



2nd COOPERATIVE AGREEMENT

between

U.S. ARMY CORPS OF ENGINEERS

and

SOUTH CAROLINA DEPARTMENT OF COMMERCE

For the 2020 - 2024 Federal Fiscal Years

(October 1, 2019 through September 30, 2024)

Article I. **FUNDING RECIPIENT**

US Army Corps of Engineers
Charleston District
69A Hagood Avenue Charleston, SC 29403

Article II. **AUTHORITY**

This Agreement between the US Army Corps of Engineers, Charleston District ("Corps") and the South Carolina Department of Commerce ("SC Commerce") is hereby entered into under the authority of 33 U.S.C. § 2352 (Section 214 of the Water Resources Development Act of 2000, as amended by Section 1006 of the Water Resources Reform and Development Act of 2014, 128 Stat. 1193, Public Law No. 113-121 [H.R. 3080]; as amended by Section 1125 of the Water Infrastructure Improvements for the Nation Act, 130 Stat. 1628, Public Law No. 114-322 [S 612]; as amended by Section 1145 of America's Water Infrastructure Act of 2018, 132 Stat. 3765, Public Law No. 115-270)). Collectively, these two agencies are referred to herein as the "Parties".

Article III. **PURPOSE AND OBJECTIVE**

The purpose of this Agreement is to set forth the responsibilities of the Parties relative to establishment of a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by the SC Department of Commerce to the Corps to expedite the evaluation of permit applications submitted by SC Commerce and/or its co-permittees that are under the jurisdiction of the Corps.

The objective of this Agreement is for the Corps to commit select employees, based on expertise and workload, to be dedicated to review of permit applications submitted by SC Commerce in its capacity as a prospective permittee or prospective co-permittee. Applications submitted by SC Commerce may be subject to Section 10 of the Rivers and Harbor Act of 1899, Section 404 of the Clean Water Act, and/or Section 103 of the Marine Protection Research and Sanctuaries Act of 1972. Enforcement actions will be handled by non-funded Regulatory Project Managers for resolution. It is also understood that the Corps employees who work on permit applications subject to this Agreement will also participate in general Corps employee activities.

Article IV. **BACKGROUND**

The SC Commerce promotes economic opportunity for individuals and businesses by assisting with the location of new sites and buildings, offering grants for community development, and infrastructure improvement, and providing workforce training. SC Commerce provides assistance to help new and existing businesses grow, both directly and indirectly, working closely and in conjunction with other governmental entities, for example, in providing regulatory and compliance assistance and aiding in the facilitation of, for example, the utilization of grants for expanding or creating infrastructure capacity.

It is critical that the already established close working relationship be maintained and expanded between the Corps and the SC Commerce. Critical to the success of this Partnership is timely interagency communications, assurances of personnel availability for site visits and meetings and, maintenance of continuity by trained and informed personnel.

This Agreement is intended to provide the resources necessary to increase direct and early Corps involvement in the SC Commerce planning process for economic and infrastructure development with regard to the Corps' expedited review of permit applications. This increased focus will facilitate environmentally responsible development while at the same time improving the Corps' ability to review, evaluate and process permit applications in a timely manner. This Agreement is predicated upon a relationship of trust among all Parties that will be maintained and strengthened as a result of this effort.

Article V. **SCOPE OF WORK**

For the period hereinafter set forth, the Corps will furnish the necessary personnel, materials, services and facilities needed to carry out the activities described below:

Specifically, the Corps will:

- A. Employ Regulatory Project Managers to carry out work as detailed in Attachment A and other work contemplated by this Agreement. The Corps will use funds provided under this Agreement in accordance with Article XI herein.
- B. Ensure that the assigned Regulatory Project Managers maintain daily time and attendance records identifying the number of hours spent working on tasks related to SC Commerce permit applications, including those listed in Attachment A and Section VI Coordination.
- C. Maintain accurate accounting records necessary for substantiating hours and costs billed against this Agreement. A budget summary report will be run quarterly and sent to SC Commerce for agency review and records. As required by federal regulations, records will be kept during and for a period of five (5) years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by SC Commerce upon request.
- D. Refund the SC Commerce with any funds advanced under this Agreement that were not expended towards fulfilling the intent of this Agreement or that remain at the end of the funding period. With approval from all Parties, the Corps shall carryover any remaining funds from the previous funding period into the next funding period for expenditure in accordance with this Agreement.
- E. Consistent with a letter of responsibility from SC Commerce, the Corps shall issue such permit or authorization as appropriate and impose such mitigation and permit responsibilities as appropriate to and between SC Commerce and its co-permittees, which may include the imposition of all mitigation responsibilities on the co-permittee; further, the Corps may allow the transfer of any obligations or responsibilities of SC Commerce to its co-permittee on any permit or authorization issued pursuant to this Agreement consistent with 33 C.F.R. Part 325 as appropriate.

