

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 THE NEBRASKA TRANSPORTATION PROGRAM

WHEREAS, 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.

WHEREAS, this Agreement sets forth the responsibilities of the parties relative to priority review of the Nebraska transportation program, 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. This Agreement is valid for six (6) years ending September 30, 2020.

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 Federal aid transportation-related project delivery; and

WHEREAS, because of the Federal-aid Program described under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Build Nebraska Act (LB 84), FHWA and NDOR has a substantial number of transportation projects that the 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 Nebraska Transportation Program includes State funded and federal-aid state and local projects and studies (Nebraska Transportation Projects); and

WHEREAS, NDOR and the FHWA desires that the USACE provide an expedited review on State funded and federal-aid state and local projects and studies.

WHEREAS, to fulfill the need to provide an expedited review, the parties have determined that it would be mutually beneficial to supplement USACE staffing above existing levels; and

WHEREAS, the parties have determined that USACE Project Managers (Supplemental Staff) dedicated to the Nebraska Transportation program would provide priority review of Nebraska Transportation Projects and will reduce the customary time for reviews that fall within the statutory responsibility of USACE; and

WHEREAS, NDOR and FHWA agree to fund Supplemental Staff dedicated to work on the projects described above; 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 would request reimbursement from FHWA for federal-aid eligible activities related to the expedited review of federal aid projects; and

WHEREAS, NDOR will reimburse USACE for non-federal-aid eligible activities allowed under this agreement; and

WHEREAS, NDOR and USACE have verified that NDOR has sufficient work associated with the processing of Department of the Army permits to fully employ two full-time employees through the first two year budget cycle of this agreement.

WHEREAS, the USACE will continue to use other staff to provide project review and coordination on Nebraska Federal-aid and State-funded NDOR projects that exceeds the workload of the Supplemental Staffing. Work done on transportation projects by other USACE staff, will be weighed against other duties and priorities and completed in order of priority as determined by USACE supervisors; and

NOW THEREFORE, the signatories agree as follows:

I. NDOR Responsibilities

A. RESOURCES

1. Program a Federal-aid and State-funded project and provide advance State payment to USACE for the costs to support Supplemental Staff (See Attachment A.) contemplated by this Agreement. USACE will submit two-year budgets to NDOR and FHWA, within sixty (60) days prior to expiration of current budget, for their approval. The approved 2015 and 2016 budget is attached as Attachment B and incorporated herein by this reference. Two year budgets submitted by USACE will be adjusted every two years to cover appropriate salary step-increases, salary awards, and salary cost of living allowance costs granted to federal government employees at

the rate equivalent to the appropriate federal white-collar pay General Schedule (GS) and administrative cost adjustments. Costs include the following:

- Salary to cover two supplemental permanent, full-time USACE Dedicated transportation Project Managers for the length of this Agreement (see Attachment B)
 - General and administrative overhead costs at 246 percent per year for the length of this Agreement as charged by the USACE's (see Attachment B)
 - In-State travel, lodging, and per-diem at federal government rates as needed to support this Agreement
 - Out-of-State Travel, lodging, and per-diem at federal government rates as needed to support this Agreement
 - NDOR approved training (including registration costs) and USACE required training
 - NDOR approved equipment
2. 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 this Agreement—up to a maximum of \$60,000. The addition or reduction of positions and subsequent funding may be evaluated under this Agreement if the workload warrants changes in USACE (Omaha District) personnel or other needed resources.

B. PAYMENTS

1. Upon receipt of a signed Agreement or supplement, transmit an advance payment equal to either 1) the total of two-year budget 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) or 2) the additional funds needed to support any budget modification within 30 days. Subsequent start date for two-year budget cycles will be 1 October, reflecting the Federal fiscal year. Funds will be transmitted electronically.
2. Beginning 1 October 2014, pay USACE (Omaha District) the two year budget amount for Federal Fiscal Year 2015 and 2016, and all Federal fiscal years thereafter, on an two-year cycle for all services set forth herein.
3. Once all parties sign this Agreement, NDOR will review and approve monthly USACE submittals of actual account of expenditures for the items as listed in (I)(A)1 above in support of work contemplated.
4. NDOR will review the USACE's monthly documentation of expenditures as submitted for completeness. If acceptable by NDOR, the NDOR Agreements Engineer will notify the USACE within twenty (20) working days.

