

Memorandum of Agreement

between the

Department of the Army
U.S. Army Corps of Engineers
Kansas City

and the

City of Waynesville, MO

and the

Missouri Department of Transportation

and the

U. S. Department of Transportation
Federal Highway Administration

for

Design and Construction
of
Defense Access Road Project A-AD-20(1)

West Gate Entrance Road
Fort Leonard Wood, Missouri

The purpose of this Memorandum of Agreement (MOA) is to establish the roles, responsibilities, funding, and procedures by which the U.S. Army Corps of Engineers, Kansas City District (COE); the City of Waynesville, MO (CITY); the Missouri Department of Transportation (MODOT); the Federal Highway Administration - Missouri Division (FHWA-MO); and the Federal Highway Administration - Eastern Federal Lands Highway Division (EFLHD) will jointly participate in the design and construction of the new West Gate Entrance Road into Fort Leonard Wood, Missouri. All participants have agreed that the COE will administer this project.

WHEREAS, \$16,500,000 in fiscal year (FY) 2000 Defense Access Road (DAR) funding has been appropriated for this project in Public Law 106-52, Military Construction Appropriations Act, 2000;

WHEREAS, the FHWA-MO and the EFLHD are authorized to administer these funds in accordance with 23 U. S. C. Section 210 and 23 CFR 660.5;

WHEREAS, the COE is authorized to administer projects pursuant to the Economy Act, 31 U. S. C., Section 1535;

WHEREAS, the CITY has agreed to accept maintenance and jurisdictional authority for the completed project;

WHEREAS, the COE has determined that this work meets the standards set forth in, and is in compliance with, the Economy Act, as amended, Federal Acquisition Regulation Subpart 17.5; and DOD FAR Supplement Subpart 217.5; and

WHEREAS, all signatory parties have agreed that the COE is to administer the project using Design-Build contracting procedures.

NOW THEREFORE, the COE, CITY, MODOT, FHWA-MO, and EFLHD do hereby mutually agree as follows:

1. The COE will be the lead agency for the development of the proposed project. Expected tasks are summarized in Appendix A. The COE will administer all work as necessary to complete the design and construction for the proposed project. A separate Appendix will be developed to document team partnership, roles, and responsibilities during the construction phase. The COE will remain the contracting agency for the project during the design and construction phases and will have primary contract administration responsibility. The COE shall provide FHWA-MO and EFLHD a breakdown of the proposed Scope of Work, including a cost estimate, time line, and a proposed budget for the design and construction of the entrance road. Updates shall be provided with each quarterly status report.

2. The FHWA-MO shall be a cooperating agency and shall (a) participate on A/E source selection boards; (b) approve the final design standards; (c) review and approve the highway environmental assessment and issue the required NEPA decision; (d) authorize the COE to begin the design-build phase of the project; (e) review the required final environmental permits; (f) participate in all of the design field reviews; and (g) approve the final plans, specifications, and estimate for construction.
3. The MODOT shall be a cooperating agency and shall (a) participate on A/E source selection boards; (b) provide the primary technical expertise for highway design and construction; (c) complete the environmental assessment, (d) obtain all necessary rights-of-way off Federal Land; (e) approve the final design standards for the project; (f) review the required final environmental clearances; (g) participate in all of the design field reviews; (h) provide construction inspection and oversight as mutually agreed with the FHWA-MO and COE; (i) concur with the preliminary and final plans, specifications, and estimate for construction; and (j) provide key membership to the Source Selection Evaluation Boards and Source Selection Advisory Council in conjunction with the request for proposal and source selection of the design/build contract.
4. The CITY shall be a cooperating agency and shall (a) be invited to participate in all of the design field reviews; (b) be requested to review and comment on preliminary and final plans and specifications for construction; and (c) accept and maintain the completed project (in accordance with established criteria).
5. The EFLHD shall be a cooperating agency and shall, as authorized by the Military Traffic Management Command (MTMC), (a) provide the funding for the proposed project, which includes funding for planning and design; (b) be invited to participate in intermediate and final field reviews; and (c) monitor and track the Federal funds being used for the program.
6. Designated points of contact for the coordination of this program are as follows:

Mr. Roger McCollum
Project Manager
Department of Defense
U.S. Army Corp of Engineers
Kansas City District
ATTN: CEMRK-PM-A
601 E. 12th Street
Kansas City, MO 64106-2896
Phone: (816) 983-3460
Fax: (816) 426-3656
E-mail: roger.d.mccollum@usace.army.mil

Mr. Alan Teikari
Planning and Coordination Engineer
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, VA 20166-6511
Phone: (703) 404-6278
Fax: (703) 404-6217
E-mail: alan.teikari@fhwa.dot.gov

