November 14, 2013

CONSTRUCTION OF RAYMOND AVENUE
GRADE SEPARATION PROJECT

ADDENDUM NO. 4

TO: ALL PLAN AND SPECIFICATION HOLDERS

ADDENDUM NO. 4, AS DESCRIBED BELOW, IS FOR USE OF CONTRACTORS AND SUBCONTRACTORS SUBMITTING BIDS ON THIS PROJECT. ALL BIDDERS SHALL INDICATE ON THE BID PROPOSAL FORM THAT THEY HAVE RECEIVED THIS ADDENDUM NO. 4.

CHANGES TO INVITATION FOR BIDS:

(1) Bid opening date has been changed from 2:00 p.m. on November 19, 2013 to 10:00 am on November 26, 2013.

(2) Remove page 2 of the Invitation to Bid Table of Contents and insert the revised page, which adds Exhibit N to the table.

(3) Remove the Attachment to AGREEMENT that follows the SAMPLE CITY OF FULLERTON AGREEMENT contained in the Information for Bidders, and replace with the revised page included with this addendum. Exhibit N was added to the listing of Other Contract Documents.

(4) Remove page 31 of Exhibit A-1, Special Conditions, and replace with revised pages 31 and 31A included with this addendum. Added clauses regarding acquisition of BNSF easements and temporary construction licenses.

(5) Remove page 55 of Exhibit A-1, Special Conditions, and replace with revised pages 55 and 55A included with this addendum. Added section SC-8.5, CITY-Provided Office Facilities.

(6) Add new Exhibit N, Sample Office Lease Agreement, that is referred to in new section SC-8.5.

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The following Exhibits, by this reference, are Contract Documents and made a part of the AGREEMENT.

Exhibit A  GENERAL CONDITIONS
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Exhibit C  LIST OF DRAWINGS
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E-1A  CALIFORNIA PUBLIC UTILITIES COMMISSION ORDER TO CONSTRUCT – RAYMOND AVENUE CROSSING
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Exhibit N  SAMPLE OFFICE LEASE AGREEMENT

Order of Precedence. Conflicting provisions of the Contract Documents, if any, shall prevail in the following descending order of precedence: (1) the provisions of the AGREEMENT, including its Exhibits; (2) the provisions of the Invitation to Bid including all Addenda; (3) the bid submitted to CITY by CONTRACTOR in response to said Invitation to Bid; and (4) any other documents, cited in the AGREEMENT or incorporated by reference. In the event of conflicting provisions of Exhibit A, (“General Conditions”), Exhibit A-1, (“Special Conditions”), all Exhibit Bs (“Specifications”), and Exhibit C (“List of Drawings”) and the Drawings included in the List of Drawings, the following descending order of precedence shall apply: (a) “Special Conditions”, (b) “General Conditions”, (c) “Specifications”, and (d) “Drawings.” In the event of a discrepancy between any drawing and the dimensions written thereon, the dimensions shall be taken as correct. Detail drawings shall prevail over general drawings.
and the entire work of the contract will not be considered to be complete until the irrigation and landscape planting work is determined to be acceptable.

6.3.11 Right of Way Acquisition Requirements

The CONTRACTOR is hereby advised that, as of the date this Addendum, the CITY has not obtained legal and physical possession of permanent easements and the temporary construction licenses, RAY-025, on the Burlington Northern Santa Fe Railway Company (BNSF) right of way (collectively, “the BNSF parcels”). Legal and physical possession of the BNSF parcels will be granted upon the execution of a Construction and Maintenance Agreement between BNSF, the CITY (EXHIBIT F, included with the bid documents). Legal and physical possession of the BNSF parcels will be obtained prior to the LNTP to the CONTRACTOR.

(this space intentionally left blank)
6.4 Working Hours and Other Work Restrictions

Allowable normal working hours, without obtaining a special work permit, are:

7:00 a.m. to 5:00 p.m., Monday through Saturday

If the CONTRACTOR wants to perform work outside of the normal working hours, it shall first obtain a permit or written approval of the CITY.

Allowable pile driving hours are: 8:30 a.m. to 3:30 p.m., Monday through Friday

Business hours for United States Spring (Parcel 001-01) are defined as 5:00 a.m. to 2:00 p.m., Monday through Friday.

Business hours for Lightning Print (Parcel 004-01) are defined as 8:00 a.m. to 5:00 p.m., Monday through Friday.

Business hours for COVOC Corporation, etc. (Parcels 005-02 and 005-03) are defined as 8:00 a.m. to 5:00 p.m., Monday through Friday.

