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**RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:**

Orange County Transportation Authority
c/o Real Property Department
550 S. Main Street
Orange, CA 92863-1584

Mail Tax Statements as shown above

THIS SPACE FOR RECORDER'S USE ONLY

APN: 345-061-07

DOCUMENTARY TRANSFER TAX \$ _____

- ___ Computed on the consideration or value of property conveyed
___ Exempt per Revenue & Taxation Code Section 11922
___ Exempt from Recording Fees per Govt. Code Section 6103

By: _____
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME

- ☐ Unincorporated Area
☒ Incorporated - City of Anaheim

OCFCD Parcel/Project: E02-351/Carbon Creek Diversion Channel
OCTA Parcel/Project: OR-001-02/Orangethorpe RR Grade Separation

EASEMENT DEED

For valuable consideration, receipt of which is hereby acknowledged,

ORANGE COUNTY FLOOD CONTROL DISTRICT,
a body corporate and politic,
hereinafter referred to as "**DISTRICT**,"

does hereby grant to

ORANGE COUNTY TRANSPORTATION AUTHORITY,
a public entity
hereinafter referred to as "**GRANTEE**," its, successor and assigns,

a non-exclusive bridge and roadway easement on, over, upon and across that certain real property (hereinafter referred to as "**Easement Area**") described in "**Exhibit A**," and illustrated in "**Exhibit B**," which exhibits are attached hereto and made a part hereof.

GRANTEE'S rights shall include rights to construct, repair, inspect and maintain and a bridge, roadway, curbs, gutters, sidewalks, and landscaping ("**Facilities**") and shall include reasonable access to the Easement Area for the purpose of exercising the rights herein granted.

DISTRICT and GRANTEE, may sometimes hereinafter be individually referred to as "**Party**" or jointly as "**Parties**". It is understood and agreed by the Parties hereto and their successors and assigns that the easement and right of way herein granted in this easement deed ("**Easement Deed**") shall be subject to the following terms, conditions, and reservations:

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1. CONSTRUCTION AND MAINTENANCE (PMES2.2S)

GRANTEE shall have all construction and/or maintenance plans approved in writing by DISTRICT'S OC Public Works Director, or designee, ("**Director**") prior to commencement of any work in, on or about the Easement Area; and upon completion of any such work, GRANTEE shall immediately notify Director in writing of such completion.

Director's approval of GRANTEE'S construction and/or maintenance plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. DISTRICT is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of GRANTEE'S construction and/or maintenance plans. Director will rely on the professional expertise of the Engineer of Record when approving GRANTEE'S construction and/or maintenance plans.

GRANTEE hereby acknowledges that the Easement Area lies within a portion of DISTRICT'S flood control facility, commonly referred to as the Carbon Creek Diversion Channel (hereinafter "**the Channel**").

GRANTEE shall perform all construction and/or maintenance in such a manner that will allow for unobstructed flood control operations and maintenance of the Channel by DISTRICT.

Should it be necessary for GRANTEE to conduct any construction or excavation activities or otherwise disturb the ground surface of the Easement Area subsequent to the completion of the initial installation of GRANTEE'S Facilities or in the event GRANTEE or any entity permitted by GRANTEE wishes to install any utilities within the Easement Area that are not fully contained inside or attached to any bridge superstructure on the Easement Area, GRANTEE agrees to notify Director in writing sixty (60) days in advance of such planned activities, obtain Director's written approval of all plans, and obtain a permit(s) for construction from the County Property Permits with payment of normal processing fees therefor prior to commencement of any such activities. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation or in conducting routine maintenance activities which do not involve disturbance of the surface area or in routine road resurfacing activities.