Mr. Mike Staggs
 Transportation Engineer
 Federal Highway Administration
 209 Adams Street
 Jefferson City, MO 65101
 Phone:(573) 636-7104
 Fax: (573) 636-9283
 E-mail: mike.staggs@fhwa.dot.gov

Mr. Tom Hambelton
 Area Engineer
 Missouri Department of Transportation
 District 9, P.O. Box 220
 Willow Springs, MO 65793
 Phone:(417) 469-6236
 Fax: (417) 469-5215
 E-mail: hambet@mail.modot.state.mo.us

Ms. Lorel Rigsby
 Mayor
 City of Waynesville
 201 North Street
 Waynesville, MO 65583
 Phone: (573) 774-6171
 Fax: (573) 774-5647
 E-mail: ttinsley@jobe.net

1. Federal funds in the amount of \$16,500,000 have been authorized in FY 2000 by Congress for this project under the DAR Program. The funds shall be transferred to the FHWA Washington DC Headquarters by the Headquarters Department of Army for execution of the project. The FHWA Headquarters shall allocate the funds to the EFLHD or the FHWA-MO as needed and authorized by the MTMC.
2. The COE will request DAR funds for preliminary engineering activities from the EFLHD. Based on these requests, the EFLHD will secure funds from the MTMC, through the FHWA Headquarters. Reimbursement to the COE will be based on invoices submitted to the EFLHD. The invoices must reference this MOA and shall be sent to the EFLHD at the address listed in No. 6 above.
3. The MODOT and FHWA-MO have entered into a project agreement to reimburse MODOT for their administration of the environmental assessment. The project agreement may be amended to include reimbursement to MODOT for technical assistance in providing oversight for the design and construction of the project. The FHWA-MO shall review all proposed cost estimates and forward requests for authorization to FHWA Headquarters. Upon receipt of funds, FHWA-MO will allocate funds to MODOT for reimbursement of expenses using normal Federal-aid procedures.
4. The EFLHD shall provide requests to FHWA-MO for expenses incurred in performing this MOA. The FHWA-MO shall approve all proposed costs estimates and request through FHWA Headquarters that MTMC authorize funds for allocation to the EFLHD.

5. The COE will perform their administrative duties noted in this MOA at the agreed fixed price of \$95,000, excluding construction engineering services. Any changes to these estimates must be documented and submitted to the FHWA-MO for approval.
6. The DAR funds for the project will be treated the same as funds coming directly from the Highway Trust Fund, which is a contract authority, reimbursable program. The DAR funds are centrally allotted to the Federal Lands Highway Program Administrator (HFL-1), and a FHWA Form 370 (Allotment Advice) will not be issued. The funds and the authority to obligate them will be allocated to the project by HFL-1 on an individual basis. The allocation will be issued by the FHWA's Budget Division, Office of Budget and Finance.
7. The DAR funds are identified by separate three digit program codes (PC), which are used by FHWA to track the obligations and expenditures. The code for funds allocated to the FHWA-MO, for work done by MODOT, is PC-75W; and the code for funds allocated to the EFLHD, for their work and for reimbursement to the COE, is PC-75U. The EFLHD shall be responsible for the administration of the PC-75U funds for this project, including compliance with all applicable laws, regulations, and reporting of fiscal information required by FHWA. All reporting of obligations and expenditures must be identified by the PC as noted above. The COE and MODOT shall prepare and submit a final account of the costs for the project to EFLHD and FHWA-MO, respectively. The EFLHD and FHWA-MO shall forward this information to FHWA Headquarters.
8. The COE shall submit quarterly status reports on the project to FHWA-MO, EFLHD, and MODOT. These reports will include separate analysis of the Design Build aspects of the project. At the completion of the project, a final construction report and Design-Build summary shall be submitted.

REQUIRED AND STANDARD CLAUSES

1. Anti-Deficiency Act: The parties agree that no funds will be expended in excess of available appropriations.
2. Non-Discrimination: The parties will abide by the provisions of Executive Order 11246, as amended; shall be in compliance with the requirements of Title VI of the *Civil Rights Act of 1964*, as amended (78 Stat. 252; 42 U.S.C. 2000(d) *et seq.*); Title V, Section 504 of the *Rehabilitation Act of 1973* (87 Stat. 394; 29 U.S.C. 794) as amended; the *Age Discrimination Act of 1975*, as amended (89 Stat. 728; 42 U.S.C. 6101 *et seq.*); and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, national origin, handicap, religion, or sex in employment and in providing facilities and services to the public.

