

**COOPERATIVE AGREEMENT**

**between**

**U.S. ARMY CORPS OF ENGINEERS**

**and**

**SOUTH CAROLINA STATE PORTS AUTHORITY**

**For the 2015-2019 Federal Fiscal Years**

**(October 1, 2014 through September 30, 2019)**

Article I. **FUNDING RECIPIENT**

US Army Corps Of Engineers  
Charleston District  
69A Hagood Avenue  
Charleston, SC 29403

Article II. **AUTHORITY**

This Agreement between the US Army Corps of Engineers, Charleston District (hereinafter referred to as the "Corps") and the South Carolina State Ports Authority ("SCSPA") is hereby entered into under the authority of 31 U.S.C. 6505 (Intergovernmental Cooperation Act), 10 U.S.C. 3036(d) (Chief's Economy Act), and 128 Stat. 1193; Public Law No. 113-121 [H.R. 3080] (Water Resources Reform and Development Act of 2014). Collectively, these two agencies are referred to herein as the "Parties".

Article III. **PURPOSE AND OBJECTIVE**

The purpose of this Agreement is to set forth the responsibilities of the Parties relative to priority review of port projects with the goal of achieving timely design and implementation of effective, safe and financially prudent port improvements, while also assuring such design and implementation is sensitive to protection of natural resources for which the Corps is responsible under Federal statutes and regulations.

The objective of this Agreement is for the Corps (Charleston District Office) to commit one full time employee dedicated exclusively to SCSPA activities, as outlined in Appendix A, in order to assure timely decisions on applications for Department of Army Permits for SCSPA projects. These applications may be subject to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972. Duties will include compliance inspections of authorized SCSPA projects, but not enforcement actions related to any unauthorized activities by SCSPA in accordance with CECW-CO memorandum dated 1 October 2008. Enforcement actions will be turned over to non-funded Regulatory Project Managers for resolution. It is also understood that the funded employees will also participate in general Corps employee activities.

Article IV. **BACKGROUND**

The SCSPA has an extremely active port development and improvement program. In addition, the SCSPA has exhibited a strong commitment to incorporating environmental quality measures into the port planning process. In order to optimize environmental coordination, it is important to develop procedures that enable Corps personnel to work directly with port planners and provide recommendations at the earliest stages of project development.

It is critical that the already established close working relationship be maintained and

expanded between the Corps and the SCSPA. Critical to the success of this Partnership is timely interagency communications, assurances of personnel availability for site visits and meetings and maintenance of continuity by trained and informed personnel.

This Agreement is intended to provide the resources necessary to increase direct and early Corps involvement in the SCSPA planning process. This increased focus will facilitate environmentally responsible port development while at the same time improving the Corps' ability to review, evaluate and process appropriate permits for SCSPA projects in a timely manner. This Agreement is predicated upon a relationship of trust among all Parties that will be maintained and strengthened as a result of this effort.

#### Article V. **SCOPE OF WORK**

For the period hereinafter set forth, the Corps will furnish the necessary personnel, materials, services and facilities needed to carry out the activities described below:

***Specifically, the Corps will:***

- A. Employ one Regulatory Project Manager to carry out work as detailed in Appendix A and other work contemplated by this Agreement. The Corps will use funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by colleagues in the Regulatory Program, such as cell phones, snake boots, other safety equipment, use of government vehicles, etc.
- B. This individual is located in the Charleston District office in Charleston, South Carolina. This individual and location will not change, unless all Parties agree to such a change. Reason for such a change would have to be unforeseen circumstances, where such a change is the only reasonable resolution.
- C. Ensure that this staff person maintains daily time and attendance records identifying the number of hours spent working on tasks related to port projects and any other work tasks, including those listed in Appendix A and Section VI Coordination.
- D. Maintain accurate accounting records necessary for substantiating hours and costs billed against this Agreement. A budget summary report will be run quarterly and sent to SCSPA for their review and records. As required by federal regulations, records will be kept during and for a period of five years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by SCSPA if they should so desire.
- E. Refund SCSPA with any funds advanced under this Agreement that were not expended towards fulfilling the intent of this Agreement or that remain at the end of the funding period. With approval from all Parties, the Corps shall carryover any remaining funds from the previous funding period into the next funding period for expenditure in accordance with this Agreement.

***Specifically, SCSPA will:***

- A. Provide funding sufficient to pay for salary, benefits and all associated overhead for one (1) full time GS-12 employee, adjusted annually to cover all Government-wide Pay Increases, including Local Market Supplement, Rate Range Adjustment, Base Salary Increase and Bonus Award.
- B. These funds will also be used to supply the project manager with the tools of the trade customarily provided to and utilized by colleagues in the Regulatory Program, such as computer equipment, cell phones, safety equipment, use of government vehicles, etc.
- C. Once this Agreement has been signed by all Parties, transmit an advance payment equal to the funding period total in Article IX, needed to support the services contemplated by this Agreement.
- D. Provide the Corps with a one year out project planning list that will be updated and submitted to the Corps at least quarterly. The list should provide the Project Title, Location, Type of Project, Status (funding, planning, design, permitting, etc.) and anticipated construction date.

