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THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

46



William Cass, P.E.
Commissioner

David Rodrigue, P.E.
Assistant Commissioner

Andre Briere, Colonel, USAF (RET)
Deputy Commissioner

Bureau of Environment
October 9, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Transportation to enter into a **sole source** Agreement with the US Army Corps of Engineers (USACE), Concord, MA, Vendor #161296, for an amount not to exceed \$1,296,808 (\$324,202 per year for four (4) years) for employment of a dedicated project manager in the USACE New England Field Office to expedite evaluation and processing of permit applications for Department and local federal-aid transportation projects, effective upon Governor and Council approval through December 31, 2028.

Funding for this request is available as follows for FY 2024 and FY 2025 and is contingent upon the availability and continued appropriation of funds in FY 2026, FY 2027, and FY 2028 with the ability to adjust encumbrances between State Fiscal Years through the Budget Office if needed and justified.

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
04-96-96-963515-3054					
Consolidated Federal Aid					
046-500464					
Gen Consultants Non-Benefit	\$189,112	\$324,202	\$324,202	\$324,202	\$135,090

The Consolidated Federal Fund, AU 3054, is utilized at this time to encumber funds for this request. Actual funding sources will be determined by each particular project incurring expenses as a result of this request.

EXPLANATION

This item is **sole source** because the USACE is the federal authority for permitting impacts to wetlands and surface waters.

The purpose of this Agreement is for the Department to fund a USACE project manager position for Department and local federal-aid projects, to create efficiency and expeditious permit application evaluations to achieve timely decision-making for transportation improvements within the State of New

Hampshire, while also assuring transportation project designs and implementation are sensitive to the protection of aquatic resources, in accordance with federal statutes.

Many Department projects include activities that fall within the jurisdiction of USACE under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403. Timely evaluation of permit applications for Department and local federal-aid transportation projects in New Hampshire under these statutes is critical to the Department's ability to advertise these projects to meet scheduled dates for obligating federal and non-federal funding. The USACE is unable, within current staff resource constraints, to provide expedited evaluation of permit applications under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 for transportation projects within the State of New Hampshire. Department-funded USACE staffing will assist the Department in meeting its milestones for bid advertisement and will help avoid unanticipated costs and delays. The parties to this Agreement have determined that the agreed upon staffing above existing levels will provide expedited evaluation of transportation projects contemplated or under design for a public purpose by the Department or local governmental entities receiving Federal Highway Administration financial assistance through the Department.

Section 214 of the Water Resources Development Act of 2000 (Section 214), as amended and codified at 33 U.S.C. § 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite evaluation of permit applications from that entity related to projects or activities with a public purpose falling under the jurisdiction of the USACE Regulatory Program.

Your approval of this resolution is respectfully requested.

Sincerely,



William J. Cass, P.E.
Commissioner

WJC/ktn
Attachment

MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES ARMY CORPS OF ENGINEERS (USACE),
NEW ENGLAND DISTRICT (NAE)
AND
NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION (NHDOT)
FOR
EXPEDITING PERMIT APPLICATION EVALUATIONS UNDER
SECTION 214 OF THE WATER RESOURCES DEVELOPMENT ACT OF 2000, AS
AMENDED, AND/OR
SECTION 139(j) OF TITLE 23, UNITED STATES CODE, ASSISTANCE TO
AFFECTED STATE AND FEDERAL AGENCIES

PREAMBLE: This Memorandum of Agreement ("MOA") between the New Hampshire Department of Transportation ("NHDOT"), and the New England District of the U.S. Army Corps of Engineers ("USACE") (collectively "the Parties") sets forth the responsibilities of the Parties relative to the expedited evaluation and processing of permit applications for NHDOT and local federal-aid transportation projects located in New Hampshire. The purpose of this Agreement is to achieve timely decision-making for transportation improvements within the State of New Hampshire while also assuring transportation project design and implementation are sensitive to the protection of federal aquatic resources, in accordance with the federal statutes. The Parties shall work proactively to enhance each agency's ability to realize its mission through open communication and teamwork.

