



MEMORANDUM OF AGREEMENT

BETWEEN

UNITED STATES ARMY CORPS OF ENGINEERS (USACE),

Mobile District and Nashville District

AND

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

AND

ALABAMA DEPARTMENT OF TRANSPORTATION (ALDOT)

FOR

EXPEDITING PERMIT APPLICATION EVALUATIONS UNDER

SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000, AS
AMENDED, AND/OR

SECTION 139(j) OF TITLE 23, UNITED STATES CODE, ASSISTANCE TO
AFFECTED STATE AND FEDERAL AGENCIES

PREAMBLE: This Memorandum of Agreement (Agreement) between the Alabama Department of Transportation (ALDOT), the Federal Highway Administration (FHWA), and the Mobile and Nashville Districts of the U.S. Army Corps of Engineers (USACE) (collectively "the Parties") sets forth the responsibilities of the Parties relative to the expedited review of permit applications for highway projects. The purpose of this Agreement is to achieve timely design and implementation of adequate, safe, and economical highway improvements within the State of Alabama 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 and its implementing regulations, and assuring such design and implementation is in accordance with federal statutes USACE and the FHWA administer. The Parties shall work proactively to enhance each agency's ability to realize its mission through open communication and teamwork.

1. WHEREAS, many of these projects include activities that fall within the jurisdiction of USACE under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403;
2. WHEREAS, timely review of permit applications for ALDOT projects under these statutes is critical to ALDOT's ability to advertise these projects to meet scheduled dates for obligating federal and non-federal funding, Alabama Transportation Rehabilitation and Improvement Program (ATRIP) targets;
3. WHEREAS, USACE is unable, within current staff resource constraints, to provide expedited evaluation of permit applications under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 for transportation projects within the State of Alabama, and ALDOT-funded USACE dedicated staffing will assist ALDOT in meeting its milestones for bid advertisement and will help avoid unanticipated costs and delays to ALDOT projects;
4. WHEREAS, the Parties have determined that it will be mutually beneficial and serve to increase efficiencies within each agency to supplement USACE staffing above existing levels;
5. WHEREAS, the Parties have determined that the agreed upon supplemental staffing above existing levels will provide expedited review of transportation projects contemplated or under design for a public purpose by ALDOT or its sub-recipients;
6. WHEREAS, ALDOT and USACE have certified that ALDOT has sufficient work associated with the processing of Department of the Army permit applications to fully employ one employee for the life of this Agreement;
7. WHEREAS, ALDOT is willing to contribute funds to USACE for supplemental staffing to provide these functions;
8. WHEREAS, Section 214 of the Water Resources Development Act of 2000, as amended, codified at 33 U.S.C. § 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite evaluation of permit applications from that entity related to projects or activities with a public purpose falling under USACE regulatory jurisdiction;
9. WHEREAS, 23 U.S.C. § 139(j) authorizes the Secretary of the U.S. Department of Transportation (USDOT) to allow public entities that receive financial assistance from USDOT (when the financial assistance is provided under title 23 ("Highways") or chapter 53 of title 49 ("Public Transportation") of the United States Code) to provide funds to Federal agencies, state agencies, and Indian Tribes participating in the environmental review process for a project or program, but only when the funds will support activities that directly and meaningfully contribute to expediting and improving permitting and review processes;

10. WHEREAS, the authority of the Secretary of the Army was delegated to the Assistant Secretary of the Army for Civil Works by memorandum dated January 8, 2018, re-delegated to the Chief of Engineers by memorandum dated January 19, 2018, and further re-delegated to District and Division Commanders by memorandum dated April 18, 2018;

11. WHEREAS, the Assistant Secretary of the Army for Civil Works, by memorandum dated January 19, 2018, issued updated implementation guidance on the establishment, management, and oversight of funding agreements that allow USACE to accept and expend funds to expedite the permit review process;

12. WHEREAS, Alabama Code Section 23-1-1 grants ALDOT the authority to enter into agreements and cooperate with the government of the United States in the construction, improvement, enhancement, or maintenance of transportation in Alabama and authorizes ALDOT to comply with the laws and regulations of the United States for the expenditure of federal moneys;

13. WHEREAS, the Parties anticipate that this Agreement and funding transfer will be able to demonstrate an improvement in performance;

14. WHEREAS, the locations of these projects within the State of Alabama fall under the jurisdictional areas of two (2) different USACE districts (Mobile and Nashville);