Business hours for Bootlegger Brewery (Parcels 011-03 and 011-04) are defined as 24 hours/day, 7 days/week.

Business hours for Bootlegger Brewery (Parcel 011-05) are defined as 8:00 a.m. to 6:00 p.m., Monday through Friday.

Business hours for WMFY.com (Parcel 011-06) are defined as 8:00 a.m. to 5:00 p.m., Monday through Friday.

6.4.1 Temporary Lane Closures

CONTRACTOR shall provide traffic control as specified elsewhere. The CONTRACTOR shall adhere to the lane closure and lane width requirements indicated on the Traffic Control Plans. Traffic lanes shall remain open without interruption, except as approved in advance in writing by the CITY.

When permitted by the CITY, CONTRACTOR may submit a temporary lane closure plan to the Engineer for review and approval if lane closures of streets indicated to be open to public traffic are necessary, with the following minimum requirements:

a) One (1) lane on each roadway adjacent to the working area may be closed to public traffic. Use of reflective or lighted traffic delineators to direct traffic away from excavations or other obstructions will be considered as a lane closure.

b) A minimum of one (1) lane of traffic, twelve (12) feet wide, fourteen (14) feet wide if a lane is adjacent to an outside curb, in each direction, will be allowed through the work area and shall be maintained at all times.

c) When work is in progress within three (3) feet of a lane being used by public traffic, without approved crashworthy barricade, CONTRACTOR shall close the lane adjacent to the work. Reflective or lighted traffic delineators shall be placed to direct public traffic around the construction area in accordance with the requirements of this section. During non-working hours or when work is not in progress, position and maintain reflective traffic delineators in the 1 to 1-1/2 foot width of the existing traffic lane adjacent to the work.
The CONTRACTOR shall clean and repair damage caused by installation or use of temporary facilities, restore existing facilities used for temporary services to original or better condition, and restore permanent facilities used for temporary services to original condition.

The CONTRACTOR shall pay all fees and charges for applications, non-City permits and inspections, installations, temporary meters, utility usage, service charges, maintenance, removals and restoration. CONTRACTOR shall use standard products of service companies. At CONTRACTOR's option, patented specialty devices may be used, when in compliance with applicable Codes and service company requirements.

Compensation to furnish, install and maintain temporary water, electricity, telephone, sanitary and other facilities for construction needs throughout construction period, and to remove same, shall be considered as included in the contract prices paid for the various items of work involved and no additional compensation will be allowed therefore.

8.5 CITY-Provided Office Facilities

The CITY will make available to the CONTRACTOR for its use during the duration of the project, plus 30 days after acceptance of all work, office space located at the existing building (SCB-015, APN-269-151-08) with addresses of 331 – 353 South State College Boulevard (the “Office Building”). The Office Building is currently owned by the Orange County Transportation Authority (“OCTA”). The office space will be provided to the CONTRACTOR by OCTA for a nominal rental rate of One Dollar ($1.00) per month during that period.

There are currently two existing suites located at the property which are suitable for construction field office use. All or a portion of one of the suites will be offered to the successful bidder. The CITY will determine which building suite, or portion of a building suite, will be offered for the CONTRACTOR’s use.

A copy of the COMMERCIAL LEASE AGREEMENT that the CONTRACTOR would be required to execute with OCTA to utilize office space at the Office Building for its construction field office staff is included as EXHIBIT N, Sample Office Lease Agreement. Key lease agreement terms include:

Original Lease Term: Duration of the project, plus 30 days after acceptance of all work.

Original Lease Term Rent: One Dollar $1.00 per month for the original term of the agreement, paid in advance for the entire term, plus a one-time processing fee of $250.00.

After the Original Lease Term: Month-to-month use of Premises will be at a Rental rate of $2.00 per square foot per month, paid in advance each month.

CONTRACTOR shall professionally maintain the office space including electrical, plumbing and water systems, and heating and air conditioning, and keep glass, windows, and doors in operable and safe condition. CONTRACTOR agrees to accept the office space “as is” on the start date of the original term, and is solely responsible for improvements to the existing office space necessary for its needs, including repair or replacement of existing electrical, plumbing, gas, water, and heating and air conditioning systems.

OCTA will maintain the roof, foundation, exterior walls, and common areas of the building. All maintenance provided by OCTA shall be during OCTA’s normal business hours.

