



**COOPERATIVE AGREEMENT**

**between**

**U.S. ARMY CORPS OF ENGINEERS**

**and**

**CHARLESTON COUNTY**

**For the 2019-2023 Federal Fiscal Years**

**(October 1, 2018 through September 30, 2023)**

## 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 (hereinafter referred to as the "Corps") and the County of Charleston ("County") is hereby entered into under the authority of Section 214 of the Water Resources Development Act of 2000, as amended, codified at 33 U.S.C. § 2352.<sup>1</sup> 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 County to the Corps to expedite the evaluation of permit applications submitted by the County for County activities that are under the jurisdiction of the Corps.

The objective of this Agreement is for the Corps (Charleston District Office) to commit select employees, based on expertise and workload, to be dedicated to review of County activities, as outlined in Appendix A. Applications submitted by the County 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 DA permit applications subject to this Agreement will also participate in general Corps employee activities.

## Article IV. **BACKGROUND**

The County has an extremely active transportation infrastructure improvement and public works program. In addition, the County has exhibited a strong commitment to incorporating environmental quality measures into the project planning process. In order to optimize environmental coordination, it is important to develop procedures that enable Corps personnel to work directly with the County and provide recommendations at the earliest stages of project development.

It is critical that the already established close working relationship be maintained and

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<sup>1</sup> 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).

expanded between the Corps and the County. 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 County planning process. This increased focus will facilitate environmentally responsible project development while at the same time improving the Corps' ability to review, evaluate and process appropriate permits for County projects 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 Appendix 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 assigned Regulatory Project Managers maintain daily time and attendance records identifying the number of hours spent working on tasks related to County projects and any other work tasks, including those listed in Appendix 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 the County for their review and records. As required by federal regulations, records will be kept during and for a period of five years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by the County upon request.
- D. Refund the County 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. Coordinate with and assist the County in developing options for wetland and stream mitigation in compliance with current Corps' Guidance, Standard Operating Procedures, Laws, and Regulations to address the needs of the County's future public projects.

- F. Provide electronic monthly status reports to the County by the 15<sup>th</sup> of each month. Reports shall include the status for all projects pending and issued by category (IP, GP, JD) and identify the status of all pending actions.
- G. Report annually on or before the 1<sup>st</sup> of September, the percentage of time frames achieved for those items in Appendix B that can be readily obtained from the Corps' ORM2 database.

***Specifically, the County will:***

- A. Provide the Award Amount as set forth in Article IX.
- B. Once this Agreement has been signed by all Parties, transmit advance payment according to the annual schedule in Article IX, needed to support the services contemplated by this Agreement.
- C. Clearly communicate project priorities to Corps staff through the Charleston County Transportation Development Director. The Charleston County Transportation Development Director will have the final authority on project priorities that are subject to this Agreement.
- D. Provide the Corps with a one year out 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. In no way shall this be construed or implied that either the County or the Corps is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under the 1973 Endangered Species Act, the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act of 1969, the Clean Water Act of 1977 (as amended), the Rivers and Harbors Act of 1899 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 a primary point of contact for administration of this Agreement and list them in **Article XIII**, which will hold monthly meetings to establish priorities and evaluate work performed under the Agreement. These meetings will be the forum 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 representative, will meet at least annually to facilitate communication, discuss interagency cooperation and identify programmatic initiatives and strategic goals. Issues which 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. Both the County 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 which 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. The County 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 County/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 Appendix B; and to document general adherence to these timeframes the Corps shall provide the County a quarterly report. Adjustments to the timeframes may be made when practical and agreed to by all Parties.
- B. Monthly agency coordination meetings shall occur in addition to a staff level coordination meeting at a minimum of once per fiscal year. These coordination meetings will address overall performance and discuss any potential improvement measures.

