



Deval L. Patrick, Governor
Richard A. Davey, Secretary & CEO

massDOT
Massachusetts Department of Transportation

Memorandum of Agreement
Amendment # 1

October 21, 2013

U.S. Army of Corps of Engineers
New England District
Chief, Permits & Enforcement Branch, Regulatory Division
696 Virginia Road
Concord, MA 01742-2751

MOA Agreement Number: 73706
Action Item #: 1
Action Item Date: August 28, 2013

Greetings Karen K. Adams;

Enclosed is your signed copy of the Memorandum of Agreement (MOA) amendment between the Massachusetts Highway Department, US Army of Corps of Engineers and the Federal Highway Administration.

This amendment is to reflect the duration change from September 30, 2013 until **September 30, 2016 along with increasing the maximum obligation to \$646,760.00.**

Please insert this amendment into the original agreement.

Cordially,

Tanya M. Barros
Director of Contracts & Records

TMB

OCT29'13 REG DIV

cc: Pamela Stephenson - FHA
Kevin Walsh
Fiscal
Contracts & Records

Massachusetts Department of Transportation - Highway Division
Agreement Amendment Amount Range: \$250,000 to \$500,000

Originating Office: Environmental Agreement #: 73706
 Agreement Type: Memorandum of Agreement Project ID: _____

Federal Aid Number: STP-002S(402)X
 Project/Location: Dedicated position at U.S. Army Corps for processing 404 permits
 Original Max. Obligation: \$250,000.00 NTP Date: 9/14/2012
 Vendor/Party Name: U.S. Army Corps of Engineers
 Vendor/Party Address: 696 Virginia Road
 Concord, MA 01742

	<u>Original:</u>	<u>Current:</u>	<u>Amendment:</u>	<u>Amended Date/ Dollar:</u>
Completion Date:	<u>9/30/2013</u>	<u>9/30/2013</u>	<u>3 yrs.</u>	<u>9/30/2016</u>
Contract				
Encumbrance Amount:	<u>\$250,000.00</u>	<u>\$250,000.00</u>	<u>\$396,760.00</u>	<u>\$646,760.00</u>

Description:

The current MOA between MassDOT, FHWA and the U.S. Army Corps expires September 30, 2013. Under the MOA, MassDOT and FHWA agreed to split evenly the \$250,000 maximum obligation, with each share totaling \$125,000. Due to delays in hiring the Corps staff member who currently occupies the position, Corps estimates that an unexpended balance of approximately \$150,000 will remain in the MOA upon its expiration. Based on the large amount of funds remaining in the MOA and the MOA's demonstrated usefulness in securing timely permits, we propose to amend the MOA by adding both time (to make use of the remaining funds) and money (to fund the position another 3 years). The proposed amendment will extend the expiration date to 9/30/2016 and increase the maximum obligation by \$396,760 (\$546,760, the amount estimated by Corps to cover salaries and all applicable overhead rates over the 3-yr. period, minus \$150,000, the projected unexpended balance upon expiration). FHWA has agreed to fund 50% of the amended amount, or \$198,380. MassDOT and the Corps believe the use of the MOA has been an unqualified success in meeting the respective needs of the two agencies.

Submitted By: *Ann M. Walsh* **Approved By:** *Patricia G. [Signature]*
 8/21/2013 Date 8/26/13 Date
 Date Chief Engineer Date

 Date *John [Signature]* 8/26/13 Date
 for General Counsel Date

Budget/C.E.P.O. Date Highway Administrator Date
James J. Barros _____ *[Signature]* 8/27/13
 Director of Contracts & Records Date for Secretary/CEO Date

FIRST AMENDED
MEMORANDUM OF AGREEMENT
between

UNITED STATES ARMY CORPS OF ENGINEERS

New England District
696 Virginia Road
Concord, MA 01742-2751
and

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

10 Park Plaza
Boston, MA 02116

and

FEDERAL HIGHWAY ADMINISTRATION

RELATIVE TO
PRIORITY PROJECT REVIEW UNDER
SECTION 404 OF THE CLEAN WATER ACT

(August 2013)

PREAMBLE: This Memorandum of Agreement (Agreement) between the Massachusetts Department of Transportation (MassDOT), the U.S. Army Corps of Engineers, New England District (COE), and Federal Highway Administration (FHWA) sets forth the responsibilities of the signatory agencies (Parties) relative to priority review of highway projects. The goal of this Agreement is to achieve timely design and implementation of adequate, safe and economical highway improvements while also assuring such design and implementation is sensitive to the protection of Waters of the United States, as that term is referred to in the Clean Water Act. The purpose of this Agreement shall be to streamline project delivery through sound environmental stewardship, and the Parties shall work proactively to enhance each agency's ability to realize its mission through open communication and teamwork.

