

**AMENDMENT NUMBER 02
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE OREGON DEPARTMENT OF TRANSPORTATION
AND
THE UNITED STATES DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS**

The **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as "ODOT," and the **UNITED STATES DEPARTMENT OF THE ARMY CORPS OF ENGINEERS, Portland District Engineer**, acting by and through its delegated officials, hereinafter referred to as "COE," entered into an Agreement on July 31, 2009 and Amendment Number 01 on October 6, 2011. Said Agreement covers the evaluation of various ODOT permits under the jurisdiction of the COE.

It has now been determined by ODOT and COE that the Agreement referenced above shall be amended to extend the termination date, update Revised Exhibit A and B, and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Revised Exhibit A and Revised Exhibit B shall be deleted in their entirety and replaced with the attached Revised Exhibit A-1 and Revised Exhibit B-1. All references to "Revised Exhibit A" shall hereinafter be referred to as "Revised Exhibit A-1" and all references to "Revised Exhibit B" shall hereinafter be referred to as "Revised Exhibit B-1."

WITNESSETH, THAT, Paragraph M, Page 3, which reads:

M. ODOT, upon execution of Agreement 23060 and Agreement 23060 Amendment 1, forwarded to COE, an advance deposit of \$30,000 for the Liaison services provided under Agreement 23060. The \$30,000 advance deposit will carry over to this Agreement. Upon completion of the Project, COE shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, COE shall return to ODOT any funds advanced in excess of the actual costs,

Shall be deleted in its entirety and replaced with the following:

M. ODOT, upon execution of Agreement 23060 and Agreement 23060 Amendment 1, forwarded to COE, advance deposits of \$15,000 each for the Liaison services provided under Agreement 23060. The advance deposits, totaling \$30,000, will carry over to this Agreement. Upon completion of the Project, COE shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, COE shall return to ODOT any funds advanced in excess of the actual costs.

NOW, THEREFORE, ARTICLE VIII – AMENDMENT, MODIFICATION AND TERMINATION, Paragraph C, Page 8, which reads:

- C. This Agreement shall remain in force until September 30, 2013, or the Agreement is terminated pursuant to this Article, or until all available funds have been expended and not otherwise replenished by amendment to increase the maximum amount of this Agreement.

Shall be deleted in its entirety and replaced with the following:

- C. This Agreement shall remain in force until September 30, 2015, or the Agreement is terminated pursuant to this Article, or until all available funds have been expended and not otherwise replenished by amendment to increase the maximum amount of this Agreement.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

Signature Page to Follow

COE/ODOT
Agreements No. 26032-02

United States Department of the
Army Corps of Engineers, Portland
District, by and through its designated
officials

By John W. Eisenbauer
Title Commander, District Engineer

Date 27 Sept 13

By [Signature]

Title CHIEF, REGULATORY

Date 9/26/13

APPROVED AS TO LEGAL
SUFFICIENCY

By N/A
COE Counsel

Date _____

COE Contact:
Shawn Zinszer
Chief, Regulatory Branch
U.S. Army of Corps of Engineers,
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Portland, OR 97204-3495
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Shawn.H.Zinszer@usace.army.mil

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Highway Division Administrator

Date 9/30/13

APPROVAL RECOMMENDED

By [Signature]
Geo-Environmental Section Manager

Date 9/30/13

APPROVED AS TO LEGAL
SUFFICIENCY

By [Signature]
Assistant Attorney General

Date 9/30/13

ODOT Contact:
John Raasch, Natural Resource Unit
Manager
Oregon Department of Transportation,
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REVISED EXHIBIT A-1 STATEMENT OF WORK

1. With this proposal, the US Army Corps of Engineers (COE) enters into an Agreement with Oregon Department of Transportation (ODOT) to employ up to 1.00 full-time equivalent staff member (FTE) to work on environmental review and planning in ODOT's Project Development, Construction, and Maintenance programs. ODOT will provide the funds, which will not exceed \$1,235,489, for services provided through September 30, 2015. The COE shall house, supervise, and provide office support for the position.

BACKGROUND

1. This Agreement sets forth responsibilities of both Parties, relative to priority review of 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 and in compliance with Federal statute and regulations.
2. The Parties have determined that it would be mutually beneficial to supplement COE staffing and that this supplemental staffing would focus on improving the efficiency and effectiveness of COE regulatory review of Federally-aided highway projects. Specifically, supplemental staffing will consist of ODOT-dedicated staff that allows the COE to (a) provide an enhanced level of technical and policy-level assistance in early transportation project planning; (b) improve coordination and consistency between ODOT and COE; (c) provide staff effort for permit process streamlining initiatives; (d) reduce the number of COE contacts for ODOT; and, (e) prioritize ODOT projects for review, ESA consultation, and permitting decisions.
3. This Agreement expresses ODOT's and COE's commitment to continue important efforts of coordination and cooperation between the agencies and to provide needed assistance to ODOT staff.
4. ODOT has developed an ODOT Liaison Program Manual (http://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/odot_liaison_manual.shtml) to assist COE and ODOT staff to successfully execute their Agreement responsibilities. Guidance is provided for all aspects of the following Agreement sections: communication and coordination principles; ODOT responsibilities; and COE responsibilities. This Agreement takes precedence for any differences in protocols and procedures between the Manual and the Agreement.

