

**AMENDMENT NO. 2  
TO  
INTERAGENCY AGREEMENT  
BETWEEN  
OKLAHOMA DEPARTMENT OF TRANSPORTATION  
AND  
THE U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT**

This AMENDMENT NO. 2, as executed on the date below, to the existing Interagency Agreement ("IA") dated October 19, 2012, by and between the Oklahoma Department of Transportation (hereinafter the "Department") and the United States Army Corps of Engineers, Tulsa District (hereinafter the "Corps"), collectively referred to as the "Parties," is as follows:

WHEREAS, the Parties entered into the IA, effective October 19, 2012, for expedited and priority review of Department priority projects by the Corps; and

WHEREAS, the IA was renewed for an additional four-year period on October 19, 2016; and

WHEREAS, the IA is renewable for an additional four-year period beginning October 19, 2020; and

WHEREAS, the Parties desire to modify and amend the IA, in accordance with Sections IV.E. and VIII. thereof, to increase the not to exceed total compensation paid to the Corps by an additional \$1,000,000.00 and extend the duration of the IA to October 19, 2024; and

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

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

WHEREAS, by memorandum dated 8 January 2018, Mark T. Esper, Secretary of the Army delegated the authority to accept and expend such contributed funds to the Assistant Secretary of the Army for Civil Works; and

WHEREAS, by memorandum dated 19 January 2018, Ryan A. Fisher, Acting Assistant Secretary of the Army (Civil Works), redelegated the authority to accept and expend such contributed funds to the Commanding General of the U.S. Army Corps of Engineers; and

WHEREAS, by memorandum dated 18 April 2018, LTG Todd Semonite, Commanding General of the U.S. Army Corps of Engineers redelegated the authority to accept and

expend contributed funds to the Division and District Commanders and this redelegation remains in effect until 20 June 2024; and

WHEREAS, the Corps (as delegated by the Secretary of the Army) to the maximum extent practicable, shall ensure that expediting the evaluation of a permit through the use of funds accepted and expended under this section does not adversely affect the timeline for evaluation of permits under the jurisdiction of the Department of the Army of other entities that have not contributed funds under this section; and

WHEREAS, the Corps in carrying out responsibilities under the IA, and any amendments thereto, shall ensure that the use of funds accepted under the IA will not impact impartial decision making with respect to permits, either substantively or procedurally; and

WHEREAS, the Corps shall make this agreement to accept funds available on Corps Headquarters public internet site; and

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

WHEREAS, the Department is continuing the Bridge Improvement and Modernization Program to maintain less than 1% structurally deficient bridges on the State Highway System within the period of the 2020-2027 by working on bridges which are at risk of becoming structurally deficient. The Construction Work Plan is anticipated to include more than 461 bridge replacements or rehabilitations and over 789 miles of shoulder and roadway geometric improvements. In addition the Department is assisting Local Government entities in the elimination of the structurally deficient bridges and the improvements of the local arterial and collector roads Those entities plan to replace or rehabilitate 313 county bridges, improve 585 miles of county roadways and multiple city owned roadways and bridges over the next 5 years, 2020-2025.

NOW, THEREFORE, the Parties agree to amend the IA as follows:

## SECTION II. Statement of Work.

F. ACCEPTABLE ACTIVITIES: Acceptable activities for expending contributed funds include pre-application meetings, application review, determinations of jurisdiction, technical writing, evaluation site visits, compliance inspection site visits, training for Corps personnel, training of Department personnel, travel, outreach, attending Department pre-work conferences, copying, coordination activities, programmatic tool development and improvement (such as programmatic agreements, NEPA-404 merger agreements, general permits, etc.), acquisition of Geographic Information System (GIS) data, participation in the transportation planning process or other early coordination activities such as NEPA/404 synchronization, annual report preparation and supporting administrative tasks.

G. EXCLUDED ACTIVITIES: The use of contributed funds is prohibited for the excluded activities of: 1) resolution of non-compliance actions and 2) enforcement actions. Resolution

of non-compliance actions and enforcement actions must be charged to Regulatory Program appropriated funds in accordance with the most recent budget execution guidance.

H. IMPARTIAL DECISION-MAKING: The Corps will ensure that acceptance and expenditure of funds from the Department will not impact impartial decision-making with respect to application review and final permit decisions, complying with the following standards:

i. Comply with Laws and Regulations: Each review must comply with applicable laws and regulations; any procedures or decisions that would otherwise be required for a specific type of project or review under consideration cannot be eliminated.

ii. One-Level-Higher Review: The Corps shall ensure that the evaluation of permits carried out using funds accepted under this agreement shall be reviewed and approved in writing by the District Commander, or the Commander's designee, achieving an independent "one-level-higher" review by a non-funded individual (WRDA Section 214(c)). This one-level-higher review is one-level above the delegated signature authority for the particular type of permit action than the delegated decision maker; or the Commander of the Corps Southwestern Division if the evaluation of the permit is initially conducted by the District Commander. One-level-higher review for nationwide permit and general permit decisions will generally be provided by a Corps Unit Supervisor or the Regulatory Chief. One-level-higher review for standard permits will be provided by the Tulsa District Commander. Decision reviews will utilize the same procedures for decisions that would otherwise be required for the evaluation of permits for similar projects or activities not carried out using funds authorized under this section.

iii. Mitigation Banks: Instruments for mitigation banks or in-lieu-fee programs developed for the Department must be signed by the Regulatory Chief, or a higher level position that is not funded by any agreement.

iv. Jurisdictional Determinations (JD): All preliminary JDs and approved JDs where funds are used to complete the JD must have documentation that a non-funded Regulatory Project Manager of equivalent grade (or higher) conducted a review of the determination. This review is intended to maintain impartiality in the decision and does not require a one-level-higher reviewer.