CONTRACTOR shall pay for all separately metered water, gas, heat, light, power, telephone, trash disposal, and other utilities and services provided to the Premises during the term of the lease until CONTRACTOR vacates the property. CONTRACTOR will acquire utility service metered separately and will terminate any and all accounts for said services when Lessee vacates property.
CONTRACTOR shall use the leased premises only for a construction project management office for staff directly employed on the Raymond Avenue Grade Separation Project. The premises shall not be used for the storage of construction materials or equipment. No other use shall be permitted without the CITY’s and OCTA’s prior written consent.

Parking space at Office Building will be limited during construction, and there is no guarantee that enough spaces will be available to satisfy all of the CONTRACTOR’s parking needs at all times. One or more other Office Building suites will be utilized by other entities as offices during the project duration, which will also affect the parking spaces that may be available for the CONTRACTOR’s use. Preference for parking of vehicles at the Office Building shall be given to office personnel and visitors. Construction worker private vehicle parking will not be permitted at the Office Building parking lot.

SC-9 Delivery, Unloading and Storage of Materials and Equipment

The CONTRACTOR shall be completely responsible for all delivery, unloading and storage activities required for the completion of work under this contract. Refer to General Conditions GC-35.4 for general requirements.

CONTRACTOR shall not use TCE areas within residential communities or on business properties that are to remain open during construction for storage, laydown or staging areas.

CONTRACTOR shall store construction equipment and materials within the project limits in a way that does not prohibit or interfere with the use of OCFCD maintenance access roads as well as the maintenance activities of OCFCD personnel.

SC-10 Contract Data Submission Requirements

The CONTRACTOR shall submit to the CITY the items identified in the Contract Documents as requiring submission for review by the CITY or its Engineer, or other entities, agencies or authorities having jurisdiction over the work. Also refer to General Conditions Section GC-43, Submittal of Shop Drawings, Product Data and Samples. Any submittal specified to be submitted to any party other than the CITY shall be submitted to the CITY’s authorized representative who will forward the submittal to the appropriate party. Procedures for preparing and transmitting required submittals shall conform to the following:

10.1 Drawings

The CONTRACTOR shall prepare working and shop drawings as required by the Contract Documents for the performance of the work. Drawings shall be prepared on sheets measuring 24” x 36”, unless otherwise approved. Each drawing shall have a blank area 5” x 5” minimum, located above the title block, for the acceptance stamp. The title block of each drawing shall display the following:

- Submittal identification (tracking) number,
- Contract number and name,
- Number and title of drawing,
- Date of drawing or revision,
- Name of the CONTRACTOR and Subcontractor originating drawing,
- Clear identification of contents and location of work,
- Referenced Technical Specifications and/or contract drawings, and
- Structural calculations signed and sealed by a California licensed civil engineer, where applicable.

10.2 Detail Drawings

The CONTRACTOR shall furnish detail drawings, engineering calculations, and supporting data acceptable to the Engineer for temporary shoring, falsework, and other temporary work, indicating the method of proposed construction for the safe and successful completion of the work.
EXHIBIT N

SAMPLE OFFICE LEASE AGREEMENT
COMMERCIAL LEASE AGREEMENT
For CONTRACTOR’s Construction Field Office Space

In consideration of the covenants herein, the ORANGE COUNTY TRANSPORTATION AUTHORITY ("LANDLORD") hereby leases to ___________________________________________ ("TENANT") the following premises, __________________________________________________________ __________________________ (the “Premises”). LANDLORD and TENANT now covenant and agree that the following terms and conditions shall govern this Lease.

1. TERM. The original term begins on ________, 2014 and shall continue until _______, 20__. Either party may terminate the tenancy by giving written notice to the other at least 30 days prior to the intended termination date, subject to any applicable local laws. Such notice may be given on any date.

2. RENT. “Rent” shall mean all monetary obligations of TENANT to LANDLORD under the terms of this agreement, except security deposit. TENANT shall pay to LANDLORD Base Rent at the rate of One Dollar $1.00 per month for the original term of the agreement, paid in advance for the entire term, plus a one-time processing fee of $250.00.

TENANT shall pay to LANDLORD Rent at the rate of $______________ per month [calculated as $2.00 per month per square foot of space] for the month-to-month term of the agreement, paid in advance on the 1st day of each calendar month, and is delinquent on the next day.

All payments shall be made payable to Orange County Transportation Authority, at the address below:

Orange County Transportation Authority
Attention: Bill Mock, Property Manager
550 S. Main Street
P.O. Box 14184
Orange, CA  92863-1584

or, at such other place as is designated in writing by LANDLORD. The original term Rent shall be payable in advance ten (10) days prior to occupancy.

