

COOPERATIVE AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY,
THE FEDERAL HIGHWAY ADMINISTRATION,
AND
THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION
FOR THE
INTERAGENCY FUNDING OF THE DEPARTMENT OF THE ARMY PERMIT
PROCESSING FOR FEDERAL-AID HIGHWAY PROJECTS IN OHIO

This Agreement is entered into this 16th day of May, 2005 by and between the Department of the Army (hereinafter the "USACE"), represented by the Division Commander, Great Lakes and Ohio River, the Federal Highway Administration (hereinafter the "FHWA"), represented by the Division Administrator, and the State of Ohio Department of Transportation (hereinafter the "ODOT"), represented by the Director, all hereinafter referred to as the parties.

WHEREAS, the ODOT desires to have priority review of highway construction projects with the goal of achieving timely design and implementation of adequate, safe, environmentally sound and economical highway improvements while also assuring such design and implementation is done in accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344, et seq) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, et seq); and

WHEREAS, this Agreement sets forth the responsibilities of the parties to ensure priority review of the State of Ohio highway construction projects with the purpose of achieving timely review and disposition of State of Ohio permit applications, and other activities which the Corps administers in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, et seq) and Section 404 of the Clean Water Act (33 U.S.C. 1344, et seq) and its implementing regulations; and

WHEREAS, authority for this Agreement is pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505), Section 214 of the Water Resources Development Act of 2000 (Pub. L. 105-178), Section 5501.03 (A)(3) of the Ohio Revised Code and Section 503.06 of Am. Sub. H.B. 68 of the Ohio General Assembly; and

WHEREAS, funding has been appropriated under the Transportation Equity Act for the 21st Century (TEA-21) (P.L 105-178) to provide a coordinated environmental review process; and

WHEREAS, ODOT has substantially increased the number of highway projects for which the USACE has legal responsibility to review pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act; and

WHEREAS, the location of these projects within Ohio fall under the jurisdictional areas of four (4) different USACE districts (Buffalo, Huntington, Louisville, and Pittsburgh); and

WHEREAS, the Parties agree that establishing a USACE central point of contact to be located in the Huntington District for all highway projects in Ohio would be more efficient and improve the environmental review process; and

WHEREAS, the parties have determined that it would be mutually beneficial to supplement USACE personnel to achieve the purpose set forth above; and

WHEREAS, ODOT is willing to pay for dedicated personnel to evaluate and process ODOT permit applications and issues in accordance with Federal laws and regulations; and

WHEREAS, the FHWA has indicated and agrees that ODOT's apportioned Federal-aid highway funds may be used to support this agreement and would be an eligible source for funding at applicable Federal-aid match rates; and

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.

Section 1: Obligations of ODOT

1.1 ODOT shall program a Federal-aid project to identify costs and provide payments to the USACE for the costs incurred pursuant to this Agreement. ODOT agrees to encumber an annual amount to cover all services to be provided by the USACE, as set forth herein. The annual amount for State of Ohio Fiscal Year 2005 shall be Forty-Eight Thousand Five Hundred Dollars (\$48,500). The annual amount for State of Ohio Fiscal Year 2006 is estimated to be Seven Hundred Ninety-Four Thousand, Four Hundred Ninety-Three Dollars and No Cents (\$794,493.00); the annual amount for State of Ohio Fiscal Year 2007 is estimated to be Six Hundred Twenty-Seven Thousand and Twenty-Six Dollars and No cents (\$627,026.00). Annual amounts for future fiscal years shall be determined by the mutual consent of the parties at least sixty (60) days prior to the start of the next fiscal year. The State of Ohio's fiscal year begins July 1 and ends June 30 each year.

1.2 Within 30 days of the execution of this Agreement, ODOT agrees to make its annual payment for State of Ohio Fiscal Year 2005 to USACE Huntington District by mutually acceptable method of payment. This payment shall cover expenses resulting from the hiring of new employees and overhead costs.

1.3 Beginning July 1, 2005, ODOT agrees to pay the USACE Huntington District the annual amount for State of Ohio Fiscal Year 2006 and 2007, and all state fiscal years thereafter, on a

quarterly basis for all services set forth herein. Quarters shall begin on the 1st day of July, October, January, and April.

1.4 If the Huntington District forecasts its actual costs will exceed the amount of funds available, it shall promptly notify the ODOT of the amount of additional funds necessary. The ODOT shall either provide the additional funds to the Huntington District, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct the termination of this Agreement pursuant to Section 7.

