AMENDMENT NO. 1
TO
INTERAGENCY AGREEMENT
BETWEEN
OKLAHOMA DEPARTMENT OF TRANSPORTATION
AND
THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT

This AMENDMENT NO. 1, dated this 29 day of September, 2016, to the existing Interagency Agreement dated October 19, 2012, by and between the Oklahoma Department of Transportation (hereinafter the "Department") and the United States Army Corps of Engineers, Tulsa District (hereinafter the "Corps"), collectively referred to as the "Parties," is as follows:

WHEREAS, the Parties entered into an Interagency Agreement ("IA"), effective October 19, 2012, for expedited and priority review of Department priority projects by the Corps; and

WHEREAS, the IA is renewable for an additional four-year period beginning October 19, 2016; and

WHEREAS, the Parties desire to modify and amend the IA, in accordance with Sections IV.E. and VIII thereof, to increase the not to exceed total compensation paid to the Corps by an additional $950,000.00 and extend the duration of the IA to October 19, 2020; and

WHEREAS, Section 214 of the Water Resources Development Act (WRDA) of 2000, as amended, codified at 33 U.S.C. § 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a nonfederal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, Public Law 113-121, signed into law on June 10, 2014, made the authority permanent; and

WHEREAS, because of long term certainty of federal-aid highway funding for surface transportation projects under the FAST Act, the Department has substantially increased the number of highway construction projects the Corps will review pursuant to federal statutes and regulations including Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act; and

WHEREAS, the Department is continuing the Bridge Improvement and Modernization Program to eliminate all structurally deficient bridges on the State Highway System within the period of the 2016-2023 Construction Work Plan which is anticipated to be more than 913 bridges; and over 776 miles of shoulder and roadway geometric improvements;

NOW, THEREFORE, the Parties agree:

Article I – RENEWAL OF IA

In accordance with Section IV.A. of the IA, the IA is hereby renewed for an additional four year term, beginning October 19, 2016 and ending October 19, 2020.

Article 2 - FUNDING.

The Department will provide additional funding to the Corps in a total sum of $950,000 for services contemplated under the IA for the additional four year term provided for in Article I of this AMENDMENT NO. 1. The Department will pay to the Corps the total sum of $950,000 in one lump sum payment upon execution of this AMENDMENT NO. 1 to fully fund the additional four year term in advance. This payment schedule may be changed by mutual written agreement of the parties but may not exceed the total compensation recited herein unless approved through an amendment.

Article 3 - EFFECTIVE DATE AND DURATION.

This AMENDMENT NO. 1 to the IA shall be considered executed and will become effective on the date of signature by the last Party. Unless amended or modified pursuant to Article VIII of the IA, this AMENDMENT NO. 1 shall remain in force until whichever of these events occurs first: 1) October 19, 2020; or 2) the IA is terminated pursuant to Article IV.C. of the IA.

Article 4. INTEGRATION.

This AMENDMENT NO. 1 represents the entire understanding of the Parties regarding changes to the IA. All other terms and conditions of the IA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the parties have caused this AMENDMENT NO. 1 to be executed as of the date herein written:

RECOMMEND FOR APPROVAL:

9/26/2016

Andrew R. Commer
Chief, Regulatory Office

RECOMMEND FOR APPROVAL:

10/14/2016

Sivanuja S. Sundaram
Division Engineer
Environmental Programs Division

9/29/16

Christopher A. Hussin
Colonel, U.S. Army
District Commander
U.S. ARMY CORPS OF ENGINEERS

10/17/16

Timothy A. Tegeler
Director of Engineering
OKLAHOMA DEPARTMENT OF TRANSPORTATION

APPROVED AS TO LEGALITY AND FORM:

10/17/16

GENERAL COUNSEL
OKLAHOMA DEPARTMENT OF TRANSPORTATION

INTERAGENCY AGREEMENT
Between
TULSA DISTRICT U.S. ARMY CORPS OF ENGINEERS (Corps) and
OKLAHOMA DEPARTMENT OF TRANSPORTATION (Department)

Section I. Background and Objectives.

