COOPERATIVE AGREEMENT

BETWEEN THE

UNITED STATES ARMY CORPS OF ENGINEERS (CE),

FEDERAL HIGHWAY ADMINISTRATION (FHWA),

AND THE

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT (AHTD)

RELATIVE TO

INTERAGENCY FUNDING FOR THE DEPARTMENT OF THE ARMY PERMIT

PROCESS ON FEDERAL-AID HIGHWAY PROJECTS IN ARKANSAS

COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES ARMY CORPS OF ENGINEERS (CE), FEDERAL HIGHWAY ADMINISTRATION (FHWA), AND THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT (AHTD) RELATIVE TO INTERAGENCY FUNDING FOR THE DEPARTMENT OF THE ARMY PERMIT PROCESS ON FEDERAL-AID HIGHWAY PROJECTS IN ARKANSAS

This cooperative agreement (Agreement) is between the Arkansas State Highway and Transportation Department (AHTD), the Federal Highway Administration (FHWA), and the United States Army Corps of Engineers (CE), hereinafter referred to as the parties.

This Agreement sets forth the responsibilities of the parties relative to priority review of highway construction 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 is done in accordance with Federal statutes which the CE administers.

WHEREAS Authority for this Agreement is pursuant to the Intergovernmental Cooperation Act (31 U.S.C. 6505); and

WHEREAS the Transportation Equity Act for the 21st Century (TEA-21) (P.L. 105-178) provides mandate for a coordinated environmental review process; and

WHEREAS, AHTD annually has a substantial number of highway projects the CE 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, many of these projects fall within waters of the United States; and

WHEREAS, the locations of these projects within Arkansas fall under the jurisdictional areas of three (3) different CE districts (Little Rock, Memphis, and Vicksburg); and

WHEREAS, the parties agree that establishing a CE central point of contact (POC) to be located in the Little Rock District for all highway projects in Arkansas would create efficiency and expedite the environmental review process; and

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

WHEREAS, the parties have determined that the supplemental staffing referenced above would provide priority review of Federal-aid highway construction projects contemplated or under design by AHTD; and

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

WHEREAS, the FHWA agrees that AHTD'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, AHTD and the CE have certified that AHTD has sufficient work associated with the processing of Department of the Army permits to fully employ one employee for the life of this agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the signatory parties to this Agreement concur with the following responsibilities and terms.

I. Agency Responsibilities

A. AHTD Shall:

1. Program a Federal-aid project to track costs and provide advance state payment to the CE for the costs contemplated by this Agreement as listed below. Annual funds needed for these services shall not exceed the amount necessary to pay for burdened labor, travel and reasonable incidental expenses of a GS-13 CE employee. If and when additional funds are necessary, additional payment will be made by AHTD upon request.

   a. Salary and benefits for one (1) full-time 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.

   b. Actual burdened overhead rate carried by the CE, including:

      i. Effective Rate
      ii. Departmental Rate
      iii. General Administrative Rate
      iv. Other as appropriate

   c. Training, travel, and per-diem at Federal government rates, as needed to support the priority review contemplated by the Agreement.

   d. Vehicles (direct charged).

2. Upon receipt of a signed agreement/modification or task order, transmit an advance payment equal to either the annual total of funds needed to support the services contemplated by this Agreement or

the additional funds needed to pay for any modification. The start date for annual funding will be 1 October. Funds will be transmitted electronically.

3. Review semiannual CE submittals of actual account of expenditures for salaries, benefits, travel and indirect costs as drawn against advance AHTD payment in support of work contemplated in paragraph I.B.1 below.

4. If AHTD disagrees with the CE submittal, a meeting to clarify the account of expenditures will be requested within ten (10) working days. In the event of a disagreement over the account of expenditures, AHTD pledges to negotiate in good faith towards a reconciliation of the disputed amount.

5. Reconcile and adjust Federal-aid project funding and/or advance AHTD payment to the CE 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. 132.

6. Hold meetings as necessary with the CE to establish priorities and evaluate work performed under the agreement.

B. CE Shall:

1. Supplement its existing staff, which currently processes AHTD and other permits on a routine basis, by hiring one term professional employee as detailed in Attachment A, and use the funds provided under this Agreement to pay the costs of this individual's salary, associated benefits and actual burdened overhead rate, and reimbursable travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, that are hereby incorporated into this Agreement by reference.

2. 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 AHTD in accordance with the coordination procedures defined in paragraph II (below).

3. 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. These records shall account for 100% of the time worked by said supplemental staff, including any time spent on non-AHTD work. In

addition, the CE shall keep accurate accounting records of all receipts and disbursements of all funds received pursuant to this Agreement and produce such records and reports (see I. A. 3. above) for examination as required by the AHTD or the FHWA and shall permit extracts and copies to be made by these other signatory agencies or their duly authorized representatives. The CE 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.