5. If the NDOR disagrees with the USACE's monthly documentation of expenditures, a meeting to clarify the account of expenditures will be requested within twenty (20) working days. In the event of a disagreement over the account of expenditures, NDOR pledges to negotiate in good faith towards reconciliation of the disputed expenditures.
6. Reconcile and adjust project funding and/or advance payment to USACE at the time of Agreement extension, Supplement, or termination and, upon completion of this Agreement.
7. If notified by USACE (Omaha District) that additional funds are needed because actual costs exceed the amount of funds budgeted under this agreement, 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 the agreed terms. USACE shall notify NDOR before funds from any of the budget categories are exhausted or over spent. The NDOR shall get approval from the FHWA before authorizing additional federal funding.

C. COORDINATION

1. Schedule and hold meetings with USACE and FHWA to discuss projects, establish priorities and evaluate work performed under the Agreement.
 - Schedule pre-application meetings with the USACE as necessary to benefit project delivery. At a minimum, pre-application meetings will be held for projects that require an Individual Permits (IPs).
 - Schedule and hold monthly project scheduling meetings with USACE and FHWA to discuss project priorities.
 - As needed, schedule and hold meetings to provide information on Nebraska Transportation Projects, including corridor plans, location studies, transportation area wide studies, and other transportation planning studies in order to facilitate receipt of USACE concerns and comments in order to improve project planning.
2. Provide reasonable access to NDOR working level staff in an effort to minimize the need for formal meetings.
3. Acknowledge that said Supplemental Staff will be required to attend USACE staff meetings, USACE mandated training, be in compliance with Government Service (GS) requirements and that these and similar work related items are provided for and reimbursed under this Agreement.

D. TRAINING

1. Communicate and allow Supplemental Staff to attend NDOR internal and sponsored training on transportation planning, transportation plan reading, transportation project development process, project scheduling, transportation engineering, definition of

construction activities and impacts, transportation decision-making, NEPA merge process, and other training as needed to benefit the activities contemplated in this agreement.

E. PERFORMANCE

1. Provide project tracking tool(s) including:
 - a. QA/QC Checklist form will be provided for Pre-Construction Notification (PCN), Jurisdictional Determination (JD) and Individual Permit (submitted with PCN, JD, and IP applications and requests).
 - b. NDOR will develop, with concurrence from all parties, a QA/QC checklist for IP's and JD's.
 - c. Monthly Permit Unit Report produced by NDOR to estimate upcoming work load of PCN's, Jurisdictional Determination requests and upcoming pre-application field meetings and other coordination meetings.
 - d. Monthly pre-scheduling project reports to be discussed in preparation for NDOR's monthly scheduling meeting.

Note: NDOR will use the tracking tools to increase predictability and efficiency in our coordination with the USACE. Tracking tool(s) may be updated and improved throughout this agreement period. The data from these tracking systems will be shared and discussed in the monthly Pre-scheduling meetings.

II. USACE Responsibilities

A. RESOURCES

1. Supplement its existing Project Manager staff, which currently process (authorize) Nebraska Transportation program on a routine basis, by hiring two (2) full-time transportation Project Managers, (meeting the professional standards described in Attachment A), and use the funds provided under this agreement to pay the costs identified in (I)(A)1 above.
2. Fill any vacancies as expeditiously as possible to support work contemplated by this Agreement.
3. USACE will consider NDOR's 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 independent decisions related to section 404 of the Clean Water Act.
4. Promptly notify NDOR and the FHWA of the need for additional funds if USACE (Omaha District) forecasts its actual costs will exceed the amount of funds

authorized under this Agreement. As mentioned above, NDOR and the FHWA 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. USACE shall notify NDOR before funds from any budget category is exhausted or over spent. The NDOR shall get approval from the FHWA before authorizing additional funds.

5. Ensure that the supplemental staff funded by this Agreement is dedicated to only work on the submitted Nebraska Transportation Projects identified by the NDOR in accordance with the coordination procedures defined within or other activities as outlined in this Agreement.
6. Below are examples of tasks which all parties agree would be assigned and supported by USACE Supplemental staff (list is not all inclusive):
 - Collaborate to determine the initial range of alternatives to be evaluated and the information needed to compare these alternatives.
 - Provide assistance regarding alternatives and the screening of alternatives according to USACE regulations.
 - Provide assistance and comment on mitigation plans.
 - Participate in transportation project interagency scoping meetings and NEPA/Section 404 merge meetings.
 - Support process improvements to increase the efficiency of Nebraska Transportation project permitting.
 - Once a PCN is determined complete the USACE will notify the NDOR by email.