- A. WHEREAS, MassDOT has realized a substantial increase in both the number of projects and aggregate dollar value of its highway and bridge construction program over the last several years due to federal-aid highway increases under the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU);
- B. WHEREAS, in 2008 both Governor Deval Patrick and the Massachusetts Legislature have called upon MassDOT to accelerate the design, construction and repair of the Commonwealth's highways and bridges, including without limitation

the project delivery system identified in Chapter 86 of the Acts of 2008 and the Accelerated Bridge Program, created through Chapter 233 of the Acts of 2008, which requires the repair of approximately 250 structurally deficient bridges over the next six years at a cost of approximately \$3 billion;

- C. WHEREAS, many of these projects fall within the jurisdiction of the COE under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899;
- D. WHEREAS, timely review of MassDOT projects under these regulations is critical to MassDOT's ability to advertise these projects so as to meet scheduled dates for obligating federal funding, statewide Transportation Improvement Program targets and the accelerated programs described above;
- E. WHEREAS, COE has indicated that due to staff resource constraints, it is currently unable to provide MassDOT with priority review and expedited permitting decisions for the increased number of transportation projects pursuant to its responsibilities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 and, MassDOT/FHWA funded COE dedicated staffing, will enable MassDOT to avoid permitting delays, which would lead to missed bid advertisements and unanticipated costs to MassDOT projects;
- F. WHEREAS, this Agreement will promote streamlined permitting and project delivery goals of the Every Day Counts initiative of FHWA;
- G. WHEREAS, the Parties have determined that it will be mutually beneficial and serve to increase efficiencies within each agency to supplement COE staffing above existing levels;
- H. WHEREAS, the Parties have determined that the agreed upon supplemental staffing above existing levels will provide priority review of highway construction projects contemplated or under design by MassDOT;
- I. WHEREAS, MassDOT, with FHWA concurrence regarding the use of federal funds to pay for the activities outlined in this Agreement, is willing to jointly fund COE for supplemental staffing to provide these functions;
- J. WHEREAS, federal funds will be used to fund the activities outlined in this Agreement, and, in its capacity as lead federal agency, FHWA will be actively involved in project-specific consultation and coordination activities undertaken in accordance with this Agreement;
- K. WHEREAS, this Agreement was developed to provide supplemental resources to the COE, to enable the COE to collaborate with MassDOT and FHWA in the development and implementation of measures to streamline the COE's environmental review and regulatory activities for transportation projects, in

accordance with the Environmental Streamlining National Memorandum of Understanding, dated July 20, 1999;

- L. WHEREAS, Section 214 of the Water Resources Development Act (WRDA) of 2000 (Public Law 106-54), as amended, allows the Secretary of the Army to accept funds from non-federal public entities in order to expedite the regulatory permit review process and Section 6002(j) of the SAFETEA-LU allows for state Departments of Transportation to provide funds to the COE to expedite the review of regulatory permit applications for transportation projects;
- M. WHEREAS, the COE Chief of Engineers by memorandum dated October 1, 2008, entitled, "Implementation Guidance for Section 2002 of the Water Resources Act of 2007", authorized District and Division Engineers to accept and expend funds contributed by non-federal entities to expedite the evaluation of permits subject to the limitations described in the implementation guidance, including the District Engineer's approval of said agreements and additional standards the District must comply with to insure impartial decision making; and
- N. WHEREAS, the Parties anticipate that this Agreement and funding transfer will be able to demonstrate an improvement in performance.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties concur with the following responsibilities and terms:

I. AGENCY RESPONSIBILITIES

A. MassDOT and FHWA

MassDOT and FHWA shall jointly fund one (1) full-time employee meeting the professional performance standards described in this Agreement and the Performance Measures described in **Attachment A**, which is incorporated into this Agreement by reference. The costs of funding the COE employee shall include all salary-related costs assessed by COE. The total funds needed for these services will not exceed \$396,760.00 (MassDOT \$198,380.00; FHWA \$198,380.00), with the contract expiring on September 30th 2016.

1. MassDOT agrees to pay COE upfront on a federal fiscal year basis for services rendered under this Agreement. MassDOT shall in turn seek reimbursement from FHWA for 50% of the total Agreement amount and shall provide funding for the position up-front per federal fiscal year during the period of the Agreement. COE shall provide timesheets on a monthly basis for the prior calendar month for actual costs incurred by COE on behalf of this Agreement. Invoices shall: (1) be in MassDOT format identifying the MassDOT Agreement number, the time period covered by the invoice, and the invoice number; (2) identify the employee, hourly employee rate, MassDOT work task name, MassDOT Project Number, Expenditure Account number, agency nexus to the activity, and number hours spent on the

respective work tasks; and (3) explain all expenses for which reimbursement is claimed, including but not limited to, hourly rates applicable to time expended for each MassDOT work task, and documented in such a manner as to be easily verified. The said invoice must total the same number of productive hours recorded on each liaison's timesheet.

