 5
  4.2.6 State Contract Process ............................................................................................... 5
4.3 AGREEMENTS WITH NON-GOVERNMENTAL ORGANIZATIONS (NGOs)........... 6
  4.3.1 Three-Party Agreements and Third-Party Agreements .............................................. 7
4.4 SPONSOR BUDGETING, AGREEMENT APPROVAL AND RESOLUTIONS............ 7
4.5 ADMINISTRATION OF STATE-LOCAL AGREEMENTS............................................. 8
  4.5.1 Federal Reimbursement Process ................................................................................ 8
  4.5.2 Marchiselli Reimbursement Process ......................................................................... 9
  4.5.3 Delays in Payments or Loss of Maximum State Marchiselli Funding .................... 9
  4.5.4 Reimbursement Requirements Related to Bonded Marchiselli Match ................. 10
  4.5.5 Extended Records Retention Requirements for Bonded Marchiselli Match .......... 10
4.6 AGREEMENT AMENDMENTS AND SUPPLEMENTS/NO COST TIME EXTENSION
  .................................................................................................................................................. 10
  4.6.1 Supplemental State-Local Agreements ..................................................................... 10
  4.6.2 No-Cost Time Extensions .......................................................................................... 11
4.7 STATE-LOCAL AGREEMENT CLOSEOUT ................................................................. 11
4.8 FEDERAL AND STATE SINGLE AUDIT ...................................................................... 11
4.9 NON-COMPLIANCE/INELIGIBLE COSTS/DBE UTILIZATION PLAN .................. 11
4.10 REFERENCES .................................................................................................................... 12
Table 4-1 NYSDOT Federal Aid Contracts/Agreements ..................................................... 13
Table 4-2 NYSDOT Miscellaneous Local Contracts/Agreements .................................... 13

NOTE: This Chapter has associated appendices and forms that can be found on the Local Programs Bureau website at: www.dot.ny.gov/plafap
4.1 INTRODUCTION

This chapter explains the requirements for entering into and administering the *Federal Aid Local Project Agreement*, which is one type of State-Local Agreement (SLA). The execution of a State-Local Agreement enables federal and state funding to become available to the Sponsor. A working knowledge of the *Federal Aid Local Project Agreement* is essential in the development of locally administered federal aid transportation projects, although applicable procedures may be relevant to other types of SLAs, including Betterment Agreements and State System Project Agreements (i.e., Reverse Betterment Agreements), as well. Throughout this manual when mention is made of a State-Local Agreement, it is to be assumed in most cases, this is a reference to the *Federal Aid Local Project Agreement*.

The State-Local Agreement is the mechanism by which New York State formally commits specific funding to a locally administered federal aid transportation project and provides the basis for encumbering funds to be used to make payments on the project. The SLA identifies specific projects and phases thereof, the amount of funds available to the project or project phase(s), the requirements for administering the project and receiving funding, and other rights and obligations of the State and the Sponsor (other parties may be involved).

4.2 STATE-LOCAL AGREEMENTS

4.2.1 Agreement Types

Table 4-1, *NYSDOT Federal Aid Contracts/Agreements* and Table 4-2, *NYSDOT Miscellaneous Local Contracts/Agreements* identify agreement types (between NYSDOT and Sponsors) used in the implementation of projects. Although the focus of this chapter is federal aid and Marchiselli-aid eligible projects (Table 4-1), Table 4-2 is provided to acquaint the reader with other types of SLAs, such as those for Legislative Initiatives and the Multi-Modal Program. Multiple program types or sources of funding can require multiple agreements.

4.2.2 Agreement Process

NYSDOT uses the State-Local Agreement for progressing locally administered federal aid transportation projects. The SLA contains terms and conditions applicable to all covered project phases. Project particulars are found in *Schedule A - Description of Project Phase, Funding and Deposit Requirements* and *Schedule B - Phases, Sub-phases/Tasks, and Allocation of Responsibility* (see Chapter 4 Appendix). If subsequent the phases (and funding) are authorized, or if project scope or funding amendments are needed, supplemental schedules will have to be created (see section on Supplemental State-Local Agreements).

