

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

THIS AGREEMENT is entered into this 31~~31~~ day of July July, 2009, by and between the UNITED STATES DEPARTMENT OF THE ARMY CORPS OF ENGINEERS, Portland District Engineer, hereinafter referred to as "COE", and the STATE OF OREGON, acting by and through its Department of Transportation hereinafter referred to as "ODOT", collectively referred to as "Parties".

WITNESSETH, THAT:

- A. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 283.110 and 366.558, ODOT may enter into cooperative agreements with the United States Federal Government for the performance of work on improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting Parties.
- B. This Agreement is entered into under the following authorities:
  - a. Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub.L.109-159), Section 6002(j), 23 U.S.C. § 139(j). Section 214 of the Water Resources Development Act of 2000 (Pub.L. 106-541), 33 U.S.C. § 2201 note (Funding to Process Permits) as amended by Pub.L. 108-137 (Dec. 1, 2003), Pub.L. 109-99 (Nov. 11, 2005), Pub.L. 109-209 (Mar. 24, 2006), Pub.L. 109-434 (Dec. 20, 2006), Pub.L. 110-114 (Nov. 8, 2007).
- C. WHEREAS, COE has indicated that due to staff resource constraints, it is currently unable to provide ODOT with priority review and timely permitting decisions for the increased number of transportation projects pursuant to its responsibilities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899; without ODOT dedicated staffing, the lack of COE staff capacity would result in permit processing delays, which can lead to slipped bid lets and unanticipated costs to ODOT projects; collaborative permit processing streamlining efforts are also hampered by COE staffing constraints; and

- D. WHEREAS, ODOT has realized value-added benefits from ODOT dedicated COE staff with transportation expertise; and
- E. WHEREAS, the Parties have determined that it would be mutually beneficial to supplement COE staffing above normal levels which were established at pre-TEA-21 highway program levels; and
- F. WHEREAS, the Parties have determined that any supplemental staffing above normal levels would provide priority review of federal-aid transportation projects or state funded transportation projects contemplated or under design by ODOT; and
- G. WHEREAS, ODOT is willing to provide funding to COE for supplemental staffing to provide these functions; and
- H. WHEREAS, while the Federal Highway Administration (FHWA) is neither a party to Agreement 26032 nor a signatory to this Agreement; however, federal-aid funds will be used to fund many of the activities outlined in this Agreement, The Parties recognize FHWA's role as a lead federal agency for federal-aid transportation projects in Oregon. In its capacity as lead federal agency, the FHWA will be actively involved in project-specific consultation and coordination activities of the Parties undertaken in accordance with this Agreement; and
- I. WHEREAS, this Agreement was developed to provide supplemental resources to the COE, to enable the COE to collaborate with ODOT and the FHWA in the development and implementation of measures to streamline the COE's environmental review and regulatory activities for transportation projects, in accordance with the *Environmental Streamlining National Memorandum of Understanding*, dated July 20, 1999; and
- J. WHEREAS, the Chief of Engineers by memorandum dated May 21, 2008, entitled Collection of Civil Works Appropriation Reimbursements, provided USACE policy for the collection of civil works appropriation reimbursements; and
- K. WHEREAS, the Chief of Engineers by memorandum dated October 1, 2008, entitled Implementation Guidance for Section 2002 of the Water Resources Act of 2007, authorized District and Division Engineers to accept and expend funds contributed by non-federal entities to expedite the evaluation of permits subject to the limitations described in the implementation guidance, including District Engineer's approval of said agreements and additional standards the District must comply with to insure impartial decision making; and

- L. WHEREAS, guidance provided by COE Headquarters indicates such agreements and funding transfers must be able to demonstrate an improvement in performance.
- M. ODOT, upon execution of Agreement 23060 and Agreement 23060 Amendment 1, forwarded to COE, an advance deposit of \$15,000 for each Liaison, totaling 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. This advance deposit will be used as advance reimbursement to COE for the costs incurred at the beginning of Agreement 26032.

NOW, THEREFORE,

### **ARTICLE 1 – PURPOSE AND AUTHORITY**

- A. This Agreement is entered into by and between COE and ODOT for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by ODOT to expedite the evaluation of permits under the jurisdiction of the COE, hereinafter referred to as "Agreement", shown on "Exhibit A", attached hereto and by this reference made a part hereof.

