

AGREEMENT
between
**THE UNITED STATES ARMY CORPS OF ENGINEERS,
GALVESTON DISTRICT**
and
**THE STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION**
for the
PROVISION OF FUNDING TO EXPEDITE REVIEWS OF TRANSPORTATION PROJECTS

THIS AGREEMENT is entered into by and between the Texas Department of Transportation (hereinafter "TxDOT"), a public agency of the State of Texas, and the United States Army Corps of Engineers, Galveston District (hereinafter "Corps"), collectively referred to as the "Parties".

WHEREAS, Section 214 of the Water Resources Development Act ("WRDA") of 2000, as amended and codified at 33 U.S.C. Section 2352 ("Section 214") allows the Secretary of the Army ("Secretary") to accept and expend funds contributed by a non-federal 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 (DA), as long as the acceptance and use of funds will not substantively or procedurally impact impartial decision-making with respect to permits, and imposes certain limitations on and requirements applicable to the use of such authority;

WHEREAS, the Secretary has delegated the responsibility of carrying out Section 214 to the United States Army Corps of Engineers Chief of Engineers and their delegated representatives;

WHEREAS, the United States Army Corps of Engineers Chief of Engineers, by memorandum dated April 18, 2018, has authorized the United States Army Corps of Engineers District and Division Engineers to accept and expend funds contributed by non-federal public entities under Section 214, subject to certain limitations including the publishing of public notice;

WHEREAS, the authority to accept and expend funds under Section 214, increases the flexibility for non-federal public entities to contribute funds to expedite the evaluation and processing of permit applications;

WHEREAS, the Corps shall ensure that expediting the evaluation of a permit application through the use of funds accepted and expended under Section 214 does not adversely affect the timeline for evaluation of permit applications of other entities that have not contributed funds under this section;

WHEREAS, it is acknowledged and understood that the Corps' review of DA permit applications will be completely impartial and in accordance with all applicable federal laws and regulations and will be performed using the same procedures for decisions that would otherwise be required for the evaluation of permit applications for similar projects or activities not carried out using funds authorized under this section;

WHEREAS, TxDOT desires expedited reviews of its requests related to transportation projects, where it functions as a state or federal agency, which the Corps has legal responsibility to review pursuant to Section 10 of the Rivers and Harbors Act of 1899, and/or Section 404 of the Clean Water Act; and/or Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972;

WHEREAS, the Corps issued an initial Public Notice dated December 10, 2020 advising the public of its intent to accept and expend funds contributed by TxDOT for the expedited review and processing of permit applications and for other requests such as pre-application meetings, jurisdictional determinations, training, coordination meetings, and associated travel;

WHEREAS, TxDOT is authorized by Section 222.005 of the Texas Transportation Code to enter into this Agreement to provide funds to a federal agency to expedite the agency's performance of its duties related to the environmental review of TxDOT's transportation projects, and imposes certain requirements on such an agreement;

WHEREAS, the Corps currently reviews aspects of certain TxDOT projects in the course of processing permit applications and related materials under Section 404 of the Clean Water Act (33 U.S.C. Section 1344), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403), and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413);

WHEREAS, the Parties have determined that it would be mutually beneficial for TxDOT to provide to the Corps advance funding to achieve expedited review of permit applications for TxDOT transportation projects;

WHEREAS, the Corps is willing to provide expedited review of permit applications for TxDOT transportation projects following receipt of funding from TxDOT as more fully described in this Agreement;

WHEREAS, the Parties estimate that an amount not to exceed \$2,000,000, would be sufficient to fund expedited reviews of TxDOT transportation project applications for DA permits and other activities required under this Agreement for a period of 4 years; and

WHEREAS, the Corps District Engineers have determined that acceptance and expenditure of funds received from TxDOT under the terms of this Agreement will comply with Section 214, as amended, and is not contrary to the general public interest.

NOW, THEREFORE, for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by TxDOT to expedite review of DA permit applications and other actions for TxDOT transportation projects under the Corps' jurisdiction, TxDOT and the Corps agree as follows:

ARTICLE I. PERSONNEL

1.1 TxDOT Personnel

- 1.1.1 TxDOT will designate an employee as the TxDOT Point of Contact ("TxDOT POC") for implementation of this Agreement. The TxDOT POC will work directly with the Corps Point of Contact ("Corps POC") on project reviews, receipt and tracking of expenditure of funds, report tracking, non-project-specific programmatic efforts designed to expedite reviews for project applications and other actions, prioritizing project submittals when needed, and overall management and interagency coordination.
- 1.1.2 The TxDOT POC may designate an alternate to perform any required functions in their absence. The Corps POC will be notified of the alternate TxDOT POC, if one is designated.
- 1.1.3 The TxDOT POC and any other pertinent TxDOT personnel shall meet with the Corps POC on an annual basis, at a minimum, to discuss implementation of this Agreement.

