STATE OF TEXAS §

COUNTY OF TRAVIS §

Agreement between the United States Army Corp of Engineers, Galveston District and Texas Department of Transportation for the Provision of Funding to Expedite Reviews of Transportation Projects

Amendment Number 01

THIS Amendment No. 1 to the Agreement between the United States Army Corps of Engineers, Galveston District (the Corps) and the Texas Department of Transportation (TxDOT) for the Provision of Funding to Expedite Reviews of Transportation Projects under Section 214 of the Water Resources Development Act of 2000, as amended and codified at 33 U.S.C. Section 2352 ("WRDA 214") is made by and between the State of Texas Department of Transportation (TxDOT) and the Corps, and shall become effective when fully executed by both parties.

BACKGROUND

TxDOT and the Corps executed an Agreement on October 9, 2015 to provide funds to the Corps Galveston District to expedite review of Department of Army (DA) permit actions as authorized by WRDA 214 for proposed TxDOT projects that are subject to the jurisdiction of the Corps. This amendment is made pursuant to Section 8.1 of the existing Agreement that allows for mutual modification or amendment of the Agreement.

AMENDMENT

1.0 The original termination date of September 30, 2020 is extended to September 30, 2021.

2.0 The total cost under the Agreement is increased by $200,000.00 from $299,450 to $499,450, as follows:

2.0.1 Adding $100,000 to allow for unanticipated increase in permit actions.
2.0.2 Adding $100,000 for expedited permit reviews in FY 2021.

All other terms and conditions of the Agreement not hereby amended remain in full force and effect.

Texas Department of Transportation	U.S. Army Corps of Engineers, Galveston District
By: James M Bass	By:
AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE
James M. Bass, Executive Director	Timothy R. Vail Colonel, U.S. Army Commanding
TYPED OR PRINTED NAME AND TITLE	TYPED OR PRINTED NAME AND TITLE
9/9/2020	25 SEP 2020
DATE	DATE

AGREEMENT
between
THE UNITED STATES ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
and
THE TEXAS DEPARTMENT OF TRANSPORTATION
for the
PROVISION OF FUNDING TO EXPEDITE REVIEWS OF TRANSPORTATION PROJECTS

THIS AGREEMENT is entered into by and between the Texas Department of Transportation (hereinafter "TxDOT"), a public agency of the State of Texas, and the United States Army Corps of Engineers, Galveston District (hereinafter "the Corps"), collectively referred to as the "Parties," and shall become effective on the date of execution by the last Party.

WHEREAS, Section 214 of the Water Resources Development Act of 2000, as amended by the Federal Water Resources Reform and Development Act of 2014 ("WRDA as amended") allows the Secretary of the Army ("Secretary") to accept and expend funds contributed by a non-federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army (DA), as long as the acceptance and use of funds will not substantively or procedurally impact impartial decision-making with respect to permits, and imposes certain limitations on and requirements applicable to the use of such authority;

WHEREAS, the Secretary has delegated the responsibility of carrying out Section 214 of the WRDA as amended to the United States Army Corps of Engineers' Chief of Engineers and his delegated representatives;

WHEREAS, the United States Army Corps of Engineers' Chief of Engineers, by memorandum dated March 29, 2004, has authorized the United States Army Corps of Engineers' district and division engineers to accept and expend funds contributed by non-federal entities under Section 214 of the WRDA as amended, subject to certain limitations including the publishing of public notice;

WHEREAS, the Secretary's authority to accept and expend funds under Section 214 of the WRDA as amended increases the flexibility for non-federal public entities to contribute funds to expedite the evaluation and processing of permits;

WHEREAS, the Corps shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under the WRDA as amended does not adversely affect the timeline for evaluation of permits of other entities that have not contributed funds under this section;

WHEREAS, it is acknowledged and understood that the Federal review of DA permit applications will be completely impartial and in accordance with all applicable Federal laws and regulations and will be performed using the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section;

WHEREAS, Section 222.005 of the Texas Transportation Code authorizes TxDOT to enter into an agreement to provide funds to a federal agency to expedite the agency's performance of its duties

related to the environmental review process for TxDOT's transportation projects, and imposes certain requirements on such an agreement;

WHEREAS, the Corps currently reviews aspects of certain TxDOT projects in the course of processing permit applications and related materials under Section 404 of the Federal Clean Water Act (33 U.S.C. Section 1344), Section 10 of the Federal Rivers and Harbors Act of 1899 (33 U.S.C. Section 403), and Section 103 of the Federal Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1414);