### **ARTICLE II – SCOPE AND FUNDING**

- A. ODOT will provide to COE an amount not to exceed \$784,989 in state funds, to expedite the evaluation of various ODOT permits under the jurisdiction of the COE. All funds transfers under this Agreement will be between COE and ODOT; a portion of these funds will be federal-aid funds. It is understood that the use of funds accepted hereunder will not impact impartial decision making with respect to such permits, either substantively or procedurally.
- B. COE agrees that the advance deposit of \$30,000 as described above in Recitals, paragraph M, will carry over to this Agreement. This advance deposit will be used as advance reimbursement to COE for the costs incurred at the beginning of this Agreement.
- C. If the Portland District forecasts its actual costs will exceed the amount of funds available, it shall promptly notify the ODOT of the amount of additional funds necessary. ODOT shall either provide the additional funds to the Portland District, require the scope of work be limited to that which can be paid for the then-available funds, or direct termination of this Agreement pursuant to Article VIII.

- D. COE will establish a separate account to track receipt and expenditure of the funds associated with its review of ODOT's permits. COE regulatory employees will charge their time against the account when they perform work to expedite resolution of any ODOT permit request.
- E. COE shall submit invoices to ODOT on a monthly basis, for the prior calendar month, for actual costs incurred by COE on behalf of this Agreement directly to ODOT's Principal Representative. Invoices shall (1) be in a form identifying the ODOT Agreement number, the time period covered by the invoice and the invoice number; (2) identify the employee, hourly employee rate, ODOT work task name, ODOT Key Number, Expenditure Account number, agency nexus to the activity and number hours spent on the respective work tasks; and, (3) explain all expenses for which reimbursement is claimed, including but not limited to, hourly rates applicable to time expended for each ODOT work task, and documented in such a manner as to be easily verified. The said invoice must total the same number of productive hours recorded on each liaison's timesheet as shown on "Exhibit C", attached hereto and by this reference made a part hereof. The travel expenditures will be broken out according to ODOT work task. The budget amount shown on "Exhibit B", attached hereto and by this reference made a part hereof, is an estimate; however, under no conditions shall ODOT's obligations exceed \$784,989, including all expenses, as referenced in Exhibit A. Payment by ODOT will be made within forty-five (45) calendar days from receipt of COE invoice.
- F. Funds contributed by ODOT hereunder will be expended on the salaries and overhead of ODOT-dedicated COE Regulatory Project Managers performing expedited processing activities for ODOT. Such activities will include, but not be limited to, the following: application intake review, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, policy review and clarification, process streamlining, meetings with ODOT, review and provision of COE comments on environmental assessments and environmental impact statements, in-state travel, and ODOT-authorized training. Travel expenses, including mileage, shall be reimbursed to COE in accordance with the current Oregon Department of Administrative Services' rates, which shall be provided by ODOT to COE upon request. Funds will *not* be expended for review of Project Managers' work by supervisors, or other persons or elements of COE in the decision making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by ODOT hereunder, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

- G. With prior coordination and approval by ODOT, funds may also be expended by other COE elements (including but not limited to Environmental Resource Section, Engineering Division, etc.) or to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing drafts of reference general biological assessments for use by ODOT and others, preparing regional general permits for use by ODOT and others, Essential Fish Habitat determinations, and other technical documents, including draft environmental documents. Unless agreed to by ODOT, all activities described in this paragraph and paragraph C above will be performed in accordance with the principles and COE responsibilities listed in Exhibit A, which includes ODOT work task ranking and prioritization direction provided to the COE on a monthly or as needed basis by ODOT. If ODOT funds are expended and are not augmented or renewed, any remaining ODOT permit applications will be handled like those of any other non-participant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.
- H. COE and ODOT will have regular meetings to discuss the status of existing permit applications and potential upcoming permit actions. The COE will provide a running account of the regulatory employee's time by project or program activity and any other time or contract expenditures being charged to this account at these meetings.
- I. COE shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
- J. All employers, including COE, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. COE shall ensure that each of its subcontractors complies with these requirements.

