

**Interagency Guidance: Transportation Funding
for Federal Agency Coordination
Associated with Environmental Streamlining Activities**

Revised March 2006

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OVERVIEW

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). With guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion, SAFETEA-LU represents the largest surface transportation investment in our nation's history. The two landmark bills that brought surface transportation into the 21st century—the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21)—shaped the highway program to meet the nation's changing transportation needs. SAFETEA-LU builds on this firm foundation by containing a provision authorizing States to provide Title 23 funds to agencies performing certain environmental review activities and preserving any funding agreements in place pursuant to it. SAFETEA-LU promotes more efficient and effective Federal surface transportation programs by focusing on transportation issues of national significance, while giving State and local transportation decision makers more flexibility for solving transportation problems in their communities.

The purpose of this guidance is to provide a common understanding among the U. S. Department of Transportation (USDOT), State Departments of Transportation (DOT), local transit operators, and Federal resource agencies regarding options for using funding under Title 23 to support Federal resource agency coordination for streamlining the review of Federal-aid transportation projects. Funding mechanisms, eligible activities, and recommended elements of interagency agreements are identified in this guidance to provide the agencies with the tools needed to develop mutually beneficial agreements to meet their environmental stewardship and streamlining goals and those of SAFETEA-LU. This guidance lists several other funding mechanisms currently being used and includes in the appendices a template that should be helpful as interagency agreements are being developed. Examples of interagency agreements and summaries of associated best practices/lessons learned to expedite environmental reviews are also included.

For further information regarding environmental streamlining, please refer to FHWA's website <http://environment.fhwa.dot.gov/index.asp> . It contains an inventory of information regarding current activities, best practices, and inventories and can be used as a reference for environmental stewardship and streamlining.

I. INTRODUCTION

SAFETEA-LU has increased Federal transportation funding without a corresponding increase in Federal agency staff. This substantial increase in project funding highlights the need for measures to improve the way project development and environmental review processes are executed. The expectation of more intensive involvement by Federal agencies impacts budgets and personnel resources that are already strained. In addition, State DOTs are requesting early involvement and coordination from Federal resource agencies to support streamlining the environmental review process. These constraints need to be addressed in order to expedite and improve the environmental review process. Congress enacted Section 6002 of SAFETEA-LU, which is codified in Subchapter I of chapter 1 of Title 23 USC section 139. Section 139(j), "Assistance to Affected State and Federal Agencies", allows a State to use funds made available to them under SAFETEA-LU or chapter 53 of Title 49 to provide additional resources to Federal agencies (including the USDOT), State agencies, and Federally recognized Indian tribes participating in the environmental review process. Section 139(j) funds may only be used for projects in a given State that support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.

The purpose of this guidance is to provide the USDOT, Federal Highway Administration (FHWA) Division offices, State DOTs, local transit operators, Federal resource agencies, and Federally recognized Indian tribes with the tools needed to develop mutually beneficial agreements to meet the goals of SAFETEA-LU. Funding agreements must be in compliance with Federal and state contracting and finance laws and

procedures. Title 23 allows interagency funding transfers to occur in anticipation of work to be done or as reimbursement for work already completed. Although SAFETEA-LU provides a mechanism for states to use Federal-aid funds, other funding mechanisms are available and may be used in conjunction with or instead of those under Title 23.

II. KEY POINTS

Several funding mechanisms and relevant activities associated with developing Federal cost-reimbursement agreements are identified. The information reflects common elements contained in interagency agreements where the Federal resource agencies, FHWA Division offices, and State DOTs are accomplishing environmental streamlining goals. SAFETEA-LU identifies activities that are eligible for funding to include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements. Interagency agreements should include an explanation of how the funded activity will expedite time limits for environmental reviews that are less than the customary time necessary for such review. Where a proposal is to fund activities that are not project-specific, such as process improvement or programmatic agreements, the criteria relating to environmental review time limits will be deemed satisfied so long as the efforts are designated to produce a reduction in the customary time for environmental reviews. A baseline of current activities and the associated times would be very helpful in this explanation. The approvals for the additional funding may only be for amounts that are necessary for the Federal agencies, the State agencies, or Federally recognized Indian tribes to meet the shorter time limits for the environmental review and related activities, or to complete the additional planning or program activities that result in expedited reviews.

In addition to the funding efforts described in this guidance, FHWA and FTA field offices should continue to work with State DOTs and Federal resource agencies to explore ways to collectively "work smarter" through informal cooperative and programmatic approaches. The use of other communication techniques (e.g., the respective environmental streamlining and RE: NEPA websites, and videoconferencing) that can improve the efficiency, effectiveness, and economy of interagency coordination is also encouraged. The following information is included in the appendices:

- Appendix A: Template for interagency agreements involving additional personnel;
- Appendix B: Examples of interagency agreements currently being used by several State DOTs, including a summary of lessons learned/best practices used to expedite reviews;
- Appendix C: A report by the AASHTO Center for Environmental Excellence on DOT funded positions (May 2005). This report presents the results of an effort to survey fifty State DOTs regarding their funding and/or staff support to resource agencies to facilitate consultation and expedite permit processing; and

Please refer to FHWA's website: <http://environment.fhwa.dot.gov/index.asp> for additional information regarding current environmental streamlining activities, references, and best practices.