4. Hold annual meetings with AHTD and FHWA to evaluate work performed under this Agreement.

5. Upon receipt of initial advance AHTD payment, the supplemental position shall be filled as expeditiously as possible to support work contemplated by this Agreement.

6. Subject to the availability of funds, return unused funds to the AHTD at the termination of this Agreement.

7. 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 state payment is sufficient to cover costs. The CE will credit AHTD for any amount determined to be an over-statement of CE expenses. Any funds advanced to the CE by the AHTD in excess of the actual costs incurred in a billing period shall apply toward the CE's expenses in the following billing period.

8. Develop internal procedures to implement this Agreement and modify as necessary (Attachment B).

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 in accordance with P.L. 105-178.

2. Under the authority of 23 U.S.C. 132, reimburse AHTD the total amount of Federal share payable for any project programmed (including advance payments) to support this Agreement upon obtaining notification of its execution.

II. Coordination

A. On a monthly basis and as needed, AHTD will establish a priority listing of projects to the CE which will guide the CE supplemental staff efforts in the priority review process.

B. Both AHTD and the CE 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. While the focus will be to review permit decisions for priority AHTD projects, CE supplemental staff may also be involved in other tasks which support agency coordination and which serve to expedite the implementation of the AHTD's highway construction program and compliance with the statutes and regulations for which the CE bears responsibility. Examples of other tasks which may be assigned include but are not limited to:

1. Attend pre-application meetings,

2. Participate in interagency scoping meetings and 404 merger meetings,

3. Comment on project alternatives, mitigation plans, review and comment on biological assessments, and

4. Develop and implement programs to increase efficiency of transportation project permit processing, such as wetland mitigation banks, in-lieu fee mitigation agreements, appropriate training of AHTD personnel in regulatory program requirements, and regional general permits.

III. Performance Objectives

A. The AHTD, CE and FHWA will review existing interagency coordination processes and formulate recommendations to improve procedures and increase efficiency within three (3) months of the time that the individual in the position to be funded by the Agreement reports for duty.

B. The CE agrees to meet the following goals:

1. Early coordination and prioritization of highway project permit applications.

2. Significant improvement of existing processing times for AHTD actions authorized by nationwide permits.

3. The CE will inform AHTD if project evaluation may exceed standard processing times due to issues such as required (Federal) Endangered Species Act coordination, controversial public interest factors, litigation, etc.

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

C. The AHTD agrees to meet the following goals:

1. Prepare and submit to the CE a completed permit application together with drawings as currently required by CE regulations set forth at 33 CFR 325, nationwide permits, and letters of permission (LOP), incorporated herein by reference.

2. Provide all information necessary for evaluation of permit applications.

3. Give full consideration to modifying the submitted permit application in accordance with the comments provided by the CE or other approving agencies in the course of permit review or terminate and withdraw the permit application.

IV. General Terms

A. Length of Agreement. This Agreement may be extended indefinitely as long as it is mutually beneficial to all parties and funding is available, unless terminated as provided in IV. C. below.

B. Modification and Extension. This Agreement may be modified or amended by the mutual agreement of the signatory parties.

C. Termination. This Agreement may be terminated by either the AHTD or the CE upon sixty (60) days written notice to the POC of the other party if the party requesting termination has demonstrated 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 AHTD or CE 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 one hundred and twenty (120) days from the date of the written notice, unless both parties agree to an alternate date.

D. Points of Contact/Project Managers

1. The title of the point of contact for each signatory agency is listed below:

a) AHTD:

Title:	Divison Head, Environmental
Address:	Arkansas State Highway & Transportation Department, P.O. Box 2261 Little Rock, AR 72203-2261
Tel:	(501) 569-2281
Fax:	(501) 569-2009

b) CE:

Title:	Regulatory Office Chief
Address:	Little Rock District, US Army Corps of Engineers P.O. Box 867 Little Rock, AR 72203-0867
Tel:	(501) 324-5296
Fax:	(501)324-6013

c) FHWA:

Title:	Environmental Specialist
Address:	Arkansas Division, Federal Highway Administration 700 West Capitol Ave., Room 3130 Little Rock, AR 72201-3298
Tel:	(501) 324-6430
Fax:	(501) 324-6423

E. During the performance of this Agreement, the parties agree to abide by the terms of Executive Order 11246 on non-discrimination 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.

F. No member of or delegate to Congress, or appointed transportation official or commissioners, shall be admitted to any share or part of the funds of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

G. All contracts to be developed and awarded pursuant to this Agreement, including all designs, plans, specifications, estimates, construction, utility relocation work, right-of-way acquisition procedures, acceptance of work and procedures in general, shall at all times conform to the applicable Federal and state laws, rules, regulations, orders and approvals, including procedures and requirements relating to labor standards, equal employment opportunity non-discrimination, compliance with the American with Disabilities Act, anti-solicitation, information, auditing and reporting requirements.

