



FUNDING AGREEMENT

BETWEEN

UNITED STATES ARMY CORPS OF ENGINEERS (USACE),

Norfolk District

AND

VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)

RELATIVE TO

EXPEDITING PERMIT APPLICATION EVALUATIONS FOR TRANSPORTATION
PROJECTS

PREAMBLE: This Funding Agreement (Agreement) between the Virginia Department of Transportation (VDOT) and the Norfolk District of the U.S. Army Corps of Engineers (USACE) (collectively "the Parties") sets forth the responsibilities of the Parties regarding the expedited review of permit applications, both project- and program-related, for highway projects. The purpose of this Agreement is to achieve timely design and implementation of adequate, safe, and economical highway improvements within the Commonwealth of Virginia 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 the USACE administers. The Parties shall work proactively to enhance each Parties ability to realize its mission through open communication and teamwork.

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;

WHEREAS, timely review of permit applications for VDOT projects under these statutes is critical to VDOT's ability to advertise these projects to meet scheduled dates for obligating federal and non-federal funding;

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 Commonwealth of Virginia, and VDOT-funded USACE dedicated staffing will assist VDOT in meeting its milestones for bid advertisement and will help avoid unanticipated costs and delays to VDOT projects;

WHEREAS, the Parties have determined that it will be mutually beneficial and serve to increase efficiencies within each Party to supplement USACE staffing above existing levels;

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 VDOT or its sub-recipients;

WHEREAS, VDOT desires and USACE has agreed to provide one (1) full-time USACE employee (the Liaison) to develop streamlining efficiencies and perform 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 and other related services exclusively to VDOT to expedite environmental reviews;

WHEREAS, VDOT has agreed to reimburse USACE for the costs of the Liaison;

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;

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;

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;

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

WHEREAS, the locations of these projects within the Commonwealth of Virginia fall under the jurisdictional area of the USACE Norfolk District;

WHEREAS, the Parties agree that establishing a USACE Liaison to be located in the Norfolk District to support transportation projects in the Commonwealth of Virginia would create efficiency and expedite the permit application review process;

WHEREAS, it is acknowledged and understood that USACE will ensure that acceptance of funds under this Agreement will not impact its impartial decision-making responsibilities and that the federal review of USACE permit applications will be in accordance with all applicable federal laws and regulations; and

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties state as follows:

I. Party Responsibilities

A. VDOT

1. VDOT shall fund one (1) full-time employee (“Liaison”) meeting the Professional Standards described in Attachment A, which is incorporated into this Agreement by reference. VDOT shall review information provided by USACE on the qualifications and experience of the USACE’s preferred candidate for the Liaison and USACE’s justification for selection of the candidate. VDOT shall provide concurrence of the USACE’s candidate selection provided such selection is determined by VDOT to satisfy the goals of this Agreement.

The costs of funding the USACE Liaison shall include all salary-related and other costs assessed by USACE, as described in more detail below. It is expected that the total annual funds needed for these services will not exceed the amounts established in Table 1 of Appendix A. Actual costs may be less than this amount, depending upon the amount of travel needed to support the streamlined efficiencies and expedited review contemplated by this Agreement. If and when additional funds are necessary, additional payments may be negotiated by all Parties to this Agreement. VDOT shall provide funds every six (6) months in advance of the commencement of work or issuance of any obligation by VDOT for any task assigned. Payment shall be made in two (2) biannual installments per year and made upon approval of invoice by VDOT. Invoices will comprise of all eligible expenses incurred along with supporting documentation, satisfactory to VDOT, evidencing the expenditures. The invoice should be sent to VDOT via email to COEnv.Invoices@vdot.virginia.gov thirty (30) calendar days prior to the start of each 6-month period. VDOT shall, within 30 days of receiving an invoice along with supporting

documentation, remit payment for eligible expenses to USACE. Invoice amounts to be billed by USACE and paid by VDOT 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 V.B of this Agreement, additional positions and subsequent funding 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 from date of agreement execution and then bi-annually thereafter as further outlined in Section V., A. 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, USACE shall promptly notify VDOT of the amount of additional funds necessary. VDOT shall (i) provide the additional funds to the USACE, (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 V.D.