I. TRANSPARENCY: The Corps shall ensure that all final permit decisions carried out using funds authorized under this section are made available to the public in a common format, including on the Internet, and in a manner that distinguishes final permit decisions under this section from other final actions of the Corps.

J. CONSISTENCY: The Corps shall use a standard decision document for evaluating all permits using funds accepted under this section; and make the standard decision document, along with all final permit decisions, available to the public, including on the Internet.

Section III. Financial Administration.

C. FINANCIAL ACCOUNTABILITY: Funds accepted by the Corps under this agreement will be established in a separate account to track receipt and expenditure for authorized purposes.

Section IV. Period of Evaluation of Performance.

A. The term of this Agreement shall run for four (4) years from the date of execution of the agreement, renewable for additional four (4) year terms thereafter when modified in accordance with paragraphs IV.E. and VIII. below, unless terminated sooner in accordance with paragraph IV.C.

Section VI. Project Officers.

A. For the U.S. Army Corps of Engineers, Tulsa District:

Andrew R. Commer  
Chief, Regulatory Office  
U.S. Army Corps of Engineers, Tulsa District  
2488 E. 81<sup>st</sup> Street, 16<sup>th</sup> Floor  
Tulsa, OK 74137-4629  
Tel: 918-669-7616  
Fax: 918-669-4306

B. For the Oklahoma Department of Transportation:

Sivanuja S. Sundaram  
Environmental Programs Division Engineer  
Oklahoma Department of Transportation  
200 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105-3204  
Tel: 405-522-3791  
Fax: 405-521-6917  
E-mail: ssundaram@odot.org

NOW, THEREFORE, the Parties further agree:

Article I - RENEWAL OF IA.

In accordance with Section IV.A. of the IA and as modified herein, the IA is hereby renewed for an additional four year term, beginning October 19, 2020 and ending October 19, 2024.

Article 2 - FUNDING.

The Department will provide additional funding to the Corps in a total sum of \$1,000,000 for services contemplated under the IA for the additional four year term provided for in Article I of this AMENDMENT NO. 2. The Department will pay to the Corps the total sum of \$1,000,000 in one lump sum payment upon execution of this AMENDMENT NO. 2 to fully

fund the additional four year term in advance. This payment schedule may be changed by mutual written agreement of the parties but may not exceed the total compensation recited herein unless approved through an amendment.

#### Article 3 - EFFECTIVE DATE AND DURATION.

This AMENDMENT NO. 2 to the IA shall be considered executed and will become effective on the date of signature by the last Party.

Unless amended or modified pursuant to Section VIII. of the IA, this AMENDMENT NO. 2 shall remain in force until whichever of these events occurs first: 1) October 19, 2024; or 2) the IA is terminated pursuant to Section IV.C. of the IA.

#### Article 4. INTEGRATION.


This AMENDMENT NO. 2 represents the entire understanding of the Parties regarding changes to the IA. All other terms and conditions of the IA remain in full force and effect.

[REMAINDER LEFT INTENTIONALLY BLANK]

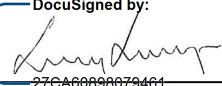
IN WITNESS WHEREOF, the parties have caused this AMENDMENT NO. 2 to be executed as of the date herein written:

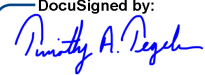
RECOMMEND FOR APPROVAL:

 22 Oct 2020  
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Andrew R. Commer  
Chief, Regulatory Office


  
\_\_\_\_\_  
Digitally signed by  
PRESTON.SCOTT.STEVEN.114416  
6678  
Date: 2020.10.26 10:53:02 -05'00'  
Scott S. Preston  
Colonel, U.S. Army  
Commanding  
U.S. ARMY CORPS OF ENGINEERS

RECOMMEND FOR APPROVAL:

DocuSigned by:  
  
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Sivanuja S. Sundaram  
Division Engineer  
Environmental Programs Division

DocuSigned by:  
  
\_\_\_\_\_  
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Timothy A. Tegeler  
Director of Engineering  
OKLAHOMA DEPARTMENT OF  
TRANSPORTATION

APPROVED AS TO LEGALITY  
AND FORM:

DocuSigned by:  
  
\_\_\_\_\_  
FE8FD8101AF34E6...  
Sarah Penn  
GENERAL COUNSEL  
OKLAHOMA DEPARTMENT OF  
TRANSPORTATION