1.2 Corps Personnel

- 1.2.1 The Corps will use funds provided under this Agreement for salary and benefits for one (1) GS 12 level highly qualified, transportation-proficient, Regulatory Project Manager to serve as the Corps POC. The Corps POC shall be, at all times, a full-time equivalent federal employee (FTE) of the Corps, fully dedicated to working on TxDOT actions subject to the Agreement.
- 1.2.2 Corps POC: The Corps POC will work directly with the TxDOT POC to implement the requirements of the Agreement. This includes overall responsibility, management, and implementation of the Corps' obligations under the Agreement, coordinating and tracking all project submittals including prioritized actions, as well as receipt and tracking of TxDOT WRDA 214 funds. The Corps POC will undertake the regulatory review of TxDOT transportation projects, as the primary Regulatory Reviewer, working to ensure timely and consistent reviews. The Corp POC will direct and undertake non-project specific programmatic initiatives (as noted in Attachment F), and provide deliverables designed to expedite reviews for project applications and other actions, as needed. The Corps POC will be responsible for District reporting (Monthly Reports, Quarterly Reports, Annual Reports, and/or other Programmatic Reporting) due to TxDOT, as established under Section 214.
- 1.2.3 Regulatory Reviewers: Additional Regulatory Reviewers may be tasked with working on TxDOT Section 214 activities, either as a second full time FTE or on an ad hoc basis, if such assignment is determined by the Parties to be advantageous to workload management, and if funding is available to support additional labor hours. The additional Regulatory Reviewers will be responsible for review of TxDOT's transportation projects and project status updates to the Corps POC for use in relevant reporting to TxDOT. The Corps POC will coordinate with ad hoc Regulatory Reviewer(s) as needed to ensure timely and consistent reviews.

- 1.2.4 Additional fully funded FTEs or ad hoc reviewers may be added upon mutual written agreement by the Parties, if workload warrants such an addition. Funding would be adjusted as needed up to the allowable maximum of \$2,000,000 for the 4-year period of the Agreement.
- 1.2.5 The distribution of workload will be determined by the Corps, for the fully funded FTE, any additional fully funded FTEs, and/or ad hoc personnel.
- 1.2.6 The Corps POC and ad hoc Regulatory Reviewer(s) will meet the professional standards as described in **Attachment A**.
- 1.2.7 The Corps POC may designate an alternate to perform any required functions in their absence. The TxDOT POC will be notified of the alternate Corps POC, if one is designated.
- 1.2.8 The Corps POC shall regularly coordinate with the Corps Regulatory Reviewer(s) in support of the reporting requirements established in this Agreement to track and ensure that expedited reviews are occurring in compliance with this Agreement.
- 1.2.9 The Corps POC and any other appropriate Corps personnel shall meet with the TXDOT POC on an annual basis, at a minimum. The Corps POC and the TXDOT POC may also meet at such times as jointly determined to be needed, typically on a monthly basis, to discuss the status of pending projects and implementation of this Agreement.

ARTICLE II. FUNDING

- 2.1 TXDOT will, subject to the billing provisions of Article II, item 2.2, below, provide funding to the Corps, not to exceed a total sum of \$2,000,000 for services contemplated under this Agreement for the contract term of four (4) years. Upon execution of this Agreement, TxDOT will pay the Corps in incremental sums, per the payment schedule included as **Attachment H**. The funding schedule will fully fund one (1) Corps POC for a period of four (4) years. Interim payments may be made as needed, in addition to scheduled payments. The amount of interim payments will be determined by mutual agreement of the Parties.
- 2.2 The funding provided by TxDOT 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 TxDOT a Quarterly Report of the amounts billed against TxDOT's funding deposit, as described in **Attachment C**.
- 2.3 The Regulatory Reviewer(s) and the Corps POC will charge against these accounts FOR THEIR FULL LABOR AND TIME to expedite review of permit applications and programmatic initiatives for TxDOT transportation projects.

- 2.4 Funds contributed by TxDOT hereunder will be expended for permit evaluation by one (1) Regulatory Corps POC for performing expedited processing activities for TxDOT transportation projects, as well as handling development of programmatic initiatives, templates, training materials, training sessions, advanced identification of permittee responsible mitigation areas and/or mitigation banks, and for management of this Section 214 Agreement. However, this Agreement does not preclude use of the funding to provide for necessary time, travel, and lodging costs of Corps staff and other expertise necessary to address TxDOT programmatic and project-related issues that may arise, such as cultural resources issues. Such activities will include, but not be limited to, the following: pre-application coordination, application review meetings, jurisdictional determinations, jurisdictional delineation verifications, functional or condition assessment verification, consultant meetings, agency meetings, public scoping meetings, and meetings with TxDOT regarding its projects. TxDOT Section 214 project funds will not be expended for review of Regulatory Reviewer's work by supervisors or by other persons or elements of the Corps District in the decision-making chain of command. Enforcement or compliance activities will not be paid for from the funds contributed hereunder, nor will such funds be used for paying the costs of public hearings and distribution of public notices.
- 2.5 The Corps, in expending TxDOT-provided funds under this Agreement, will comply with all relevant laws, regulations, guidance, and policies for expenditure of WRDA 214 funds.
- 2.6 In the event the Corps does not utilize the entire amount paid by TxDOT in a year, the unused funds shall carry over for use in the following year or be returned if the Agreement is terminated pursuant to the provisions of Article VII.
- 2.7 No work subject to this Agreement will be completed by the Corps until funds are received by the Corps, (i.e., no funding in arrears is allowed).
- 2.8 Section 214 funds may not be used to continue activities for TxDOT should a lapse in appropriations result in a shutdown furlough for the Corps.
- 2.9 TxDOT shall not use funds provided by another federal agency (or any non-federal contribution made to match funds provided by another federal agency) to meet any of its obligations under this Agreement, unless TxDOT submits to the Corps a written confirmation from the federal agency that the use of the funds to expedite the permit application process is acceptable.