The SLA must include a Sponsor (legislature/board) adopted resolution:

1) Showing Sponsor approval of the project or project phase(s);
2) Formally obligating funding of the applicable project or project phase(s), including first instance funding\(^1\) of all federal-aid and state-aid portions; and
3) Designating the official(s) who will sign documents on behalf of the Sponsor.

\(^{1}\)First instance, in this context, means the Sponsor is required to pay the total amount of a payment request submitted by a contractor in connection with the project up front, to be reimbursed for the federal and any State shares subsequently.
Projects that are located in or otherwise involve more than one municipal jurisdiction require resolutions from each involved municipality. An Intermunicipal Agreement must be created for the project to identify and document:

1. Why the agreement is necessary?
2. Parties to the agreement
3. Duration of agreement
4. Who is responsible during construction (Indemnification/Liability)?
5. Local share responsibilities
6. Anticipated useful life
7. Inclusion of the federal-aid project agreement by reference
8. Document distribution
9. Revocability
10. Schedule of reimbursement proration if applicable
11. Ownership upon contract completion
12. Maintenance responsibility
13. Anticipated construction time frame
14. Other necessary provisions identified during project development

The Intermunicipal Agreement must be signed, notarized and recorded with the Municipal Clerks of all parties to the Agreement.

Depending on the scope of the original authorizing resolution, subsequent resolutions for additional project phases may or may not be necessary.

4.2.3 Marchiselli Program

The Marchiselli Program (i.e., Municipal Streets and Highway Program) is the primary state aid match to FHWA-funded projects. The Marchiselli Program can pay (when funding is available) up to 75% of the non-federal share of an eligible project (or project phase), with the remaining 25% of non-federal costs to be born by the Sponsor. For a typical federal aid project consisting of 100% eligible activities, this would amount to: 80% federally funded, 15% state funded, and 5% locally funded. If a project involves a local over-match,² the Marchiselli match would still be calculated based on the amount of federal participation.

For all Marchiselli Program Activities, the following is true:

1) Eligibility and participation level of federal aid must first be determined.
2) Sponsor can only be a Municipality (County, City, Town and Village).
3) Completed work must have a certifiable ten (10) year minimum service life.
4) Proposed work must fall within one of the approved Work-Types.*

Marchiselli Program funds will be added by NYSDOT to an eligible project on an availability basis. Marchiselli Program funds are not guaranteed; the total amount of funds available is capped in the state budget for each state fiscal year.

*Funding must be used for work which relates directly and exclusively to construction, reconstruction or improvement of highways, bridges, or highway-railroad crossings off the State

² When a Sponsor contributes more than the required matching share (often through in-kind services).
Highway System. Work performed on sidewalks, and bike/pedestrian paths/facilities within the municipality’s right-of-way (ROW) are eligible. Facilities that are separated from a road or bridge, regardless of whether its location is within the local highway ROW are not eligible.

4.2.4 Composition of State-Local Agreements

SLAs are prepared by the Regional Local Project Liaison (RLPL). The complete Federal Aid Local Project Agreement is organized as follows:

- Standard Terms and Conditions.
- Schedule A - Description of Project Phase, Funding and Deposit Requirements.
- Schedule B - Phases, Sub-phases/Tasks, and Allocation of Responsibility. The content of Schedule B can differ between construction and non-construction projects. The latter type may have a project-specific content and format.
- Appendix A - Standard Clauses for NYS Contracts.
- Appendix A-1 - Supplemental Title VI Provisions (Civil Rights Act).³
- Appendix B - Requirements for Federally Aided Transportation Projects.
- Sponsor Resolution(s).

Other standard SLAs are similarly structured.

The State-Local Agreement, Schedules, and Appendices are to be used as written. No Sponsor-proposed changes will be accepted.

4.2.5 Completing the State-Local Agreement

State-Local Agreements are prepared by the RLPL in consultation with the Sponsor and, as applicable, other parties. The RLPL coordinates, as needed, with various NYSDOT Main Office functional groups such as the Local Programs Bureau, Project Management Bureau, Accounting Bureau, Contract Management Bureau, and Division of Legal Affairs.