Except in areas in which such activities require regulatory agency approval, or are otherwise designated as environmentally sensitive, GRANTEE shall have the right to cut such roots as may endanger or interfere with GRANTEE'S Facilities provided, however, that any excavation shall be made in such a manner as will cause the least injury to the surface of the ground and any improvements and/or landscaping around such excavation, and that the earth so removed shall be replaced and the surface of the ground and any improvements and/or landscaping around such excavation, damaged shall be promptly restored by GRANTEE at its expense to the same condition as existed prior to excavation, to Director's satisfaction.

GRANTEE shall, at no cost to DISTRICT, maintain in good repair and in safe condition all Facilities constructed, used or placed upon the Easement Area by or on behalf of GRANTEE pursuant to this Easement Deed.

2. REMOVAL AND/OR ABANDONMENT (PMES3.1S)

GRANTEE agrees that in the event (a) GRANTEE'S Facilities are not constructed or are no longer required, or (b) GRANTEE'S use of said Facilities ceases for a continuous period of more than one (1) year without written notice from GRANTEE to DISTRICT of the circumstances affecting such suspension and of GRANTEE'S intention to resume usage of the Facilities, GRANTEE shall, at Director's request and at no cost to DISTRICT, remove and/or abandon said Facilities within ninety (90) days after receipt of written notice from Director to remove and/or abandon. Following such removal and/or abandonment, GRANTEE

shall, at no cost to DISTRICT, restore the Easement Area to the condition that existed prior to the granting of this Easement Deed, to Director's satisfaction.

GRANTEE shall also execute and deliver to Director, within ninety (90) days of such removal and/or abandonment, for recordation in the Official Records of Orange County, California, a quitclaim deed sufficient to remove the encumbrance of this Easement Deed from title.

3. COMPLIANCE WITH REGULATORY AUTHORITIES (PMES6.2S)

GRANTEE shall, at its own cost and expense, promptly and at all times observe, comply with and carry out all present and future orders, regulations, directions, rules, laws, ordinances, permits and requirements of all governmental authorities, including but not limited to environmental regulatory authorities, with jurisdiction in, on, over and about the Easement Area, which arise from GRANTEE'S use of or performance of any activities permitted to be conducted in, on, over, or across the Easement Area.

In addition, GRANTEE shall ensure that all construction in the Easement Area is performed in accordance with any NPDES (National Pollutant Discharge Elimination System) permit requirements or other water quality statutes, regulations, ordinances, or permits applicable to the construction, including but not limited to use of appropriate best management practices, so as to ensure that pollutants are not discharged into the Channel nor into DISTRICT'S flood control system.

GRANTEE shall not accept any regulatory permit, or consent to any regulatory permit provision which may (i) affect the operation and maintenance of the Channel; (ii) commit DISTRICT to any new maintenance obligation; (iii) require the installation of any water quality feature within the Channel; (iv) result in increased Channel operation or maintenance expenses; or (v) be inconsistent with DISTRICT'S Channel operations and/or facilities standards and criteria, without the Director's prior written approval, which approval shall be at Director's sole discretion and which approval may include, but not be limited to the posting of a bond or the deposit of funds to cover any permit obligations. GRANTEE shall ensure that any such proposed permit provision(s) not approved in writing by the Director is/are stricken or deleted from the final permit prior to its issuance.

No approvals or consents given hereunder by DISTRICT, as a Party to this Easement Deed, shall be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules or regulations.

4. HOLD HARMLESS (PMES7.2S)

GRANTEE acknowledges the Easement Area is in, on, over, upon and across DISTRICT'S Channel and may be subject to all hazards associated with flood conditions. GRANTEE agrees to assume all risks, financial or otherwise, associated therewith.

GRANTEE hereby releases and waives all claims and recourse against DISTRICT and County including the right of contribution for loss of or damage to property, or injury to or death of any person arising from, growing out of or in any way connected with or related to this Easement Deed, including any damage to or interruption of use of GRANTEE'S Facilities caused by erosion, flood, or flood overflow conditions of the Channel, or caused by the operation, maintenance, repair, reconstruction, replacement, enlargement or improvement of the Channel or by DISTRICT'S flood control operations, except claims arising from the concurrent active or sole negligence of DISTRICT and/or County, their officers, agents, employees and contractors.