1. WHEREAS, many of these projects include activities that fall within the jurisdiction of USACE under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, and Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403;
2. WHEREAS, timely evaluation of permit applications for NHDOT and local federal-aid transportation projects in New Hampshire under these statutes is critical to NHDOT's ability to advertise these projects to meet scheduled dates for obligating federal and non-federal funding;
3. WHEREAS, USACE is unable, within current staff resource constraints, to provide expedited evaluation of permit applications under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 for transportation projects within the State of New Hampshire and NHDOT-funded USACE staffing will assist NHDOT in meeting its milestones for bid advertisement and will help avoid unanticipated costs and delays to NHDOT and local federal-aid transportation projects in New Hampshire;
4. WHEREAS, the Parties have determined that it will be mutually beneficial and serve to increase efficiencies within each agency to supplement USACE staffing above existing levels;
5. WHEREAS, the Parties have determined that the agreed upon staffing above existing levels will provide expedited evaluation of transportation projects contemplated or under design for a public purpose by NHDOT or local governmental entities receiving Federal Highway Administration (FHWA) financial assistance through NHDOT ("sub-recipients");
6. WHEREAS, NHDOT and USACE have determined that NHDOT and its sub-recipients have sufficient work associated with the processing of USACE permit applications for NHDOT and local federal-aid sub-recipient projects to employ one full-time equivalent USACE Project Manager for the life of this Agreement for the expedited evaluation and processing of such permit applications ("USACE Project Manager");
7. WHEREAS, NHDOT is willing to contribute funds to USACE for the USACE Project Manager to provide these functions;
8. WHEREAS, Section 214 of the Water Resources Development Act of 2000 (Section 214), as amended and codified at 33 U.S.C. § 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite evaluation of permit applications from that entity related to projects or activities with a public purpose falling under the jurisdiction of the USACE Regulatory Program;
9. WHEREAS, NHDOT receives funding from FHWA pursuant to 23 U.S.C. § 139(j) (Section 139(j)) which authorizes the Secretary of the U.S. Department of Transportation (USDOT) to allow public entities that receive financial assistance from USDOT (when the financial assistance is provided under title 23 ("Highways") or chapter 53 of title 49 ("Public Transportation") of the United States Code) to provide funds to Federal agencies, state agencies, and Indian Tribes participating in the environmental evaluation

process for a project or program, but only when the funds will support activities that directly and meaningfully contribute to expediting and improving permitting and evaluation processes;

10. WHEREAS, the authority of the Secretary of the Army was delegated to the Assistant Secretary of the Army for Civil Works (ASA-CW) by memorandum dated January 8, 2018, re-delegated to the Chief of Engineers by memorandum dated January 19, 2018, and further re-delegated to District and Division Commanders by memorandum dated April 18, 2018;

11. WHEREAS, the ASA-CW, by memorandum dated January 19, 2018, issued implementation guidance on the establishment, management, and oversight of Section 214 and Section 139(j) funding agreements that allow USACE to accept and expend funds to expedite the permit evaluation process;

12. WHEREAS, the New Hampshire Statutes grants NHDOT the authority to enter into agreements and cooperate with the government of the United States in the construction, improvement, enhancement, or maintenance of transportation in New Hampshire and authorizes NHDOT to comply with the laws and regulations of the United States for the expenditure of federal moneys;

13. WHEREAS, the Parties anticipate that this Agreement and the funding hereunder will result in demonstrated improvements in coordination amongst the Parties and in the permit decision-making process for NHDOT and local federal-aid transportation projects, in accordance with the performance objectives outlined in this Agreement;

14. WHEREAS, the locations of these projects within the State of New Hampshire fall under the area of responsibility of the New England District of the USACE;

15. WHEREAS, the Parties agree that funding a USACE Project Manager position for NHDOT and local federal-aid transportation projects in the state of New Hampshire would create efficiency and expedite the permit application evaluation process for such projects;

16. WHEREAS, USACE involvement in the planning and environmental analysis of proposed Federal-aid transportation projects undertaken by NHDOT or its sub-recipients is in in the public interest;

17. WHEREAS, it is acknowledged and understood that USACE will ensure that acceptance and expenditure of funds under this Agreement will not impact its impartial decision-making responsibilities and that the USACE implementation of this agreement and USACE evaluation of NHDOT and its sub-recipients' permit applications will be in accordance with all applicable federal laws and regulations and the ASA-CW's January 2018 implementation guidance (or subsequent guidance).