3. UTILITIES. TENANT shall pay for all separately metered water, gas, heat, light, power, telephone, trash disposal, and other utilities and services provided to the Premises during the term of the lease until TENANT vacates the property. TENANT will acquire utility service metered separately and will terminate any and all accounts for said services when Lessee vacates property.

4. TERMINATION. This Lease may be terminated at any time by LANDLORD or TENANT upon thirty (30) days’ prior written notice. Such notice shall be deemed given upon the mailing thereof, postage prepaid, to the other party at the address set forth below. Neither the termination provision of this Paragraph 6 nor the term of this Lease as set forth in Paragraph 1 above shall be relevant or affect LANDLORD and TENANT in any negotiation or proceedings to determine TENANT’s right to relocation expenses by reason of LANDLORD’s acquisition of the property.
5. **USE OF PREMISES.** TENANT shall use the leased premises only for a construction project management office for staff directly employed on the Raymond Avenue Grade Separation Project. The premises shall not be used for the storage of construction materials or equipment. No other use shall be permitted without LANDLORD’s prior written consent. TENANT shall not permit any use of the leased premises which will adversely affect or make voidable any insurance on the property of which the leased premises are a part, or on the contents of said property, or which shall be contrary to any law, regulation or recommendation made by the Insurance Services Office (or successor organization), state fire prevention agency, local fire department, LANDLORD’s insurer or any similar entity. TENANT shall on demand reimburse LANDLORD all extra insurance premiums caused by TENANT’s use of the leased premises.

6. **COMPLIANCE WITH LAWS.** TENANT agrees not to use the leased premises in any way that may be unlawful, improper, noisy, offensive, or contrary to any applicable statute, regulation, ordinance or bylaw. TENANT shall keep all employees working in the leased premises covered by Worker’s Compensation Insurance and shall obtain any licenses and permits necessary for TENANT’s use and occupancy. TENANT shall be responsible for causing the leased premises and any alterations by TENANT allowed hereunder to be in full compliance with any applicable statute, regulation, ordinance or bylaw.

7. **ASSIGNMENT OR SUBLEASE.** In no case may TENANT assign this Lease or sublet the leased premises to any other persons or entities, current or prospective tenant of LANDLORD, or any affiliate of such current or prospective TENANT. LANDLORD reserves the right to sell or transfer the property where the Premises is located to the City of Fullerton, or other entity, and TENANT agrees that the executed COMMERCIAL LEASE AGREEMENT may be assigned to the new property owner.

8. **ACCESS AND PARKING.** Unless otherwise provided herein, TENANT shall have the right without additional charge to use parking facilities provided for the leased premises in common with others entitled to the use thereof. TENANT shall not obstruct any portion of the building or its walkways and approaches. No unattended parking will be permitted between 7:00 PM and 7:00 AM without LANDLORD’s prior written approval. Unregistered or disabled vehicles, or storage trailers of any type, may not be parked at any time. LANDLORD may tow, at TENANT’s sole risk and expense, any misparked vehicle belonging to TENANT or TENANT’s employees, agents, callers or invitees, at any time. LANDLORD shall not provide, and shall not be responsible for providing, any security services.

9. **MAINTENANCE AND REPAIR OF PREMISES.** TENANT shall professionally maintain the Premises including electrical, plumbing and water systems, and heating and air conditioning, and keep glass, windows, and doors in operable and safe condition. TENANT agrees to accept the Premises “as is” on the start date of the original term, and is solely responsible for improvements to the existing Premises necessary for its needs, including repair or replacement of existing electrical, plumbing, gas, water, and heating and air conditioning systems. All improvements by the TENANT shall be constructed in accordance with all applicable building codes and regulations under a building permit, if required. A copy of the signed-off building permit shall be provided to the LANDLORD upon completion of any improvements by the TENANT.

TENANT shall keep Premises free of noxious weeds and trash, and shall comply with all applicable laws and regulations concerning the use of the Premises. If TENANT fails to maintain the Premises, LANDLORD may contract for or perform such maintenance, and charge TENANT for the cost.