15. WHEREAS, the Parties agree that establishing a USACE central point of contact (POC) to be located in the Mobile District for all Surface Transportation Program (STP) projects in the State of Alabama would create efficiency and expedite the permit application review process;

16. WHEREAS, the FHWA and ALDOT have determined USACE involvement in the planning and environmental analysis of proposed Federal-aid STP projects undertaken by ALDOT or a local governmental entity receiving FHWA title 23 U.S.C. financial assistance through ALDOT (hereinafter its "sub-recipients") to be in the public interest; and

17. WHEREAS, the FHWA agrees that ALDOT'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.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties to this Agreement concur and agree as follows:

I. Agency Responsibilities

A. ALDOT

1. ALDOT shall fund one (1) full-time employee ("Supplemental Position") meeting the Professional Standards described in Attachment A, which is incorporated into this Agreement by reference. The costs of funding the USACE employee shall include all salary-related costs assessed by USACE. It is expected that the total annual funds needed for these services will not exceed \$250,000.00. Actual costs may be less than this amount, depending upon the amount of travel needed to support the expedited review contemplated by this Agreement. Since FHWA and ALDOT are legislatively prohibited from reimbursing for services in advance, billings against the programmed and obligated amount will be made no more frequently than monthly in arrears. If and when additional funds are necessary, additional payments may be negotiated by all Parties to this Agreement. Amounts to be billed by USACE and paid by ALDOT shall include:

(a) Salary and benefits (including paid Federal holidays) for one (1) full-time employee (meeting the Professional Standards described in Attachment A), adjusted annually as needed to cover appropriate locality pay increases and performance-based salary increases within the employee's pay grade under the GSA General Schedule pay scale. In accordance with Section VI.H of this Agreement, additional positions and subsequent funding, subject to an encumbrance as required by Alabama State law, may be added under this Agreement if all parties to the Agreement find that the workload warrants additional USACE personnel.

(b) Actual burdened overhead rate carried by USACE, including:

- i. Effective Rate,
- ii. Departmental Overhead Rate,
- iii. General Administrative Rate,
- iv. Other Items, as appropriate.

(c) Compensatory time, overtime labor compensation, training, travel, and per-diem at Federal government rates, as needed to support the expedited review contemplated by this Agreement.

(d) Costs for the use of a government-owned vehicle or rental car.

2. The start date for annual funding will be 1 October. Funds will be transmitted electronically in accordance with USACE procedures.

3. If this Agreement is modified to provide for additional services from USACE not provided by this Agreement, payment shall be made for the costs for those additional services within thirty (30) days of receiving an invoice from USACE.

4. If USACE forecasts that its actual costs will exceed the amount of funds specified in Section I.A.1, it shall promptly notify ALDOT of the amount of additional funds necessary. ALDOT shall (i) provide the additional funds to the USACE, subject to an encumbrance as required by Alabama State law, (ii) require that the scope of work

be limited to that which can be paid for by the then-available funds, or (iii) direct the termination of the Agreement pursuant to Section VI.J.

5. ALDOT shall review quarterly USACE submittals of actual account of expenditures. ALDOT shall request a meeting to clarify the account of expenditures within thirty (30) calendar days of receipt if ALDOT disagrees with the USACE submittals. In the event of a disagreement over the account of expenditures, ALDOT pledges to negotiate in good faith towards a reconciliation of the disputed amount, in accordance with Section VI.A. USACE and ALDOT will each credit the other as appropriate for any amount determined to be an over-statement or under-statement of USACE expenses.

6. On a quarterly basis and as needed, ALDOT shall establish a priority listing of projects for USACE that will guide the USACE Supplemental Staff's efforts in the expedited permit review process.

7. Within sixty (60) days following the last signature on this Agreement, ALDOT shall provide the USACE with a one-year-out project planning list that will be updated and submitted at least quarterly. The list shall provide project title, location, type of project, status (funding, planning, design, permitting, etc.), and, if known, anticipated contract advertisement, award, and construction dates.

8. On a quarterly basis, ALDOT will meet with the USACE to evaluate work performed under this Agreement.

9. When a Department of the Army permit is needed, ALDOT shall, with the guidance of the USACE Supplemental Staff, prepare and submit to USACE a completed permit application and drawings, as required by USACE regulations set forth at 33 C.F.R. Part 325, Mobile District procedures, and Nashville District procedures. ALDOT shall provide all information necessary for USACE evaluation of permit applications, delineations of aquatic resources, and jurisdictional determinations.