2. MassDOT shall provide an overview on a quarterly basis of MassDOT's project development process and advertising program to the COE Project Manager, as identified below, and other appropriate staff identified by COE.
3. MassDOT shall provide COE on a quarterly basis with an advance, timely summary of the planned transportation projects that may require review by COE, including the specific geographic locations of such projects with a projected schedule for planning and construction of each project.
4. MassDOT shall provide a MassDOT Project Manager, as a first point of contact at MassDOT, to coordinate assignments and communicate priorities internally within MassDOT, and to act as the first point of contact with COE for the purposes of this Agreement.

B. COE

1. Upon receipt of the initial funding provided for in Section I.A., COE shall hire or otherwise dedicate an existing term or permanent career professional staff person as expeditiously as possible to function as the COE Project Manager and to undertake work detailed in this Agreement.
2. The COE Project Manager shall be dedicated full-time to work on the priority projects identified by MassDOT in accordance with this Agreement unless performing work on other projects, programs or initiatives as agreed to by the MassDOT's Project Manager. The Parties intend that this Agreement will provide funding for one full-time equivalent position. The parties agree that any hiring pursuant to this Agreement shall at all times conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing, and reporting provisions. The COE shall notify MassDOT prior to making any staff changes affecting this Agreement.
3. The COE Project Manager shall work with the MassDOT Project Manager in a cooperative and collaborative way to find solutions and streamline the environmental permitting process.
4. The COE Project Manager shall keep sufficient contemporaneous records to identify the MassDOT projects and any other work tasks assigned under this

Agreement. In addition, he/she 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 MassDOT and shall permit extracts and copies to be made by MassDOT. COE shall keep such records for a period of at least five (5) years after the final billing is submitted. These records shall be subject to review by MassDOT, as appropriate.

5. In order to satisfy FHWA's reimbursement requirements, the COE shall submit documentation to MassDOT on a monthly basis, for the prior calendar month, for actual costs incurred by COE on behalf of this Agreement directly to MassDOT's Project Manager. Documentation shall: (1) identifying the MassDOT Agreement, the time period covered by the invoice, and the invoice number; (2) identify the employee, hourly employee rate, MassDOT work task name, MassDOT Project Number, Expenditure Account number, agency nexus to the activity, and number hours spent on the respective work tasks; and (3) explain all expenses for which reimbursement is claimed, including but not limited to, hourly rates applicable to time expended for each MassDOT work task, and documented in such a manner as to be easily verified. Said invoice must total the same number of productive hours recorded on each timesheet.
6. COE and MassDOT agree to meet on a quarterly basis, or more frequently if requested by either Party, to establish priorities and to evaluate the activities performed under the Agreement.
7. Funds contributed by MassDOT hereunder shall be expended on the salary and overhead of the COE Project Manager. Funds will not be expended for review of the COE Project Manager's work by his/her supervisors, or other COE staff in the decision-making chain of command.
8. COE shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of the individual to perform the work under this Agreement, including but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

II. SCOPE

Duties of the COE Project Manager shall include, but not be limited to, the following:

A. General Duties.

1. Represent the COE by providing MassDOT staff Section 404 and Section 10 guidance and analysis at meetings and when requested.

2. Respond to MassDOT requests for COE-related information in a timely manner.
3. Provide advice and guidance on ways to avoid and minimize project impacts to achieve better environmental outcomes and to reduce permit processing timeframes and potential delays; this includes suggestions to qualify for more streamlined permits, such as MassDOT's Comprehensive Bridge Permit or General Permits.
4. Provide timely permit and modification decisions for construction projects.
5. For the purposes of permit process improvement and consistent decision-making, copy the Environmental Services Wetlands Permitting Supervisor with e-mail or other written MassDOT-related communications that may have statewide Section 404 or Section 10 policy implications for MassDOT project delivery.
6. Provide consistent decision making in coordination with COE policy by: (1) assisting the Environmental Services Wetlands Permitting Supervisor in the development of COE-related technical guidance documents; (2) frequent coordination with all COE staff working under this Agreement; and (3) frequent coordination with Environmental Services staff.
7. Stay current with COE national and regional policy changes that may affect MassDOT project delivery, and provide timely updates to the Environmental Services Wetlands Permitting Supervisor for dissemination to relevant MassDOT staff.

