

DEC 003

COOPERATIVE AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF INDIANA, DEPARTMENT OF TRANSPORTATION
FOR THE
INTERAGENCY FUNDING OF THE DEPARTMENT OF THE ARMY PERMIT
PROCESSING FOR HIGHWAY PROJECTS IN INDIANA

This Agreement is entered into this 20th day of November, 2002 by and between the Department of the Army (hereinafter the "USACE"), represented by the District Commander, Louisville District and the State of Indiana Department of Transportation (hereinafter "INDOT"), represented by the Commissioner, all hereinafter referred to as the Parties.

WHEREAS, the INDOT desires to have priority review of highway construction projects with the goal of achieving timely design and implementation of adequate, safe, environmentally sound and economical highway improvements while also assuring such design and implementation is done in accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344, et seq) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, et seq); and

WHEREAS, this Agreement sets forth the responsibilities of the Parties to ensure priority review of the State of Indiana highway construction projects with the purpose of achieving timely review and disposition of State of Indiana permit applications, and other activities which the USACE administers in accordance with Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, et seq) and Section 404 of the Clean Water Act (33 U.S.C. 1344, et seq) and their implementing regulations; and

WHEREAS, authority to enter into this Agreement is granted pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505), SAFETEA-LU (23 U.S.C. 139 (j)), and Section 214 of the Water Resources Development Act of 2000; and

WHEREAS, INDOT has substantially increased the number of highway projects for which 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, the location of these projects within Indiana fall under the jurisdictional area of the USACE Louisville District (hereinafter the "District"); and

WHEREAS, the Parties agree that establishing a District central point of contact for all INDOT transportation projects in the District boundaries in Indiana would be more efficient and improve the environmental review process; and

WHEREAS, the Parties agree that establishing an INDOT central point of contact for all INDOT transportation projects in the District boundaries in Indiana would be more efficient and improve the environmental review process; and

WHEREAS, the Parties have determined that it would be mutually beneficial to supplement District personnel to achieve the purpose set forth above; and

WHEREAS, INDOT is willing to pay for dedicated personnel to evaluate and process INDOT permit applications and issues in accordance with Federal laws and regulations; and

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.

Section 1: Obligations of INDOT

1.1 INDOT shall program a project to identify costs and provide payments to the District for the costs incurred pursuant to this Agreement. INDOT agrees to encumber an annual amount to cover all services to be provided by the District, as set forth herein. The annual amount for the State of Indiana Fiscal Year 2009 is estimated to be Three Hundred Seventeen Thousand Six Hundred Dollars and No Cents (\$317,600.00). The annual amount for the State of Indiana Fiscal Year 2010 is estimated to be Three Hundred Twenty-Seven Thousand One Hundred Dollars and No Cents (\$327,100.00). Annual amounts for future fiscal years shall be determined by the mutual consent of the parties at least sixty (60) days prior to the start of the next fiscal year. The State of Indiana's fiscal year begins July 1 and ends June 30 each year.

1.2 Within thirty (30) days of the execution of this Agreement, INDOT agrees to make its annual payment based on the remaining percentage of State of Indiana Fiscal Year 2009 to the District. Within ten (10) days of execution of this Agreement, the District shall send an invoice for the annual payment amount to INDOT. INDOT shall make payment to the District by electronic funds transfer. This payment shall cover expenses resulting from the hiring of new employees and overhead costs.

1.3 Beginning July 1, 2009, INDOT agrees to pay the District the annual amount for State of Indiana Fiscal Year 2010, and all state fiscal years thereafter, on a quarterly basis for all services set forth herein. Quarters shall begin on the 1st day of July, October, January, and April. The District shall send an invoice for payment to INDOT no later than sixty (60) days prior to the beginning of each quarter. INDOT shall make payment by electronic funds transfer within thirty (30) days of receipt of such invoice.

