

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

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 27th day of January, 2010, between the Orange County Transportation Authority (hereinafter the "OCTA") and the Los Angeles District of the United States Army Corps of Engineers (hereinafter "Corps"), collectively referred to as "the Parties."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands; and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-120, provides as follows:

- (a) IN GENERAL. - The Secretary [of the Army], after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.
- (b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.

WHEREAS, the authority provided under section 214 of the WRDA 2000 is presently in effect until December 31, 2010; and

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

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of OCTA projects; and

WHEREAS, the OCTA believes it is in the best interests of the taxpayers of the County of Orange to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps environmental review under section 404 of the Clean Water Act ("CWA") and/or section 10 of the Rivers and Harbors Act ("RHA") for OCTA-designated priority projects as more fully described in Article II.D. of this MOA; 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 OCTA 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

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 acceptance and expenditure of funds contributed by OCTA to provide expedited permit evaluation-related services for OCTA-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by the OCTA. This MOA is a vehicle by which OCTA will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process. OCTA enters into this MOA pursuant to its authority under section 130221 of the California Public Utilities Code. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

Article II. - SCOPE OF WORK

A. The work to be performed under this MOA shall be in accordance with the Cost Proposal dated October 25, 2010, a copy of which is attached hereto and hereby incorporated by reference as **Appendix A**. If there is any conflict between the Cost Proposal and this MOA, this MOA shall take precedence.

B. OCTA will provide funds to the Corps to expedite permit evaluation related services for OCTA-designated priority projects under the jurisdiction of the Corps in the amount of \$249,578.

C. The Corps' Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. Funds received from the OCTA will be added to the Regulatory budget of the Corps, in accordance with the provisions of section 214 of WRDA 2000. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described in Article II.D., below, for OCTA-designated priority projects and/or other programmatic efforts to support efficient decision-making related to the OCTA's CWA section 404 and/or RHA section 10 permitting needs.

D. Specific services to be provided pursuant to this MOA include, but are not necessarily limited to: (1) participation in OCTA project development activities, including planning, scoping, Project Development Team ("PDT") meetings, and field reviews; (2) review

of OCTA proposed Measure M2 projects; (3) processing permit applications; and (4) review of environmental documents and technical studies.

E. The Corps 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 OCTA. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite permit evaluation related requests designated by the OCTA as a priority or undertake other programmatic efforts to support efficient decision-making related to the OCTA's permitting needs. Corps Regulatory personnel will focus on the work as prioritized by the OCTA, and if no or few projects are designated by the OCTA as a priority, Corps personnel will then work on other programmatic efforts for the OCTA.

F. Funds contributed by the OCTA hereunder will be expended by the Corps to defray the costs of regulatory staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by the OCTA. The Corps may expend OCTA funds to 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 priority projects and activities designated by the OCTA. If such expenditures when combined with the costs of the regulatory staff require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractors until and unless additional funds are provided by the OCTA and the Parties execute a written amendment to this MOA.

G. If the funds provided by the OCTA are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

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. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. Each party will issue a letter to the other designating the Principal Representative for each party within fifteen (15) days of MOA execution. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The OCTA will provide adequate resources to fund additional Corps Regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' reviews and activities, the OCTA will:

1. Provide adequate information regarding 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 27 of

the Nationwide Permit Program as published in the Federal Register (72 Fed. Reg. 11194, dated March 12, 2007). Upon request, the OCTA 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 process. On a case-by-case basis, if requested by the Corps, the OCTA shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps schedule their involvement in the priority projects identified by the OCTA. The project(s) designated as a priority by the OCTA are listed in **Appendix B** to this MOA. The list may be changed by the OCTA's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing 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 process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Regulatory Program staff resources. If overlaps or conflicts occur among priority projects, then the OCTA will work with the Corps to identify procedures to handle such overlaps or resolve the conflicts.

B. The Corps shall supplement or reassign its existing Regulatory Program personnel, which currently reviews OCTA projects on a routine basis, with qualified personnel within projected funding levels provided by the OCTA. The Corps 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 OCTA's priority projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, other non-priority projects submitted by the OCTA 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 OCTA with an estimated schedule to complete the permit evaluation process for each application submitted. The OCTA shall be able to comment on these schedules and adjust their priorities per Appendix B, or provide additional resources per Article V. F, below.

3. Consult on a monthly basis with the OCTA regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds the Corps' ability to provide the services specified in this MOA and the October 25, 2010 Cost Proposal (Appendix A).

4. Provide the OCTA a brief quarterly summary report of progress made under this MOA, or in accordance with an alternative schedule as agreed to the Parties to 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 the Corps has documented in coordinating

and improving the efficiency of environmental 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 fourth quarter report shall include a summary of the annual progress made under this MOA. All reports shall not exceed five (5) pages.

5. Designate and identify to the OCTA a Regulatory Project Manager(s) and his/her specific responsibilities for each priority project.