B. Site visits.

1. Serve as the COE reviewer responsible for conducting site visits for MassDOT projects. These site visits include both early coordination site meetings and pre-construction meetings. For MassDOT projects with a special permit condition requiring a COE pre-construction meeting, the COE Project Manager may attend said meeting in lieu of the COE Regulatory Division staff referenced in any previously issued permits.
2. Document site visits in writing and upon request, and make site visit notes available to the Environmental Services Wetlands Permitting Supervisor. On a regular basis, the COE Project Manager shall copy the Environmental Services Wetlands Permitting Supervisor with site visit documentation that indicates statewide Section 404 or Section 10 policy implications for MassDOT projects.

C. Process MassDOT's Section 404 and Section 10 deliverables.

In addition to final permit decisions, deliverables include preliminary jurisdictional determinations, Section 106 Determinations of Effect, informal feedback on

appropriateness of proposed wetland mitigation, review and provision of comments on Environmental Assessments and Environmental Impact Statements, and local agency permit actions. More specifically:

1. Process deliverables in a timely manner by meeting process time performance measures listed below; note, however, COE permit decisions pending decisions from other agencies may exceed these targets even with timely COE follow-ups with coordinating agencies.
2. Coordinate MassDOT workload priority conflicts with the Environmental Services Wetlands Permitting Supervisor.
3. Copy e-mails and correspondence related to COE permit application completeness to the Environmental Services Wetlands Permitting Supervisor. Advise the MassDOT Region applicant and Environmental Services Wetlands Permitting Supervisor within fifteen (15) calendar days if an application is not considered complete and what additional information is required.
4. Increase COE transparency for pending MassDOT permit actions and projects by making accessible to MassDOT a copy of the report of pending MassDOT permit actions. COE shall provide a current project tracking report on a monthly basis.
5. Prior to COE final permit decisions on complex actions, coordinate permit conditions with MassDOT staff and copy the Environmental Services Wetlands Permitting Supervisor with the draft conditions.
6. Issued permits and other decisions on MassDOT permit actions shall be copied to the Environmental Services Wetlands Permitting Supervisor.

D. Interagency permit action coordination.

This includes Endangered Species Act Section 7 consultation with the National Marine Fisheries Service and U.S. Fish and Wildlife Service. More specifically:

1. Contact coordinating agencies within two weeks of initiating consultation or requesting agency assistance for follow-up; maintain prudent follow-up throughout agencies' review process.
2. Minimize process delays for coordinating agencies by maintaining quality standards for deliverables.

E. Account for COE staff time.

1. Provide monthly reporting of employees' time.

F. Quarterly and annual performance measure reporting.

1. Provide COE Agreement performance data to the Environmental Services Wetlands Permitting Supervisor two (2) weeks prior to COE-MassDOT Quarterly Meetings. Review of performance data should be a standing agenda item for Quarterly Meetings. (See Section III of this Agreement.)
2. Coordinate performance data collection and reporting (data fields, quality control and assurance, report format, and schedules) with the Environmental Services Wetlands Permitting Supervisor.

G. Feedback on staff performance in meeting goals of this Agreement.

1. Annually, or upon request by the MassDOT Principal Representative, obtain COE staff feedback about MassDOT's performance for: (1) quality of work submitted to COE for review and approval; (2) MassDOT staff knowledge of COE regulations, rules, and permit requirements; and (3) professional conduct related to communication and coordination. The feedback should also include COE staff recommendations for improving working relationships with and performance of MassDOT staff.
2. Provide the COE staff feedback to MassDOT's Principal Representative.

H. Identify opportunities for and provide support to COE-MassDOT process improvement and streamlining initiatives.

1. Assist MassDOT in finding innovative ways to improve COE permit processing efficiency for all MassDOT projects requiring Section 404 or Section 10 authorization.
2. In coordination with the Environmental Services Wetlands Permitting Supervisor, develop project plans and schedules for process improvement/streamlining initiatives; provide initiative status reports at COE-MassDOT Quarterly Meetings.

I. Provide training to MassDOT staff on COE policies and procedures related to jurisdictional determinations and Section 404/10 regulations and policies.

1. Coordinate training sessions with the Environmental Services Wetlands Permitting Supervisor.
2. On a case-by-case basis, conduct post training assessment surveys of attendees.

III. AGREEMENT PERFORMANCE MEASURES

A. Background.

1. Agreement performance measures are indicators of performance pertaining to achievement of MassDOT and COE goals for the Agreement. Performance measures results and subsequent evaluation methods can be used to determine the effectiveness of the Agreement, which will help all Parties to understand, manage, and allow for modification of the Agreement, as necessary. Detailed Performance Measures are described in **Attachment A**, which is incorporated into this Agreement by reference.
2. Significant results for measures, either positive or negative, should be considered as puzzles to be solved; for negative results, as opportunities to examine the processes that generated them and learn how to work together more effectively. Quantitative results for any particular measure are likely to require careful analysis before drawing firm conclusions. They may be caused by a complex mix of MassDOT, COE, and other actions and influences.
3. The performance measures listed in **Attachment A** (along with specific performance targets) are fluid and likely to be revised based on collaborative evaluation between MassDOT and COE. The initial focus is on quantitative measures where data are readily available, such as process times for MassDOT deliverables, completeness of MassDOT applications, and some environmental outcomes. Measures that address the less tangible goals and principles of this Agreement, such as communication, coordination, and negotiation, are not addressed quantitatively in this Agreement. They will, however, be addressed informally and qualitatively during MassDOT-COE meetings.

