COOPERATIVE AGREEMENT

BETWEEN THE

FEDERAL HIGHWAY ADMINISTRATION

AND THE

US ARMY CORPS OF ENGINEERS

REGARDING

FUNDING FOR STREAMLINED ENVIRONMENTAL REVIEW

FOR

INTERSTATE HIGHWAY 69

OCTOBER 7, 2003
COOPERATIVE AGREEMENT BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND THE US ARMY CORPS OF ENGINEERS

This cooperative agreement (Agreement) is between the Federal Highway Administration (FHWA) and the US Army Corps of Engineers (USACE), hereafter referred to as the parties.

This agreement sets forth the responsibilities of the parties relative to the provision of additional resources for streamlined environmental reviews of the TransTexas Corridor Vision (TransTexas) and Interstate Highway 69 (I-69) projects and participation in a joint study and report containing suggestions for improvement and streamlining of the environmental process within and between the USACE, FHWA, and the Texas Department of Transportation (TxDOT). The goal is to achieve timely design and construction of adequate, safe and economical highway improvements while also assuring such design and implementation does not compromise environmental quality.

The construction of I-69 in Texas will cover a one thousand mile transportation corridor to improve international and interstate movement of people and freight. It is part of the 1,600-mile I-69 NAFTA High Priority Corridor, which runs from the U.S.-Canada border to the U.S.-Mexico border. The Intermodal Surface Transportation Equity Act (ISTEA) of 1991 originally supported its development. It has been more recently supported by the Transportation Equity Act of the 21st Century (TEA-21) of 1998. I-69 is being developed as an environmental streamlining “pilot” through TEA-21, Section 1309, and was selected as a priority project by Executive Order 13274. In 2003 the Texas Legislature authorized TxDOT to develop proposals for the TransTexas Corridor Vision, which incorporates I-69 as a potential component of that intermodal plan. The relatively short timeline for development of the Texas portion of I-69 increases the need for streamlined review of environmental documents.

WHEREAS, the Texas Division of FHWA serves as the lead Federal agency for the I-69 project and provides support and oversight to the State lead agency, the TxDOT; and

WHEREAS the FHWA is establishing environmental streamlining partnerships with the USACE and other federal environmental resource agencies with the goal of delivering I-69 in a manner that is safe, timely, cost-effective, and environmentally sound; and

WHEREAS the USACE regulates activities that result in the discharge of fill material into waters of the United States, including wetlands, as specified in Section 404 of the Clean Water Act, and work in or effecting navigable waters of the United States as specified in Section 10 of the Rivers and Harbors Act of 1899; and

WHEREAS, this Agreement is entered into under the authority of Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) and in support of the
Environmental Streamlining National Memorandum of Understanding executed on July 20, 1999, and Executive Order 13274; and

WHEREAS, Section 1309 of TEA-21 directs the U.S. Department of Transportation to develop an integrated environmental review process to streamline environmental review for highway construction projects without compromising environmental quality; and

WHEREAS, the Parties have determined that it would be mutually beneficial to supplement the USACE staffing above current levels for a period of two (2) years; and

WHEREAS, the Parties agree that the funding support provided by FHWA is intended to supplement the funds needed by the USACE to participate as a full partner in activities and decisions related to the I-69 Process Manual and related Technical Advisory and Steering Committees; and

WHEREAS, the Parties agree to meet quarterly, as needed, to discuss current and future project deliverables and performance objectives and agree on priorities; and

WHEREAS, the Parties have determined that any supplemental staffing above current levels would provide streamlined review by the USACE for the federal-aid I-69 highway project contemplated or under design by TxDOT; and

WHEREAS, this streamlined review would enable the I-69 projects within Texas to proceed with additional, earlier and meaningful coordination of project review and analysis, and promote effective and timely decision making by the USACE; and

WHEREAS, the I-69 review process goal is to enable all parties to evaluate the transportation project development process including related resource agency actions and develop new tools and approaches to achieve the parties respective missions in a more efficient, effective, and timely manner; and

WHEREAS, the parties to this agreement will participate as full partners in the development of a streamlining report which will document processes jointly developed during the I-69 process; and

