

COOPERATIVE AGREEMENT

BETWEEN THE

UNITED STATES ARMY CORPS OF ENGINEERS (USACE),

FEDERAL HIGHWAY ADMINISTRATION (FHWA),

AND THE

MISSISSIPPI DEPARTMENT OF TRANSPORTATION (MDOT)

RELATIVE TO

INTERAGENCY FUNDING FOR THE DEPARTMENT OF THE ARMY PERMIT

PROCESS ON FEDERAL-AID TRANSPORTATION PROJECTS IN MISSISSIPPI

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES ARMY CORPS OF ENGINEERS (USACE), FEDERAL HIGHWAY ADMINISTRATION (FHWA), AND THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION (MDOT) RELATIVE TO INTERAGENCY FUNDING FOR THE DEPARTMENT OF THE ARMY PERMIT PROCESS ON FEDERAL-AID TRANSPORTATION PROJECTS IN MISSISSIPPI

This cooperative agreement (Agreement) is between the Mississippi Department of Transportation (MDOT), the Federal Highway Administration (FHWA), and the United States Army Corps of Engineers (USACE), hereinafter referred to as the parties.

This Agreement sets forth the responsibilities of the parties relative to priority review of surface transportation projects with the goal of achieving timely design and implementation of adequate, safe, environmentally and economically sound transportation improvements while also assuring such design and implementation is done in accordance with federal statutes which the USACE and the FHWA administer.

WHEREAS Authority for this Agreement is pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505); and

WHEREAS funding has been appropriated under the Transportation Equity Act for the 21st Century (TEA-21) (P.L. 105-178) and SAFETEA-LU (P.L. 109-59) to provide a coordinated environmental review process; and

WHEREAS, many of these projects fall within waters of the United States; and

WHEREAS, the locations of these projects within Mississippi fall under the jurisdictional areas of five (5) different USACE districts (Vicksburg, Mobile, Memphis, Nashville and New Orleans); and

WHEREAS, the parties agree that establishing a USACE central point of contact (POC) to be located in the Vicksburg District for all surface transportation projects in Mississippi would create efficiency and expedite the environmental review process; and

WHEREAS, the parties have determined that it would be mutually beneficial to supplement USACE staffing above normal levels; and

WHEREAS, the parties have determined that the supplemental staffing referenced above would provide priority review of surface transportation projects contemplated or under design by MDOT or its subrecipients ; and

WHEREAS, FHWA and MDOT have determined USACE involvement in the planning and environmental analysis of proposed surface transportation projects undertaken by MDOT or its subrecipients to be in the public interest; and

WHEREAS, MDOT is willing to fund supplemental USACE support staff dedicated to work with involving MDOT and its subrecipients' planning and environmental studies and permit actions and issues; and

WHEREAS, the FHWA agrees that MDOT's apportioned Federal-aid highway funds may be used to support this agreement and would be an eligible source for funding at applicable Federal-aid match rates; and

WHEREAS, MDOT and the USACE have certified that MDOT and its sub-recipients have sufficient work associated with the environmental review process and with the evaluation of Department of the Army permits to fully employ one individual for the life of this agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties to this Agreement concur with the following responsibilities and terms.

I. Agency Responsibilities

A. MDOT Shall:

1. Program and have obligated annually in advance a Federal-aid project to track costs and provide payment to the USACE for the costs contemplated by this Agreement as listed below. It is anticipated that total annual funds needed for these services will not exceed \$250,000. Actual costs may be less than this amount, depending upon the amount of travel needed to support the priority review contemplated by this Agreement. Since FHWA and MDOT are legislatively prohibited from reimbursing for services in advance, billings against the programmed and obligated amount will be made no more frequently than monthly in arrears. If and when additional funds are necessary, additional payments may be negotiated by all parties to this agreement.
 - a. Salary and benefits for one (1) full-time employee (meeting the professional standards described in Attachment A) will be adjusted annually, if needed, to cover appropriate salary-increases and cost of living allowance (COLA) awarded Federal government employees.
 - b. Actual burdened overhead rate carried by the USACE, including:
 - i. Effective Rate
 - ii. Departmental Rate
 - iii. General Administrative Rate
 - iv. Other as appropriate