GRANTEE hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and County, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any

persons or property, arising out of the maintenance, use of or operations or activities conducted in, on, or over the Easement Area, and/or the exercise of the rights under this Easement Deed by GRANTEE, its agents, officers, employees, invitees or licensees including, but not limited to, use of the Easement Area by members of the general public. GRANTEE'S indemnity obligation shall not extend to any liability arising out of the concurrent active or sole negligence of DISTRICT, and/or County, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT and/or County is/are named as co-defendant(s) in a lawsuit, GRANTEE shall notify Director of such fact and shall represent DISTRICT/County in such legal action unless DISTRICT/County undertake(s) to represent itself/themselves as co-defendant(s) in such legal action, in which event, GRANTEE shall pay to DISTRICT/County its/their litigation costs, expenses, and attorneys' fees. If judgment is entered against DISTRICT/County and GRANTEE by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT/County and GRANTEE, DISTRICT and GRANTEE agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

5. GRANTEE'S LIABILITY FOR HAZARDOUS OR TOXIC MATERIALS (PMES8.2S)

GRANTEE shall not cause or permit any "Hazardous Material," as hereinafter defined, to be brought upon, kept, or used in or about the Easement Area. If GRANTEE breaches the obligations stated herein, or if contamination of the Easement Area by Hazardous Material otherwise occurs for which GRANTEE is legally liable to DISTRICT for damage resulting therefrom, then GRANTEE shall indemnify, defend with counsel approved in writing by DISTRICT, and hold harmless, DISTRICT and/or County, and their elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Easement Area, sums paid in settlement of claims, attorney fees, consultant fees, and expert witness fees) which arise during or after GRANTEE'S use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by DISTRICT in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material being present in the soil or ground water under the Easement Area. GRANTEE shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Easement Area to its condition prior to the introduction of such Hazardous Material by GRANTEE, provided GRANTEE shall first have obtained Director's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material, or waste which is or shall become regulated by any governmental entity or agency, including, without limitation, the County, the State of California, or the United States government.

6. RESERVATIONS (PMES9.1S)

DISTRICT hereby reserves for itself and its successors and assigns, such surface, subsurface and aerial rights in the Easement Area as will not unreasonably interfere with or prohibit the use by GRANTEE of the rights and easement herein granted.

DISTRICT hereby reserves for itself the right to act in accordance with the Flood Control Act including but not limited to improving, constructing, reconstructing, rehabilitating, operating and maintaining the Channel facility.

In the event DISTRICT exercises such rights to utilize the Easement Area which use results in the disturbance of the ground surface or subsurface of the Easement Area, DISTRICT'S only responsibility shall be to backfill with compacted earth to the grade of the surrounding property or to a condition DISTRICT desires, consistent with the terms herein, following completion of DISTRICT'S activity. GRANTEE shall have the sole

responsibility to restore GRANTEE'S Facilities to the design and grade approved as provided for in Section 1 (Construction and Maintenance) above.

DISTRICT agrees that it shall not grant to any other party, any surface, subsurface or aerial rights which unreasonably interferes with or prohibits the use by GRANTEE of the rights and easement herein granted.

7. CONVEYANCE SUBJECT TO EXISTING INTERESTS (PMES10.1S)

This Easement Deed is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Easement Area, and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

Nothing contained herein, or in any document related hereto, shall be construed to imply the conveyance to GRANTEE of rights in the Easement Area which exceed those owned by DISTRICT, or any representation or warranty, either express or implied, relating to the nature or condition of the Easement Area or DISTRICT'S interest therein.