ARTICLE III. EXPEDITED PERMIT REVIEWS

- 3.1 TxDOT represents and agrees that all permit applications and permissions requested pursuant to this Agreement will be submitted to the Corps in the name of TxDOT and that the proponent of any permit and permission requests is TxDOT.
- 3.2 The Corps shall, to the maximum extent practicable, complete review of TxDOT permit applications, requests for letters of permission, regional general permits, nationwide permit pre-construction notifications, jurisdictional determinations, and other submittals in less time than is customary, as determined by the Corps, for the completion of such reviews. See **Attachment E** Performance Measures section for specifics relative to reductions in review times.

- 3.3 The Corps shall prioritize review of actions as needed to complete reviews in less time than is customary and/or to accommodate TxDOT's requested decision dates. In the event that reviewing multiple actions in less time than is customary, and/or meeting the requested decision dates of multiple projects, results in a bottleneck for review of TxDOT transportation projects, the Corps will request from TxDOT a priority order of those transportation projects that are involved in the bottleneck. The priority order will be used to manage Corps personnel workload to resolve the bottleneck.
- 3.4 To the extent it will not interfere with the Corps' ability to comply with the performance measures set forth in **Attachment E**, the Corps shall:
- 3.4.1 Provide TxDOT with any requested project development guidance on permitting requirements regarding what is needed for permit review including stream and wetland assessments and delineations, scopes of analyses, jurisdictional determinations, and mitigation plans.
 - 3.4.2 Respond promptly to any urgent matters identified by TxDOT.
 - 3.4.3 Attend all meetings, trainings, conferences, and field visits that the Parties deem appropriate.
 - 3.4.4 Work collaboratively with TxDOT to develop programmatic initiatives, and approaches with the intent to streamline permit reviews, such as the development of regional general permits, where applicable. Example programmatic initiatives are included in **Attachment F**.
 - 3.4.5 Provide training on subject matter requested by TxDOT, for TxDOT and TxDOT contractor personnel for the purpose of developing consistent understanding of Corps policies, regulations, and procedures, as well as permit application requirements.

ARTICLE IV. IMPARTIAL DECISION-MAKING

- 4.1 The Corps will use the following procedures to ensure that TxDOT's provision of funds will not impact impartial Corps decision-making with respect to TxDOT transportation projects:
- 4.1.1 All final decisions on projects for which the Corps uses TxDOT-provided Section 214 funding must be reviewed and approved in writing by at least one level above the normal decision-maker. For purposes of this Agreement, the decision-maker is the person that has been delegated signature authority. For example, if the decision-maker would be the Corps Team Leader, then the reviewer would be the Branch Chief. If the decision maker is the District Engineer (District Commander), the final decision must be reviewed and approved in writing by the Division Engineer (Division Commander). It is understood and agreed by the Parties that use of the funds accepted by the Corps pursuant to this Agreement will not impact government decision-making with respect to TxDOT transportation projects and applications.

- 4.1.2 All final decisions on projects for which the Corps uses TxDOT-provided Section 214 funding must be made available on the respective Corps District webpage. The information will be posted in a clearly identifiable area indicating that the Corps used TxDOT-provided funding for the review of the projects.
- 4.1.3 The Corps will not eliminate any procedures or decision criteria that would otherwise be required for the type of project and permit application under consideration.
- 4.1.4 The Corps must comply with all applicable laws and regulations.
- 4.1.5 TxDOT-provided Section 214 funds will only be expended to expedite the final decision or other submittal and programmatic or other actions according to the terms and conditions of this Agreement. Funds will not be expended for the required review and approval of the decision-maker's decision.

ARTICLE V. REPORTING

- 5.1 **Monthly Reports:** The Corps will track submission and status of all actions assigned a permit number including but not limited to standard permit applications, requests for letters of permission, nationwide permit pre-construction notifications, and other submittals, including jurisdictional determination requests, and compile such information into a Monthly Report for TxDOT. The Monthly Report will be submitted in a format that has been agreed upon by both the Corps and TxDOT. Information that may be included in the Monthly Report is listed in **Attachment B**. The report format and content may be changed by written agreement of the Parties.
- 5.2 **Quarterly Reports:** The Corps will issue a Quarterly Report of all expenditures charged to the TxDOT 214 account for each quarter, including all travel expenditures and travel purpose summaries. Information that may be included in the Quarterly Report is listed in **Attachment C**. The report format and content may be changed by written agreement of the Parties. Quarterly Reports are due no later than thirty (30) days after the end of each federal Fiscal Year (FY) calendar quarter, according to the following schedule:
 - Quarter 1 (Oct 1 – Dec 31) – Report due Jan 30
 - Quarter 2 (Jan 1 -Mar 31) – Report due Apr 30
 - Quarter 3 (Apr 1 – Jun 30) – Report due Jul 30
 - Quarter 4 (July 1 – Sep 30) – Report due Oct 30The period of reporting can be revised by written agreement of the Parties, without the need to formally amend this Agreement.
- 5.3 **Quality Assurance/Quality Control (QA/QC) Reports:** The Corps will review TxDOT's application submissions and provide feedback to TxDOT on a quarterly basis, using the tracking forms noted in **Attachment G**. The Corps and TxDOT POCs will review the QA/QC performance tracking forms, to identify trends and opportunities for improvement.