***Regarding all Parties:***

- A. The Parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; and neither Party shall be construed as the officer, agent or employee of the other.
- B. In no way shall this be construed or implied that either SCSPA or the Corps is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under the 1973 Endangered Species Act, the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act of 1969, the Clean Water Act of 1977 (as amended), the Rivers and Harbors Act of 1899 or any other Federal statute or implementing regulations. Nor shall this Agreement be construed to imply that the Corps' impartial decision making will be compromised in any way.
- C. The Parties will establish a primary point of contact for administration of this Agreement and list them in Article XIII, which will hold monthly meetings to establish priorities and evaluate work performed under the Agreement. These meetings will be the forum to discuss management level concerns related to staff performance, workload priorities and management initiatives.
- E. The Agreement Officers listed in Article XII, or their designated representative, will meet at least annually to facilitate communication, discuss interagency cooperation and identify programmatic initiatives and strategic goals. Issues which the Agreement Administrators have identified and are unable to resolve at their level should be brought forward and resolved at this meeting.

Article VI. **COORDINATION**

- A. Both SCSPA and the Corps 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. Both agencies are committed to frequent and productive interaction and the establishment of working-level interpersonal relationships which will allow for expedient scheduling of field visits, meetings and all manner of open communications in a sustained effort to achieve the stated goals of this Agreement.
- B. SCSPA and the Corps agree to conduct early and frequent coordination on issues such as, but not limited to, comments on project alternatives; mitigation plans; review of and comments on Biological Assessments; implementation of permit streamlining processes; and interagency SCSPA/Corps training.

Article VII. **PERFORMANCE OBJECTIVES**

- A. As part of this Agreement, the Corps has agreed to make every effort to adhere to the timeframes outlined in Appendix B. Adjustments to the timeframes may be made when practical and agreed to by all Parties.

Article VIII. **PERIOD OF PERFORMANCE**

- A. This Agreement shall be effective for a period of five (5) years from the start date of the funding period. Options for renewal of this Agreement will be determined at the end of the five year period.
- B. Any Party may terminate this Agreement upon ninety (90) day written notification to the other Parties. Upon termination by SCSPA, the Corps will refund to SCSPA any funds which had been previously advanced, but which had not been used or would not be used in accordance with this Agreement. At such time, all SCSPA projects will be redistributed amongst existing Corps staff and all commitments made by the Corps under this Agreement shall cease.

Article IX. **AWARD AMOUNT**

- A. 1<sup>ST</sup> FUNDING PERIOD: October 1, 2014 – September 30, 2015
  - 2<sup>ND</sup> FUNDING PERIOD: October 1, 2015 – September 30, 2016
  - 3<sup>RD</sup> FUNDING PERIOD: October 1, 2016 – September 30, 2017
  - 4<sup>TH</sup> FUNDING PERIOD: October 1, 2017 – September 30, 2018
  - 5<sup>TH</sup> FUNDING PERIOD: October 1, 2018 – September 30, 2019
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- B. TOTAL ESTIMATED COSTS FOR 1<sup>ST</sup> FUNDING PERIOD: \$188,000.00
  - TOTAL ESTIMATED COSTS FOR 2<sup>ND</sup> FUNDING PERIOD: \$195,000.00
  - TOTAL ESTIMATED COSTS FOR 3<sup>RD</sup> FUNDING PERIOD: \$200,000.00
  - TOTAL ESTIMATED COSTS FOR 4<sup>TH</sup> FUNDING PERIOD: \$205,000.00
  - TOTAL ESTIMATED COSTS FOR 5<sup>TH</sup> FUNDING PERIOD: \$210,000.00
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- C. TOTAL FUNDING FOR THIS AGREEMENT: \$998,000.00

Article X. **PAYMENT PROVISIONS**

In accordance with the Intergovernmental Cooperation Act, 31 U.S.C. 6505, advance payment is required to be given to the Corps prior to the commencement of goods or services as described in this Agreement. Additionally, under authority of Public Law 105-277, the Corps is entitled to receive advance payment before incurring any expenditures and providing any goods or services as outlined in this Agreement.

Award amount should be sent by check, prior to the start date of the Funding Period, payable to:

USAED  
Accounting Officer  
Charleston District  
69A Hagood Avenue  
Charleston, South Carolina 29403

Article XI. **FUNDING**

- A. The estimated amount for the funding period is based on the annual cost including overhead for one (1), GS-12, Regulatory Project Manager and associated costs for benefits, overhead, safety equipment, vehicles, etc.
- B. The funding amount may have to be adjusted, either increased or decreased, to adequately compensate for the employee's actual total cost and/or any reasonable unforeseen costs. If a funding adjustment is required, all Parties will meet and agree to the appropriate amount in writing.
- C. Any funds that have not been expended during the current fiscal year will be applied towards the next funding period covered by this Agreement.