1.4 If the District forecasts that its actual costs will exceed the amount of funds available, it shall promptly notify INDOT of the amount of additional funds necessary. INDOT shall either provide the additional funds to the District, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct the termination of this Agreement pursuant to Section 6. If INDOT elects to provide additional funds to the District, the District shall promptly send an invoice for the required amount to INDOT. INDOT shall make payments via electronic funds transfer within thirty (30) days of receipt of such invoices.

1.5 Quarterly payments may include the following expenses:

1. Salary and benefits for the full-time employee(s) which will be adjusted annually to cover appropriate step-increases and cost of living allowance (COLA) awarded to Federal government employees.
2. Actual burdened overhead rate carried by the District, including:
 - Effective Rate
 - Departmental Rate
 - General Administrative Rate
 - Other as appropriate
 - Training and travel

1.6 INDOT agrees to hold meetings with the District to establish priorities and evaluate work performed under this Agreement.

Section 2: Obligations of the USACE Louisville District

2.1 The District may accept and expend the funds provided for herein by INDOT to expeditiously evaluate permit applications under the jurisdiction of the USACE for INDOT transportation projects.

2.2 Using the funds provided by INDOT, the District shall expeditiously supplement its existing staff, which currently processes INDOT permit applications and other permits on a routine basis, by hiring professional employees, and use the funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate. Additional positions and subsequent funding may be added under this Agreement, if all parties find that the work load warrants additional District personnel.

2.3 The District agrees to ensure that the supplemental staff funded by this Agreement shall be assigned to evaluate and process permit applications and other tasks which support this Agreement including agency coordination and compliance with the statutes and regulations for which the District is legally responsible and identified as priority projects by the INDOT in accordance with the coordination procedures defined in Section 5 below.

2.4 The District shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records and reports as required by Section 4 for examination as required by INDOT. The District 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.

2.5 The District agrees to hold a meeting every six months for the first year with INDOT to assess the coordination procedures and the timeliness of work performed under this Agreement. After the first year, annual meetings will be held with INDOT to assess the coordination procedures and the timeliness of work performed under this Agreement.

2.6 Upon receipt of the initial INDOT payment, the positions shall be filled as expeditiously as possible to support work contemplated by this Agreement.

2.7 The District shall develop internal procedures to implement this Agreement and modify as necessary.

Section 3: Payment Provisions

3.1 In accordance with Section 1.3 of this Agreement, INDOT agrees to make its annual payment for State of Indiana Fiscal Year 2009 to the District via electronic funds transfer within (thirty) 30 days of the execution of this Agreement, and the District agrees to send an invoice for the annual amount to INDOT within ten (10) days of execution of this agreement. INDOT shall, within ten (10) calendar days of making payment, notify the District in writing that the payment has been made to the appropriate account at the USACE Finance Center.

3.2 For all subsequent quarterly advance payments, the District shall provide an invoice of estimated costs to implement this Agreement for the upcoming quarter to INDOT. Such estimate shall include supporting documentation based on the costs for the previous quarter and shall be provided to INDOT sixty (60) days prior to the start of the next quarter. INDOT shall pay the District a quarterly lump sum amount as mutually determined by the parties and pursuant to Section 1.3 of this Agreement. The District shall ensure that said funds are assigned to an appropriate account from which the District may withdraw the funding in support of activities identified in this Agreement.

3.3 INDOT shall make prompt payment within thirty (30) calendar days of the receipt of the District's invoice of estimated of costs for the next quarter.

3.4 The District shall provide to INDOT a quarterly accounting of the actual expenditures for salaries, benefits, and overhead. INDOT shall review the quarterly District's accountings of such actual expenditures. If INDOT determines that the documentation or allowance of such expenditures are inadequate or insufficient, or determines that further documentation or clarification is required, a meeting to clarify the account of expenditures will be requested by INDOT within fifteen (15) working days of the receipt of the submittal from the District. In the event of a disagreement over the account of expenditures, the parties pledge to negotiate in good faith towards a reconciliation of the disputed amount; however, the burden of providing the required information or documentation is on the District. INDOT shall notify the District in writing of the inadequacy or insufficiency of the documentation provided and may provide any information necessary to correct the inadequacy or insufficiency.

