

Exhibit B (County Agreement No. D07-016)

12-ORA-133 KP 6.7/13.0

State Route 133, Laguna Canyon Road,

From State Route 73 to

0.5 kilometer south of Route I-405

12208 – 1072E1

District Agreement No. 12-515

COOPERATIVE AGREEMENT

This AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2008,
is between the STATE OF CALIFORNIA, acting by and through its Department of
Transportation, referred to herein as “STATE” and the

COUNTY OF ORANGE

A political subdivision of

the State of California

referred to herein as

“COUNTY”.

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RECITALS

1. STATE and COUNTY, pursuant to Streets and Highways Code Sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within COUNTY's jurisdiction.
2. STATE is implementing a widening and realignment project on State Route 133 from State Route 73 to Interstate 405, referred to herein as "PROJECT".
3. Pursuant to consultation in compliance with Section 404 of the Clean Water Act (33 U.S.C. Section 1344) for PROJECT, the United States Army Corps of Engineers (USACE) issued an Individual Permit (No. 970007600-RLK), dated August 15, 2002 and thereafter amended July 22, 2005, and June 15, 2007 for PROJECT, collectively referred to as "404 PERMIT", which by their reference are incorporated herein.
4. Pursuant to consultation in compliance with Division 7 of the California Water Code, the State Water Quality Control Board (SWQCB) adopted a Water Discharge Requirements and Water Quality Certification, dated August 15, 2002, hereinafter referred to as "SWQCB CERTIFICATION", which by this reference is incorporated herein.
5. Pursuant to California Fish and Game Code section 1600 et. seq., the California Department of Fish and Game (DFG) issued a 1601 Lake and Stream Bed Alteration

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Agreement (No. 1600-2006-0059-3) dated August 9, 2002, and thereafter amended and extended on June 5, 2007 for PROJECT, collectively referred to as "1601 AGREEMENT", which by their reference are incorporated herein.

6. Pursuant to consultation in compliance with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. section 1531, et. seq.), the United State Fish and Wildlife Service (USFWS) issued a Biological Opinion (No. 1-6-99-59), dated May 4, 2000, for PROJECT, hereinafter referred to collectively as "BO", which by their reference is incorporated herein.
7. In order to satisfy the Wetland and Riparian Habitat Mitigation and Monitoring components of the 404 PERMIT, SWQCB CERTIFICATION, 1601 AGREEMENT and BO for the PROJECT, collectively hereinafter referred to as "PERMITS", COUNTY prepared the Wetland and Riparian Habitat Mitigation and Monitoring Plan, dated May 20, 2004, referred to herein as the HMMP and which by this reference is incorporated herein.
8. COUNTY desires to implement the obligations described in the HMMP and all conditions imposed thereon by USACE, SWQCB, DFG, and USFWS to satisfy the requirements of the PERMITS. COUNTY also desires to ensure that the created habitat, referred to as the Mitigation Area in the HMMP, is maintained in perpetuity pursuant to any requirements imposed thereon by USACE, SWQCB, DFG, and/or USFWS in order to satisfy PERMITS.

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9. COUNTY will be responsible for 100% of the costs for satisfying all of the obligations set forth in this Agreement, unless otherwise set forth herein.
10. The parties now define herein below the terms and conditions under which COUNTY will implement the obligations set forth in the HMMP and fulfill all of the conditions imposed thereon by USACE, SWQCB, DFG, and USFWS to satisfy PERMITS as well as ensure that created habitat, referred to as the Mitigation Area in the HMMP, is maintained in perpetuity pursuant to any requirements imposed thereon by USACE, SWQCB, DFG, and/or USFWS in order to satisfy PERMITS.

SECTION I

COUNTY AGREES:

1. Notwithstanding the language of the HMMP and unless otherwise set forth herein this Agreement, COUNTY shall be responsible for implementing all of the obligations described in the HMMP and fulfill all conditions imposed thereon by USACE, SWQCB, DFG, and USFWS to satisfy the requirements of PERMITS. COUNTY also agrees to ensure that created habitat, referred to as the Mitigation Area in the HMMP, is maintained in perpetuity pursuant to any requirements imposed thereon by USACE, SWQCB, DFG, and/or USFWS in order to satisfy PERMITS.
2. Notwithstanding the minimum amount of Mitigation Area described in the Summary section of the HMMP that must be created, COUNTY agrees to ensure that the total

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amount of Mitigation Area created satisfies the mitigation ratio identified in Table C of the HMMP Summary section.