III. LEGISLATIVE AUTHORITIES

Cost-reimbursement agreements can be implemented under the following transportation authority, as appropriate:

Safe, Accountable, Flexible, Efficient transportation Equity Act: A Legacy for Users (SAFETEA-LU)

Section 6002 of the Act, codified in Subchapter I of chapter 1 of title 23, United States Code, section 139(j), states:

- (1) *IN GENERAL-* For a project that is subject to the environmental review process established under this section and for which funds are made available to a State under this title or chapter 53 of title 49, the Secretary may approve a request by the State to provide funds so made available under this title or such chapter 53 to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State. Such funds may be provided only to support activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in that State.
- (2) *ACTIVITIES ELIGIBLE FOR FUNDING-* Activities for which funds may be provided under paragraph (1) include transportation planning activities that precede the initiation of the environmental review process, dedicated staffing, training of agency personnel, information gathering and mapping, and development of programmatic agreements.
- (3) *USE OF FEDERAL LANDS HIGHWAY FUNDS-* The Secretary may also use funds made available under section 204 for a project for the purposes specified in this subsection with respect to the environmental review process for the project.
- (4) *AMOUNTS-* Requests under paragraph (1) may be approved only for the additional amounts that the Secretary determines are necessary for the Federal agencies, State agencies, or Indian tribes participating in the environmental review process to meet the time limits for environmental review.
- (5) *CONDITION-* A request under paragraph (1) to expedite time limits for environmental review may be approved only if such time limits are less than the customary time necessary for such review.

Payments on Federal-aid Projects undertaken by a Federal Agency, 23 U.S.C Section 132

Section 132 states:

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth

in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

IV. REQUIREMENTS FOR COST REIMBURSEMENT AGREEMENTS UNDER SAFETEA-LU

Any Federal or State agency or Federally recognized Indian tribe who is anticipated to provide activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery to be eligible for funding reimbursement under §139(j). The §139(j) funding can only be used for the additional resources that are needed for Federal agencies, State agencies, or Federally recognized Indian tribes to meet the time limits established for environmental reviews.

§139(j) funds cannot be used to increase Congress's general appropriation for an agency's operating expenses. Acceptance and use of §139(j) funding requires a determination by FHWA that the requested level of service or activity is above and beyond what typically could be provided as a part of regular operations funded under the agency's general appropriation. A baseline determination is necessary in order to avoid a conflict with the legal prohibition against a Federal agency augmenting its Congressional appropriations. Work that might be performed on other matters cannot be paid for under §139. For example, if an agency hires a temporary employee to help expedite environmental reviews on highway or transit projects, but the employee also works on other matters, the reimbursement will be limited to only a prorated portion of the employee's salary based on the amount of time spent on work related to highway and transit environmental reviews.

Funds cannot be used for routine project reviews, but can only be used for the purpose of expediting a review. This means that the agency receiving the funds must have agreed that, with the assistance of the additional resource, it will conduct its environmental reviews in a time frame that is less than the time it would ordinarily have taken to complete this review. The "customary time" for a review should be based on the best data available or should reflect the best estimate of the agency based on its historical experience. SAFETEA-LU has added planning activities as eligible activities for funding, and therefore, State agencies may include Metropolitan Planning Organizations (MPO), local governments, and tolling commissions that have approved processes for project delivery. Baselines of services and associated times need to be done to determine the contribution, reduction, and/or improvement to transportation planning and project delivery.

The decision to participate in this funding option remains with the States agencies, which are encouraged to take a flexible approach to the concept of funding assistance to affected State and Federal agencies.

There are three steps to using the funding under §139(j).

1. A State must submit a request to the FHWA Division Administrator to use Federal-aid funds to pay for costs of activities that contribute to expediting and improving transportation project planning and delivery for projects in that State. The request should identify the additional resource(s) (staff position, travel, etc.) needed and describe the work that the requested resource(s) would perform or other assistance it would provide. The request should also explain how this additional resource(s) would enable the agency to directly and meaningfully contribute to meet time limits for environmental reviews on highway or transit projects that are less than the customary time for review.

Where a proposal is to fund activities that are not project-specific, such as process improvement or programmatic agreements, the criteria relating to environmental review time limits will be deemed satisfied so long as the efforts are designed to produce a reduction in the customary time for environmental reviews in the State. The request should explain why the agency cannot accomplish these time limits with its current resources.

2. The Division Administrator must approve this request, like other approvals regarding project eligibility, as either a part of the original project agreement and authorization, or as a subsequent modification. If the work will affect a number of projects, the costs should be prorated across those projects.
3. An agreement should be executed between the State and the Federal agency upon approval of the funds.

Please note that the interagency agreement(s) must be valid in accordance with state procurement requirements.

V. KEY ELEMENTS of INTERAGENCY AGREEMENTS

As a normal practice, the FHWA and FTA encourage appropriate Federal and State agencies and Federally recognized Indian tribes to participate in the project development process, become participating agencies, perform routine analyses, conduct studies (if appropriate), and/or prepare a portion of the environmental documentation. However, Federal and State agencies and Federally recognized Indian tribes cannot substantially increase their involvement in planning, scoping, and alternatives development without additional resources. This up-front investment, if well-planned and executed in a timely manner, will result in lower overall project costs and reduced time periods, producing a win-win situation. Agencies should consider the following elements when preparing interagency agreements, and customize the agreements to meet their specific needs. A generic template for interagency personnel agreements between a State and a Federal agency is provided in Appendix A. Examples of interagency agreements currently in use by several State DOTs are included in Appendix B.

PREAMBLE:

- Establish the purpose, background, and objectives. The agreement should address why the parties are engaging in the agreement; what benefits the respective agencies hope to realize; how the agreement is expected to improve transportation projects, environmental quality, and timeliness of decisions.
- Identify the funding mechanism(s) and resources to be funded under the agreement (e.g., project activity, FTE/staff, research, etc.).
- Explain how the agreement directly and meaningfully contributes to expediting and improving transportation project planning and delivery. The agreement should not be construed in such manner or imply that either party is intending to abrogate its obligation and duty to comply with its relevant statutory and regulatory responsibilities.

