

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

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" and the US Army Corps of Engineers, acting by and through its elected officials, hereinafter referred to as "COE," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. ODOT is responsible for administering federal aid highway projects within the State of Oregon consistent with federal laws and regulations.
2. By the authority granted in ORS 190.110, 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.
3. By the authority granted in ORS 366.588, ODOT may contract with the federal government to coordinate programs related to the construction and improvement of highways.
4. COE has regulatory jurisdiction and permitting responsibilities under Section 404 of the Federal Clean Water Act (33 USC 1344) ("hereinafter "Section 404") and Section 10 of the Rivers and Harbors Act (33 USC 403) ("hereinafter "Section 10").
5. By the authority granted in Section 214 of the Water Resources Development Act of 2000, as amended, codified at 33 USC 2352 (hereinafter "Section 214"), the Secretary of the Army, after public notice, may accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose.
6. The authority of the Secretary of the Army under Section 214 has been delegated through the Assistant Secretary of the Army for Civil Works and the Chief of Engineers to the district and division commanders.
7. COE issued a public notice on September 19, 2003 regarding the intent to accept and expend funds contributed by ODOT.

8. The Parties agree that it is mutually beneficial to supplement the COE staffing to include a dedicated FTE to provide expedited COE review of federal aid highway projects administered by ODOT.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

### **TERMS OF AGREEMENT**

1. Under such authority, the COE enters into an agreement with the ODOT to employ up to a 1.00 full-time equivalent staff member (FTE) that will be dedicated to providing expedited review of permit applications, wetlands/waters delineations and compensatory mitigation plans submitted by ODOT and to enhance coordination and technical and policy assistance to ODOT for early transportation project planning as shown on Exhibit A, attached hereto and by this reference made a part hereof. ODOT shall pay COE an amount not to exceed \$989,550 in state funds for COE services over the term of the agreement this amount includes all travel expenses.
2. This Agreement shall become effective on the date all required signatures are obtained and shall terminate on 12/31/2020, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

### **COE OBLIGATIONS**

1. COE shall be responsible for hiring, training, supervising, providing office space and office support and all compensation, employment benefits, insurance, and employment taxes, for a dedicated FTE at the GS-12 pay range at a maximum hourly rate not to exceed \$105.00 per hour to perform the work described in Exhibit A. COE shall keep accurate cost accounting records for work under this agreement. COE shall prepare and submit monthly itemized invoices for time and travel directly related to the dedicated COE FTE's performance of the work described in Exhibit A directly to ODOT's Project Manager for approval of payment. Such invoices will identify the ODOT Project and the time to the nearest half hour that the dedicated COE FTE spent providing the services described in Exhibit A. Under no conditions shall ODOT's total obligations exceed \$989,550.
2. Funds contributed by ODOT hereunder will be expended by the COE for the costs (including salary, associated benefits, overhead, and travel expenses) of Corps personnel (including Regulatory Branch, Environmental Resources Section, and Engineering Division personnel) and/or contractors hired by the COE to perform expedited permit processing activities for ODOT projects as provided in this Agreement, up to a total of 1 FTE. ODOT project-related activities that the funds may be expended on include, but are not limited to, the following: pre-application conferences, participation in early coordination activities such as National Environmental Policy Act (NEPA)/404 synchronization, application intake review, review and/or preparation of NEPA documents, drawings correction, jurisdictional

determinations, site visits, public notice preparation, preparation of correspondence, public interest review, undertaking consultations pursuant to the Endangered Species Act and National Historic Preservation Act, tribal consultation, preparation of draft permit decision documents, meetings with ODOT or resource agencies, programmatic tool development and improvement, acquisition of geographic information system (GIS) data, and real estate evaluation. Funds will not be used for the required review by a responsible official one level above the decision maker of the final permit decisions and decision documents. Funds will not be used for enforcement activities; however funds may be used for compliance activities including monitoring of mitigation sites and compliance inspections.

3. In Agreement No. 23060, ODOT paid to COE an advance deposit of \$30,000, which shall transfer over to this Agreement. Within thirty days of the termination of this Agreement, COE shall conduct an accounting to determine the actual costs for the services provided under this Agreement. ODOT's advance deposit will be used to pay any remaining unreimbursed costs. COE shall return any funds advanced in excess of these actual costs to ODOT along with a full cost accounting for this Agreement and the \$30,000 advanced deposit.
4. COE shall not enter into any contracts for any of the work scheduled under this Agreement without obtaining prior written approval from ODOT.
5. If COE hires a contractor or subcontractor, COE shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of COE's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.
6. Any such indemnification shall also provide that neither COE's contractor and subcontractor nor any attorney engaged by COE's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that COE's contractor is prohibited from defending the State of Oregon, or that COE's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all

rights to pursue claims it may have against COE's contractor if the State of Oregon elects to assume its own defense.