The Schedule A serves as a comprehensive fiscal summary document and is used to identify the project and project phases authorized by the State-Local Agreement and all of the funding sources committed to the project.

Schedule B designates project tasks and assigns responsibilities for phases being funded.

4.2.6 State Contract Process

The SLA is an agreement between NYSDOT and the Sponsor and must be signed by the Responsible Local Official (as provided for in the resolution) and by an authorized NYSDOT official. In addition, State Finance Law requires all contracts in excess of $50,000 to be approved by the Office of the Attorney General (AG) and the Office of the State Comptroller (OSC) before they can become effective. Within NYSDOT, only designated officials in the Contract Management Bureau (CMB) and, depending on contract amounts, Main Office executive managers, have contract signatory authority. Regional NYSDOT officials do not have contract signatory authority for any SLA’s referenced in this manual.

³ The Sponsor must include this document in all contracts and subcontracts for projects which are funded in whole or in part with federal aid (see Chapter 2, Roles and Responsibilities).
When the RLPL receives a signed SLA in proper form from the Sponsor, he or she will submit it to Main Office for signature and AG/OSC approval. Normally, it will take 60 to 90 days to return a fully-executed agreement to the Sponsor.

4.3 AGREEMENTS WITH NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

It is NYSDOT’s general policy to authorize only governmental entities to enter into SLAs as primary Sponsors of locally administered federal-aid or State-aid transportation projects, e.g., construction, studies, or the provision of transportation-related services. When a qualified governmental entity will not commit to becoming the primary Sponsor, however, NYSDOT reserves the right to determine whether or not an NGO has sufficient resources, experience, and history to act as the primary Sponsor. An NGO certification assessment process has been outlined as an aid to the RLPL (see the Chapter 4 Appendix for the certification process and NGO policies).

The following are examples of governmental and non-governmental organizations (NGOs):

**Governmental Organizations:**
- A municipal corporation designated as a county, city, town, or village as identified in Section 2 of Article 1 of the General Municipal Law.
- A public authority or a public benefit corporation including any New York State agency, board, commission, or other entity created through an act of the State Legislature.
- A State University of New York.
- A tribal nation recognized by New York State pursuant to Articles 3 through 10 of the State Indian Law.

**Non-Governmental Organizations (NGOs):**
- Not-for-profit corporations with a designated 501(c)(3) tax-exempt status.
- Local chambers of commerce.
- Hospitals and medical centers.
- Industrial or economic development authorities created by local law or resolution.
- Private universities and educational centers and public universities and education centers which do not come under the jurisdiction of the NYS Department of Education, e.g., City University of New York (CUNY).
- Civic organizations.
- School districts, but only if the project is on their property.

---

4 Other New York State agencies entering into a contractual relationship with NYSDOT would do so through a Memorandum of Understanding (MOU).

5 Article 7-a of the Executive Law requires, with certain exemptions, a not-for-profit organization (NFP) which receives funding of $25,000 or more in the aggregate from government agencies to register with the AG as a charitable organization. Consequently, state agencies cannot contract with NFPS which are not current with their charities registration filing requirements. As of 1/1/08, the OSC required contracting agencies to provide proof that a NFP is up-to-date with its charities registration at the time any contract involving a NFP is submitted to it for review. (Religious-based charities are generally exempt from registration.). Consequently, NFPS that contract with NYSDOT need to submit, together with the executed SLA, written documentation showing that their charity registration is current. Proof of current registration may be obtained from the AG by calling (212) 416-8392 or by emailing charities.bureau@oag.state.ny.us.
4.3.1 Three-Party Agreements and Third-Party Agreements

A *Three-Party Agreement* is one in which NYSDOT is asked to contract with two parties simultaneously in one document. NYSDOT does not as a rule enter into a three-party agreement for locally administered projects.6

A *Third-Party Agreement* is an arrangement wherein the Sponsor has entered into a State-Local Agreement (SLA) with NYSDOT for the purpose of receiving federal and/or State funds to assist in completing a federal-aid transportation project and there is also a separate, direct one-to-one contractual relationship between the Sponsor and a third party (e.g. NGO, multiple NGOs or other government organization). This is for the purpose of progressing said federal-aid transportation project.