8. ASSIGNMENT

This Easement Deed is personal and exclusive to GRANTEE, and GRANTEE shall not assign or convey any of GRANTEE'S interest, rights, or obligations under this Easement Deed to a third party, except that GRANTEE may assign or transfer its interest in this Easement Deed to another public entity provided that GRANTEE'S interest, rights and obligations in this Easement Deed are conveyed in their entirety. In the event of a conveyance of GRANTEE'S interest in this Easement Deed, GRANTEE agrees that the instrument of conveyance shall include a provision obligating the transferee, assignee or grantee to keep, perform and be bound by all the terms, covenants and conditions of this Easement Deed. GRANTEE further agrees to record the instrument of conveyance and provide Director with a copy of the recorded document within 45 days of recording.

9. TAXES AND ASSESSMENTS (PMES11.1S)

Should this Easement Deed create a possessory interest which is subject to the payment of taxes levied on such interest, it is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Easement Area or upon fixtures, equipment, or other property installed, constructed or used by GRANTEE thereon in connection with this Easement Deed, shall be the full responsibility of GRANTEE, and GRANTEE shall cause said taxes and assessments to be paid promptly when due.

10. NOTICES (PMES12.1S)

All notices, documents, correspondence and communications concerning this Easement Deed shall be addressed as set forth in this Section, or as the Parties may hereafter designate by written notice, and shall be sent through the United States mail with postage prepaid. Any such mailing shall be deemed served or delivered forty-eight (48) hours after mailing. Each Party may change the address for notices by giving the other Party at least ten (10) calendar days' prior written notice of the new address.

Notwithstanding the above, either Party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery or by facsimile and so given shall be deemed to have been given upon receipt if provided by personal delivery; or if by facsimile on the day transmitted provided transmitted by 4:30 P.M. (PT) on the receiving Party's regular business day, otherwise delivery shall be deemed to have been given on the next business day.

To DISTRICT:

Orange County Flood Control District
c/o OC Public Works/Real Estate Services
RE: E02-351/Carbon Crk Diversion Channel
300 N. Flower Street, 6th Floor
Santa Ana, CA 92703
Facsimile: 714/834-2870

To GRANTEE:

Orange County Transportation Authority
c/o Real Property Department
550 S. Main Street
P.O. Box 14184
Orange, CA 92863-1584

11. VENUE (PMES13.1S)

The Parties hereto agree that this Easement Deed has been negotiated and executed in the state of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Easement Deed, the sole and exclusive venue shall be a court of competent jurisdiction located in the County of Orange, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

12. WAIVER OF RIGHTS (PMES14.1S)

The failure of DISTRICT to insist upon strict performance of any of the terms, covenants, or conditions of this Easement Deed shall not be deemed a waiver of any right or remedy that DISTRICT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Easement Deed thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Easement Deed.

13. SEVERABILITY (PMES15.1S)

If any term, covenant, condition, or provision of this Easement Deed is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

14. ATTORNEYS' FEES (PMES16.1S)

In any action or proceeding brought to enforce or interpret any provision of this Easement Deed, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

15. SUCCESSORS AND ASSIGNS (PMES18.1S)

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

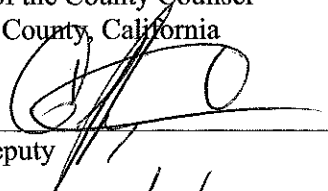
16. AUTHORITY (PMES20.1S)

The Parties to this Easement Deed represent and warrant that this Easement Deed has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

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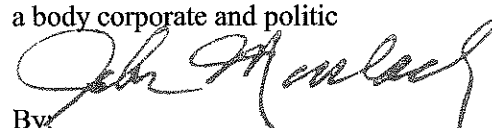
Approved as to Form
Office of the County Counsel
Orange County, California

By: 
Deputy


Date: 7/5/2012

DISTRICT

Orange County Flood Control District,
a body corporate and politic

By: 
Chairman, Board of Supervisor
Orange County, California

Signed and certified that a copy of this document
has been delivered to the Chairman of the Board per
G.C. Sec. 25103, Reso 79-1535