1.5 Quarterly payments may include the following expenses:

1. Salary and benefits for the full-time employee(s) which will be adjusted annually to cover appropriate step-increases and cost of living allowance (COLA) awarded to Federal government employees.
2. Actual burdened overhead rate carried by the USACE, including:
 - Effective Rate
 - Departmental Rate
 - General Administrative Rate
 - Other as appropriate
 - Training and travel

1.6 ODOT agrees to hold meetings with the USACE to establish priorities and evaluate work performed under this Agreement.

Section 2: Obligations of the USACE Huntington District

2.1 USACE Huntington District may accept and expend the funds provided for herein by ODOT to expeditiously evaluate permit applications under the jurisdiction of the Department of the Army for ODOT highway construction projects.

2.2 Using the funds provided by ODOT, the USACE Huntington District shall expeditiously supplement its existing staff, which currently processes ODOT permit applications and other permits on a routine basis, by hiring professional employees, and use the funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate.

2.3 USACE Huntington District agrees to ensure that the supplemental staff funded by this Agreement shall be assigned to evaluate and process permit applications and other tasks which support this Agreement including agency coordination and compliance with the statutes and regulations for which the USACE is legally responsible and identified as priority projects by the ODOT in accordance with the coordination procedures defined in Section 5 below.

2.4 The USACE shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records and reports as required by Section 4 for examination as required by the ODOT or the FHWA and shall permit extracts and copies to be made by these other signatory agencies or their duly

authorized representatives. The USACE 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.

2.5 USACE Huntington District agrees to hold a meeting every six months for the first year with ODOT and FHWA to assess the coordination procedures and the timeliness of work performed under this Agreement. After the first year, annual meetings will be held with ODOT and FHWA to assess the coordination procedures and the timeliness of work performed under this Agreement.

2.6 Upon receipt of the initial ODOT payment, the positions shall be filled as expeditiously as possible to support work contemplated by this Agreement.

2.7 USACE Huntington District shall develop internal procedures to implement this Agreement and modify as necessary.

Section 3: Obligations of FHWA

3.1 FHWA shall approve programming 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.

3.2 Under the authority of 23 U.S.C. 132, the FHWA shall reimburse ODOT within 30 days for the total amount of the Federal share payable for any project programmed (including any initial and quarterly payments) to support this Agreement upon obtaining notification of its execution.

Section 4: Payment Provisions

4.1 In accordance with paragraph 1.3, ODOT agrees to make its annual payment for State of Ohio Fiscal Year 2005 to USACE Huntington District by a mutually acceptable method of payment and shall, within ten (10) calendar days, notify the USACE Huntington District in writing that the payment has been sent to the appropriate account at the USACE Finance Center.

4.2 For all subsequent quarterly advance payments, the USACE Huntington District shall provide an invoice of estimated costs to implement this Agreement for the upcoming quarter to ODOT. Such estimate shall include supporting documentation based on the costs for the previous quarter and shall be provided to ODOT sixty (60) days prior to the start of the next quarter. ODOT shall pay the USACE Huntington District a quarterly lump sum amount as mutually determined by the parties. The USACE Huntington District shall ensure that said funds are assigned to an appropriate account from which the USACE Huntington District may withdraw the funding in support of activities identified in this Agreement.

4.3 ODOT shall make prompt payment within thirty (30) calendar days of the receipt of the USACE Huntington District's estimate of costs for the next quarter.

4.4 USACE Huntington District shall provide to ODOT a quarterly accounting of the actual expenditures for salaries, benefits, and overhead. ODOT shall review the quarterly USACE accountings of such actual expenditures. If ODOT determines that the documentation or allowance of such expenditures are inadequate or insufficient, or determines that further documentation or clarification is required, a meeting to clarify the account of expenditures will be requested by ODOT within fifteen (15) working days of the receipt of the submittal from USACE Huntington District. In the event of a disagreement over the account of expenditures, the parties pledge to negotiate in good faith towards a reconciliation of the disputed amount; however, the burden of providing the required information or documentation is on the USACE Huntington District. ODOT shall notify USACE Huntington District in writing of the inadequacy or insufficiency and may provide any information necessary to correct the inadequacy or insufficiency.

4.5 In the event of disagreement over statements of expenditure, USACE Huntington District agrees to continue the priority review of highway construction projects throughout negotiations as long as the current balance is sufficient to cover costs. The USACE Huntington District will credit ODOT for any amount determined to be an over-statement of USACE expenses. Any funds paid to the USACE by ODOT in excess of the actual costs incurred in a billing period shall apply toward the USACE Huntington District's expenses in the following billing period.

