

**FIRST AMENDMENT TO
AGREEMENT NO. MA-080-16011447
(Cow Camp Road Segment 2 – Ortega Highway Interchange)**

This First Amendment to Agreement No. MA-080-16011447 (“**First Amendment**”) is made this ___ day of _____, 2021 (“**Effective Date**”) by and between THE COUNTY OF ORANGE, a political subdivision of the State of California (the “**County**”), and RMV COMMUNITY DEVELOPMENT, LLC, a California limited liability company (“**RMV**”). The County and RMV are sometimes hereafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. The County and RMV are parties to that certain Agreement No. MA-080-16011447 dated April 12, 2016 (the “**Agreement**”). All capitalized terms appearing in this First Amendment and not specifically defined herein shall have the same meanings as ascribed in the Agreement.

B. The Agreement addresses certain roles and responsibilities of the Parties in relation to the implementation of “**Segment 2**” of the Cow Camp Road right-of-way improvement program. Notably, Segment 2 is designated as that 2.25+/- mile portion of Cow Camp Road (“**CCR**”) that extends east from the Village of Esencia and connects with Ortega Highway (SR 74). Ortega Highway is a right-of-way that is under the control and jurisdiction of the State of California (“**Caltrans**”).

C. Development of Segment 2 will require construction of a new at-grade intersection (or “roundabout”) at the CCR / Ortega Highway interconnection (the “**Roundabout Project**”). Pursuant to State law, any activities that may affect a State-owned/controlled highway are subject to the review and approval of Caltrans. Accordingly, implementation of the Roundabout Project will require coordination and cooperation with Caltrans.

D. Concurrent with the execution and delivery of this First Amendment, the County is entering into an agreement (“**Cooperative Agreement**”) with Caltrans that addresses, in relevant part, (i) Caltrans’ issuance of an encroachment permit in connection with the Roundabout Project (the “**Encroachment Permit**”) and (ii) the County’s obligations in connection with the Roundabout Project and the Encroachment Permit. A copy of the Cooperative Agreement is attached hereto as Exhibit A.

E. By virtue of the County’s status as a public agency, Caltrans is willing and able to waive the fees that Caltrans would otherwise charge and collect in connection with its issuance of the Encroachment Permit, because the County is designated as the applicant to the State for the Roundabout Project. Notwithstanding, the County will incur certain costs and expenses in

connection with its processing / receipt of the Encroachment Permit and compliance with the Cooperative Agreement.

F. RMV acknowledges the benefits that will accrue from the County's execution and performance of the Cooperative Agreement (*i.e.*, cost savings associated with Caltrans' waiver of its fees and charges in connection with the Encroachment Permit). In consideration of these benefits, RMV is willing and able to (i) reimburse the County for all costs incurred by the County in obtaining the Encroachment Permit, (ii) provide to the County all right-of-way easements which are necessary as a condition of the Encroachment Permit and the Cooperative Agreement ("**Required Easements**") and (iii) cover all costs associated with the future transfer of the Required Easements from the County to Caltrans.

G. The Parties are desirous of amending the Agreement in order to memorialize (i) the County's commitment to perform its obligations under the Cooperative Agreement and to obtain the Encroachment Permit (all in furtherance of Segment 2) and (ii) RMV's commitment to perform those obligations which are identified in the preceding Recital.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Supplemental County Obligations. In addition to the obligations established for County in the Agreement, the County shall perform the following:

a. Cooperative Agreement and Encroachment Permit. The County shall timely perform its obligations and responsibilities under the Cooperative Agreement and shall diligently pursue issuance of the Encroachment Permit from Caltrans. The County shall keep RMV apprised as to the status of (and the County's efforts with respect to) each of the Cooperative Agreement and the Encroachment Permit.

b. Cost-Tracking and Invoicing. The County shall track all costs incurred by the County in relation to obtaining the Encroachment Permit and otherwise performing its obligations under this First Amendment (collectively, "**Reimbursable Costs**"). By way of example only, and not limitation, Reimbursable Costs shall include costs incurred by the County in performing design reviews, coordinating with Caltrans and performing other tasks necessary in connection with issuance of the Encroachment Permit. As the County incurs Reimbursable Costs, the County shall, on a periodic basis, prepare and transmit to RMV invoices that reflect the value / amount of the Reimbursable Costs thus incurred by the County. Consistent with Section 3 of the Agreement, the County shall be reimbursed by RMV for the Reimbursable Costs in accordance with the provisions and procedures established for Client Trust Account Number CT000757.