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties to this Agreement concur and agree as follows:

I. Agency Responsibilities

A. NHDOT

1. NHDOT shall fund one (1) full-time equivalent USACE Project Manager position to evaluate and process federal permit applications pursuant to Section 404 Clean Water Act and Section 10 Rivers and Harbors expeditiously for NHDOT and local federal-aid sub-recipient projects in accordance with the Performance Measures set forth in Attachment A hereto, which is incorporated into this Agreement by reference. The costs of funding the USACE Project Manager shall include all salary-related costs assessed by USACE as provided in this Section I.A. It is expected that the total annual funds needed for these services will not exceed \$324,202.00. Actual costs may be less than this amount, depending upon the amount of travel needed to support the expedited evaluation contemplated by this Agreement. The total amount paid under this agreement will not exceed \$1,296,808.00. If additional funds are necessary, additional payments may be negotiated by all Parties to this Agreement by written agreement. Reconciliation of DOT payments against actual USACE invoices will occur quarterly. Balance of unexpended or over expended funds will be addressed annually and could result in a payment made by the appropriate party to clear the account unless agreement can be reached between the parties on account rollover from year to year. Costs to be billed by USACE and paid by NHDOT shall include:

(a) Salary and benefits (including paid Federal holidays) for one (1) full-time equivalent USACE Project Manager, adjusted biannually as needed to cover appropriate locality pay increases and performance-based salary increases within the employee's pay grade under the GSA General Schedule pay scale. In accordance with Section VI.H of this Agreement, additional positions and subsequent funding, subject to an encumbrance as required by New Hampshire State law, may be added under this Agreement if all parties to the Agreement find that the workload warrants additional USACE personnel.

(b) Actual burdened overhead rate carried by USACE, including:

- i. Effective Rate,
- ii. Departmental Overhead Rate,
- iii. General Administrative Rate,
- iv. Other Items, as appropriate.

(c) Compensatory time, overtime labor compensation, training, travel, and per-diem at Federal government rates, as needed to support the expedited evaluation contemplated by this Agreement.

(d) Costs for the use of a government-owned vehicle or rental car.

2. Funding and payment under this Agreement shall be as follows: NHDOT shall prepay one quarter (three (3) months) in advance of services provided; same amount; same timeframe each quarter, transmitted electronically, in accordance with USACE procedures, subject to the provisions of this Agreement, and reviewed annually.

3. If this Agreement is modified to provide for additional services from USACE not identified by this Agreement, payment shall be made for the costs for those additional services within thirty (30) days of receiving an invoice from USACE, provided that such services and costs are identified in the invoice and such costs have been correctly calculated.

4. If USACE forecasts that its actual costs will exceed the amount of funds specified in Section I.A.1, it shall promptly notify NHDOT of the amount of additional funds necessary. NHDOT shall (i) provide the additional funds to the USACE through an amendment of this Agreement, or (ii) require that the scope of work be limited to that which can be paid for by the then-available funds, or (iii) direct the termination of the Agreement pursuant to Section VI.J.

5. NHDOT shall review quarterly USACE submittals of actual account expenditures. NHDOT shall request a meeting to clarify the account of expenditures within thirty (30) calendar days of receipt if NHDOT disagrees with the USACE submittals. In the event of a disagreement over the account of expenditures, NHDOT pledges to negotiate in good faith towards a reconciliation of the disputed amount, in accordance with Section VI.A. USACE and NHDOT will each credit the other as appropriate for any amount determined to be an over-statement or under-statement of USACE expenses.

6. On a quarterly basis or as determined appropriate at the field level, NHDOT shall provide USACE with the current permit priority list established by NHDOT, which will guide the USACE Project Manager's efforts in expediting the permit application evaluation process. NHDOT will provide updates to this priority listing to USACE as needed.

