



AGREEMENT NO. 04-07-01(20)
CORE ID. NO.20DOT0097AA

MEMORANDUM OF AGREEMENT
between

UNITED STATES ARMY CORPS OF ENGINEERS

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

STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION

2800 Berlin Turnpike
Newington, CT 06111

This MEMORANDUM OF AGREEMENT (“MOA”) is entered into as of the Effective Date (as hereinafter defined), amongst the State of Connecticut, Department of Transportation (“CT DOT”), and the U.S. Army Corps of Engineers, New England District (“Corps”), and sets forth the responsibilities of the signatory agencies (individually “Party”, collectively “Parties”) relative to priority review of federal-aid highway projects and non-federal-aid highway projects. The goal of this MOA is to achieve timely review of plans for highway, road and bridge 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 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.

WHEREAS, many of the CT DOT construction projects fall within the jurisdiction of the Corps pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 (collectively, “Acts”);

WHEREAS, timely review of CT DOT projects under these Acts is critical to CT DOT’s ability to advertise these projects so as to meet scheduled dates for obligating federal funding, statewide transportation improvement program targets and accelerated programs;

WHEREAS, the Corps has indicated that due to staff resource constraints, it is currently unable to provide CT DOT with priority review for permitting decisions for the increased number of transportation projects pursuant to its responsibilities pursuant to the Acts;

WHEREAS, this MOA will promote streamlined permitting and project delivery goals of the Every Day Counts initiative of the Federal Highway Administration (“FHWA”);

WHEREAS, this MOA was developed to provide supplemental resources to the Corps, to enable the Corps to collaborate with CT DOT and FHWA in the development and implementation of measures to streamline the Corps' environmental review and regulatory activities for transportation projects within Connecticut;

WHEREAS, Section 214 of the Water Resources Development Act of 2000, as codified at 33 U.S.C. § 2352 ("Section 214") authorizes the Secretary of the Army to accept and expend funds contributed by a non-federal public entity to expedite the permit review process; and

NOW, THEREFORE, the Parties agree as follows:

I. PURPOSE AND AUTHORITIES

- A. This MOA is entered into by the Parties for the purpose of establishing the responsibilities of the Parties relative to priority review of FHWA-funded and non-federal-aid transportation projects with the goal of achieving timely design and implementation of highway improvements while also assuring such design and implementation is sensitive to the protection of aquatic resources for which the Corps is responsible under federal statute and regulation. This MOA is not the exclusive means of obtaining review of projects proposed by CT DOT. This MOA is a vehicle by which CT DOT may obtain expedited review of FHWA-funded and non-federal-aid projects designated as priorities, outside of the ordinary Corps review process.
- B. CT DOT enters into this MOA pursuant to sections 13b-4 of the Connecticut General Statutes.
- C. The Corps enters into this MOA pursuant to 33 U.S.C. 2352.

II. SCOPE OF WORK

- A. Activities that the Corps may pursue under this MOA are restricted to actions taken under the Corps regulatory authority that will expedite processing of environmental permits required by CT DOT to facilitate permit application review in less than customary time necessary for such review. Said processing shall include full consideration of all relevant and applicable environmental laws and regulations. In no way shall it be construed or implied that the Parties intend to abrogate by entering into MOA any obligations or duties to comply with applicable federal or state laws, regulations, guidance, policies and/or procedures. The Corps agrees that the use of funds will not affect its impartial decision-making either substantively or procedurally pursuant to this MOA.

B. The Corps Regulatory program is funded as a Congressionally appropriated line item in the annual federal budget. CT DOT shall fund one (1) full-time employee meeting the Performance Measures described in **Attachment A**, which is incorporated into this MOA by reference. The employee will possess sufficient education and experience to perform the work as outlined in this MOA, including but not limited to, a working knowledge of Section 404 of the 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 identification and delineation of federal wetlands. The Corps, in its sole judgment and discretion, will determine whether the employee meets these criteria. Funds contributed by CT DOT hereunder will be expended by the Corps to defray the costs of the Corps' employee (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the review of CT DOT permit requests. The Corps may make staff substitutions provided that the substitute possess a comparable environmental background.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by CT DOT. The Corps' employee will charge his or her time and expenses against the account when they perform work to either expedite permit reviews related to requests by CT DOT as a priority or undertake other programmatic efforts to support efficient decision-making related to CT DOT's permitting needs.