### **ARTICLE III – IMPARTIAL DECISION MAKING**

- A. It is understood and agreed that in order to ensure that the acceptance and expenditure of funds will not impact impartial decision making with respect to permit review and final permit decision, either substantively or procedurally, the District will comply with the following standards, as mandated by Headquarters, U.S. Army Corps of Engineers:

- a. In cases where funds are used, all final permit decisions, including all reporting nationwide, general, and regional permit verifications, must be reviewed and signed by at least one level above the decision maker, unless the decision maker is the District Commander. For example, if the decision maker is the Chief, Regulatory Branch, then the reviewer would be the Chief, Operations Division. Team Leaders are appropriate one level-above-reviewers provided signature authority has been delegated to the project manager level. In accordance with all national policy and guidance, Districts are encouraged to delegate signature authority to the lowest appropriate level.
- b. All documents involved in the decision making process (e.g., decision document and permit instrument, if applicable) must be reviewed and signed by the one-level-above reviewer as defined above.
- c. All jurisdictional determinations made on projects where funds are used must have documentation that a non-funded, Regulator reviewed and agreed with the determination (e.g., peer review). This review does not need to be a field review.
- d. All final permit decisions, including all reporting nationwide, general, and regional permit verifications, for cases where these funds are used will be made available and updated monthly on the District's web page in an area separate from any other final actions, clearly identifiable as being for projects funded by and through this authority.
- e. Any procedures or decisions that would otherwise be required for a specific type of project or permit under consideration cannot be eliminated; however, process improvements that are developed can be shared in order for all members of the regulated public to benefit.
- f. The Corps must comply with all applicable laws and regulations.
- g. Funds will not be expended for the review of the decision maker's decision. If contracts are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the Corps before the permit decision is made.
- h. Funds will not be used for enforcement activities. Funding may be used for compliance activities including monitoring of mitigation sites.

#### **ARTICLE IV – COMMUNICATIONS**

- A. To provide for consistent and effective communication between COE and ODOT, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this Agreement. ODOT will be the central point of contact for ODOT and its partners on matters relating to this Agreement, and their Principal Representative is:

Frannie Brindle, Natural Resource Unit Manager  
Oregon Department of Transportation, Geo-Environmental Section  
355 Capitol Street N.E., Room 301  
Salem, OR 97301  
503.986.3370

The Principal Representative for COE is:

Karla Ellis, Chief Policy and Compliance, Regulatory Branch  
U.S. Army of Corps of Engineers, Portland District  
P.O. Box 2946  
Portland, OR 97208-2946  
503.808.4370

- B. Any notice required by the Agreement shall be written and sent to the Principal Representative by first-class mail or recognized overnight courier. Notices shall be deemed delivered (i.) on the third day after mailing when sent by first-class mail and the post mark affixed to the United States Postal Service shall be conclusive evidence of the date of mailing; or (ii.) on the second business day after deposit with a recognized overnight courier.

#### **ARTICLE V – ODOT-DEDICATED COE STAFF**

- A. The COE shall identify the staff operating under this Agreement (Article II D.) and notify ODOT prior to making staff changes.
- B. Selection of new COE staff shall be reached by consensus between ODOT and the COE, which includes ODOT's input and participation in the selection of staff.
- C. New COE staff shall undergo a six (6) month trial service period, with periodic performance reviews by ODOT's Principal Representative and the COE Principal Representative. Continuation of the staff beyond the six (6) month trial service shall be a consensus decision between ODOT and the COE.

#### **ARTICLE VI – APPLICABLE LAWS**

- A. This Agreement and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States and the State of Oregon.

## **ARTICLE VII – DISPUTE RESOLUTION**

- A. The Parties agree that, in the event of a dispute between the Parties regarding implementation of this Agreement (excluding any specific permit application/decisions) ODOT and COE shall use their best efforts to expeditiously resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. When staff level efforts can not expeditiously resolve a dispute, COE and ODOT staff will prepare a summary of the dispute and elevate the dispute for expeditious resolution.

## **ARTICLE VIII – AMENDMENT, MODIFICATION AND TERMINATION**

- A. This Agreement may be modified or amended only by written, mutual agreement of the Parties. Either party may terminate this Agreement by providing written notice to the Principal Representative of the other party at the listed address above. Such termination shall be effective upon the sixtieth (60<sup>th</sup>) calendar day following notice. In the event of termination, ODOT shall continue to be responsible for all costs incurred by COE under this Agreement prior to the effective date of such termination.
- B. ODOT may terminate this Agreement effective upon delivery of written notice to COE, or at such later date as may be established by ODOT, under any of the following conditions:
- a. If COE fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If COE fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If COE fails to provide payment of its share of the cost of the Project.
  - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
  - f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- C. This Agreement shall remain in force until September 30, 2011, 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.
- D. Within sixty (60) days of termination, or the expiration of this Agreement, the 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.
- E. The Parties may extend this Agreement by mutual written agreement, with no single extension lasting more than five years in length. The number of such five-year extensions is limited only by the desires of the Parties.
- F. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

#### **ARTICLE IX – EFFECTIVE DATE**

- A. This Agreement shall begin on the date that all required signatures are obtained.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year hereinafter written.