If either MassDOT or COE believes that the respective responsibilities of the Parties are not being implemented in a satisfactory manner, then the Parties shall utilize their best efforts to attempt to resolve this issue in a cooperative fashion.

IV. GENERAL TERMS

A. Length of Agreement. The duration of this Agreement is from the date of signature of the last Party to sign this Agreement to and thru September 30, 2016 unless extended or terminated as provided below.

B. Impartial Decision Making

1. It is understood and agreed that in order to ensure that the acceptance and expenditure of funds will not impact impartial decision making with respect to permit review and final permit decision, either substantively or procedurally, the New England District will comply with the following standards, as mandated by Headquarters, U.S. Army Corps of Engineers:

- a. In cases where MassDOT/FHWA funds are used, all final permit decisions, including all reporting general permit verifications, must be reviewed and signed by at least one level above the decision maker. For example, if the decision maker is the Chief, Permits & Enforcement Branch, then the reviewer would be the Chief, Regulatory Division.
- b. All documents involved in the decision making process (e.g., decision document and permit instrument, if applicable) must be reviewed and signed by the one-level-above reviewer as defined above.
- c. All jurisdictional determinations made on projects where MassDOT/FHWA funds are used must have documentation that a COE regulator not funded by MassDOT/FHWA reviewed and agreed with the determination (e.g., peer review). This review does not need to be a field review.
- d. All final permit decisions, including all reporting general permit verifications, for cases where MassDOT/FHWA funds are used will be made available and updated monthly on the District's web page in an area separate from any other final actions, clearly identifiable as being for projects funded by and through this authority.
- e. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.
- f. The COE must comply with all applicable laws and regulations.
- g. MassDOT/FHWA funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the COE before the permit decision is made.
- h. MassDOT/FHWA funds will not be used for enforcement activities but may be used for permit compliance monitoring.

C. Communication

1. To provide for consistent and effective communication between MassDOT, FHWA and COE, each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement. For the purposes of this Agreement, MassDOT's Principal Representative shall be:

Henry Barbaro, Supervisor of Wetlands and Water Resources
10 Park Plaza, Rm. 4260, Boston, MA 02116
Tel: (617) 973-7419; Fax: (617) 973-8879
E-mail: Henry.Barbaro@State.MA.US

For the purposes of this Agreement, the Principal Representative for FHWA shall be:

Michael Chong, Planning & Environmental Team Leader
55 Broadway -10th Floor, Cambridge, MA 02142
Tel: (617) 494-3275; Fax: (617) 494-3355
E-mail: Michael.Chong@dot.gov

For the purposes of this Agreement, the Principal Representative for the COE shall be:

Karen K. Adams
Chief, Permits & Enforcement Branch, Regulatory Division
U.S. Army of Corps of Engineers, New England District
696 Virginia Road, Concord, MA 01742-2751
Tel: (978) 318-8828
E-mail: Karen.K.Adams@usace.army.mil

2. Any notice required by the Agreement to or between the Parties shall be in writing and sent to the Principal Representative by certified mail or recognized overnight courier with proof of delivery.

D. MassDOT-Dedicated COE Staff

1. The COE shall identify the staff operating under this Agreement and notify MassDOT prior to making relevant staff changes.
3. Such new COE staff shall undergo a six (6) month trial service period, with periodic performance reviews by MassDOT's Principal Representative and the COE Principal Representative.

E. Applicable Laws

1. This Agreement and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States and the Commonwealth of Massachusetts.

F. Dispute Resolution

1. The Parties agree that, in the event of a dispute between the Parties regarding implementation of this Agreement (excluding any specific permit application/decisions) MassDOT, FHWA and COE shall use their best efforts to

expeditiously resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties.