7. Within sixty (60) days following the date of the last signature on this Agreement, NHDOT shall provide the USACE with a one-year-out project planning list (Attachment B) that will be updated and submitted at least quarterly. The list shall provide project title, location, type of project, anticipated USACE permits required, status (funding, planning, design, permitting, etc.), and, if known, anticipated contract advertisement, award, and construction dates.

8. On a quarterly basis, NHDOT will meet with the USACE to evaluate work performed under this Agreement.

9. When a USACE permit is needed, NHDOT and its sub-recipients shall, with the guidance of the USACE staff, prepare and submit to USACE a completed permit

application and drawings, as required by USACE regulations set forth at 33 C.F.R. Part 325, and New England District procedures. NHDOT and/or its sub-recipients shall provide all information necessary for USACE evaluation of permit applications, delineations of aquatic resources, and jurisdictional determinations.

B. USACE, New England District, shall:

1. Designate a USACE Project Manager as the central point of contact for all USACE permit application evaluations for NHDOT and sub-recipient projects contemplated by this Agreement.

2. Hold quarterly meetings with NHDOT to evaluate work performed under this Agreement.

3. Upon execution of this Agreement and the programming and obligation of the initial year's funding as provided in Section I.A.1 hereof, hire at least one full-time equivalent USACE Project Manager with the qualifications to provide evaluation of permit applications for transportation projects of the NHDOT and its local federal-aid sub-recipients required under this Agreement, as determined by the USACE in consultation with NHDOT during the hiring process. The USACE Project Manager filling the position shall be employed by USACE at the Concord Park Office and supervised solely by the New England District.

4. No later than ten (10) working days following the end of each quarter, provide quarterly reports to NHDOT for actual time and cost expenditures incurred for the quarter, which shall include NHDOT project number and sufficient detail for NHDOT reimbursement by FHWA. As provided in Section I.A.2(c) of this Agreement, in the event of disagreement over statements or accounts of expenditures, USACE and NHDOT shall negotiate in good faith towards reconciliation of the disputed amount. USACE will continue work under this Agreement throughout negotiations as long as current funding is sufficient to cover costs set forth in such statements or accounts.

5. Develop internal procedures to implement this Agreement and modify such procedures as necessary, including but not limited to, procedures for tracking receipts and expenditures of funds provided under this Agreement – particularly to identify the relevant statutory authority (that is, Section 214 and/or Section 139(j)); to evaluate applications for Federal-aid transportation projects or state-aid projects proposed by NHDOT under Section 214 and applications for projects of NHDOT's Federal-aid sub-recipients under Section 139(j); and to comply with reporting requirements related to activities undertaken pursuant to this Agreement.

II. Coordination

A. NHDOT will establish a list of priority projects to guide the USACE Project Manager's efforts in prioritizing permit application evaluation process, per Section I.A.5 above. NHDOT and USACE will collaborate on other priority work to be accomplished

by the USACE Project Manager hired pursuant to this Agreement, such as the development of programmatic improvements that aim to expedite the permit application evaluation process.

B. Both NHDOT and USACE agree that reasonable access will be provided to working level staff of the other agency to minimize the need for formal meetings.

C. While the primary focus will be to prioritize the evaluation and processing of permit applications for NHDOT projects, the USACE Project Manager may also be involved in other related tasks which support agency coordination (e.g., programmatic efforts). These may include efforts towards compliance with the statutes and regulations for which USACE bears responsibility, including advising NHDOT in the USACE environmental decision-making process and on pertinent environmental regulations to achieve timely permit application evaluations for projects undertaken by NHDOT and its local federal-aid sub-recipients. Examples of other tasks which USACE may assign to the USACE Project Manager, include but are not limited to:

1. Attend pre-application meetings, site visits, interagency meetings, internal NHDOT project coordination meetings, and public meetings for requested NHDOT and local federal-aid transportation permit actions, as determined appropriate by the USACE.

2. Participate in interagency scoping meetings and NEPA-404 merger meetings:

3. Conduct outreach on USACE-related issues for stakeholders, as needed.

4. Evaluation and comment on project alternatives, mitigation plans, and biological assessments.

5. Assist NHDOT in developing programs to increase the efficiency of NHDOT's environmental decision-making process, programmatic agreements, and transportation project permit application evaluation.