WHEREAS, the FHWA is willing to provide advance funding on a quarterly basis to the USACE for dedicated staff to provide these functions; and

WHEREAS, Section 1309(e) of TEA-21 allows for a State to request to use funds made available under Chapter 1 of Title 23, United States Code, to provide resources to affected Federal agencies necessary to conduct such activities; and

WHEREAS, the FHWA has indicated and agrees that TxDOT’s allocated discretionary Federal-aid highway funds are eligible to support this agreement; and

WHEREAS, Texas State law restricts TxDOT from funding Federal agencies directly; and
WHEREAS, the FHWA, at the request of TxDOT, has agreed to withhold funds from TxDOT’s allocated discretionary funds to fund the USACE; and

WHEREAS, direction provided by the FHWA indicates such agreements and funding transfers must be able to demonstrate an improvement in performance;

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

Agency Responsibilities:

1. FHWA responsibilities. FHWA will:

   A. Pay the USACE based on the advance estimated quarterly funding needs provided by the USACE to the FHWA. The total funding amount will not exceed $350,000 for the two-year term of this agreement. The funding will be used to defray the USACE costs contemplated by this agreement, including staff time, administrative assistance travel, and per-diem at federal government rates as needed to support this agreement.

   B. Review USACE quarterly reports of actual account expenditures for salaries, benefits, travel and indirect costs as drawn against this advance payment in support of work under this agreement.

   C. Approve or dispute USACE submittals of expenditures and negotiate with USACE in good faith toward reconciliation of any disputed amount.

   D. Be the lead for developing a joint streamlining report evaluating the transportation project development process including related resource agency actions with the goal of producing new tools and approaches to achieve our respective missions in a more efficient, effective, and timely manner. The review, formulation of recommendations, and submission of the streamlining report shall be completed after the I-69 Tier 1 Record of Decision has been issued.

1. USACE responsibilities. USACE will:

   A. Assign qualified and experienced staff to participate in the I-69 Process Manual, NEPA integrated review and concurrence process.

   B. On a quarterly basis, formally request the transfer of funds from the FHWA to the USACE in advance of the expenditure of such funds. As a part of the formal request, estimate how those funds will be spent.
C. Use the funds provided under this agreement to defray the costs of the salaries and necessary travel expenses in accordance with the Federal Travel Regulations, 41 C.F.R. Chapter 301, which is incorporated into this agreement by reference. USACE will submit all necessary expenditures incurred by USACE staff in performing work under this agreement. Expenditure reports will be submitted at the end of each quarter to FHWA using Standard Form 133, Budget and Execution Report.

D. Ensure that the staff shall keep time records identifying the hours spent on the objectives contained in Appendix A of this agreement. These records shall be available to FHWA for at least four (4) years after the termination of this agreement.

E. Participate as a full partner in activities and decisions related to the I-69 Process Manual and related Technical and Steering Committee activities.

F. Participate with FHWA, TxDOT, and other resource agencies in the joint development of the streamlining report of suggestions and ideas for improving the logistics and communication within and among USACE, FHWA and TxDOT that occurs during the NEPA and permitting processes.

G. Meet the performance objectives contained in Appendix A, Agency Performance Objectives, based on priorities as established and agreed to by the parties at the quarterly meetings as described under “General Terms,” paragraph “A.”

3. General Terms

A. As part of this Agreement, parties to this Agreement may meet quarterly or as otherwise needed, to discuss current and future project deliverables and agree on priorities.

B. For purposes of this agreement, it is assumed that portions of the TransTexas Corridor Vision and I-69 will be studied jointly as one corridor and therefore will share environmental documentation. This agreement will apply to I-69 projects only. If TransTexas projects are developed separately from I-69 this agreement does not apply to those projects.

C. This Agreement may be modified or amended only by written, mutual agreement of the parties.

D. Transfer of funds from FHWA Headquarters to USACE Headquarters should be sent to the attention of Mr. Mark Guest, (202) 761-0067, and mailed by certified mail/return receipt to: USACE, ATTN: CERM-BC, 441 G. Street, NW, Washington, DC, 20314-1000. USACE will generate a work allowance for the Galveston District.
Expenditure Reports must be sent to FHWA:

Sandra E. Allen
I-69 Environmental Manager
Federal Highway Administration
Federal Office Building, Room 826
300 East 8th Street
Austin, TX  78701

E. This agreement becomes effective when executed by all parties hereto and it shall terminate at the close of business on the date that is two calendar years after the its effective date, unless: (1) the Agreement is modified by written amendment prior to the date of termination; or (2) the Agreement is otherwise terminated by either agency upon a 60 day advance written notice.