7. COE acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and accounting records of COE which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Services under this Agreement -- if applicable). Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
8. COE certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of COE, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind COE.
9. COE's Point of Contact for this Agreement is Shawn Zinszer, Chief Regulatory Branch, 503.808.4380, [Shawn.H.Zinszer@usace.army.mil](mailto:Shawn.H.Zinszer@usace.army.mil) or assigned designee upon individual's absence. COE shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **STATE OBLIGATIONS**

1. In consideration for the services performed, ODOT agrees to pay COE within forty-five (45) days of receipt by ODOT of each approved invoice, up to a maximum amount of \$989,550 over the term of the Agreement.
2. ODOT shall provide COE project numbers for monthly invoices.
3. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
4. ODOT's Point of Contact for this Agreement is John Raasch, Natural Resource Manager, 503.986.3370, [John.RAASCH@odot.state.or.us](mailto:John.RAASCH@odot.state.or.us) or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **GENERAL PROVISIONS**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

2. 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 ODOT may authorize.
  - c. 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.
  - d. 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 ODOT is prohibited from paying for such work from the planned funding source.
3. COE may terminate this Agreement effective upon delivery of written notice to ODOT, or at such later date as may be established by COE, under any of the following conditions:
  - a. If ODOT fails to provide funds pursuant to this Agreement within the time specified herein or any extension thereof.
  - b. If federal laws, regulations, policy or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or the COE is prohibited from receiving funds from ODOT.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. COE shall be responsible to the extent permitted by the Federal Tort Claims Act only for the acts, omissions, or negligence of its own officers, employees, or agents. ODOT shall be responsible to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act (ORS 30.260 – 30.300) only for the acts, omissions, or negligence of its own officers, employees, or agents.
6. Notwithstanding the foregoing obligations under the paragraph above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act

as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

7. This Agreement 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 Agreement so executed shall constitute an original.
8. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.
- 9.

**Signature Page to Follow**

Misc. Contracts and Agreements  
No. 34044 **31153**

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.

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

By \_\_\_\_\_

Jose L. Aguilar  
Colonel, Corps of Engineers  
District Commander

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**COE Contact:**

Shawn Zinszer,  
Chief, Regulatory Branch  
U.S. Army of Corps of Engineers,  
Portland District  
P.O. Box 2946  
Portland, OR 97204-3495  
503.808.4380  
Shawn.H.Zinszer@usace.army.mil

**ODOT Contact:**

John Raasch,  
Natural Resource Manager  
Oregon Department of Transportation,  
Geo-Environmental Section  
4040 Fairview Industrial Drive SE MS #6  
Salem, OR 97302  
503.986.3370,  
John.RAASCH@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By J.R.W.  
Highway Division Administrator

Date 1/5/16

**APPROVAL RECOMMENDED**

By Robyn N. Thompson : For  
John Raasch

Date 12/31/15

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Jennifer O'Brien per email  
Assistant Attorney General (If Over  
\$150,000)

Date December, 30 2015

Misc. Contracts and Agreements  
No. ~~34011~~ 31153

**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.

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

By Jose L. Aguilar, GS-15, DPM

Jose L. Aguilar  
Colonel, Corps of Engineers  
District Commander

Date 31 Dec 2015

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Julie R. Decker  
Counsel

Date 31 Dec. 2015

**COE Contact:**

Shawn Zinszer,  
Chief, Regulatory Branch  
U.S. Army of Corps of Engineers,  
Portland District  
P.O. Box 2946  
Portland, OR 97204-3495  
503.808.4380  
Shawn.H.Zinszer@usace.army.mil

**ODOT Contact:**

John Raasch,  
Natural Resource Manager  
Oregon Department of Transportation,  
Geo-Environmental Section  
4040 Fairview Industrial Drive SE MS #6  
Salem, OR 97302  
503.986.3370,  
[John.RAASCH@odot.state.or.us](mailto:John.RAASCH@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By Jennifer O'Brien per email  
Assistant Attorney General (If Over  
\$150,000)

Date December, 30 2015

## **EXHIBIT A STATEMENT OF WORK**

### **Background**

The goal of this Agreement is to:

Achieve 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.

This Agreement expresses ODOT's and COE's mutual commitment to continue important efforts of coordination and cooperation between the agencies and to provide needed expedited review of ODOT federal aid highway projects, the Oregon State Transportation Improvement Plan (STIP) and maintenance programs.