While an agreement between the primary Sponsor and the third party would be required to serve the purposes and conform to the requirements of the program through which funding is to be provided, such third-party agreement would not be developed by NYSDOT, nor would NYSDOT be a party to such agreement. NYSDOT, however, reserves the right to audit and to disapprove such third-party agreement if it fails to meet program requirements. Furthermore, NYSDOT reserves the right to review and approve certain agreements between the Sponsor and certain third parties, including, but not limited to, railroads, utilities, and property owners where property is acquired under the project.

Certain programs such as the Transportation Enhancement Program (TEP) mandate a process in which projects are selected through a formal application process. Program rules permit applications to be submitted by NGOs (chambers of commerce, civic organizations, or other Not-for-Profits). In such cases, NYSDOT would enter into a two-party project agreement with a governmental organization which agrees to act as Sponsor. As part of its responsibility to oversee and administer the project through completion and close out, the Sponsor would then be required to enter into a secondary or “subrogate” agreement with the NGO.

4.4 SPONSOR BUDGETING, AGREEMENT APPROVAL AND RESOLUTIONS

The Sponsor resolution attests that the Sponsor’s legislative body has approved the project and authorized sufficient funding to first-instance the full amount of the federal and non-federally aided project costs. Sponsors will authorize project spending either in their budgets or by separate resolutions. Funding authorizations may proceed in accordance with the phasing of projects, which are often multi-phased and multi-year. Sponsors who maintain capital plans must reflect multi-year spending expectations in these plans.

The municipal resolution (for public authorities or corporate Sponsors, comparable corporate resolution) provides project approvals and funding authorizations. If the approvals are granted through other actions, (e.g., budget-related appropriations) the SLA must make reference to such actions. To the extent these actions are limited to a particular phase or project description, later phases or scope modifications to the project will generally require subsequent approvals and funding resolutions.

---

6 The NYSDOT Local Program Bureau reserves the right to make an exception and allow three-party agreements for local projects in circumstances where it has determined that to do so is in the public interest, after consultation, as needed, with Division of Legal Services, Contract Management Bureau, Regional Planning and Program Management staff and other NYSDOT staff.
4.5 ADMINISTRATION OF STATE-LOCAL AGREEMENTS

4.5.1 Federal Reimbursement Process

The federal reimbursement process is described in detail in Chapter 5, Accounting and Reimbursement Procedures. The Sponsor must understand costs incurred on the project prior to authorization of federal funds are not reimbursable and the RLPL will not request authorization of federal funds until he or she has received the signed local agreement from the Sponsor. In addition, reimbursement of authorized costs cannot be made until the SLA has been fully executed and approved by the Office of the State Attorney General (AG) and the Office of the State Comptroller (OSC).

The requirement regarding the timing of the authorization request applies strictly to the original SLA. With respect to Supplemental Agreements (SAs) to the SLA which may be needed to initiate a subsequent project phase or to accommodate an increase in project cost or scope, the Federal Highway Administration (FHWA) is permitting NYSDOT flexibility on the timing of the request for authorization of funds so as not to cause unnecessary delays in progressing an ongoing project. Signed SAs, however, will still be required to be in place and approved by the AG and the OSC before reimbursements for costs incurred on work performed under the SA can be made.

NYSDOT will apply federal funds only for work and items eligible for federal participation under Title 23 of U.S. Code as amended which requires federal-aid eligible projects to be on the Federal-Aid Highway System (FAHS), except for bridge, safety and certain enhancement projects which can be located off the FAHS.

NYSDOT will administer federal funds for the benefit of the Sponsor for the federal share and will fund the applicable percentage designated in Schedule A as federal-aid participating costs incurred in connection with the work covered by the agreement, subject to the limitations set forth in the Schedule A. Included among the federal participating items are the actual cost of employee personal services and leave and fringe benefit additives. Other participating costs may include materials and supplies, equipment use charges or other federal participating costs directly identifiable with the eligible project.