c. Required Easements.

i. Acceptance of Required Easements. As required by the Cooperative Agreement, the County shall accept from RMV those easements which are necessary for right-of-way and drainage purposes in connection with the Roundabout Project (*i.e.*, the Required Easements) prior to the beginning of construction.

ii. Future Transfer to Caltrans. Upon completion of the Roundabout Project, the County shall coordinate with Caltrans in relation to transferring the Required Easements to Caltrans (the “**Caltrans Easements**”). The County acknowledges that Caltrans may prescribe a form for the Caltrans Easements that differs from the Required Easements; accordingly, the County agrees to work cooperatively with Caltrans and RMV regarding any modifications or adjustments to the form of the Required Easements which are necessary to accommodate the Caltrans Easements.

2. Supplemental RMV Obligations. In addition to the obligations established for RMV in the Agreement, RMV shall perform the following:

a. Required Easements.

i. Grant of Required Easements. Prior to the beginning of construction, RMV shall execute, notarize and deliver to the County the Required Easements. If the County incurs any costs in connection with the processing and recording of the Required Easements, then RMV shall reimburse County for said costs as an element of the Reimbursable Costs (*see* Section 1.b, above, and Section 2.b, below).

ii. Future Transfer of Required Easements to Caltrans. RMV shall work cooperatively with the County and Caltrans in preparing and recording the Caltrans Easements (*see* Section 1.c.ii, above). If the County incurs any costs in connection with its recordation of the Caltrans Easements, then RMV shall reimburse County for said costs as an element of the Reimbursable Costs (*see* Section 1.b, above, and Section 2.b, below).

b. Reimbursement of County’s Costs. RMV shall reimburse the County for all costs incurred by the County in connection with obtaining the Encroachment Permit and otherwise performing its obligations under this First Amendment (*i.e.*, Reimbursable Costs). As provided in Section 1.b, above, the County shall be reimbursed by RMV for the Reimbursable Costs in accordance with the provisions and procedures established for Client Trust Account Number CT000757.

3. Ratification; Remainder of Agreement Unmodified. The Agreement, as amended hereby, is and shall remain in full force and effect in accordance with its terms and is hereby ratified and confirmed in all respects. The execution and delivery of this First Amendment shall

not operate as a waiver of or, except as expressly set forth herein, an amendment of any right, power or remedy of either party in effect prior to the date hereof.

4. Counterparts. This First Amendment may be executed in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

5. Entire Agreement. This First Amendment constitutes the sole and only agreement of the Parties hereto with respect to the subject matter hereof (other than the Agreement, as amended hereby) and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter hereof and cannot be changed except by their written consent.

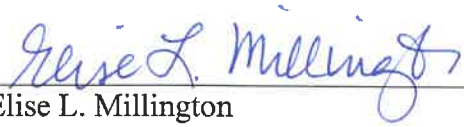
[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment on the dates opposite their respective signatures:

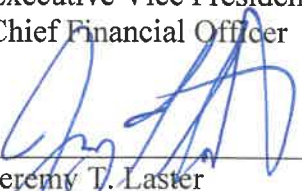
RMV COMMUNITY DEVELOPMENT, LLC
a California limited liability company

By: RANCHO MISSION VIEJO, LLC,
a Delaware limited liability company
Its: Authorized agent and manager

Date: 4/28/21

By 
Elise L. Millington
Executive Vice President and
Chief Financial Officer

Date: 4/28/21

By 
Jeremy T. Laster
Executive Vice President and
Chief Operating Officer

THE COUNTY OF ORANGE,
a political subdivision of the State of
California

Date: _____

By: _____

Chairman of the Board of Supervisors
County of Orange, California

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRWOMAN
OF THE BOARD OF SUPERVISORS PER
GC § 25103, RESO. 79-1535

APPROVED AS TO FORM:

By: _____

Robin Stieler
Clerk of the Board of Supervisors
County of Orange, California

By: Ray Diaz 5/4/2021

Deputy County Counsel
County of Orange, California

EXHIBIT A

Copy of County / Caltrans Cooperative Agreement

(See Attached)

COOPERATIVE AGREEMENT

This AGREEMENT, effective on _____, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

County of Orange, a political subdivision of the State of California, referred to hereinafter as COUNTY.