4.6 ODOT agrees to reconcile and adjust Federal-aid project funding and ODOT payments to the USACE Huntington District at the time of any Agreement extension, modification, or termination. Upon completion of this Agreement, ODOT shall make any adjustments needed in Federal and non-Federal shares payable in accordance with 23 U.S.C. Section 132.

Section 5: Coordination

5.1 On a monthly basis or as needed, ODOT will establish a priority listing of projects with the USACE Huntington District which will guide the Huntington District staff efforts in the priority review process.

5.2 Both ODOT and the USACE agree that ready and reasonable access will be provided to working level staff of each party in an effort to minimize the need for formal meetings.

5.3 While the focus will be to review permit applications for priority ODOT projects, USACE Huntington District staff may also be involved in other tasks which support this Agreement including agency coordination and compliance with the statutes and regulations for which the USACE is legally responsible. Examples of other tasks which may be assigned include, but are not limited to:

1. Review and comment on pre-application submittals (i.e., project alternatives, ecological survey reports, environmental documents, mitigation plans, functional assessments, etc.).
2. Attend project meetings, including field or office meetings.
3. Participate in interagency scoping meetings.

4. Perform other tasks including jurisdictional determinations and wetland delineation verifications.
5. Develop and implement programs to increase efficiency of transportation project permit processing, such as merging NEPA and 404 process requirements to improve efficiencies of the project development process, implementing wetland mitigation banks and in-lieu fee mitigation agreements, developing programmatic agreements and general permits as necessary, review and comment on Nationwide Permit (NWP) changes as necessary, and developing interagency training programs in cooperation with ODOT and FHWA to sustain efforts contemplated by this agreement.
6. Work with FHWA to identify and implement procedures to improve efficiencies during the project development process that allow the USACE to adopt environmental documentation as a cooperating agency to comply with NEPA, and where appropriate, reference and adopt findings on projects to comply with other laws, regulations and Executive Orders. Examples include, but are not limited to, findings for National Historic Preservation Act, Endangered Species Act, and Environmental Justice.

Section 6: Goals and Objectives

6.1 The ODOT, USACE, and FHWA shall review all existing interagency coordination processes and formulate recommendations to improve procedures and increase efficiency within six (6) months of the individual(s) in the position(s) to be funded by the Agreement report for duty. The recommendations shall be accompanied with a proposed schedule for implementation.

6.2 The USACE agrees to meet the following goals:

1. Early coordination and prioritization of ODOT project permit applications and related activities (i.e., project alternative analysis, ecological survey reports, environmental documents, mitigation plans, functional assessments, etc.).
2. The USACE will inform ODOT if project evaluation may exceed agreed upon processing times.
3. The USACE will work proactively to improve upon all timelines set forth at 33 CFR 325 and 33 U.S.C. 1344 for Department of the Army actions unless otherwise previously indicated or noted as an exception.

6.3 ODOT agrees to meet the goals established by the following performance indicators:

1. Prepare and submit to the USACE a complete permit application with drawings and necessary information as currently required by USACE regulations.
2. Provide all information necessary for evaluation of permit applications and related activities.
3. Give full consideration to modifying the submitted permit application in accordance with the comments provided by the USACE or other approving agency in the course of permit review or terminate and withdraw the permit application.

Section 7: Commencement, Expiration, and Termination

7.1 The terms and conditions of this Agreement shall become effective when executed by all the parties.

7.2 The terms and conditions of this Agreement shall be reviewed at a meeting to be held by the parties every year, coinciding with the beginning of the State of Ohio's fiscal year. At the time of review, the parties shall discuss the estimated annual amount for the next fiscal year, quality of work performed, key accomplishments, work processes, procedures, priorities, and the goals and objectives of the Agreement. The parties shall determine whether the terms and conditions of this Agreement are still satisfactory to each party or whether modifications are required. If modifications are required, such changes shall be made by written amendment executed by all parties. Each party is free to request modifications to the terms and conditions of this Agreement at any time while this Agreement is in effect and such modifications may be made by written amendment upon the mutual agreement of both parties.

