

**5<sup>th</sup> COOPERATIVE AGREEMENT**

**between**

**U.S. ARMY CORPS OF ENGINEERS,  
FEDERAL HIGHWAY ADMINISTRATION,**

**and**

**STATE OF SOUTH CAROLINA  
DEPARTMENT OF TRANSPORTATION**

**For the 2012-2014 Federal Fiscal Years  
(October 1, 2011 through September 30, 2014)**

Article I. **FUNDING RECIPIENT**

US Army Corps Of Engineers  
Charleston District  
69A Hagood Avenue  
Charleston, SC 29403

Article II. **AUTHORITY**

This Agreement between the US Army Corps of Engineers, Charleston District (hereinafter referred to as the "Corps"), Federal Highway Administration (hereinafter referred to as "FHWA"), and the South Carolina Department of Transportation (hereinafter referred to as "SCDOT") is hereby entered into under the authority of the Intergovernmental Cooperation Act, 31 U.S.C. 6505, 10 U.S.C. 3036d and Section 6002 of SAFETEA-LU. Collectively, these three agencies are referred to herein as the "Parties".

Article III. **PURPOSE AND OBJECTIVE**

The purpose of this Agreement is to set forth the responsibilities of the Parties relative to priority review of transportation projects with the goal of achieving timely design and implementation of effective, safe and financially prudent transportation improvements, while also assuring such design and implementation is sensitive to protection of natural resources for which the Corps is responsible under Federal statutes and regulations.

The objective of this Agreement is for the Corps (Charleston District Office) to commit three full time employees dedicated exclusively to SCDOT activities, as outlined in Appendix A, in order to assure timely decisions on applications for Department of Army Permits for SCDOT Transportation projects. These applications may be subject to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Duties will include compliance inspections of authorized SCDOT projects, but not enforcement actions related to any unauthorized activities by SCDOT in accordance with CECW-CO memorandum dated 1 October 2008. Enforcement actions will be turned over to non-funded Regulatory Project Managers for resolution. It is also understood that the funded employees will also participate in general Corps employee activities.

Article IV. **BACKGROUND**

SCDOT has an extremely active highway development and improvement program. In addition, SCDOT has exhibited a strong commitment to incorporating environmental quality measures into the transportation planning process. The Parties to this agreement are each signatories to a "Partnering Agreement" concerning our interactions and relationships related to transportation projects. We have held summit conferences in the past to discuss broad issues and have continuing regular working-level meetings to discuss specific projects. These contacts and discussions have shown that in order to optimize environmental coordination, it is important to develop procedures that enable Corps personnel to work directly with transportation planners and provide recommendations at the earliest stages of project development.

To implement a merged NEPA/404 process and meet the environmental streamlining goals of SAFETEA-LU, it is critical that the already established close working

relationship be maintained and expanded between the Corps, FHWA and SCDOT. Critical to the success of this Partnership is timely interagency communications, assurances of personnel availability for site visits and meetings and, maintenance of continuity by trained and informed personnel.

This Agreement is intended to provide the resources necessary to increase direct and early Corps involvement in the SCDOT planning process. This increased focus will facilitate environmentally responsible highway development while at the same time improving the Corps' ability to review, evaluate and process appropriate permits for SCDOT projects in a timely manner. This Agreement is predicated upon a relationship of trust among all Parties that will be maintained and strengthened as a result of this effort.

#### Article V. **SCOPE OF WORK**

For the period hereinafter set forth, the Corps will furnish the necessary personnel, materials, services and facilities needed to carry out the activities described below:

***Specifically, the Corps will:***

- A. Employ three Regulatory Project Managers to carry out work as detailed in Appendix A and other work contemplated by this agreement. The Corps will use funds provided under this Agreement to pay the costs of salary, associated benefits and actual burdened overhead rate. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program, such as cell phones, snake boots, other safety equipment, use of government vehicles, etc.
- B. One of these individuals is located in the Columbia Regulatory Field Office and the other two are located in the Charleston District office. These individuals and locations will not change, unless all parties agree to such a change. Reason for such a change would have to be unforeseen circumstances, where such a change is the only reasonable resolution.
- C. Ensure that these staff persons maintain daily time and attendance records identifying the number of hours spent working on tasks related to transportation projects and any other work tasks, including those listed in Appendix A and Section VI Coordination. Copies of these time and attendance records will be provided to SCDOT on a quarterly basis, subsequent to supervisor certification.
- D. Maintain accurate accounting records necessary for substantiating hours and costs billed against this Agreement. A budget summary report will be run quarterly and sent to SCDOT for their review and records. As required by federal regulations, records will be kept during and for a period of five years thereafter the completion of work conducted under this Agreement. These records will be subject to examination or audit by SCDOT if they should so desire.
- E. Refund SCDOT with any funds advanced under this agreement that were not expended towards fulfilling the intent of this Agreement or that remain at the end of the funding period. With approval from all parties, the Corps shall carryover any remaining funds from the previous funding period into the next funding period for expenditure in accordance with this agreement.

