

**MEMORANDUM OF AGREEMENT
BETWEEN
THE GEORGIA DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA
AND
THE SAVANNAH DISTRICT, US ARMY CORPS OF ENGINEERS
FOR
POSITION FUNDING**

THIS AGREEMENT is entered into as of this 21st day of June, 2011 between the Georgia Department of Transportation, an agency of the State of Georgia, hereinafter called the "Department," and the Department of the Army, represented by the Savannah District, United States Army Corps of Engineers, hereinafter the "Savannah District", and collectively referred to as "the Parties."

WITNESSETH THAT:

WHEREAS, Section 214 of the federal Water Resources Development Act of 2000 (WRDA 2000) provides as follows:

(a) IN GENERAL. - In Fiscal Years 2001 through March 31, 2003, the Secretary (of the Army), after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

(b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers by memorandum dated July 17, 2001, has authorized the Savannah District's District and Division Engineers to accept and expend funds contributed by non-federal entities subject to certain limitations including the publishing of public notices; and

WHEREAS, the Department requires expedited and priority review of certain projects in the State of Georgia by the Savannah District; and

WHEREAS, the Savannah District issued an initial Public Notice dated August 26, 2006, regarding its intent to accept and expend funds contributed by non-Federal public entities for such purposes; and

WHEREAS, the Savannah District has determined that expenditure of funds received from the Department will be in compliance with Section 214 of WRDA 2000, and a public notice dated October 25, 2006, regarding the Savannah District Engineer's decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that Savannah District's review of Department projects will be completely impartial and in accordance with all applicable federal laws and regulations; and

WHEREAS, the Department is a non-federal public entity.

NOW, THEREFORE, the Department and the Savannah District agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

Pursuant to Section 214 of WRDA 2000 (Pub.L 106-541) and H.R. 6184 (Pub.L. 111-315), this MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by the Department to expedite the evaluation of permits under the jurisdiction of the Army. This MOA is not intended as the exclusive means of obtaining Savannah District review of Department projects. This MOA is a vehicle by which the Department may obtain expedited review of Department projects designated as a priority, outside of the ordinary Savannah District review process.

Article II. - SCOPE

A. The Department will provide additional funds to the Savannah District to expedite the evaluation of Department priority projects under the jurisdiction of the Savannah District for state fiscal years 2012-2014 (through June 30, 2014). These funds shall be used to perform project review in accordance with the Scope of Work, Exhibit A, as attached hereto and incorporated in its entirety as if fully set out herein. The Savannah District's regulatory program is funded as a congressionally appropriated line item in the annual federal budget. Funds received from the Department will be used to augment the Savannah District regulatory budget in accordance with the provisions of WRDA.

B. The Savannah District will establish a separate account to track receipt and expenditure of the funds associated with its review of Department priority projects. Savannah District employees will charge their time against the account when they do work to expedite resolution of Department permit requests.

C. Funds contributed by the Department hereunder will mainly be expended to defray the costs of additional regulatory staff (including salary, associated benefits, overhead, and travel expenses) and other costs in order to expedite the evaluation of permit requests submitted by the Department. Such activities will include, but not be limited to, the following: application

intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, public notice preparation, preparation of correspondence, conduct of the public interest review, preparation of draft permit decision documents, meetings with the Department, agencies and applicants, and any other permit evaluation-related responsibilities that may be mutually agreed upon (See Exhibit A). Funds will *not* be expended for review by supervisors or other persons or elements of the Savannah District in the decision-making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed by the Department, nor will such funds be used for paying the costs of public hearings and distribution of public notices.

D. Funds may be expended to hire contractors to perform select duties, such as site visits, technical writing, copying, reviewing technical materials, preparing regional general permits for use by the Department and others, Essential Fish Habitat Assessments, and other technical documents, including draft environmental documents for the purpose of augmenting the resources available to the Savannah District regulatory staff for expediting priority permit applications submitted by the Department. If such expenditures, when combined with the costs of the regulatory staff, require funding in excess of the amount specified in this, then said contractors shall not be hired until and unless additional funds are approved by the Department and memorialized by written amendment to this MOA.

E. If the Department's funds are expended and are not renewed, any remaining Department priority permit applications will be handled like those of any other non-participant, in a manner decided by the assigned regulatory project review specialist and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Savannah District and the Department, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific permit actions. Each party will issue a delegation letter to the other designating the Principal Representative for each agency.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The Department shall:

1. Provide adequate information regarding priority projects and other specific activities to initiate permit evaluation. Upon request, the Department shall provide supplemental information necessary to assure the Savannah District can effectively accomplish the required review.

