COOPERATIVE AGREEMENT

BETWEEN THE

UNITED STATES DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS (USACE),

THE FEDERAL HIGHWAY ADMINISTRATION (FHWA),

AND THE

IDAHO TRANSPORTATION DEPARTMENT (ITD)

RELATIVE TO

PRIORITY HIGHWAY CONSTRUCTION

PROJECT REVIEW

June 2010

This Cooperative Agreement (Agreement) is between the Idaho Transportation Department (ITD), the Federal Highway Administration (FHWA), and the Walla Walla District, 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 highway construction projects with the goal of achieving timely design and implementation of adequate, safe and economical highway improvements while also assuring such design and implementation is sensitive to the protection of natural resources for which the USACE is responsible under Federal statute and regulation.

Authority and Funding. This Agreement is authorized pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505) and funding has been appropriated for this purpose under the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU)(P.L. 109-59).

WHEREAS, ITD has a number of highway construction projects that the USACE has legal responsibility to review pursuant to Section 10 of the Rivers and Harbors Act of 1899; and Section 404 of the Clean Water Act; and

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

WHEREAS, the USACE has indicated that due to staff resource constraints, it is currently unable to provide the ITD with priority review and permitting decisions within the timeframe necessary to meet construction schedules established by ITD for the number of highway construction projects pursuant to its responsibilities; and

WHEREAS, the Parties have determined that it would be mutually beneficial to supplement USACE staffing above normal levels which were established at pre-Transportation Equity Act for the 21st Century (TEA-21)(P.L. 105-178) highway program levels; and

WHEREAS, the Parties have determined that any separate supplemental funding above normal levels would provide priority review of Federal-aid highway construction projects contemplated or under design by ITD; and

WHEREAS, ITD is willing to provide the USACE supplemental funding to provide these staffing and functions; and

WHEREAS, the Federal Highway Administration (FHWA) has indicated and agrees that Idaho's apportioned Federal-aid highway funds may be used to support this agreement and would be an eligible source of funding at applicable Federal-aid match rates consistent with 23 U.S.C. Section 132; and

WHEREAS, ITD and the Walla Walla District have certified that ITD has sufficient work associated with the processing of Department of the Army permits to fully employ up to 2 people per year of regulatory support services (Attachment A).

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.

1. AGENCY RESPONSIBILITES

A. ITD Shall:

1. Program a Federal-aid project to track costs and provide advance state payment to the USACE for the costs contemplated by this Agreement as listed below.

- Salary and benefits for up to two (2) full-time employees (meeting the professional standard described in Attachment B) adjusted annually to cover appropriate step increases and cost of living allowance (COLA) costs awarded Federal government employees at a rate equivalent to a Federal white-collar Pay Schedule General Schedule 12 (GS-12).

- Actual burdened overhead rate carried by the USACE, including:

  - Effective Rate
  - Departmental Rate, and
  - General Administrative Rate.

- Training, travel and per-diem at Federal government rates, as needed to support the priority review contemplated by this Agreement.

- Vehicles (direct charged).

2. Upon receipt of a signed Agreement/modification or task order, transmit an advance payment equal to either the annual total of funds needed to support the service contemplated by this Agreement or additional funds needed to fund any modifications.

3. Review for approval, quarterly USACE submittals of actual account of expenditures for salaries, benefits, travel and indirect costs as drawn against advance state payment in support of work contemplated in paragraph 1.B.1 below.

4. If in agreement with the USACE quarterly account of expenditure, as submitted, transmit an approval to the USACE within ten (10) working days. If ITD 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 account of expenditures, ITD pledges to negotiate in good faith towards a reconciliation of the disputed amount.

5. Reconcile and adjust Federal-aid project funding and/or advance state payment to the USACE at the time of Agreement extension, modification, or termination and, upon completion of this cooperative agreement, make any adjustments needed in Federal share payable as consistent with 23 U.S.C. §132.

B. USACE Shall:

1. Supplement its existing staff, which currently processes ITD and other permits on a routine basis, with qualified staff as detailed in Attachment B, and use the funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate; and to reimburse reasonable travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, which is incorporated into this agreement by reference.

2. Hire career professional staff individual(s) to undertake work contemplated by this agreement, and, as necessary, pay authorized permanent change of station entitlements costs associated with filling the position.

3. Ensure that 100% of the supplemental staff contemplated by this Agreement is detailed to work on the priority projects identified by the ITD in accordance with the coordination procedures defined in paragraph II (below) unless detailing to other projects has occurred as authorized in paragraph II.E (below).

4. Ensure that the supplemental staff identified in Attachment B 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 supplemental staff, including any time spent on non-ITD work. In addition, USACE shall keep accurate and separate accounting records of all receipts and disbursements of all funds

received pursuant to this Agreement and produce such records for examination as required by the ITD or the FHWA and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. 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.