Communication and Coordination Principles

1. COE and ODOT staffs should work together in a collaborative manner, seeking to skillfully balance their roles in regulatory oversight and project advocacy.
2. COE and ODOT staffs are encouraged to learn and implement principles of effective communication, coordination, and negotiation to meet the mutual purpose and goals of this Agreement.

COE/ODOT
Agreements No. 26032-02

3. For conflicts that may arise between ODOT and COE staff, the first step is for staff to *constructively negotiate* their disputes; for conflicts that cannot be resolved after constructive negotiation is attempted, staff is advised to make use of *constructive elevation* protocols to elevate the decision to a higher management level for resolution.

ODOT Responsibilities

1. ODOT shall make payment to COE as stated in Article II – Scope and Funding, paragraph D, in an amount not to exceed \$1,235,489 to COE for expenses connected with up to 1.00 full-time equivalent positions through September 30, 2015 at the GS-12 pay range described under COE Responsibilities.
2. ODOT shall respond in a timely manner to issues raised by the COE relating to the implementation of the terms of this Agreement.
3. On an as needed basis, such as when project prioritization and scheduling conflicts arise, ODOT shall provide project ranking and prioritization direction to the COE.
4. ODOT will provide adequate notice to COE staff for field visits and changes to standing meeting schedules.
5. When ODOT requests and coordinates site or project meetings, ODOT will provide COE adequate information. The level of project detail provided to COE should be commensurate with the level of guidance detail expected in return from COE.
6. The ODOT Principal Representative shall obtain ODOT feedback on COE staff performance in carrying out the work tasks under this Agreement as listed herein and provide it to the COE Principal Representative as input for COE staff performance appraisals.
7. ODOT shall provide COE staff working under this Agreement ODOT project key numbers and expenditure account numbers (EAs) for monthly timesheets. Any inefficiency in obtaining these numbers should be reported to the ODOT Principal Representative.
8. ODOT observations of possible COE decision inconsistency or policy discrepancy should be collaboratively discussed during regular check-in meetings between the GES Wetlands Program Coordinator and COE staff and, if warranted, brought to the attention of management during COE-ODOT quarterly meetings.
9. ODOT staff concerns about COE staff performance shall be reported to that ODOT staff member's manager for consideration and discussion with the ODOT Principal Representative.

COE Responsibilities

1. COE shall invoice ODOT as stated in Article II – Scope and Funding, paragraph E, up to an Amount not to exceed \$1,235,489 in state funds. In Agreement No. 23060,

COE/ODOT
Agreements No. 26032-02

ODOT paid an advance deposit in the amount of \$30,000 which shall transfer over to this Agreement. Upon completion of the Project, COE shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, COE shall return to ODOT any funds advanced in excess of the actual costs.

2. Communication responsibilities. The following timeframes are general guidance and subject to temporary modification where staff is out of the office due to illness, training, or other reasons.
 - a. Respond to ODOT phone calls within one (1) work day; respond to e-mails within three (3) work days.
 - b. Route messages to alternate COE staff if out of the office for more than two (2) work days.
 - c. Inform the ODOT Principal Representative, or their designee, if COE staff will be out of the office for more than three (3) work days.
3. **Respond to ODOT requests for meetings and manage meeting commitments as determined by COE workload demands, ODOT priorities, and necessity for meeting.**
 - a. Primary ODOT meetings COE staff is expected to attend include the following. (Meeting frequency is subject to change.)
 - i. Region requested on-site and in-office pre-application and project meetings: as needed
 - ii. Quarterly Wetlands/Permits Team: as needed
 - iii. ODOT sponsored training sessions: as requested by the ODOT Principal Representative
 - b. Respond to ODOT meeting requests in a timely manner.
 - c. Unless other ODOT priorities or reasons take precedence, attend all primary meetings; coordinate commitment conflicts with the GES Wetlands Program Coordinator.
 - d. Provide relevant ODOT staff with an early notice if, for any reason, meeting commitments cannot be met.
4. **Represent the COE** by providing ODOT staff Section 404 and Section 10 guidance and analysis—at meetings and when requested through phone calls or e-mails.
 - a. Respond to ODOT requests for COE-related information in a timely manner. To help manage COE workload, COE staff may refer general questions to the GES Wetlands Program Coordinator.