SCOPE:

- Clearly define the scope of work to be performed.
- Identify priority areas, if any, on which the State DOT or transit agency would like the Federal or State agency or Indian tribe positions or activities to focus their efforts (e.g., individual projects, transportation project planning, types of projects, certain geographical bounds, programmatic agreements, training, checklists, information gathering, mapping, etc.) Also, if expertise is needed in a particular discipline, or if there are any special requirements, those should be clearly articulated in the agreement. The agencies may want to consider, as appropriate, developing a process for identifying future priorities.
- Identify the expected work product. This should include an explanation of how the work will reduce the time for completing environmental reviews or reaching decisions on specific projects.
- Where a proposal is to fund activities that are not project-specific, such as process improvement or programmatic agreements, the criteria relating to environmental review time limits will be deemed satisfied so long as the efforts are designed to produce a reduction in the customary time for environmental reviews in the State.

ROLES AND RESPONSIBILITIES:

- Clearly define the roles and responsibilities of the parties to the agreement. What will each agency do to facilitate a smooth working relationship? How will they handle routine coordination? How will they resolve disputes?
- Describe how conflicts of interest (e.g., time allocation for the work, conflict between agency responsibilities, etc.) will be addressed through supervisory arrangements.
- Emphasize that signatory agencies should focus on resolving issues in the planning (pre-scoping) and scoping stages, where environmental issues can most readily and efficiently be resolved.

GENERAL TERMS:

- Identify as appropriate, the costs to be covered (e.g., for personnel, travel, training, etc.)
- Identify how the needed resources were determined and the costs estimated
- Identify the source of the funds and how payment is to be made. The agreement must comply with the appropriate state and Federal agency's procurement and funding requirements.
- Describe how the expenditure of funds and accounting will be monitored, and include any restrictions on their use.
- Identify the commitment term (e.g., multi-year, etc.).
- Describe the agreed upon coordination process for progress reports.
- Identify the agencies' contacts.
- Identify the process for amending the agreement.
- Other Agreements: Reference or attach existing cooperative interagency agreements (e.g., NEPA/ 404 merger agreements, etc.), and existing and ongoing Federal, State, and local plans that complement the workings and relationship between the agencies involved.

PERFORMANCE MEASURES:

- Identify performance measures and evaluation methods (including a pre-set evaluation period) to be used to determine the effectiveness of the agreement. This will help all parties to understand, manage, and allow for modification of the agreement, as necessary.
- Performance measures can be grouped into one or more of the following general categories:
 - *Effectiveness*: Measures the degree to which the process output (work product) conforms to requirements.
 - *Efficiency*: Measures how well the work product was completed at minimum resource cost.
 - *Quality*: Measures the degree to which a product or service meets customer requirements and expectations.
 - *Timeliness*: Measures whether a unit of work was done correctly and on time. Criteria must be established to define what constitutes timeliness for a given unit of work. The criteria are usually based on customer requirements.
 - *Productivity*: The value added by the process divided by the value of the labor and capital consumed. The Environmental Streamlining National MOU encourages agencies to avoid delays and promotes enhanced environmental protection.
- Agencies should also consider conducting a baseline study of the past 2 - 3 years to establish the current review times to help to identify a definitive point from which to measure improvement.
- Be flexible. Have contingencies to accommodate changing needs during the term of the agreement.

VI. OTHER COST REIMBURSEMENT MECHANISMS

This section lists other statutory authorities and types of eligible activities State DOTs, transit operators, and Federal resource agencies may enter into for the purposes of environmental streamlining and cost-reimbursement. Please note that agencies other than the USDOT have lead responsibility for implementing the following statutes. Any reimbursable agreements relying on these authorities should be developed in consultation with the appropriate agency having primary responsibility.

State DOTs, transit operators, and Federal resource agencies should address the question of whether to fund a position to work exclusively on State priority projects or to fund one or more part-time positions on a project-specific basis. Funding levels that do not result in increased staffing levels for the Federal resource agencies are generally unable to achieve the environmental streamlining goals.

Statutory Authorities

The Fish and Wildlife Act of 1956 (16 U.S.C., Chapter 9 §742e and f(a)(4))

The Fish and Wildlife Act of 1956 authorizes the USFWS's use of another agency's funds as follows:

". . . The Secretary, with the assistance of the departmental staff herein authorized, shall . . . take such steps as may be required for the development, advancement, management, conservation and protection of fish and wildlife resources including, but not limited to, research, development of existing facilities, and acquisition by purchase or exchange of land and water, or interests therein." (Sec. 742f(a)(4)).

The law states that the *"Secretary may request and secure the advice or assistance of any department or agency of the Government in carrying out the provisions of this Act, and any such department or agency which furnishes advice or assistance to the Secretary may expend its own funds for such purposes, with or without reimbursement from the Secretary as may be agreed upon between the Secretary and the department or agency." (Sec. 742e(c))*

Under the terms of an interagency agreement, the FWS can hire additional staff whose salary is paid by the State DOT (the State's expenses are reimbursed using apportioned Federal-aid project funds).

The additional FWS staff can work exclusively on State DOT actions: planning (pre-scoping), project scoping, and alternatives development. The most efficient time to successfully resolve environmental issues is at the planning (pre-scoping) and scoping stages.

The Intergovernmental Cooperation Act (31 U.S.C. 6505)

Several Federal agencies have implemented interagency agreements under this authority.

The Intergovernmental Cooperation Act authorizes Federal agencies to provide specialized or technical services to State and local governments. Under section 6505 -

"(a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training

activities, surveys, reports documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

(b) The head of an executive agency may provide services prescribed by the President under this section to a state or local government when -

(1) written request is made by the state or local government; and (2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the state or local government making the request.