6. Assist NHDOT in providing appropriate training of NHDOT personnel in USACE Regulatory Program requirements and general permits.

7. Assist NHDOT and its local federal-aid sub-recipients in identifying navigable waters of the United States and waters of the United States that may be impacted by NHDOT and local federal-aid sub-recipient projects and require a USACE permit and potential wetland and stream mitigation sites and plans.

III. Performance Objectives

A. NHDOT and USACE will review existing interagency coordination processes and, if appropriate, formulate recommendations to improve procedures and increase efficiency.

B. USACE agrees to use best efforts to meet the following goals:

1. Provide early coordination and priority evaluation of transportation project permit applications for NHDOT and its sub-recipients.

2. Inform NHDOT if the processing of a permit application may exceed Performance Targets evaluation and processing times set forth in Attachment A hereto due to, but not limited to, issues such as required (Federal) Endangered Species Act consultation, Section 106 of the National Historic Preservation Act consultation, Section 404(b)(1) Guideline compliance, controversial public interest factors, litigation, etc.

3. Meet all timelines established by regulations and USACE policy for individual permit decisions, unless otherwise previously indicated.

4. Provide relevant substantive comments (as necessary) during project evaluations and construction.

5. Provide timely evaluations and response for General Permit re-verifications and Individual Permit amendments to meet NHDOT permitting needs.

6. Provide timely evaluations and response for NHDOT Urgency projects to meet NHDOT permitting needs.

7. Include the USACE Project Manager as a commenting member of NHDOT's environmental review and evaluation team for USACE pre-applications, informal consultations under the Endangered Species Act, and USACE participating and cooperating agency roles under NEPA.

C. NHDOT agrees to use best efforts to meet the following goals:

1. With the guidance of the USACE Project Manager, provide all information necessary for evaluation of complete permit applications, as required by the NH General Permits in effect at the time of permitting and/or 33 CFR 325.1(d)(10), as applicable.

2. With the guidance and assistance of the USACE Project Manager, give full consideration to modifying each submitted permit application and supporting documentation in accordance with the comments provided by USACE and other approving or commenting agencies in the course of permit application evaluation or terminating or withdrawing the permit application.

IV. Impartial Decision Making

It is understood and agreed that, to ensure the acceptance and expenditure of NHDOT funds will not impact USACE's impartial decision-making with respect to eligible NHDOT and sub-recipient permit applications, USACE will apply the following procedures to all

cases where funds provided by NHDOT as a participating non-Federal public entity are used by USACE for the work envisioned by this Agreement:

A. All final USACE permit decisions (including individual permit decisions, all reporting general permit verifications, such as nationwide and regional general permits, and no permit required decisions) and associated decision documents must be reviewed and signed by a responsible USACE official that is at least one level above the decision-maker. The decision-maker is the USACE official that has been delegated signature authority. For example, if the decision-maker would be a Regulatory Section Chief, then the one-level-above reviewer would be the Regulatory Technical Support Branch Chief. In addition, the one-level-above review must not hold a position that is partially or fully funded by NHDOT for at least one year.

B. All final USACE permit decisions for applications where these funds are used will be made available on the USACE Headquarters Regulatory ORM2 public web page.

C. The New England District will not eliminate any procedures or decisions that would otherwise be required for the type of project and permit application under consideration.

D. The New England District will comply with all applicable Federal laws and regulations.

E. Funds accepted under this Agreement will only be expended to expedite and prioritize the evaluation and processing of eligible permit applications, according to the terms and conditions of this Agreement. Funds will not be expended for the review of the USACE Project Manager's decisions. If any third parties are used to develop decision documents, such decision documents must be drafts only and be reviewed and adopted by the New England District before the final permit decision is made.

F. Funds accepted under this Agreement will not be used for enforcement activities. Funds may be used for compliance inspections, including monitoring of mitigation sites, but cannot be used to take formal non-compliance actions. Mitigation bank or in-lieu-fee program instruments sponsored by NHDOT and evaluated by USACE using funds accepted under this Agreement must be signed by the Regulatory Division Chief or a higher-level position not funded by any funding agreement.