5. VDOT shall review quarterly USACE submittals of the actual account of expenditures. VDOT shall request a meeting to clarify the account of expenditures within thirty (30) calendar days of receipt if VDOT disagrees with the USACE submittals. In the event of a disagreement over the account of expenditures, VDOT pledges to negotiate in good faith towards a reconciliation of the disputed amount, in accordance with Section VI.A. USACE will credit VDOT as appropriate for any amount determined to be an over-statement of USACE eligible expenses; for example, in an instance where VDOT has advanced paid, but the Liaison is not available to provide services.

6. On a routine basis, VDOT shall establish a one-year out project planning list, priority listing of projects and programmatic objectives for USACE that will guide the USACE Liaison's efforts in streamlining efficiencies and the expedited permit review process.

7. On an annual basis or as required, VDOT will meet with the USACE to evaluate work performed under this Agreement.

8. When a Department of the Army permit is needed, VDOT shall, with the guidance of the USACE Liaison (if needed), 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, and Norfolk District procedures. VDOT shall provide all information necessary for USACE evaluation of permit applications, delineations of aquatic resources, and jurisdictional determinations, in accordance with current and future streamlining agreements on permit processing.

B. USACE, Norfolk District, shall:

1. 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 Liaison Position as expeditiously as possible to support work contemplated by this Agreement. Said employee filling the Liaison Position shall be employed by USACE and supervised solely by the Norfolk District. Selection of the candidate shall be done by USACE, following the VDOT qualification requirements found in Appendix A.

2. Designate the Liaison to act as a central point of contact for streamlining efficiencies and USACE permit application reviews for VDOT projects contemplated by this Agreement.

3. In order to preserve impartial decision making, USACE shall incorporate the following requirements into their review process:

(a) Funds would not be expended for review of project managers' work by supervisors or other persons in the decision making chain of command.

(b) All final permit decisions for cases where these funds are used must be reviewed and approved in writing at least one level above the decision maker.

(c) Funds from this agreement will not be used for enforcement activities. Funds may be used for compliance inspections, but cannot be used to resolve non-compliance issues.

(d) All final permit decisions (including no permit required decisions) for applications where these funds are expended will be made available on the Corps Headquarters' web page.

(e) The Corps must ensure compliance with all applicable laws and regulations and will not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.

(f) Instruments for mitigation banks or in-lieu-fee programs developed for the entity with a funding agreement must be signed by the Regulatory Branch Chief or higher level position that is not funded by any funding agreement.

(g) All preliminary jurisdictional determinations (JDs) and approved JDs where funds are used to complete the JD must have documentation that a non-funded regulator conducted a review of the determination. The review does not need to be a field review.

(h) A non-funded decision-maker at least one level above the funded position will also review and approve each of the following determinations as they are made: (1) the level of National Environmental Policy Act (NEPA) review the USACE will conduct; (2) the range of alternatives that will be evaluated; and (3) the stated purpose and need for the project.

4. On an annual basis or as required, USACE will meet with VDOT to evaluate work performed under this Agreement.

5. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount, per Section V.I 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.

6. 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 review applications for Federal-aid STP projects or state-aid projects proposed by VDOT and applications for projects of VDOT's Federal-aid sub-recipients; and to comply with reporting requirements related to activities undertaken pursuant to this Agreement.

7. Process VDOT permit applications submitted to the USACE Norfolk District after the Effective Date of this Agreement.

II. Coordination

A. VDOT, in collaboration with USACE, will establish priorities for the USACE Liaison efforts for streamlining efficiencies and the expedited permit review process, consistent with Section I.A of this Agreement.

B. Both VDOT and USACE agree that reasonable access will be provided to working level staff of the other Party 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 VDOT projects, the USACE Liaison shall also be involved in other tasks which improve Party coordination and serve to expedite the implementation of the VDOT's transportation program, in compliance with the statutes and regulations for which USACE bears responsibility. Examples of additional tasks that may be assigned to the Liaison include but are not limited to:

1. Attend pre-application meetings, monthly Interagency Coordination Meetings (IACM), supplemental VDOT project coordination meetings, and public meetings for each requested permit action.

