

INTERPERSONNEL
MEMORANDUM OF UNDERSTANDING
between
UNITED STATES ARMY CORPS OF ENGINEERS, Baltimore District
and
MARYLAND DEPARTMENT OF TRANSPORTATION, acting for and on behalf of the
STATE OF MARYLAND

THIS MEMORANDUM OF UNDERSTANDING (MOU), executed in duplicate, made and entered into this 26 day of July 2023, by and between the United States Army Corps of Engineers Baltimore District, hereinafter referred to as "USACE" and the Maryland Department of Transportation acting for and on behalf of the State of Maryland, hereinafter referred to as "MDOT", which includes the Secretary's Office (MDOT TSO), Maryland Transportation Authority (MDTA) and the following transportation business units (TBU): State Highway Administration (MDOT SHA), Maryland Aviation Administration (MDOT MAA), Maryland Transit Administration (MDOT MTA), Maryland Port Administration (MDOT MPA), and Motor Vehicle Administration (MDOT MVA) (collectively known as MDOT).

WHEREAS, MDOT has requested USDOT to provide funds to MDOT for USACE review of MDOT projects in regard to aquatic resource impact evaluation pursuant to the Clean Water Act (Section 404), the Rivers and Harbors Act of 1899 (Section 10), and the Marine Resources, Protection, and Sanctuaries Act (Section 103), to assure that the planning and design of these projects is environmentally acceptable by law; and

WHEREAS, MDOT anticipates an increased number of transportation projects in the near future due to increased federal funding from the "Infrastructure Investment and Jobs Act" (Pub. L. 117-58) (IIJA 2021) and additional MDOT TBUs covered in this agreement, which USACE must review and desires USACE to increase its level of involvement during the planning and project development processes and operational phases, as needed, to provide priority review of the aquatic resource impact evaluation for the projects. It would also shorten its review time such that USACE permit reviews do not unnecessarily delay the MDOT planning and development processes and project implementation; and

WHEREAS, USACE has indicated that due to staff and resource constraints, conditions of a new agreement providing additional staff capacity may help improve priority review of transportation projects by USACE and increase USACE participation in MDOT's transportation planning and project development processes; and

WHEREAS, all parties have determined that it would be mutually beneficial to increase USACE staff dedicated to providing MDOT with priority project review, consultation, and assistance in the project planning and development processes, so that transportation projects can be planned, designed, and implemented promptly to meet the changing transportation and environmental quality needs of the State, in a manner that meets all obligations of the law and is sensitive in regard to aquatic resources and the public interest; and

WHEREAS, MDOT is willing to fund USACE for the increased staff (to be filled by up to three (3) full-time positions) for up to eight (8) years unless both MDOT and USACE agree to modify staffing levels to reflect changes in the workload that is required to provide MDOT with priority project review and USACE shall provide the identity of the persons assigned to MDOT; and

WHEREAS, USACE has determined that it is authorized pursuant to Section 214 of WRDA 2000, as amended (33 U.S.C. Section 2352); to accept and expend funds that supports activities that directly and meaningfully contribute to expediting and improving transportation project planning and delivery for projects in a State; and

WHEREAS, the parties hereto desire to enter into this MOU to facilitate and streamline the review of MDOT transportation projects and provide for the personnel and funds to obtain this goal.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises set forth below, the parties hereto agree, with the intention of being legally bound to the following:

I. Statement of Work

A. To accomplish the objectives established in this MOU, MDOT shall fund three full-time positions (MDOT-funded positions) which shall be responsible for performing the services set forth herein. USACE shall employ these MDOT-funded positions to provide priority review of MDOT projects by USACE regulatory personnel necessary to accomplish review of transportation projects and for compliance with permit processes to include the streamlined National Environmental Policy Act, Clean Water Act Section 404 processes (Streamlined Process), Rivers and Harbors Act, and Marine Resources, Protection, and Sanctuaries Act through the current Maryland's Transportation Environmental Regulatory Process (TERP) and any subsequent revisions.

USACE will use the funds provided under this MOU to defray its costs associated with the review of MDOT projects; said funds may be used by USACE for salaries and associated benefits, and to pay reasonable travel expenses in accordance with the Joint Travel Regulations, 41 C.F.R. Chapter 301, which is hereby incorporated by reference as if physically attached hereto. For the positions funded under this MOU and for work specifically covered under this MOU, USACE shall make reasonable efforts to obtain prior concurrence and approval from MDOT prior to authorizing overnight travel. Only previously authorized USACE staff may bill MDOT in accordance with this MOU. MDOT also understands that certain USACE staff, including those with signature authority, may provide support on projects but will not bill to this funding.