WHEREAS, the Parties have determined that it would be mutually beneficial for TxDOT to provide to the Corps advance funding to achieve expedited review of permit applications for TxDOT transportation projects;

WHEREAS, the Corps is willing to provide expedited review of permit applications for TxDOT transportation projects following receipt of funding from TxDOT as more fully described in this Agreement;

WHEREAS, the Parties estimate that an amount of $299,450 would be sufficient to fund expedited reviews of TxDOT transportation project applications for DA permits and other activities required under this Agreement for one 12-month period; and

WHEREAS, the Corps' Galveston District Engineer has determined that acceptance and expenditure of funds received from TxDOT under the terms of this Agreement will comply with Section 214 of the WRDA as amended, and a public notice regarding that determination was issued on April 16, 2015.

NOW, THEREFORE, for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by TxDOT to expedite review of DA permits for TxDOT transportation projects under the Corps' jurisdiction, TxDOT and the Corps agree as follows:

ARTICLE I.
PERSONNEL

1.1 TxDOT Personnel

1.1.1 TxDOT will designate an employee as the TxDOT Point of Contact for implementation of this Agreement. The TxDOT Point of Contact will work directly with the Corps Point of Contact on prioritizing project reviews, as well as receipt and tracking of expenditure of funds, non-project-specific efforts designed to expedite reviews for transportation project applications, and overall management and interagency coordination.

1.1.2 The TxDOT Point of Contact may designate an alternate to perform any required functions in his or her absence.

1.1.3 The TxDOT Point of Contact and any other pertinent TxDOT personnel shall meet with the Corps Point of Contact on an annual basis to discuss implementation of this Agreement.

1.2 Corps Personnel

1.2.1 The Corps will designate an employee as the Corps Point of Contact for implementation of this Agreement. The Corps Point of Contact will provide deliverables and work directly with the TxDOT Point of Contact on coordinating and/or conducting expedited permit reviews, receipt and tracking of expenditure of funds, non-project-specific efforts designed to expedite reviews for transportation projects, and overall management and interagency cooperation.

1.2.2 The Corps will assign one or more highly-qualified and transportation-proficient Project Managers (PMs) in the Galveston District to provide expedited reviews of TxDOT projects and participate in any permitting-related activities that will facilitate expedited reviews of TxDOT projects. The number of PMs will be sufficient to meet the commitments made in this Agreement.

1.2.3 The Corps Point of Contact may designate an alternate to perform any required functions in his or her absence. TxDOT will be notified of the Point of Contact/PMs.

1.2.4 The Corps Point of Contact may serve as a Corps PM.

1.2.5 The Corps Point of Contact shall coordinate with the Corps PMs as needed to achieve expedited reviews in compliance with this Agreement.

1.2.6 The Corps Point of Contact and any other pertinent Corps personnel shall meet with the TxDOT Point of Contact on an annual basis to discuss implementation of this Agreement.

ARTICLE II.
FUNDING

2.1 Nothing in this Agreement requires TxDOT, or obligates TxDOT in any way, to provide any funds whatsoever. The Corps is not entitled to rely on the receipt of any funding under this Agreement and will not expedite project reviews until funding is received. TxDOT, in its sole discretion, will determine whether to provide funding and the amount of funding provided under this Agreement.

2.2 TxDOT may provide the Corps with funds to pay for costs associated with performing expedited reviews of TxDOT transportation projects and other activities required under this Agreement.

2.3 All funds provided by TxDOT under this Agreement shall be used solely for performing expedited reviews of TxDOT transportation project applications and other activities required under this Agreement, and shall be used in the most efficient manner possible. Enforcement and compliance activities will not be paid from the funds contributed by TxDOT hereunder, nor will such funds be used for paying the cost for public hearings and distribution of public notices.

2.4 Within 30 days of the effective date of this Agreement, the Corps will provide TxDOT with a work order outlining the estimated cost, in labor hours, by activity to which the Corps is

obligated, for the initial 12-month period of the provision of services under this Agreement. The total cost for this work order will be $299,450.

2.5 At least 60 days before the anniversary of the most recent annual provision of funds under this Agreement, the Corps will provide TxDOT with an estimate of the cost, in labor hours, of performing expedited reviews of TxDOT project permit applications and performing other tasks required under this Agreement for the upcoming 12-month period. Upon approval of the estimate by TxDOT, the Corps will provide TxDOT with a work order outlining the estimated cost, in labor hours, by activity to which the Corps is obligated.