An individual signatory agency in this AGREEMENT is referred to as a PARTY. Collectively, the signatory agencies in this AGREEMENT are referred to as PARTIES.

RECITALS

1. PARTIES are authorized to enter into a cooperative agreement for improvements to the State Highway System per the California Streets and Highways Code, Sections 114 and 130.
2. For the purpose of this AGREEMENT, *New at grade intersection (roundabout) and widening of Route 74 to connect with Cow Camp Road* will be referred to hereinafter as PROJECT. The PROJECT scope of work is defined in the project initiation and approval documents (e.g. Project Study Report, Design Engineering Evaluation Report, or Project Report).
3. All obligations and responsibilities assigned in this AGREEMENT to complete the following PROJECT COMPONENTS will be referred to hereinafter as WORK:
 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)
 - RIGHT-OF-WAY

Each PROJECT COMPONENT is defined in the CALTRANS Workplan Standards Guide as a distinct group of activities/products in the project planning and development process.

4. The term AGREEMENT, as used herein, includes this document and any attachments, exhibits, and amendments.

This AGREEMENT is separate from and does not modify or replace any other cooperative agreement or memorandum of understanding between the PARTIES regarding the PROJECT.

PARTIES intend this AGREEMENT to be their final expression that supersedes any oral understanding or writings pertaining to the WORK. The requirements of this AGREEMENT will preside over any conflicting requirements in any documents that are made an express part of this AGREEMENT.

If any provisions in this AGREEMENT are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.

Except as otherwise provided in the AGREEMENT, PARTIES will execute a written amendment if there are any changes to the terms of this AGREEMENT.

PARTIES agree to sign a CLOSURE STATEMENT to terminate this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement or expire by the statute of limitations.

5. The following work associated with this PROJECT has been completed or is in progress:
 - COUNTY is developing the Design Engineering Evaluation Report (DEER).
6. In this AGREEMENT capitalized words represent defined terms, initialisms, or acronyms.
7. PARTIES hereby set forth the terms, covenants, and conditions of this AGREEMENT.

RESPONSIBILITIES

Sponsorship

8. A SPONSOR is responsible for establishing the scope of the PROJECT and securing the financial resources to fund the WORK. A SPONSOR is responsible for securing additional funds when necessary or implementing PROJECT changes to ensure the WORK can be completed with the funds obligated in this AGREEMENT.

PROJECT changes, as described in the CALTRANS Project Development Procedures Manual, will be approved by CALTRANS as the owner/operator of the State Highway System.

9. COUNTY is the SPONSOR for the WORK in this AGREEMENT.

Implementing Agency

10. The IMPLEMENTING AGENCY is the PARTY responsible for managing the scope, cost, schedule, and quality of the work activities and products of a PROJECT COMPONENT.

- COUNTY is the Plans, Specifications, and Estimate (PS&E) IMPLEMENTING AGENCY.

PS&E includes the development of the plans, specifications, and estimate; obtaining any resource agency permits; and the advertisement/award of the construction contract.

- COUNTY is the RIGHT OF WAY IMPLEMENTING AGENCY

RIGHT OF WAY includes coordination with utility owners for the protection, removal, or relocation of utilities; the acquisition of right-of-way interests; and post-construction work such as right-of-way monumentation/recordation, relinquishments/vacations, and excess land transactions. The RIGHT OF WAY component budget identifies the cost of the capital costs of right-of-way acquisition (RIGHT-OF-WAY CAPITAL) and the cost of the staff work in support of the acquisition (RIGHT-OF-WAY SUPPORT).

11. COUNTY will provide a Quality Management Plan (QMP) for the WORK in every PROJECT COMPONENT that they are the IMPLEMENTING AGENCY of. The QMP describes the IMPLEMENTING AGENCY's quality policy and how it will be used. The QMP will include a process for resolving disputes between the PARTIES at the team level. The QMP is subject to CALTRANS review and approval.

12. Any PARTY responsible for completing WORK will make its personnel and consultants that prepare WORK available to help resolve WORK-related problems and changes for the entire duration of the PROJECT including PROJECT work that may occur under separate agreements.