COE/ODOT  
Agreement No. 26032

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

**SIGNATURE PAGE TO FOLLOW**

On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

United States Department of the Army  
Corps of Engineers, Portland District

By [Signature]  
Chief, Operations Div. NWP  
Title Chief, Operations Div NWP  
Date 30 Jul 09

By [Signature]  
Chief, Policy/Compliance  
Title CHIEF POLICY/COMPLIANCE SECTION  
Date 7/30/09

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By [Signature]  
Counsel  
Date 7/30/09

STATE OF OREGON, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Director, Highway Division  
Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager, Chief  
Engineer  
Date \_\_\_\_\_

By \_\_\_\_\_  
Geo-Environmental Section Manager  
Date \_\_\_\_\_

By \_\_\_\_\_  
Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By [Signature]  
Assistant Attorney General  
Date: 7/31/09

On November 10, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates to the Deputy Director, Highways the authority to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in other system plans approved by the Oregon Transportation Commission such as the Traffic Safety Performance Plan, or in a line item in the biennial budget approved by the Director.

United States Department of the Army  
Corps of Engineers, Portland District

By [Signature]  
Chief, Operations Div. NWP  
Title Chief, Operations Div NWP  
Date 30 Jul 09

By [Signature]  
Chief, Policy and Compliance  
Title CHIEF POLICY/COMPLIANCE SECTION  
Date 7/30/09

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By [Signature]  
Counsel  
Date 7/30/09

STATE OF OREGON, by and through  
its Department of Transportation

By [Signature]  
Deputy Director, Highway Division  
Date 31 Jul 09

**APPROVAL RECOMMENDED**

By [Signature]  
Technical Services Manager, Chief  
Engineer  
Date 7-31-09

By [Signature]  
Geo-Environmental Section Manager  
Date 30 July 2009  
By \_\_\_\_\_  
Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General  
Date: \_\_\_\_\_

**EXHIBIT A  
STATEMENT OF WORK**

**Background**

With this proposal, the COE enters into an Agreement with ODOT to employ up to two (2) full-time equivalent staff members (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 \$784,989 for services provided through September 30, 2011. The COE shall house, supervise, and provide office support for the positions.

1. This Agreement sets forth responsibilities of the 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](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; COE responsibilities; and, performance measures. 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.
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 \$784,989 to COE for expenses connected with up to two (2) full-time equivalent positions through September 30, 2011 at the NSPS YD-2 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 agrees to pay for employee's time related training authorized by ODOT's Principal Representative, as needed to support ODOT work.
8. 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.
9. ODOT observations of possible COE decision inconsistency or policy discrepancy should be collaboratively discussed during regular check-in meetings between the GES Wetlands/Permits Program Coordinator and COE staff and, if warranted, brought to the attention of management during COE-ODOT quarterly meetings.
10. 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 D, up to an Amount not to exceed \$784,989 in state funds. In Agreement No. 23060, 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. Natural Resource Unit (Geo-Environmental Section) staff meeting: once per month
    - iii. GES process improvement initiative meetings (e.g., development of a COE RGP): as needed
    - iv. Quarterly Wetlands/Permits Team: once per quarter
    - v. Programmatic Agreements Reporting and Implementation Team (PARIT): twice monthly
    - vi. Collaborative Environmental and Transportation Agreement on Streamlining (CETAS): once per month
    - vii. Columbia River Crossing: as needed
    - viii. 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/Permits 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/Permits Program Coordinator.
  - 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/Permits 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/Permits 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/Permits 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/Permits 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, OTIA III PCAs, informal feedback on appropriateness of proposed wetland mitigation, review and provision of comments on Environmental Assessments and Environmental Impact Statements, CETAS document reviews, and local agency permit actions.
- a. Process deliverables in a timely manner by meeting process time performance measures listed below; note, however, COE permit decisions pending decisions from other agencies may exceed these targets even with timely COE follow-ups with coordinating agencies.
  - b. Coordinate ODOT workload priority conflicts with the GES Wetlands/Permits Program Coordinator;
  - c. Copy e-mails and correspondence related to COE permit application completeness to the GES Wetlands/Permits Program Coordinator. Advise the ODOT Region applicant and GES Wetlands/Permits 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.
  - e. Prior to COE final permit decisions on complex actions, coordinate final permit conditions with ODOT staff and copy the GES Wetlands/Permits Program Coordinator with the draft conditions.
  - f. Issued permits and other decisions on ODOT permit actions shall be copied to the GES Wetlands/Permit 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. **Maintain and enhance job related skills through training.**
- a. For training to be charged to ODOT, first obtain approval from the ODOT Principal Representative.
  - b. For training paid by ODOT, COE staff should ask, when applicable, the GES Wetlands/Permits Program Coordinator about ODOT interest in a brief presentation or write-up of the training, which would include lessons learned for ODOT.
10. **Quarterly and annual performance measure reporting.**
- a. Provide COE Agreement performance data to the GES Wetlands/Permits Program Coordinator two weeks prior to COE-ODOT Quarterly Meetings. Review of performance data should be a standing agenda item for Quarterly Meetings. (See Agreement Performance Measures section below.)
  - b. Coordinate performance data collection and reporting (data fields, quality control and assurance, report format, and schedules) with the GES Wetlands/Permits Program Coordinator.
11. **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.
12. **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/Permits Coordinator, develop project plans and schedules for process improvement/streamlining initiatives; provide initiative status reports at COE-ODOT Quarterly Meetings.