Note: In the South Carolina DOT interagency agreement (Appendix B) with the U.S. Fish and Wildlife Service(USFWS), this statute and Public Law 105-277, were used as authorities for the USFWS to receive advance payment before incurring any expenditures and providing any goods or services.

Revised Intergovernmental Personnel Act (IPA) Mobility Program (5 CFR Part 334)

The Intergovernmental Personnel Act Mobility Program provides for the temporary assignment of personnel between Federal, State, local, and Indian tribal governments, institutions of higher learning, federally funded research and development centers, and other eligible organizations. It offers additional flexibility for augmenting the staffing available to Federal resource agencies to carry out their missions.

Examples of activities eligible for funding under these mechanisms

Intergovernmental Personnel Act of 1970 (IPA):

A staff member from a Federal resource agency is detailed to a State DOT to help scope issues and conduct environmental analysis for its projects. Although the staff member remains a Federal employee, the state may reimburse the agency for all or part of the employee's salary and expenses. This increased attention and early involvement by the Federal resource agency should result in less time to resolve issues and smoother review. The Federal resource agency could then hire someone for the duration to "fill in," so there would not be a loss of the agency's ability to conduct its business.

A staff member from a State resource agency or from academia is obtained as additional Federal resource agency staff to assist in scoping or review of State DOT projects. An IPA must be developed in accordance with the U.S. Office of Personnel Management's (OPM) regulations and guidance. For more information, please refer to the OPM website at: www.opm.gov/programs/ipa/ipa.htm.

Assignments may be made up to two years (and may be extended) and conditions are laid out regarding total length of mobility assignments, continuation of service agreements, certifications, and necessary agreements between the agencies.

Programmatic Agreements:

Interagency agreements between State DOTs and Federal resource agencies should consider whether the State seeks more intense Federal agency involvement for the purpose of (1) expediting a specific project or projects, (2) streamlining the overall approach to decision making, or (3) some combination of these. Most State-Federal agreements to date have focused on Federal support of specific, priority projects, but State DOTs and Federal resource agencies are

encouraged to consider the broad benefits of establishing agreed upon approaches and standard operating procedures that can streamline future projects as well as those currently in the pipeline.

Determining the purpose and focus of the Federal-aid associated with environmental streamlining efforts will also dictate the skills and experience level needed of the Federal agency staff working under the interagency agreement. For example, if the State needs help with a mitigation plan for an endangered species affected by a road re-routing, a junior wildlife biologist could be brought in to develop that plan. Or, if the State primarily seeks technical assistance with deciding the preferred corridors for future highway expansion, the Federal agency may provide a mid-level employee with the appropriate technical skills in environmental mapping. However, if the State wants to develop a programmatic agreement under which certain routine actions can be handled by the state rather than the Federal resource agency, the agency would need to supply a more senior level employee who understands agency policy and legal requirements and can negotiate on behalf of the agency.

State DOTs and Federal resource agencies should also consider the benefits of funding a full-time position to work on streamlining future projects. This would reduce the need for costly mitigation, reduce delays when the projects are planned, and provide for enhancement of environmental quality. For example, if a state needs help with developing a programmatic approach to mitigation for future projects, a biologist could be dedicated to specifically develop the plan.

VII. Interagency Agreements with FHWA

In SAFETEA-LU, Congress eliminated any possible doubt about the eligibility of the FHWA and FTA to receive Federal-aid funds from the States. Congress provided that the Secretary may approve State requests to provide funds:

...to affected Federal agencies (including the Department of Transportation), State agencies, and Indian tribes participating in the environmental review process for the projects in that State or participating in a State process that has been approved by the Secretary for that State....

Congress also was clear about its intention to authorize Federal agencies to accept funding without triggering an issue of augmentation under appropriation law. The general rule concerning augmentation of appropriations is that when Congress appropriates funds for an activity, the appropriation represents a limitation, and all expenditures for the activity must come from the appropriation absent express authority to the contrary. The language of SAFETEA-LU supports the conclusion that Congress intended the FHWA and other Federal agencies to be able to receive funds above and beyond their general appropriations if the specified conditions are met. Congress expected that the funds would be in addition to general appropriations for the Federal agencies.

APPENDIX A

**TEMPLATE FOR DEVELOPING
INTERAGENCY PERSONNEL AGREEMENTS**

COOPERATIVE AGREEMENT

BETWEEN THE

(FEDERAL RESOURCE AGENCY),

FEDERAL HIGHWAY ADMINISTRATION (FHWA)
(IF APPROPRIATE)

AND THE

(STATE) DEPARTMENT OF TRANSPORTATION

RELATIVE TO

PRIORITY HIGHWAY DESIGN

PROJECT REVIEW

(DATE)

PREAMBLE:

This Cooperative Agreement (Agreement) between the _____ (*state*) Department of Transportation, the Federal Highway Administration (FHWA), and the _____ (*Federal or State agency or Indian tribe*) sets forth the responsibilities of the signatory agencies (Parties) relative to priority review of highway projects with the goal of achieving timely design and implementation of adequate, safe and economical highway improvements while also assuring such design and implementation is sensitive to the protection of _____ (*identify Federal or State Agency or Indian tribe's primary responsibility, e.g. protection of natural resources, fish and wildlife, etc.*) for which the _____ (*Federal or State agency or Indian tribe*) is responsible under Federal statute and regulation.