### **Communication and Coordination Principles**

1. The staff at COE and ODOT should work together in a collaborative manner, seeking to skillfully balance their roles in regulatory oversight and project advocacy.
2. The staff at COE and ODOT are encouraged to learn and implement principles of effective communication, coordination, and negotiation to meet the mutual purpose and goals of this Agreement.
3. When conflicts arise between ODOT and COE, the first step is for the affected staff to constructively negotiate their disputes between each other; for conflicts that cannot be resolved after constructive negotiation is attempted, affected staff should elevate the decision to a higher management within their respective agency for resolution.
4. For the purposes of routine coordination under this agreement, the ODOT Principal Representative is Brad Livingston, Wetland Program Lead, and primary contact at COE is Carrie Bond, regulatory Project Manager.
5. ODOT shall respond in a timely manner to issues raised by the COE relating to the implementation of the terms of this Agreement.
6. When project prioritization and scheduling conflicts arise, ODOT shall provide project ranking and prioritization direction to the COE.
7. ODOT will provide COE adequate information and notice for joint site or project meetings. The level of project detail should be commensurate with the level of guidance detail expected in return from COE.

8. ODOT and COE shall meet regularly to discuss issues regarding policy consistency.
9. ODOT staff will direct any concerns about COE staff performance to that ODOT staff member's manager. COE will adhere to the following timeframes:
  - 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 dedicated FTE is 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.
  - d. Respond to ODOT requests for meetings in a timely manner; and manage meeting commitments as determined by COE workload demands, ODOT priorities, and necessity for meeting.
  - e. Provide ODOT staff with an early notice if, for any reason, meeting commitments cannot be met.

### **Statement of Work**

COE shall

1. Provide expedited review and process of ODOT's Section 404 and Section 10 deliverables in a timely manner. Deliverables include, but are not limited to: jurisdictional determinations, Permit Applications, informal feedback on appropriateness of proposed compensatory mitigation, and review and provision of comments on Environmental Assessments and Environmental Impact Statements. Activities necessary to accomplish the deliverables may include, but are not limited to, the following: pre-application conferences, participation in early coordination activities such as National Environmental Policy Act (NEPA)/404 synchronization, application intake review, review and/or preparation of NEPA documents, drawings correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, public interest review, undertaking consultations pursuant to the Endangered Species Act and National Historic Preservation Act, tribal consultation, preparation of draft permit decision documents, meetings with ODOT or resource agencies, programmatic tool development and improvement, acquisition of geographic information system (GIS) data, and real estate evaluation.

2. Consider ODOT project ranking and scheduling when prioritizing work.
3. Provide copies of e-mails and correspondence related to COE permit application completeness to ODOT Principal Representative. Promptly advise the ODOT Region applicant and Principal Representative if additional information is necessary and notification of whether application is considered complete. .
  - a. Coordinate final permit conditions with ODOT Region Applicant and copy the ODOT Principal Representative with the draft conditions prior to COE final permit decisions on complex actions.
  - b. Provide a copy of all permits and other decisions to the ODOT Principal Representative.
4. Coordinate interagency permit action with all relevant agencies including National Marine Fisheries Service for Endangered Species Act Section 7 consultation, Oregon Department of Environmental Quality for water quality certification, and others as applicable.
  - 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.
5. Annually, or upon request by the ODOT Principal Representative, provide feedback about ODOT's performance under this agreement for: (1) quality of work submitted to COE for review and approval; (2) ODOT staff knowledge of COE regulations, rules, and permit requirements; (3) professional conduct related to communication and coordination; and (4) recommendations for improving working relationships with and performance of ODOT staff.
6. Identify opportunities for and provide support to COE-ODOT process improvement and streamlining initiatives.
  - a. Assist ODOT to identify innovative ways to improve COE permit processing efficiency for all ODOT projects requiring Section 404 or Section 10 authorization.
  - b. Coordinate with the ODOT Principal Representative to develop project plans and schedules for process improvement/streamlining initiatives at COE-ODOT Quarterly Meetings.
7. Attend ODOT meetings when requested by ODOT.
  - a. Primary meetings COE staff is expected to attend include the following:
    - Region-requested on-site and in-office pre-application and project meetings.

Misc. Contracts and Agreements  
No. 31153

- Quarterly Wetlands/Permits Team meetings.
  - ODOT sponsored training sessions, as requested by the ODOT Principal Representative
- b. Coordinate commitment conflicts with the ODOT Principal Representative.
8. Provide ODOT staff Section 404 and Section 10 guidance and analysis when requested.
- a. Respond to ODOT requests for COE-related information in a timely manner, COE staff may refer general questions to the ODOT Principal Representative.
  - 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, including 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 ODOT Principal Representative on 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 ODOT Principal Representative 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 ODOT 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 ODOT Principal Representative for dissemination to relevant ODOT staff.
9. Document site visits in writing and provide copies to ODOT Principal Representative.

Estimated Costs - COE Position

Labor and Overhead	\$914,550
Travel Costs	\$ 75,000
Total 5-Year Estimated Cost	\$989,550