Fountain Valley, California, 2013

Orange County Water District,
a public corporation

Grantors

Document No. ___102793-1, 102793-2, 102793-5, 102793-6, C-741, C-741-1, C-741-3, C-741-4__, in the form of a Permanent Easement Deed, covering the property particularly described in said document has been executed and delivered to ___Jessica Freeman___, Right of Way Agent for the State of California.

This Document No. ___102793-3 and 102793-4__, in the form of a Temporary Construction Easement, covering the property particularly described in Clause 3 below has been executed and delivered to ___Jessica Freeman___, Right of Way Agent for the State of California.

In consideration of which, and the other considerations hereinafter set forth, it is mutually agreed as follows:

1. (A) The parties have herein set forth the whole of their agreement. The performance of this agreement constitutes the entire consideration for said document and shall relieve the State of all further obligation or claims on this account, or on account of the location, grade or construction of the proposed public improvement.

   (B) Grantee requires said property described in Document No. ___102793-1,-2,-3,-4,-5,-6 and C-741, C-741-1, C-741-3, C-741-4__, for State highway purposes, a public use for which Grantee has the authority to exercise the power of eminent domain. Grantor is compelled to sell, and Grantee is compelled to acquire the property.

   Both Grantor and Grantee recognize the expense, time, effort, and risk to both parties in determining the compensation for the property by eminent domain litigation. The compensation set forth herein for the property is in compromise and settlement, in lieu of such litigation.

2. The State shall:

   (A) Pay the undersigned grantor(s) the sum of $727,100.00 for the property or interest conveyed by above document(s) when title to said property vests in the State free and clear of all liens, encumbrances, assessments, easements and leases (recorded and/or unrecorded) and taxes, except:

      a. Taxes for the tax year in which this escrow closes shall be cleared and paid in the manner required by Section 5086 of the Revenue and Taxation Code, if unpaid at the close of escrow.

      b. Covenants, conditions, restrictions and reservations of record, or contained in the above-referenced document.

      c. Easements or rights of way over said land for public or quasi-public utility or public street purposes, if any

   (B) Pay all escrow and recording fees incurred in this transaction and, if title insurance is desired by the State, the premium charged therefor. Said escrow and recording charges shall not, however, include documentary transfer tax.
(C) Have the authority to deduct and pay from the amount shown on Clause 2(A) above, any amount necessary to satisfy any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid nondelinquent assessments which have become a lien at the close of escrow.

(D) In addition to the Fair Market Value, it is agreed by and between the parties hereto that the amount in clause 2A above includes the sum of $66,100.00 as an incentive to the grantor for the timely signing of this Right of Way Contract. This incentive payment offer expires sixty (60) days from the Initiation of Negotiations (February 13, 2013).

3. Permission is hereby granted to State or its authorized agent to enter upon grantor land where necessary within that certain area shown outlined on the map attached hereto and made a part hereof, for the purpose of facilitation of the widening of the bridge, construction of the bridge abutments, the piers, columns, and debris noses.

   It is further understood that the Grantor grants the State or its authorized agent permission to enter upon Grantor’s remaining land, where necessary, to install and remove temporary fencing.

4. It is agreed and confirmed by the parties hereto that notwithstanding other provisions in this contract, the right of possession and use of the subject property by the State, including the right to remove and dispose of improvements, if any, shall commence on April 30, 2013 or the close of this escrow controlling this transaction, whichever occurs first, and that the amount shown in clause 2(A) herein includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

5. It is understood and agreed by and between the parties hereto, that payment in Clause 2(A) above includes, but is not limited to, payment for the following items, which are considered to be part of the property and are being acquired by the State in this transaction: 500 SF of landscaping (small to large trees, close spacing, and automatic irrigation), 1,098 SF concreted walk/path, 40 LF 6’ chain-link fencing (including installation).

6. The undersigned grantor warrants that they are the owner in fee simple of the property affected by this Temporary Easement, as described in Clause 3 above, and that they have the exclusive right to grant this Temporary Easement.

