

**MEMORANDUM OF AGREEMENT  
BETWEEN  
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
AND  
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

SUBJECT: Memorandum of Agreement between the Los Angeles County Metropolitan Transportation Authority and the U.S. Army Corps of Engineers, Los Angeles District.

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into between the Los Angeles County Metropolitan Transportation Authority (hereinafter the “LACMTA”) and the United States Army Corps of Engineers (“Corps”), Los Angeles District (hereinafter the “LAD”), collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the Corps has regulatory jurisdiction over certain activities occurring in waters of the United States pursuant to Section 404 of the Clean Water Act (“CWA”) of 1972, as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act (“RHA”) of 1899, as amended; and

WHEREAS, Section 214 of the Federal Water Resources Development Act (“WRDA”) of 2000, as amended, codified at 33 U.S.C. 2352, authorizes the Secretary of the Army, after public notice, to accept and expend funds to expedite the permit application review process for projects or activities that have a public purpose; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000, as amended, to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Assistant Secretary of the Army (Civil Works), by memorandum dated January 19, 2018, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by a non-Federal public entity subject to certain limitations; and

WHEREAS, the LAD has indicated it is not able, without additional resources, to expedite the evaluation of LACMTA permit applications; and

WHEREAS, the LACMTA is a non-Federal public entity and believes it is in its best interest to provide funds to the LAD pursuant to this MOA to streamline and expedite LAD’s review under Section 404 of the CWA and/or Section 10 of the RHA for LACMTA-designated priority projects, as more fully described in this MOA; and

WHEREAS, the LAD issued an initial public notice dated November 2, 2020, regarding its intent to accept and expend funds contributed by the LACMTA; and

WHEREAS, in a memorandum dated XXX, the LAD's District Engineer determined that the acceptance and expenditure of funds received from the LACMTA is appropriate, and an informational public notice dated XXX, regarding the decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the LACMTA permit applications for LACMTA-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist the LACMTA in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

## AGREEMENT

### Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the Corps' acceptance and expenditure of funds contributed by the LACMTA to provide expedited permit application evaluation-related services for LACMTA-designated priority projects requiring Corps' approval pursuant to Section 404 of the CWA and/or Section 10 of the RHA, as listed in **Appendix A** to this MOA ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by the LACMTA; it is a vehicle by which the LACMTA will obtain expedited permit application evaluation-related services, outside of the ordinary Corps review process for Priority Projects.

B. The LACMTA enters into this MOA pursuant to its authority under California Public Utilities Code sections 30530 and 30531.

C. The LAD enters into this MOA pursuant to its authority under 33 U.S.C. 2352.

### Article II. - SCOPE OF WORK

A. The LAD will expedite permit application evaluation-related services for LACMTA-designated Priority Projects under the jurisdiction of the Corps in exchange for funds provided by LACMTA, as set forth below. The Corps' Regulatory Program is funded as a congressionally appropriated line item in the annual Federal budget. Funds received from

LACMTA will be added to the Regulatory Division budget of the LAD, in accordance with 33 U.S.C. 2352.

B. The LAD will provide staffing resources exclusively dedicated to expediting permit application evaluation-related services, as described below, for LACMTA- designated Priority Projects and/or other programmatic efforts to support efficient decision-making related to the LACMTA CWA Section 404 and/or RHA Section 10 permitting needs.

C. The LAD will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the LACMTA for Priority Projects. LAD personnel will charge their time and expenses against the account when they perform work to either expedite permit application evaluation-related requests for LACMTA Priority Projects or undertake other programmatic efforts to support efficient decision-making related to the LACMTA's permitting needs.

D. Funds contributed by the LACMTA hereunder will be expended by LAD to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. Activities covered by this MOA will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, travel, regional coordination with Corps personnel and with other agencies, preparing and distributing public notices, preparing and conducting public hearings, preparing correspondence, performing the public interest review, preparing draft permit decision documents, and meetings with the LACMTA and other agencies.

E. LAD may expend funds provided by the LACMTA to have other Corps personnel outside LAD (e.g., Institute for Water Resources and/or Engineer Research and Development Center) or hire contractors to perform select duties, including but not limited to: site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting its review of LACMTA-designated Priority Projects. If such expenditures when combined with the costs of the LAD Regulatory Division personnel require funding in excess of the amount available under this MOA, then LAD, as appropriate, shall not utilize said other Corps personnel outside LAD or hire said contractors until and unless additional funds are provided by the LACMTA and the Parties execute a written amendment to this MOA. LACMTA may at any time choose to require the LAD to obtain pre-approval from LACMTA for use of funds provided by LACMTA prior to LAD utilizing said other Corps personnel outside LAD or hiring said contractors in subsequent Federal fiscal quarters by notifying the LAD in writing at least two (2) weeks before the start of the Federal fiscal quarter in which the pre-approval requirement is to become effective.