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. Any Party may terminate this Agreement upon ninety (90) day written notification to the other Parties. Upon termination by the County, the Corps will refund to the County 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 County 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.e 1ST FUNDING PERIOD:e	October 1, 2018 - September 30, 2019
2ND e FUNDING PERIOD:	October 1, 2019 - September 30, 2020
3RD e FUNDING PERIOD:	October 1, 2020 - September 30, 2021
4TH e FUNDING PERIOD:	October 1, 2021 - September 30, 2022
5TH e FUNDING PERIOD:e	October 1, 2022 - September 30, 2023

B.e TOTAL ESTIMATED COSTS FOR 1 <sup>st</sup> FUNDING PERIOD:e	\$150,000.00
TOTAL ESTIMATED COSTS FOR 2 <sup>nd</sup> FUNDING PERIOD:e	\$150,000.00
TOTAL ESTIMATED COSTS FOR 3 <sup>rd</sup> FUNDING PERIOD:e	\$150,000.00
TOTAL ESTIMATED COSTS FOR 4 <sup>th</sup> FUNDING PERIOD:e	\$150,000.00
TOTAL ESTIMATED COSTS FOR 5 <sup>th</sup> FUNDING PERIOD:e	\$150,000.00
C.e TOTAL FUNDING FOR THIS AGREEMENT:e	\$750,000.00

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.

Award amount should be sent by check, prior to the start date of the Funding Period, payable to:

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

Article XI. **FUNDING**

A.e The estimated amount for the funding period is based on the annual cost including overhead for assigned Project Managers and associated costs for benefits, overhead, safety equipment, vehicles, etc., not to exceed \$150,000.e

B.e The funding amount may be adjusted, either increased or decreased, to adequately compensate for the employees' 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, all Parties will meet and agree to the appropriate amount in writing.e

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

Article XII. **AGREEMENT OFFICERS**

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

B.o Charleston County  
Jennifer J. Miller – County Administrator  
4045 Bridge View Drive  
North Charleston, SC 29405

Article XIII. **AGREEMENT ADMINISTRATORS**

A.o US Army Corps of Engineers  
Amanda Heath – Chief, Special Projects Branch  
Regulatory Division 69A Hagood Avenue  
Charleston, SC 29403  
(843)829-8044

B.o Charleston County  
Steven L. Thigpen – Director of Transportation Development  
4045 Bridge View Drive, Suite C204  
North Charleston, SC 29405

**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.

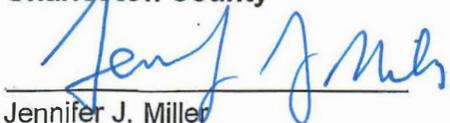
**U.S. Army Corps of Engineers**



Jeffrey S. Palazzini  
Lieutenant Colonel, EN  
Commander, U.S. Army Engineer District, Charleston

30 May 19  
Date

**Charleston County**



Jennifer J. Miller  
Charleston County Administrator

7/15/19  
Date

## Appendix A

The Corps staff will accomplish the reviews and tasks appropriate to coordinate, expedite, and review permit applications in a manner that meets the County'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 the County
- Coordinate with and assist the County in developing options for wetland and stream mitigation in compliance with current Corps Guidance, Standard Operating Procedures, Laws, and Regulations to address the needs of the County's projects
- Review project plans and programs
- Participate in agency scoping
- Participate in Needs Analysis review and comment
- 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
- Ensure Corps reviews coordination on separate reports for the same project
- 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
- \* Section 404 Permit Applications
- \* Policies and Procedures

- Coordinate and provide training on natural resource issues and permits
- Organize meeting and conference calls to clarify problems at the request of the County or the Corps
- Perform other related tasks as defined by the County and agreed to by the Corps

## Appendix 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.

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 the County, all comments received as a result of the notice, as well as those comments from the Corps.
4. With all of the County's requests for Jurisdictional Determinations (JDs), the Regulatory Project Manager shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such JD requests.
5. For IP applications, upon resolution of comments/issues with the Corps, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification and/or a Critical Area Permit, the Corps shall render a permit decision within 30 days, in 95% of all instances.
6. Upon receipt of a completed and correct JD request, the Corps shall issue the Jurisdictional Determination within 30 days, provided coordination with EPA and Corps HQ is not required pursuant to the Rapanos Guidance. Completed and correct JD requests requiring coordination with EPA and/or Corps HQ, but not elevated, will generally be completed within 45 days.