3.5 In the event of disagreement over statements of expenditure, the District agrees to continue the priority review of INDOT transportation projects throughout negotiations as long as the current balance is sufficient to cover costs. The District will credit INDOT for any amount determined to be an over-statement of District expenses. Any funds paid to the District by INDOT in excess of the actual costs incurred in a billing period shall apply toward the District's expenses in the following billing period.

3.6 INDOT agrees to reconcile and adjust funding and INDOT payments to the District at the time of any Agreement extension, modification, or termination.

Section 4: Coordination

4.1 Every forty five (45) days, or as needed, INDOT's Manager of the Office of Environmental Services, or designee, will establish a priority listing of projects with the District which will guide the District's staff efforts in the priority review process.

4.2 Both INDOT and the District agree that ready and reasonable access will be provided to working level staff of each party in an effort to minimize the need for formal meetings.

4.3 While the focus will be to review permit applications for priority INDOT projects, the District staff may also be involved in other tasks which support this Agreement, including agency coordination and compliance with the statutes and regulations for which the District is legally responsible.

Examples of other tasks which may be assigned include, but are not limited to:

1. Review and comment on pre-application submittals (i.e., project alternatives, ecological survey reports, environmental documents, mitigation plans, functional assessments, etc.).
2. Attend project meetings, including field or office meetings.
3. Participate in interagency scoping meetings.
4. Perform other tasks including jurisdictional determinations and wetland delineation verifications.
5. Develop and implement programs to increase efficiency of transportation project permit processing, such as merging NEPA and 404 process requirements to improve efficiencies of the project development process, implementing wetland mitigation banks and in-lieu fee mitigation agreements, developing programmatic agreements and general permits as necessary, review and comment on Nationwide Permit (NWP) changes as necessary, and developing interagency training programs in cooperation with INDOT to sustain efforts contemplated by this Agreement.
6. Work with INDOT and Federal Highway Administration (FHWA) to identify and implement procedures to improve efficiencies during the project development process that allows the District to adopt environmental documentation as a cooperating agency to comply with NEPA, and where appropriate, reference and adopt findings on projects to comply with other laws, regulations and Executive Orders. Examples include, but are not limited to, findings for the National Historic Preservation Act, and the Endangered Species Act.

Section 5: Goals and Objectives

5.1 INDOT and the District shall review all existing interagency coordination processes and formulate recommendations to improve procedures and increase efficiency within six (6) months of the date that of the individual(s) in the position(s) to be funded by the Agreement report for duty. The recommendations shall be accompanied with a proposed schedule for implementation.

5.2 The District agrees to meet the following goals:

1. Early coordination and prioritization of INDOT project permit applications and related activities (i.e., project alternative analysis, ecological survey reports, environmental documents, mitigation plans, functional assessments, etc.).
2. The District will inform INDOT if project evaluation may exceed agreed upon processing times.
3. The District will work proactively to improve upon all timelines set forth at 33 CFR 325 and 33 U.S.C. 1344 for District actions unless otherwise previously indicated or noted as an exception.

5.3 INDOT agrees to meet the goals established by the following performance indicators:

1. Prepare and submit to the District a complete permit application with drawings and necessary information as currently required by USACE regulations.
2. Provide all information necessary for evaluation of permit applications and related activities.
3. Give full consideration to modifying the submitted permit application in accordance with the comments provided by the District or other approving agency in the course of permit review or terminate and withdraw the permit application.