2. Make a reasonable effort to provide the Savannah District with information on other projects with Department involvement that may affect the Savannah District's workload and staff availability (e.g., schedules for projects with Individual Permits).

3. In consultation with the Savannah District, schedule Savannah District involvement in the priority projects identified by the Department.

4. To the best of its ability, ensure the participation of all essential personnel, customers and decision makers during the permit evaluation process.

5. Routinely coordinate with the Savannah District to resolve workload conflicts and adjust priorities and schedules in order to make optimal use of available staff resources.

B. The Savannah District shall:

1. Expedite permits in accordance with the purpose, terms, and conditions of this MOA. The Savannah District shall not redirect resources from, or otherwise postpone, other Department projects submitted through the standard Savannah District review process.

2. Consult with the Department regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds Savannah District's ability to provide the services specified in this MOA.

3. Provide the Department with monthly reports noting the project tasks performed under this agreement.

4. Provide the Department an annual summary report of progress made under this Agreement. This report will describe achievements, including any improvements the Savannah District has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA.

5. Designate a Regulatory Project Manager who will make his or her best efforts to attend periodic meetings with the Department.

C. The Parties shall meet annually to discuss the provisions of this MOA.

Article V. - IMPARTIAL DECISIONMAKING

It is understood and agreed that in order to ensure that the funds will not impact impartial decision-making with respect to Department permit applications, the following procedures, mandated from Headquarters, U.S. Army Corps of Engineers, will apply to all cases using additional funds provided by the Department as a participating non-federal public entity:

1. All final permit decisions for cases where these funds are used must be reviewed at least by one level above the decision-maker, unless the decision-maker is the Savannah District Engineer. For example, if the decision-maker would be the Chief,

Regulatory Division, then the reviewer would be the District Engineer.

2. All final permit decisions for cases where these funds are used will be made available on the Savannah District Regulatory web page.

3. The Savannah District will not eliminate any procedures or decision criteria that would otherwise be required for that type of project and permit application under consideration.

4. The Savannah District must comply with all applicable laws and regulations.

5. Funds will only be expended to expedite the final decision on the permit application according to the terms and conditions of this MOA. 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 Savannah District regulatory program employees before the final permit decision is made.

Article VI. – FUNDING

A. The Department will pay the Savannah District an amount not to exceed \$900,000 for purposes of funding two additional project managers, including overhead, and associated support personnel for the term of this MOA (See Exhibit B). Funding required under this MOA may be increased no more than 10 percent over the life of the Agreement to account for the Federal Government's General Schedule increases and locality adjustments. Any carry-over funds from year to year would be credited to the following fiscal year's payment, or refunded if this MOA is terminated or expires.

B. Funds for each funding period will be payable in one lump sum ninety (90) days in advance of the Savannah District incurring any financial obligations for the next funding period under this MOA. Payment will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Savannah District.

Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of environmental permit applications undertaken by Savannah District will be governed by Savannah District regulations, policies and procedures.

Article VIII. - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the Department and the Savannah District shall use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute

resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with federal law.

Article IX. - PUBLIC INFORMATION

Justification and explanation of Department programs or projects before other agencies, departments and offices will not be the responsibility of the Savannah District. The Savannah District may provide, upon request from the Department, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Savannah District is responsible only for public information regarding Savannah District regulatory activities. The Department will give the Savannah District advance notice before making formal, official statements regarding Savannah District activities funded under this MOA.

Article X. - MISCELLANEOUS

A. Other Relationships or Obligations

This MOA will not affect any pre-existing or independent relationships or obligations between the Department and the Savannah District.

B. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

Article XI. - 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 MOA prior to its expiration date by providing written notice to the other party. Such termination shall be effective upon the sixtieth (60th) calendar day following notice or June 30, 2014, whichever is earlier. In the event of termination, the Department shall continue to be responsible for all costs incurred by the Savannah District under this MOA prior to the effective date of such termination and for the costs of closing out or transferring any on-going Department priority projects.

B. Any changes, corrections or additions to this Agreement that do not extend the term of the Agreement or change the monetary payment shall be in the form of a letter from either of the Parties to the other setting forth the proposed change, correction or addition. Such a letter shall provide the terms and conditions of the original Agreement that are not modified shall remain in full force and effect. Such letter shall become an amendment to the Agreement upon full execution and approval thereof by the other party. The Chief of the Multipurpose Management Branch Regulatory Division is authorized to enter into a letter amendment on behalf of the Savannah District. The State Environmental Administrator is authorized to enter

into a letter amendment on behalf of the Department. Any change, correction or addition to the Agreement that affects its term or the compensation to be paid pursuant hereto may only be made by an instrument of equal dignity.