B. USACE staff shall provide streamlined and expedited environmental document and permit review (within agreed upon time frames), technical assistance, consultation, and project coordination as identified in Attachment A, attached hereto and made part hereof.

C. USACE shall review documents as timely as possible, based on mutually established priorities. The MDOT priorities for these MDOT-funded positions will be established or verified, in writing, on a quarterly basis, or more frequently, if required. It is recognized that multiple, overlapping requirements will occur. In these cases, MDOT will determine priorities and will negotiate time frames with USACE.

D. In the event that an MDOT project requires a permit, and the project is not being evaluated in the standard TERP, USACE will evaluate and render its decision in accordance with the requirements established in 33 C.F.R. Part 325 as timely as possible.

E. USACE shall provide MDOT with guidance, as appropriate, and when requested in the preparation of permit applications, mitigation site plans, Chesapeake Bay Total Maximum Daily Load (TMDL) plans, TERP - Comment I Concurrence Packages, environmental documents (e.g., Environmental Assessments, Environmental Impact Statements), and other required documentation necessary in the transportation project planning and development processes.

F. USACE regulatory personnel assigned to MDOT projects under this MOU shall keep daily time records to identify the number of hours worked on MDOT projects and charges to appropriate project numbers. These hours will be documented separately for each project using a mutually agreed upon format developed jointly by USACE and MDOT. These hours will also be documented separately for each MDOT TBU (TSO, SHA, MAA, MTA, MVA, and MPA) and MDTA. Attachment A provides general guidance of types of potential tasks that are suitable for billing and is not a form for required billing. The total number of hours billable during each year of the MOU shall not exceed 2080 hours per position (6240 hours total for three full-time persons). Nor shall the amount due for each year for all regulatory personnel assigned to MDOT under this MOU exceed the maximum annual funding limits agreed upon in the annual supplement. Initially funding for three (3) full-time positions is planned under this MOU. However, MDOT and USACE shall consult as needed on the appropriate number of positions based on the status of MDOT's workload and priorities. In addition, USACE shall keep accurate and separate accounting records of all receipts and disbursements of all funds received and expenses paid pursuant to this MOU and produce such records for examination as required by MDOT and/or USDOT and will permit extracts and copies to be made by MDOT, USDOT, or their duly authorized representatives. USACE shall keep records substantiating hours and costs billed pursuant to this MOU for a period of at least five (5) years after the final billing for each year that has been submitted.

G. USACE shall provide MDOT with a quarterly status report on, or in accordance with, a form to be provided by MDOT, within thirty (30) working days after the end of each quarter, which shall detail quarterly project review activity pursuant to this MOU.

H. MDOT shall provide USACE with a complete and updated list of billing codes per MDOT department, project, and activity that USACE will be billing to/working. An updated list shall be provided at least semiannually. It is the responsibility of MDOT to provide any updates to billing codes to USACE ahead of quarterly reports.

I. USACE, in cooperation with MDOT, will prepare program-based performance standards/measures and conduct periodic performance reviews (see Attachment B). USACE shall document all appropriate performance standard measurements (discussed in Attachment B) in the quarterly status reports described in Paragraph I. G. above. These standards may be modified from time to time by a mutual understanding of all parties hereto, independently of this MOU. USACE will work with MDOT to improve / correct identified deficiencies.

J. The parties to this MOU shall act in independent capacities in the performance of their respective functions under this MOU; and no parties shall be construed as the officer, agent, or employee of another.

K. During the period of performance of this MOU, the positions funded shall be an employee or person under the control and direction of USACE and MDOT shall not be considered an employing agency for any purpose, and MDOT shall not be responsible for the actions of that person nor shall they control or direct those actions.

L. In no way shall it be construed or implied that either MDOT or USACE is by this MOU intending to abrogate its obligation and duty to comply with the regulations promulgated under Sections 9, 10, 11,

13, 14 of the Rivers and Harbors Act of 1899 (33 C.F.R. 401,403, 407, 408), Section 404 of the Clean Water Act of 1977 (as amended) (33 U.S.C. 1344), Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972(as amended) (33 U.S.C. 1413), or the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), as applicable. Nothing in this MOU shall be construed to relieve USACE of its responsibilities under the relevant laws relating to cooperating and/or commenting agency, and it is the intent of this MOU to provide additional resources to facilitate environmental streamlining and provide services over and beyond expectations and requirements on transportation projects.