ATTEST:

Susan Novak
Clerk of the Board of Supervisors
Orange County Flood Control District
Orange County, California

GRANTEE'S SIGNATURE ON FOLLOWING PAGE

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On Aug 3,, 2012 before me, Sergio Mora, Notary Public, personally appeared
Susan Novak

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



Grantor/Grantee: OC Flood Control District/OC Transportation Authority

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Easement Deed dated July 5 2012 from Orange County Flood Control District, a body corporate and politic, to the Orange County Transportation Authority (OCTA), a public entity, by the within instrument, the provisions of which contain certain terms and conditions which are incorporated by this reference as though fully set forth in this Certification, is hereby accepted and agreed to by the undersigned officer(s) on behalf of the OCTA pursuant to authority conferred by the OCTA Board of Directors Resolution No. 2010-010 adopted on March 8, 2010, and the Grantee agrees to be bound by the terms and conditions in the within instrument and consents to recordation thereof by its duly authorized officer.

Dated: _____

8/8/12

By: _____


Jim Bell

Executive Director, Capital Programs

EXHIBIT 'A'

LEGAL DESCRIPTION

CARBON CREEK DIVERSION CHANNEL (E02)

OR-001-02 (Roadway Easement)

(E02-351)

That portion of Lot 2, Block 'K' of Kraemer Tract, in the City of Anaheim, County of Orange, State of California, as shown on map recorded in Book 12, Pages 87 and 88, of Miscellaneous Records, in the Office of the County Recorder of Los Angeles County, California described as Parcel 302 in the deed to the Orange County Flood Control District, recorded May 19, 1960 in Book 5251, Page 466 of Official Records in the Office of the County Recorder of said Orange County, more particularly described as follows:

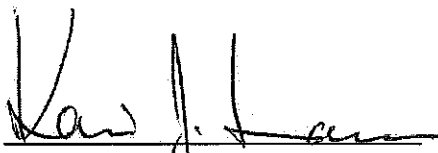
BEGINNING at the intersection of the southerly line of Orangethorpe Avenue and the westerly line of Miller Street (90 feet wide) as shown on a map filed in Book 96, Page 48 of Record of Survey in the Office of the County Recorder of said Orange County said intersection also being the most westerly corner of Parcel 1 described in the deed to the City of Anaheim, recorded November 21, 1966 in Book 8108, Page 877 of said Official Records; thence along said southerly line, also being the northerly line of said Parcel 302, South 74°27'32" West 75.85 feet; thence South 16°35'05" East 8.80 feet to the beginning of a non-tangent curve concave southerly having a radius of 42.00 feet, a radial line to said curve at said beginning bears North 16°35'00" West; thence southeasterly along said curve at said beginning through a central angle of 50°33'51" a distance of 37.07 feet to an intersection with a curve concave southwesterly, having a radius of 540.00 feet, a radial line to said curve at said intersection bears North 51°02'29" East; thence southerly along said curve through a central angle of 23°03'19" a distance of 217.29 feet to a point of tangency with the westerly line of said Miller Street; thence along said westerly line North 15°54'12" West 234.72 feet to the **POINT OF BEGINNING**.

Containing 4,430 square feet.

Bearings and distances shown hereon are based on the California Coordinate System of 1983, Zone 6, 1983 North American Datum, 2007.00 Epoch Adjustment. Divide distances shown by 0.99999084 to obtain ground distances.

As shown on Exhibit 'B' attached hereto by this reference made a part hereof.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.