WHEREAS, this Agreement is entered into under the authority of _____ (*Identify funding authority*)

WHEREAS, because of federal-aid highway funding increases under the Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU), the _____ (*state DOT*) has substantially increased the number of highway construction projects the _____ (*Federal or State agency or Indian tribe*) has to review pursuant to (*list the agency's applicable statutory responsibilities*)

WHEREAS, the _____ (*Federal or State agency or Indian tribe*) has indicated that due to staff resource constraints, it is currently unable to provide the _____ (*state DOT*) with priority review and permitting decisions for the increased number of highway construction projects pursuant to its responsibilities; and

WHEREAS, the Parties have determined that it would be mutually beneficial to supplement _____ (*Federal or State agency or Indian tribe*) staffing above normal levels which were established at pre-TEA-21 highway program levels; and

WHEREAS, the Parties have determined that any supplemental staffing above normal levels would provide priority review of federal-aid highway construction projects contemplated or under design by _____ (*state DOT*); and

WHEREAS, (*state DOT*) is willing to reimburse the _____ (*Federal or State agency or Indian tribe*) for supplemental staffing to provide these functions; and

WHEREAS, the Federal Highway Administration (FHWA) has indicated and agrees that _____ (*state DOT's*) apportioned Federal-aid highway funds can be used to support this agreement and would be eligible for reimbursement at applicable federal-aid match rates; and

WHEREAS, guidance provided by _____ (*Federal or State agency or Indian tribe*) indicates such agreements and funding transfers must be able to demonstrate an improvement in performance.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties to this Agreement concur with the following responsibilities and terms.

I. AGENCY RESPONSIBILITIES

A. (state DOT) Shall:

1. Program a federal-aid project to track costs and support state payment to the (Federal or State agency or Indian tribe) for the costs contemplated by this Agreement, including:

- Salary and benefits for (number of employees) (___) full-time employee (meeting the professional standard described in Attachment ___) adjusted annually to cover appropriate step-increases and cost of living allowance (COLA) costs awarded Federal government employees at a rate equivalent to a federal white-collar (*Indicate appropriate Pay Schedule and General Schedule (GS-)*). Attachment ___ is attached by reference to this Agreement.
- Actual burdened overhead rate carried by the (Federal or State agency or Indian tribe), including:
 - Special Effective Rate,
 - Departmental Rate, and
 - General Administrative Rate.

An illustrative breakdown of these rates is shown in Attachment _____ for a (*Identify appropriate GS and step levels*).

- Travel and per-diem at federal government rates as needed to support the priority review contemplated by this Agreement.
- It is anticipated that total annual funds needed for these services will not initially exceed (\$) . Actual costs may be more or less than this amount, depending on the amount of travel needed to support the priority review contemplated by this Agreement. (state DOT) shall advance additional state payment as necessary.

In the event that (state DOT) workload allows, (Federal or State agency or Indian tribe) funding is available, and the (state DOT) Project Manager agrees, the employee may work on assignments other than (state DOT) projects and charge that work to the appropriate (Federal or State agency or Indian tribe) account. However, it is anticipated that (state DOT) workload will be sufficient to cover a full time employee. This situation would be executed only if beneficial to both agencies.

2. Upon receipt of a signed Agreement/modification, transmit an advance state payment equal to either the annual total of funds needed to support the services contemplated by this Agreement or additional funds needed to

fund any modifications. To ensure proper accounting, the State DOT should refer to the agreement number in transmitting payments to the Federal agency.

3. Review for approval, (identify frequency, e.g. monthly) (Federal or State agency or Indian tribe) submittals of actual account of expenditures for salaries, benefits, travel and indirect costs as drawn against advance state payment in support of work contemplated in paragraph 1.B.1.
4. If the (state DOT) Project Manager agrees with the Federal or State agency or Indian tribe monthly account of expenditure as submitted, an approval will be transmitted to the (Federal or State agency or Indian tribe) Project Manager within ten (10) working days. If the (state DOT) Project Manager disagrees with this submittal, a meeting to clarify the account of expenditures will be requested within (identify number of working days). In the event of a disagreement over the account of expenditures, (state DOT) pledges to negotiate in good faith towards a reconciliation of the disputed amount.
5. Reconcile and adjust federal-aid project funding and/or advance state payment to the (Federal or State agency or Indian tribe) at the point of Agreement extension, modification, or termination and upon completion of this cooperative agreement make any adjustments needed in Federal share payable as consistent with (cite appropriate USC).
6. Hold (identify frequency, e.g. quarterly, monthly, etc.) meetings with the (Federal or State agency or Indian tribe) to establish priorities and evaluate work performed under the agreement.

B. (Federal or State agency or Indian tribe) Shall:

1. (Federal or State agency or Indian tribe) shall supplement its existing staff, which currently processes (state DOT) projects on a routine basis, with qualified staff as detailed in Attachment __, and use the funds provided under this Agreement to pay the costs of salaries, associated benefits and actual burdened overhead rate; and to reimburse reasonable travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, which is incorporated into this agreement by reference.
2. (Federal or State agency or Indian tribe) shall seek to hire a permanent career professional staff person to undertake work contemplated by this agreement, and as necessary shall pay all permanent change of station (PCS) costs associated with filling the position.
3. (Federal or State agency or Indian tribe) shall ensure that 100% of the supplemental staff contemplated by this Agreement is detailed to work

on the priority projects identified by the (state DOT) in accordance with the coordination procedures defined in I.D. unless detailing to other projects is agreed to by the (state DOT) Project Manager, see I.A.1.

4. (Federal or State agency or Indian tribe) shall ensure that the supplemental staff identified in Attachment shall keep daily time records identifying the number of hours spent working on each specific (state DOT) project and any other work tasks such as those listed under I.D. relative to coordination. These records shall account for 100% of the time worked by supplemental staff, including any time spent on non- (state DOT) work. In addition, (Federal or State agency or Indian tribe) shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records for examination as required by the (state DOT) or the Federal Highway Administration and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. (Federal or State agency or Indian tribe) shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least three (3) years after the final billing is submitted. These records shall be subject to audit by the (state DOT) , as appropriate.
5. Hold (*specify frequency, e.g., quarterly, monthly, etc.*) meetings with (state DOT) to evaluate work performed under this Agreement.
6. Upon receipt of initial advance state payment supplement existing staff as expeditiously as possible to support work contemplated by this agreement.
7. Provide (specify frequency - monthly, quarterly, or semiannual, as appropriate) accounting records using an "Advice Notice" and will return unused funds to the State of at project completion or termination.
8. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount, continue the priority review of highway construction projects throughout negotiations as long as current advance state payment is sufficient to cover costs, and credit the (state DOT) for any amount determined to be a (Federal or State agency or Indian tribe) overcharge.