- F. Assist in developing Mitigation options to include, but not limited to, assistance in the establishment of a Statewide In Lieu Fee Program for Public Transportation Projects.

***Specifically, SCDOT will:***

- A. Provide funding sufficient to pay for salary, benefits and all associated overhead for two (2) full time GS-12 employees and one (1) GS-11 employee adjusted annually to cover all Government-wide Pay Increases, including Local Market Supplement, Rate Range Adjustment, Base Salary Increase and Bonus Award.
- B. These funds will also be used to supply the project managers with the tools of the trade customarily provided to and utilized by their colleagues in the Regulatory Program, such as computer equipment, cell phones, safety equipment, use of government vehicles, etc.
- C. Once this agreement has been signed by all parties, transmit an advance payment equal to the funding period total in Article IX, needed to support the services contemplated by this Agreement.
- D. Provide the Corps with a one year out project planning list that will be updated and submitted to the Corps at least quarterly. The list should provide the Project Title, Location, Type of Project, Status (funding, planning, design, permitting, etc.) and anticipated construction date.

***Specifically, FHWA will:***

- A. Approve and program a Federal-Aid project to accomplish the work contemplated by this agreement at the applicable Federal-Aid reimbursement rate in accordance with P.L. 105-178.
- B. Under Authority of 23 U.S.C. 132, reimburse SCDOT the total amount of Federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.

***Regarding all Parties:***

- A. The Parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; and neither party shall be construed as the officer, agent or employee of the other.
- B. In no way shall this be construed or implied that either SCDOT, FHWA, or the Corps is by this Agreement intending to abrogate its obligation and duty to comply with the regulations promulgated under the 1973 Endangered Species Act, the Fish and Wildlife Coordination Act of 1958 (as amended), the National Environmental Policy Act of 1969, or the Clean Water Act of 1977 (as amended) or any other Federal statute or implementing regulations. Nor shall this agreement be construed to imply that the Corps' impartial decision making will be compromised in any way.
- C. All parties will actively and consistently, institute and utilize a NEPA/404 merged process for all SCDOT projects that require an Individual Permit. A shared goal of the NEPA/404 merger was to facilitate a more streamlined and efficient process

for evaluating SCDOT projects subject to Section 404 of the Clean Water Act. This is also one of the fundamental reasons for this agreement. Therefore, it is in all parties' best interest to ensure its success and the application of the merged process on all SCDOT projects. This effort will be a priority for all parties and will be the starting point for all upcoming and future SCDOT projects.

- D. The Parties will establish a primary point of contact for administration of this agreement and list them in Article XIII, which will hold monthly meetings to establish priorities and evaluate work performed under the agreement. These meetings will be the forum to discuss management level concerns related to staff performance, workload priorities and management initiatives.
- E. The Agreement Officers listed in Article XII, or their designated representative, will meet at least annually to facilitate communication, discuss interagency cooperation and identify programmatic initiatives and strategic goals. Issues which the Agreement Administrators have identified and are unable to resolve at their level should be brought forward and resolved at this meeting.
- F. The Parties will provide staff to attend regularly scheduled monthly interagency coordination meetings. These meetings will be attended by the Corps SCDOT Project Managers to specifically discuss SCDOT projects. The intent of these meetings is to solicit input from the group on particular projects to identify concerns and facilitate the resolution of concerns. For the purpose of this agreement, "projects" can apply to upcoming work, pending applications, permit modifications and mitigation.

#### Article VI. **COORDINATION**

- A. Regarding the monthly administrators meeting established above, SCDOT will submit to the Corps a priority listing of projects, which will guide the Corps in the priority review process. In return, the Corps will provide a monthly status report for all projects Pending and Issued by category (IP, GP, NWP, JD) and identify status of all pending actions. These meetings will be held monthly, if the meeting is not face-to-face the monthly priority report and status report are still due by the first of the month.
- B. At the staff interagency meetings mentioned above, SCDOT will provide sufficient information to facilitate substantive comments from the Corps, however, it is understood by all parties that in many cases these comments are preliminary and are in no way an official position or approval from the Corps. Official positions or approvals, including commitments from the Corps, will only be provided by official letterhead.
- C. Both SCDOT and the Corps agree that ready and reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings. Both agencies are committed to frequent and productive interaction and the establishment of working-level interpersonal relationships which will allow for expedient scheduling of field visits, meetings and all manner of open communications in a sustained effort to achieve the stated goals of this agreement.
- D. SCDOT, the Corps and FHWA agree to conduct early and frequent coordination on issues such as, but not limited to, comments on project alternatives; mitigation

plans; review of and comments on Biological Assessments; implementation of permit streamlining processes; and interagency SCDOT/Corps training.