- c. Training, travel, and per-diem at Federal government rates, as needed to support the priority review contemplated by the Agreement.
 - d. Costs for the use of vehicle(s) unless MDOT elects to provide USACE support staff with appropriate vehicle(s) and fuel from MDOT's fleet.
2. The start date for annual funding will be 1 October. Funds will be transmitted electronically.
 3. MDOT will review USACE submittals of actual account of expenditures for salaries, benefits, travel and indirect costs as drawn against advance MDOT programmed obligations in support of work contemplated in paragraph I.B.1 below.
 4. If MDOT disagrees with the USACE submittal, a meeting to clarify the account of expenditures will be requested within ten (10) working days. In the event of a disagreement over the amount of expenditures, MDOT pledges to negotiate in good faith towards a reconciliation of the disputed amount.
 5. Reconcile and adjust Federal-aid project funding and/or advance MDOT payment to the USACE at the time of Agreement extension, modification, or termination and, upon completion of this Agreement, make any adjustments needed in Federal share payable as consistent with 23 U.S.C. 132.
 6. Hold meetings as necessary with the USACE to establish priorities and evaluate work performed under the agreement.

B. USACE Shall:

1. Supplement its existing staff, which currently evaluates MDOT and other permits and participate as a commenting agency on planning and environmental studies on a routine basis, by hiring one professional employee as detailed in Attachment A, and use the funds provided under this Agreement to pay the costs of this individual's salary, associated benefits and actual burdened overhead rate, and reimbursable travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, that are hereby incorporated into this Agreement by reference.
2. Attempt to ensure that 100% of the work time of the supplemental staff funded by this Agreement is dedicated to work on projects as

identified by the MDOT in accordance with the coordination procedures defined in paragraph II (below).

3. Ensure that the employee identified in Attachment A keeps a daily time record identifying the number of hours spent working on tasks related to highway projects and any other work tasks such as those listed under paragraph II (below) relative to coordination. These records shall account for 100% of the time worked by said supplemental staff, including any time spent on non-MDOT work. In addition, the USACE shall keep accurate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records and reports (see I. A. 3. above) for examination as required by the MDOT or the FHWA and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. The USACE shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least three (3) years after the final billing is submitted. These records shall be subject to audit in accordance with the Single Audit Act.
4. Hold annual meetings with MDOT and FHWA to evaluate work performed under this Agreement.
5. Upon programming and obligation of the initial year's funding, the supplemental position shall be filled as expeditiously as possible to support work contemplated by this Agreement.
6. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount. Continue the priority review of highway construction projects throughout negotiations as long as current funding obligations are sufficient to cover costs. The USACE will credit MDOT for any amount determined to be an over-statement of USACE expenses.
7. Develop internal procedures to implement this Agreement and modify as necessary (Attachment B).

C. FHWA Shall:

1. Approve programming of a Federal-aid project to obligate funds to accomplish the work contemplated by this Agreement at the applicable Federal-aid reimbursement rate in accordance with P.L. 109-59.

2. Under the authority of 23 U.S.C. 132, reimburse MDOT the total amount of Federal share payable for any project programmed to support this Agreement upon obtaining notification of its execution.

II. Coordination

- A. MDOT will establish priorities to direct the USACE supplemental staff efforts in the priority review process.
- B. Both MDOT and the USACE agree that reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings.
- C. While the primary focus will be advising MDOT in the environmental decision making process and pertinent environmental regulations in order to achieve timely permit reviews for projects undertaken by MDOT and its sub-recipients, USACE supplemental staff may also be involved in other tasks which support agency coordination and which serve to expedite the implementation of the MDOT's surface transportation program and to comply with the statutes and regulations for which the USACE bears responsibility. Examples of other tasks which may be assigned include but are not limited to:
 1. Attend pre-application meetings, interagency meetings, internal MDOT project coordination meetings, and public meetings.
 2. Participate in interagency scoping meetings and 404 merger meetings.
 3. Assist MDOT in explaining USACE related issues in its project decision making process to other Federal and Local resource agencies.
 4. Comment on project alternatives, mitigation plans, review and comment on biological assessments, and
 5. Develop and implement programs to increase the efficiency of MDOT's environmental decisionmaking process, statewide wetland banking program, and transportation project permit evaluation.
 6. Assist MDOT in providing appropriate training of MDOT personnel in regulatory program requirements and regional general permits.
 7. Assist MDOT and its recipients in identifying and delineating wetlands and potential wetland and streambank mitigation sites.