13. **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/Permits Coordinator.
  - b. On a case-by-case basis, conduct post training assessment surveys of attendees.

## **Agreement Performance Measures**

### **1. Background**

- a. Agreement performance measures are indicators of performance pertaining to achievement of ODOT and COE goals for the Agreement. Performance measures results and subsequent evaluation methods can be used to determine the effectiveness of the Agreement, which will help all Parties to understand, manage, and allow for modification of the Agreement, as necessary.
- b. Significant results for measures, either positive or negative, should be considered as puzzles to be solved; for negative results, as opportunities to examine the processes that generated them and learn how to work together more effectively. Quantitative results for any particular measure are likely to require careful analysis before drawing firm conclusions. They may be caused by a complex mix of ODOT, COE, and other actions and influences.
- c. The performance measures listed in this Agreement (along with specific performance targets) are a work in progress and likely to be revised based on collaborative evaluation between ODOT and the COE. The initial focus is on quantitative measures where data is readily available: process times for ODOT deliverables; completeness of ODOT applications; some environmental outcomes. Measures that address the less tangible goals and principles of this agreement—communication, coordination, and negotiation—are not addressed quantitatively in this Agreement. They will, however, be addressed informally and qualitatively during ODOT-COE meetings.

### **2. Agreement Performance Measures and Comparative Data**

- a. Table 1 identifies Agreement performance measures that the COE will collect, compile, and report to the GES Wetlands/Permits Program Coordinator on a quarterly basis. "Strategic Objectives" are general category objectives that

support the broad goals of the Agreement. "Agreement Performance Targets" have been collaboratively determined by COE and ODOT; where targets are not specified, it means there is insufficient data to define a target. The field 'COE Comparative Data' is for non ODOT-dedicated staff results at the COE; this data is to inform a value-added evaluation of the Agreement.

- b. Table 2 identifies COE workload items important for providing context to performance measure analysis and for determining staff capacity needs. These items will also be collected, compiled, and reported by COE to the GES Wetlands/Permits Program Coordinator on a quarterly basis.
- c. Tables 3 through 5 are sample spreadsheets that collect all the performance measure data and that link the data to specific permit action records.

**Table 1. COE Agreement Measures.** These measures are key indicators of performance for the Agreement.

PM ID	AGREEMENT PERFORMANCE MEASURES	STRATEGIC OBJECTIVE	AGREEMENT PERFORMANCE TARGETS	REQUESTED COE COMPARATIVE DATA
1	Area of authorized wetland impacts (by permit action and total)	Avoid, minimize impacts	None specified	Not Required
2	Area of wetland compensatory mitigation authorized by types of mitigation	Better environmental outcomes	None specified	Not Required
3	Wetland impacts avoided/minimized from pre-app meeting to initial application submittal to permit issuance	Better environmental outcomes	None specified	Yes
4	COE initiated ESA Section 7 consultations with NMFS within 30 days	Efficient operations	100% within 30 days	Yes
5	COE applications deemed complete on submittal	Improve quality	None specified	Yes
6	Jurisdictional determination processing times	Permit timeliness	Within 60 days after submittal of a complete JD	Yes
7	Individual permits processed within 120 days after submittal of a complete application	Permit timeliness	95% of submitted actions	Yes
8	Other permit actions processed within 60 days after submittal of a complete application	Permit timeliness	95% of submitted actions	Yes