F. LAD will not expend funds provided by the LACMTA for costs associated with the review of the LAD's work undertaken by supervisors or other persons or elements of the LAD in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds provided by LACMTA may be used. LAD will not expend funds provided by the LACMTA to defray the costs of activities related to the Corps'

enforcement functions, but may use funds provided by the LACMTA to defray costs of activities related to permit compliance functions for LACMTA permits, such as compliance inspections. Enforcement functions are defined as activities not permitted by the Corps but requiring Corps authorization. Permit compliance functions are defined as Corps oversight of Corps-permitted activities.

G. If the funds provided by the LACMTA are expended and not replenished, any remaining LACMTA-designated Priority Projects will be handled like those of any permit applicant.

### Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. The Principal Representatives are identified in Article IV. B. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. Principal Representatives may be changed upon written notification to the other party without requiring an amendment to this MOA.

### Article IV. - NOTICES

A. Any notices, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and delivered personally, or sent by email, or mailed by first-class, registered, or certified mail to the applicable Principal Representative. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) business days after it is mailed.

B. All inquiries during the term of this MOA will be directed to the Principal Representatives listed below:

If to LACMTA:

LACMTA  
Eduardo Cervantes  
Third Party Administration  
Deputy Executive Officer  
One Gateway Plaza  
Los Angeles, CA 90012  
cervantese@metro.net

If to LAD:

Stephen M. Estes  
Chief, Los Angeles and San Bernardino Counties Section (North Coast Branch)  
Regulatory Division  
U.S. Army Corps of Engineers

Los Angeles District  
915 Wilshire Boulevard, Suite 930  
Los Angeles, California 90017-3489  
Stephen.M.Estes@usace.army.mil

With a copy in all instances to:

District Counsel  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Suite 930  
Los Angeles, CA 90017-3489

#### Article V. - RESPONSIBILITIES OF THE PARTIES

A. The LACMTA will provide adequate resources to fund existing or additional LAD Regulatory Division personnel for the purpose of expediting the review of LACMTA-designated Priority Projects and other identified activities. To facilitate the Corps' reviews and activities, the LACMTA will:

1. Provide adequate information regarding LACMTA-designated Priority Projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 32 of the Nationwide Permit Program. Upon request, the LACMTA shall provide supplemental information necessary to complete the permit application. Additional information [33 C.F.R. § 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the application review process. On a case-by-case basis, if requested by LAD, the LACMTA shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with LAD, establish the specific order of priority of the LACMTA-designated Priority Projects as listed in Appendix A to this MOA. The LACMTA-designated Priority Projects included in Appendix A and the order of priority of those LACMTA-designated Priority Projects may be changed by the LACMTA Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to LAD's Principal Representative in writing in the manner provided by Article IV and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

4. Work closely with LAD to adjust priorities and schedules in order to optimize available LAD Regulatory Division and/or other Corps staff resources. While the LACMTA will make every effort not to overlap project schedules, occasional overlaps may occur and the LACMTA Principal Representative will work with LAD to prioritize such overlaps.

5. Provide funding pursuant to the terms of this MOA.

B. LAD shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Expedite review of the LACMTA-designated Priority Projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. LAD shall not redirect resources from, or otherwise postpone, permit applications related to non-Priority Projects submitted by the LACMTA through the standard Corps review process.

2. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the LACMTA with an estimated completion date for the permit evaluation process for each complete application submitted. The LACMTA shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects per Appendix A, or provide additional resources per Article VI.

3. Consult with the LACMTA regarding an adjustment of priorities or establishment of relative priorities if the current or projected workload of Priority Projects and activities exceeds the LAD's ability to provide the services specified herein.

4. No later than thirty (30) days after the conclusion of each Federal fiscal quarter, unless an extension is granted by the LACMTA Principal Representative, provide the LACMTA a brief quarterly summary report of progress made under this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements LAD has documented in coordinating and improving the efficiency of environmental/permit reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA. The report will also include the LAD's current best estimate of the LAD's expected costs and tasks for the ensuing quarter. The report shall not be in excess of five (5) pages.

5. Designate a Regulatory Project Manager(s) and his/her specific responsibilities for each Priority Project. If possible, LAD will designate the same Regulatory Project Manager for all major LACMTA-designated Priority Project permit applications to ensure consistency and maintain efficiency of the review process.

#### Article VI. - FUNDING

A. Within 30 days of execution of this MOA and prior to the LAD incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the LACMTA shall pay only the anticipated costs expected to be incurred through September 30, 2021, at the level specified in the LAD's budget estimate for Federal fiscal year 2021 and agreed by LACMTA, which is included as **Appendix B** to this MOA and incorporated herein by reference. Unless amended per Article VI.E. below, the total maximum amount payable under this MOA will not exceed Seven-Hundred Fifty-Thousand and No/100 Dollars (\$750,000.00).