F. This agreement may be terminated by the parties upon (60) sixty days written notice if the party requesting termination believes that another party has not substantially performed its responsibilities by the terms of this Agreement, and provided further that the offended party first serve all parties with written notice of the perceived non-performance and sixty days within which to remedy the problem, unless the parties agree in writing to an alternate date. If any party wishes to terminate this agreement for any reason other than deficient performance, the party wishing to terminate shall provide written notice to the other parties, indicating the intent to terminate the agreement one hundred and twenty (120) days from the date of the written notice, unless all parties agree to an alternate date. If the agreement is terminated prior to completion, USACE will reimburse FHWA the balance of unobligated funds.

G. The point of contact/project manager in each signatory agency is as listed below unless such responsibilities are delegated by this individual.

USACE: Mr. Dolan Dunn
Chief, Regulatory Program Branch
US Army Corps of Engineers, Galveston District
Post Office Box 1229
Galveston, TX  77553-1229
Telephone No.: (409) 766-3929
Fax No.: (409) 766-3931
E-Mail Address: Dolan.Dunn@swg.usace.army.mil
H. During the performance of this agreement, the parties agree to abide by the terms of Executive Order 11246 on equal employment opportunity and will not discriminate against any person because of race, color, religion, sex or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex or national origin.

I. The parties to this agreement are acting in an independent capacity in the performance of their respective functions under this agreement. Regardless of the funding source for any staff employed by USACE, such staff shall not be construed as an officer, agency or employee of the FHWA or TxDOT. The USACE will make all decisions as to hiring, directing and assigning work under this agreement. In the event of a liability claim, each party shall defend their own interests. Neither party shall be required to provide indemnification of the other party.

J. In no way do the parties intend to abrogate through this agreement any obligations or duties assigned by law to their agencies.

K. This agreement does not preclude the parties from entering into other interagency agreements relative to their respective roles and responsibilities; however, any other agreements should be consistent with this agreement.
SIGNATURES OF THE PARTIES TO THE AGREEMENT
FOR THE UNITED STATES ARMY CORPS OF ENGINEERS

Michael L. Schultz
Colonel, US Army
Southwestern Division

DATE

Leonard D. Waterworth
Colonel, US Army
Galveston District Engineer

DATE

John R. Minahan
Colonel, US Army
Fort Worth District Engineer

DATE

FOR THE US FEDERAL HIGHWAY ADMINISTRATION

C. D. Reagan, Division Administrator
Federal Highway Administration

DATE
Appendix A

USACE Performance Objectives

1. The USACE shall participate in the I-69 project development activities as outlined in the Process Manual. Those activities shall be considered first priority in terms of performance objectives. Examples include:

   A. Represent USACE by attending and participating in all meetings and all activities of the I-69 NEPA and Project Development Process Steering Committee and Technical Advisory Committee, as coordinated by FHWA and TxDOT.

   B. Participate in appropriate activities associated with the development of mitigation options for the impacts associated with the I-69 project, including advance mitigation opportunities.

   C. Participate in the development/implementation of written FHWA/TxDOT and USACE guidance.

   D. Share in the responsibilities with FHWA and TxDOT in organizing meetings or conference calls to clarify problems encountered during the project development process.

2. Other activities listed in this agreement shall be secondary to the deliverables listed in the I-69 Process Manual.

3. Priorities will be assigned and agreed to by the signatory parties during the quarterly meetings specified under General Terms, paragraph A. Other objectives will be accomplished if funding remains after meeting the Process Manual requirements.

4. The USACE shall review and respond to I-69 project submissions according to timelines established in the I-69 Process Manual.

5. The USACE shall participate in the joint development of the streamlining report evaluating the I-69 project development process including related resource agency actions with the goal of developing new tools and approaches to achieve our respective missions in a more efficient, effective, and timely manner.