D. If the funds provided by CT DOT are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant.

III. RESPONSIBILITIES OF THE PARTIES

A. CT DOT shall:

1. Fund a Corps Regulatory employee under this MOA, for the primary purpose of the timely review of CT DOT priority projects. **Subject to the provisions of Section VI.C.1, the Corps is a cost reimbursable organization and all actual costs of the Corps employee's efforts under this MOA for CT DOT must be fully reimbursed.** However, the parties estimate that the total funds needed for a 3-year term shall not exceed \$800,000.
2. Provide to the Corps a list of the planned priority transportation projects, to be attached as **Attachment B** that require review by the

Corps, including the specific geographic locations of such projects with a projected schedule for planning and construction of each project. CT DOT is responsible for updating and/or amending the list to reprioritize the Corps' review of its priority projects as necessary.

3. Provide a CT DOT project manager, to coordinate assignments, communicate priorities within CT DOT and to act as the first point of contact with the Corps for the purposes of this MOA. This project manager will serve as the primary contact for new permit requests, permit modifications and issues of non-compliance.
4. Actively engage with the Corps in scoping, planning and project development through various means, including, but not limited to, meetings, field visits, conference calls, video teleconferencing and electrical correspondence.
5. Provide all required information regarding projects and other specific activities. For projects requiring individual permits, CT DOT shall provide sufficient information and time to the Corps, for the determination of project purpose statements and range of alternatives, analysis of project effects, determination of the least environmentally damaging practicable alternative, and development of appropriate mitigation measures. Upon request CT DOT shall provide supplemental information necessary to assure that the Corps can effectively accomplish the permit review.
6. In a timely manner, make every effort to resolve all outstanding non-compliance issues. Failure to resolve non-compliance issues may interfere with the success of the Performance Measures, as outlined in **Attachment A**, and shall not be the responsibility of the Corps.

B. The Corps shall:

1. Expedite review and decision making for CT DOT's priority projects as identified in **Attachment B**, in accordance with the purpose, terms and conditions of this MOA.
2. Actively participate in CT DOT scoping, planning and project development meetings and field reviews, when requested, to identify critical issues, key decision points, and potential conflicts as early as possible. The level of participation will be determined by the project's relative priority, as identified by CT DOT, as well as the Corps' current and projected workload of priority projects and activities.
3. Participate with other federal, state and local agencies in the concurrent and proactive review of CT DOT priority projects and

provide any concurrences or recommendations, as required. The level of participation will be determined by the project's relative priority, as identified by CT DOT, as well as the Corps' current and projected workload of priority projects and activities.

4. 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 and processes, such as General Permits.
5. As appropriate, use a coordinated process to review draft and final Environmental Impact Statements, Environmental Assessments and other environmental documents, and provide timely agency comments to the CT DOT project manager.
6. Review application packages for completeness and notify CT DOT within fifteen (15) calendar days of receipt if the application is incomplete.
7. Provide periodic training, when available, based on the Corps' current and projected workload of priority projects, on the Clean Water Act, Section 404 for CT DOT employees.
8. Participate in site visits which include early coordination meetings, pre-construction meetings and compliance inspections.
9. In order to satisfy CT DOT's reimbursement requirements, the Corps shall submit timesheets to CT DOT on a monthly basis, for the prior calendar month, for actual costs incurred on behalf of this MOA directly to CT DOT's point of contact. The timesheets shall: (1) identify the time period covered, (2) identify the employee, hourly employee rate, CT DOT work task name, CT DOT Project Number/Corps File No, Expenditure Account number, and number of hours spent on the respective work tasks; and (3) explain all expenses for which reimbursement is claimed.
10. Process deliverables in a timely manner by making every effort to meet the target process times listed in **Attachment A**; note, however, Corps permit decisions that are pending decisions from other agencies may exceed these targets even with timely Corps follow-ups with coordinating agencies.
11. Meet with CT DOT on a quarterly basis, or more frequently if requested by either Party, to establish priorities and to evaluate the activities performed under the MOA.