II. Financial Administration

A. Subject to the billing provisions of Paragraph 11.B. below, and for a period of up to eight years, MDOT shall pay USACE a maximum total annual amount of \$600,000 for three (3) full-time positions (\$200,000 each). Maximum billing on a quarterly basis shall not exceed \$150,000 (for three (3) full-time positions). The maximum amount may be amended annually by a mutual understanding of all parties. Payment will be in advance of each quarter for each full/part-time position. If the parties agree that staffing modifications are needed, this MOU may be modified by a written amendment signed by both parties.

B. MDOT shall fund the costs of all USACE regulatory services provided under this MOU for which such persons shall be specifically designated to render the priority assistance described in this MOU. The parties to this MOU, however, recognize and acknowledge that USACE shall not be relieved of any responsibility to render such other assistance to the agencies as required by statute, regulation, and/or custom and practice, and the agencies are under no obligation to fund such assistance. MDOT shall provide funds on a quarterly basis in advance of the commencement of work or the issuance of any obligation by USACE for any task assigned. MDOT shall provide USACE the full amount of USACE estimated expenses by sending a check payable to "F&AO, USAED Baltimore" approximately 30 days prior to the start of each quarter at the following address:

U.S. Army Corps of Engineers

Baltimore District
Ms. Heather Dahl
CENAB OP-O
2 Hopkins Plaza
Baltimore, MD 21201
410-962-6733
Heather.N.Dahl@usace.army.mil

At the end of each quarter, USACE shall provide to MDOT a detailed accounting, including a balance sheet, of the actual costs incurred during that quarter and under this MOU, per TBU and MDTA, per project.

C. Any funds advanced to USACE by MDOT in excess of the actual costs incurred that quarter shall be applied toward the following quarter's USACE estimated expenses.

D. If it appears that the actual quarterly cost to USACE will exceed the amount of funds already paid for that quarter, USACE shall promptly notify MDOT of the amount of the additional funding necessary to pay for the required goods and services. If the carryover from previous quarters is insufficient to cover any overrun, MDOT shall (i) provide the additional funds to USACE, or (ii) require that the scope of the assistance be limited to that which can be financed by the funds already paid, or (iii) direct the termination of the work. If MDOT directs USACE to proceed, MDOT shall provide USACE with the full amount of the additional funds within thirty (30) calendar days thereafter. Future quarterly USACE estimated expenses may need to be adjusted so that the total annual cost does not exceed the established maximum annual amount.

E. USACE will utilize funds issued by MDOT to cover all expenses for USACE funded by MDOT, including but not limited to, salaries, benefits, travel, per diem, administrative overhead, and MDOT-authorized training and overtime, pursuant to this MOU. Established USACE accounting procedures will be used for recording costs. Prior approval by MDOT shall be required for travel.

F. The foregoing financial obligations of MDOT are subject to available appropriations from the General Assembly. All commitments made by USACE in this MOU are subject to the availability of appropriated funds. Nothing in this MOU obligates USACE to expend appropriations or incur other financial obligations that would be inconsistent with federal law.

III. Period of Performance

A. The term of this MOU is for a period of eight (8) years from the date of the last required signature on the signature page, unless terminated sooner as set forth herein.

B. During the term of this MOU the total amount to be reimbursed to USACE shall not exceed Four Million Eight Hundred Thousand Dollars (\$4,800,000) for three full-time positions.

C. The term of this MOU shall remain in effect up to the term specified in III. A. so long as (i) USDOT continues to provide funding to federal agencies participating in the environmental review process and Congress grants USACE the authority to accept such funding, and (ii) this MOU has not been terminated sooner in accordance with Paragraph III.D. below. However, this MOU may be modified by a written amendment signed by both parties if it has been mutually determined that it is necessary to change the number of funded positions, or otherwise.

D. Either party may terminate its participation in this MOU upon ninety (90) days written notice to all the other parties. Should the MOU be terminated, the parties are under no obligation to the person funded under this MOU and the continued employment of that person shall be solely the responsibility of USACE. The parties may agree to a different period of notice for termination of the MOU upon unanimous consent.