3. To ensure that implementation of the HMMP remains in environmental compliance with the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA). If additional documentation is required to comply with CEQA and/or NEPA or new information is obtained during the implementation of the HMMP which requires additional environmental documentation to comply with CEQA and/or NEPA, then COUNTY shall complete those additional tasks. COUNTY shall submit the environmental documentation, including the investigative studies, technical environmental reports, decisions, and/or documents produced to attain said compliance to STATE for STATE's review, comment and concurrence of the CEQA documentation and STATE's review, comment, and approval of NEPA documentation.
4. To locate, acquire, and obtain all necessary property rights in order to implement all of the obligations set forth in this Agreement.
5. To fund one hundred percent (100%) of all costs to implement all of the obligations set forth in this Agreement, unless otherwise set forth herein.
6. To not use STATE's funds for any capital and support costs to implement COUNTY's obligations set forth in this Agreement, except as otherwise set forth herein.

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7. All work performed by COUNTY, or performed on COUNTY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures and standards that STATE would normally follow. All such work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
8. All work, except as set forth in this Agreement, is to be performed by COUNTY. Should COUNTY request that STATE perform any portion of work, except as otherwise set forth in this Agreement, COUNTY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed Agreement.
9. To permit STATE to monitor, participate, and oversee selection of personnel who will implement the HMMP. COUNTY agrees to consider any request by STATE to discontinue services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
10. To advertise, award, and administer the contract for implementation of the HMMP in accordance with requirements of the Uniform Public Construction Cost Accounting Act and the California Labor Code, including its prevailing wage provisions. COUNTY will require its contractor to comply with all provisions of the California Labor Code when performing work under the HMMP or performing work under an encroachment permit. If Federal funds are expended during the implementation of

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the HMMP, the County's contractor shall comply with all applicable Federal labor mandates.

11. Implementation by COUNTY of those portions of HMMP which lie within the SHS right of way shall not commence until COUNTY's contract plans involving such work, the utility relocation plans, and the right of way certification have been reviewed and accepted by STATE and encroachment permits have been issued to COUNTY and COUNTY's contractor.
12. COUNTY's contractor shall maintain in force, until completion and acceptance of the PROJECT construction contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability, that complies with all coverage requirements equivalent with Section 7-1.12 of STATE's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE and its officers, agents, and employees as additional insureds. This insurance coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to COUNTY's contractor.
13. To require its contractor to furnish both a payment and a performance bond, naming COUNTY as obligee. Both bonds shall comply with the requirements set forth in Section 3-1.02 of STATE's May, 2006, Standard Specifications prior to performing any HMMP work. COUNTY shall defend, indemnify, and hold harmless STATE

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and its officers, agents, and employees from all claims and suits by stop notice claimants related to the implementation of HMMP.

- 14 To make written application to STATE for necessary encroachment permits authorizing entry of COUNTY or COUNTY's contractor onto SHS right of way to perform COUNTY's obligation set forth in this Agreement.
- 15 To identify and locate all utility facilities within the area that HMMP will be implemented.
- 16 If any existing utility facilities conflict with the implementation of the HMMP in SHS right of way or violate STATE's encroachment policy, COUNTY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.
- 17 The costs for the positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.
- 18 To furnish, at COUNTY's expense and subject to the approval of STATE, a field site representative. That representative shall not be an employee or subcontractor of the entity, if any, that prepared the HMMP or an employee of the contractor.

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19. To complete all of the required monitoring and reporting documents as described in Section V of the HMMP. Notwithstanding the parties identified in Section V of the HMMP, COUNTY shall submit the monitoring and reporting documents directly to USACE, SWQCB, San Diego Regional Water Quality Control Board, Santa Ana Regional Water Quality Control Board, and DFG with a copy to STATE. With respect to USFWS, COUNTY shall submit the required monitoring and reporting documents to STATE for STATE's submission to USFWS.
20. To ensure that the Performance Criteria, as outlined in Section V of the HMMP, is met. COUNTY further agrees to implement and perform any and all required remedial measures to achieve the Performance Criteria stated therein and fulfill any obligations imposed thereon by USACE, SWQCB, DFG, and USFWS to satisfy the requirements of PERMITS.
21. Upon completion of the obligations set forth in the HMMP, COUNTY will, at COUNTY's costs, operate, maintain, and manage the created Mitigation Area. COUNTY further agrees to ensure that the Mitigation Area is maintained in perpetuity pursuant to any requirements imposed thereon by USACE, SWQCB, DFG, and/or USFWS in order to satisfy PERMITS.
22. To retain or cause to be retained for audit by STATE or other government auditors for a period of four (4) years from the date of final payment under the contract, or four (4) years from STATE payment of the final voucher, whichever is longer, all records and accounts relating to implementation of the HMMP after acceptance of the work

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performed by USACE, SWQCB, DFG, and USFWS. COUNTY shall retain said records and accounts longer for such periods as are required in writing by STATE.