Section 6: Commencement, Expiration, and Termination

6.1 The terms and conditions of this Agreement shall become effective when executed by all the parties.

6.2 The terms and conditions of this Agreement shall be reviewed at a meeting to be held by the Parties every year, coinciding with the beginning of the State of Indiana's fiscal year. At the time of review, the Parties shall discuss the estimated annual amount for the next fiscal year, quality of work performed, key accomplishments, work processes, procedures, priorities, and the goals and objectives of the Agreement. The Parties shall determine whether the terms and conditions of this Agreement are still satisfactory to each Party or whether modifications are required. If modifications are required, such changes shall be made by written amendment executed by all Parties. Each Party is free to request modifications to the terms and conditions of this Agreement at any time while this Agreement is in effect and such modifications may be made by written amendment upon the mutual agreement of both Parties.

6.3 INDOT has the legal authority to enter into this Agreement, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the Agreement. INDOT acknowledges that the rights, duties, and obligations described in this Agreement cannot be binding until all statutory and regulatory requirements have been met. In the case of invalidity, the District may exercise any legal rights it has to protect the Government's interests related to this Agreement.

6.4 This Agreement may be terminated by either the INDOT or the District upon sixty (60) days written notice to the point of contact of the other agency listed in Section 7.1 of this Agreement 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 INDOT or the District 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.

6.5 In the event of termination, all excess funds shall be refunded within sixty (60) days after the effective period of the termination. Neither party shall incur any new obligations for the terminated portion of the Agreement after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination. In the event of termination of this Agreement, the District shall conduct a final accounting. If additional funds are necessary, the District shall be entitled to compensation for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of INDOT. INDOT shall not be liable for any further claims, and the claims submitted by the District shall not exceed the total amount of consideration stated in this Agreement. Should the District be unable to complete the provisions of this Agreement for any reason, all monies provided by INDOT which prove to be cancelable obligations or unallowable shall be refunded to INDOT.

Section 7: General Provisions

7.1 The point of contact in each signatory agency is as listed below:

1. INDOT: Manager, Office of Environmental Services
Indiana Department of Transportation
100 N. Senate Avenue
Indianapolis, Indiana 46204
Tel: 317-232-5135; Fax: 317-233-4929
2. USACE: Chief, Regulatory Branch
USACE Louisville District
P.O. Box 59
Louisville, Kentucky 40201-0059
Tel: 502-315-6675; Fax: 502-315-6677

7.2 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.

7.3 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 staff to be hired by the District to support priority review of INDOT transportation projects.
2. 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; National Historic Preservation Act of 1966, or any other applicable Federal statute or implementing regulations.

7.4 This Agreement in no way restricts the District or INDOT from participating in similar activities with other public or private agencies, organizations, and individuals.

7.5 This Agreement and any claims arising out of this Agreement shall be governed by the laws and regulations of the United States and the State of Indiana.

7.6 The District shall provide its own workers compensation coverage throughout the duration of the Agreement and any extensions thereof.

7.7 By signature below, INDOT certifies that the individuals listed in this Agreement as representatives of INDOT are authorized to act in their respective areas for matters related to this Agreement. All parties acknowledge that any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

DEPARTMENT OF THE ARMY

K. Landry

10/25/08

Keith A. Landry
Colonel, Corps of Engineers
District Commander

DATE

INDIANA DEPARTMENT OF TRANSPORTATION

Karl B. Browning

11/3/08

Karl B. Browning, Commissioner
Indiana Department of Transportation

DATE

APPROVED BY THE INDIANA DEPARTMENT OF ADMINISTRATION

Carrie Henderson For 11/19/2008

Carrie Henderson, Commissioner
Indiana Department of Administration

DATE

APPROVED BY THE INDIANA STATE BUDGET AGENCY

Christopher A. Ruhl

11/24/08

Christopher A. Ruhl, Director
Indiana Department of Transportation

DATE

APPROVED AS TO FORM AND LEGALITY

Elizabeth A. Blawie (FOR)
Stephen Carter, Attorney General

Date: 11-26-08