Funding

13. The WORK does not use funds administered by CALTRANS. PARTIES will amend this AGREEMENT should this condition change.
14. Each PARTY is responsible for the costs they incur in performing the WORK unless otherwise stated in this AGREEMENT.

CALTRANS' Quality Management

15. CALTRANS, as the owner/operator of the State Highway System (SHS), will perform quality management work including Quality Management Assessment (QMA) and owner/operator approvals for the portions of WORK within the existing and proposed SHS right-of-way.
16. CALTRANS' Quality Management Assessment (QMA) efforts are to ensure that COUNTY's quality assurance results in WORK that is in accordance with the applicable standards and the PROJECT's quality management plan (QMP). QMA does not include any efforts necessary to develop or deliver WORK or any validation by verifying or rechecking WORK.

When CALTRANS performs QMA, it does so for its own benefit. No one can assign liability to CALTRANS due to its QMA.

17. CALTRANS, as the owner/operator of the State Highway System, will approve WORK products in accordance with CALTRANS policies and guidance and as indicated in this AGREEMENT.
18. COUNTY will provide WORK-related products and supporting documentation upon CALTRANS' request for the purpose of CALTRANS' quality management work.
19. The cost of CALTRANS' quality management work is to be borne by CALTRANS.

CEQA Lead Agency

20. COUNTY is the CEQA Lead Agency for the PROJECT.
21. CALTRANS is a CEQA Responsible Agency for the PROJECT.

Environmental Permits, Approvals and Agreements

22. COUNTY will comply with the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to COUNTY's responsibilities in this AGREEMENT.
23. Unless otherwise assigned in this AGREEMENT, the IMPLEMENTING AGENCY for a PROJECT COMPONENT is responsible for all PROJECT COMPONENT WORK associated with coordinating, obtaining, implementing, renewing, and amending the PROJECT permits, agreements, and approvals whether they are identified in the planned project scope of work or become necessary in the course of completing the PROJECT.
24. The PROJECT will not require environmental permits/approvals.

Plans, Specifications, and Estimate (PS&E)

- 25. As the PS&E IMPLEMENTING AGENCY, COUNTY is responsible for all PS&E WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
- 26. CALTRANS will be responsible for completing the following PS&E activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.15.10.xx Quality Management

- 27. COUNTY will prepare Utility Conflict Maps identifying the accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the PROJECT or that violate CALTRANS' encroachment policy.

COUNTY will provide CALTRANS a copy of Utility Conflict Maps for CALTRANS' concurrence prior to issuing the Notices to Owner and executing the utility agreement. All utility conflicts will be addressed in the PROJECT plans, specifications, and estimate.

- 28. COUNTY will determine the cost to positively identify and locate, accommodate, protect, relocate, or remove any utility facilities whether inside or outside the State Highway System right-of-way in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements including but not limited to Freeway Master Contracts.

RIGHT-OF-WAY

- 29. As the RIGHT-OF-WAY IMPLEMENTING AGENCY, COUNTY is responsible for all RIGHT-OF-WAY WORK except those activities and responsibilities that are assigned to another PARTY and those activities that are excluded under this AGREEMENT.
- 30. CALTRANS will be responsible for completing the following RIGHT-OF-WAY activities:

CALTRANS Work Breakdown Structure Identifier (If Applicable)
100.25.10.xx Quality Management

31. The selection of personnel performing RIGHT-OF-WAY WORK will be in accordance with federal and California laws and regulations, and CALTRANS' policies, procedures, standards, practices, and applicable agreements.
32. COUNTY will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of the PROJECT or that violate CALTRANS' encroachment policy.
33. COUNTY will provide CALTRANS a copy of conflict maps, relocation plans, proposed notices to owner, reports of investigation, and utility agreements (if applicable) for CALTRANS' concurrence prior to issuing the notices to owner and executing the utility agreement. All utility conflicts will be fully addressed prior to Right-of-Way Certification and all arrangements for the protection, relocation, or removal of all conflicting facilities will be completed prior to construction contract award and included in the PROJECT plans, specifications, and estimate.
34. COUNTY will provide a land surveyor licensed in the State of California to be responsible for surveying and right-of-way engineering. All survey and right-of-way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.
35. COUNTY will hear and adopt Resolutions of Necessity when authorized to do so by law or will work with local agencies having jurisdiction and authorized under the law to hear and adopt Resolutions of Necessity.