C. FHWA Shall:

1. Approve programming a federal-aid project to accomplish the work contemplated by this Agreement at the applicable federal-aid reimbursement rate.

2. Under the authority of _____, reimburse (state DOT) the total amount of federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.

II. SCOPE

1. In the event of conflicting transportation priorities, the, (state DOT) in coordination with the FHWA, will determine the priority listing of projects for the (Federal or State agency or Indian tribe) which will guide the (Federal or State agency or Indian tribe) supplemental staff efforts in the priority review process.
2. Initially, (state DOT) and the (Federal or State agency or Indian tribe) will hold (identify frequency, e.g., monthly, biweekly, etc.) meetings to discuss coordination of the priority review process. After a reasonable start-up period, the scheduling of these meetings may be changed at the discretion of the project managers.
3. Both (state DOT) and the (Federal or State agency or Indian tribe) agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings.
4. While the focus will be on review permitting decisions for priority (state DOT) projects, (Federal or State agency or Indian tribe) supplemental staff may also be involved in other tasks which support agency coordination and which serve to expedite the implementation of the (state DOT) highway construction program and compliance with the statutes and regulations for which the (Federal or State agency or Indian tribe) bears responsibility. Examples of other tasks which may be assigned at the request of (state DOT) and with concurrence of the (Federal or State agency or Indian tribe) include, but are not limited to *(the following are examples)*:
 - early review of projects contemplated for programming.
 - participation in agency scoping activities,
 - review of data base information relative to permit activities along the state's highway system,
 - provide detailed input on alternatives under discussion, or
 - review and provide comments on systems-level planning documents.

III. PERFORMANCE OBJECTIVES - *Example*

- A. The ____ (Federal or State agency or Indian tribe) agrees to meet the goals established by these performance indicators:
1. The ____ (state DOT) and ____ (Federal or State agency or Indian tribe) will review existing interagency coordination processes and formulate recommendations to streamline procedures and increase efficiency within three months of the individual in the position starting duty.
 2. The ____ (Federal or State agency or Indian tribe) will provide a preliminary response to ____ (state DOT) on all applications within ____ days of submission to include a status update on the expected level of complexity and the estimated future action that will be needed on the permit.
 3. Unless initially flagged as a more complex project, the ____ (Federal resource agency) will ____ (identify specific task(s), e.g. issue permits) within ____ days of receipt of a completed ____ (as appropriate, application, document, etc.) from ____ (state DOT).
 4. The ____ (Federal or State agency or Indian tribe) will meet all timelines established by regulation for ____ (identify specific task, e.g., environmental review, permit issuance, etc.) unless otherwise previously indicated or noted as an exception. The ____ (Federal or State agency or Indian tribe) will inform ____ (state DOT) if project evaluation may exceed standard processing times due to issues such as required Endangered Species Act coordination, controversial public interest factors, etc.

IV. GENERAL TERMS

- A. Length of Agreement. The length of this Agreement is ____ years from the date of signature of the last signing party unless extended or terminated as provided in III.B. and III.C.
- B. Modification and Extension. This Agreement may be modified, amended or extended in ____ increments by the mutual Agreement of the signatory parties.
- C. Termination. This Agreement may be terminated by either the ____ (state DOT) or the ____ (Federal or State agency or Indian tribe) upon ____ days written notice to the point of contact/project manager in the other agency if the party requesting termination has demonstrated that other agency has not substantially fulfilled the responsibilities and terms of the Agreement after being provided with notice and ____ days to remedy the situation.
- D. Point of Contact/Project Managers.

1. The Point of Contact/Project Manager in each signatory agency is as listed below unless such responsibilities delegated by this individual.

a. (State DOT) :

Name:

Address:

Tel: Fax: E-mail:

b. Federal or State agency or Indian tribe)

Name:

Address:

Tel:

Fax:

E-mail:

c. FHWA:

Name:

Address:

Tel:

E-mail:

E. Required Clauses.

During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

1. No member of or delegate to Congress, or appointed transportation official or commissioners, shall be admitted to any share or part of this Agreement or any benefit that may arise there from; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

2. The parties agree that in any contracts to be developed and awarded pursuant to this Agreement all design, plans, specifications, estimates of costs, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general shall at all times, conform to the applicable federal and state laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity non-discrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing and reporting provisions.

F. Continuation of Existing Responsibilities.

1. The parties to this Agreement are acting in an independent capacity in the performance of their respective functions under this Agreement, and

regardless of the funding source for any supplemental staff to be hired by the (Federal or State agency or Indian tribe) to support priority review on highway construction projects, such staff shall not be construed as an officer, agent or employee of either the (state DOT) or FHWA.

2. In no way do the (Federal or State agency or Indian tribe) , state DOT) , or FHWA intend to abrogate through this Agreement any obligations or duties to comply with the regulations promulgated under the (identify relevant statute(s)) ,

G. Other Agreements.

1. This Agreement does not preclude the signatory agencies from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreements should be consistent with this Agreement.