- 5.4 **Annual Report:** The Corps will provide TxDOT an annual report with accounting details for the prior Corps FY. This report will be provided by November 30 of each year, following the end of the Corps FY, to the extent practicable by Corps, based on data availability and workload. The format for the Annual Report is listed in **Attachment D**.
- 5.5 **Satisfaction Letter:** TxDOT will issue an annual satisfaction letter to the Corps, discussing TxDOT's assessment of the success of this Agreement, based on the data provided to date for the FY. The letter will be submitted to the Corps by October 15 of each year that the Agreement remains in place, for inclusion in the Corps annual report to Headquarters.

ARTICLE VI. COMMITMENTS & PERFORMANCE MEASURES

- 6.1 This Article VI applies to all TxDOT submittals made after TxDOT's initial payment of funds under Article II. This Article also applies to all actions received, processed, evaluated, and finalized, or terminated by the Corps.
- 6.2 TxDOT will for all actions, excluding programmatic initiatives:
- 6.2.1 Utilize the respective Districts' electronic submittal process, when able.
 - 6.2.2 Engage in pre-application coordination with the Corps when possible, at least thirty (30) days prior to submission of any permit application.
 - 6.2.3 Prepare and submit to the Corps a complete permit application together with drawings as currently required by Corps regulations:
 - Individual Permits (Standard Permits, Letters of Permission, and modifications or extensions of time) – refer to 33 CFR 325.
 - Nationwide Permit Pre-Construction Notifications (PCNs) – refer to 33 CFR 330, and the Regional and General Conditions for Nationwide Permits in the Galveston District.
 - Regional General Permits (RGPs) - refer to 33 CFR 330, and the PCN requirements specified in each potentially applicable RGP.
 - 6.2.4 All permit applications will clearly identify whether TxDOT is functioning as a federal agency on the particular project.
 - 6.2.5 Each TxDOT District will conduct a QA/QC review of all permit applications and other requests and actions, as well as data and information associated with required reporting aspects as established in this Agreement, prior to submitting them to the Corps for review or evaluation. TxDOT will include a QA/QC cover sheet with every submission, as formatted in **Attachment G**. The QA/QC form may be changed as needed, by written agreement of the Parties.

- 6.2.6 Provide all information necessary when requests for additional information are received from the Corps on project specific actions, including consideration of using recommended templates, as well as project-related activities, in a complete packet of additional information, within thirty (30) days of receipt of the request for additional information. If TxDOT is not able to provide the Corps with the complete packet of additional information within thirty (30) days, the Corps will withdraw the permit application or request. Coordination on the application or submittal will continue in a pre-application capacity to obtain the needed information. Once the Corps receives the complete information, the application or request will be reopened, and review will continue where it was left off.
 - 6.2.7 Give full consideration to modifying submitted permit applications 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.
 - 6.2.8 Provide prioritization of projects to the Corps, as needed, if a bottleneck should occur. Coordination will occur to determine if requested decision dates will impact the Corps' ability to meet all submittals under review at a given time and effect meeting performance measures.
- 6.3 **Performance measures** relative to the Corps associated with meeting the requirements of this Agreement are included as **Attachment E**. The Corps will adhere to the review timelines noted in **Attachment E**, to the extent practicable.
- 6.3.1 If additional information is needed, the Corps will identify the outstanding information to meet federal completeness in its notification to TxDOT. If TxDOT is not able to provide the Corps with the complete packet of additional information, within thirty (30) days of receipt of the request for additional information, the Corps will withdraw the permit application or request, and continue to coordinate with the TxDOT in a pre-application capacity to obtain the needed information. Once the Corps receives the complete information, the application or request will be reopened, and review will continue where it left off.
 - 6.3.2 The Corps will provide TxDOT with monthly updates regarding the status of the permit reviews via direct communication between project managers and POCs.
 - 6.3.3 With respect to any project, if TxDOT requests completion sooner than any of the proposed timelines specified in this Article and **Attachment E**, the Corps will attempt to prioritize the action to meet the requested decision date. However, the Corps cannot guarantee a decision by a requested date.
- 6.4 The Parties agree to meet on a monthly, quarterly, and annual basis, based on the State of Texas FY calendar, to discuss workload and performance. The Parties may agree to adjust the scheduling of meetings as needed. The expectations and performance of the Parties to this Agreement shall be formally reviewed at quarterly meetings. In addition to quarterly meetings, meetings may be held on an as-needed basis to facilitate continuous improvement. The Parties shall discuss whether performance is as expected and, if not, what improvements will be made moving forward. Any additional continuous improvement topics may be discussed throughout the year, as needed as well.