2. Participate in interagency scoping meetings and NEPA-404 merged process meetings.

3. Attend regular standing meetings at VDOT's offices in Richmond, VA.

4. Assist VDOT in explaining USACE-related issues in its project decision-making process to other Federal and Local resource agencies.

5. Review and comment on project alternatives, mitigation plans, and biological assessments.

6. Review monitoring reports and participate in site visits in coordination with VDOT to determine if VDOT wetland and stream mitigation sites and banks have met success criteria as stated in project-specific Section 404 permits and issue letters to VDOT stating that sites meeting such success criteria require no further action by VDOT (except for such sites that require long term management).

7. Assist VDOT in developing streamlining efficiencies and programs to increase the efficiency of VDOT's environmental decision making process, statewide wetland mitigation program, and transportation project permit application evaluation.

8. Assist VDOT in providing appropriate training of VDOT personnel in regulatory program requirements and permits.

9. Assist VDOT and its sub-recipients in identifying Waters of the United States that may be impacted by VDOT projects and require a Department of the Army permit and potential wetland and stream mitigation sites and plans.

10. Assist VDOT in identifying potential research topics for consideration by VDOT's Environmental Research Advisory Committee.

11. Collaborate with VDOT and USACE Norfolk District Staff to assist in the negotiation of general permits that would further streamline the permitting process for transportation projects, and address programmatic questions about existing general permits.

III. Performance Objectives

A. VDOT and USACE will review existing interagency coordination processes and, if appropriate, formulate recommendations to improve procedures and increase efficiency within six (6) months of the time that the Liaison reports for duty.

B. USACE agrees to meet the following goals:

1. Provide early coordination and expedited review of transportation project permit applications.

2. Inform VDOT 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.

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

4. Include the USACE Liaison as a commenting member of VDOT's IACM process and NEPA-404 merged process.

5. Support VDOT in the identification and development of streamlining efficiencies, updating guidance and the preparation of programmatic agreements to further expedite the permitting process.

C. VDOT agrees to meet the following goals:

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

2. With the guidance and assistance of the USACE Liaison, 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.

3. Support the Liaison in identification and development of streamlining efficiencies, and the preparation of programmatic agreements to further expedite the permitting process.

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

V. General Terms:

A. Length of Agreement. The length of this Agreement is approximately five (5) years. The effective date of this Agreement shall commence on the date the last Party signs, and the first term of this Agreement expiring the next-occurring June 30th of 2020. This Agreement shall then automatically renew for five (5) one-year periods on July 1 of each subsequent year, each of which shall expire on June 30 of each year thereafter unless otherwise extended by the parties under Section V.B. below. Upon written notice to the other Party on or before the first day of June preceding the upcoming renewal term, either Party may elect to not renew the Agreement for the upcoming renewal term.

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

C. Termination. This Agreement may be terminated by either VDOT or USACE upon ninety (90) calendar days written notice to the Project Manager 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 notice and thirty (30) calendar days to remedy the situation. Upon written notice of VDOT's intent to immediately terminate this Agreement, USACE will immediately cease all work under this Agreement and, within thirty (30) calendar days, provide VDOT with an accounting of all outstanding obligations. If either VDOT or USACE wishes to terminate this Agreement for any reason other than those identified above, 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, VDOT shall continue to be responsible for all costs incurred by USACE under this Agreement until the date of termination takes effect.

- D. If VDOT terminates this Agreement for convenience, USACE may collect its costs incurred prior to the termination plus any termination costs.
- E. If USACE terminates this Agreement for convenience, VDOT may collect any funding advance paid, minus any eligible expenses, plus any termination costs.
- F. The Project Manager for each signatory Party is as listed below unless such responsibilities are delegated by this individual.