G. Amendment, Modification and Termination


1. This Agreement may be modified or amended only in writing and by mutual agreement of the Parties. A Party may terminate this Agreement by providing written notice to the Principal Representative of the other Parties at the addresses provided in this Agreement. Such termination shall be effective upon the sixtieth (60th) calendar day following receipt notice. In the event of termination, MassDOT and FHWA shall continue to be responsible for all costs incurred by COE under this Agreement prior to the date of such termination.
2. This Agreement may be terminated by either MassDOT or COE upon ten (10) days from receipt of written notice to the Parties' Principal Representatives if the Party requesting termination has demonstrated that the other Party(ies) has/have not substantially fulfilled the responsibilities and terms of the Agreement after being provided with notice and thirty (30) days to remedy the situation.
3. This Agreement shall remain in force until **September 30, 2016**, or the Agreement is terminated, or until all available funds have been expended and not otherwise replenished by amendment to increase the maximum amount of this Agreement.
4. Within sixty (60) days after termination, or the expiration of this Agreement, the COE shall conduct an accounting to determine the actual costs of the work performed pursuant to this Agreement. Within thirty (30) days of completion of this accounting, COE shall return to MassDOT any funds advanced in excess of the actual costs.
5. Extension: This Agreement may be extended in yearly increments by the mutual written agreement of the Parties.
6. This Agreement and attachment constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written; not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of any Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

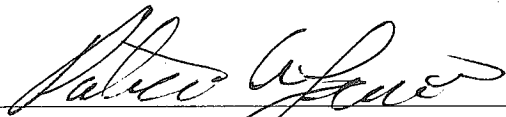
V. EFFECTIVE DATE

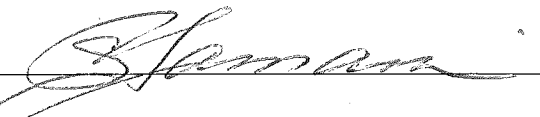
- A. This Agreement does not preclude the Parties from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreements entered into should not contradict or otherwise undermined the intent of this Agreement.

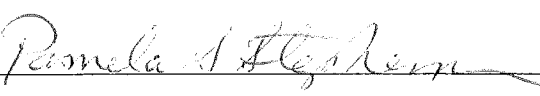
- B. The provisions of this Agreement shall be binding upon the Parties. This Agreement supersedes all prior negotiations and understandings between the Parties relating to the subject matter thereof.

IN WITNESS WHEREFOR, the Parties hereto execute this Agreement to the last date written below.

Date: 8/27/13 BY: 
FRANCIS A. DEPAOLA P.E.
HIGHWAY ADMINISTRATOR
Massachusetts Department of Transportation

Date: 8/27/13 BY: 
PATRICIA A. LEAVENWORTH, P. E.
CHIEF ENGINEER
Massachusetts Department of Transportation,
Highway Division

Date: 5 Sep 13 BY: 
Charles P. Samaris, Colonel
District Engineer
U.S. Army Corps of Engineers

Date: 9/6/2013 BY: 
Pamela Stephenson, Administrator
Massachusetts Division
Federal Highway Administration

ATTACHMENT A
Performance Measures and Comparative Data

A. Purpose

This Performance Measures and Comparative Data document provides a description of the performance measures that are to be applied in connection with the Memorandum of Agreement between MassDOT and COE.

B. Agreement Performance Measures and Comparative Data

1. Table 1 identifies Agreement performance measures that the COE will collect, compile, and report to the Environmental Services Wetlands Permitting Supervisor on a quarterly basis. “Strategic Objectives” are general category objectives that support the broad goals of the Agreement. “Agreement Performance Targets” have been collaboratively determined by COE and MassDOT; where targets are not specified, it means there is insufficient data to define a target. The field ‘COE Comparative Data’ is for non MassDOT-dedicated staff results at the COE; these data is to inform a value-added evaluation of the Agreement.
2. Table 2 identifies COE workload items important for providing context to performance measure analysis. These items will also be collected, compiled, and reported by COE to the Environmental Services Wetlands Permitting Supervisor on a quarterly basis.

Table 1. COE Agreement Measures. These measures are key indicators of performance for the Agreement.

PM ID	AGREEMENT PERFORMANCE MEASURES	STRATEGIC OBJECTIVE	AGREEMENT PERFORMANCE TARGETS	REQUESTED COE COMPARATIVE DATA
1	Area of authorized wetland impacts (by permit action and total)	Avoid, minimize impacts	None specified	Not Required
2	Area of wetland compensatory mitigation authorized by types of mitigation	Better environmental outcomes	None specified	Not Required
3	Preparing Section 106 No Adverse Effect Determination for Non-federally Aided Projects	Efficient operations	95% within 10 days	unavailable
4	Preparing Section 106 Adverse Effect Determination and MOA's for Non-federally Aided Projects	Efficient operations	95% within 30 days	unavailable
5	COE initiated required Federal consultations such as Sec 7 ESA, NHPA, EFH & Wild & Scenic Rivers within 30 days of a complete application.	Efficient operations	100% within 30 days	unavailable
6	COE applications deemed complete on submittal	Improve quality	None specified	unavailable
7	Determination of completeness of COE applications	Efficient operations	100% within 15 days	Yes
8	Individual permit decisions within 120 days after submittal of a complete application.	Permit timeliness	95% of submitted actions	Yes
9	Permit Modifications processed within 30 days after submittal of a complete application	Permit timeliness	95% of submitted actions	Yes
10	Other permit actions processed within 60 days after submittal of a complete application	Permit timeliness	95% of submitted actions	Yes
11	Jurisdictional determination responses within 120 days of receipt of complete information.	Efficient operations	95% within 120 days.	unavailable