ARTICLE VII. TERM AND TERMINATION

- 7.1 The terms and conditions of the Agreement shall become effective upon the date the Agreement is signed by the Corps District Engineer. The terms and conditions of this Agreement shall be reviewed at an annual meeting to be formally held by the Parties at a frequency of no less than once per year, coinciding with the beginning of the State of Texas FY. Modifications to this Agreement may be made per Sections 10.1 and 10.2 of this Agreement.
- 7.2 TxDOT has the legal authority to enter into this Agreement, and the institutional, managerial, and financial capability (including sufficient funding per the agreed upon structure noted in Article II.) to ensure proper planning, management, and completion of the Agreement. TxDOT acknowledges that the rights, duties, and obligations described in this Agreement cannot be binding until all statutory and regulatory requirements have been met.
- 7.3 This Agreement shall remain in force for a period of four (4) years, from the execution date of the Corps District Engineer, or until one of the Parties chooses to terminate its participation. This Agreement may be terminated by either TxDOT or the Corps.
- 7.3.1 Termination: If either TxDOT or the Corps wishes to terminate this Agreement for any reason, the party wishing to terminate shall provide written notice to the other party's POC, indicating the intent to terminate the Agreement, and the reason for termination. The notice shall be provided to the other party one hundred eighty (180) days in advance of the termination date, unless the Parties agree to an alternate date.
- 7.3.2 Any application being processed, reviewed, or evaluated on or after the effective date of the termination will no longer be required to meet the expedited processing timelines set forth in this Agreement.
- 7.3.3 In the event of termination, regardless of the reason, the Corps will return any unused funds within ninety (90) days after the date of termination. Unused funds shall be returned to TxDOT by either check or electronic funds transfer. TxDOT shall remain responsible for all costs properly incurred by the Corps under this Agreement prior to the effective date of termination and for the costs of closing out the Agreement.

ARTICLE VIII. DISPUTE RESOLUTION

- 8.1 The Parties agree that, in the event of a dispute between the Parties regarding the implementation of this Agreement, TxDOT and the Corps shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication or other forms of non-binding alternative dispute resolution acceptable to the Parties. A dispute relating to a final decision by the Corps on a TxDOT permit application or other submittal shall not be subject to resolution by such informal means.

ARTICLE IX. AUDITS

- 9.1 The Corps may conduct or arrange for the conduct of audits of the TXDOT WRDA 214 accounts. Corps audits shall be conducted in accordance with applicable Corps and federal cost principles and regulations. To the extent permitted under applicable Federal laws and regulations, the Corps may allow TxDOT to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Corps, or at the request of TxDOT provide TxDOT such information necessary to enable an audit of activities under this Agreement. The costs of audits requested by TxDOT shall be paid solely by the TxDOT, separate from WRDA 214 funds. The Corps will maintain records, documents, or other evidence pertaining to costs and expenses associated with TXDOT WRDA 214 account for a minimum of seven years after the close of a FY.


ARTICLE X. MISCELLANEOUS

- 10.1 Substantive changes to this Agreement may be accomplished by written amendment signed by the Galveston District Engineer and the Governor. Certain non-substantive minor modifications may be made by letter agreement. Substantive and non-substantive changes are described in Section 10.2.
- 10.2 Substantive modifications to the Agreement include changes that affect the term, specific roles and responsibilities, conditions of performance, reporting, or funding requirements. Non-substantive modifications include changes to report formats, content, timing, communications improvements, or other administrative provision that are designed to improve the execution of the tasks involved. Such non-substantive changes may be approved by letter expressing mutual agreement to the minor changes if executed by the Galveston District Regulatory Division Chief and the TxDOT Environmental Affairs Division Director, with the exception of the Monthly and Quarterly Reports, and the QA/QC Cover Sheets which can be modified by written agreement between the Corps POC and the TxDOT POC.
- 10.3 Attachments A-H are made part of this Agreement. Report formats and content noted in the attachments may be changed by written agreement of the Parties as referenced in 10.1 and 10.2.
- 10.4 If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in full force and unaffected to the fullest extent permitted by law.
- 10.5 This Agreement is the entire agreement between the Parties concerning the provision of funding to expedite permitting-related reviews of projects, and supersedes all prior written or verbal statements, understandings, commitments, or promises.
- 10.6 This Agreement is entered into for the sole benefit of TxDOT and the Corps. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies, or claims to any other entity, including, without limitation, the public in general.
- 10.7 Nothing in this Agreement shall be construed as waiving TxDOT or Corps sovereign immunity.

- 10.8 This Agreement may be executed in multiple counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement.
- 10.9 This Agreement and all documents and action pursuant to it shall be governed by the applicable statutes, regulations, directives, policies, and procedures of the United States.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Corps District Engineer.