NYSDOT will make reimbursements periodically upon request and certification by the Sponsor, based on the following:

a. Billings submitted by the consultant;
b. Payment estimates prepared by NYSDOT’s Engineer-in-Charge; or
c. Billings prepared by the Sponsor in accordance with NYSDOT requirements, based on costs incurred as disclosed by the records thereof, as required by the Project, with adjustments to be made after audit by NYSDOT or FHWA.

The frequency of billing must be in conformance with that stipulated in the NYSDOT Standard Specifications; Construction and Materials (section 109-06, Contract Payments). NYSDOT recommends that bills not be submitted more frequently than monthly for a typical project. In all cases, bills must be submitted at least once every six months.

For work performed by NYSDOT, NYSDOT will directly apply federal aid and the required Sponsor Deposit to the non-Federally-aided portion and, if applicable, will request Marchiselli aid to the Sponsor as described below in section 4.5.2.
On January 22, 2010, the Governor’s Office issued a memorandum to all State agencies and public authorities directing all contracts, grants and purchase orders executed after February 28, 2010 to include a provision that contractors and grantees agree to accept electronic payments (in lieu of payments by check) unless the agency head grants an exemption based on extenuating circumstances. Therefore, payment for invoices submitted by the Sponsor for work completed under an SLA will only be made electronically unless payment by paper check is expressly authorized by the NYSDOT Commissioner.

In order to receive electronic payments, the Sponsor must comply with the OSC’s procedures for authorizing such payments. Authorization forms are available at the State Comptroller’s website or by email: epunit@osc.state.ny.us.

4.5.2 Marchiselli Reimbursement Process

1. Non-Federal Marchiselli Share: The Marchiselli Program’s enabling legislation provides State funds to be used for a portion of the non-federal share of a federally aided transportation project. Under the program, Municipal Sponsors progressing projects on local highway systems through a federal aid highway program may be eligible for State reimbursement of up to 75% of the non-federal share. When otherwise qualified, federally aided project phases must have a total non-federal cost of $5,000 or more. Assuming a 20% non-federal share, all Marchiselli-qualified projects or phases exceeding $25,000 in total costs are potentially eligible for a Marchiselli matching share Marchiselli Program funds are reimbursed by the Office of the State Controller.

2. Reimbursement Process: The Sponsor must comply with the OSC’s procedures cited above for reimbursements made electronically by New York State, as described in section 4.5.1 of this chapter, Federal Reimbursement Process.

When a project using Marchiselli Program monies is to be state-administered (progressed by NYSDOT), a deposit is required. The deposit should be shown in Section C of the Schedule A attached to the State-Local Agreement (SLA). The reimbursement process for state-administered Marchiselli Program federal aid phases can begin only after a fully executed SLA and the required Marchiselli Deposit Transmittal (CP74) form are received and verified by NYSDOT. If a project using Marchiselli Program funds is locally (Sponsor) administered, no deposit is required.

4.5.3 Delays in Payments or Loss of Maximum State Marchiselli Funding

Payment Delay Factors – Either of the following will cause the delay of State Marchiselli reimbursement:

- If the Sponsor does not execute the SLA, including the timely execution of a Supplemental Agreement (SA) necessitated when costs exceed those estimated in a prior Schedule A.

- If the Sponsor does not deposit sufficient funds for State-administered project phases upon execution of a SLA.

Loss of Maximum State Marchiselli Reimbursement – Failure to execute the State-Local Agreement within two years (2) years from the approved allocation will result in rescission of the

---

7 www.osc.state.ny.us/epay/index.htm
initial State commitment for such project phase(s) and concomitant release of programmed Marchiselli funds. Furthermore, any project approved by the State for Marchiselli funds through an executed SLA which has not proceeded under the current phase within two years of the authorization of funds will be rescinded, unless a waiver is obtained from NYSDOT. Once commitments are rescinded and funds released, the Sponsor will have to reapply for the allocation through the Region.