APPROVED FOR LEGAL SUFFICIENCY

Date: _____

BY: _____
_____(state)____ Department of Transportation

Date: _____

BY: _____

_____(state)____ Director
_____(state)____ Department of Transportation

Date: _____

Indian tribe)

BY: _____
(Name and Title for Federal or State Agency or

Date: _____

BY: _____
(Name and Title of appropriate)
Administrator
Federal Highway Administration

ATTACHMENT A

EXAMPLE

THE FOLLOWING INFORMATION IS PROVIDED AS AN EXAMPLE ONLY; AGENCIES SHOULD CUSTOMIZE THEIR AGREEMENTS AS APPROPRIATE.

Professional Standards for Supplemental Staff

One (1) specialist with experience and /or education in _____ (identify areas of expertise, e.g. Engineering, Biology, Natural Resources, or other related Environmental Science, etc) _____. Working knowledge of _____ (identify appropriate statutes, e.g., Section 404 of the Federal Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, and the Joint Federal Manual for the Identification and Delineation of Wetlands, etc. _____ is essential. In addition, an ability to travel, occasionally overnight is mandatory. Federal White Collar Pay Schedule at the full performance level of General Schedule _____. See attached Standard Job Description.

ATTACHMENT B

EXAMPLE

NOTE: The following information is provided as an example only; agencies should customize their agreements as appropriate.

An Illustrative Breakdown of Actual Burdened Overhead Rate Carried by the (Federal or State agency or Indian tribe) as added on to Labor and Per Diem

1. **General and Administrative rate**

G&A rate is ___% of all direct costs.

The G&A is used to record cost of either a general or administrative nature. These are the support services to the District that are paid for as a portion of all direct costs. These costs support things such as the executive office, office of counsel, personnel, EEO, etc. These types of costs include labor, travel, awards, training, space costs, communications, expendable property less than \$____, etc., related to the support organizations.

2. **Our special effective rate (if appropriate)**

Special effective rate is _____

Rate includes factors to absorb the cost of paid leave, holiday pay, other excused absences and government contributions. Included in the government contribution factor is the government's share of the CSRS and FERS retirement plans, social security benefits, life and health insurance benefits, survivors insurance and Medicare.

3. **Department rate (if appropriate)**

Department overhead is used to record and distribute costs incurred in the day-to-day operation of the technical organization which can not be directly identified or charged to a specific project, program or reimbursable order. Administrative costs include, training, management, budgeting, quarterly reviews, awards, supplies and materials, printing charges, GSA space costs, etc.

| Grade | Salary | Special Effective Rate |
|---------|---------|------------------------|
| GS ____ | \$_____ | _____/hour |

_____ labor hours x \$(*special effective rate*) = \$_____

G&A ____% (*amount*)

Departmental ____% (*amount*)

Total Labor \$_____

Travel _____

Total estimated costs \$_____.

Source: _____(Federal or State agency or Indian tribe contact and address)

APPENDIX B

Interagency Agreements to Promote Environmental Streamlining Summaries of Best Practices for Expedited Reviews and Lessons Learned

| Agencies | Purpose/Activity Funded | Statutory Authority | Best Practices for Expedited Reviews/Lessons Learned |
|---|---|--|--|
| Maryland DOT- SHA- MTA-FHWA- EPA (available in hardcopy only) | To provide additional resources to EPA for streamlined and expedited document review (w/in agreed upon time frames), technical assistance, consultation, and project coordination for SHA and MTA projects and the Woodrow Wilson Bridge project. | Intergovernmental Cooperation Act, 31 U.S.C., §6505 et. seq. TEA-21 §1309(e)(2)(B) | The intent of this agreement is to facilitate environmental streamlining and provide services over and beyond expectations and requirements on transportation projects. The agreement describes how the objectives will be met, includes program-based performance standards/measures; requires periodic performance reviews and documentation in monthly status reports. |
| USFWS (available in hardcopy only) | Cooperative agreement to provide additional staff to FWS for expedited document reviews & project coordination. This is a multi-year agreement for 5 years. | Intergovernmental Cooperation Act, 31 U.S.C., §6505 et. seq. | This agreement requires: FWS to review and comment on the SHA's submissions within the timeframes stipulated in "Maryland's Streamlined Environmental and Regulatory Process," or as mutually agreed upon by both agencies; and provide guidance as requested in the preparation of biological assessments, mitigation plans, environmental documents and other required documentation necessary for transportation project development process. |
| Montana DOT- USACOE- FHWA | Priority highway construction project review: To provide staff to the COE for §404 and §10 reviews of projects under design or contemplated by MDT. This is a multi-year agreement initiated in 1999 for 4 years. The funding includes overhead costs. | Intergovernmental Cooperation Act, 31 U.S.C. §6505; 10 U.S.C. §3036d; 23 U.S.C. §132** | The focus of the agreement is on reviewing permitting decisions for priority projects. Provisions for expedited reviews are considered other tasks that could be assigned by MDT and include but not limited to the following: early review of projects; participation in scoping activities; review database information associated with permit activities; provide detailed input on alternatives under consideration; or review and comment on system-level documents. Performance indicators require: MDT and COE to review existing interagency coordination processes |

