

MEMORANDUM OF AGREEMENT
BETWEEN THE
NEBRASKA DEPARTMENT OF ROADS,
UNITED STATES ARMY CORPS OF ENGINEERS, AND
FEDERAL HIGHWAY ADMINISTRATION
RELATIVE TO
INTERAGENCY FUNDING FOR THE DEPARTMENT OF THE ARMY PERMIT
PROCESS ON FEDERAL-AID HIGHWAY PROJECTS IN NEBRASKA

This Memorandum of Agreement (Agreement) is between the Nebraska Department of Roads (NDOR), United States Army Corps of Engineers (USACE), and Federal Highway Administration (FHWA), hereinafter referred to as the parties.

This Agreement sets forth the responsibilities of the parties relative to priority review of highway projects, with the goal of achieving timely design and implementation of adequate, safe, environmentally sound and economical highway improvements while also assuring such design and implementation are done in accordance with the Federal statutes that USACE administers.

WHEREAS, authority for this Agreement is pursuant to The Chiefs' Economy Act (10 U.S.C. 3036(d)) and Section 214 of the Water Resources Development Act of 2001 (P.L. 106-541, subsequently extended by P.L. 108-137, P.L. 109-99, P.L. 109-209, P.L. 109-434, and P.L. 110-114); and

WHEREAS, Section 6002 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (P.L. 109-59) provides a mandate for a coordinated environmental review process and authorizes the use of Federal-aid highway funds to expedite transportation-related project delivery; and

WHEREAS, NDOR has a substantial number of highway projects that USACE (Omaha District) has legal responsibility to review pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act; and

WHEREAS, the parties have determined that it would be mutually beneficial to supplement USACE staffing above existing levels; and

WHEREAS, the parties have determined that the supplemental staffing referenced above would provide priority review of those Federal-aid and State-funded highway projects contemplated or under design by NDOR and will reduce the customary time for reviews that fall within the legal responsibility of USACE; and

WHEREAS, NDOR is willing to fund supplemental USACE support staff dedicated to work on NDOR permit actions and issues; and

WHEREAS, FHWA agrees that NDOR's apportioned Federal-aid highway funds may be used to support this Agreement and would be an eligible source for funding at applicable Federal-aid match rates; and

WHEREAS, NDOR and USACE have certified that NDOR has sufficient work associated with the processing of Department of the Army permits to fully employ one full-time employee for the life of this Agreement.

NOW, THEREFORE, the signatories agree as follows:

I. Agency Responsibilities

A. NDOR shall:

1. Program a Federal-aid project to track costs and provide advance State payment to USACE for the costs contemplated by this Agreement, as listed below. It is anticipated that total annual funds needed for these services will not exceed \$213,636 in Federal Fiscal Year 2010. (See Attachment A.) Actual costs may be less than the estimated amount, depending on the amount of travel needed to support the priority review contemplated by this Agreement. Costs include the following:
 - a. Salary and benefits (including paid Federal holidays) for one (1) full-time employee (meeting the professional standards described in Attachment B), adjusted annually to cover appropriate cost of living and performance-based salary increases within the employee's pay band under the National Security Personnel System. Permanent Change of Station (PCS) expenses, if needed to hire a qualified Regulator outside the commuting distance of the Omaha, Nebraska metro area, may be covered by NDOR—up to a maximum of \$60,000. Additional positions and subsequent funding may be added under this Agreement if all parties to the Agreement find that the workload warrants additional USACE (Omaha District) personnel or other needed resources.
 - b. Actual burdened overhead rate for USACE, including:
 - i. Effective Rate
 - ii. Departmental Overhead Rate
 - iii. General and Administrative Rate
 - iv. Other, as appropriate
 - c. Credit hours, compensatory and overtime labor compensation, training, travel, and per diem at Federal Government rates, as needed to support the priority review contemplated by the Agreement.