5. Upon receipt of initial advance state payment, supplement existing staff as expeditiously as possible to support work contemplated by this agreement.

6. Subject to the availability of funds, return unused funds to the ITD at the termination of this Agreement.

7. 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 advance state payment is sufficient to cover costs. The USACE will credit ITD for any amount determined to be an over-statement of USACE expenses.

C. FHWA Shall:

1. Approve programming a Federal-aid project 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 ITD the total amount of Federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.

II. Coordination:

A. On a monthly basis, ITD will establish and submit a prioritized listing of projects to the USACE which will guide the USACE supplemental staff efforts in the project review process.

B. ITD will hold quarterly meetings with the USACE to establish priorities and evaluate work performed under the agreement. Senior management is encouraged to attend the monthly meetings when possible.

C. Both ITD and the USACE 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.

D. While the focus will be to review permit decisions for priority ITD projects, USACE supplemental staff may also be involved in other tasks which support agency coordination and which serve to expedite the implementation of the ITD's highway construction program and compliance with the statutes and regulations for which the USACE bears responsibility. Examples of other tasks which may be assigned at the request of ITD and with concurrence of the USACE include, but are not limited to:

i. Attend pre-application meetings,

ii. Participate in interagency scoping meetings,

iii. Search USACE database for permit activities along state highways,

iv. Comment on project alternatives, mitigation plans, review and comment of Biological Assessments, and

v. Develop and implement programs to increase efficiency of transportation project permit processing, such as wetland mitigation banks, in-lieu fee mitigation agreements, regulatory training of ITD personnel, and regional general permits.

E. To the extent ITD workload allows and USACE funding is available, the employee may be directed by the USACE to work on assignments other than ITD projects and charge that work to the appropriate USACE account. This option would be utilized only if beneficial to both agencies and after consultation between agencies.

III. PERFORMANCE OBJECTIVES

A. The USACE agrees to meet the goals established by the following Performance Indicators:

1. The USACE will provide a preliminary response to ITD on all applications within 10 days of submission including a status update on the expected level of complexity and the estimated future action that will be needed on the permit. The USACE will also include their forecasted delivery date for the action.

2. Unless initially flagged as a more complex project, the USACE will complete processing of 90% of the nationwide (General) permit applications within 45 days of receipt of a completed application from ITD.

3. The USACE will meet all timelines established by regulation for individual permits unless otherwise previously indicated or noted as an exception. Fifty percent (50%) of Standard Permit applications will be processed in 120 days or less. The USACE will inform ITD if project evaluation may exceed standard processing times due to issues such as required Endangered Species Act coordination, controversial public interest factors, litigation, or others.

4. The USACE will strive to perform compliance inspections on general permit as well as individual permit projects, and their compensatory mitigation. Nationwide goals are for the USACE to perform compliance inspections on at least 10 % of all individual permits in construction; and at least 5% of all general permit projects in construction. USACE shall perform compliance inspections of 5% of compensatory mitigation sites required by the USACE.

5. USACE will provide weekly updates to ITD HQ providing lists of work items performed/completed. The weekly updates will include date work item was received, USACE forecast delivery date, and date work accomplished/finished. Any comments on additional information/items needed to accomplish work item will also be included in USACE weekly updates.

6. USACE will provide to ITD HQ a work calendar/schedule of the supplemental staff. This will help facilitate work load prioritization.

B. In general, the USACE's regulatory program prioritizes its workload in the following manner:

   a. First priority: Permit Applications. Both General Permit applications and Standard Permit applications are the USACE's first priority. Generally, permit applications are processed in a first-come, first-serve basis. If an application is associated with a project already in construction, or in preparation of a project's bid package, the application will be placed in front of other permit applications, with ITD HQ's approval.

b. Second priority: Jurisdictional Determinations and No-Permit Required letters. Generally, these will be processed in the priority set by ITD HQ.

c. Thirdly: Pre-application meetings and Compliance. These meetings can occur in the field and/or in offices. The pre-application meetings are scheduled on a first-come, first serve basis. Pre-application meetings also include discussions/scoping for potential compensatory mitigation requirements. Pre-application meetings are encouraged to help expedite the processing of upcoming permit applications. The projects slated for compliance inspection are those that are in construction. Generally, compliance inspections are prioritized by the authorized project's environmental setting, the permit's special conditions, and the complexity of construction in/near waters of the United States. Compliance also includes the review of required compensatory mitigation monitoring reports/clearances.

d. Other tasks as assigned. For example: Projects where the USACE is a Cooperating Agency on an Environmental Impact Statement (EIS). Other Special Projects (interagency agreements, etc.). These work items can take longer amounts of time. USACE agrees to coordinate with ITD HQ often on work-load as affected by prioritized EIS(s) and other Special Projects.

e. Should the USACE and ITD HQ allow a work-item to be placed behind other projects repeatedly, and should 6 months elapse, USACE agrees to place the delayed work-item to the top of the priority list, with ITD HQ approval.