III. Performance Objectives

- A. The MDOT, USACE and FHWA will review existing interagency coordination processes and, if appropriate, formulate recommendations to improve procedures and increase efficiency within three (3) months of the time that the individual in the position to be funded by the Agreement reports for duty.
- B. The USACE agrees to meet the following goals:
 1. Early coordination and prioritization of transportation project environmental decision making actions and permit applications.
 2. Significant improvement of existing evaluation times for MDOT actions authorized by nationwide permits.
 3. The USACE will inform MDOT if project evaluation may exceed standard evaluation times due to issues such as required (Federal) Endangered Species Act coordination, controversial public interest factors, litigation, etc.
 4. The USACE will meet all timelines established by regulation for individual permits unless otherwise previously indicated or noted as an exception.
 5. The USACE supplement staff will be a commenting member of MDOT's environmental review and evaluation team.
- C. The MDOT agrees to meet the following goals:
 1. With the guidance of the supplement USACE staff, prepare and submit to the USACE a completed permit application together with drawings as currently required by USACE regulations set forth at 33 CFR 325, Standard permits, General permits, and letters of permission (LOP), incorporated herein by reference.
 2. With the guidance of the supplement USACE staff, provide all information necessary for evaluation of permit applications.
 3. With the guidance and assistance of the supplement USACE staff, give full consideration to modifying the submitted permit application in accordance with the comments provided by the USACE or other approving agencies in the course of permit review or terminate and withdraw the permit application.

IV. General Terms

- A. Length of Agreement. This Agreement expires on September 30, 2011, three years following the date of execution, unless extended or terminated as provided in IV. B. or C. below.
- B. Modification and Extension. This Agreement may be modified, amended or extended by the mutual agreement of the signatory parties.
- C. Termination. This Agreement may be terminated by either the MDOT or the USACE upon sixty (60) days written notice to the POC 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 ninety (90) days to remedy the situation. If either MDOT or USACE wishes to terminate this agreement for any reason other than deficient performance, the party wishing to terminate shall provide written notice to the other party, indicating the intent to terminate the agreement one hundred and twenty (120) days from the date of the written notice, unless both parties agree to an alternate date.
- D. Points of Contact/Project Managers

The title of the point of contact and current office holder for each signatory agency is listed below:

a) MDOT:

Name: Mr. Larry L. "Butch" Brown
Title: Executive Director
Address: Mississippi Department of Transportation
Post Office Box 1850
Jackson, MS 39215-1850
Tel: (601) 359-7002
Fax: (601) 359-7050
E-mail: lbrown@mdot.state.ms.us

b) USACE:

Name: Mr. Michael F. McNair, R.F.
Title: Regulatory Branch Chief
Address: Vicksburg District, US Army Corps of Engineers
4155 Clay Street
Vicksburg, Mississippi 39183-3435
Tel: (601) 631-5721
Fax: (601) 631-5459

E-mail: mike.mcnair@usace.army.mil

c) FHWA:

Name: Mr. Andrew Hughes
Title: Division Administrator
Address: Mississippi Division, Federal Highway
Administration
666 North Street, Suite 105
Jackson, Mississippi 39202
Tel: (601) 965-4215
Fax: (601) 965-4231
E-mail: andrew.hughes@fhwa.dot.gov

- E. 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 age, race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their age, race, color, religion, sex, or national origin.
- F. No member of or delegate to Congress, or appointed transportation official or commissioners, shall be admitted to any share or part of the funds of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
- G. All contracts to be developed and awarded pursuant to this Agreement, including all designs, plans, specifications, estimates, construction, utility relocation work, right-of-way acquisition procedures, acceptance of work and procedures in general, shall at all times conform to the applicable Federal and state laws, rules, regulations, orders and approvals, including procedures and requirements relating to labor standards, equal employment opportunity non-discrimination, compliance with the American with Disabilities Act, anti-solicitation, information, auditing and reporting requirements.
- H. Continuation of Existing Responsibilities
1. The parties to this Agreement are acting in an independent capacity in the performance of their respective legally authorized functions under this Agreement, and none of the parties' employees are to be considered the officer, agent, or employee of another party, to include the supplemental staff to be hired by the USACE to support priority review of MDOT highway construction projects.