2.6 Upon receipt of a work order, TxDOT may pay, either by check or electronic funds transfer, the corresponding amount of funds to the Corps for the upcoming 12-month period, as desired.

2.7 The Corps, in expending TxDOT-provided funds under this Agreement, will comply with all procurement-related laws and policies that would apply to the Corps' expenditure of its own funds.

2.8 In the event the Corps does not utilize the entire amount paid by TxDOT in a year, the unused funds shall carry over for use in the following year or be returned if the agreement is terminated pursuant to the provisions of Article VII.

2.9 No expedited permit application processing will be completed by the Corps until funds are received by the Corps, i.e., no funding in arrears is allowed.

ARTICLE III.
EXPEDITED PERMIT REVIEWS

3.1 The Corps shall, to the maximum extent practicable, complete review of TxDOT individual permit applications, requests for letters of permission, regional general permits, nationwide permit pre-construction notifications and other submittals in less time than is customary for the completion of such reviews.

3.2 The Corps shall endeavor to review individual permit applications, requests for letters of permission, regional general permits, nationwide permit pre-construction notifications and other submittals in accordance with the requested completion dates presented by TxDOT. The Corps Point of Contact will inform the TxDOT Point of Contact if adhering to a requested priority order would prevent the Corps from meeting any TxDOT-requested completion date.

3.3 To the extent it will not interfere with the Corps' ability to comply with the performance measures set forth in Article VI, the Corps shall:

3.3.1 Provide TxDOT with any requested project development guidance on permitting requirements regarding what is needed for permit review including stream and wetlands assessments and delineations, scopes of analyses, jurisdictional determinations, and mitigation plans;

3.3.2 Respond promptly to any urgent matters identified by TxDOT;

3.3.3 Attend all meetings, trainings, conferences, and field visits that the Corps deems appropriate;

3.3.4 Work collaboratively with TxDOT to develop a dynamic process improvement plan and programmatic approaches to streamline permit reviews such as development of a regional general permit for projects that would typically require pre-construction notifications solely on the basis of triggers identified in Nationwide Permit General Conditions 18 and 20; and

3.3.5 To streamline the permitting process, after consultation with TxDOT, provide training to TxDOT and TxDOT contractor personnel for the purpose of developing consistent understanding of Corps policies, regulations, and procedures, as well as permit application requirements.

ARTICLE IV.
IMPARTIAL DECISION-MAKING

The Corps will use the following procedures for the purpose of ensuring that TxDOT's provision of funds will not impact impartial Corps decision-making with respect to TxDOT projects:

4.1 All final permit decisions on projects for which the Corps uses TxDOT-provided funding must be reviewed by at least one level above the normal decision-maker, unless the decision-maker is the district engineer. For example, if the decision-maker would be the Corps PM, then the reviewer could be the Team Leader or Branch/Division Chief.

4.2 All final permit decisions on projects for which the Corps uses TxDOT-provided funding must be made available on the Corps' webpage. The information will be posted in a clearly identifiable area indicating that the Corps used TxDOT-provided funding for the review of the projects.

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

4.4 The Corps must comply with all applicable laws and regulations.

4.5 TxDOT-provided funds will only be expended to expedite the final decision on the permit application or other submittal according to the terms and conditions of this Agreement. Funds will not be expended for the review of the decision-maker's decision. If the Corps uses an outside contractor to develop decision documents, such decision documents must be drafts only and must be reviewed and adopted by Corps regulatory program employees before the permit decision is made.

ARTICLE V.
REPORTING

5.1 The Corps will track information on all individual permit applications, requests for letters of permission, nationwide permit pre-construction notifications, and other submittals, and compile

such information into a quarterly report for TxDOT that includes summary information with total number of permits by type, average processing time per type, and expenditures per charging category (IPs, LOPs, RGPs, NWPs, EISs, Misc.), along with specific information on each submittal, including but not limited to date of submittal, date of verification/expiration letter/issuance, number of hours charged, and other pertinent information. The Parties shall assess the expedited process outlined in this Agreement to confirm that reviews performed after Agreement execution were completed in less time than was customary for those performed prior to Agreement execution.

5.2 Prior to preparing the first quarterly report under this Agreement, the Corps will work with TxDOT to develop and finalize a comprehensive list of reporting documentation and a template/form to make all quarterly submissions consistent and that will, at a minimum, show expenditures by permit/project, including all travel expenditures and travel purpose summaries. Reports are due within 15 calendar days of the end of each calendar quarter.