Specifically, SC Commerce will:

- A. Provide the Award Amount as set forth in Article IX.
- B. Provide the Corps with a one-year projected project planning list that will be updated and submitted to the Corps at least quarterly. The list should provide the Project Title,

Location, Type of Project, Status funding, planning, design, permitting, etc.) and anticipated construction date.

Regarding all Parties:

- A. The Parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; and neither Party shall be construed as the officer, agent or employee of the other.
- B. This Agreement shall not be construed to require or authorize either party to abrogate its respective obligation and duty to comply with the regulations promulgated under the Endangered Species Act of 1973 (as amended), the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act of 1969, the Clean Water Act of 1972 (as amended), the Rivers and Harbors Act of 1899 as amended), or any other Federal statute or implementing regulations. Nor shall this Agreement be construed to imply that the Corps' impartial decision making will be compromised in any way.
- C. The Parties will establish primary point of contacts for administration of this Agreement (the "Agreement Administrators") as identified in Article XIII. The Agreement Administrators will hold monthly meetings to establish priorities and evaluate work performed under the Agreement to discuss management level concerns related to staff performance, workload priorities and management initiatives.
- D. The Agreement Officers listed in Article XII, or their designated representatives, will meet at least annually to facilitate communication, discuss interagency cooperation and identify programmatic initiatives and strategic goals. Issues that the Agreement Administrators have identified and are unable to resolve at their level should be brought forward and resolved at this meeting.

Article VI. COORDINATION

- A. SC Commerce and the Corps agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings. Both agencies are committed to frequent and productive interaction and the establishment of working-level interpersonal relationships that will allow for expedient scheduling of field visits, meetings and all manner of open communications in a sustained effort to achieve the stated goals of this Agreement.
- B. SC Commerce and the Corps agree to conduct early and frequent coordination on issues such as, but not limited to, comments on project alternatives; mitigation plans; review of and comments on Biological Assessments; implementation of permit streamlining processes; and interagency SC Commerce/Corps training.

Article VII. PERFORMANCE OBJECTIVES

- A. As part of this Agreement, the Corps has agreed to make every effort to adhere to the timeframes outlined in Attachment B. Adjustments to the timeframes may be made when practical and agreed to by all Parties.

Article VIII. PERIOD OF PERFORMANCE

- A. This Agreement shall be effective for a period of five (5) years from the start date of the funding period. Options for renewal of this Agreement will be determined at the end of the five-year period.
- B. Either party may terminate this Agreement upon ninety (90) day written notification to the other Parties. Upon termination by SC Commerce, the Corps will refund to SC Commerce any funds which had been previously advanced, but which had not been used or would not be used in accordance with this Agreement. At such time, all SC Commerce projects will be redistributed amongst existing Corps staff and all commitments made by the Corps under this Agreement shall cease.

Article IX. AWARD AMOUNT

- A. 1ST FUNDING PERIOD: October 1, 2019 – September 30, 2020
 2ND FUNDING PERIOD: October 1, 2020 – September 30, 2021
 3RD FUNDING PERIOD: October 1, 2021 – September 30, 2022
 4TH FUNDING PERIOD: October 1, 2022 – September 30, 2023
 5TH FUNDING PERIOD: October 1, 2023 – September 30, 2024
- B. TOTAL ESTIMATED COSTS FOR 1st FUNDING PERIOD: \$170,000
 TOTAL ESTIMATED COSTS FOR 2nd FUNDING PERIOD: \$170,000
 TOTAL ESTIMATED COSTS FOR 3rd FUNDING PERIOD: \$170,000
 TOTAL ESTIMATED COSTS FOR 4th FUNDING PERIOD: \$170,000
 TOTAL ESTIMATED COSTS FOR 5th FUNDING PERIOD: \$170,000
- C. TOTAL FUNDING FOR THIS AGREEMENT: \$850,000

Article X. PAYMENT PROVISIONS

The Parties agree that advance payment is required to be given to the Corps prior to the commencement of goods or services as described in this Agreement.

After execution of this Agreement by both parties, SC Commerce agrees to make payment in full of the Award Amount for each funding period as set forth in Article IX prior to the start date of the applicable funding period. Checks shall be made payable to:

USAED
 Accounting Officer
 Charleston District
 69A Hagood Avenue
 Charleston, South Carolina 29403

Article XI. FUNDING

- A. The estimated amount for the funding period is based on 100% of the annual cost of assigned Project Managers and associated costs for benefits, overhead, safety equipment, vehicles, etc, not to exceed \$170,000.
- B. The funding amount may be adjusted, either increased or decreased, to adequately compensate for the employee’s actual total cost and/or any reasonable unforeseen costs, based on the number of projects and/or County activities submitted for

Corps review at any given time. If a funding adjustment is required, the Parties will meet and agree to the appropriate amount in writing.

- C. Any funds that have not been expended during the current fiscal year will be applied towards the next funding period covered by this Agreement upon approval by SC Commerce.