G. All preliminary jurisdictional determinations (JDs) and approved JDs where funds accepted under this Agreement are used to complete the JD must have a documented evaluation by a USACE Regulatory employee that is not funded by this Agreement. The evaluation does not need to be a field evaluation. For those approved JDs that require coordination with the U.S. Environmental Protection Agency, additional internal evaluation is not required.

V. Public Information

Justification and explanation of NHDOT programs or projects before other agencies, departments and offices will not be the responsibility of the New England District. The New England District may provide, upon request from NHDOT, any assistance necessary to support justification or explanations of activities conducted under this Agreement. In general, the New England District is responsible only for public information regarding New England District regulatory activities. NHDOT will give the New England District advance notice before making formal, official statements regarding New England District activities funded under this Agreement.

VI. General Terms:

A. **Dispute Resolution.** The Parties agree that, in the event of a dispute between the Parties, NHDOT and the USACE New England District shall use their best efforts to resolve the dispute collaboratively in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, the matter will be resolved in accordance with Federal law.

B. **Other Relationships or Obligations.** This Agreement will not affect any pre-existing or independent relationships or obligations between NHDOT and the USACE New England District. USACE's participation in this Agreement does not imply endorsement of NHDOT projects or projects of its local federal-aid sub-recipients, nor does it diminish, modify, or otherwise affect USACE statutory or regulatory authorities.

C. **Continuation of Existing Responsibilities.** 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, representative, agent, or employee of any other Party, to include the Staff hired by USACE to support priority evaluation of NHDOT and local federal-aid sub-recipient permit applications under this Agreement.

D. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

E. **Effective Date.** This Agreement will become effective upon the date of execution by the last signatory (the "Effective Date").

F. **Controlling Law.** The applicable statutes, regulations, policies, directives, and procedures of the United States govern this Agreement and all documents pursuant to and actions arising out of the Agreement. Unless otherwise required by law, all expediting of permit applications undertaken by USACE will be governed by USACE regulations, policies and procedures.

G. Length of Agreement. This Agreement shall expire four (4) years following the Effective Date of execution, unless extended or terminated as provided below.

H. Modification and Extension. This Agreement may be modified, amended or extended by written agreement of the signatory Parties, and only after approval of such modification, amendment, or extension by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

I. Merger. This Agreement, including any documents incorporated by reference or attachments thereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, with respect to such subject matter are merged herein and shall be of no further force or effect.

J. Termination. This Agreement may be terminated by either NHDOT or USACE upon sixty (60) days prior written notice given to the contact for the other party set forth in Section VI.K hereof, 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 written notice and ninety (90) days to remedy the situation. If either NHDOT or USACE 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, at least one hundred and eighty (180) days from the date of the written notice, unless both parties agree to an alternate date. In the event of termination, NHDOT shall continue to be responsible for all costs previously incurred by USACE under this Agreement, not to exceed the amount listed in Section I.A.1.

K. Agency Points of Contact. Any notice, request, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally to the party's place of business during normal business hours, sent by fax, sent by email, or mailed by registered or certified mail, with return receipt. A Party may change the recipient or address to which such communications are to be directed by giving written notice to the other Parties in the manner provided in this section. The points of contact are listed below:

1. NHDOT:

ADDRESS: New Hampshire Department of Transportation
Attn: Kevin T. Nyhan, Administrator
7 Hazen Drive Room 160-JOM Bldg.
Concord, NH 03302
PHONE: (603) 271-3226
FAX: (602) 271-7199
EMAIL: Kevin.T.Nyhan@dot.nh.gov

2. USACE:

ADDRESS: New England District, U.S. Army Corps of Engineers
Attn: Daniel B. Breen, Transportation and Utilities Section Chief
696 Virginia Road
Concord, MA 01742

PHONE: (978) 318-8831

FAX: (978) 318-8303

EMAIL: Daniel.B.Breen@usace.army.mil

3. FHWA:

ADDRESS: Federal Highway Administration
Attn: Patrick A. Bauer, Division Administrator
53 Pleasant Street, Suite 2200
Concord, NH 03301