6. Meet with OCTA as needed to discuss progress under this MOA.

7. Prior to expiration of the MOA, hold a final meeting with OCTA to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article V. - FUNDING

A. The Corps will neither accept nor expend funds under this MOA after December 31, 2010, unless Federal law extends or makes permanent the Corps' authority under section 214 of the WRDA 2000 to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. If the authority under section 214 of the WRDA 2000 is not extended or made permanent, the Corps will return any unobligated money.

B. Within 30 days of execution of this MOA, OCTA shall pay the anticipated costs expected to be incurred through October 31, 2012, at the level specified in the Corps' Cost Proposal. Maximum payable under this MOA shall not exceed \$249,578.

C. Expediting of permit evaluation related activities as specified in this MOA will be undertaken by the Corps only after funds have been transferred to the Corps. Payments by the OCTA are to be made to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Carlos M. Tebares

D. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available as a result of the Federal Government's General Schedule increases and locality adjustments, then the Corps will promptly notify the OCTA of the incremental amount of funds needed to defray the costs. The OCTA will either initiate an amendment to Appendix A of this MOA to increase the funding amount, or agree to a reduced level of service.

E. The Corps will carry over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires.

F. The OCTA may elect to extend the services of the Corps beyond October 31, 2012, subject to 1) paragraph A of this Article, 2) additional funding is provided by the OCTA, and 3) written amendment to this MOA.

Article VI. - 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 VII. - 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 VIII. - PUBLIC INFORMATION

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

Article IX – AMENDMENT, MODIFICATION, AND TERMINATION

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

B. Either party reserves the right to terminate this MOA without cause upon thirty (30) days written notice to the other party, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, OCTA will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out or transferring any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the OCTA with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, shall directly remit to the OCTA the unexpended balance of the advance payment, if any. Funds may be provided to the OCTA either by check or electronic funds transfer.

Article X. - MISCELLANEOUS

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

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

C. Under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps pursuant to this MOA after December 31, 2010. However, if prior to this date, this statutory authority is extended or made permanent, then provisions of this MOA shall remain in force until the earlier of the sunseting of section 214 of WRDA 2000, as further extended or made permanent, or until the expiration date as provided in this MOA.

D. 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.

E. This MOA, including any documents incorporated by reference or attachments thereto, constitute 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 XI. - EFFECTIVE DATE AND DURATION

This MOA will be effective on the date of execution by the last party. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2010, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA will remain in effect for the duration of the statutory extension or until October 31, 2012, whichever date is earlier; or 2) the MOA is terminated pursuant to Article IX.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the date stated in the introductory clause by the Orange County Transportation Authority acting by and through its authorized Board of Directors and by the Los Angeles District of the U.S. Army Corps of Engineers, through its authorized officer.

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: Will Kempton

Date: 1-24-11

WILL KEMPTON
Chief Executive Officer

APPROVED AS TO FORM:

By: Kennard R. Smart, Jr.

Date: NOVEMBER 11 2010

Kennard R. Smart, Jr.
General Counsel

APPROVAL RECOMMENDED:

By: Kia Mortazavi

Date: 1-12-2010

KIA MORTAZAVI
Executive Director, Planning

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

By: R. Mark Toy

Date: 5 NOV 2010

R. Mark Toy, P.E.
Colonel, US Army
Commander and District Engineer

Appendix B: OCTA Priority Projects

(Dated: October 5, 2010)

The list of OCTA Priority Projects under this MOA includes the following proposed Measure M2 projects:

Project A: I-5 Improvements Between SR-55 and SR-57

- I-5: SR-55 to SR-57 (Segment 1)
- I-5: I-5/SR-55 Interchange (Segment 2)

Project B: I-5 Improvements Between SR-55 to El Toro "Y" Area

Project C: I-5 Improvements South of the El Toro "Y"

- I-5: Pico to PCH (Segment 1)
- I-5: I-405 to SR-73 (Segment 2)

Project D: I-5 Local Interchange Upgrades

- I-5/El Toro Interchange (integrated into Project C Segment 2)
- I-5/La Paz Interchange (integrated into Project C Segment 2)
- I-5/Avery Interchange Feasibility Study (integrated into Project C Segment 2)
- I-5/Ave Pico Interchange (integrated into Project C Segment 1)

Project F: SR-55 Improvements

- SR-55: I-405 to I-5 (Segment 1)
- SR-55, I-5 to SR-22 (Segment 2)

Project G: SR-57 Improvements

- SR-57: NB - Oranewood to Katella (Segment 2b)
- SR-57: NB - Truck Climbing Lane

Project I: SR-91 Improvements from SR-57 to SR-55

- SR-91: SR-55/Tustin Avenue Interchange
- SR-91: SR-57 to SR-55

Project J: SR-91/SR-241 HOV/HOT Connector

Project L: I-405 Improvements between SR-55 and I-5

Project M: I-605 Freeway Access Improvements