**Article VII. PERFORMANCE OBJECTIVES**

- A. As part of this agreement, the Corps has agreed to make every effort to adhere to the timeframes outlined in Appendix B; and to document general adherence to these timeframes the Corps shall provide SCDOT and FHWA a quarterly report from our regulatory actions database. Adjustments to the timeframes may be made when practical and agreed to by all parties.
- B. Monthly agency coordination will occur, at a minimum, during the ACE Meeting that occurs regularly on the second Thursday of the month. In addition to these monthly meetings, there will be a staff level Partnering Meeting at a minimum of once per fiscal year. These Partnering Meetings will address overall performance and discuss any potential improvement measures.

**Article VIII. PERIOD OF PERFORMANCE**

- A. This agreement shall be effective for a period of three (3) years from the start date of the funding period. Options for extension of this agreement, up to five (5) years, will be determined at the end of the 3<sup>rd</sup> Funding Period.
- B. Any party may terminate this Agreement upon ninety (90) day written notification to the other parties. Upon termination by SCDOT, the Corps will refund to SCDOT any funds which had been previously advanced, but which had not been used or would not be used in accordance with this agreement. At such time, all SCDOT projects will be redistributed amongst existing Corps staff and all commitments made by the Corps under this agreement shall cease.

**Article IX. AWARD AMOUNT**

- A. 1<sup>ST</sup> FUNDING PERIOD: October 1, 2011 – September 30, 2012  
2<sup>ND</sup> FUNDING PERIOD: October 1, 2012 – September 30, 2013  
3<sup>RD</sup> FUNDING PERIOD: October 1, 2013 – September 30, 2014  
Optional 4<sup>TH</sup> FUNDING PERIOD: October 1, 2014 – September 30, 2015  
Optional 5<sup>TH</sup> FUNDING PERIOD: October 1, 2015 – September 30, 2016

- B. TOTAL ESTIMATED COSTS FOR 1<sup>ST</sup> FUNDING PERIOD: [REDACTED]  
TOTAL ESTIMATED COSTS FOR 2<sup>ND</sup> FUNDING PERIOD: [REDACTED]  
TOTAL ESTIMATED COSTS FOR 3<sup>RD</sup> FUNDING PERIOD: [REDACTED]  
\*Reduced amount due to carryover from FY 2011 [REDACTED]

- C. TOTAL FUNDING FOR THIS AGREEMENT: [REDACTED]

- D. Total Estimated Costs for Optional 4<sup>th</sup> Funding Period: [REDACTED]  
Total Estimated Costs for Optional 5<sup>th</sup> Funding Period: [REDACTED]

- E. Total Funding For Optional Extensions: [REDACTED]

**Article X. PAYMENT PROVISIONS**

In accordance with the Intergovernmental Cooperation Act, 31 U.S.C. 6505, advance payment is required to be given to the Corps prior to the commencement of goods or services as described in this Agreement. Additionally, under authority of Public Law 105-277, the Corps is entitled to receive advance payment before incurring any expenditures and providing any goods or services as outlined in this Agreement.

Award amount should be sent by check, prior to the start date of the Funding Period, payable to:

USAED  
Accounting Officer  
Charleston District  
69A Hagood Avenue  
Charleston, South Carolina 29403

**Article XI. FUNDING**

- A. The estimated amount for the funding period is based on the annual cost including overhead for two (2), GS-12, Regulatory Project Managers and one (1), GS-11, Regulatory Project Managers and associated costs for benefits, overhead, safety equipment, vehicles, etc.
- B. The funding amount may have to be adjusted, either increased or decreased, to adequately compensate for the employee's actual total cost and/or any reasonable unforeseen costs. If a funding adjustment is required, all parties will meet and agree to the appropriate amount in writing.
- C. Any funds that have not been expended during the current fiscal year will be applied towards the next funding period covered by this agreement.

**Article XII. AGREEMENT OFFICERS**

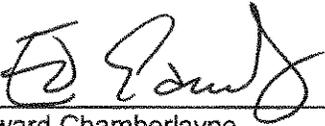
- A. US Army Corps of Engineers  
Tina Hadden - Chief, Regulatory Division  
69A Hagood Avenue  
Charleston, SC 29403
- B. State of South Carolina Department of Transportation  
John Walsh - Deputy Secretary for Engineering  
Post Office Box 191  
Columbia, SC 29202
- C. Federal Highway Administration  
Robert Lee - Division Administrator  
1835 Assembly Street, Suite 758  
Columbia, SC 29201

**Article XIII. AGREEMENT ADMINISTRATORS**

- A. US Army Corps of Engineers  
Travis Hughes – Assistant Chief, Regulatory Division  
69A Hagood Avenue  
Charleston, SC 29403  
(843) 329-8044
- B. State of South Carolina Department of Transportation  
Randall D. Williamson – Environmental Engineer  
Post Office Box 191  
Columbia, SC 29202
- C. Federal Highway Administration  
Patrick Tyndall – Environmental Program Manager  
1835 Assembly Street, Suite 758  
Columbia, SC 29201

IN WITNESS WHEREOF, each Party has caused this agreement to be executed by an authorized official on the date and year set forth below their signature.