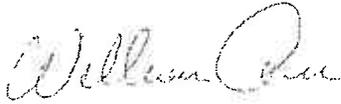
PHONE: (603) 228-0417

FAX: (603) 228-2829

EMAIL: Patrick.Bauer@dot.gov

[Signature page immediately follows]

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



8/9/2023

William Cass
Commissioner
New Hampshire Department of Transportation

Date

**PATRICK A
BAUER**

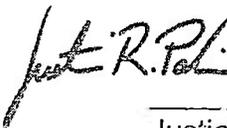
Digitally signed by
PATRICK A BAUER
Date: 2023.08.14 08:44:10
-04'00'

8-14-23

Patrick A. Bauer,
Division Administrator
Federal Highway Administration

Date

(Signing for the limited purpose of documenting FHWA's approval consistent with their authority pursuant to 23 U.S.C. § 139(j) (Section 139(j))



Digitally signed by
PABIS.JUSTIN.ROBERT.
1010160606
Date: 2023.09.29 17:12:03

29 September 2023

Justin R. Pabis, PE
Colonel, Corps of Engineers
District Engineer

Date

Encls.

ATTACHMENT A

	Performance Measures	Performance Targets
1.	Determination of completeness of Corps applications	Within 15 days of submission
2.	Individual Permit decisions within 120 days after submittal of a complete application; with the exception of those that are delayed due to: absence of CWA Section 401 certification; Section 7 of the Endangered Species Act (ESA) consultation(s); Essential Fish Habitat consultation(s); Section 106 of the National Historic Preservation Act consultation(s); untimely or insufficient submittal of information or failure to comply with regulatory requirements by New Hampshire DOT; extended objections or comment period for Public Notice; and/or environmental evaluation processes with statutory time frames.	75% of submitted annually
3.	General permit decisions within 60 days after submittal of a complete application; with the exception of those that are delayed due to: absence of CWA Section 401 certification; Section 7 of the Endangered Species Act (ESA) consultation(s); Essential Fish Habitat consultation(s); Section 106 of the National Historic Preservation Act consultation(s); untimely or insufficient submittal of information or failure to comply with regulatory requirements by New Hampshire DOT; extended objections or comment period for Public Notice; and/or environmental evaluation processes with statutory time frames.	90% of submitted annually

Definitions and Notes

1. **Determination of completeness of Corps applications.** This refers to applications formally deemed complete in accordance with 33 CPR Part 325.1.
2. **Individual Permits.** The national COE goal for processing individual permits is 70% within 120 days of a complete application.
3. **General Permits.** The national Corps goal for processing other permit actions is 85% within 60 days of a complete application.

ATTACHMENT B

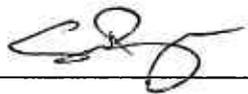
Planned Priority Transportation Projects

Projects :
Milton, NH-Lebanon, ME, X-A004(865), 40658 – Townhouse Road over Northeast Pond bridge replacement
Orford, X-A005(251), 41151 – Archertown Road bridge replacement over Jacobs Brook
Wentworth, 40648 – Frescoln Road over Rocky Branch bridge replacement
Lee, X-A004(593), 41322 – NH Route 125 bridge replacement over Little River
Lebanon, X-A005(250), 24221 – Trues Brook Road over Bloods Brook bridge replacement
Seabrook-Hampton, X-A001(026), 15904 – NH Route 1A over Hampton River bridge replacement
Troy-Jaffrey, X-A005(110), 43443 – NH Route 124 stream crossing replacement
Jefferson, X-A004(910), 42558 – US Route 2 bridge replacement over Pricilla Brook
Jaffrey, X-A001(234), 16307 – US Route 202 intersection reconfiguration with NH Route 124 and 137

Notes

1). Planned Priority Transportation Projects list (List) and Pending Permits List is subject to updating and/or amending by the NHDOT and will be conveyed to the Corps regularly (quarterly at minimum).

New Hampshire
Department of Transportation

 (11/13/2023)

Signature

Samuel Burgess

Name

Assistant Attorney General

Title

NH Attorney General

Governor and Council
Approval

Secretary of State

Dated