When the required Sponsor deposit for a State-administered project has not been verified within twelve (12) months of execution of the SLA, any amount of Marchiselli Program funds remaining for such project or project phase(s) will be declared surplus by NYSDOT. In such cases, all surplus funds will be reallocated for use with the next year’s Marchiselli allocation request. It is imperative that Sponsors monitor their projects and SLAs closely to avoid such potential loss of funds.

4.5.4 Reimbursement Requirements Related to Bonded Marchiselli Match

The Sponsor’s reimbursement requests are restricted to eligible project costs. To be classified as an “eligible project cost” the original expenditure must have been paid within the past 15 months to comply with Federal Tax Law (26 CFR 1.150-2 (d)(2)(i)) which governs fund disbursements from the issuance of tax-exempt bonds. Hence, expenditures paid more than 15 months prior to the reimbursement request are ineligible for reimbursement. This requirement specifically applies to reimbursements under the Marchiselli Program and Bridge NY Program Culvert Projects.

4.5.5 Extended Records Retention Requirements for Bonded Marchiselli Match

To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations, Part 26, relating to bonding Marchiselli match and to ensure that NYSDOT may authorize the use of such funds for a project, the Sponsor must retain the following documents in connection with these projects:

a. Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property financed with proceeds of the bonds.

b. Documents, if any, evidencing the sale or other disposition of the financed property.

The Sponsor must agree to retain the records described above, which are used by the Sponsor in connection with the administration of the project, for thirty-six (36) years after the date of NYSDOT’s final payment of the eligible project cost(s).

Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the project agreement and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor’s repayment of funds distributed, to the Sponsor under the project agreement.

4.6 AGREEMENT AMENDMENTS AND SUPPLEMENTS/NO COST TIME EXTENSION

4.6.1 Supplemental State-Local Agreements

The Supplemental Agreement process facilitates amending or supplementing agreements, typically to add project funding or phases. This is accomplished through Supplemental Schedule
As and Supplemental Schedule Bs under a brief Supplemental Agreement Cover describing changes to the original SLA and bearing the required signatures and approvals needed to constitute a contract amendment. Supplemental Agreements follow the same contract approval process as the original agreement but generally without the need to revisit all of the terms and attachments in the original. Depending on the scope of the prior local resolution(s), an additional resolution may or may not be required. Because Sponsors typically authorize funding in conjunction with the project phase being contracted, additional resolutions, however, are the norm. (See Appendices for sample Supplemental Agreement Cover).

4.6.2 No-Cost Time Extensions

As an addendum to the Supplemental SLA process, a streamlined procedure has been created to expedite “No-Cost Time Extensions” for those cases in which the completion date of a project needs to be extended but the project cost will remain the same. A No-Cost Time Extension does not require a new Sponsor resolution or Supplemental Agreement Cover, nor does it require review and approval by the AG and the OSC; only the signatures of the Sponsor and NYSDOT (see Appendices for sample No-Cost Time Extension form).

Note: When requesting a No-Cost Time Extension, federal authorization dates should be verified, as a change in completion date may require a change in federal authorization dates.

4.7 STATE-LOCAL AGREEMENT CLOSEOUT

SLA close-out is necessary to release funds or funding commitments no longer needed for a completed project and to permit re-programming of funds or funding commitments to new projects. Project close-out should be completed within six (6) months of the Sponsor’s final acceptance of the completed work. Information on project closeout is contained in Chapter 17.

4.8 FEDERAL AND STATE SINGLE AUDIT

Sponsors are required to comply with the provisions of U.S. Office of Management and Budget Circular A-133 Federal Single Audits codified in 2 CFR 2008. The Sponsor might also be required to provide an audit of NYSDOT State-funded programs with total annual expenditures greater than $100,000 if a Federal Single Audit is required. State-funded programs include snow and ice control on state highways, State Multi-Modal Program, State Transit Operating Assistance (STOA), Consolidated Local Street and Highway Improvement Program (CHIPS), Marchiselli Program, etc. Information on the Federal and State Single Audit process is contained in Chapter 16.