LANDLORD shall maintain the roof, foundation, exterior walls, and common areas. All maintenance provided by LANDLORD shall be during LANDLORD’s normal business hours.
10. **ALTERATIONS.** TENANT shall not make structural alterations, additions or improvements of any kind to the leased premises, but may make nonstructural alterations, additions or improvements with LANDLORD’s prior written consent. All such allowed alterations, additions and improvements shall be at TENANT’s expense and shall conform to LANDLORD’s building standards and construction specifications. All improvements shall be constructed in accordance with all applicable building codes and regulations under a building permit, if so required. A copy of the signed-off building permit shall be provided to the LANDLORD upon completion of any improvements by the TENANT. If LANDLORD or its agent provides any services or maintenance for TENANT in connection with such alterations, additions and improvements or otherwise under this lease, TENANT will promptly pay any just invoice. TENANT shall obtain a lien waiver from any contractor it employs prior to commencement of any work. TENANT shall not permit any mechanics’ liens, or similar liens, to remain upon the leased premises in connection with any work performed or claimed to have been performed at the direction of TENANT and shall cause any such lien to be released or removed forthwith without cost to LANDLORD. Any alterations, additions and improvements shall become part of the leased premises and the property of LANDLORD. LANDLORD shall have the right at any time to make additions to the building, change the arrangement of parking areas, stairs or walkways, or otherwise alter common areas or the exterior of the building.

11. **MECHANICS LIENS.** TENANT shall keep property free from any liens arising out of any work performed, material furnished, or obligations incurred by TENANT, or any tenant or subtenant thereof.

TENANT shall obtain a lien waiver from any contractor it employs prior to commencement of any work. TENANT shall not permit any mechanics’ liens, or similar liens, to remain upon the leased premises in connection with any work performed or claimed to have been performed at the direction of TENANT and shall cause any such lien to be released or removed forthwith without cost to LANDLORD.

TENANT shall indemnify, defend with counsel selected by LANDLORD, protect and hold LANDLORD, its officers, directors, employees, agents, successors and assigns, and any successor or successors to LANDLORD’s interest harmless from and against all claims, actual damages (including, but not limited to, special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys' and expert witness' fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Property, or any indemnified party directly or indirectly arising from or attributable to any work performed, material furnished, or obligations incurred by TENANT, or any tenant or subtenant thereof.

12. **FIRE PREVENTION.** TENANT agrees to use every reasonable precaution against fire, to provide and maintain approved, labeled fire extinguishers, emergency lighting equipment and exit signs, and to complete any other modifications within the leased premises as required or recommended by the Insurance Services Office (or successor organization), OSHA, the local fire department, LANDLORD’s insurer or any similar entity.

13. **FIRE / CASUALTY.** Should a substantial portion of the leased premises, or of the property of which they are a part, be substantially damaged by fire or other casualty, LANDLORD may elect to terminate this lease. When such fire or casualty renders the leased premises substantially unsuitable for their intended use, a proportionate abatement of rent shall be made, and TENANT may elect to terminate this Lease if: (a) LANDLORD fails to give written notice within 30 days after said fire or
casualty of its intention to restore the leased premises; or (b) LANDLORD fails to restore the leased
premises to a condition substantially suitable for their intended use within 90 days after said fire or
casualty.

14. **INSURANCE.** TENANT shall obtain and keep in force a Commercial General Liability policy
of insurance protecting TENANT and naming LANDLORD as additional insured against claims for
bodily injury, personal injury and property damage based upon or arising out of the ownership, use,
occupancy or maintenance of the Premises, and all areas appurtenant thereto. Such insurance shall
be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per
occurrence with an annual aggregate of not less than $2,000,000, an “Additional Insured-Managers
or Lessors of Premises Endorsement” and contain the “Amendment of the Pollution Endorsement”
for damage caused by heat, smoke, or fumes from a hostile fire. The policy shall not contain any
intra-insured exclusions as between insured persons or organizations, but shall include coverage for
liability assumed under this Lease as an “insured contract” for the performance of TENANT’s
indemnity obligations under this lease. The limits of said insurance shall not, however, limit the
liability of TENANT nor relieve TENANT of any obligation hereunder. All insurance carried by
TENANT shall be primary and not contributory with a similar insurance carried by LANDLORD,
whose insurance shall be considered excess insurance only. Failure to maintain a certificate of
insurance on file with LANDLORD evidencing such insurance shall be cause for termination.

15. **SECURITY MEASURES.** TENANT hereby acknowledges that the Rent payable to
LANDLORD hereunder does not include the cost of guard service or other security measures, and
that LANDLORD shall have no obligation whatsoever to provide same. TENANT assumes all
responsibility for the protection of the Premises, TENANT, its agents and invitees to the property
from the acts of third parties.