23. That STATE intends to vacate to COUNTY that portion of State Route 133 between Station 67+60 "G" Line, also known as the old alignment, to Station 98+20 "G" Line as shown on Exhibit 1, attached to and made a part of this Agreement, referred to hereinafter as "VACATED FACILITIES". COUNTY is willing to accept said vacation upon approval by the California Transportation Commission (CTC) of a Resolution of Vacation and STATE's recording of said Resolution in the County Recorder's Office. Execution of this Agreement constitutes COUNTY's waiver of STATE's obligation to provide ninety (90) days prior notice of STATE's "Intention to Vacate". COUNTY will accept ownership, including all of STATE's current obligations, rights, title and interest in said VACATED FACILITIES and to thereafter operate, maintain, and be liable for VACATED FACILITIES at no cost to STATE.

SECTION II

STATE AGREES:

1. At no cost to COUNTY, to provide IQA, as defined in Section III, Article 2, to assure that COUNTY's work within SHS right of way is performed in accordance with STATE's then effective policies, procedures, standards, and practices. This IQA function includes both the obligation and the authority to reject noncompliant work

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and materials accepted by COUNTY, to order any actions needed for public safety or the preservation of property on the SHS, and to assure compliance with all provisions of the encroachment permit(s) issued by STATE to COUNTY and COUNTY's contractor.

2. Upon proper application by COUNTY and by COUNTY's contractor, to issue, at no cost to COUNTY and COUNTY's contractor, the necessary encroachment permits for required work within the SHS right of way.
3. To review and, if acceptable, submit to USFWS a copy of necessary documents submitted by COUNTY to STATE pursuant to Section I, Article 19.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of resources by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the HMMP. This guidance includes reviews by STATE to assure that all work implemented on SHS right of way by COUNTY conform with then existing STATE

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standards. IQA does not include any related work deemed necessary to actually develop and implement the HMMP, nor does it involve any validation to verify and recheck any work performed by COUNTY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by COUNTY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds, upon approval by the COUNTY, as a service for which STATE will invoice its actual costs and COUNTY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement authorizing such services to be performed by STATE.

3. That by signing this Agreement, COUNTY confirms that it has a copy of the HMMP and PERMITS described herein. Except for the permits, amendments and/or correspondence described herein, should COUNTY and/or STATE seek any amendments to the PERMITS and/or if there is correspondence with the USFWS, USACE, DFG, and SWQCB that affect implementation of the HMMP and/or the maintenance of the Mitigation Area in perpetuity, a copy of the documents shall be provided to the other party within fourteen (14) days of receipt.
4. That COUNTY will, at COUNTY's expense, provide for biological, archaeological, paleontological and Native American monitoring during implementation of the HMMP. Copies of all monitoring reports shall be submitted to District 12, Office of Environmental Planning upon report completion.

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5. That if cultural, archaeological, paleontological or other protected materials are encountered or impacted during implementation of the HMMP, COUNTY shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. The costs for any removal or protection of that material shall be covered as a cost contemplated by this Agreement. COUNTY also agrees to notify STATE within 12 hours of that said encounter or impact.
6. To ensure that any cultural site(s) located within the area that HMMP will be implemented, including the cultural sites that have been determined to be significant and warranting preservation as defined in the June 2001 Environmental Assessment/Finding of No Significant Impact (EA/FONSI) document for PROJECT and/or discovered during construction of PROJECT, are preserved and protected as cultural sites in perpetuity. Furthermore, COUNTY acknowledges that there are other cultural sites that are identified in the EA/FONSI and COUNTY agrees to take all necessary precautions to ensure that those said cultural sites are not impacted by the implementation of COUNTY's obligations set forth in this Agreement.
7. If there is a legal challenge to the implementation of the HMMP or the management, operation, maintenance and/or ownership of the Mitigation Area to ensure that the created habitat is maintained in perpetuity, those said legal challenges shall be at COUNTY's cost.