Article XII. **AGREEMENT OFFICERS**

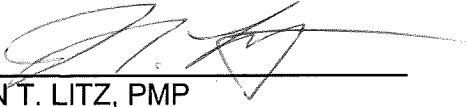
- A. US Army Corps of Engineers  
Tina Hadden - Chief, Regulatory Division  
69A Hagood Avenue  
Charleston, SC 29403
  
- B. South Carolina State Ports Authority  
Peter Hughes – Senior Vice President, Chief Financial Officer  
Post Office Box 22287  
Charleston, SC 29413

Article XIII. **AGREEMENT ADMINISTRATORS**

- A. US Army Corps of Engineers  
Travis Hughes – Assistant Chief, Regulatory Division  
69A Hagood Avenue  
Charleston, SC 29403  
(843) 329-8044
  
- B. South Carolina State Ports Authority  
James Van Ness – Vice President, Engineering and Facilities Maintenance  
Post Office Box 22287  
Charleston, SC 29413

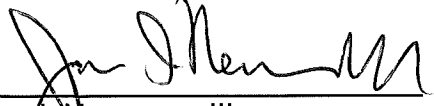
IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by an authorized official on the date and year set forth below their signature.

**U.S. Army Corps of Engineers;**

  
\_\_\_\_\_  
JOHN T. LITZ, PMP  
Lieutenant Colonel, EN  
Commander, U.S. Army Engineer District, Charleston

17 SEP 14  
\_\_\_\_\_  
Date

**South Carolina State Ports Authority;**

  
\_\_\_\_\_  
James I. Newsome, III  
President and Chief Executive Officer

9/15/14  
\_\_\_\_\_  
Date

## Appendix A

The Corps staff will accomplish the reviews and tasks appropriate to expedite, implement and coordinate the Project Development Process and meet SCSPA's needs for compliance with applicable State and Federal statutes. The Corps staff reviews and work tasks may include, but are not limited, to the following:

- Review port plans and programs
- Participate in agency scoping
- Participate in Needs Analysis review and comment
- Participate in wildlife resource inventory and impact assessment
- Provide preliminary environmental analysis, guidance and review
- Provide preliminary and detailed alternatives analyses guidance and review
- Represents the Corps at meetings as appropriate
- Participate in the development and implementation of written SCSPA and Corps guidance
- Ensure Corps reviews coordination on separate reports for the same project
- Conduct document reviews and draft agency responses, which may include but are not limited to:

- \* Wetlands Identification and Delineation Reports
- \* Wetland Functional Assessment Reports
- \* Wildlife Resources and Related Technical Reports
- \* Alternatives Analyses
- \* Cultural Resource Assessments
- \* Endangered Species - Biological Assessments
- \* Floodplain Determination
- \* Hydraulics Report
- \* Habitat Evaluation Procedure Reports
- \* Purpose and Need Statements
- \* Preliminary Alternatives Reports
- \* Environmental Impact Statements
- \* Environmental Assessments
- \* Categorical Exclusion Evaluations
- \* FONSI Requests
- \* Environmental Evaluation Reports
- \* Mitigation Reports and Plans
- \* Section 404 Permit Applications
- \* Policies and Procedures

- Coordinate and provide training on natural resource issues and permits
- Organize meeting and conference calls to clarify problems at the request of SCSPA or the Corps
- Perform other related tasks as defined by SCSPA and agreed to by the Corps



## Appendix B

Under normal circumstances the Corps will make every effort to meet the following timeframes. Please be advised that these timeframes can be affected by Regulation changes, Supreme Court decisions, National Guidance, National Policy, etc.

1. With all requests for Nationwide Permit authorization (NWP) and Individual Permit (IP) applications, the Corps shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such applications.
2. Upon receipt of a completed application or the requested (required), additional information associated with an IP application, the Corps shall disseminate the 30-day Joint Public Notice within 15 days.
3. For Individual Permits, within 15 days of the end of any Joint Public Notice the Corps shall provide, to SCSPA, all comments received as a result of the notice, as well as those comments from the Corps.
4. With all of SCSPA's requests for Jurisdictional Determinations (JDs), the Corps liaison shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such JD requests.
5. For IPs, upon resolution of comments/issues with the Corps, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification or a Critical Area Permit, the Corps shall render a permit decision within 30 days, in 95% of all instances.
6. Upon receipt of a completed and correct JD request the Corps shall issue the Jurisdictional Determination within 30 days, provided coordination with EPA and HQ is not required pursuant to the Rapanos Guidance. Completed and correct JD requests requiring coordination with EPA and or HQ, but not elevated, will generally be completed within 45 days.