16. **INDEMNIFICATION OF LANDLORD.** Except for LANDLORD’s gross negligence or willful
misconduct, TENANT shall indemnify, defend, and hold harmless, the Premises, LANDLORD, its
officers, directors, employees, agents, successors and assigns, from and against any and all loss of
rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorney’s fees and
consultants’ fees arising out of, involving, or in connection with the use and/or occupancy of the
Premises by TENANT. If any action or proceeding is brought against LANDLORD by reason of any
of the foregoing matters, TENANT shall upon notice to defend the same at TENANT’s expense by
counsel reasonably satisfactory to LANDLORD and LANDLORD shall cooperate with TENANT in
such defense. LANDLORD need not have first paid any such claim in order to be defended or
indemnified.

17. **EXEMPTION OF LANDLORD FROM LIABILITY.** LANDLORD shall not be liable for injury or
damage to the person or goods, wares, merchandise or other property of TENANT, TENANT’s
employees, contractors, invitees, customers or any other person in or about the Premises, whether
such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from
the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances,
plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage
results from conditions arising upon the Premises or upon other portions of LANDLORDS’s property,
or from other sources or places. LANDLORD shall not be liable for any damages arising from any
act or neglect of any other tenant of LANDLORD nor from the failure of LANDLORD to enforce the
provisions of any other lease on the property. Notwithstanding LANDLORD’s negligence or breach
of this lease, LANDLORD shall under no circumstances be liable for injury to TENANT’s business or
for any loss of income or profit therefrom.

LANDLORD shall not be liable to anyone for, nor shall TENANT’s obligations under this Lease be
reduced because of, loss or damage caused in any way by the use, leakage, seepage, flooding or
escape of water or sewage in any form or from any source, by the interruption or cessation of any
service rendered customarily to the leased premises or building or agreed to by the terms of this
Lease, by any accident, the making of repairs, alterations or improvements, labor difficulties,
weather conditions, mechanical breakdowns, trouble or scarcity in obtaining fuel, electricity, service
or supplies from the sources from which they are usually obtained, by any change in any utility or
service provider, or by any cause beyond LANDLORD’s immediate control.

18. ASSUMPTION OF RISK AND INDEMNITY. TENANT assumes all risk of loss to itself, which
in any manner may arise out of the use of the Premises under this Lease. Further, TENANT, its
successors and assigns, shall indemnify and defend LANDLORD and its officers, directors,
employees, agents, successors and assigns against any liability and expenses, including the
reasonable expense of legal representation whether by special counsel or by LANDLORD’s staff
attorneys; resulting from injury to or death of TENANT, its successor and assigns, and invitees, and
any person who otherwise is lawfully on the property; or damage to any property, including property
of LANDLORD, or damage to any other interest of LANDLORD, including but not limited to suit
alleging noncompliance with any statute or regulation which in any manner may arise out of the
issuing of this Lease; or use by TENANT of the Premises, or any adjoining land used with the
property. All common areas, including but not limited to any parking areas, stairs, corridors, roofs,
walkways and elevators (herein collectively called the common areas) shall be considered a part of
the leased premises for liability and insurance purposes when they are used by TENANT or
TENANT’s employees, agents, callers or invitees.

19. WAIVER. The waiver by LANDLORD of any breach of any term, covenant, or condition
herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or of any
subsequent breach of the same or any other term, covenant, or condition herein contained. The
subsequent acceptance of rent hereunder by LANDLORD shall not be deemed to be a waiver of any
preceding breach by TENANT of any term, covenant, or condition of this Lease, other than the
failure of TENANT to pay the particular rental so accepted, regardless of LANDLORD's knowledge of
such preceding breach at the time of acceptance of such rent.