B. USACE, Mobile District, shall:

1. Act as the central point of contact for all USACE permit application reviews for ALDOT projects contemplated by this Agreement.

2. Hold annual meetings with ALDOT and FHWA to evaluate work performed under this Agreement.

3. Upon programming and obligation of the initial year's funding, hire a full-time employee meeting the Professional Standards described in Attachment A to fill the Supplemental Position as expeditiously as possible to support work contemplated by this Agreement. Said employee filling the Supplemental Position shall be employed by USACE and supervised solely by the Mobile District.

4. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount, per Section VI.A below. Continue the expedited review of permit applications for highway construction projects throughout negotiations as long as current funding obligations are sufficient to cover costs.

5. Develop internal procedures to implement this Agreement and modify as necessary, including but not limited to, procedures for tracking receipts and expenditures of funds provided under this Agreement – particularly to identify the relevant statutory authority (that is, Section 214 and/or Section 139(j)); to review applications for Federal-aid STP projects or state-aid projects proposed by ALDOT under Section 214 and applications for projects of ALDOT's Federal-aid sub-recipients under Section 139(j); and to comply with reporting requirements related to activities undertaken pursuant to this Agreement.

6. Process all ALDOT permit applications, including those submitted to the USACE Nashville District after the Effective Date of this Agreement for work proposed in the Tennessee River watershed.

C. FHWA shall:

1. Approve programming of a Federal-aid project to obligate funds to accomplish the work contemplated by this Agreement at the applicable Federal-aid reimbursement rate, in accordance with 23 U.S.C. § 139(j).

2. Under the authority of 23 U.S.C. § 132, reimburse ALDOT the total amount of Federal share payable for any project programmed to support this Agreement upon obtaining notification of its execution.

3. Attend annual meetings described in Section I.B.2 above with ALDOT and USACE to evaluate work performed under this Agreement.

II. Coordination

A. ALDOT will establish priorities for USACE Supplemental Staff efforts in the expedited permit review process.

B. Both ALDOT and USACE agree that reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings.

C. While the primary focus will be to expedite the review and processing of permit applications for ALDOT projects, USACE Supplemental Staff may also be involved in other tasks which support agency coordination and serve to expedite the implementation of the ALDOT's Surface Transportation Program and to comply with the statutes and regulations for which USACE bears responsibility, including advising ALDOT in the USACE environmental decision making process and pertinent environmental

regulations to achieve timely permit application reviews for projects undertaken by ALDOT and its sub-recipients. Examples of other tasks which USACE may assign to the Supplemental Staff include but are not limited to:

1. Attend pre-application meetings, interagency meetings, internal ALDOT project coordination meetings, and public meetings for each requested permit action.
2. Participate in interagency scoping meetings and NEPA-404 merger meetings.
3. Assist ALDOT in explaining USACE-related issues in its project decision-making process to other Federal and Local resource agencies.
4. Review and comment on project alternatives, mitigation plans, and biological assessments.
5. Assist ALDOT in developing programs to increase the efficiency of ALDOT's environmental decision making process, statewide wetland banking program, and transportation project permit application evaluation.
6. Assist ALDOT in providing appropriate training of ALDOT personnel in regulatory program requirements and nationwide permits.
7. Assist ALDOT and its sub-recipients in identifying Waters of the United States that may be impacted by ALDOT projects and require a Department of the Army permit and potential wetland and stream mitigation sites and plans.

III. Performance Objectives

A. ALDOT, USACE and FHWA will review existing interagency coordination processes and, if appropriate, formulate recommendations to improve procedures and increase efficiency within three (3) months of the time that the Supplemental Staff reports for duty.

B. USACE agrees to use best efforts to meet the following goals:

1. Provide early coordination and expedited review of transportation project permit applications.
2. Continue timely review for ALDOT actions authorized by nationwide permits.
3. Inform ALDOT if permit application processing may exceed standard evaluation times due to, but not limited to, issues such as required (Federal) Endangered Species Act consultation, Section 106 of the National Historic Preservation Act consultation, Section 404(b)(1) Guideline compliance, controversial public interest factors, litigation, etc.

4. Meet all timelines established by regulations and USACE policy for individual permit decisions, unless otherwise previously indicated or noted as an exception.

5. Include the USACE Supplemental Staff as a commenting member of ALDOT's environmental review and evaluation team.

C. ALDOT agrees to meet the following goals:

1. With the guidance of the USACE Supplemental Staff, provide all information necessary for evaluation of complete permit applications.