4.9 NON-COMPLIANCE/INELIGIBLE COSTS/DBE UTIORIZATION PLAN

If the Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with Federal requirements, the Sponsor will not be reimbursed for ineligible activities within the affected contracts. In particular, the Sponsor must ensure that the prime contractor has a Disadvantaged Business Enterprise (DBE) Utilization Plan and complies with such plan. If, without prior written approval by NYSDOT, the Sponsor’s contractors and subcontractors fail to complete work for the project as proposed in the DBE Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend the SLA or such portion of the SLA or (2) assess liquidated damages in an amount of up to 20% of the pro rata share of the Sponsor’s

8 http://www.ecfr.gov/cgi-bin/text-idx?SID=e554976a44f0e59264659d28129d56c2&mc=true&node=se2.1.200_1501&rgn=div8.
contracts and subcontracts funded in whole or in part through the SLA for which contract goals have been established (see NYSDOT’s cost recovery and repayment process in Chapters 5 and 17).

4.10 REFERENCES

Executive Law, Article 7-a
General Municipal Law, Article 1, Section 2
State Finance Law, Section 12(2)(a)
State Indian Law, Articles 3-10
Marchiselli Program, Chapter 329, Chapter 330 and Chapter 331 of the laws of 1991
OMB Circular A-133 Federal Single Audits
Table 4-1  NYSDOT Federal Aid Contracts/Agreements

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Description/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Aid Local Project Agreement</td>
<td>Federal Aid/Marchiselli Program projects are authorized and proceed by phase. Each Phase is documented on the Schedule A attached to the Agreement. Multiple phases can be combined within one agreement.</td>
</tr>
<tr>
<td>Emergency Relief Project Agreement</td>
<td>State-Local Agreement with Sponsor to participate in the FHWA Emergency Relief (ER) program.</td>
</tr>
<tr>
<td></td>
<td>May be prepared as soon as ER funding is approved, using estimated costs contained within an approved Detailed Damage Inspection Report (DDIR) to prepare Schedule A.</td>
</tr>
<tr>
<td></td>
<td>May be prepared after final costs are determined, using actual costs to prepare Schedule A.</td>
</tr>
<tr>
<td>Supplemental Agreement</td>
<td>The State-Local Agreement may be modified with a Supplemental State-Local Agreement using a Supplemental Agreement Cover.</td>
</tr>
</tbody>
</table>

Table 4-2  NYSDOT Miscellaneous Local Contracts/Agreements

<table>
<thead>
<tr>
<th>Contract Type</th>
<th>Description/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Legislative Initiative Project Agreement (i.e., Member Items)</td>
<td>These contracts may take into account other project funding sources.</td>
</tr>
<tr>
<td>Betterment Project Agreement</td>
<td>NYSDOT performed betterment funded by or through a Sponsor.</td>
</tr>
<tr>
<td></td>
<td>Used when NYSDOT includes work in a project for improvements to Sponsor facilities not directly required by the project. These are included at the Sponsor’s request and funded by the Sponsor. Not to be confused with projects completed under a Highway Work Permit alone.</td>
</tr>
<tr>
<td></td>
<td>Betterment expenses are not eligible for Marchiselli Program funding.</td>
</tr>
<tr>
<td>State System Project Agreement (Reverse Betterment)</td>
<td>Sponsor performs on-state system work at NYSDOT expense. Identifies funding and roles and responsibilities where the Sponsor performs work on the State system.</td>
</tr>
<tr>
<td></td>
<td>While a reverse betterment itself is not eligible for Marchiselli Program match, the remainder of the local federal-aid project of which it is a part may be.</td>
</tr>
<tr>
<td>Multi-Modal (MM) Project Agreement</td>
<td>An agreement for all transportation modes which require contractual agreements (i.e., agreements involving all privately owned and municipally-owned facilities).</td>
</tr>
<tr>
<td></td>
<td>State Multi-Modal program funds cannot be used to match federal funding on a federal aid highway or highway-related project. Multi-Modal funds can, however, be used to fund non-federally aided phases of such project or for an otherwise eligible overmatch. A Multi-Modal agreement, separate and distinct from the Federal Aid Local Project Agreement, is required.</td>
</tr>
</tbody>
</table>