C. Measure Definitions and Notes

1. **Area of authorized wetland impacts (by permit action and total).** The acreage of wetland impacts authorized by COE in a variety of permit action types issued to MassDOT; permit action types include Nationwide Permits, Individual Permits, and Regional General Permits.
2. **Area of wetland compensatory mitigation authorized by types of mitigation.** This includes physical, mitigation bank, in-lieu-fee, or other wetland compensatory mitigation types.

3. **Preparing Section 106 No Adverse Effect Determinations for Non-federally Aided Projects.** This refers to the time it takes for COE staff to forward Section 106 Findings of No Adverse Effect to the MA SHPO after receipt of MassDOT report on historic properties.
4. **Preparing Section 106 Adverse Effect Findings and MOA's for Non-federally Aided Projects.** This refers to the time it takes for COE staff to forward Section 106 Findings of Adverse Effect and MOA to the MA SHPO after receipt of MassDOT report on historic properties.
5. **COE initiated Federal consultations with within 30 days.** This refers to the time it takes for COE staff to initiate consultation with the federal resource agencies after receiving a complete application from MassDOT.
6. **COE applications deemed complete on submittal.** This refers to applications formally deemed complete or not as recorded in the COE's agency database system. For applications where additional information requests or minor changes are dealt with informally through e-mail or phone calls with MassDOT staff, they are not designated as formally incomplete.
7. **Determination of administrative completeness of COE applications.** This refers to applications formally deemed complete in accordance with 33 CFR Part 325.1 or the General Permit required information check list. For applications where additional information requests or minor changes are dealt with informally through e-mail or phone calls with MassDOT staff, they are not designated as formally incomplete.
8. **Individual permits processed within 120 days after submittal of a complete application.** The target is for 95% of submitted permit actions to meet the 120 day standard. The national COE goal for processing individual permits was 50% within 120 days of a complete application for FY11 (New England District was at 70%).
9. **Construction Permit Modifications processed within 30 days.** This refers to those permit amendments requested during construction..
10. **Other permit actions processed within 60 days after submittal of a complete application.** Other permit actions include permit modifications, and General Permit actions. The target is for 95% of submitted actions to meet the 60 day standard. The national COE goal for processing other permit actions is 75% within 60 days of a complete application. New England District was at 95%.

Table 2 COE Workload/Productivity Data. The following workload items can be accounted for in Tables 3, 4, and 5.

WORKLOAD DATA MEASURES	WORKLOAD ITEMS
Volume of pending and issued MassDOT permit actions processed by COE staff per month	<ul style="list-style-type: none"> ▪ # Non-federal aid Section 106 No Adverse and Adverse Effect Findings ▪ # Individual Permits ▪ # Jurisdictional Determinations ▪ # General Permits ▪ # Pre-App meetings attended ▪ # Pre-Const. meetings attended ▪ # Permit modifications

massDOT Request For Allocation of Funds Prior to Encumbrance

Massachusetts Department of Transportation

Project Number(s)	Encumbrance Document ID			681
	Trans	Dept	Unit	Identification Number
	CT	DOT	0821	INTF00X02012A0073706

9/19/2013

Funding Source

Capital Tolls Capital Tolls General Federal Grant
 Operating Tolls Operating Expendable Trust

Approp No	Obj	Unit	Activity	Program	Phase	N/P	Amount Allocated
61210816	N13	0821					\$396,760.00
							\$396,760.00

Obligation By Fiscal Year for Multi-Year Contracts

	61210816	Total
2014	\$396,730.00	\$396,730.00
2015	\$10.00	\$10.00
2016	\$10.00	\$10.00
2017	\$10.00	\$10.00
MMARS Total	\$396,760.00	\$396,760.00

Reason for Request:

Contract #: 73706 Cost Reduction %:
 Vendor ID & Address Code: VC6000158296 AD001 Current Year Savings:

Vendor Name: US ARMY CORPS OF ENGINEERS

Contract Location:

Contract Description: Agreement with the ACOE to fund a position with the Army Corps to assist the MassDOT with regulatory reviews of Highway and Bridge projects.