1. This Agreement shall not abrogate any obligations or duties to comply with the regulations promulgated under the 1973 (Federal) Endangered Species Act as amended, the 1958 (Federal) Fish and Wildlife Coordination Act as amended, the National Environmental Policy Act of 1969, the (Federal) Clean Water Act of 1977 as amended, or any other Federal statute or implementing regulations.

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PROCESS ON FEDERAL-AID TRANSPORTATION PROJECTS IN MISSISSIPPI

Signatory Participants



Andrew Hughes
Division Administrator
Federal Highway Administration

Date 9/17/08



Larry L. "Butch" Brown
Executive Director
Mississippi Department of Transportation

Date 9/17/08

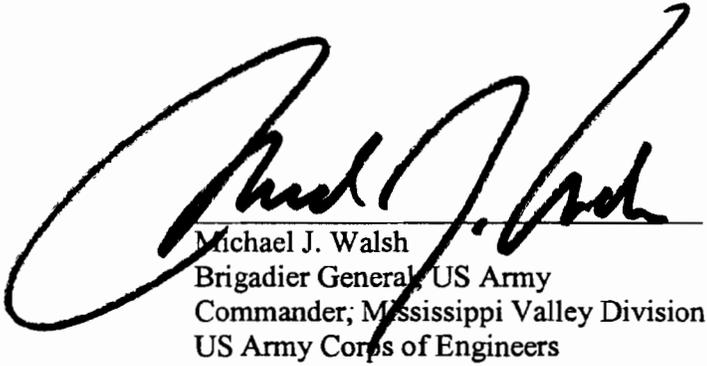


Michael C. Wehr
Colonel, US Army
Commander, Vicksburg District
US Army Corps of Engineers

Date 29 SEP 08

COOPERATIVE AGREEMENT
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Signatory Participant

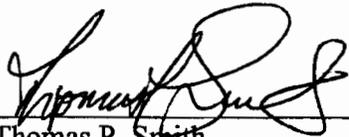


Michael J. Walsh
Brigadier General, US Army
Commander, Mississippi Valley Division
US Army Corps of Engineers

Date 22 Oct 2008

COOPERATIVE AGREEMENT
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Signatory Participant

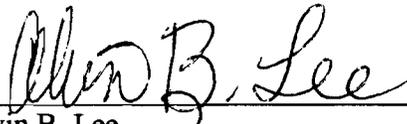


Thomas P. Smith
Colonel, US Army
Commander, Memphis District
US Army Corps of Engineers

Date 20 Oct 08

COOPERATIVE AGREEMENT
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Signatory Participant

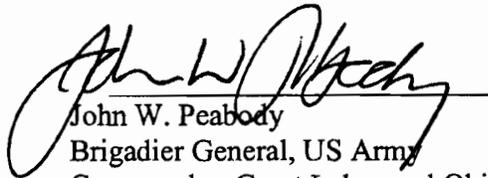


Alvin B. Lee
Colonel, US Army
Commander, New Orleans District
US Army Corps of Engineers

Date 10-7-08

COOPERATIVE AGREEMENT
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Signatory Participant



John W. Peabody
Brigadier General, US Army
Commander, Great Lakes and Ohio River Division
US Army Corps of Engineers

Date 12 Dec, 2008

COOPERATIVE AGREEMENT
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Signatory Participant

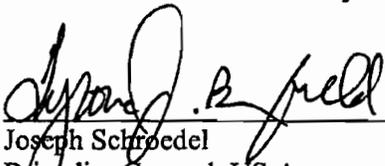


Bernard R. Lindstrom
Lieutenant Colonel, US Army
Commander, Nashville District
US Army Corps of Engineers

Date 12 DEC 08

COOPERATIVE AGREEMENT
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Signatory Participant

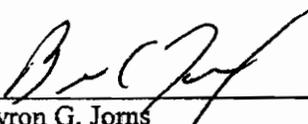
for 

Joseph Schroedel
Brigadier General, US Army
Commander, South Atlantic Division
US Army Corps of Engineers

Date 12 Dec 08

COOPERATIVE AGREEMENT
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Signatory Participant


Byron G. Jorns
Colonel, US Army
Commander, Mobile District
US Army Corps of Engineers

Date 120821'08

ATTACHMENT A

Professional Standards for Supplemental Staff

One (1) specialist with experience and/or education in engineering, biology, natural resources, 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, National Environmental Policy Act, the (Federal) Endangered Species Act, the National Historic Preservation Act, and the Joint Federal Manual 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 Federal NSPS Pay Schedule at the full performance level of YD-xxxx-02.