WHEREAS, pursuant to the Clean Water Act (CWA), the Corps is responsible for review of federal actions that may affect waters of the United States; and

WHEREAS, the Department is responsible for providing a safe, economical, and efficient transportation network for the state; and

WHEREAS, the Intergovernmental Cooperation Act (31 USC 6505) authorizes federal agencies to provide specialized or technical support to state governments; and

WHEREAS, this Agreement is entered into under the authority of Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, codified in 23 U.S.C. 139); and

WHEREAS, because of federal-aid highway funding increases under the SAFETEA-LU, the Department has substantially increased the number of highway construction projects the Corps will review pursuant to federal statutes and regulations including Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act; and

WHEREAS, the Department, in order to protect the safety and welfare of the travelling public, is substantially increasing the number of transportation projects that the Corps is to review and desires the Corps to increase its involvement during the project development process, such that the final Corps reviews do not constitute an unnecessary delay in Department project implementation; and

WHEREAS, the Department has initiated the Bridge Improvement and Modernization Program to eliminate all structurally deficient bridges on the State Highway System within the period of the 2012-2019 Construction Work Plan which is anticipated to be more than 967 bridges; and

WHEREAS, the Corps has indicated that it is unable at present to provide the Department with priority review of Department projects and increase the Corps' involvement in the Department's transportation project development process; and

WHEREAS, all parties have determined that it would be mutually beneficial to provide additional resources to the Corps to enable the Corps to provide the Department with priority project review, so that transportation projects can be designed and implemented promptly, to meet the ever-changing needs of the state, in a manner that is sensitive to waters of the United States, natural resource protection and conservation; and

WHEREAS, the Department is willing to fund the Corps for increased staff required to provide priority project review; and

WHEREAS, the Department is authorized under the provisions of Title 69 O.S. § 1502 and Title 74 O.S § 85.12 to contract for necessary services; and

WHEREAS, the Department is authorized under the provisions of Title 74 O.S. § 85.44B to pay the Corps prior to services being rendered pursuant to this cooperative agreement to protect the public health, safety and welfare of the people of the State of Oklahoma; and

WHEREAS, the parties hereto desire to enter into this Cooperative Agreement to facilitate the cooperation of the parties in the review of transportation projects and provide for the personnel and funds to attain this goal.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the Parties hereto agree, with the intention of being legally bound, to the following:

Section II. Statement of Work.

A. The Corps shall provide a qualified experienced Project Manager to provide the Department with expedited review of transportation projects. The Corps shall use the funds provided under this agreement for salary and benefits for at least one (1) full-time equivalent employee (meeting the professional standard described in Attachment A) adjusted annually to cover appropriate step-increases and cost of living allowance (COLA) awarded Federal government employees, as well as travel, training, and overhead rates as specified in this agreement and additional support as required not to exceed the funding limit in Section IIIA. The Project Manager shall at all times be a single position (1) full-time equivalent federal employee of the Corps and shall at no time be deemed an employee of the Department or of the State of Oklahoma for any reason. The only purpose of this agreement is to provide Department funding for the Corps federal FTE for the sole benefit of the Department.

B. The Project Manager retained through funds provided by this agreement shall work on Department projects and provide expedited document review and project coordination as identified in Attachment A attached hereto and made part hereof.

C. The Project Manager shall keep daily time records identifying the number of hours spent working on each specific Department project and the work tasks defined in Attachment A. In addition, the Corps shall keep accurate and separate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement, and produce such records for examination as required by the Department, and shall permit extracts and copies to be made by the Department or their duly authorized representatives. The Corps shall keep records substantiating hours and costs billed to this Agreement for a period of three (3) years after the final billing is submitted. These records shall be subject to audit by the Department as appropriate.

D. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement; no party shall be construed as the officer, agent or employee of the other.

E. In no way shall it be construed or implied that the Department or the Corps are by this Agreement intending to abrogate their obligations and duties to comply with the regulations promulgated under the CWA or any other statute.

Section III. Financial Administration.

A. The Department will, subject to the billing provisions of Paragraph III.B. below, provide funding to the Corps, a total sum of $950,000 for services contemplated under this agreement for the contract term of four years. The Department will pay to the Corps the total sum of $950,000 in one lump sum payment upon execution of this agreement to fully fund the four year contract term in advance.