**U.S. Army Corps of Engineers;**

  
\_\_\_\_\_  
Edward Chamberlayne  
Lieutenant Colonel  
Charleston District Engineer

28 SEP 11  
Date

**Federal Highway Administration;**

  
\_\_\_\_\_  
Robert L. Lee  
Division Administrator

9/28/11  
Date

**South Carolina Department of Transportation;**

  
\_\_\_\_\_  
Robert J. St. Onge, Jr.  
Secretary of Transportation

9/28/2011  
Date

## Appendix A

The Corps staff will accomplish the reviews and tasks appropriate to expedite, implement and coordinate the Project Development Process and meet SCDOT's needs for compliance with applicable State and Federal statutes. The Corps staff reviews and work tasks may include, but are not limited, to the following:

- Review transportation plans and programs
- Participate in agency scoping
- Participate in Needs Analysis review and comment
- Participate in wildlife resource inventory and impact assessment
- Provide preliminary environmental analysis, guidance and review
- Provide preliminary and detailed alternatives analyses guidance and review
- Represents the Corps at meetings as appropriate
- Participate in the development and implementation of written SCDOT and Corps guidance
- Ensure Corps review coordination on separate reports for the same project
- Conduct document reviews and draft agency responses, which may include but are not limited to:

- \* Wetlands Identification and Delineation Reports
- \* Wetland Functional Assessment Reports
- \* Wildlife Resources and Related Technical Reports
- \* Alternatives Analyses
- \* Cultural Resource Assessments
- \* Endangered Species - Biological Assessments
- \* Floodplain Determination
- \* Hydraulics Report
- \* Habitat Evaluation Procedure Reports
- \* Purpose and Need Statements
- \* Preliminary Alternatives Reports
- \* Environmental Impact Statements
- \* Environmental Assessments
- \* Categorical Exclusion Evaluations
- \* FONSI Requests
- \* Environmental Evaluation Reports
- \* Mitigation Reports and Plans
- \* Section 404 Permit Applications
- \* Policies and Procedures

- Coordinate and provide training on natural resource issues and permits
- Organize meeting and conference calls to clarify problems at the request of SCDOT or the Corps
- Perform other related tasks as defined by SCDOT and agreed to by the Corps

## Appendix B

Under normal circumstances the Corps will make every effort to meet the following timeframes. Please be advised that these timeframes can be affected by Regulation changes, Supreme Court decisions, National Guidance, National Policy, etc.

1. With all requests for Nationwide Permit authorization (NWP) and Individual Permit (IP) applications, the Corps shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such applications.
2. Upon receipt of a completed application or the requested (required), additional information associated with an IP application, the Corps shall disseminate the 30-day Joint Public Notice within 15 days.
3. For Individual Permits, within 15 days of the end of any Joint Public Notice the Corps shall provide, to SCDOT, all comments received as a result of the notice, as well as those comments from the Corps.
4. Regarding requests for authorization under SCDOT's General Permit (GP) agreement with the Corps, the Corps shall provide notification of any need for additional, required information within 15 days of the Corps' receipt of such GP authorization requests.
5. With all of SCDOT's requests for Jurisdictional Determinations (JDs), the Corps liaison shall provide notification of any need for additional, required information/clarification within 15 days of the Corps' receipt of such JD requests.
6. For General Permit (GP) authorization requests requiring dissemination to the resource agencies, the Corps shall provide all comments within 15 days of the end of the 15-day comment period.
7. For IPs, upon resolution of comments/issues with the Corps, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification or a Critical Area Permit, the Corps shall render a permit decision within 30 days, in 95% of all instances.
8. For GP authorization requests that do not require dissemination to the resource agencies, the Corps shall issue or deny such GP authorization requests within 30 days of their receipt of a complete GP authorization request, or the requested (required), additional information associated with a GP authorization request. Provided there are no outstanding issues/comments from other resource agencies, the Corps will waive, issue, or deny at least 95% of all GP authorization requests within 30 days.
9. Upon receipt of a completed **and correct** JD request the Corps shall issue the Jurisdictional Determination within 30 days, provided coordination with EPA and HQ is not required pursuant to the Rapanos Guidance. Completed **and correct** JD requests requiring coordination with EPA and or HQ, but not elevated, will generally be completed within 45 days.