E. Within thirty (30) days of terminating this MOU, USACE shall provide to MDOT a final accounting of the actual cost incurred in that quarter. USACE shall return to MDOT any funds advanced in excess of the actual costs as then known, or MDOT shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit MDOT's duty in accordance with Article II to pay for any costs which may become known after the final accounting.

IV. Project Officers

At the date of signature of this MOU, USACE and MDOT Project Officers for this project are the individuals identified below. USACE and MDOT shall each have the right to reassign the Project Officer position, on a permanent or temporary basis, to a different individual, and shall notify the other party of any such reassignment.

A. For U.S. Army Corps of Engineers:

Joseph P. DaVia, Chief
Maryland North Section/ U.S. Army Corps of Engineers, Baltimore District
Attn: CENAB-OP-RMN
2 Hopkins Plaza
Baltimore, MD 21201-2930
joseph.davia@usace.army.mil
Phone: (410) 962-5691

B. For Maryland Department of Transportation

Eddie Lukemire
Acting Director
Office of Environment
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076
jdenniston@mdot.maryland.gov
Phone: (410) 865-1321

V. Required Clauses

A. During the performance of this MOU, the parties agree to abide by the terms of Executive Order 11246 – Equal Employment Opportunity on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will ensure that applicants are employed without regard to their race, color, religion, sex or national origin. Parties must comply with the requirement of Attachment C and Attachment D of MDOT's Standard Title VI/Non-Discrimination Assurances DOT Order No. I 050.2A which generally set forth non-discriminatory regulations and other civil rights related regulations. Attachment C and Attachments D are attached hereto and incorporated herein as substantive parts of this document. The term "Acts" in Attachment C refers to Title VI of the Civil Rights Act of 1964. The term "Regulations" in Attachment D refers to 49 C.F.R. Part 21 and 28 C.F.R. Section 50.3.

B. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this MOU or any benefit that may arise there from; but this provision shall not be construed to extend to this MOU if made with a corporation for its general benefit.

C. The parties agree that any hiring pursuant to this MOU and any contracts to be developed and awarded pursuant to this MOU, all design, plans, specifications, estimates of costs, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general, shall, at all times, conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including, specifically, procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with the Americans with Disabilities Act, anti-solicitation, information, auditing, and reporting provisions.

D. The parties hereby agree and affirm that the persons executing this MOU on their respective behalf are authorized and empowered to act on behalf of the respective parties. The parties hereby further warrant and affirm that no cause of action challenging the existence, scope, or validity of this MOU shall lie on the grounds that the persons signing on behalf of the respective parties were neither authorized nor empowered to do so.

E. The recitals (WHEREAS clauses) at the beginning of this MOU are incorporated herein as substantive provisions of this MOU.

VI. Modification

- A. Any changes, amendments corrections, or additions to this MOU, including any annual amendment concerning the maximum total amount of payment provided for in paragraph II.A. above, shall be in writing; shall be executed and approved by the same office of the parties that executed and approved this original MOU (or their designees); shall be in accordance with applicable law; and shall become effective upon written approval by both parties.

VII. Notices and Invoicing

All correspondence, reports and notices required hereunder shall be sent to the following: Invoices and/or payment to USACE:

Baltimore District Attention:

Mr. Christopher Higgins
CENAB OP-O
2 Hopkins Plaza
Baltimore, MD 21201
410-962-3233
Email: christopher.higgins@usace.army.mil

Ms. Cynthia Geppi
Finance & Accounting Officer
2 Hopkins Plaza
Baltimore, MD 21201
410-496-2272
Email: Cyndi.r.geppi@usace.army.mil

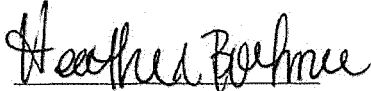
Ms. Heather Dahl
CENAB OP-O
2 Hopkins Plaza
Baltimore, MD 21201
410-962-6733
Email: Heather.N.Dahl@usace.army.mil


Invoices and/or payment to MDOT:

Eddie Lukemire
Acting Director
Office of Environment
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

VIII. Signatures


IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their respective duly authorized officers on the day and year first above written.