B. The funding provided by the Department will be accounted for services provided at the actual burdened overhead rate carried by the Corps including Special Effective Rate, Departmental Rate, and General Administrative Rate, direct costs of training, and travel and per diem at Federal Government rates, as needed to support the priority review contemplated by the Agreement. The Corps shall provide the Department an itemized monthly accounting statement of all amounts billed against the Department's advance funding deposit with the Corps which will indicate a description of all items charged, the amount of the item, the date paid, the name of the person or entity paid and any other information deemed necessary or requested by the Department that will provide a full accounting of the deposited funds, the amount of funds expended to date and the remaining funds available on deposit.

Section IV. Period and Evaluation of Performance.

A. The term of this Agreement shall run for four (4) years from the date of execution of the agreement, renewable for four (4) additional years unless terminated sooner in accordance with paragraph IV.C. below.

B. Performance Expectations. The Department and the Corps will review existing interagency coordination processes and formulate recommendations to improve procedures, increase efficiency, and delineate Department program priorities at least quarterly. The Corps will provide an accounting of financial expenditures and progress reports to the Department on a monthly basis.

The Corps agrees to meet the following goals:

- Early coordination and prioritization of highway project permit applications.
- The Corps will inform the Department if project evaluation may exceed standard processing times due to issues such as required Endangered Species Act coordination, controversial public interest factors, litigation, etc.

- The Corps will meet all timelines established by regulation for individual permits unless otherwise previously indicated or noted as an exception.

The Department agrees to meet the following goals:

- Prepare and submit to the Corps a completed permit application together with drawings as currently required by Corps regulations set forth at 33 CFR 325, nationwide permits, and letters of permission (LOP), incorporated herein by reference.
- Provide all information necessary for evaluation of permit applications.
- Give full consideration to modifying the submitted permit application in accordance with the comments provided by the Corps or other approving agencies in the course of permit review or terminate and withdraw the permit application.

C. Either party may terminate this Agreement upon sixty (60) days written notice to the other party addressed to the Projects Officers listed in Section V., provided that the party requesting termination can show cause that there has been a failure on the part of the other party to fulfill substantially its responsibilities under this Agreement, and only after providing notice and sufficient opportunity for remedy. A failure of the Corps to meet the performance expectations identified in Section IV.B above, and Attachment A, shall be construed as cause for termination.

D. If this agreement is terminated in accordance with paragraph IV.C, the Corps shall provide an accounting of all unused funding deposited with the Corps. Any Department funding that remains unused at the termination of this agreement shall be returned to the Department within forty-five (45) days after the end of the sixty (60) day notice period.

E. Modifications to this agreement are valid when executed by the parties with same formalities as are observed in the execution of this Agreement.

F. Time is of the essence in performance of all tasks enumerated within this Agreement.

Section V: Mediation and Conciliation.

Any dispute or difference of opinion arising between the parties hereto, or the failure of the parties hereto to agree as to matters arising out of the Agreement itself shall, at the request of either party, be handled under procedures of mediation and conciliation under the auspices of a mediator selected by agreement of the parties. A mediator shall be selected by the parties from a neutral mediation source. If the parties are unable to agree on a mediator, the matter shall be referred to the American Arbitration Association for the appointment of a mediator and for mediation in accordance with current Association rules. Each party shall pay one half (1/2) of the cost of such mediation fees to include transportation costs of the mediator, if required. Each Party will bear its own legal fees, costs and expenses, including, without limitation, the cost of its expert witnesses. The fees and expenses of any mediator incurred in performing the duties hereunder shall be shared equally by the parties.

Section VI. Project Officers.

A. U.S. Army Corps of Engineers Tulsa District:

Andrew R. Commer, Chief
U.S. Army Corps of Engineers, Regulatory Office
1645 South 101st Street East, Tulsa, Oklahoma 74128
Tel: 918-669-7400
Fax: 918-669-4306
E-mail: Andrew.Commer@usace.army.mil

B. Oklahoma Department of Transportation:

Dawn R. Sullivan, Environmental Division Engineer
Oklahoma Department of Transportation
200 NE 21st Street
Oklahoma City, Oklahoma 73105-3204
Tel: 405-521-2927
Fax: 405-521-6917
E-mail: dsullivan@odot.org

VII. Required Clauses.

A. The Corps agrees to comply with Title VI of the Civil Rights Act of 1964, 78 Stat. Section 252, 42 USC. Section 2000 et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21 - "Nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964". As such laws may be applicable, the Corps agrees to be subject to such federal requirements as to Equal Employment Opportunity 28 CFR 35, 29 CFR 1630 and 41 CFR 60, the Americans with Disabilities Act of 1990, 42 USC 12.01 et seq.

B. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement or any benefit that may arise there from; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

C. Article headings used in this Agreement are inserted for convenience of reference only and shall not be deemed a part of this Agreement for any purpose.

Section VIII. Modification.

Any changes, amendments, corrections, or additions to this Agreement, including annual amendment in the total amount of reimbursement provided for in Paragraph III.A. above, shall be in writing; shall be executed and approved by the same officials (or their designees) of the parties who execute and approve this original Agreement and in accordance with applicable law; and shall become effective upon complete approval by all parties.

Section IX. Limitation of Liability.

The Department and the Corps mutually recognize that each party is a governmental entity subject to the provisions of the respective Governmental Tort Claims Acts (51 O.S. § 151 et seq. and 28 USC §2671 et seq.). The Department and the Corps hereby mutually agree that each is and may be held severally liable for any and all claims, demands, and suits in law or equity, of any nature whatsoever, paying for damages or otherwise, arising from any negligent act or omission of any of their respective employees, agents or officers which may occur during the prosecution or performance of this Agreement to the extent provided in the Governmental Tort Claims Act. Each party agrees to severally bear all costs of investigation and defense of claims arising under the Governmental Tort Claims Act and any judgments which may be rendered in such cause to the limits provided by law. Nothing in this section shall be interpreted or construed to waive any legal defense which may be available to a party or any exemption, limitation or exception which may be provided by the Governmental Tort Claims Act.

Section X. Signatures.

IN WITNESS WHEREOF, the parties have caused this Cooperative Agreement to be executed as of the date herein written: OCTOBER 19, 2012

RECOMMEND FOR APPROVAL:

Andrew R. Commer, Chief
Regulatory Office

Colonel Michael J. Teague, Commander
Tulsa District
UNITED STATES ARMY
CORPS OF ENGINEERS

RECOMMEND FOR APPROVAL:

Dawn Sullivan, Division Engineer
Environmental Programs Division

David Streb, Director of Engineering
OKLAHOMA DEPARTMENT OF
TRANSPORTATION

APPROVED AS TO LEGALITY AND FORM:

GENERAL COUNSEL

Attachment A

Professional Standards: One (1) Senior Project Manager and supplemental staff with experience and/or education in engineering, biology, natural resources, or other related environmental science. Expert knowledge of Section 404 of the (Federal) Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, 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 General Schedule 13.

The Corps staff shall accomplish the following tasks for the Department, as requested, in order to expedite, implement and coordinate the Department's needs for compliance with applicable state and federal statutes and regulations:

1. Attempt to ensure that 100% of the work time of the supplemental staff funded by this Agreement is dedicated to work on the priority projects identified by the Department in accordance with the coordination procedures defined in paragraph II (below).

2. Ensure that the employee identified in Attachment A keeps a daily 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. In addition, the Corps shall keep accurate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records and reports monthly for examination as required by the Department and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. The Corps 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.

3. Hold annual meetings to evaluate work performed under this Agreement, or more frequently as deemed necessary by the designated project managers as identified in Section VI.

4. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount and continue the priority review of highway construction projects throughout negotiations. The Corps will credit the Department for any amount determined to be an over-statement of Corps expenses. Develop internal procedures to implement this Agreement and modify as necessary.

5. Work contemplated under this Agreement includes but is not limited to the following:
    - Response to a National Environmental Policy Act (NEPA) solicitations requesting initial comment on a proposed Department undertaking.
    - Participate in agency scoping.

- Provide preliminary environmental analysis guidance and review.
- Review wetland identifications and delineations.
- Provide preliminary and detailed alternatives analysis guidance.
- Review and comment on reports.
- Represent the Corps at meetings, as appropriate.
- Attend inter/intra-agency meetings, as appropriate.
- Conduct document reviews and draft agency responses which may include, but not be limited to:
  Wetlands identification and delineation reports.
  Wetland functional assessment reports.
  Preliminary alternatives reports.
  Environmental impact statements.
  Environmental impact statement comment resolution.
  Environmental assessments.
  Categorical exclusion evaluations.
  Mitigation reports and plans.
  Section 404 permit applications.

6. Perform other related tasks as defined by the Department and agreed to by the Corps.