Article XII. AGREEMENT OFFICERS

US Army Corps of Engineers
Travis Hughes – Chief, Regulatory Division
69A Hagood Avenue
Charleston, SC 29403

South Carolina Department of Commerce
Jennifer Noel Fletcher – Deputy Secretary
1201 Main Street, Suite 1600
Columbia, SC 29201-3200

Article XIII. AGREEMENT ADMINISTRATORS

US Army Corps of Engineers
Amanda Heath – Chief, Special Projects Branch
69A Hagood Avenue
Charleston, SC 29403
(843) 329-8044

South Carolina Department of Commerce
Jennifer Noel Fletcher – Deputy Secretary
1201 Main Street, Suite 1600
Columbia, SC 29201-3200

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by an authorized official on the date and year set forth below their signature.

U.S. Army Corps of Engineers



RACHEL A. HONDERD
Lieutenant Colonel, EN
Commander, U.S. Army Engineer District, Charleston

25 SEP 19

Date

South Carolina Department of Commerce



Robert M. Hitt, III
Secretary of Commerce

9/19/19

Date

Attachment A

The Corps staff will accomplish the reviews and tasks appropriate to coordinate, expedite and review permit applications in a manner that meets SC Commerce's initiatives in compliance with applicable State and Federal statutes. The Corps staff reviews and work tasks may include, but are not limited, to the following:

- Review and process permit applications submitted by SC Commerce.
- Participate in agency coordination.
- Participate in site selection review and comment.
- Verify delineations of Waters of the US for proposed project sites.
- Participate in wildlife resource inventory and impact assessment.
- Provide preliminary environmental analysis, guidance and review.
- Provide preliminary and detailed alternatives analyses guidance and review.
- Represents the Corps at meetings, as appropriate.
- Participate in advising the SC Commerce and/or its co-applicants or proposed co-applicants on Corps regulations and guidance.
- Conduct document reviews and draft agency responses, which may include but are not limited to:
 - Wetlands Identification and Delineation Reports
 - Wetland Functional Assessment Reports
 - Wildlife Resources and Related Technical Reports
 - Alternatives Analyses
 - Cultural Resource Assessments
 - Endangered Species - Biological Assessments
 - Floodplain Determination
 - Hydraulics Report
 - Habitat Evaluation Procedure Reports
 - Purpose and Need Statements
 - Preliminary Alternatives Reports
 - Environmental Impact Statements
 - Environmental Assessments
 - Categorical Exclusion Evaluations
 - FONSI Requests
 - Environmental Evaluation Reports
 - Mitigation Reports and Plans
 - Department of the Army Permit Applications
 - Policies and Procedures
- Coordinate and provide training on natural resource issues and permits, including various aspects of the Regulatory Program.
- Organize meetings and conference calls to clarify issues at the request of SC Commerce and/or its co-applicants or proposed co-applicants or the Corps.
- Perform other related tasks as defined by SC Commerce and agreed to by the Corps.

Attachment B

Under normal circumstances the Corps will make every effort to meet the following timeframes. Please be advised that these timeframes can be affected by Regulation changes, Supreme Court decisions, National Guidance, National Policy, etc. and can only be met when complete and accurate information is provided.

1. With all requests for Nationwide Permit authorization (NWP) and Individual Permit (IP) applications, the Corps shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such applications.

2. Upon receipt of a completed application or the requested (required), additional information associated with an IP application, the Corps shall disseminate the 30-day Joint Public Notice within 15 days.

3. For Individual Permits, within 15 days of the end of any Joint Public Notice the Corps shall provide to SC Commerce and any co-applicant all comments received as a result of the notice, as well as those comments from the Corps.

4. Regarding requests for authorization under a General Permit (GP) agreement with the Corps, the Corps shall provide notification of any need for additional, required information within 15 days of the Corps' receipt of such GP authorization requests.

5. With all of SC Commerce's or their co-applicant or proposed co-applicant requests for Jurisdictional Determinations (JDs), the Corps liaison shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such JD requests.

6. For General Permit (GP) authorization requests requiring dissemination to the resource agencies, the Corps shall provide all comments within 15 days of the end of the 15-day comment period.

7. For IPs, upon resolution of comments/issues with the Corps, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification or a Critical Area Permit, the Corps shall render a permit decision within 30 days, in 95% of all instances.

8. For GP authorization requests that do not require dissemination to the resource agencies, the Corps shall issue or deny such GP authorization requests within 30 days of their receipt of a complete GP authorization request, or the requested (required), additional information associated with a GP authorization request. Provided there are no outstanding issues/comments from other resource agencies, the Corps will waive, issue, or deny at least 95% of all GP authorization requests within 30 days.

9. Upon receipt of a completed and correct JD request, the Corps shall issue the Jurisdictional Determination within 30 days, provided coordination with EPA and HQ is not required pursuant to the Rapanos Guidance. Completed and correct JD requests requiring coordination with EPA and or HQ, but not elevated, will generally be completed within 45 days. These timeframes are subject to the scheduling and timing of site visits and the availability of SC Commerce, its co-applicant, and/or the consultant for the project.