ATTACHMENT B

Interdistrict Procedures to Implement the “Cooperative Agreement Between the United States Army Corps of Engineers (USACE), Federal Highway Administration (FHWA) and the Mississippi Department of Transportation (MDOT) Relative to Interagency Funding for the Department of the Army Permit Process On Federal Aid Transportation Projects in Mississippi” (Agreement)

1. Purpose. The Agreement provides a means for USACE’s Vicksburg District to handle Section 10/Section 404 permitting of applications by FHWA/MDOT within the boundaries of the USACE Mobile, Memphis, New Orleans, and Nashville Districts. The purpose of this attachment is to outline the procedures that the five USACE districts will follow in implementing the Agreement to ensure maximum consistency within and among districts. For purposes of the Agreement, the home district is the USACE district within which an action occurs.

2. Points of Contact. Each district will designate a primary point of contact (POC) to implement the provisions of the Agreement.

A. The Vicksburg District POC will be the hiring official for the person selected to fill the position funded under the Agreement. This POC’s duties will include keeping the other four districts adequately informed of work to be permitted within their boundaries. The Vicksburg District POC will meet with representatives of the other four districts and develop methods of interdistrict coordination prior to permitting any work within their boundaries. These methods will include addressing impacts of proposed highway projects on Corps facilities and operations in the home district. Also, this POC will, where pertinent, invite the other four district POCs to all meetings and conferences called for in the Agreement.

B. The Mobile, Memphis, New Orleans, and Nashville District POCs will be individuals familiar with the Agreement and the USACE’s Regulatory Program. They will be the first persons contacted by the Vicksburg District POC on matters pertaining to the Agreement within their district boundaries.

3. Responsibilities.

A. Permit Review. Vicksburg District will handle all aspects of permit review and decision making on permit applications from FHWA/MDOT, to include signature authority for the entire State of Mississippi, unless other arrangements are made on a case-by-case basis (See 3.B. below). Appropriate coordination will be made with Mobile, Memphis, New Orleans and Nashville Districts prior to Vicksburg District making a decision on applications that fall within their respective boundaries.

B. Compliance/Enforcement. The Vicksburg District will be responsible for reviewing permits that it issues under the Agreement for compliance with permit conditions. Enforcement actions on unauthorized MDOT work (work performed without proper USACE authorization) will be initiated by the Corps district within which the work occurs. The Vicksburg District will evaluate any after-the-fact permit applications resulting from MDOT enforcement actions.

C. Mitigation Bank. Vicksburg District will lead review teams for mitigation banks proposed by MDOT solely for its use. The Mobile, Memphis, New Orleans, and Nashville Districts will be invited to each meeting, have a member on the review team, and will be provided a copy of the annual reports for each bank. The lead USACE district for other mitigation banks being utilized by MDOT will typically be the district in which the proposed bank is located. The USACE district lead for existing mitigation banks will remain in the home district.

D. Administrative Appeals. Vicksburg District will support any of its jurisdictional determinations and permit decisions associated with MDOT actions that are administratively appealed under the USACE appeal process. Depending on within which of the USACE Division's boundaries the action being appealed is located, appeals will be submitted to either the Mississippi Valley, South Atlantic or Great Lakes and Ohio River Divisions.

E. Section 404(q) Elevations. Vicksburg District will handle all Section 404(q) case specific issues/elevations for projects on which it makes permit decisions under the Agreement.

F. ORM Interface. To insure each district has the ability to effectively implement and monitor the Agreement, appropriate access will be allowed between the five USACE district's ORM databases and geographic information systems. This will not include the ability for any district to change the data of another district. The home USACE district will report permit decisions on its database.