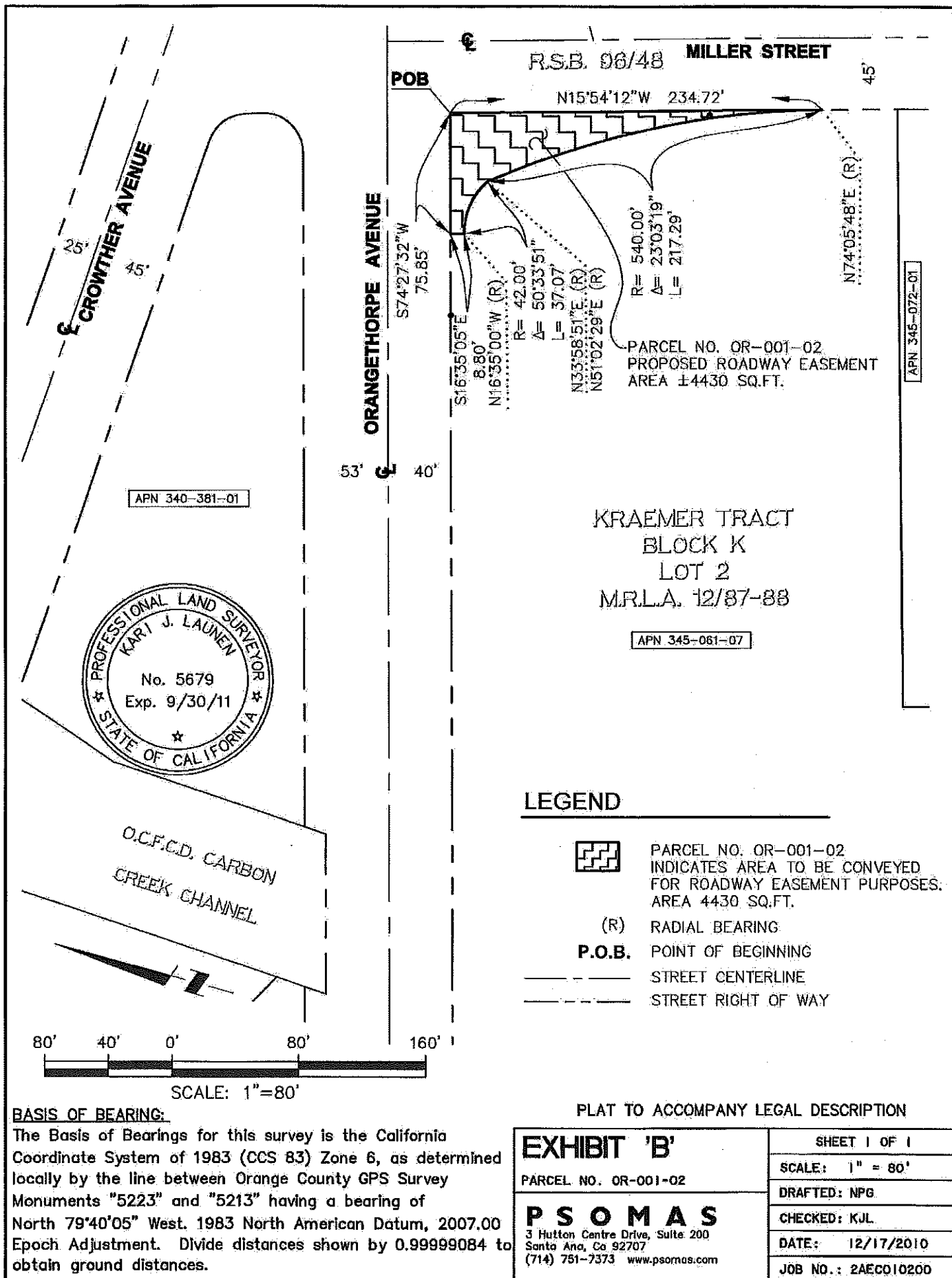
Kari J. Launen

L.S. No. 5679

Expiration Date: 9/30/2011

APRIL 4, 2011
Date





DWG Name: M:\2AECO10200\SURVEY\LEGALS\EXHIBITS\X-UG-RE-APN 345-061-07 (OR-001-02)_REV 1.dwg Plotted by: varguyen on Apr 01, 2011 - 14:17:05