1. VDOT:

Angel Deem
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
804-371-6756
Angel.Deem@VDOT.Virginia.gov

2. USACE:

Kimberly Prisco-Baggett
U.S. Army Corps of Engineers, Norfolk District
803 Front Street, Norfolk, VA 23510
757-201-7873
Kimberly.A.Baggett@USACE.Army.mil

G. Required Clauses.

- 1. 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 race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.
- 2. No member of or delegate to Congress, or appointed transportation official or commissioners, shall be admitted to any share or part of this Agreement or any benefit that may arise there from; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
- 3. The Parties agree that in any contracts to be developed and awarded pursuant to this Agreement all design, plans, specifications, estimates of costs,

construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general shall at all times, conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity non-discrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing and reporting provisions.

4. VDOT's obligation to make payments under this Agreement is subject to appropriation by the General Assembly and allocation by the Commonwealth Transportation Board.

With regard to the duties anticipated under this Agreement, the Liaison shall be USACE's representative and shall have project-level authority to transmit instructions, receive information, interpret and communicate USACE's policies and decisions, and speak on behalf of USACE.

H. Continuation of Existing Responsibilities

1. The Parties to this Agreement are acting in an independent capacity in the performance of their respective functions under this Agreement, and regardless of the funding source for any Liaison to be hired by USACE to support dedicated review of transportation projects, such staff shall not be construed as an officer, agent, or employee of VDOT.
2. In no way does USACE or VDOT intend to abrogate through this Agreement any obligations or duties to comply with the regulations promulgated under the Clean Water Act or NEPA.

- I. Other Agreements. This Agreement does not preclude the signatory agencies from entering other interagency agreements relative to their respective roles and responsibilities; however, any other agreements should not conflict with this Agreement. To the extent that any of the terms of such other agreements conflict with this Agreement, those terms shall not be effective unless the Parties have executed a written instrument explicitly modifying or amending this Agreement.

- J. Dispute Resolution. The Parties agree that, in the event of a dispute between the Parties, VDOT and the Norfolk 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.

- K. 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.

L. 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.

APPROVED BY:

VIRGINIA DEPARTMENT OF
TRANSPORTATION

BY: Angel Deem
Angel Deem
Environmental Division Director

Date: 04/14/2020

USACE, NORFOLK DISTRICT

BY: KINSMAN.PATRICK.V
ANDYKE.1161624639
PATRICK V. KINSMAN, PE
Colonel, EN
Commanding

Date: April 14th, 2020

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 the GS-7/9/11 level.

Table 1. Not-to-Exceed Totals for Salary, Benefits, Operational and Overhead Costs

Time Period	Hourly Rate (GS11 Step 10)	Salary and Benefits (GS11 Step 10)	USACE Office Operational Costs	Subtotal	USACE Standard Overhead (15% of subtotal)	Total
Year 1	\$ 40.06	\$ 83,612.00	\$ 10,000.00	\$ 93,612.00	\$ 14,041.80	\$107,653.80
Year 2	\$ 40.86	\$ 85,284.24	\$ 10,000.00	\$ 95,284.24	\$ 14,292.64	\$109,576.88
Year 3	\$ 41.68	\$ 86,989.92	\$ 10,000.00	\$ 96,989.92	\$ 14,548.49	\$111,538.41
Year 4	\$ 42.51	\$ 88,729.72	\$ 10,000.00	\$ 98,729.72	\$ 14,809.46	\$113,539.18
Year 5	\$ 43.36	\$ 90,504.32	\$ 10,000.00	\$100,504.32	\$ 15,075.65	\$115,579.97
Total		\$435,120.21	\$ 50,000.00	\$485,120.21	\$ 72,768.03	\$557,888.24

Table 2. Field Office Operational Costs remaining constant

Operational Cost	Year 1	Year 2	Year 3	Year 4	Year 5
Travel (e.g., lodging, per diem, airfare, vehicle costs)	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00
Training and fees	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Office Supplies/Field Equipment	\$ 3,750.00	\$ 3,750.00	\$ 3,750.00	\$ 3,750.00	\$ 3,750.00
Telecommunication Services	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00	\$ 1,750.00
Total	\$ 10,000.00				