7. This Temporary Construction Easement shall terminate upon completion of the project known as “add an exit bypass lane on westbound SR-91 at the SR-55 connector in the City of Anaheim.”

8. In consideration of the State’s waiving the defects and imperfections in the record title, the undersigned Grantor covenants and agrees to indemnify and hold the State of California harmless from any and all claims that other parties may make or assert on the title to the premises. The Grantor’s obligation herein to indemnify the State shall not exceed the amount paid to the Grantor under this contract.

9. State agrees to indemnify and hold harmless the Grantor from any liability arising out of State’s operations under this agreement. State further agrees to assume responsibility for any damages proximately caused by reason of State’s operations under this agreement and State, will, at its option, either repair or pay for such damage.

10. It is understood and agreed that included in the amount payable in Clause 2(A) above is compensation in full for the actual possession and use of the Temporary Construction Easements identified as Document No. 102793-3 and 102793-4 for a period of Nineteen (19) months. Said period to commence on first entry by State’s contractor and extend to July 1, 2016. At least 48 (forty-eight) hours advance written notice will be given before any entry on Grantor’s property.
In the event said actual use extends beyond the prescribed period of time and said use is verified through the State’s contractor logs, the state shall pay the Grantor by amended Right of Way Contract at the same contract rate of $15,235.42 for Parcel No. 102793-3 and $1,977.19 for Parcel No. 102793-4 per month prorated to the actual date said actual use terminates.

It is further understood that in no event shall the temporary right granted herein extend beyond the completion of the construction project add an exit bypass lane on westbound SR-91 at the SR-55 connector in the City of Anaheim.

Written notification shall be given to the owners at:

Orange County Water District  
Attn: Property Management  
PO Box 8300  
Fountain Valley, CA 92728-8300

Verbal communication with the owners shall be at telephone number (714) 378-3200.

In the event this information changes or property transfers, the owner shall notify the State in writing of such occurrence at:

STATE DEPARTMENT OF TRANSPORTATION  
c/o Jessica Freeman  
3347 Michelson Drive, Suite. 100  
Irvine, CA 92612-8892  
(949) 724-2549

11. The Grantors agree that no improvements, other than those already on the Temporary Construction Easement, shall be placed thereon; and the planting of any crops, trees, or shrubs, or alterations, repair, or additions to existing improvements, which may hereafter be placed thereon, are at Grantor’s risk and without exception of payment if removed by the State.

12. It is understood and agreed that in the event the Grantors plan to sell, lease, or rent the Grantor’s property prior to the earliest of the completion of the project or the final expiration date of this Temporary Construction Easement, the Grantors shall inform, in writing, any and all parties involved in said sale, lease, or rental, of this Temporary Construction Easement and associated construction project by the State.

13. Escrow will be handled through an internal escrow with the Department of Transportation, 3347 Michelson Drive, Suite 100, Irvine, CA 92612-8894. The title report number is 210-1201235-20.

14. All work done under this agreement shall conform to all applicable building, fire and sanitary laws, ordinances, and regulations relating to such work, and shall be done in a good and workmanlike manner. All structures, improvements or other facilities, when removed, and relocated, or reconstructed by the State, shall be left in as good condition as found.
In WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

APPROVED AS TO FORM:
RUTAN & TUCKER, LP

By: ___________________________
General Counsel,
Orange County Water District

By: ___________________________
MICHAEL R. MARKUS, P.E.
General Manager
Orange County Water District

By: ___________________________
SHAWN DEWANE
President
Orange County Water District

Recommended for Approval:               Approved:

By: ___________________________
JESSICA FREEMAN
Right of Way Agent

By: ___________________________
STATE OF CALIFORNIA
Department of Transportation

By: ___________________________
RICKY RODRIGUEZ
Office Chief
Office of Right of Way – District 12

NO OBLIGATION OTHER THAN THOSE SET FORTH HEREIN WILL BE RECOGNIZED