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8. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
9. For the purpose of this Agreement, any hazardous material or contamination found within the area that HMMP will be implemented shall be classified in two categories, HM-1 and HM-2. Hazardous material or contamination of an HM-1 category shall be defined as that level or type of contamination which State or Federal regulatory control agencies having jurisdiction have determined must be cleaned up by reason of its mere discovery, regardless of whether it is disturbed by implementation of the HMMP or not. Hazardous material or contamination of an HM-2 category shall be defined as that level or type of contamination which said regulatory control agencies would have allowed to remain in place if undisturbed or otherwise protected in place should the implementation of the HMMP not proceed.
10. STATE shall perform, or cause to be performed, all required cleanup of any hazardous material or contamination of an HM-1 category found within the existing SHS right of way during implementation of the HMMP, if that said HM-1 material

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- was placed within SHS right of way during STATE's ownership of State Highway's easement. COUNTY shall perform, or cause to be performed, all required cleanup of any hazardous material or contamination of an HM-1 category found outside of SHS right of way during investigative studies. Whether COUNTY decides to proceed with HMMP or not, STATE shall sign the HM-1 manifest and pay all costs for required cleanup within the existing SHS right of way is said material was placed within SHS right of way during STATE's ownership of STATE's Highway easement and COUNTY shall sign the HM-1 manifest and pay all costs for required cleanup outside of SHS right of way. If STATE determines, in its sole judgment, that costs for cleanup within the existing SHS right are increased as a result of COUNTY's decision to proceed with HMMP, these additional costs identified by STATE shall be deemed a part of the costs of HMMP.
11. COUNTY shall perform, or cause to be performed, the cleanup of any hazardous material or contamination of an HM-2 category found within and outside of the existing SHS right of way during implementation of HMMP at COUNTY's expense. If County decides to proceed with HMMP. COUNTY shall sign any HM-2 manifest if HMMP proceeds and HM-2 material must be removed in lieu of being treated in place. If COUNTY decides to not proceed with HMMP, there will be no obligation to either COUNTY or STATE other than COUNTY's duty to cover and protect HM-2 material left in place.

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12. Remedial actions proposed by COUNTY on SHS right of way shall be pre-approved by STATE and shall be performed in accordance with STATE's standards and practices and standards and practices mandated by those Federal and State regulatory agencies.
13. STATE, in exercising its authority under section 591 of the Vehicle Code, has included all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code as applicable to the PROJECT areas open to public traffic. COUNTY shall take all necessary precautions for safe operation of COUNTY's vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by COUNTY to assure the protection of the traveling public and STATE employees from injury and damage from such vehicles or equipment.
14. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
15. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by COUNTY under or in connection with any work, authority or jurisdiction conferred upon COUNTY and arising under this Agreement. It is understood and agreed that COUNTY shall fully defend, indemnify and save harmless STATE and all its officers

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and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by COUNTY under this Agreement.

16. Neither COUNTY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless COUNTY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
17. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
18. This Agreement shall terminate upon acceptance and completion of the obligations set forth in the HMMP by USACE, RWQCB, DFG, USFWS and STATE, or on December 31, 2018, whichever is earlier in time. However, the ownership, management, maintenance, and operation, in perpetuity of the Mitigation Area, legal

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challenge, audit, Section III, Article 6, and indemnification articles will remain in effect until terminated or modified by mutual written consent of the parties.

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IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers.

STATE OF CALIFORNIA
Department of Transportation

COUNTY OF ORANGE

WILL KEMPTON
Director of Transportation

By: _____
Chairman, Board of Supervisors

By: _____
Jim Beil
Deputy District Director
Capital Outlay

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

APPROVED AS TO FORM:

Attorney, Department of
Transportation

Darlene J. Bloom
Clerk of the Board of Supervisors of
Orange County, CA

CERTIFIED AS TO FINANCIAL TERMS
AND CONDITIONS:

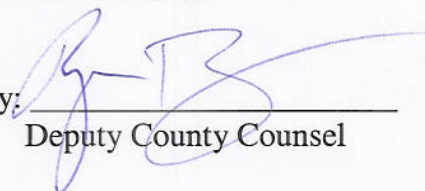
Date: _____

Accounting Administrator

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange

CERTIFIED AS TO FUNDS:

District Budget Manager

By:  _____
Deputy County Counsel