B. REIMBURSEMENTS

1. Ensure that the Supplemental Staff funded under this Agreement keeps daily time records, which identifies the number of hours spent working on each specific Nebraska Transportation Project. Time will be tracked to the nearest hour. In addition, USACE 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 by NDOR or FHWA. The USACE shall keep records substantiating hours and costs billed pursuant to this Agreement for a period of at least four (4) years after the final billing is submitted. These records shall be subject to audit by NDOR, FHWA, or other federal or state agencies as appropriate upon request.
2. Submit a monthly summary of: 1) a list of projects and activities, and 2) the number of hours spent working on these projects and activities, and summary of monthly expenditures with receipts to the NDOR Agreements Engineer. Information provided to NDOR regarding monthly expenditures needs to include those items included in (I)(A)(1) above.

3. Reconcile advance payment balances at the time of any Agreement extension, supplement, or termination and, upon completion of this Agreement.
4. In the event of disagreement over statements of expenditure, negotiate in good faith towards reconciliation of the disputed amount. Continue the review of transportation projects throughout negotiations as long as current advance NDOR payment is sufficient to cover costs. The Leadership Group consisting of management representatives from the USACE, NDOR, and FHWA will make the final determination regarding the dispute. USACE will credit NDOR for any amount determined to be an overstatement of USACE expenses.

C. COORDINATION

1. Ensure that the employees identified in Attachment A will attend NDOR and FHWA meetings or trainings, as requested, (unless a previously coordinated absence is arranged) including:
 - NDOR scheduled pre-application meetings.
 - NDOR scheduled monthly project coordination meetings.
 - NDOR scheduled quarterly resource inter-agency meeting.
2. Ensure that the employees identified in Attachment A will document USACE arranged meetings and decisions (when appropriate) and review meeting minutes and decisions and transmit them to NDOR and FHWA within 14 days of the meetings.
3. Ensure that the employees identified in Attachment A will review Nebraska Transportation Projects with a first in, first out prioritization while recognizing that periodically a high priority project will be communicated where expedited review and authorization needs to occur before other projects already at the USACE. High priority State projects will not affect the review schedule of Local Public Agency projects.
4. Schedule quarterly leadership meetings with NDOR and FHWA to evaluate work performed under this Agreement during the previous quarter. NDOR and USACE performance measures will be reviewed and evaluated quarterly to verify this Agreement is expediting permitting activities (e.g., timelines, responsiveness, and availability, attendance at training and meetings).
5. Provide updates to NDOR and FHWA staff regarding statutes, regulations and new guidance affecting transportation project delivery and the associated Clean Water Act permits.
6. Provide comments regarding corridor plans, transportation area wide studies and other transportation planning documents to facilitate the goals of environmental streamlining and stewardship.

7. Provide reasonable access to funded staff in an effort to minimize the need for formal meetings.

D. TRAINING

1. Provide the supplemental Project Manager Staff an opportunity to attend required USACE training and NDOR approved training as necessary to provide the transportation project review services described under this agreement.

E. PERFORMANCE

1. Monthly Project reporting

Provide a prepared Nebraska Transportation Status Report of submitted PCN's and PCN's recently approved and including PJD's and AJD's.

2. Monthly Activity Reporting

The USACE will provide a monthly report, due by the 15th of each month, detailing the project, time and activity worked on a daily basis and then summarized for the month. This reporting shall include an hourly breakdown of time expended and details on the following:

- Federal-aid projects, activities and hours.
- State funded projects, activities and hours.
- Annual leave hours
- NDOR training and USACE internal training activities and hours.
- Other internal USACE activities required for the position but not related to Nebraska Transportation project reviews.

3. Bi-Annual Reporting

The USACE will prepare a bi-annual report, due December 1 (for year ending September 30) and due June 1 (for bi-annual period ending March 31) for each year to document the following performance measures:

- a. The USACE will attend 80% of the meetings identified

- NDOR scheduled pre-application meetings.
- NDOR scheduled monthly project coordination meetings.
- NDOR scheduled quarterly resource inter-agency meeting.

- b. The USACE will have the following goal:

USACE will make it a goal to schedule and perform required field visits prior to end of the current growing season during which the NDOR requests a Preliminary Jurisdictional Determination (PJD) or Approved Jurisdictional Determination (AJD).

c. The USACE will meet or exceed the following performance measures and goals:

- Notice of complete (or incomplete) application within 25 days, 80% of the time.
- Return the approved PCN within 25 days of notice of complete application, 80% of the time.
- Forward AJD actions to the District for the AJD coordination process, within 40 days, (weather dependent) once the JD package is complete, 80% of the time. Notify NDOR when the AJD has been forwarded for coordination. Return AJD within 60 days. This is a goal to be reported.
- Return Preliminary Jurisdictional Determination (PJD) within 45 days, (weather dependent) once the JD package is complete, 80% of the time.
- Return the Individual Permit (IP) once the PCN is determined complete for public notice within 120 days, 80% of the time.
- Respond to questions concerning USACE policy and guidance within 21 calendar days. This is a goal to be reported.