WITNESS


By:  4/20/23 (SEAL)
Samantha Biddle Date
Deputy Secretary
Maryland Department of Transportation

**Approved as to form and Legal
Sufficiency:**

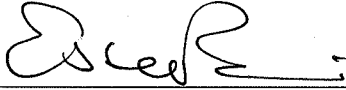
This 19th day of April, 2023


Assistant Attorney General

Funds Approval


Director
Office of Finance

**U.S. Army Corps of Engineers,
Baltimore District**

 20 JUL 23

Esther S. Pinchasin Date
Colonel, U.S. Army
Commander and District Engineer

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ATTACHMENT A TASKS

USACE staff currently reviews proposed MDOT projects to help evaluate and suggest ways to avoid, minimize, and mitigate potential harmful impacts to the natural and human environment, pursuant to the National Environmental Policy Act, Section 309 of the Clean Air Act, and Section 404 and Section 408, of the Clean Water Act, among other Federal requirements.

Due to the varying number of transportation projects which USACE must review, and the desire for MDOT to increase its level of USACE involvement during the planning and project development phases, and operational phases, as needed, MDOT is providing reimbursement funding to USACE to facilitate the environmental review process for MDOT projects, as well as USACE participation in MDOT's transportation planning and project development processes.

As authorized and permitted by federal law and regulation and USACE policy, and subject to federal appropriations, USACE staff shall accomplish the following common tasks for MDOT, as appropriate, in order to expedite, implement, and coordinate the transportation project development process and meet MDOT's needs for compliance with applicable State and Federal statutes:

- Review transportation plans and programs, according to MDOT review priorities
- Review permit applications and mitigation bank proposals
- Participate in interagency scoping processes
- Provide preliminary environmental analyses guidance and review
- Provide preliminary and detailed alternatives analyses guidance and review
- Represent USACE at meetings (including public hearings, public meetings, team meetings, and task forces) with the authority to make routine decisions
- Participate in the development and implementation of written MDOT and joint agency guidance
- Perform expedited internal USACE coordination, as needed, on document reviews
- Ensure USACE review coordination on separate reports/documents for the same project
- Provide timely communication of updated or changing USACE requirements to support consistency of regulatory program implementation across MOOT and to ensure minimal project delays.
- Attend inter- and intra-agency meetings regarding MDOT projects/programs as appropriate
- Organize and/or facilitate meetings or conference calls to clarify problems at the request of USACE, other agencies, or MDOT
- Participate in conflict resolution for either project or policy issues
- Perform other duties as requested by MDOT and agreed to by USACE

USACE staff shall accomplish the following specific tasks for MDOT, as appropriate, in order to expedite, implement, and coordinate the transportation project development process and meet MDOT's needs for compliance with applicable State and Federal statutes.

- Participate in all streamlined process milestones (e.g., purpose and need, alternatives retained for detailed study, preferred alternative/conceptual mitigation, preferred alternative/final mitigation) during the review/comment period

- Participate in impact assessment activities/field work
- Verify wetland delineations and assist with functional assessments
- Participate in site visits to identify/refine project alternatives
- Participate in Preapplication site visits and/or meetings
- Participate in field reviews of potential mitigation sites and constructed mitigation
- Conduct permit compliance inspections at construction sites
- Conduct annual inspections of MDOT mitigation sites
- Conduct coordination with resource agencies and environmental groups to resolve objections to proposed permit issuance
- Conduct document reviews and prepare USACE comments for such things as (not inclusive):
 - Wetland delineation reports
 - Wetland functional assessment reports
 - Stream and Wetland calculator documentation
 - Habitat evaluation reports, including biological assessments
 - Phase I and Phase II mitigation documents
 - Purpose and Need package
 - Preliminary alternates documents
 - Alternates Retained for Detailed Study package
 - Preferred Alternative/Conceptual Mitigation package
 - Preferred Alternative/Final Mitigation package
 - Assist with streamlining the National Environmental Policy Act (NEPA) approvals and permitting processes
 - Environmental Assessments
 - Environmental Impact Statements (draft and final)
 - Environmental Impact Statement comment resolution packages
 - Categorical Exclusions
 - Findings of No Significant Impact
 - Mitigation Site Reports and Plans
 - Section 404/Section 10 Permit Applications in the Streamlined Process
 - Proposed policies and procedures
 - Mitigation Bank Instruments
- Assist with streamlining feasibility studies including climate, adaptation, and resilience activities
- Coordinate and provide technical and policy training on natural and aquatic resource issues and other relevant issues, as necessary
- Prepare USACE permit decision documents
- Submit quarterly status reports, documenting the work performed on each project and a self-assessment in accordance with the performance standards in Attachment B.