COUNTY will conduct and document Condemnation Evaluation and Condemnation Panel Review meetings as required in accordance with CALTRANS policy and guidance.

CALTRANS will be notified in advance of any Condemnation Panel Review meetings.

36. If COUNTY acquires any right-of-way to be incorporated into the State Highway System, COUNTY will first acquire in its own name.

No right-of-way will be acquired in CALTRANS' name.

Title to the State Highway System right-of-way will ultimately be vested in the State. CALTRANS' acceptance of title will occur after the Right-of-Way Closeout activities are complete.

37. COUNTY will utilize a public agency currently qualified by CALTRANS or a properly licensed consultant for all RIGHT-OF-WAY activities. A qualified right-of-way agent will administer all right-of-way consultant contracts.

COUNTY will submit a draft Right-of-Way Certification to CALTRANS six weeks prior to the scheduled Right-of-Way Certification milestone date for review.

COUNTY will submit a final Right-of-Way Certification to CALTRANS for approval prior to the advertising the construction contract.

38. Physical and legal possession of the right-of-way must be completed prior to advertising the construction contract, unless PARTIES mutually agree to other arrangements in writing.
39. CALTRANS' acceptance of right-of-way title is subject to review of an Updated Preliminary Title Report provided by COUNTY verifying that the title is free of all encumbrances and liens. Upon acceptance, COUNTY will provide CALTRANS with a Policy of Title Insurance in CALTRANS' name.
40. Right-of-way conveyances must be completed prior to WORK completion unless PARTIES mutually agree to other arrangements in writing.

Schedule

41. PARTIES will manage the WORK schedule to ensure the timely use of obligated funds and to ensure compliance with any environmental permits, right-of-way agreements, construction contracts, and any other commitments. PARTIES will communicate schedule risks or changes as soon as they are identified and will actively manage and mitigate schedule risks.

Additional Provisions

Standards

42. PARTIES will perform all WORK in accordance with federal and California laws, regulations, and standards; Federal Highway Administration (FHWA) standards; and CALTRANS standards. CALTRANS standards include, but are not limited to, the guidance provided in the:

- CADD Users Manual
- CALTRANS policies and directives
- Plans Preparation Manual
- Project Development Procedures Manual (PDPM)
- Workplan Standards Guide
- Standard Environmental Reference
- Highway Design Manual
- Right of Way Manual

Noncompliant Work

43. CALTRANS retains the right to reject noncompliant WORK within current State Highway System. COUNTY agrees to suspend WORK within the current State Highway System upon request by CALTRANS for the purpose of protecting public safety, preserving property rights, and ensuring that all WORK is in compliance with the Caltrans approved plans.

Qualifications

44. Each PARTY will ensure that personnel participating in WORK are appropriately qualified or licensed to perform the tasks assigned to them.

Consultant Selection

45. COUNTY will invite CALTRANS to participate in the selection of any consultants that participate in the WORK.

Encroachment Permits

46. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within State Highway System (SHS) right-of-way. COUNTY, their contractors, consultants, agents and utility owners will not work within the SHS right-of-way without an encroachment permit issued in their name. CALTRANS will provide encroachment permits to COUNTY, their contractors, consultants, and agents at no cost. CALTRANS will provide encroachment permits to utility owners at no cost. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.
47. The IMPLEMENTING AGENCY for a PROJECT COMPONENT will coordinate, prepare, obtain, implement, renew, and amend any encroachment permits needed to complete the WORK.

Protected Resources

48. If any PARTY discovers unanticipated cultural, archaeological, paleontological, or other protected resources during WORK, all WORK in that area will stop and that PARTY will notify all PARTIES within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and CALTRANS approves a plan for its removal or protection.

Disclosures

49. PARTIES will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for the WORK in confidence to the extent permitted by law and where applicable, the provisions of California Government Code, Section 6254.5(e) will protect the confidentiality of such documents in the event that said documents are shared between PARTIES.

PARTIES will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the WORK without the written consent of the PARTY authorized to release them, unless required or authorized to do so by law.

