

2nd COOPERATIVE AGREEMENT

between

**U.S. ARMY CORPS OF ENGINEERS,
FEDERAL HIGHWAY ADMINISTRATION,**

and

**STATE OF SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION**

**For the *Remainder* of the 2006 – 2007 Federal Fiscal Year
(January 1, 2007 through September 30, 2007)
and the 2007 – 2008 Federal Fiscal Year**

Article I. GRANT RECIPIENT:

U.S. Army Corps Of Engineers
Charleston District
69A Hagood Avenue
Charleston, S.C. 29403

Article II. AUTHORITY:

This Agreement between the U.S. Army Corps of Engineers, Charleston District (hereinafter referred to as the "Corps"), Federal Highway Administration (hereinafter referred to as "FHWA"), and the South Carolina Department of Transportation (hereinafter referred to as "SCDOT") is hereby entered into under the authority of the Intergovernmental Cooperation Act, 31 U.S.C. 6505, 10 U.S.C. 3036d, and Section 6002 of SAFETEA-LU. Collectively, these three 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 transportation projects with the goal of achieving timely design and implementation of effective, safe, and financially prudent transportation 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 two full time employees dedicated exclusively to SCDOT activities, as outlined in Attachment A, in order to assure timely decisions on applications for Department of Army Permits for SCDOT Transportation projects. These applications may be subject to section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act. Duties will include compliance inspections of authorized SCDOT projects and enforcement actions related to any unauthorized activities by SCDOT. It is also understood that these people will also participate in general Corps employee activities.

Article IV. BACKGROUND:

The SCDOT has an extremely active highway development and improvement program. In addition, SCDOT has exhibited a strong commitment to incorporating environmental quality measures into the transportation planning process. The Parties to this agreement are each signatories to a "Partnering Agreement" concerning our interactions and relationships related to transportation projects. We have held summit conferences in the past to discuss broad issues and have continuing regular working-level meetings to discuss specific projects. These contacts and discussions have shown that in order to optimize environmental coordination, it is important to develop procedures that enable Corps personnel to work directly with transportation planners and provide recommendations at the earliest stages of project development.

To implement a merged NEPA/404 process and meet the environmental streamlining goals of SAFETEA-LU, it is critical that the already established close working relationship

be maintained and expanded between the Corps, FHWA, and SCDOT. 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 SCDOT planning process. This increased focus will facilitate environmentally responsible highway development while at the same time improving the Corps' ability to review, evaluate and process appropriate permits for SCDOT 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. Supplement its existing staff with additional qualified staff in order to carry out work as detailed in Attachment 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; and to reimburse reasonable training and travel expenses in accordance with Federal Travel Regulations, 41 C.F.R. Chapter 301. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program, such as cell phones, snake boots, other safety equipment, use of government vehicles, etc.
- B. Hire or reassign two career professional staff persons to undertake the work contemplated by this agreement. The plan is to locate one of these individuals in the Columbia Regulatory Field Office and one in the Charleston District office.
- C. Ensure that these staff persons maintain daily time records identifying the number of hours spent working on tasks related to transportation projects and any other work tasks, including those listed in Attachment A and Section VI Coordination.
- D. Maintain accurate accounting records necessary for substantiating hours and costs billed against this Agreement as required by federal regulations during and for a period of three years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by SCDOT if they should so desire.
- E. Upon receipt of the initial advance payment under this agreement, the Corps will hire supplemental staff and/or reassign existing staff as expeditiously as possible to support the work contemplated by this Agreement.
- F. Refund SCDOT with any funds advanced under this agreement that were not expended towards fulfilling the intent of this Agreement.

Specifically, the SCDOT will:

- A. Provide funding sufficient to pay for salary, benefits, and all associated overhead for two (2) full time employees adjusted annually to cover appropriate step-increases and cost of living allowances (COLA) awarded Federal government employees at a rate equivalent to a Federal white-collar General Pay Schedule 12 (GS-12). Cover all costs associated with training, travel, and per diem at the Federal government rates for the employee as necessary to support the priority review contemplated by this Agreement.
- B. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program, such as computer equipment, cell phones, safety equipment, use of government vehicles, etc.
- C. Upon receipt of the signed Agreement transmit an advance payment equal to the annual total of funds needed to support the services contemplated by this Agreement.

Specifically, the FHWA will:

- A. Approve and program a Federal-Aid project to accomplish the work contemplated by this agreement at the applicable Federal–Aid reimbursement rate in accordance with P.L. 105-178.
- B. Under Authority of 23 U.S.C. 132, reimburse SCDOT the total amount of Federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.

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 the SCDOT, FHWA, 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, or the Clean Water Act of 1977 (as amended) 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 hold monthly meetings to establish priorities and evaluate work performed under the agreement. During these meetings, the Corps will provide a monthly permit status report detailing important milestones associated with each permit. The format of the report will be mutually acceptable to all parties. These meetings will be monthly in the beginning but can be less frequent if all parties agree.

Article VI. COORDINATION

- A. At the monthly meeting established above, SCDOT will submit to the Corps a priority listing of projects, which will guide the Corps supplemental staff efforts in the priority review process. As previously stated, these meetings will be monthly in the beginning but can be less frequent if all parties agree.
- B. Both SCDOT 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.
- C. SCDOT, the Corps, and FHWA 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 SCDOT/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; and to document general adherence to these timeframes the Corps shall provide SCDOT and FHWA copies of the Charleston Regulatory Permits Tracking System (CRPTS), or equivalent, on a quarterly basis. Once the positions have been filled and the timeframes can be further evaluated, adjustments to the timeframes may be made when practical, and agreed to by all parties.
- B. Within three months after approval of this document, SCDOT, the Corps, and FHWA will formalize a specific written procedure, which will address each type of Corps Permit. A principal purpose of these procedures will be to identify what information needs to be included in permit application submittals to the Corps. The procedure will include formal sign-off by all Parties as a commitment to improved coordination.
- C. Within six months after approval of this document, SCDOT, the Corps, and FHWA will review existing interagency coordination processes and formulate recommendations to streamline procedures and increase efficiency. Any changes to the process provided under this agreement shall be agreed to in writing by all parties.