7.3 ODOT has the legal authority to enter into this Agreement, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the Agreement. ODOT acknowledges that the rights, duties, and obligations described in this Agreement cannot be binding until all statutory and regulatory requirements have been met, including Ohio Revised Code Section 126.07. In the case of invalidity due to Ohio Revised Code Section 126.07, USACE may exercise any legal rights it has to protect the Government's interests related to this Agreement.

7.4 This Agreement may be terminated by either the ODOT or the USACE upon sixty (60) days written notice to the POC of the other agency if the party requesting termination has demonstrated that the other party has not substantially fulfilled the responsibilities and terms of the Agreement after being provided with notice and ninety (90) days to remedy the situation. If either ODOT or USACE wishes to terminate this agreement for any reason other than deficient performance, the party wishing to terminate shall provide written notice to the other party, indicating the intent to terminate the agreement one hundred and twenty (120) days from the date of the written notice, unless both parties agree to an alternate date.

7.5 In the event of termination, all excess funds shall be refunded within sixty (60) days after the effective period of the termination. Neither party shall incur any new obligations for the terminated portion of the Agreement after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination. In the event of termination of this Agreement, the USACE Huntington District shall conduct a final accounting. If additional funds are necessary, the USACE Huntington District shall be entitled to compensation for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the USACE shall not exceed the total amount of consideration stated in this Agreement. Should the USACE Huntington District be unable to complete the provisions of this Agreement for any reason, all monies provided by ODOT which prove to be cancelable obligations or unallowable shall be refunded to ODOT.

Section 8: General Provisions

8.1 The point of contact in each signatory agency is as listed below:

1. ODOT: Administrator, Office of Environmental Services
Ohio Department of Transportation
1980 West Broad Street; Columbus, Ohio 43223
Tel: 614-644-0377; Fax: 614 -728-7368

2. USACE: Chief, Regulatory Branch
USACE Huntington District
502 8th Street; Huntington, West Virginia 25701
Tel: 304-399-5389; Fax: 304-399-5085

3. FHWA: Environmental Program Manager
Federal Highway Administration
200 North High Street; Columbus, OH 43215-2408
Tel: 614-280-6852; Fax: 614-280-6876

8.2 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 age, race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their age, race, color, religion, sex, or national origin.

8.3 All contracts to be developed and awarded pursuant to this Agreement, including all designs, plans, specifications, estimates, construction, utility relocation work, right-of-way acquisition procedures, acceptance of work and procedures in general, 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 non-discrimination, compliance with the American with Disabilities Act, anti-solicitation, information, auditing, and reporting requirements.

8.4 Continuation of Existing Responsibilities

1. The Parties to this Agreement are acting in an independent capacity in the performance of their respective legally authorized functions under this Agreement, and none of the parties' employees are to be considered the officer, agent, or employee of another party, to include the staff to be hired by the USACE to support priority review of ODOT highway construction projects.

2. This Agreement shall not abrogate any obligations or duties to comply with the regulations promulgated under the 1973 (Federal) Endangered Species Act, as amended; the 1958 (Federal) Fish and Wildlife Coordination Act, as amended; the National Environmental Policy Act of 1969; the (Federal) Clean Water Act of 1977, as amended; National Historic Preservation Act of 1966, or any other Federal statute or implementing regulations.

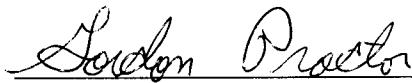
8.5 This Agreement in no way restricts the USACE or ODOT from participating in similar activities with other public or private agencies, organizations, and individuals.

8.6 This Agreement and any claims arising out of this Agreement shall be governed by the laws of the United States and the State of Ohio.

8.7 The USACE shall provide its own workers compensation coverage throughout the duration of the Agreement and any extensions thereof.

8.8 By signature below, ODOT certifies that the individuals listed in this Agreement as representatives of ODOT are authorized to act in their respective areas for matters related to this Agreement. All parties acknowledge that any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

STATE OF OHIO



Gordon Proctor, Director
Ohio Department of Transportation

Date 5/16/05

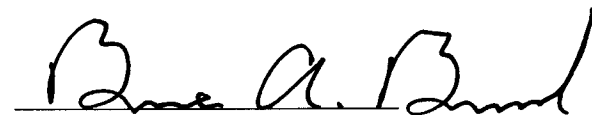
FEDERAL HIGHWAY ADMINISTRATION



Dennis Decker, Division Administrator
Federal Highway Administration

Date 5/16/2005

DEPARTMENT OF THE ARMY



Bruce A. Berwick
Brigadier General, U.S. Army
Division Engineer

Date 16 May 2005