50. If a PARTY receives a public records request pertaining to the WORK, that PARTY will notify PARTIES within five (5) working days of receipt and make PARTIES aware of any disclosed public records.

Hazardous Materials

51. HM-1 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, irrespective of whether it is disturbed by the PROJECT or not.

HM-2 is hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by the PROJECT.

The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.

52. If HM-1 or HM-2 is found the discovering PARTY will immediately notify all other PARTIES.
53. CALTRANS, independent of the PROJECT, is responsible for any HM-1 found within the existing State Highway System right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

CALTRANS, independent of the PROJECT will pay, or cause to be paid, the cost of HM-1 MANAGEMENT related to HM-1 found within the existing State Highway System right-of-way.

54. COUNTY, independent of the PROJECT, is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. COUNTY will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.

COUNTY, independent of the PROJECT, will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way.

55. The CONSTRUCTION IMPLEMENTING AGENCY is responsible for HM-2 MANAGEMENT within the PROJECT limits.

COUNTY and CALTRANS will comply with the Soil Management Agreement for Aerially Deposited Lead Contaminated Soils (Soil Management Agreement) executed between CALTRANS and the California Department of Toxic Substances Control (DTSC). Under Section 3.2 of the Soil Management Agreement, CALTRANS and COUNTY each retain joint and severable liability for noncompliance with the provisions of the Soil Management Agreement. COUNTY will assume all responsibilities assigned to CALTRANS in the Soil Management Agreement during PROJECT COMPONENTS for which they are the IMPLEMENTING AGENCY except for final placement and burial of soil within the State right-of-way, per Section 4.5 of the Soil Management Agreement, which is subject to CALTRANS concurrence and reporting to DTSC which will be performed by CALTRANS.

56. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

Claims

57. COUNTY may accept, reject, compromise, settle, or litigate claims of any consultants or contractors hired to complete WORK without concurrence from the other PARTY.
58. PARTIES will confer on any claim that may affect the WORK or PARTIES' liability or responsibility under this AGREEMENT in order to retain resolution possibilities for potential future claims. No PARTY will prejudice the rights of another PARTY until after PARTIES confer on the claim.
59. If the WORK expends state or federal funds, each PARTY will comply with the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards of 2 CFR, Part 200. PARTIES will ensure that any for-profit consultant hired to participate in the WORK will comply with the requirements in 48 CFR, Chapter 1, Part 31. When state or federal funds are expended on the WORK these principles and requirements apply to all funding types included in this AGREEMENT.
60. If the WORK expends state or federal funds, each PARTY will undergo an annual audit in accordance with the Single Audit Act in the Federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as defined in 2 CFR, Part 200.
61. When a PARTY reimburses a consultant for WORK with state or federal funds, the procurement of the consultant and the consultant overhead costs will be in accordance with the Local Assistance Procedures Manual, Chapter 10.

Interruption of Work

62. If WORK stops for any reason, IMPLEMENTING AGENCY will place the PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
63. If WORK stops for any reason, each PARTY will continue with environmental commitments included in the environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, and will keep the PROJECT in environmental compliance until WORK resumes.

Penalties, Judgements and Settlements

64. Any PARTY whose action or lack of action causes the levy of fines, interest, or penalties will indemnify and hold all other PARTIES harmless per the terms of this AGREEMENT.

Project Files

65. COUNTY will furnish CALTRANS with the Project History Files related to the PROJECT facilities on State Highway System within sixty (60) days following the completion of each PROJECT COMPONENT. COUNTY will prepare the Project History File in accordance with the Project Development Procedures Manual, Chapter 7. All material will be submitted neatly in a three-ring binder and on a CD ROM in PDF format.

Environmental Compliance

66. If during performance of WORK additional activities or environmental documentation is necessary to keep the PROJECT in environmental compliance, PARTIES will amend this AGREEMENT to include completion of those additional tasks.

GENERAL CONDITIONS

67. All portions of this AGREEMENT, including the Recitals Section, are enforceable.

Venue

68. PARTIES understand that this AGREEMENT is in accordance with and governed by the Constitution and laws of the State of California. This AGREEMENT will be enforceable in the State of California. Any PARTY initiating legal action arising from this AGREEMENT will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this AGREEMENT resides, or in the Superior Court of the county in which the PROJECT is physically located.