2. Upon receipt of a signed Agreement/modification or task order, transmit an advance payment equal to either the total of funds needed to support the services contemplated by this Agreement (prorated to begin with the start date of the employee to the end of the federal fiscal year – 30 September 2009) or the additional funds needed to pay for any modification within 30 days. Subsequent start date for annual funding will be 1 October, 2009, reflecting the Federal fiscal year. Funds will be transmitted electronically.
3. Beginning 1 October 2009, pay USACE (Omaha District) the annual amount for Federal Fiscal Year 2010, and all Federal fiscal years thereafter, on an annual basis for all services set forth herein.
4. If notified by USACE (Omaha District) that additional funds are needed (because actual costs exceed the amount of funds available), either provide the additional funds to USACE (Omaha District), require that the scope of work be limited to that which can be paid for by the then-available funds, or direct the termination of the Agreement pursuant to Section IV.
5. Review quarterly USACE submittals of actual account of expenditures for salaries, benefits, travel, and indirect costs, as drawn against advance NDOR payment in support of work contemplated by this Agreement, and review quarterly USACE reports of tasks completed.
6. Request a meeting to clarify the account of expenditures within ten (10) working days if NDOR disagrees with the USACE submittals. In the event of a disagreement over the account of expenditures, NDOR pledges to negotiate in good faith towards a reconciliation of the disputed amount.
7. Reconcile and adjust Federal-aid project funding and/or advance NDOR payment to USACE at the time of Agreement extension, modification, or termination and, upon completion of this Agreement, make any adjustments needed in "Federal share payable" as consistent with 23 U.S.C. 120.
8. Hold meetings as necessary with USACE to establish priorities and evaluate work performed under the agreement.
9. Provide USACE with information on NDOR corridor plans, transportation area wide studies, and other transportation planning studies in order to facilitate receipt of USACE concerns and comments in order to better link planning and NEPA.
10. To facilitate expedited service, in addition to the Nationwide Permits Preconstruction Notification requirements, as specified in General Condition 27, paragraphs (b)(1) through (7), provide USACE the following:

a. Threatened and endangered species signed consultation documentation from the U.S. Fish and Wildlife Service (USFWS) and the Nebraska Game and Parks Commission (NGPC), or a statement that the project is covered under a signed and dated Programmatic Memorandum of Agreement between the USFWS, NGPC, NDOR and the FHWA.

b. Section 106 concurrence documentation from the Nebraska State Historical Preservation Office (SHPO), or a statement that the project resulted in such determination under a signed and dated Programmatic Memorandum of Agreement between the NSHS, NDOR, and FHWA.

c. At a minimum, a conceptual wetland/stream channel mitigation plan showing location and general design parameters to document compliance with current USACE mitigation policies. If mitigation is proposed at an approved NDOR wetland mitigation bank, a copy of the current bank site ledger shall be provided.

d. Wild and Scenic Rivers (including National River Inventory segments) documentation that the proposed activity will not adversely affect the designation, when applicable.

e. Signed floodplain permits or NDOR's floodplain compliance certification, when applicable.

11. Provide training on transportation planning process, transportation plan reading, transportation project development process and scheduling, transportation engineering design, definition of construction activities and impacts, transportation decision making NEPA Merge Process, and other training, as needed.

B. USACE shall:

1. Supplement its existing staff, which currently processes NDOR and other permits on a routine basis, by hiring one professional employee, as detailed in Attachment B, and use the funds provided under this Agreement to pay the costs of this individual's salary, associated benefits, (which may include Permanent Change of Station expenses, if needed and agreed to by NDOR), and actual burdened overhead rate; any needed training, as determined by USACE or required by NDOR or FHWA; and reimbursable travel expenses in accordance with the Federal Travel Regulations, 41 CFR Chapter 301, that are hereby incorporated into this Agreement by reference.
2. Promptly notify the NDOR of the amount of additional funds needed if USACE (Omaha District) forecasts its actual costs will exceed the amount

of funds available. As mentioned in paragraph I.A.4., the NDOR shall then either provide the additional funds to USACE (Omaha District), require that the scope of work be limited to that which can be paid for by the then-available funds, or direct the termination of the Agreement pursuant to Section IV.

3. Include FHWA and NDOR on the interview panel and fully consider their comments on the personnel selection for the position. Conditions for the personnel selection for the position will include the ability of the person to recommend sound permit decisions, make jurisdictional determinations, and evaluate wetland/waters delineations.
4. Ensure that the supplemental staff funded by this Agreement is dedicated to work on the priority projects identified by the NDOR in accordance with the coordination procedures defined in paragraph II (below).
5. Ensure that the employee identified in Attachment B keeps a biweekly time record identifying the number of hours spent working on tasks related to highway projects and any other work tasks such as those listed under paragraph II (below) relative to coordination. It is acknowledged that said supplemental staff will be required to attend USACE staff meetings, USACE mandated training, be in compliance with National Security Personnel System requirements and that these and similar work related items are provided for by this agreement. In addition, USACE shall keep accurate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records and reports for examination on a quarterly basis as required by NDOR or FHWA and shall permit extracts and copies to be made by the other signatory agencies or their duly authorized representatives. USACE shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least three (3) years after the final billing is submitted. These records shall be subject to audit in accordance with the Single Audit Act, Amendments of 1996.
6. Hold quarterly meetings with NDOR and FHWA to evaluate work performed under this Agreement during the previous quarter.
7. Upon receipt of initial advance NDOR payment, fill the supplemental position as expeditiously as possible to support work contemplated by this Agreement.
8. Promptly return any unused funds to NDOR upon termination of this Agreement.

9. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount. Continue the priority review of highway construction projects throughout negotiations as long as current advance NDOR payment is sufficient to cover costs. USACE will credit NDOR for any amount determined to be an overstatement of USACE expenses.
10. Ensure that the employee identified in Attachment B will attend NDOR or FHWA meetings or trainings, as requested, including the monthly project coordination meetings and the quarterly agency meetings conducted by NDOR, unless a previously coordinated absence is arranged.
11. Ensure that the employee identified in Attachment B will document meetings and decisions reached in minutes and transmit them to NDOR and FHWA within 7 days of the meetings for their verification against the official meeting minutes.
12. Provide updates and training to NDOR/FHWA staff regarding statutes, regulations and new guidance affecting transportation project permits.
13. Participate in NEPA scoping activities for Federally funded road construction projects in Nebraska.
14. Develop internal procedures to implement this Agreement and modify as necessary.
15. Provide comments and concerns to corridor plans, transportation area wide studies and other transportation planning documents to facilitate the goals of environmental streamlining and stewardship through linking planning and NEPA.
16. Prepare and submit an annual report of the performance of actions covered by this MOA, to NDOR and FHWA no later than October 30 of each year.

C. FHWA shall:

1. Approve programming a Federal-aid project to accomplish the work contemplated by this Agreement at the applicable Federal-aid reimbursement rate.
2. Under the authority of 23 U.S.C. 139, reimburse NDOR the total amount of Federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.
3. Participate in quarterly meetings with USACE and NDOR to evaluate work performed under this Agreement to provide priority project reviews, and to evaluate progress toward achieving expedited project permitting.

II. Coordination

- A. On a monthly basis and as needed, NDOR, in concert with USACE (Nebraska Regulatory Office), will establish a priority listing of projects for USACE that will guide the USACE supplemental staff efforts in the priority review process.
- B. Both NDOR and USACE agree that reasonable access will be provided to working level staff of the other agency in an effort to minimize the need for formal meetings.
- C. Quantitative and qualitative performance measures for the supplemental position will be developed mutually by NDOR, USACE, and FHWA prior to first transmittal of funding for the position. These performance measures will be reviewed quarterly to evaluate the value of the position in expediting permitting activities (e.g., timeliness, responsiveness, availability, and attendance at training and meetings, etc.). These performance measures may be modified over time by agreement of all parties as the needs and responsibilities of the position develop and solidify.
- D. While the focus will be to review permit decisions for priority NDOR projects, USACE supplemental staff may also be involved in other tasks that support agency coordination and serve to expedite the implementation of NDOR's highway construction program and compliance with the statutes and regulations for which USACE bears responsibility. Examples of other tasks that may be assigned include, but are not limited to:
 - 1. Attend pre-application meetings and preliminary engineering reviews (as travel budget and workload allow). Collaborate to determine the initial range of alternatives to be evaluated and the information needed to compare these alternatives. Provide reliable direction regarding whether the preferred alternative, as designed, is permissible under USACE regulations.
 - 2. Participate in interagency scoping meetings and NEPA/Section 404 merger meetings.
 - 3. Comment on project alternatives and mitigation plans and review and comment on biological assessments.
 - 4. Develop and implement NDOR/FHWA/USACE process improvements to increase efficiency of transportation project permit processing.

III. Performance Objectives

- A. NDOR, USACE, and FHWA will review existing interagency coordination processes and formulate recommendations to improve procedures and increase

efficiency within three (3) months of the time the individual in the position to be funded by the Agreement reports for duty.