20. HAZARDOUS SUBSTANCES. For purposes of this Lease, the term "Hazardous Substance"
means: (i) any substance, product, waste or other material of any nature whatsoever which is waste
or other material of any nature whatsoever which is or becomes listed, regulated, or addressed
pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 United
States Code Section 9601, et seq.; the Resources Conservation and Recovery Act, 42 United States
Code Section 6901, et seq. (CERCLA); the Hazardous Materials Transportation Conservation and
Recovery Act, 42 United States Code Section 1801, et seq.; the Resources Conservation and
Recovery Act, 42 United States Code Section 6901, et seq. (RCRA); the Clean Water Act, 33 United
States Code Section 1251, et seq.; the Toxic Substances Control Act, 15 United States Code
Section 2601, et seq.; the California Hazardous Waste Control Act, Health and Safety Code
Section 25100, et seq.; the California Hazardous Substance Account Act, Health and Safety Code
Section 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and
(Underground Storage of Hazardous Substances); the California Hazardous Waste Management
Sections 25501, et seq. (Hazardous Materials Release Response Plans and Inventory); or the
California Porter-Cologne Water Quality Control Act, Water Code Section 13000, et seq., all as
amended, (the above-cited California state statutes are hereinafter collectively referred to as "the
State Toxic Substances Laws") or any other federal, state, or local statute, law, ordinance,
resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or
standards of conduct concerning, any hazardous or toxic substance hereafter in effect; (ii) any
substance, product, waste or other material of any nature whatsoever which may give rise to liability
under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (iii) petroleum or crude oil other than petroleum and petroleum products which are contained within regularly-operated motor vehicles; and, (iv) asbestos.

a. LANDLORD makes no warranty or representation whatsoever concerning the Property, including without limitation, the condition, fitness or utility for any purpose thereof, any improvements thereto or personal property located thereon, or compliance thereof with applicable laws, ordinances or governmental regulations, and the TENANT's right to use the Property is strictly "as is", with all faults, and LANDLORD hereby disclaims all other warranties whatsoever, express or implied, including, without limitation, any warranty as to the presence or absence of Hazardous Substances, the condition of the soil (or water), geology, and any warranty of merchantability or habitability or fitness for a particular purpose.

b. Except as otherwise permitted in this Lease, TENANT shall not use, create, store or allow any Hazardous Substances on the Property. TENANT shall not cause or permit fuel or other Hazardous Substances to contact with the soil or subsoil and any such Hazardous Substances shall be removed from the Property by TENANT by lawful means.

c. In no case shall TENANT cause or allow the deposit or disposal of any such Hazardous Substances on Property.

d. No underground storage tanks shall be installed.

e. TENANT shall, within reasonable time, either prior to the release or following the discovery by TENANT of the presence of or believed presence of the hazardous substance as defined herein, give written notice to LANDLORD in the event that TENANT knows or has reasonable cause to believe that any release of a hazardous substance has come or will come to be located on or beneath the subject Property. The failure to disclose in a timely manner the release of either a material amount of hazardous substance or an amount which is required to be reported to a state or local agency pursuant to law (e.g. California's Hazardous Materials Storage and Emergency Response Act, Health and Safety Code Section 25550, et seq.), may subject TENANT to a default on this Lease in addition to actual damages and other remedies provided by law. TENANT shall immediately clean up and completely remove from the Property all Hazardous Substances used, stored or created by TENANT on the Property, in a manner that is in all respects safe and in accordance with all applicable laws.

f. TENANT shall disclose to LANDLORD its disposal of any Hazardous Substances located in Property and provide written documentation of its safe and legal disposal.

g. Breach of any of these covenants, terms and conditions shall give LANDLORD the authority to immediately terminate this Lease and/or to shut down TENANT's operations thereon, pending rectification of the breach, in which case, TENANT will continue to be liable under this Lease to clean up all Hazardous Substances from the Property. TENANT shall be responsible for and bear the entire cost of removal and disposal of Hazardous Substances introduced to the Property during TENANT's period of use and possession of the Property, except where such Hazardous Substances are placed thereon by LANDLORD or LANDLORD's agents. LANDLORD may pass through to TENANT any and all cleanup costs incurred by LANDLORD as a result of TENANT's activities on the Property. Notwithstanding the foregoing, TENANT shall be responsible for any cleanup or decontamination on or off the
Property necessitated by the presence of such Hazardous Substances. Upon termination of this Lease, TENANT is required, in accordance with all laws, to remove from the Property any equipment or improvements to the Property that could be contaminated by Hazardous Substances.

h. TENANT shall indemnify, defend with counsel selected by LANDLORD, protect and hold LANDLORD, its officers, directors, employees, agents, successors and assigns, and any successor or successors to LANDLORD’s interest harmless from and against all claims, actual damages (including, but not limited to, special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys’ and expert witness’ fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Property, or any indemnified party directly or indirectly arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any hazardous substance on, under, or about the Property, regardless of whether undertaken due to governmental action. To the fullest extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of LANDLORD. The foregoing indemnity is intended to operate as an agreement pursuant to CERCLA Section 107(e) of 42 United States Code Section 9607(E), and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify LANDLORD from any liability pursuant to such sections.

I HAVE READ AND UNDERSTOOD PARAGRAPH 7 HAZARDOUS SUBSTANCES.