2. With the guidance and assistance of the USACE Supplemental Staff, give full consideration to modifying each submitted permit application and supporting documentation in accordance with the comments provided by USACE and other approving or commenting agencies in the course of permit review or terminate or withdraw the permit application.

IV. Impartial Decision Making: It is understood and agreed that, to ensure the funds will not impact impartial decision making with respect to ALDOT permit applications, the following procedures will apply to all cases using funds provided by ALDOT as a participating non-Federal public entity:

A. All final permit decisions (including individual permit decisions and all reporting general permit verifications, such as nationwide and regional general permits) and associated decision documents must be reviewed and signed by a responsible official that is at least one level above the decision-maker. For example, if the decision-maker would be a Regulatory Section Chief, then the one-level-above reviewer would be the Branch Chief. In addition, the one-level-above review must not be a position partially or fully funded by ALDOT for at least one year.

B. All final permit decisions for cases where these funds are used will be made available on the USACE Headquarters Regulatory ORM2 public web page.

C. The Mobile District will not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration.

D. The Mobile District must comply with all applicable Federal laws and regulations.

E. Funds will only be expended to expedite the evaluation of a permit application according to the terms and conditions of this Agreement. Funds will not be expended for the review of the decision maker's decision. If any third parties are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Mobile District before the final permit decision is made.

F. Funds will not be used for enforcement activities. Funds may be used for compliance inspections, including monitoring of mitigation sites, but cannot be used to

resolve non-compliance issues. Mitigation bank or in-lieu-fee program instruments developed for ALDOT must be signed by the Regulatory Division Chief or a higher level position not funded by any funding agreement.

G. All preliminary jurisdictional determinations (JDs) and approved JDs where funds are used must be reviewed by a non-funded USACE regulatory employee. The review does not need to be a field review. For those approved JDs that require coordination with the U.S. Environmental Protection Agency, additional internal Mobile District review is not required.

V. Public Information: Justification and explanation of ALDOT and FHWA programs or projects before other agencies, departments and offices will not be the responsibility of the Mobile District. The Mobile District may provide, upon request from ALDOT, any assistance necessary to support justification or explanations of activities conducted under this Agreement. In general, the Mobile District is responsible only for public information regarding Mobile District regulatory activities. ALDOT will give the Mobile District advance notice before making formal, official statements regarding Mobile District activities funded under this Agreement.

VI. General Terms:

A. Dispute Resolution: The Parties agree that, in the event of a dispute between the Parties, ALDOT and the Mobile District shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

B. Other Relationships or Obligations. This Agreement will not affect any pre-existing or independent relationships or obligations between ALDOT and the USACE Mobile District or Nashville District. USACE's participation in this Agreement does not imply endorsement of ALDOT projects, nor does it diminish, modify, or otherwise affect USACE statutory or regulatory authorities.

C. Continuation of Existing Responsibilities. 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, representative, agent, or employee of any another Party, to include the Supplemental Staff hired by USACE to support expedited review of ALDOT permit applications under this Agreement.

D. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

E. Effective Date. This Agreement will become effective upon the date of execution by the last signatory.

F. Controlling Law. The applicable statutes, regulations, policies, directives, and procedures of the United States govern this Agreement and all documents pursuant to and actions arising out of the Agreement. Unless otherwise required by law, all expediting of permit applications undertaken by USACE will be governed by USACE regulations, policies and procedures.

G. Length of Agreement. This Agreement shall expire five (5) years following the Effective Date of execution, unless extended or terminated as provided below.

H. Modification and Extension. This Agreement may be modified, amended or extended by written agreement of the signatory Parties.

I. Merger. This Agreement, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

J. Termination. This Agreement may be terminated by either ALDOT or USACE upon sixty (60) days written notice to the POC of the other party, 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 written notice and ninety (90) days to remedy the situation. If either ALDOT 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 at least one hundred and eighty (180) days from the date of the written notice, unless all Parties agree to an alternate date. In the event of termination, ALDOT shall continue to be responsible for all costs incurred by USACE under this Agreement.

K. Agency Points of Contact. Any notice, request, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by registered or certified mail, with return receipt. A Party may change the recipient or address to which such communications are to be directed by giving written notice to the other Parties in the manner provided in this Article. The points of contact are listed below.