B. USACE agrees to meet the following goals:

1. Provide early coordination and prioritization of highway project permit applications.
2. Dedicate one full-time position to work on Federal-aid highway construction projects contemplated or under design by NDOR.
3. Provide official acknowledgement of the date each application is received by the USACE via e-mail or written notification within 5 business days. Verbal communication (personal or by telephone) shall not be an acceptable means of notification. The notification shall include at a minimum the NDOR project name; NDOR project number and Control Number; USACE File Number and USACE Project Manager (if other than the USACE supplemental employee identified in Attachment B); date of application receipt; and the end date of the 30 calendar-day complete application review period, (if applicable).
4. Determine and notify NDOR whether the application is complete within the 30 calendar-day review period for Nationwide Permits. If the application is deemed incomplete, USACE will provide, at the time of notification, a list of additional information required to complete the application. Additional information should be requested only once. Upon USACE's receipt of the requested additional information, the USACE supplemental employee will again review the application for completeness. If questions regarding the newly submitted information remain, USACE and NDOR will resolve the questions within 14 calendar days, whenever possible.
5. Inform NDOR if project evaluation may exceed standard processing times due to, but not limited to, issues such as required (Federal) Endangered Species Act coordination, Section 106 of the National Historic Preservation Act, elevated jurisdictional determinations, Section 404(b)(1) Guidelines compliance, controversial public interest factors, litigation, etc.

C. NDOR agrees to meet the following goals:

1. Prepare and submit to USACE a complete permit application, together with drawings, as currently required by USACE regulations set forth at 33 CFR 325 or 330 and any subsequent information deemed necessary for permit evaluation.
2. Provide information to supplement the submitted permit application in accordance with the comments provided by USACE or other approving

agencies in the course of permit review. Fully consider any recommendations for project proposal modifications.

IV. General Terms

- A. Length of Agreement. This Agreement expires on 1 October 2014, unless extended or terminated as provided in paragraph IV.B. or IV.C. below.
- B. Modification and Extension. This Agreement may be modified, amended, or extended by the mutual agreement of the signatory parties.
- C. Termination. This Agreement may be terminated by either NDOR, FHWA or USACE upon six (6) months' written notice to the POC of the other party if the party requesting termination has determined that the other party has not substantially fulfilled the responsibilities and terms of the Agreement after being provided with notice and ninety (90) days to remedy the situation. If either NDOR or USACE wishes to terminate this agreement for any reason other than deficient performance, the party wishing to terminate shall provide written notice to the other party indicating the intent to terminate the agreement six (6) months from the date of receipt of the written notice, unless both parties agree to an alternate date.
- D. Excess Funds (if Agreement is terminated). In the event of termination, all unobligated funds shall be refunded to NDOR within sixty (60) days after the effective date of termination. Neither party shall incur any new obligations after the effective date of termination and shall cancel all severable agreements. Full credit shall be allowed for each party's expenses and all non-severable obligations incurred up to the effective date of termination. In the event of termination of this Agreement, USACE (Omaha District) shall conduct a final accounting. If additional funds are necessary, USACE (Omaha District) shall be entitled to compensation for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of NDOR. NDOR shall not be liable for any further claims, and the claims submitted by USACE shall not exceed the total amount of consideration stated in this Agreement. Should USACE (Omaha District) be unable to complete the provision of this Agreement for any reason, all monies provided by NDOR which prove to be severable obligations shall be refunded to NDOR.
- E. By signature below, NDOR certifies that the individuals listed in this Agreement as representatives of NDOR are authorized to act in their respective areas for matters related to this Agreement. All parties acknowledge that any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

F. Points of Contact/Project Managers. The title of the point of contact and current office holder for each signatory agency is listed below.

1. NDOR:

Name: Randall D. Peters, P.E
Title: Deputy Director- Engineering
Engineer, Nebraska Department of Roads
Address: 1500 Highway 2
Lincoln, NE 68502
Tel: (402) 479-4795
Fax: (402) 479-3629
Email: Randy.Peters@nebraska.gov

2. USACE:

Name: Martha S. Chieply
Title: Chief, Regulatory Branch
Omaha District, U.S. Army Corps of Engineers
ATTN: CENWO-OD-R
Address: 1616 Capitol Avenue, Suite 9000
Omaha, NE 68102-9000
Tel: (402) 995-2451
Fax: (402) 996-3842
Email: Martha.S.Chieply@usace.army.mil

3. FHWA:

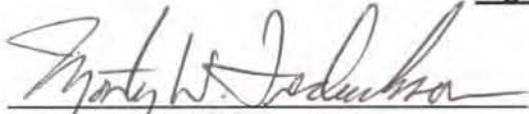
Name: Joseph A. Werning
Title: Division Administrator
Federal Highway Administration
Nebraska Division
Address: 100 Centennial Mall North
Lincoln, NE 68508
Tel: (402) 437-5961
Fax: (402) 437-5146
Email: Joseph.Werning@dot.gov

G. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of age, race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their age, race, color, religion, sex, or national origin.