C. This MOA shall remain in force until June 30, 2014, unless the MOA is terminated earlier than said date pursuant to this Article; or funds have been expended and not replenished following notice to the Department.

D. Within ninety days (90) days of termination, or expiration of the MOA, the Savannah District shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, subject to availability, the Savannah District shall return to the Department any funds advanced in excess of the actual costs. Funds may be provided to the Department either by check or by electronic funds transfer.

Article XII. - EFFECTIVE DATE

This MOA will become effective when signed by both the Department and the Savannah District. This MOA shall expire on June 30, 2014. The Savannah District shall notify the Department in writing of the date if the project review specialist assigned to work on Department expedited projects is changed within thirty (30) days of said date.

Article XIV. – INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

IN WITNESS WHEREOF, the Agreement is executed by the Department of Transportation, acting by and through its Commissioner or his designee, and by the US Army Savannah District of Engineers, through its authorized officer.

For the Department of Transportation

BY:

Vann Smith Jr
Commissioner

For the Savannah District, US Army Corps of Engineers:

BY:

Jeff M Hall
JEFFREY M. HALL
Colonel, US Army
Commanding

ATTEST:

Angela D Whitworth
Treasurer

Date: 17 MAY 2011

REVIEWED AS TO LEGAL FORM:

Office of Legal Services



Exhibit A Scope of Work

The Savannah District staff will accomplish the reviews and tasks appropriate to expedite, implement, and coordinate the Project Development Process and meet Department's needs for compliance with applicable state and federal statutes. The Savannah District 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 Savannah District at meetings as appropriate
- Participate in the development and implementation of written Department and Savannah District guidance
- Ensure Savannah District 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 Department or the Savannah District

- Perform other related tasks as defined by Department and agreed to by the Savannah District

Under normal circumstances the Savannah District will make every effort to meet the following timeframes:

1. With all requests for Nationwide Permit (NWP) authorization and Individual Permit (IP) applications, the Savannah District shall provide notification of any need for additional, required information/clarification within 15 days of the Savannah District's receipt of such applications.
2. Upon receipt of a completed application or the requested (required), additional information associated with an IP application, the Savannah District shall disseminate the 30-day Joint Public Notice within 15 days.
3. For IPs, within 15 days of the end of any Joint Public Notice the Savannah District shall provide, to the Department, all comments received as a result of the notice, as well as those comments from the Savannah District.
4. Regarding requests for authorization under our General Permits (GPs), the Savannah District shall provide notification of any need for additional, required information within 15 days of the Savannah District's receipt of such GP authorization requests.
5. With all of the Department's requests for Jurisdictional Determinations (JDs), the Savannah District liaison shall provide notification of any need for additional, required information/clarification within 15 days of the Savannah District's receipt of such JD requests.
6. For GP authorization requests requiring dissemination to the resource agencies, the Savannah District shall provide all comments within 5 days of their receipt.
7. For IPs, upon resolution of comments/issues with the Savannah District, the resource and other regulatory agencies, and issuance of 401 Water Quality Certification or a Coastal Zone Consistency, the District 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 Savannah District shall issue or deny such GP authorization requests within 45 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 Savannah District will waive, issue, or deny at least 95% of all GP authorization requests within 45 days.
9. Upon receipt of a completed and correct JD request the Savannah District shall issue the

Jurisdictional Determination within 30 days.

10. In the event of an issue between the Parties regarding processing or timeliness of work products, the following procedures will be used to informally resolve the issue. Nothing herein should be construed as a waiver of either Parties' remedies at law or equity.

Issue Identified	Savannah District PM meets with Department Team Leader	Savannah District Branch Chief/Deputy Division Chief meets with Branch Manager/ Department's Assistant State Environmental Administrator	Savannah District Division Chief meets with Department's State Environmental Administrator	Savannah District Engineer or his representative meets with Department's Commissioner
DAY 1 – Issue identified in writing (e-mail or letter)	Within 5 days – if not resolved, elevate verbally to next level	Within 5 days from PM meeting – if not resolves, elevate verbally to next level.	Within 5 days from last meeting – if not resolved, elevate in writing to next level.	Within 30 days from receipt of request for elevation.