C. ITD agrees to meet the goals established by the following performance indicators:

1. Prepare and submit all work items to USACE and updated prioritization of said work items on at least a monthly basis.

2. 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, incorporated herein by reference. Provide all information necessary for evaluation of permit applications.

3. Give full consideration to modifying the submitted permit application in accordance with the comments provided by the USACE in the course of permit review or to consider terminating

and withdrawing the permit application in response to USACE comments.

4. Review quarterly reports/budget submitted by USACE. Schedule quarterly meetings to discuss work performed under this agreement. Senior management is encouraged to attend quarterly meetings. Senior management can utilize quarterly meetings to schedule an annual management meeting for parties under this agreement.

IV. GENERAL TERMS

A. Length of Agreement. This Agreement expires on September 30, 2015, unless extended or terminated as provided in IV.B. and C. below.

B. Modification and Extension. This Agreement may be modified, amended or extended in five-year increments beyond 2015 by the mutual Agreement of the signatory parties.

C. Termination. This Agreement may be terminated by either the ITD or the USACE upon sixty (60) days written notice to the point of contact.

D. Point of Contact/Project Managers.

1. The Point of Contact in each signatory agency is as listed below:

a. ITD:

Name: Sue Sullivan
Environmental Section Manager
Address: Idaho Transportation Department
P.O. Box 7129
Boise, Idaho 83707
Telephone: 208-334-8203
Fax: 209-334-8025
Email: sue.sullivan@itd.idaho.gov

b. USACE:

Name: G. Leroy Phillips
Deputy Chief, Regulatory Division
Address: U.S. Army Corps of Engineers
10095 W. Emerald
Boise, Idaho 83704
Telephone: 208-376-1832

Fax: 208-345-2968
Email: gilbert.l.phillips@usace.army.mil

c. FHWA:

Name: Brent Inghram
Environmental Program Manager
Address: Federal Highway Administration
3050 Lakeharbor Lane, Suite 126
Boise, Idaho 83703-6243
Telephone: 208-334-9180 extension 114
Email: brent.inghram@fhwa.dot.gov

E. 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 of 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.

3. 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 Americans with Disabilities Act, anti-solicitation, information, auditing and reporting requirements.

F. 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 regardless of the funding source for any supplemental staff hired by the USACE to support priority review of ITD highway construction projects, such staff shall not be construed as an officer, agency or employee of either the ITD or FHWA.

2. In no way do the USACE, ITD or FHWA intend to abrogate through this Agreement 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 Clean Water Act of 1977 (as amended) or any other Federal statute or implementing regulations.

G. Other Agreements.

1. This Agreement does not preclude the signatory agencies from entering other inter-agency agreements relative to their respective roles and responsibilities; however, any other agreements should be consistent with this Agreement.

APPROVED FOR LEGAL SUFFICIENCY

Date: 5/3/2010

Approved as to Form

BY: _____
ITD Legal Counsel

Date: 5/04/2010

BY: _____
Brian W. Ness
Director
Idaho Transportation Department

Date: 05/20/2010

BY: _____
Peter J. Hartman
Division Administrator
Federal Highway Administration

Date: 27 MAY 2010

BY: _____
Michael J. Farrell
Lieutenant Colonel, Corps of Engineers
District Engineer

ATTACHMENT A

The persons whose signatures set forth below have reviewed the projected 5-year workload for the Idaho Transportation Department and found that expected services world require the commitment of one to two individuals per year of effort dedicated exclusively to review of Section 10 and Section 404 permits.

David B. Barrows
Chief, Regulatory Division

Brian W. Ness
Director, Idaho Transportation Department

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BARROWS.DAVID.B.1278115204 Digitally signed by BARROWS.DAVID.B.1278115204 DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USA, cn=BARROWS.DAVID.B.1278115204 Date: 2010.08.21 14:35:08 -07'00'

David B. Barrows
Chief, Regulatory Division

Brian W. Ness
Director, Idaho Transportation Department

ATTACHMENT B

One (1) to two (2) specialist(s) 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 Endangered Species Act, the National Historic Preservation Act, and the Joint Federal Manual for the Identification and Delineation of Wetlands is essential. In addition, an ability to travel, occasionally overnight is mandatory. Federal White Color Pay Schedule at the full performance level of General Schedule 12. See attached Standard Job Description.