Exemptions

69. All CALTRANS' obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, programming and allocation of funds by the California Transportation Commission (CTC).

Indemnification

70. Neither CALTRANS nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by COUNTY, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon COUNTY under this AGREEMENT. It is understood and agreed that COUNTY, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by COUNTY, its contractors, sub-contractors, and/or its agents under this AGREEMENT.
71. Neither COUNTY nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless COUNTY and all of their officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

Non-parties

72. PARTIES do not intend this AGREEMENT to create a third party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT. PARTIES do not intend this AGREEMENT to affect their legal liability by imposing any standard of care for fulfilling the WORK different from the standards imposed by law.
73. PARTIES will not assign or attempt to assign obligations to entities not signatory to this AGREEMENT without an amendment to this AGREEMENT.

Ambiguity and Performance

74. Neither PARTY will interpret any ambiguity contained in this AGREEMENT against the other PARTY. PARTIES waive the provisions of California Civil Code, Section 1654.

A waiver of a PARTY's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.

75. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.

Defaults

76. If any PARTY defaults in its performance of the WORK, a non-defaulting PARTY will request in writing that the default be remedied within thirty (30) calendar days. If the defaulting PARTY fails to do so, the non-defaulting PARTY may initiate dispute resolution.

Dispute Resolution

77. PARTIES will first attempt to resolve AGREEMENT disputes at the PROJECT team level as described in the Quality Management Plan. If they cannot resolve the dispute themselves, the CALTRANS District Director and the Executive Officer of COUNTY will attempt to negotiate a resolution. If PARTIES do not reach a resolution, PARTIES' legal counsel will initiate mediation. PARTIES agree to participate in mediation in good faith and will share equally in its costs.

Neither the dispute nor the mediation process relieves PARTIES from full and timely performance of the WORK in accordance with the terms of this AGREEMENT. However, if any PARTY stops fulfilling its obligations, any other PARTY may seek equitable relief to ensure that the WORK continues.

Except for equitable relief, no PARTY may file a civil complaint until after mediation, or forty-five (45) calendar days after filing the written mediation request, whichever occurs first.

PARTIES will file any civil complaints in the Superior Court of the county in which the CALTRANS District Office signatory to this AGREEMENT resides or in the Superior Court of the county in which the PROJECT is physically located.

78. PARTIES maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.

Prevailing Wage

79. When WORK falls within the Labor Code § 1720(a)(1) definition of "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code § 1771, PARTIES will conform to the provisions of Labor Code §§ 1720-1815, and all applicable provisions of California Code of Regulations, Title 8, Division 1, Chapter 8, Subchapter 3, Articles 1-7. PARTIES will include prevailing wage requirements in contracts for public work and require contractors to include the same prevailing wage requirements in all subcontracts.

Work performed by a PARTY's own employees is exempt from the Labor Code's Prevailing Wage requirements.

If WORK is paid for, in whole or part, with federal funds and is of the type of work subject to federal prevailing wage requirements, PARTIES will conform to the provisions of the Davis-Bacon and Related Acts, 40 U.S.C. §§ 3141-3148.

When applicable, PARTIES will include federal prevailing wage requirements in contracts for public works. WORK performed by a PARTY's employees is exempt from federal prevailing wage requirements.

SIGNATURES

PARTIES are empowered by the law to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

This AGREEMENT may be executed and delivered in counterparts, and by each PARTY in a separate counterpart, each of which when so executed and delivered shall constitute an original and all of which taken together shall constitute one and the same instrument.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Adnan Maiah
Deputy District Director
Strategic Portfolio Management
Single Focal Point

Verification of funds and authority:

Neda Saber
District Budget Manager

Certified as to financial terms and policies:

Gina Schumacher
HQ Accounting Supervisor

COUNTY OF ORANGE

Chairman of the Board of Supervisors
County of Orange, California

SIGNED AND CERTIFIED THAT A COPY
OF THIS AGREEMENT HAS BEEN
DELIVERED TO THE CHAIR OF THE
BOARD PER G.C SEC. 25103, RESO 79-1535

Robin Stieler
Clerk of the Board
County of Orange, California

Approved as to form:
Office of the County Counsel
County of Orange, California

Ray Diaz
Deputy County Counsel