B. No later than July 1 of each year that this MOA remains in effect, LAD will provide the LACMTA with an anticipated cost invoice (“Invoice”) that provides an updated budget estimate of costs for the next Federal fiscal year, including any proposed changes in the level of staffing compared to the levels indicated in Appendix B, less any estimated carry-over of unobligated funds from the prior Federal fiscal year. The Invoice shall also contain proposed updates to Appendix B, if any, for future Federal fiscal years. For Federal fiscal year 2028, the Corps shall provide LACMTA with an Invoice that provides an updated budget estimate of anticipated costs through December 31, 2027. LAD will give LACMTA reasonable opportunity to review and to request revisions to the Invoice and any updates to Appendix B proposed by LAD, and the Parties will attempt to reach agreement on any such revisions requested by LACMTA, consistent with Article VIII. Revisions agreed to in writing by the Parties will be incorporated into a revised budget estimate, Invoice, or Appendix B, as applicable. This update to Appendix B will not require an amendment to the MOA. Each Invoice shall be provided on LAD letterhead, and include (1) the LAD’s name and address, (2) LAD’s remittance address, if different, (3) service dates, and (4) total amount requested. Invoices shall be submitted by LADs to: Eduardo Cervantes at [cervantese@metro.net](mailto:cervantese@metro.net) and a hard copy to the address stated in Article IV.B.

C. Each Federal fiscal year after the year in which the MOA is executed, prior to LAD incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the LACMTA will make an annual lump sum payment to LAD of the total amount specified in the Corps’ Invoice for the relevant year, or, if the Parties have outstanding disagreement(s) on revisions to the Invoice, the total amount specified in the Appendix B budget estimate for the relevant Federal fiscal year, less any carry-over of unobligated funds from the prior Federal fiscal year. Payments by the LACMTA are to be made preferably by electronic funds transfer in accordance with Standard Operating Procedure UFC 08 (**Appendix C**) or by check payable to the “USAED Los Angeles, FAO” and sent to the following address:

U.S. Army Corps of Engineers, Finance Center  
ATTN: EROC: L1  
5722 Integrity Drive  
Millington, TN 38054

D. LAD will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article X.

E. If LAD’s actual costs for providing the agreed-upon level of service will at any time during the term of this MOA exceed the amount of funds available, LAD will notify the LACMTA at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The LACMTA will have the option of (i) making a payment to LAD for the incremental amount, provided the total amount of payments to the Corps does not exceed the total funding amount, (ii) increasing the total funding amount through an amendment to this MOA, or (iii) agree to a reduced level of service.

## Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

## Article VIII. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute 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, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

## Article IX. - PUBLIC INFORMATION

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

## Article X. - AMENDMENT, MODIFICATION, AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties, except where otherwise noted.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other party. In the event of termination, the LACMTA will continue to be responsible for all costs incurred by LAD in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by LAD under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the LAD shall provide the LACMTA with a final statement of expenditures. Within sixty (60) calendar days after submittal of the LAD's final statement of expenditures, LAD, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit to the LACMTA the unexpended balance of the advance payments, if any. Funds may be provided to the LACMTA by electronic funds transfer.

## Article XI. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between Parties.



B. LAD's participation in this MOA does not imply endorsement of LACMTA projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. If any provision of this MOA 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.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, constitutes the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein and shall be of no further force or effect.

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

This MOA and any amendments will be effective on the date of execution by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2027 or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the LACMTA and by LAD, through their authorized officers.

LACMTA

By: \_\_\_\_\_

Date: \_\_\_\_\_

Phillip A. Washington  
Chief Executive Officer

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: \_\_\_\_\_

Date: \_\_\_\_\_

Julie A. Balten  
Colonel, US Army  
Commanding

## **Appendix A: LACMTA-designated Priority Projects**

**(Dated: February 21, 2021)**

The list of LACMTA-designated Priority Projects under this MOA includes the following proposed projects:

1. West Santa Ana Branch Transit Corridor Project
2. Los Angeles River Path Project
3. I-710 Corridor
4. I-710 Corridor – Shoemaker Bridge
5. I-605 Corridor
6. Doran Street Crossing at Verdugo Wash
7. Brighton Double Track over Tujunga Wash and Pacoima Wash
8. East San Fernando Valley Project
9. Eastside Transit Corridor
- 10. Sepulveda Transit Corridor**

Other projects if appropriate will be added to the MOA when they are ready for 404 coordination.

**Appendix B: Budget Estimate**

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**Appendix C**

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