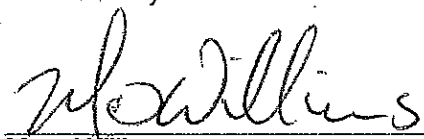
**U.S. DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
GALVESTON DISTRICT**



Timothy R. Vail
Colonel, Corps of Engineers
District Engineer

Date: **OCT 22 2021**

**THE STATE OF TEXAS
TEXAS DEPARTMENT OF
TRANSPORTATION**

Executed by:


Marc Williams
Executive Director

Date: **8/10/21**

Attachment A -- Professional Standards for Corps FTEs

Professional Standards for Corps POC:

- Degree in engineering, biology, natural resources, or other related environmental science.
- 4+ years of Regulatory Permit Review experience or equivalent.
- Working knowledge of Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, evaluation of jurisdiction under the Navigable Water Protection Rule of 2020, the Corps of Engineers Wetland Delineation Manual, as well as relevant Regional Supplements, and methodologies in Compensatory Mitigation for impacts to wetlands and waters of the US.
- Experience in evaluating permit applications and jurisdictional determinations for linear projects and/or transportation projects preferred.
- Experience in overseeing and managing interagency efforts including development of programmatic initiatives.
- Ability to effectively coordinate with other federal and state agencies to evaluate comments and recommendations on large-scale and/or controversial actions.
- Ability to travel 20%, occasionally overnight.

Professional Standards for ad hoc Regulatory Reviewers:

- Degree in engineering, biology, natural resources, or other related environmental science.
- 3+ years of Regulatory Permit Review experience or equivalent.
- Working knowledge of Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the National Environmental Policy Act, the Endangered Species Act, the National Historic Preservation Act, and the Corps of Engineers Wetland Delineation Manual, as well as relevant Regional Supplements.
- Experience in evaluating permit applications and jurisdictional determinations for linear projects and/or transportation projects preferred.
- Ability to travel 20%, occasionally overnight.

Attachment B – Example fields to be included in the Monthly Report

Example fields for Monthly Tracking:

- Corps PM
- Corps Number
- TxDOT Priority
- TxDOT District
- TxDOT District Contact
- TxDOT CSJ
- Project/Road Name
- Action Type
- Corps Received Date
- Federally Complete Date
- Requested by Date
- Decision Date
- Days to Review – calc from fed complete to decision date
- Mitigation – yes/no
- Status – brief comments on current status and relevant information

The format and data fields included in example reports may be changed as needed upon written agreement by the Parties, as noted in Section 10.2 of the Agreement.

Attachment C – Example Quarterly Report Format

The format and data fields included in example reports may be changed as needed upon written agreement by the Parties, as noted in Section 10.2 of the Agreement.

TxDOT X QTR REPORT FY 20XX

Section 214 of the Water Resources Development Act of 2000 (WRDA 2000, Public Law No. 106-541) as amended, allows the Corps to accept funds from non-federal public entities to provide priority review of their permit applications. TxDOT's funds were accepted under the DATE MOA with Galveston District, which requires the tracking of funds to ensure they are expended for the intended purpose.

The below table identifies manpower hours and cost expenditures for each project. For the first quarter of 20XX (DATE RANGE), a total of XX labor hours, and no travel/training hours, were recorded, for a total of \$X. Vehicle use fees were recorded for a total of \$X for the Quarter. Total expended in XQ20XX was \$X.

QUARTERLY ACTION SUMMARY

Action ID	DESCRIPTION	TXDOT CSJ	Type	STATUS
2018-xxxxx	SH 73 at FM 1663	0508-xxxxx	SP	Issued
2014-xxxxx	Harbor Bridge	0101-xxxxxx	SP MOD	Withdrawn
2014-xxxxx	Bay Street Extension	0101-xxxxx	MOD	Pending
Total Cost Labor Hours				
Total Cost Travel				
Total Cost Vehicle Use				
TOTAL Cost				

Attachment D - Annual Report Format

The format and data fields included in example reports may be changed as needed upon written agreement by the Parties, as noted in Sections 10.1 and 10.2 of the Agreement.

MEMORANDUM FOR TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT)

SUBJECT: FY 20XX End of Year Report for TxDOT under Section 214 of WRDA 2000, as amended.

1. **Funding:** Section 214 of WRDA 2000, as amended (Sec. 214), Title 23 U.S.C. Section 139(j), and Title 49 U.S.C. Section 307 allow the Secretary of the Army to accept and expend funds contributed by certain entities to expedite the permit evaluation process. The Regulatory Program's Implementation Guidance for the Use of Funding Agreements within the Regulatory Program ("Implementation Guidance") gives examples of acceptable activities executed under funding agreements, including application reviews, site visits, training, travel, field office set-up costs, coordination activities, additional personnel, and others. Funding may come directly from the funding TxDOT's budget or may be from a grant or other source. The following outlines the funds accepted and expended by the Corps District during the subject federal fiscal year (FY):

- i. Total funds accepted during this FY: \$X
- ii. Total funds expended during this FY: \$X
- iii. Number of FTEs: X
- iv. Name(s) of staff working under the agreement this FY: XX

2. **Assessment:** The goal of funding through an agreement is to expedite the permit evaluation process. This can be accomplished through *qualitative means*, such as dedicating staff for improved communication, ability of TxDOT to prioritize projects with Corps staff, and improved submittals of information. The permit process must be expedited quantitatively for TxDOT, while not adversely impacting the timeframes for review for other applicants within the same district. *Quantitative* improvements can be demonstrated by showing that permit processing times have generally improved since inception of an agreement. Performance measures are a means to show quantitative improvement, and performance relative to any such measures for the subject FY should be provided below.