12. Provide issued permits and other decisions to the CT DOT project manager.
13. Annually, or upon request by the CT DOT's point of contact, provide Corps feedback about CT DOT's performance for: (a) quality of work submitted to Corps for review and approval; (b) CT DOT staff knowledge of Corps regulations, rules, and permit requirements; (c) resolving non-compliance issues; and (d) professional conduct related to communication and coordination. The feedback should also include Corps' recommendations for improving working relationships with and performance of CT DOT staff.

IV. FUNDING

This MOA shall be for a term of three (3) years expiring on January 31, 2023. The costs of funding the Corps employee shall include all employee-related costs associated with performance under this MOA assessed by Corps including mandatory employee training, field safety equipment such as safety shoes, use of a government vehicle for offsite field work and meetings, and other miscellaneous expenses. If the Parties mutually agree to extend this MOA for an additional period of time after January 31, 2023, then any monies from this current MOA may be carried over to the subsequent MOA. The Corps will provide an accounting of all carried over funding to CT DOT within thirty (30) days after the extension is executed. **Subject to the provisions of Section VI.C.1, the Corps is a cost reimbursable organization and all actual costs of the Corps employee's efforts under this MOA for CT DOT must be fully reimbursed.** However, the parties estimate that the total funds needed for a 3-year term shall not exceed \$800,000.

V. MOA PERFORMANCE MEASURES

A. Performance measures are indicators of performance pertaining to achievement of CT DOT and Corps goals for this MOA. Performance measures results and subsequent evaluation methods can be used to determine the effectiveness of this MOA, which will help all Parties to understand, manage, and allow for modification of this MOA, as necessary. Detailed Performance Measures are described in **Attachment A**.

B. The Performance Measures listed in **Attachment A** (along with specific performance targets) may be revised based on collaborative evaluation between CT DOT and the Corps. The focus is on quantitative measures where data are readily available, such as permit process times and completeness of CT DOT applications.

C. If either CT DOT or the Corps 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.

VI. GENERAL TERMS

A. Duration. The duration of this MOA is from the date of signature of the last Party to sign this MOA to and thru January 31, 2023 unless extended or terminated as provided below. This MOA may be extended in yearly increments by a written agreement signed by the Parties, as provided for in Paragraph X below.

B. Impartial Decision Making

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 Corps will comply with the following standards, as mandated by Headquarters, U.S. Army Corps of Engineers:

1. In cases where CT DOT 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 Corps Chief, Permits & Enforcement Branch, then the reviewer would be the Corps Chief, Regulatory Division.

2. All jurisdictional determinations made on projects where CT DOT funds are used must have documentation that a Corps regulator, not funded by CT DOT, reviewed and agreed with the determination (e.g., peer review).

3. All final permit decisions, including all reporting general permit verifications, for cases where CT DOT funds are used will be made available and updated monthly on the Corps' web page in an area separate from any other final actions, clearly identifiable as being for projects funded by and through this authority.

C. Use of Funds

1. CT DOT funds will not be expended for costs associated with the review of the Corps' work undertaken by supervisors, persons or elements of the Corps decision making chain of command. However, funds may be used for additional staff if found to be necessary to accomplish the work load. The Corps may expend funds provided by CT DOT to hire contractors to perform select duties, including but not limited to, site visits; preparing and providing technical materials, including environmental documentation; geographic information system-related services; and meeting coordination for the purposes of augmenting the resources available to the Corps for expediting its review of CT DOT priority projects. If such expenditures when combined with the costs of Corps' personnel require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractor until and unless additional funds are provided by CT DOT and the Parties execute a written amendment to this MOA.