ATTACHMENT B
PROGRAM PERFORMANCE STANDARDS

- I. Document Review
 - A. Substance of Comments: Comments provided on documents (e.g. purpose and need statement, EA, EIS) will provide the appropriate level assistance, technical information, expertise, policy explanation, and guidance necessary to meet USACE requirements under NEPA or other applicable statutes. Comments will be consistent with current Department of the Army regulations, guidance, agency policy, and address relevant issues; and will be in keeping with the highest environmental standards. Suggestions will be offered to address the identified issues.
 - B. Timeliness: Review of documents will be as established in the accepted Streamlined Process, based on mutually established priorities. MDOT priorities for this position will be established or verified on a quarterly basis, or more frequently, if required. It is recognized that multiple, overlapping requirements will occur. In these cases, MDOT and USACE will mutually determine review priorities. After receipt and preliminary review of draft documentation, if additional information is needed, USACE and MDOT shall discuss the issues involved and suggest a resolution. Until a resolution has been reached, the timed response period may be halted. Once a complete document is received, USACE and MDOT will negotiate a review completion date. On a case-by-case basis, review time extensions will be granted, acknowledging that comments on public documents (e.g. DEIS/FEIS) must be completed within the established comment period. Instances where comments on preliminary documents were minor and have not significantly changed, every effort will be made to provide an expedited final review with formal comments/concurrence in less than 30 days.
 - C. Program Performance Standard
 - 1. An evaluation of the substance of USACE comments (consistency with current USACE regulations, guidance, agency policy, while addressing relevant issues) will be conducted (i) through a programmatic review by USACE and MDOT management of a random selection of comments, and (ii) by discussions with involved regulatory personnel quarterly.
 - 2. Timeliness will be evaluated by the following standards:
 - (a) 100-90% of the time = Good
 - (b) 89-80% of the time = Satisfactory
 - (c) Below 80% = Needs Improvement.
- II. Technical Assistance
 - A. Meetings: USACE will attend and actively participate in meetings by providing technical assistance, rendering decisions, gathering information, and facilitating meetings regarding projects requiring their input or expertise including: inter-agency review meetings, project specific briefings, public meetings and hearings, and various coordination meetings.

If a scheduled MDOT project meeting cannot be attended, USACE will coordinate other means for providing input or assistance. After the meeting that was not attended, USACE will coordinate with the MDOT project manager to review what happened and determine whether an additional meeting should be scheduled. USACE will also convene meetings when necessary to address specific concerns, or to facilitate inter-agency coordination. However, MDOT recognizes that USACE has an objective role to maintain in the evaluation process and thus will not attend meetings to advocate a project on behalf of MDOT but may provide a briefing on the status of USACE permit evaluations.

1. Participation in meetings will be evaluated by attendance at necessary meetings (as agreed to by USACE and MDOT) and participation in information gathering as follows:
 - a) 100-90% = Good
 - b) 90-80% = Satisfactory
 - c) below 80% =Needs Improvement

- B. Field Reviews: USACE will utilize MDOT scheduled field reviews and initiate additional field meetings whenever necessary to gather pertinent information to render a decision (on a permit, permit conditions, and mitigation, etc.), to coordinate permit review with other resource agencies, and to share information and requirement needs with MDOT. When a scheduled field review cannot be attended, USACE will coordinate other means for providing input or assistance. After the field review that was not attended, USACE will coordinate with the MDOT staff person to review what happened and determine whether additional field time should be scheduled. Additional field views or site visits not requiring a multi-agency group will be scheduled, as required, in coordination with MDOT or conducted independently.
 1. Participation in field reviews will be evaluated by attendance at necessary meetings (as agreed to by USACE and MDOT) and participation in information gathering as follows:
 - a) 100-90% = Good
 - b) 90-80% = Satisfactory
 - c) below 80% =Needs Improvement

- C. Technical Assistance with Scoping, Planning, Design, and Construction: USACE will clearly identify potential problems pertaining to impacts to aquatic resources, provide specific recommendations for resolution, and work to resolve issues during all phases of transportation project development. This will include providing suggestions and recommendations for avoidance, minimization, and mitigation through all phases of development. Should USACE concerns, suggestions, and recommendations not be incorporated, MDOT and USACE will work towards resolution.
 1. USACE participation will be evaluated based on (i) the identification of potential problems; (ii) timeliness, practicability and feasibility of recommendations; and (iii) cooperative negotiation and resolution of issues, within mutually agreed upon timeframes as follows:
 - a) 100-90% = Good
 - b) 90-80% = Satisfactory.

c) below 80% = Needs Improvement.