The following describes how funds have been used to expedite the permit evaluation process:

- i. Qualitative description: XXX//
- ii. Quantitative description: XXX

Overall, [CONCLUSION STATEMENT].

Attachment E – Performance Measures

TXDOT and the Corps have agreed to the following performance measures to be utilized to evaluate permit processing under this 214 Agreement to accept funds to expedite permit processing. These Performance Measures may be revised by written agreement between the TxDOT Environmental Affairs Division Director and the Corps Regulatory Division Chief, or their delegated representatives, without necessitating a formal revision of the MOA. Results of the Performance Measure analysis will be presented to TxDOT at least once a year by November 30, sixty (60) days after the end of the USACE fiscal year. Monthly or Quarterly Reports can be used to provide additional analysis throughout the year. An objective is considered to be satisfactorily met if the performance falls into either the “Expected” or “Exceeds Expectations” category.

Corps Performance Objectives	Performance Measure (% Obj. Met)	
1. The Corps will assign submitted actions a project number and notify the TxDOT POC and appropriate TxDOT District office within 15 calendar days of receiving a submission.	>95% =	Exceeds Expectations
	80-95% =	Expected
	<80% =	Needs Improvement
2. The Corps will complete all non-complex Standard Permits and Letters of Permission within 120 calendar days of a federally complete application. Exceptions include complex projects.	>80% =	Exceeds Expectations
	80% =	Expected
	<80% =	Needs Improvement
3. The Corps will complete all NWP, within 40 calendar days of receipt of a federally complete permit application. Exceptions include NWP with waiver requirements, and/or complex projects.	>90% =	Exceeds Expectations
	85-90% =	Expected
	<85% =	Needs Improvement
4. The Corps will complete all GPs, and non-complex SP Modifications within 60 calendar days of receipt of a federally complete permit application. Exceptions include complex projects.	>90% =	Exceeds Expectations
	85-90% =	Expected
	<85% =	Needs Improvement
5. The Corps will review all permit applications, to determine if they are federally complete, within 15 calendar days from the date of receipt. If the application is not federally complete, the Corps will request additional information to meet the federal completeness standard within the same 15 calendar days.	>95% =	Exceeds Expectations
	85-95% =	Expected
	<85% =	Needs Improvement

TxDOT Performance Objectives	Performance Measure (% Obj. Met)	
1. TxDOT Districts will QA/QC all applications and requests for jurisdictional determinations, and will submit them to the Corps with a cover sheet that identifies the QA/QC reviewer, per the format in Attachment G.	>90% =	Exceeds Expectations
	80-90% =	Expected
	<80% =	Needs Improvement

Performance Measure Footnotes:

1. The term “action” means request for pre-application meeting, jurisdictional determination, No Permit Required Request, or permit application for any type of DA permit.
2. The column for % Obj. Met is calculated based on number of actions that occur during the Corps’ Fiscal Year (Oct 1 – Sep 30), or an extrapolation thereof. The percentage calculation is the number of actions that met or exceeded the performance objective divided by the total number of applicable actions undertaken in the year, multiplied by 100.
3. The term “completeness” is defined as federally complete per Corps regulations noted in 33 CFR Parts 325, 330, and other relevant guidance or policies.
4. The term “complex project(s)” is defined as an action that requires additional review time to reach a final decision. Such actions include proposed projects that require one or more of the following: extended comment periods, plan modifications, delays associated with meeting permit special conditions (to include NWP General and Regional Conditions), other agency approvals, development of permittee responsible compensatory mitigation plans, extended coordination for ESA, Section 106, Section 408, and/or Corps Real Estate reviews, and/or projects that require an EIS.

For complex projects, the Parties will work collaboratively to develop a realistic timeline estimate for the review and will communicate any adjustments to the schedule in a timely manner. To the extent that the Corps Regulatory Staff has control over steps in the process, they will strive to meet or exceed timelines as set forth in the performance objectives.

Attachment F - Example Programmatic Initiatives to streamline permit reviews

- Develop Regional General Permit(s)
- PRM Mitigation Strategies with advanced identification of sites
- Annual/Bi-annual Training Sessions
- Development of Templates
- NEPA/404 merger agreement

Other initiatives may be undertaken, if there is a need, based on agreement between the Corps and TxDOT.

Initiatives started in a prior FY, may be continued in a new FY, if additional time is needed to complete the activity. Continued development of a programmatic initiative will serve to meet the Initiative Objective for the subject FY.

Attachment G – QA/QC Cover Sheets

The format and data included in examples may be changed as needed as a non-substantive modification upon written agreement by the Parties, as noted in Section 10.2 of the Agreement.

TxDOT WRDA 214 – Permit Application QA/QC Cover Sheet

TxDOT Section (To be completed by TxDOT before submitting application)

TxDOT PM: _____ TxDOT QA/QC Reviewer: _____
 TxDOT District: _____ Project Consultant: _____
 TxDOT is non-federal applicant or Co-applicant App Submittal Date: _____
 TxDOT is acting as Federal applicant Requested Decision Date: _____
(If TxDOT is not the applicant or Co-applicant, then 214 funds cannot be used.)