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| | | | <p>and develop recommendations to streamline procedures and increase efficiency w/in 3 months of the staff's starting date; the COE is to provide a preliminary response to MDT on all applications w/in 30 days of submission, to include status update on expected level of complexity and estimated future action that may be needed.</p> <p>To address the COE's specific requirement for payment-in-advance, the state used 23 U.S.C §132 as a mechanism to transfer advanced funds at the time the agreement was signed and to obtain immediate reimbursement of the Federal-aid share. The FHWA division office was a signatory. The individual in the position has been very effective.</p> |
| <p>South Carolina DOT — USFWS (available in hardcopy only)</p> | <p>To increase and facilitate FWS involvement in the SCDOT planning and environmental coordination process.</p> <p>This agreement provides for a full time Biologist to work on SCDOT projects and provide expedited document review and project coordination.</p> | <p>US Fish and Wildlife Act of 1956 (16 U.S.C., 742f(a)(4))</p> <p>Intergovernmental Cooperation Act (31 U.S.C. 6505)</p> | <p>SCDOT uses Federal funds for 4 positions, i.e. 1 at each of the following resource agencies: (SHPO) at SC Dept. of Archives and History; SC Dept. of Natural Resources; USFWS; and SC Dept. of Health and Environmental Control.</p> <p>The agreements are established for separate Federal-aid projects; require agencies to baseline and demonstrate expedited time frames, and establish goals</p> <p>Performance Measures: Maximum review times are written into the agreements and if the times are not met, the position will not be funded for another term.</p> <p>SC DOT developed a performance survey requiring the personnel in these positions to provide monthly summaries of their work and the review times. Thus far, the review times from the SHPO office have averaged 6.6 days (previously 30+ days); overall time</p> |

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| | | | <p>to get a 404/401 permit has been reduced from 330 to 220 days.</p> <p>These personnel are becoming involved in an environmental screening process for long-range transportation plans. The goal is to keep environmental challenges from becoming environmental obstacles and to address the issues before they reach the project development stage.</p> <p>SCDOT used the Intergovernmental Cooperation Act and Public Law 105-277, as authorities for the USFWS to receive advance payment before incurring any expenditures and providing any goods or services.</p> |
| Pennsylvania DOT-EPA | To provide staff to EPA for expedited document review and project coordination. Agreement term is 6 years. | Intergovernmental Personnel Act of 1970 | EPA staff to review and respond to the state's submissions within the mutually agreed upon 20 working days upon receipt of the complete project documentation. A 30 day review period is allowed for DEIS. Performance review standards were developed cooperatively. |
| USFWS (available in hardcopy only) | Provides staff to FWS for expedited document review and project coordination. This 5 year interagency agreement was amended in 1995. | Intergovernmental Cooperation Act, 31 U.S.C., §6505 et seq. | This agreement increases FWS involvement. The focus is on joint involvement in the pre-scoping and scoping stages of planning. The early coordination has resulted in fewer impacts to fish and wildlife resources. |
| FHWA California Division-EPA-CALTRANS (available in hardcopy only) | To provide staff to increase EPA's level of early involvement during the project planning and development process, so that final EPA reviews will not result in unnecessary delays in Caltrans project development. MOU was signed September 26, 2001 | TEA-21 | This MOU is in the early stages of implementation. It includes a signed partnership agreement that lists the agencies' commitments to achieving the objective for 2000 and beyond. EPA is required to submit an annual summary report of progress describing achievements, including any improvements it has documented in coordinating and streamlining environmental reviews, identify recommendations for |

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| | and will terminate on June 30, 2003. | | <p>improving consultation and coordination, etc. Under the section on standard operating procedures, the MOU presents strategies for dispute resolution.</p> <p>Performance Measures: Among the standards is the requirement pertaining to timeliness of document/project reviews for a target turnaround time of 20 working days upon receipt of complete documentation by EPA.</p> |
| <p>North Carolina DOT-USFWS (available in hardcopy only)</p> | <p>To provide assistance to the NCDOT for project coordination and expedited document review. This agreement was signed in 1999 and expires 9/30/03. The first agreement between NCDOT and USFWS was in 1997.</p> | <p>US Fish and Wildlife Act of 1956 (16 U.S.C., 742f(a)(4))</p> | <p>North Carolina is currently funding 21 positions. Based on the state's experience the following best practices/lessons learned follow:</p> <ul style="list-style-type: none"> • If more than one position is being funded, try to have the agreements on the same cycle. • Agreements should cover more than one year, so that the staff has enough time to better understand the agency's processes, etc. Also, if the agreement term is short, it is difficult to recruit or retain the most qualified individuals. • Provide enough information in the agreement to clarify expectations, identify specific tasks/key responsibilities, priorities, etc. • Require the development of a reporting system to describe the value the position added to the agency (e.g., notable projects/accomplishments, initiatives for process improvement, role the staff had in proactive issues, etc.) • Evaluation Process: Evaluate the positions in the agencies that are supported by the program to determine the benefit of the services to the funded agency. Follow-up with one-on-one discussions/interviews with the |

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| | | | <p>managers.</p> <p>Lessons Learned: To avoid unnecessary concern from the agency staff funded by the program, inform them of the evaluations and subsequent interviews with management. Other suggestions include:</p> <ul style="list-style-type: none"> • Have the agencies rate themselves so that gaps, discrepancies, etc. can be identified and resolved. • In obtaining feedback from the managers, discuss expectations, accountability, accomplishments, and next steps. • Develop a tracking mechanism. |
|--|--|--|---|

****Sec. 132. Payments on Federal-aid projects undertaken by a Federal agency**

Where a proposed Federal-aid project is to be undertaken by a Federal agency pursuant to an agreement between a State and such Federal agency and the State makes a deposit with or payment to such Federal agency as may be required in fulfillment of the State's obligation under such agreement for the work undertaken or to be undertaken by such Federal agency, the Secretary, upon execution of a project agreement with such State for the proposed Federal-aid project, may reimburse the State out of the appropriate appropriations the estimated Federal share under the provisions of this title of the State's obligation so deposited or paid by such State. Upon completion of such project and its acceptance by the Secretary, an adjustment shall be made in such Federal share payable on account of such project based on the final cost thereof. Any sums reimbursed to the State under this section which may be in excess of the Federal pro rata share under the provisions of this title of the State's share of the cost as set forth in the approved final voucher submitted by the State shall be recovered and credited to the same class of funds from which the Federal payment under this section was made.

APPENDIX C

Center for Environmental Excellence on DOT Funded Positions

http://environment.transportation.org/center/products_programs/dot_funded.aspx