III. Policy Development and Participation

- A. Involvement in Inter-agency Task Forces: Many task forces currently exist to address issues involving environmental review that would benefit from continued and consistent USACE involvement (e.g., Inter-agency Training, Every Day Counts, Environmental Justice, WRR, etc.). While serving on each group, USACE will make reasonable efforts to attend a majority of meetings; provide comments and input relative to USACE mission, policies, and guidance; and produce any requested decisions or comments within MDOT and USACE mutually agreed upon time frames. When a USACE representative cannot attend, the meeting minutes will serve to update that person on the progress of the task force.
- B. Review of Policy Documents and Handbooks: As MDOT develops or modifies environmental compliance documents and handbooks conveying policies for conforming to regulatory requirements, USACE will provide input regarding resources within its purview, upon request.
- C. USACE Regulation, Policy, and Guidance Dissemination: In order for MDOT to remain informed as to any changes to regulation, policies, and guidance that may affect their procedures, USACE will make reasonable efforts to advise MDOT of any changes pertaining to the transportation program in a timely manner. USACE will also provide copies of applicable documents as reasonable and approved by higher USACE authority.
- D. Standards
 - 1. Task force involvement will be evaluated based on feedback from the taskforce chairperson and other taskforce representatives. In making this evaluation, consideration will be given to the number of task forces, project workload, and the area of expertise that USACE can provide.
 - 2. Policy review will be evaluated on the substance and timeliness of comments provided.
 - 3. Dissemination of USACE regulations, policy and guidance will be evaluated as follows:
 - a) Guidance and documents disseminated within 30 days = Acceptable
 - b) Guidance and documents disseminated after 30 days = Needs Improvement

IV. Outreach, Education, and Continuous Improvement

- A. It is expected that the increased involvement of USACE in MDOT processes will lead to positive growth in working relationships, trust, and cooperation. As a part of this process, USACE will actively seek, develop, and implement ways to continually improve, re-engineer, increase efficiencies, and streamline the environmental review/evaluation

process per MDOT approval. Often, these efforts will expand USACE duties beyond what is described in the standards thus far. This standard is designed to give USACE the opportunity to work on additional initiatives (e.g., specialized training, watershed evaluation) performed without MDOT's direct involvement. A brief description of these efforts will be provided before the program evaluation.

B. Standard:

These standards will fluctuate based on the complexity, longevity, and difficulty of the initiative and will be mutually determined by USACE and MDOT. Progress will be evaluated based on input provided by MDOT at quarterly manager meetings.

ATTACHMENT C

TITLE VI ASSURANCES

During the performance of this MOU, the U.S. Army Corps of Engineers-Baltimore District (USACE), for itself, its assignees, and successors in interest (hereinafter referred to as USACE) agrees as follows:

1. **Compliance with Regulations:** USACE (hereinafter may include consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally- assisted programs of the U.S. Department of Transportation (USDOT) and the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this MOU.
2. **Non-discrimination:** USACE, with regard to the work performed by it during the MOU, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. USACE will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the MOU covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for contracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by USACE for work to be performed under a contract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by USACE of USACE obligations under this MOU and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** USACE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Maryland Department of Transportation (hereinafter referred to as MDOT), the U.S. Department of Transportation (USDOT), or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of USACE is in the exclusive possession of another who fails or refuses to furnish the information, USACE will so certify to MDOT, USDOT, or FHWA as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of noncompliance by USACE with the Nondiscrimination provisions of this MOU, MDOT will impose such MOU sanctions as it, USDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to USACE under the MOU until USACE complies; and/or
 - b. cancelling, terminating, or suspending the MOU, in whole or in part.

6. **Incorporation of Provisions:** USACE will include the provisions of paragraphs one through six in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. USACE will take action with respect to any contract or procurement as MDOT, USDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance.

ATTACHMENT D

TITLE VI ASSURANCES

During the performance of this MOU, USACE, for itself, its assignees, and successors in interest (hereinafter referred to as USACE) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. Section 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-aid Highway Act of 1973, (23 U.S.C. Section 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. Section 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. Section 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC Section 471, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL I 00-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. Sections 12131- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. Section 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).