2. CT DOT funds will not be used for enforcement activities.

VII. NOTICE

A. To provide for consistent and effective communication between CT DOT and the Corps, each Party shall appoint a "Principal Representative" to serve as its central point of contact on matters relating to this MOA. For the purposes of this MOA, CT DOT's Principal Representatives shall be:

Kimberly Lesay, Transportation Assistant Planning Director
2800 Berlin Turnpike
P.O. Box 317546, Newington, CT 06131-7546
Tel: (860) 594-2099; Fax (860) 594-3377
E-mail: Kimberly.lesay@ct.gov

For the purposes of this MOA, the Principal Representative for the Corps shall be:

Kevin R. Kotelly, P.E.
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) 318-8703
E-mail: Kevin.R.Kotelly@usace.army.mil

- B. Any notice required by this MOA to or between the Parties shall be in writing and sent to the Principal Representatives by certified mail or recognized overnight courier with proof of delivery.

VIII. APPLICABLE LAWS

The applicable statutes, regulations, directives, and procedures of the United States will govern this MOA and all documents pursuant thereto. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, guidance, procedures and policies.

IX. DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties regarding implementation of this MOA (excluding any specific permit application and decisions), CT DOT and the Corps 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. The Parties agree that in the event such measures fail to resolve the dispute, they shall proceed in accordance with applicable law.

X. AMENDMENT, MODIFICATION AND TERMINATION

- A. This MOA may be modified or amended only in writing and by mutual agreement of the Parties.
- B. A Party may terminate this MOA, without cause, upon sixty (60) days written notice to the Principal Representative of the other Party at the addresses provided in Paragraph VII. In the event of termination, CT DOT shall continue to be responsible for all costs incurred by the Corps under this MOA prior to the date of such termination.
- C. Within sixty (60) days after termination, or the expiration of this MOA, the Corps shall conduct a final accounting to determine the actual costs of the work performed pursuant to this agreement. Within thirty (30) days of completion of this accounting, the Corps shall return to CT DOT, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et seq.), any unobligated or unexpended funds advanced in excess of the actual costs.

XI. PUBLIC INFORMATION

Justification and explanation of CT DOT's programs or projects before other agencies, departments, and offices will not be the responsibility of the Corps. The Corps may provide, upon request from CT DOT, assistance to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding the Corps' regulatory activities. CT DOT will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

XII. MISCELLANEOUS

- A. The following link is provided to the Corps' regulatory informational webpage:
<http://www.nae.usace.army.mil/Missions/Regulatory/WRDA214.aspx>
- B. This MOA will not affect any pre-existing or independent relationships or obligations of the Parties.
- C. The Corps' participation does not imply endorsement of CT DOT projects nor does it diminish, modify or otherwise affect the Corps statutory or regulatory authorities.
- D. This MOA and attachments constitute the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this MOA. No waiver, consent, modification or change of terms of this MOA 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 MOA shall not constitute a waiver by that Party of that or any other provision.
- E. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by federal law and regulation.
- F. This MOA does not preclude the Parties from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreement entered into should not contradict or otherwise undermine the intent of this MOA.

XIII. EFFECTIVE DATE

This MOA shall become effective on the date of the signature by the last Party (the “Effective Date”). This MOA shall remain in force until **January 31, 2023**, or until this MOA is terminated, or until all available funds have been expended and not otherwise replenished by amendment to increase the maximum amount of this MOA.

[Signature page immediately follows.]

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

CONDE.WILLIAM.MER
IAM.MERRILL
RILL.1096800190
Date: 2020.06.01
11:26:36 -04'00'

Date: 6/1/2020

BY: 1096800190
William M. Conde, Colonel
District Engineer
U.S. Army Corps of Engineers

Digitally signed by
Garrett Eucalitto
Date: 2020.05.18
08:34:26 -04'00'



Date: 5/18/2020

BY: _____
Garrett T. Eucalitto
Deputy Commissioner
Connecticut Department of Transportation

APPROVED AS TO FORM:
OFFICE OF THE ATTORNEY GENERAL

Digitally signed by Joseph
Rubin
Date: 2020.05.18 16:53:03
-04'00'

Joseph Rubin

By: _____

Name:
Title: Asst. Dep. A.G.