H. Continuation of Existing Responsibilities

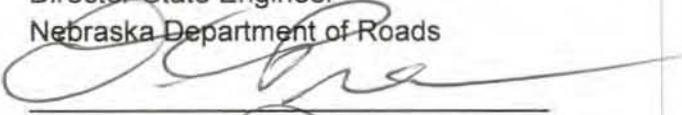
1. The parties to this Agreement are acting in an independent capacity in the performance of their respective legally authorized functions under this Agreement, and none of the parties' employees are to be considered the officer, agent, or employee of another party, to include the supplemental staff to be hired by USACE to support priority review of NDOR highway construction projects.
2. This Agreement shall not abrogate any obligations or duties to comply with the regulations promulgated under the 1973 (Federal) Endangered Species Act, as amended; the 1958 (Federal) Fish and Wildlife Coordination Act, as amended; the National Environmental Policy Act of 1969; the (Federal) Clean Water Act of 1977, as amended; or any other Federal statute or implementing regulations.

Signatory Participants



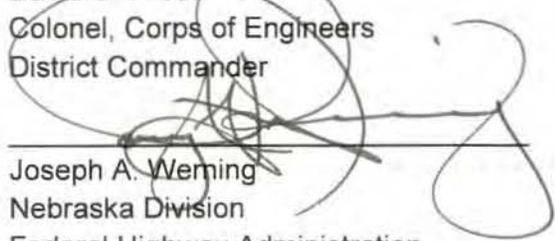
Monty W. Fredrickson, P.E.
Director-State Engineer
Nebraska Department of Roads

Date 8/14/09



David C. Press
Colonel, Corps of Engineers
District Commander

Date 9/2/09



Joseph A. Werning
Nebraska Division
Federal Highway Administration

Date 8/25/2009

ATTACHMENT A

Cost Estimate

Labor (approx. \$77,000 (rounded up), assuming a former GS-12/5)

Fully burdened rate/salary (based on 2087 hours a year and a total labor multiplier of 2.49; includes holidays and paid benefits)	\$191,730
+ 3.5% est. cost of living adjustment for 2010 (effective in January 2010)	\$6,711
+ 1.5% award +/- (if applicable)	\$1,195
Overtime	\$2,000
Total Estimated Labor	\$201,636
Training (assuming one required Regulatory out-of-state course per year)	\$2,000
Travel (for out-of-state training) \$2,000	\$2000
Travel (for in-state training and for visiting project sites, vehicle to be leased by USACE and all costs to be reimbursed by NDOR*)	\$8,000
Computer/supplies/materials (to be paid by Corps)	\$0
ESTIMATED TOTAL COST TO SUPPORT ONE FTE**:	\$213,636

* When working on NDOR projects, the USACE supplemental employee is authorized to travel via State-provided transportation.

** FTE = Full-time equivalent position.

*** Total will be adjusted annually by the signatories to this agreement.

Note: If it is necessary to provide Permanent Change of Station (PCS) expenses to hire a qualified Regulator from outside the commuting distance of the Omaha, Nebraska metro area, this will be negotiated with the NDOR. Maximum expenses allowed would be \$60,000 (refer to paragraph I.A.1.a. of the Agreement).

ATTACHMENT B

Professional Standards for Supplemental Staff

One (1) specialist with experience and/or education in engineering, biology, natural resources, or other related environmental science. Working knowledge of Section 404 of the (Federal) Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, the National Environmental Policy Act, the (Federal) Endangered Species Act, the National Historic Preservation Act, and the Joint Federal Manual for the Identification and Delineation of Wetlands is essential. In addition, the ability to travel, occasionally overnight, is mandatory. This employee will be qualified to be paid under the Federal White Collar Pay Schedule at the full performance level of either Standard Career Group-Professional/Analytical Pay Schedule (YA) pay band 2 or Engineering and Scientific Career Group-Professional Pay Schedule (YD) pay band 2.

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