Report Notes:

Recommended by: John E Remulak 9/19/13 (Signature / Date) Approved by: Ken M Walsh 9/19/13 (Signature / Date)

Completed by the Budget Office:		9/20/13
Expense Budget Entered By:	<u>Shreyas Neophanaya</u> (Signature / Date)	Approved by: <u>Matt H NT 9/20/13</u> (Signature / Date)

Document Name		ARMY CORPS MOU BUDGET		[978297]	
Document Description					
Document I.D.					
Code	Dept	Unit	Document Identifier	Action	Code
CT	DOT	0821	INTF00X02012A0073706	Mod	MA
Header / Vendor Information					
Budget FY:	2014	Document Total:			
Fiscal Year:	2014	Vendor Name:			
Period:	3	Vendor Address:			
Board Award:	0073706	Vendor/Customer No.:			
Requester ID:		Address Code:			
Report Note:		Comment:			

Line #1 - Commodity Information

Commodity Code	81100000000	List Price		Description	Dedicated position at USACOE for review of MassDOT 404 permit applications
Line Type	Service	Unit Price		Contract Amount	Commodity Ref. Line
Quantity		Service From	09/14/2012	Action (Inc/Dec)	I
Unit of Measure		Service To	09/30/2016	Incl/Dec Amount	

Line #1 - Accounting Information

Event Type	PR05	Budget FY	2013	Unit	0821	Major Program	Location
Line Amount		Fiscal Year	2014	Object	N13	Program	Phase
Dept	DOT	Period	3	Appropriation	61210816	Program Period	Activity
Line Description	FY 2013			Dept Object		Function	

TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify under the penalties of perjury that all laws of the Commonwealth governing disbursements of public funds and the regulations thereof have been complied with and observed.

Print Name: John Rempelakis Signed: [Signature] Title: Archaeological Resources Supervisor Phone Ext.: 8822 Date: 9/19/13
 Print Name: David White Signed: [Signature] Title: Deputy Director of Environmental Services Phone Ext.: 8829 Date: 9/19/13

FOR FISCAL USE ONLY

Entered By: _____ Date: _____ Verified By: _____ Date: _____
 (Initial) (Initial)

Document Name	ARMY CORPS MOU BUDGET	[978297]
Document Description		

Document I.D.			
Code	Dept	Unit	Action
CT	DOT	0821	Mod
INTF00X02012A0073706			

Line #2- Accounting Information

Event Type	PR05	Budget FY	2014	Unit	0821	Major Program	Location
Line Amount	1 \$396,730.00	Fiscal Year	2014	Object	N13	Program	Phase
Dept	DOT	Period	3	Appropriation	61210816	Program Period	Activity
Line Description	FY 2014			Dept Object		Function	

Line #3- Accounting Information

Event Type	PR08	Budget FY	2015	Unit	0821	Major Program	Location
Line Amount	1 \$10.00	Fiscal Year	2014	Object	N13	Program	Phase
Dept	DOT	Period	3	Appropriation	61210816	Program Period	Activity
Line Description	FY 2015			Dept Object		Function	

Line #4- Accounting Information

Event Type	PR08	Budget FY	2016	Unit	0821	Major Program	Location
Line Amount	1 \$10.00	Fiscal Year	2014	Object	N13	Program	Phase
Dept	DOT	Period	3	Appropriation	61210816	Program Period	Activity
Line Description	FY 2016			Dept Object		Function	

TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify under the penalties of perjury that all laws of the Commonwealth governing disbursements of public funds and the regulations thereof have been complied with and observed.

Print Name: John Rempelkis Signed: _____

Prepared by: [Signature] Title: Archaeological Resources Supervisor

Date: 9/19/13

Print Name: David White Signed: _____

Title: Deputy Director of Environmental Services

Date: 9/19/13

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Entered By: _____ Date: _____ Verified By: _____ Date: _____
 (Initial) (Initial)

Document Name: **ARMY CORPS MOU BUDGET** [978297]
 Document Description:

Document I.D.		
Code	Document Identifier	Action
CT	INTF00X02012A0073706	Mod

Line #5- Accounting Information

Event Type	Budget FY	Unit	Major Program	Location
PR08	2017	0821		
Line Amount	Fiscal Year	Object	Program	Phase
I \$10.00	2014	N13		
Dept	Period	Appropriation	Program Period	Activity
DOT	3	61210816		
Line Description	FY 2017	Dept Object	Function	

TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify under the penalties of perjury that all laws of the Commonwealth governing disbursements of public funds and the regulations thereof have been complied with and observed.

Print Name: John Rempelckis Signed: [Signature]

Title: Archaeological Resources Supervisor

Phone Ext.: 8822 Date: 9/19/13

Print Name: David White Signed: [Signature]

Title: Deputy Director of Environmental Services

Phone Ext.: 8829 Date: 9/19/13

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Entered By: _____ Verified By: _____ Date: _____
 (Initial) (Initial)