III. FHWA Responsibilities

- A. Consider approval of programming a Federal-aid project to accomplish the work contemplated by this Agreement.
- B. Under the authority of 23 U.S.C. 139, reimburse NDOR monthly, the total amount of Federal share for federal-aid eligible activities to support this Agreement.
- C. Support the state and local transportation program by involvement and participation in the following meetings as time allows:
 - NDOR scheduled pre-application meetings.
 - NDOR scheduled monthly project coordination meetings.
 - NDOR scheduled quarterly resource inter-agency meeting.
 - USACE scheduled quarterly leadership meetings

FHWA will provide the NDOR and the USACE reasonable access to working level staff in an effort to minimize the need for formal meetings. 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 screen these alternatives. Participate in interagency scoping meetings and NEPA/Section 404 merger meetings.

Comment on project alternatives and mitigation plans.

IV. General Terms

- A. Length of Agreement. This Agreement expires on September 30, 2020, unless extended or terminated as provided within.

- B. Supplement, Modification and Extension. This Agreement may be modified, amended, or extended by the mutual agreement of the signatory parties. This agreement will be supplemented on two year cycles to update the budget and other provisions as appropriate.
- 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. The NDOR or USACE may terminate this Agreement for any reason including 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 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. The 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: Michael Owen, P.E.
Title: Planning and Project Development Engineer
Nebraska Department of Roads
Address: 1500 Highway 2
Lincoln, NE 68502
Tel: (402) 479-4795

Name: Dawn Knott, P.E.
Title: Agreements Engineer
Nebraska Department of Roads
Address: 1500 Highway 2
Lincoln, NE 68502
Tel: (402) 479-4414

2. USACE:

Name: John Moeschen
Title: Nebraska State Program Manager
Nebraska Regulatory Office, US Army Corps of Engineers
Address: Nebraska Regulatory Office
8901 South 154th Street, Ste 1
Omaha, NE 68138-3621
Tel: (402) 896-0896

3. FHWA:

Name: Melissa Maiefski
Title: Program Delivery Team Lead
Federal Highway Administration
Nebraska Division
Address: 100 Centennial Mall North
Lincoln, NE 68508
Tel: (402) 742-8473

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



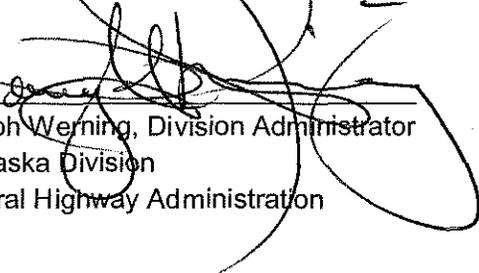
Randall D. Peters, Director-State Engineer
Nebraska Department of Roads

Date 12/9/2014



Joel R. Cross, Colonel
Omaha District Commander
U.S. Army Corps of Engineers

Date 12/17/14



Joseph Werning, Division Administrator
Nebraska Division
Federal Highway Administration

Date 12-5-2014

ATTACHMENT A

Professional Standards for Supplemental Staff

Two (2) specialists 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. These employees will be qualified to be paid under the Federal White Collar Pay Schedule at the full performance level of General Schedule GS 11/12.

ATTACHMENT B

Cost Estimate

Labor (approx. \$729,531.72 (rounded up), for the period FY2015/FY2016 assuming two GS-12/3 project managers.

Fully burdened rate/salary for FY 2015/2016 (based on 8348 hours for 2 PMs and a total labor multiplier of 2.46: includes holidays and paid benefits in 2015/2016 for both PMs)	\$729,531.72
+ 1.00% award +/- (if applicable) for FY 2015/2016	7,295.32
Overtime for FY 2015/2016	3,000.00
Total Estimated Labor	<u>\$739,827.04</u>
Out-of-state Training & Travel (assuming one required Regulatory out-of-state course per year) and Travel for out-of-state training	12,000.00
In-state Travel (for visiting project sites and project meetings, vehicle to be leased by USACE and all costs to be reimburse by NDOR*)	8,000.00
Computer/supplies/materials (to be paid by Corps)	.00
ESTIMATED TOTAL COST TO SUPPORT TWO FTEs**:	<u>\$759,827.04</u>

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

** FTE = Full-time equivalent position, 4174 hours for each PM for 2 years.

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