COE/ODOT

Agreements No. 26032-02

- b. Provide advice and guidance on ways to avoid and minimize project impacts to achieve better environmental outcomes and to reduce permit processing timeframes and potential delays; this includes suggestions to qualify for more streamlined permits, such as Nationwide Permits or Regional General Permits.
 - c. For the purposes of permit process improvement and consistent decision making, copy the GES Wetlands Program Coordinator with e-mail or other written ODOT-related communications that may have statewide Section 404 or Section 10 policy implications for ODOT project delivery.
 - d. Provide consistent decision making between COE staff and COE policy by (1) assisting the GES Wetlands Program Coordinator in the development of COE-related technical guidance documents; (2) frequent coordination with all COE staff working under this Agreement; and, (3) frequent coordination with GES staff.
 - e. Stay current with COE national and regional policy changes that may affect ODOT project delivery, and provide this information in a timely manner to the GES Wetlands Program Coordinator for dissemination to relevant ODOT staff.
5. **Site visit documentation.** Document site visits in writing; upon request, make site visit notes available to the GES Wetlands Program Coordinator. On a regular basis, however, copy the program coordinator with site visit documentation that indicates statewide Section 404 or Section 10 policy implications for ODOT projects.
6. **Process ODOT's Section 404 and Section 10 deliverables.** Deliverables include jurisdictional determinations, Joint Permit Applications, informal feedback on appropriateness of proposed wetland mitigation, review and provision of comments on Environmental Assessments and Environmental Impact Statements, and local agency permit actions.
- a. Process deliverables in a timely manner.
 - b. Coordinate ODOT workload priority conflicts with the GES Wetlands Program Coordinator;
 - c. Copy e-mails and correspondence related to COE permit application completeness to the GES Wetlands Program Coordinator. Advise the ODOT Region applicant and GES Wetlands Program Coordinator immediately if an application is not considered complete. Copy completed ORM database completeness determination data to the GES Program Coordinator on a quarterly basis.
 - d. Increase COE transparency for pending ODOT permit actions and projects by making accessible to ODOT an ORM database report of pending ODOT permit actions and projects. COE shall update this project tracking data on a monthly basis.

COE/ODOT

Agreements No. 26032-02

- e. Prior to COE final permit decisions on complex actions, coordinate final permit conditions with ODOT staff and copy the GES Wetlands Program Coordinator with the draft conditions.
 - f. Issued permits and other decisions on ODOT permit actions shall be copied to the GES Wetlands Program Coordinator.
7. **Interagency permit action coordination.** This includes Endangered Species Act Section 7 consultation with the National Marine Fisheries Service.
- a. Contact coordinating agencies within two weeks of initiating consultation or requesting agency assistance for follow-up; maintain prudent follow-up throughout agencies' review process.
 - b. Minimize process delays for coordinating agencies by maintaining quality standards for deliverables.
8. **Account for COE staff time.** Provide monthly reporting of employees' time using an ODOT-provided timesheet.
9. **Feedback on staff performance in meeting goals of this Agreement.**
- a. Annually, or upon request by the ODOT Principal Representative, obtain COE staff feedback about ODOT's performance for (1) quality of work submitted to COE for review and approval; (2) ODOT staff knowledge of COE regulations, rules, and permit requirements; and, (3) professional conduct related to communication and coordination. (The feedback should also include COE staff recommendations for improving working relationships with and performance of ODOT staff.)
 - b. Provide the COE staff feedback to ODOT's Principal Representative.
10. **Identify opportunities for and provide support to COE-ODOT process improvement and streamlining initiatives.**
- a. Assist ODOT in finding innovative ways to improve COE permit processing efficiency for all ODOT projects requiring Section 404 or Section 10 authorization.
 - b. In coordination with the GES Wetlands Program Coordinator, develop project plans and schedules for process improvement/streamlining initiatives; provide initiative status reports at COE-ODOT Quarterly Meetings.
11. **Provide training to ODOT staff** on COE policies and procedures related to jurisdictional determinations and Section 404/10 regulations and policies.
- a. Coordinate training sessions with the GES Wetlands Program Coordinator.
 - b. On a case-by-case basis, conduct post training assessment surveys of attendees.

**REVISED EXHIBIT B-1
Estimated Costs - COE Positions**

Period 1 (8/1/2009 - 9/30/2011)

Labor, Overhead, Travel Costs (Actual)

Period 1 Total **\$ 426,489**

Period 2 (10/1/2011 - 9/30/2013)

Labor, Overhead, Travel Costs (Actual) \$339,000
(through 7/31/2013)

Labor, Overhead, Travel Costs (Estimate) \$ 50,000
(8/1/2013 - 9/30/2013)

Period 2 Total **\$ 389,000**

Period 3 (10/1/2013 - 9/30/2015)

Labor and Overhead(Estimate) \$390,000
Travel \$ 30,000

Period 3 Total **\$ 420,000**

Total Estimated Cost (All Periods) **\$1,235,489**

Period 3

Maximum Hourly Rate: \$105

*Note: Maximum Hourly Rate Calculation (GS-12 pay range) based on 1742 hours per year per FTE.
Rate includes all costs associated with position except travel.*