5.3 The Corps will provide TxDOT an annual report with accounting details for the Corps' fiscal year (FY) which ends on the last day in September. This report will be provided within 7 working days of the end of the Corps' FY. Following provision of the annual report to TxDOT, TxDOT will issue a satisfaction letter rating the success of this Agreement, which needs to be received by the Corps by October 20 for inclusion in the USACE annual report as required by the current implementing guidance for WRDA as amended.

ARTICLE VI.
PERFORMANCE MEASURES

6.1 This Article VI will apply to all TxDOT submittals made after TxDOT's initial payment of funds under Article II.

6.2 The Corps will acknowledge receipt of all hard copy or electronic correspondence from TxDOT (excluding individual permit applications, requests for letters of permission, regional general permit applications, and nationwide permit pre-construction notifications) within 3 working days of receipt.

6.3 The Corps will assign each individual permit application, request for letter of permission, regional general permit (if applicable), and nationwide permit pre-construction notification a permit number within 5 calendar days of receipt.

6.4 Within 10 calendar days of receipt of a TxDOT individual permit application, request for letter of permission, or pre-construction notification, the Corps will determine whether the application is complete or if additional information is needed, and notify TxDOT of its determination and any additional needed information.

6.5 For each individual permit application and request for letter of permission, the Corps will, to the extent possible, complete its review and issue a decision within 120 calendar days, on average, following receipt of a complete application or request. Exceptions include ESA delays, Section 106 delays, extended comment periods, plan modifications, and delays associated with 208 or 408 approval. Completion of review within 120 calendar days is less time than is customary for

review of individual permit applications and requests for letters of permission by the Corps, as required by Section 222.005 of the Texas Transportation Code.

6.6 For each nationwide permit pre-construction notification and request for an individual permit modification, the Corps will, to the extent possible, complete its review and issue a decision in fewer than 45 calendar days, on average, of receiving a complete notification or request. Exceptions include ESA delays, Section 106 delays, extended comment periods, plan modifications, and delays associated with 208 or 408 approval. Review completion and issuance of a decision in fewer than 45 calendar days is less time than is customary for nationwide permit pre-construction notifications and requests for an individual permit modification reviews by the Corps, as required by Section 222.005 of the Texas Transportation Code.

6.7 In the event the Corps fails to meet the expedited permit review timelines set forth in Sections 6.5 or 6.6 for any review, the Corp will provide TxDOT with a written explanation detailing the causes of and reasons for the delay(s) in the appropriate quarterly report.

6.8 If, with respect to any project, TxDOT requests completion sooner than any of the proposed timelines specified in this Article VI, the Corps will strive to meet the requested deadline.

6.9 If, at any time, there are insufficient TxDOT-provided funds in the designated account to cover the cost of performing expedited review of a project application under this Agreement, the Corps shall notify TxDOT, and the application will be processed on a non-expedited basis until such time that TxDOT replenishes the account with the required level of funding.

6.10 Any remaining funds not applied to an expedited review shall carry over in accordance with Article II.

ARTICLE VII.
TERM AND TERMINATION

7.1 This Agreement shall remain in force until September 30, 2020, or one of the Parties chooses to terminate its participation and provides the other Party with 30 days written notice, whichever occurs first.

7.2 In the event of termination, the Corps will return any unused funds within 30 days. Upon return of the unused funds, any application in processing as of the effective date of the termination will no longer be required to meet the expedited processing timelines set forth in this Agreement. Unused funds shall be returned to TxDOT by either check or electronic funds transfer.

ARTICLE VIII.
MISCELLANEOUS

8.1 This Agreement may be modified or amended only by written, mutual agreement of the Parties.

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

8.3 This Agreement is the entire agreement between the Parties concerning the provision of funding to expedite permitting-related reviews of transportation projects, and supersedes all prior written or verbal statements, understandings, commitments, or promises.

8.4 This Agreement is entered into for the sole benefit of TxDOT and the Corps. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies, or claims to any other entity, including, without limitation, the public in general.

8.5 Nothing in this Agreement shall be construed as waiving either TxDOT's or the Corps' sovereign immunity.

8.6 This Agreement may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date next to their signatures.

STATE OF TEXAS

Recommended by:

LtGen J.F. Weber, USMC, (Ret)
Executive Director
Texas Department of Transportation

Date: 7/30/15

Executed by:

Greg Abbott
Governor, State of Texas

Date: 9/8/15

U.S. ARMY CORPS OF ENGINEERS

Richard P. Pannell
Colonel, United States Army
District Commander, Galveston District

Date: 10/9/15