**Measure Definitions and Notes**

- 1. Area of authorized wetland impacts (by permit action and total).** The acreage of wetland impacts authorized by COE in a variety of permit action types issued to ODOT; permit action types include Nationwide Permits, Individual Permits, and Regional General Permits.
- 2. Area of wetland compensatory mitigation authorized by types of mitigation.** This includes physical, mitigation bank, fee-in-lieu, or other wetland compensatory mitigation types.
- 3. Wetland impacts avoided/minimized from pre-app meeting to initial application submittal to permit issuance.** This is project-by-project tracking of wetland impacts proposed by ODOT from an initial pre-application meeting with COE staff; to that

proposed upon application submittal; to that authorized by COE upon issuance of a permit. Specifying how the pre-application impact value is determined, along with attendant QC/QA data issues, is a work in progress between COE and ODOT.

4. **COE initiated ESA Section 7 consultations with NMFS within 30 days.** This refers to the time it takes for COE staff to initiate ESA Section 7 consultation with the National Marine Fisheries Service (NMFS) after receiving an application from ODOT.
5. **COE applications deemed complete on submittal.** This refers to applications formally deemed complete or not as recorded in the COE's agency database system. For applications where additional information requests or minor changes are dealt with informally through e-mail or phone calls with ODOT staff, they are not designated as formally incomplete.
6. **Jurisdictional determinations processing times.** This refers to the time to review and concur with an ODOT jurisdictional determination (JD). See Table 5 below for data fields. Target: processed within 60 days after the date of a complete JD.
7. **Individual permits processed within 120 days after submittal of a complete application.** The target is for 95% of submitted permit actions to meet the 120 day standard. The national COE goal for processing individual permits is 75% within 120 days of a complete application (for 2009-2011).
8. **Other permit actions processed within 60 days after submittal of a complete application.** Other permit actions include Nationwide Permits, permit modifications, and Regional General Permit actions. The target is for 95% of submitted actions to meet the 60 day standard. The national COE goal for processing other permit actions is 85% within 60 days of a complete application.

**Table 2 COE Workload/Productivity Data.** The following workload items can be accounted for in Tables 3, 4, and 5.

WORKLOAD DATA MEASURES	WORKLOAD ITEMS
Volume of pending and issued ODOT permit actions processed by COE staff per month	<ul style="list-style-type: none"> <li>▪ # NWP's</li> <li>▪ # Individual Permits</li> <li>▪ # Jurisdictional Determinations</li> <li>▪ # Regional General Permit actions</li> <li>▪ # Pre-App meetings attended</li> </ul>

**Sample Spreadsheets to Collect and Report COE Performance Data**

The following tables capture the information to compile and report on the aforementioned performance measures. They are linked tables with the key ID of "COE auth Id No.," which is the COE authorization number used to record and track permit actions in the COE's agency database system. (Specific field names are subject to change.)

**Table 3 COE authorization data.**

ODOT Key No.	COE auth Id No.	Permit Type	Pre-app Mtg	App complete on initial submittal?	Date app submitted	Date app complete	Date auth issued	No. Permit mods
		NWP, IP, RGP	# attended	Yes or No				

**Table 4 Wetland impact data by COE authorization.**

COE auth Id No.	Pre-app wetland impact proposed*	Wetland impact proposed at app submittal	Wetland impact authorized
	acres	acres	acres

**Table 5 Jurisdictional Determination data.**

Delineation report ID no.	COE auth Id No.	JD formally complete on initial submittal?	Date JD submitted	Date JD complete	Date of JD concurrence
		Yes or No			

**EXHIBIT B**

(Estimated Labor per FTE for a 2-1/4 year period: = approximately 3938 productive hrs)

Gagnon	875 hours @ \$92.24 =	\$ 80,710	
	1750 hours @ \$96.07 =	\$168,123	
	1313 hours @ 111.85 =	<u>\$146,859</u>	\$395,692
Davis	875 hours @ \$89.36 =	\$ 78,190	
	1750 hours @ \$91.95 =	\$160,913	
	1313 hours @ 95.54 =	<u>\$125,444</u>	<u>\$364,547</u>
Total Labor and Overhead			\$760,239
Estimated travel related costs			<u>\$ 24,750</u>
Total Estimated Agreement Costs			\$784,989