Date:

ATTACHMENT A
Performance Measures

	PERFORMANCE MEASURES	PERFORMANCE TARGETS
1.	Determination of completeness of Corps applications	Within 15 days of submission
2.	Individual Permit decisions within 120 days after submittal of a complete application with the exception of those that are delayed due to: absence of CWA Section 401 certification; Section 7 of the Endangered Species Act (ESA) consultation(s); Section 106 of the National Historic Preservation Act consultation(s); untimely submittal of information or comments from CTDOT; extended comment period for Public Notice; and/or environmental review processes with statutory time frames (e.g. Environmental Impact Statement).	55% of submitted actions
3.	General permit decisions within 60 days after submittal of a complete application	85% of submitted actions

Definitions and Notes

1. **Determination of completeness of Corps applications.** This refers to applications formally deemed complete in accordance with 33 CFR Part 325.1.
2. **Individual Permits.** The target is for 55% of submitted permit actions to meet the 120 day standard. The national COE goal for processing individual permits is 50% within 120 days of a complete application.
3. **General Permits.** The target is for 85% of submitted actions to meet the 60 day standard. The national Corps goal for processing other permit actions is 80% within 60 days of a complete application.

ATTACHMENT B
Planned Priority Transportation Projects

<u>CTDOT Project Number</u>	<u>Location</u>	<u>Project Description</u>	<u>Advertise Date</u>
0301-0176	Norwalk	Walk Bridge Replacement	06/01/2020
0028-0206	Colchester	REHAB/REPLACE 3 CULVERTS	11/25/2020
0030-0097	Coventry, Columbia	Hop River State Park Trail	11/25/2020
0032-0149	Coventry	REPLACE BR 06851 CULVERT	11/25/2020
0040-0144	East Haddam	REHAB/REPLACE BR 06887 CULVERT	12/16/2020
0040-0146	East Haddam	E. Haddam: Replace BR #02510	10/28/2020
0043-0132	East Haven, New Haven	E. Haven: Rehab Bridge #02166	3/24/2021
0044-0156	East Lyme	I-95 Interchange 74 @ Rte 161	10/20/2021
0053-0190	Glastonbury, Wethersfield	Trail Connect to Putnam BR	10/13/2021
0056-0305	Greenwich	Br.# 01872 Replace	6/9/2021
0060-0160	Haddam	Replace 2 T-type Intersections	12/16/2020
0076-0222	Manchester	REHAB BR 06650 CULVERT	6/30/2021
0076-0223	Bolton, Manchester	REHAB BR 06884 & 06885	11/3/2021
0086-0092	Morris	REPLACE BR 05417 CULVERT	5/5/2021
0101-0117	North Stonington	Replace Bridge #02967	8/25/2021
0102-0295	Norwalk, Westport	I-95 MEDIAN RECONSTRUCTION	8/25/2021
0102-0296	New Canaan, Norwalk, Westport	Resurf/Bridge/Safety Improve	9/9/2020
0120-0095	Salem	REHAB BR 06780 CULVERT	2/24/2021
0122-0103	Deep River	Replace Bridge #02929	7/22/2020
0132-0139	South Windsor	Rehab Bridge #05944	3/17/2021
0141-0156	Thompson	Replace BR #06706 (Culvert)	4/22/2020
0148-0209	Wallingford	Rehab Bridge #06537 (Culvert)	12/9/2020
0162-0155	Winchester	Winchester: Replace BR #00617	2/14/2021
0166-0103	Wolcott	Replacement of BR #03240	1/13/2021
0171-0412	Farmington	CTfastrak ParknRide Farmington	9/29/2021
0120-0090	Salem	Replace Br 01140 & 05401	8/26/2020
0105-0209	Old Saybrook	Replace Bridge #01386	4/29/2020
0173-0415	Weston	Rehab Br (Culvert) 06750	9/16/2020

Notes

1. The Planned Priority Transportation Projects List (List) is subject to updating and/or amending by the CTDOT and will be conveyed to the Corps on a monthly basis.