Corps Section (To be completed by Corps during application review)

Date Received by Corps: _____ Date assigned: _____
 SWG#: _____ Regulator assigned: _____
(Copy Applicant, Agent Contact information from IR or PW)
 APPLICANT: _____

AGENT: _____

Date Reviewed for completeness: _____
 Federally complete? Y N Complete for entire review? Y N
 Items missing/requested: _____

Additional information received? Y N Date received: _____
 If incomplete, list missing items: _____

Date determined federally complete: _____
 Delays in project review (note item and impact to schedule): _____

Other Notes or comments: _____

Included	Submission pending	N/A	
			Narrative Description of Jurisdictional Work and Project Purpose
			Impact Assessment (Table of Impacts to Wetlands and/or Waters of the US)
			Jurisdictional Determination(s) (copy of letter(s) and map(s), if previously issued)
			Project Plan Packet (including items 1-7 below, if required)
			1. Vicinity Map
			2. Plan View (focused on jurisdictional area and regulated work)
			3. Cross Sections (showing tidal datum, ordinary high water mark, wetland boundaries)
			4. Staging Areas / Temp access routes for construction access
			5. Temporary Restoration Plan with timeline
			6. Compensatory Mitigation Plan
			7. Dredge Material Management Plan (DMMP)
			Requested by date (note construction/contracting milestones)
			Cultural Resources Assessment
			Threatened and Endangered Species Assessment
			Alternatives Analysis
			List of prior permits or JDs (include the number(s), type(s), and issued/withdrawn dates)
			Any prior Corps coordination (other Corps offices for 408, Real Estate, etc.)
			Data matches throughout packet (Data is consistent on tables, plans, narrative, etc.)
			Other (please list):

Other Notes or comments: _____

TXDOT WRDA 214 – Jurisdictional Determination, and/or Delineation Assessment/Verification QA/QC Cover Sheet

TXDOT Section (To be completed by TXDOT before submitting request.)

TXDOT PM: _____ TXDOT QA/QC Reviewer: _____
 TXDOT District: _____ Project Consultant: _____
 TXDOT is non-federal applicant or Co-applicant Submittal Date: _____
 TXDOT is acting as Federal applicant Requested Decision Date: _____
(If TXDOT is not the applicant or Co-applicant, then 214 funds cannot be used.)

Included	Submission Pending	
		N/A
		<i>(* items with an asterisk are preferred but not required in regulation or rule)</i>
		Narrative description of jurisdictional area and site conditions
		Summary Table of Aquatic Resources (Wetlands and/or Waters of the US)
		Data Sheets (including items 1-3 below)
		1. Site photographs
		2. Delineation Map Set
		3. Vicinity Map
		Site detail maps and figures (with tidal datums or ordinary high water marks noted)
		Antecedent Precipitation Tool (APT) Data
		Other Supporting data (soils, NWI, aerial photography, etc.)
		Draft JD form(s)*
		Permit pending for the subject site (list permit application number and Regulator assigned)
		List of prior permits or JDs (include the number(s), type(s), and issued/withdrawn dates)
		Data matches throughout packet (Data is consistent on tables, plans, narrative, etc.)
		Other (please list):

Other Notes or comments:

Corps Section (To be completed by Corps during application review.)

Date Received by Corps: _____ Date assigned: _____
 SWG #: _____ Regulator assigned: _____
 Date Reviewed for completeness: _____
 Packet complete for review? Y N
 Items missing/requested: _____

Additional information received? Y N Date received: _____
 If incomplete, list missing items: _____

Other delays (note item and impact to schedule):

Other Notes or comments:

Attachment H – Estimated Funding Schedule (based on estimated FTE salaries and supplementals State FY 22-25)

	Single FTE 2022 - Two FTE 23-25				
	FY 2022*	FY 2023	FY 2024	FY 2025	Agreement Total
Fully loaded labor rate for 2 GS 12 Employees	\$ 194,784.00	\$ 401,255.04	\$ 413,292.69	\$ 425,691.47	
Anticipated increase (3%)	\$ 5,843.52	\$ 2,037.65	\$ 12,398.78	\$ 12,770.74	
214 Program Manager Oversight	\$ 10,000.00	\$ 10,300.00	\$ 10,609.00	\$ 10,927.27	
Anticipated increase (3%)	\$ 300.00	\$ 309.00	\$ 318.27	\$ 327.82	
Travel, Training, and Vehicle Use	\$ 6,000.00	\$ 6,180.00	\$ 6,365.40	\$ 6,556.36	
Anticipated inflation (3%)	\$ 180.00	\$ 185.40	\$ 190.96	\$ 196.69	
Supplemental FTE Hours	\$ 15,000.00	\$ 5,450.00	\$ 15,913.50	\$ 16,390.91	
Anticipated increase (3%)	\$ 450.00	\$ 463.50	\$ 477.41	\$ 491.73	
Total	\$ 232,557.52	\$ 446,180.59	\$ 459,566.01	\$ 473,352.99	\$ 1,611,657.11 **
Biannual Payment	\$ 116,278.76	\$ 223,090.30	\$ 229,783.00	\$ 236,676.49	

* Based on Single FTE in 2022, Two FTEs in 2023-25.

** Funding NTE amount of \$2,000,000 was determined by rounding up from this estimated total.