1. ALDOT:

ADDRESS: Alabama Department of Transportation
Attn: Transportation Director
Post Office Box 303050
Montgomery, Alabama 36130-3050
PHONE: (334) 242-6776
FAX: (334) 353-6505

2. USACE:

ADDRESS: Mobile District, U.S. Army Corps of Engineers
Attn: Regulatory Division Chief
Post Office Box 2288
Mobile, Alabama 36628-0001
PHONE: (251) 690-2658
FAX: (251) 694-3692

3. FHWA:

ADDRESS: Federal Highway Administration
Attn: Division Administrator
9500 Wynlakes Place
Montgomery, Alabama 36117
PHONE: (334) 274-6840
FAX: (334) 274-4352

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, which shall become effective upon the date it is last signed.

ALABAMA DEPARTMENT OF
TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

BY: _____
John R. Cooper
Transportation Director

BY: _____
Mark Bartlett
Division Administrator

Date: _____

Date: _____

USACE, MOBILE DISTRICT

USACE, NASHVILLE DISTRICT

BY: JOLY.SEBASTIEN.PIERRE.1132186762
Digitally signed by
JOLY.SEBASTIEN.PIERRE.1132186762
Date: 2019.09.09 08:20:20 -05'00'
Sebastien P. Joly
Colonel, U.S. Army
District Commander

BY: TOOLE.JUSTIN.RICHARD.1255472212
Digitally signed by
TOOLE.JUSTIN.RICHARD.1255472212
Date: 2019.10.06 19:59:15 -05'00'
Sonny B. Avichal
Lieutenant Colonel, U.S. Army
District Commander

Date: _____

Date: _____

2. USACE:

ADDRESS: Mobile District, U.S. Army Corps of Engineers
Attn: Regulatory Division Chief
Post Office Box 2288
Mobile, Alabama 36628-0001
PHONE: (251) 690-2658
FAX: (251) 694-3692

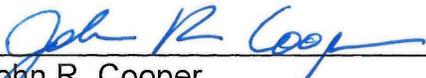
3. FHWA:

ADDRESS: Federal Highway Administration
Attn: Division Administrator
9500 Wynlakes Place
Montgomery, Alabama 36117
PHONE: (334) 274-6840
FAX: (334) 274-4352

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ALABAMA DEPARTMENT OF
TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

BY: 
John R. Cooper
Transportation Director

BY: _____
Mark Bartlett
Division Administrator

Date: _____

Date: _____

USACE, MOBILE DISTRICT

USACE, NASHVILLE DISTRICT

BY: JOLY.SEBASTIEN.P Digitally signed by
JOLY.SEBASTIEN.PIERRE.113218
6762
Date: 2019.09.09 08:20:20 -05'00'
IERRE.1132186762
Sebastien P. Joly
Colonel, U.S. Army
District Commander

BY: _____
Sonny B. Avichal
Lieutenant Colonel, U.S. Army
District Commander

Date: _____

Date: _____

2. USACE:

ADDRESS: Mobile District, U.S. Army Corps of Engineers
Attn: Regulatory Division Chief
Post Office Box 2288
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ALABAMA DEPARTMENT OF
TRANSPORTATION

FEDERAL HIGHWAY ADMINISTRATION

BY: _____
John R. Cooper
Transportation Director

MARK D
BARTLETT
BY: _____
Mark Bartlett
Division Administrator
Digitally signed by
MARK D BARTLETT
Date: 2019.09.18
12:49:20 -05'00'

Date: _____

Date: _____

USACE, MOBILE DISTRICT

USACE, NASHVILLE DISTRICT

JOLY.SEBASTIEN.P
IERRE.1132186762
BY: _____
Sebastien P. Joly
Colonel, U.S. Army
District Commander
Digitally signed by
JOLY.SEBASTIEN.PIERRE.113218
6762
Date: 2019.09.09 08:20:20 -05'00'

BY: _____
Sonny B. Avichal
Lieutenant Colonel, U.S. Army
District Commander

Date: _____

Date: _____

ATTACHMENT A

Professional Standards for Supplemental Staff

One (1) specialist with experience and/or education in engineering, biology, natural resources, and/or other related environmental science. Working knowledge of Section 404 of the (Federal) Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, the National Environmental Policy Act, the (Federal) Endangered Species Act, the National Historic Preservation Act, and the 1987 Corps of Engineers Delineation Manual and applicable Regional Supplements for the identification and delineation of wetlands is essential. In addition, the ability to travel, occasionally overnight, is mandatory. This interdisciplinary employee will be qualified to be paid under the General Services Administration General Schedule pay scale, at least at the full performance GS-12 level.