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 the CE to support priority review of AHTD 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

Sandra L. Otto
Division Administrator
Federal Highway Administration

Date 8/16/06

Dan Flowers
Director
Arkansas State Highway and Transportation Department

Date 8-14-06

Wally Z. Walters
Colonel, US Army
Commander, Little Rock District
US Army Corps of Engineers

Date 31 Jul 06

Charles O. Smithers III
Colonel, US Army
Commander, Memphis District
US Army Corps of Engineers

Date 28Aug06

LTC, EN

for Anthony C. Vesay
Colonel, US Army
Commander, Vicksburg District
US Army Corps of Engineers

Date 5 Sep 06

Jeffrey J. Dorko
Brigadier General, US Army
Commander, Southwestern Division
US Army Corps of Engineers

Date 15 Sep 06

Robert Crear
Brigadier General, US Army
Commander, Mississippi Valley Division
US Army Corps of Engineers

Date 8 Sept 06

ATTACHMENT A

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, 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.

ATTACHMENT B

Interdistrict Procedures to Implement the "Cooperative Agreement Between the United States Army Corps of Engineers (CE), Federal Highway Administration (FHWA) and the Arkansas State Highway and Transportation Department (AHTD) Relative to Interagency Funding for the Department of the Army Permit Process On Federal Aid Highway Projects in Arkansas" (Agreement)

1. Purpose. The Agreement provides a means for CE's Little Rock District to handle Section 10/Section 404 permitting of applications by FHWA/AHTD within the boundaries of the CE Memphis and Vicksburg Districts. The purpose of this attachment is to outline the procedures that the three CE districts will follow in implementing the Agreement to ensure maximum consistency within and among districts. For purposes of the Agreement, the home district is the CE district within which an action occurs.

2. Points of Contact. Each district will designate a primary point of contact (POC) to implement the provisions of the Agreement.

A. The Little Rock District POC will be the person selected to fill the position funded under the Agreement. This POC's duties will include keeping the other two districts adequately informed of work to be permitted within their boundaries. The Little Rock District POC will meet with representatives of the other two districts and develop methods of interdistrict coordination prior to permitting any work within their boundaries. These methods will include addressing impacts of proposed highway projects on Corps facilities and operations in the home district. Also, this POC will, where pertinent, invite the other two district POCs to all meetings and conferences called for in the Agreement.

B. The Memphis and Vicksburg District POCs will be individuals familiar with the Agreement and the CE's Regulatory Program. They will be the first persons contacted by the Little Rock District POC on matters pertaining to the Agreement within their district boundaries.

3. Responsibilities.

A. Permit Review. Little Rock District will handle all aspects of permit review and decision making on permit applications from FHWA/AHTD, to include signature authority for the entire State of Arkansas, unless other arrangements are made on a case-by-case basis (See 3.B. below). Appropriate coordination will be made with Memphis and Vicksburg Districts prior to Little Rock District making a decision on applications that fall within their respective boundaries.

B. Interstate 69. Unless an arrangement is made on a case-by-case basis, the CE district within which the work occurs will handle the Section 10/Section 404 permitting of activities associated with the proposed Interstate 69 in Arkansas.

C. Compliance/Enforcement. The Little Rock District will be responsible for reviewing permits that it issues under the Agreement for compliance with permit conditions. Enforcement actions on unauthorized AHTD work (work performed without proper CE authorization) will be initiated by the Corps district within which the work occurs. The Little Rock District will handle any after-the-fact permit applications resulting from AHTD enforcement actions.

D. Mitigation Bank. Little Rock District will lead review teams for mitigation banks proposed by AHTD solely for its use. Memphis and Vicksburg Districts will be invited to each have a member on the review team and will be provided a copy of the annual reports for each bank. The lead CE district for other mitigation banks being utilized by AHTD will typically be the district in which the proposed bank is located. The CE district lead for existing mitigation banks will remain in the home district.

E. Administrative Appeals. Little Rock District will support any of its jurisdictional determinations and permit decisions associated with AHTD actions that are administratively appealed under the CE appeal process. Depending on within which of the CE Division's boundaries the action being appealed is located, appeals will be submitted to either the Mississippi Valley or Southwestern Division.

F. Section 404(q) Elevations. Little Rock District will handle all Section 404(q) case specific issues/elevations for projects on which it makes permit decisions under the Agreement.

G. RAMS/ORM Interface. To insure each district has the ability to effectively implement and monitor the Agreement, appropriate access will be allowed between the three CE district's RAMS/ORM databases and geographic information systems. This will not include the ability for any district to change the data of another district. The home CE district will report permit decisions on its database.