Article VIII. PERIOD OF PERFORMANCE:

- A. This agreement shall be effective for a period of one (1) year and nine (9) months from the start date of the funding period. Options for renewal of this agreement will be determined at the end of the twenty-one-month period.
- B. Any party may terminate this Agreement upon ninety (90) day written notification to the other parties. Upon termination by SCDOT, the Corps will refund to SCDOT any funds which had been previously advanced, but which had not been used or would not be used in accordance with this agreement.

Article IX. AWARD AMOUNT:

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|--|--------------------------------------|
| A. 1 ST FUNDING PERIOD: | January 1, 2007 – September 30, 2007 |
| 2 ND FUNDING PERIOD: | October 1, 2007 – September 30, 2008 |
| B. ESTIMATED 1 ST FUNDING PERIOD COST PER POSITION: | \$110,000 |
| C. TOTAL ESTIMATED COSTS FOR 1 ST FUNDING PERIOD: | \$220,000 |
| D. TOTAL AWARD FOR 1 ST FUNDING PERIOD: | \$220,000 |

Article X. PAYMENT PROVISIONS:

In accordance with the Intergovernmental Cooperation Act, 31 U.S.C. 6505, advance payment is required to be given to 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 1st funding period is based on the annual cost including overhead for two (2), GS-0401-12-05, Regulatory Project Managers (adjusted for the $\frac{3}{4}$ -year period) and associated costs for purchasing/upgrading computer equipment, communication equipment, safety equipment, etc. Based on the selection of candidates, the funding amount may have to be adjusted, either increased or decreased, to adequately compensate for their actual total cost and/or any reasonable unforeseen costs. Once the selections have been made, if a funding adjustment is required, all parties will meet and agree to the appropriate amount in writing.
- B. Any funds that have not been expended during the first funding period will either be refunded to DOT or applied towards the next funding period.
- C. Prior to the 2nd funding period, all parties will meet to evaluate the expenditure of funds for the 1st funding period and determine the award amount for the next funding period.

Article XII. PROJECT OFFICERS:

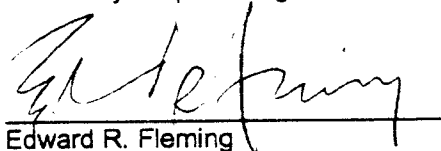
- A. U.S. Army Corps of Engineers
Tina Hadden - Chief, Regulatory Division
69A Hagood Avenue
Charleston, SC 29403
(843) 329-8044

- B. State of South Carolina Department of Transportation
State Highway Engineer
P.O. Box 191
Columbia, S.C. 29201

- C. Federal Highway Administration
Division Administrator
1835 Assembly Street, Suite 758
Columbia, S.C. 29201

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.

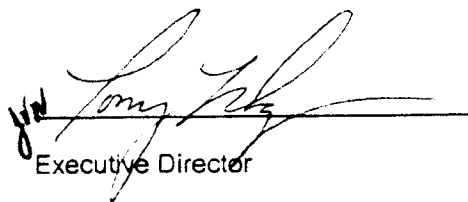
U.S. Army Corps of Engineers;



Edward R. Fleming
Lieutenant Colonel
Charleston District Engineer

5 February 2007
Date

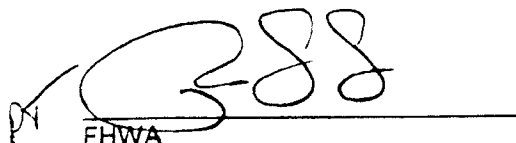
South Carolina Department of Transportation;



Executive Director

2/28/07
Date

Federal Highway Administration;



FHWA
Division Administrator

3/1/07
Date

Appendix A

The Corps staff will accomplish the reviews and tasks appropriate to expedite, implement, and coordinate the Project Development Process and meet SCDOT'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 transportation 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 SCDOT and Corps guidance
- Ensure Corps review 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 SCDOT or the Corps
- Perform other related tasks as defined by SCDOT and agreed to by the Corps

Appendix B

Under normal circumstances the Corps will make every effort to meet the following timeframes:

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 the SCDOT, all comments received as a result of the notice, as well as those comments from the Corps.
4. Regarding requests for authorization under the SCDOT's General Permit (GP) agreement with the Corps, the Corps shall provide notification of any need for additional, required information within 15 days of the Corps' receipt of such GP authorization requests.
5. With all of the SCDOT'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.
6. For General Permit (GP) authorization requests requiring dissemination to the resource agencies, the Corps shall provide all comments within 15 days of the end of the 15-day comment period.
7. 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.
8. For GP authorization requests that do not require dissemination to the resource agencies, the Corps shall issue or deny such GP authorization requests within 30 days of their receipt of a complete GP authorization request, or the requested (required), additional information associated with a GP authorization request. Provided there are no outstanding issues/comments from other resource agencies, the Corps will waive, issue, or deny at least 95% of all GP authorization requests within 30 days.
9. Upon receipt of a completed and correct JD request the Corps shall issue the Jurisdictional Determination within 30 days.