3. Lobbying Prohibition: The parties shall abide by the provisions of 18 U.S.C. Section 1913, *Lobbying with Appropriated Moneys*, which states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

4. Procurement: This MOA is subject to all laws governing Federal procurements and to all regulations promulgated thereunder, whether now in force or hereafter enacted or promulgated.
5. Severance of Terms and Compliance with Applicable Law: Nothing in this MOA shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. The Parties shall comply with all applicable laws and regulations, and nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose or intent of any Act of Congress or the laws of the State establishing, affecting, or relating to this MOA. If any term or provision of this MOA is held to be invalid or illegal, such term or provision shall not effect the validity or enforce ability of the remaining terms and provisions.
6. Drug Free Work Place Act (Required for use with Appropriated Funds): The parties certify that comprehensive actions will be taken to ensure the workplace is drug free.
7. In the event that a claim is brought under the Federal Tort Claims Act (28 USC 2671, et seq.) against any Federal Party, alleging that the basis for the claim is related to the performance of this MOA; it shall be the responsibility of the Party receiving the claim to coordinate with any other Federal Party regarding investigation, settlement, or litigation arising from such claim. All other Parties to this MOA will cooperate in this effort.

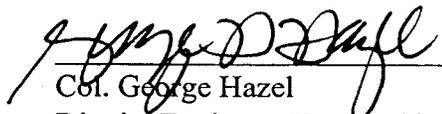
8. The COE, on a cost reimbursable basis, will be responsible for the administrative investigation, settlement, or defense, in litigation of any claim based on the Contract Disputes Act and arising from any contract awarded by the COE in accordance with this MOA. The COE will coordinate their actions with the FHWA-MO on the status of these matters, including providing cost estimates to the FHWA-MO for approval.
9. Public Laws: Nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose of or intent of any Act of Congress establishing, affecting, or relating to the MOA. No member of, or delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this MOA, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
10. The Parties accept responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors, to the fullest extent permitted by law. All claims will be handled pursuant to applicable law. To the extent that work is performed by other than public employees, those persons shall be licensed to do business in the State of Missouri, as consistent with 23 C.F.R. 635.110(c).

TERM OF THIS MOA

This MOA shall become effective on the date of the last approving signature, and shall remain in effect until the Project is complete. The date of execution is the date of the last signature affixed to this document. The MOA may be modified, extended, or terminated by written consent of all of the Parties.

IN WITNESS THEREOF, the parties hereto have caused this MOA to be executed by their duly authorized representatives.

DEPARTMENT OF DEFENSE
DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS

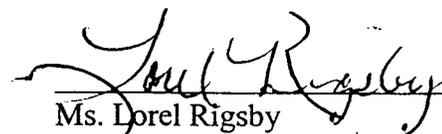


Col. George Hazel
District Engineer, Kansas City District

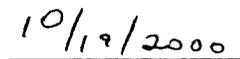


Date

CITY OF WAYNESVILLE, MISSOURI



Ms. Lorel Rigsby
Mayor



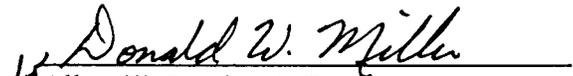
Date

MISSOURI DEPARTMENT OF TRANSPORTATION


Mr. J. T. Yarnell
Chief Engineer, Missouri Department of Transportation

10-2-00
Date

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION


Allen W. Burden, P.E.
Division Engineer, Eastern Federal Lands Highway Division

11/7/00
Date


Mr. Allen Masuda
Division Administrator, Missouri Division

10-2-00
Date

APPENDIX A

SUMMARY OF TASKS/SCOPE OF WORK

The U.S. Army Corps of Engineers, Kansas City District (COE), will provide the following work and services for the design and construction of the West Gate Access to Fort Leonard Wood:

1. Project Management and general management and coordination of the project.
2. Development of a Request for Proposal (RFP), primarily through the services of an Architect Engineer (AE) firm, for a Design/Build contract to design and construct the Westgate Access Road.
 - A. The highway design will use MODOT standards and specifications and will be completed to approximately a 35 percent level as the basis of the RFP.
 - B. The RFP will be developed using the FAR, DFAR, AFAR, and EFAR regulations. It will be a "Best Value" procurement.
3. Acquisition and award of the Design Build contract. The COE will be the contracting agency for the design build contract.
 - A. The COE will advertise the RFP and make distribution of the RFP to interested prime and subcontractors.
 - B. The COE will develop, in consultation with MODOT and FHWA-MO, evaluation factors and the source selection plan.
4. Contract administration.
5. Construction contract supervision and administration in cooperation and conjunction with the MODOT and FHWA-MO.
6. Assistance and coordination of Section 404 permits required by the COE for Reauxbideau Creek and other wetlands.
7. Adequate and appropriate oversight of funding provided for this project including financial reports, accounting, and status at periodic intervals.
8. As part of a team effort with FHWA-MO and MODOT, provide a final report evaluating and summarizing the Design-Build process used on this project. The final report should be suitable as guidance for future Design-Build highway projects.