TENANT’s Initials

21. BROKERAGE. TENANT warrants and represents to LANDLORD that TENANT has dealt with no broker or third person with respect to this lease, and TENANT agrees to indemnify LANDLORD against any brokerage claims arising out of this lease. LANDLORD warrants and represents to TENANT that LANDLORD has employed no exclusive broker or agent in connection with this lease. If either party introduces a broker or third person on its behalf for any extension, renewal or expansion of this lease, any fees or commissions shall be the sole responsibility of the party engaging such broker or third person.

22. NOTICE. Any notice from LANDLORD to TENANT relating to the leased premises or this Lease shall be deemed duly served when left at the leased premises, or served by constable, or sent to the leased premises or to the last address designated by notice in accordance with this section, by certified or registered mail, return receipt requested, postage prepaid, or by recognized courier service with a receipt therefor, addressed to TENANT. Any notice from TENANT to LANDLORD relating to the leased premises or this Lease shall be deemed duly served when served by constable, or delivered to LANDLORD by certified or registered mail, return receipt requested, postage prepaid, or by recognized courier service with a receipt therefor, addressed to LANDLORD at the Orange County Transportation Authority, 550 S. Main Street, Orange, CA 92863-1584, attention: Department of Real Property or at LANDLORD’s last designated address. No oral notice or representation shall have any force or effect. Time is of the essence in the service of any notice.
23. **SURRENDER.** On or before the termination of this lease, TENANT shall remove all of TENANT’s goods and effects from the leased premises, and shall deliver to LANDLORD actual and exclusive possession of the leased premises and all keys and locks thereto. TENANT shall deliver the leased premises fully sanitized from any chemicals or other contaminants, broom clean, and in at least the same condition as they were at the commencement of the Lease or any prior lease between the parties for the leased premises, or as they were modified during said term with LANDLORD’s written consent, reasonable wear and tear only excepted, and TENANT shall be deemed to be encumbering the leased premises until it delivers the leased premises to LANDLORD in the condition required under this lease. Any of TENANT’s property that remains in the leased premises upon termination of the Lease shall be deemed abandoned and shall be disposed of as LANDLORD sees fit, with no liability to TENANT for loss or damage thereto, and at the sole risk of TENANT. LANDLORD may remove and store any such property at TENANT’s expense; retain same under LANDLORD’s control; sell same at public or private sale (without notice) and apply the net proceeds of such sale to the payment of any sum due hereunder; or destroy same. In no case shall the leased premises be deemed surrendered to LANDLORD until the termination date provided herein or such other date as may be specified in a written agreement between the parties, notwithstanding the delivery of any keys to LANDLORD.

24. **WAIVERS, ETC.** No consent or waiver, express or implied, by LANDLORD to or of any breach of any covenant, condition or duty of TENANT shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. If TENANT is several persons, corporations, or other legal entities, or a partnership, or some combination thereof, TENANT’s obligations are joint and several. Unless repugnant to the context, “LANDLORD” and “TENANT” mean the person or persons, natural or corporate, named above as LANDLORD and as TENANT respectively, and their respective heirs, executors, administrators, successors and assigns.

25. **MULTIPLE PARTIES.** If more than one person or entity is named herein as TENANT, such multiple parties shall have joint and several responsibility to comply with the terms of this Lease.

26. **ATTORNEYS’ FEES.** The prevailing party in any action brought by either party hereto based on any claim arising under this Lease shall be entitled to reasonable attorneys’ fees.

27. **AMENDMENT.** The terms of this Lease may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

28. **TIME OF ESSENCE.** Time is of the essence of each and every term, condition, obligation, and provision hereof.

29. **AMERICANS WITH DISABILITIES ACT.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon TENANT’s specific use of the Premises, LANDLORD makes no warranty or representation as to whether or not the Premises comply with the ADA or any similar legislation. In the event that TENANT’s use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, TENANT agrees to make any such necessary modifications and/or additions at TENANT’s expense.
IN WITNESS WHEREOF, LANDLORD and TENANT have hereunto set their hands and common seals, intending to be legally bound hereby this ____ day of __________, 2014.

LANDLORD:

ORANGE COUNTY
TRANSPORTATION AUTHORITY

By: __________________________
Rose Casey, Director, Highway Programs

TENANT:

By: __________________________
Print name:
Title:

Approved as to Form:

By: __________________________
Kennard R. Smart, Jr., General Counsel

By: __________________________
Print name:
Title: