

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

MAY 3, 2016

CLERK OF COUNCIL USE ONLY:

TITLE:

AMEND SITE LICENSE AGREEMENT WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR BUS PASSENGER SERVICES AT THE SANTA ANA REGIONAL TRANSPORTATION CENTER {STRATEGIC PLAN NO. 3, 2C}

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____



 CITY MANAGER

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute the First Amendment to the Site License Agreement with Orange County Transportation Authority, for the term beginning May 3, 2016, through the remaining three of five one-year renewal options to be granted at the City's discretion, to compensate the City \$2,282 annually for the use of the license area for bus passenger services at the Santa Ana Regional Transportation Center, subject to nonsubstantive changes approved by the City Manager and City Attorney.

DISCUSSION

The Santa Ana Regional Transportation Center (SARTC) is a regional transportation hub that brings together Amtrak, Metrolink, Orange County Transportation Authority (OCTA), and interstate bus services. It is open to the public seven days a week from 5:00 a.m. to midnight. The facility contains approximately 35,000 square feet of total rental space, including ten bus bays. Currently, four bus bays are licensed to OCTA, five are licensed to private bus operators, and one bus bay remains vacant.

In 2009, the City entered into Site License Agreement No. N-2009-046 with OCTA for the use of four bus bays at the Santa Ana Regional Transportation Center (Exhibit 1). Bus Bays 1, 2, and 3 primarily service OCTA commuter services Monday through Friday. Bus Bay 10 services OCTA bus Route 59, which operates seven days a week. Earlier this year, OCTA contacted the City requesting to license one additional bus bay for the implementation of Bravo! Route 560 service starting in June 2016. This new route will operate every 12 minutes during rush hour and every 18 minutes, midday, between SARTC and Goldenwest Street in Westminster. Every other trip will serve Long Beach. Route 560 will travel Seventeenth Street and Westminster Avenue along the same route as OCTA's existing Route 60 but with fewer stops. This new rapid bus service will

reduce travel time from Santa Ana to Long Beach by twenty percent, a trip that currently takes more than ninety minutes.

Of the ten bus bays at SARTC, five are licensed to private bus service passenger providers at an average of \$33,000 annually per bus bay. At this time, the City is agreeing to license to OCTA a total of five bus bays for a total annual amount of \$2,282, subject to CPI increases.


STRATEGIC PLAN ALIGNMENT

Approval of this item supports the City's efforts to meet Goal #3 Economic Development, Objective #2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies), Strategy C (promote and market Santa Ana specific strengths in the regional economy including: location, size of workforce, proximity to airport/train, and availability of industrial/commercial opportunities such as 55-freeway corridor, South Main corridor, South Bristol Street, Harbor Boulevard, Downtown and Streetcar Corridor).


FISCAL IMPACT

The Site License Agreement grants OCTA the option of monthly payments or a single, annual payment. Revenues received in FY 2015/16 will be deposited into the PWA-SARTC Operations revenue account (No. 06717002-53819). Annual revenue of \$2,282 will be recognized in the same revenue account and budgeted for expenditure in the FY 2016/17 PWA SARTC-Operations Budget (Accounting Unit No. 06717650) and in subsequent budgets, if remaining extension options are exercised.

APPROVED AS TO FUNDS AND ACCOUNTS:



Fred Mousavipour
Executive Director
Public Works Agency



Francisco Gutierrez
Executive Director
Finance & Management Services Agency

FM/MLM/GPL

- Exhibits: 1. Site License Agreement No. N-2009-046
 2. Amendment to Site License Agreement – OCTA

INSURANCE ON FILE
WORK MAY PROCEED
UNTIL INSURANCE EXPIRES

DO NOT RECORD

51
CLERK OF COUNCIL
DATE: MAY 20 2009

SITE LICENSE AGREEMENT

BETWEEN

THE CITY OF SANTA ANA

AND

ORANGE COUNTY TRANSPORTATION AUTHORITY

THIS LICENSE AGREEMENT ("Agreement") is made and entered into this 1st day of JUNE, 2009, by and between the City of Santa Ana, a charter city and municipal corporation, duly organized and existing under the constitution and laws of the State of California, herein referred to as "Licensor", and the Orange County Transportation Authority herein referred to as "Licensee".

RECITALS:

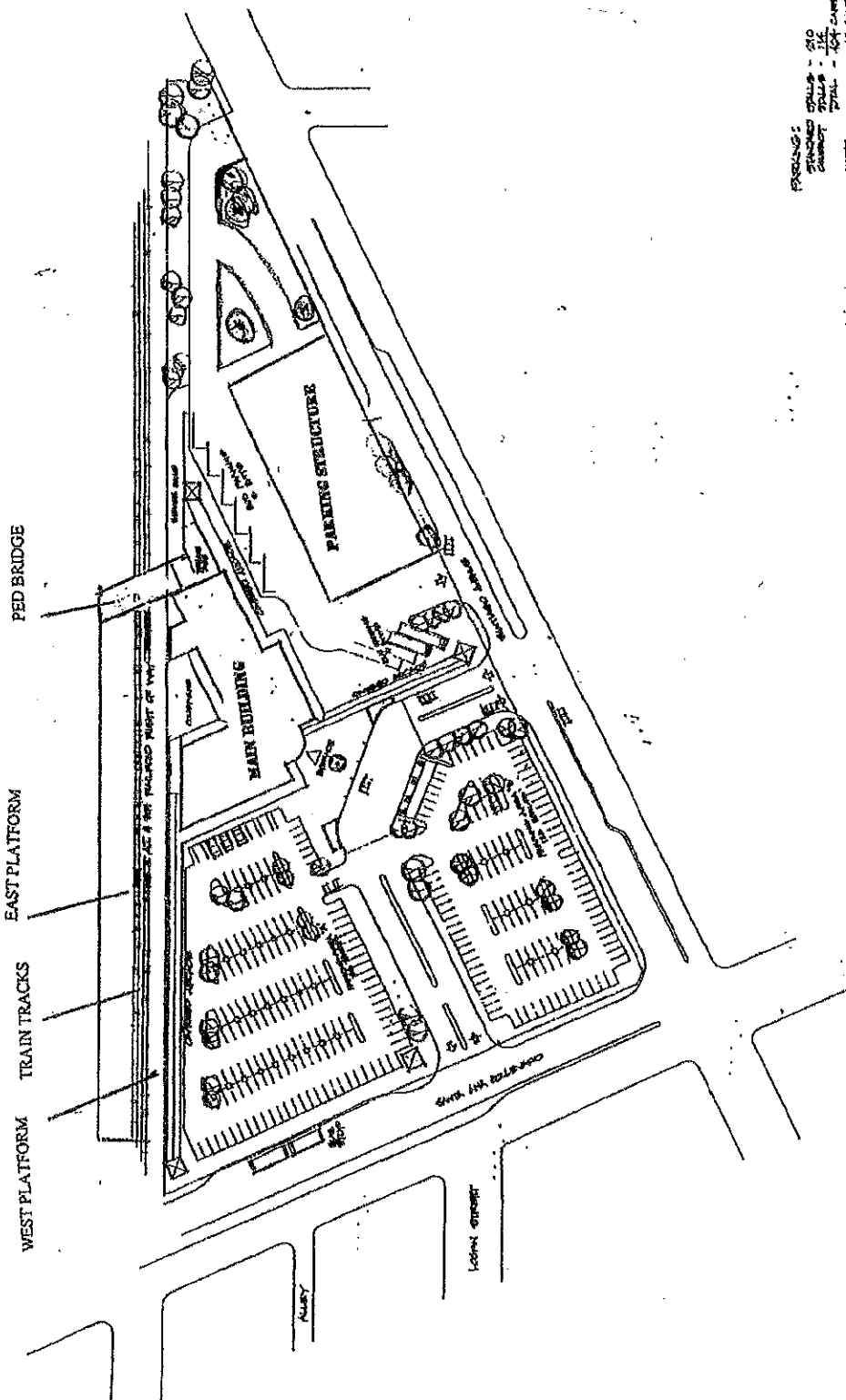
- A. The City of Santa Ana desires to provide the Licensee with Bus Bays 1, 2, 3, and 10 at The Santa Ana Regional Transportation Center ("SARTC"), and Licensee desires to contract for such services with Licensor.
- B. Licensee represents that it is qualified to provide such services to City. In undertaking the performance of this Agreement, Licensee represents that it is knowledgeable in its field and that any service performed under this Agreement will be performed in compliance with all required standards of Interstate Commerce Commission and United States Department of Transportation and include all City, County, and State licenses.

NOW THEREFORE, in consideration of the respective and mutual covenants and promises hereinafter contained and made, and subject to all terms and conditions hereof, the parties hereto agree as follows:

ARTICLE 1 – TERM OF LICENSE

Section 1.01 License Area and Use

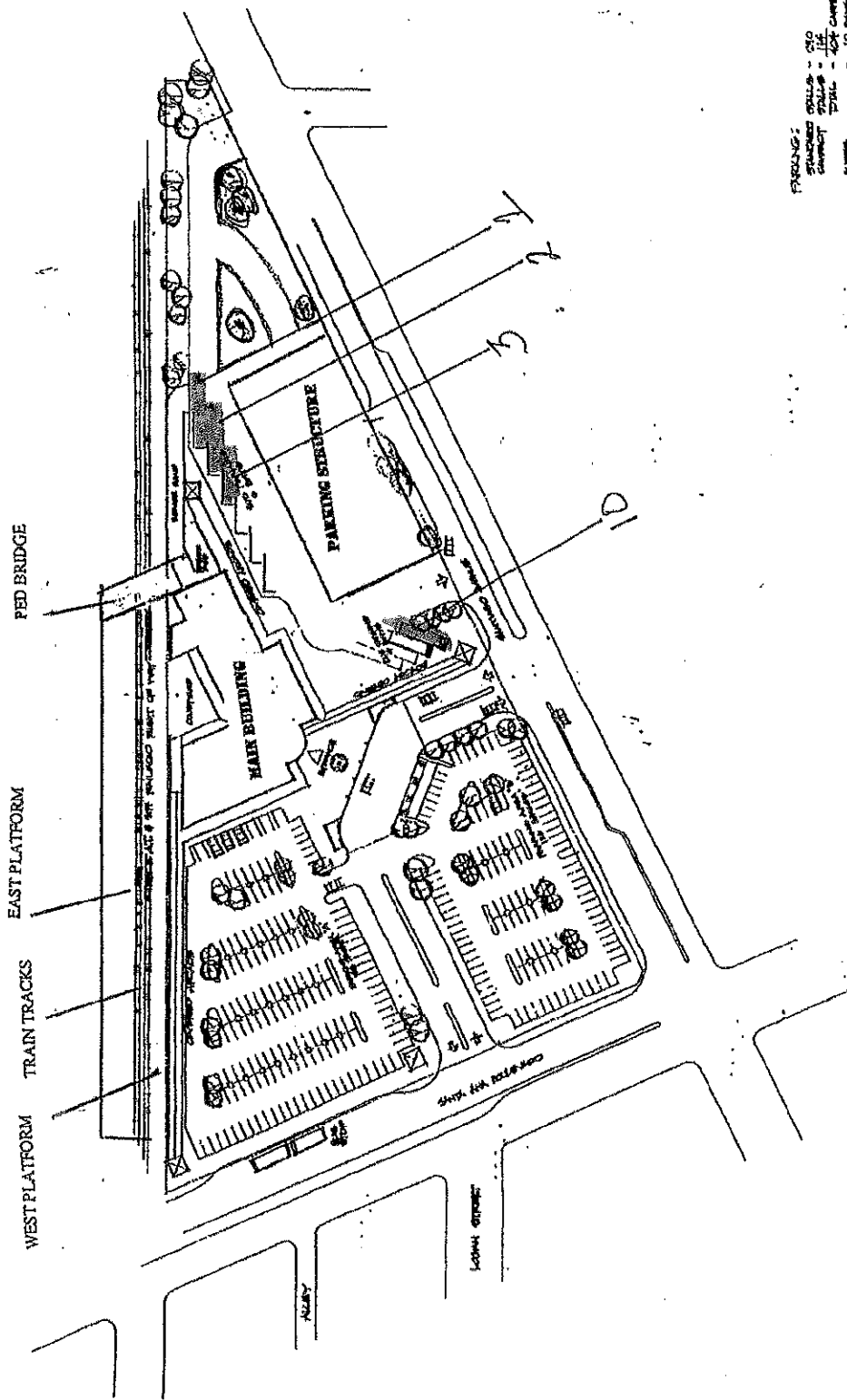
- (a) Licensor owns the real property described in **Exhibit "A"** attached hereto and made a part hereof (the "Property"), commonly know as The Depot at Santa Ana located at 1000 East Santa Ana Boulevard, Santa Ana, California. Licensor grants to Licensee the privilege of a personal, non-exclusive, revocable license ("License") to encroach upon the "License Area", as herein described and shown in general in **Exhibit "B"**, attached hereto and incorporated herein by reference, for the purpose of accommodating a bus transportation Company and for no other purpose.
- (b) The right and permission of Licensee is subordinate to the prior and paramount right of Licensor to use the Property in its entirety for public



PROJECT: 210
 DRAWING: 210-111
 SHEET: 210-111-1
 DATE: 10/19/88
 TOTAL SITE AREA: 7,000 SQ. FT.
 SCALE: 1" = 100'-0"
 NORTH ARROW
 SITE PLAN
 The Burch Perimeter
 CORPORATION

THE DEPOT at Santa Ana

EXHIBIT A



PARKING:
 STAMPER COLLEGE - 250
 GARAGE - 100
 TOTAL - 350
 TRUCKS - 10 SPOTS
 TOTAL SITE AREA - 720,000 SQ. FT.

SCALE: 1" = 20'

SITE PLAN

THE BLACK PENTAGON ARCHITECTS

THE DEPOT at Santa Ana

EXHIBIT 

purposes to which it presently is and may, at the option of Licensor, be devoted. Licensee undertakes and agrees to use the License Area and to exercise this License at all times in such manner as will not unreasonably interfere with the full use and enjoyment of the Property by Licensor.

- (c) Licensee hereby acknowledges that title to the Property is vested in Licensor and agrees never to assail or resist the same, and further agrees that Licensee's use and occupancy of License Area shall be referable solely to the permission herein given.

Section 1.02 Term

The term of the Agreement for the License Area ("Term") shall be Five Years (5) commencing on the date of execution hereof ("Commencement Date"). At the Licensor's sole discretion, Licensee may be granted extension of this Agreement, by and through 5 one-year options to extend the term. Earlier termination of this License shall be in conformance with Section 5.02.

Section 1.03 Consideration/Maintenance Fee

- (a) Licensee shall pay to Licensor an annual Maintenance Fee for the maintenance and upkeep of the License Area in the amount of One Thousand Six Hundred Fifty Dollars (\$1,650.00) payable in one full payment upon execution of this Agreement, and thereafter, on each anniversary date of this Agreement. Licensee may choose to pay said Maintenance Fee on a monthly basis with payments in the amount of One Hundred Thirty Seven Dollars and Fifty Cents (\$137.50) per month. Payments will be due upon execution of this Agreement and thereafter on or before the 10th of each month, payable to "The City of Santa Ana" and remitted to: The Depot at Santa Ana, 1000 East Santa Ana Blvd., Suite 108, Santa Ana, CA 92701. A late charge of ten percent (10%) shall be applied after any payment hereunder is due but unpaid.
- (b) Said Maintenance Fee shall be applied towards the maintenance and upkeep of Licensee's four bus bays. Regular maintenance includes, but is not limited to the following: quarterly power washing of each of the bus bays, repair/replacement of four wheel stops, striping for each bus bay, removal of all trash, debris, graffiti, etc.
- (c) Licensee's annual maintenance payments shall be subject to an automatic annual adjustment in accordance with, and proportionate to, the change in the Consumer Price Index for Los Angeles—Anaheim—Riverside (CPI). Licensor shall calculate the amount of the CPI adjustment and notify Licensee in writing on each anniversary of this Agreement.

Section 1.04 RESERVED

Section 1.05 Non-Possessory Interest

Licensor retains full possession of the License Area and Licensee will not acquire any interest temporary, permanent, irrevocable, possessory or otherwise by reason of this Agreement, or by the exercise of the permission given herein. Licensee will make no claim to any such interest. Any violation of this provision will immediately void and terminate this Agreement.

Section 1.06 Non-Recording

Neither party shall record this Agreement.

ARTICLE 2 – RESERVED.

ARTICLE 3 – IMPROVEMENTS AND ACCESS

Section 3.01 Licensee's Equipment

- (a) Licensee shall hold title only to any equipment placed on the License Area by Licensee. All of Licensee's equipment shall remain the property of Licensee and are not fixtures that will stay on the License Area or Property. Licensee has the right to remove all of its equipment at its sole cost and expense on or before the expiration or termination of this Agreement; provided that such removal shall be done in a professional and careful manner, without interference or damage to any other equipment, structures or operations on the License Area or the Property, including the use of the License Area or Property by Licensor or any of Licensor's licensees, assignees or lessees. Licensee shall repair any damage to the License Area caused by such removal and will leave the License Area in satisfactory condition as approved in writing by Licensor. Licensee shall be required to remove all its equipment upon expiration/termination of the License, and if Licensee fails to do so within thirty (30) days, Licensor may elect to do so at Licensee's sole cost and expense, or elect to not remove such equipment, in which case, such equipment shall become the property of Licensor, at Licensor's option. Any personal property, equipment or other improvements that are not removed within said thirty-day period shall become the property of Licensor, at Licensor's option. Licensee's obligation to pay compensation to Licensor shall not cease, unless and until the equipment that Licensee must remove, are removed to Licensor's approval.
- (b) Each party shall provide access to the License Area to the other party, and its employees, agents, contractors and subcontractors, twenty-four (24)

hours a day, seven (7) days a week. Except in the case of emergencies, Licensor shall give Licensee twenty-four (24) hours notice prior to entry into the License Area. Licensor represents and warrants that it has full rights of ingress and egress to and from the License Area, and hereby grants such rights to Licensee to the extent required to maintain, and operate Licensee's equipment within the License Area. Licensee's exercise of such rights shall not cause undue inconvenience to Licensor.

- (c) Reserved.
- (d) Upon the expiration or termination of this Agreement, Licensor shall approve in writing the surrender of the License Area by Licensee only after being satisfied that License Area has been left in good and clean condition, less ordinary wear and tear.
- (e) Quiet Enjoyment. Upon Licensee paying the license fee reserved hereunder, and observing and performing all of the covenants, conditions, and provisions on Licensee's part to be observed and performed hereunder, Licensee shall have quiet possession of its License Area for the entire term hereof, subject to all the provisions of this License.

Section 3.02 Liens

Licensee will not permit any mechanics' or materialmens' or other liens to stand against the License Area by reason of any use or occupancy by Licensee, or any person claiming under Licensee.

ARTICLE 4 – INDEMNITY AND INSURANCE

Section 4.01 Indemnification, Defense, Hold Harmless

Licensee shall indemnify, defend and hold harmless the City, its agents, officers, employees and volunteers from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by Licensee, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement.

Section 4.02 Insurance

A. Licensee shall maintain self insurance coverage during the entire term of this Agreement. Licensee shall provide the following self insurance coverage:

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury Liability with a limit of \$4,000,000.00 per occurrence.
2. Automobile Liability Insurance to include owned, hired and non-owned autos with a limit of \$4,000,000.00 each accident;
3. Workers' Compensation with limits as required by the State of California; and
4. Employers' Liability with minimum limits of \$1,000,000.00.

B. Proof of self insurance coverage, in the form of an insurance certificate will be submitted by Licensee to Licensor prior to commencement of the Agreement. It is agreed that such self insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the Licensor.

Section 4.03 Reserved.

Section 4.04 Certificates of Insurance; Additional Insured Endorsements

Prior to execution of this Agreement, Licensee shall furnish to Licensor certificates of insurance and additional insured endorsements to each of Licensee's insurance policies, subject to approval of the City Attorney, evidencing the foregoing insurance coverages as required by this Agreement; these certificates shall:

1. provide the name and policy number of each carrier and policy;
2. shall state that the policy is currently in force; and
3. shall promise to provide that such policies will not be canceled, suspended, voided, reduced in coverage or in limits, or modified without thirty (30) days prior written notice of Licensor; and
4. If Licensee self insures, Licensee shall provide proof of self insurance including the following:

"Licensee represents to Licensor and Licensor acknowledges that Licensee self-insures in the ordinary course of its business. Notwithstanding any other provision contained herein to the contrary, the insurance obligations of Licensee set forth in this License may be satisfied by endorsements to existing excess/umbrella policies written by companies of recognized standing showing a self-insurance retention of not less than the public liability requirement."

Licensee shall maintain the foregoing insurance coverages in force throughout the term of this Agreement. The requirement for carrying the foregoing insurance coverages shall

not derogate from the provisions for indemnification of Licensor by Licensee under the Agreement. Licensor or its representatives shall at all times have the right to demand the original or a copy of all these policies of insurance, which Licensee shall provide within fifteen (15) days of Licensor's request.

ARTICLE 5 – TERMINATION AND DEFAULT

Section 5.01 Termination in the Event of Casualty or Condemnation

- (a) In the event of any damage, destruction or condemnation of the License Area, which renders the License Area unusable or inoperable in Licensor's judgment, Licensee shall have the right, but not the obligation, to terminate the Agreement with respect to the subject License Area by giving written notice to Licensor within thirty (30) days after such damage, destruction or condemnation. If by virtue of such casualty or condemnation, Licensor determines that the License Area is no longer adequate for Licensee to continue its operations, or any repairs to the License Area have not been completed or cannot reasonably be completed within sixty (60) days from the date of the damage, destruction or condemnation. This License Agreement will become null and void.
- (b) In the event of condemnation, unless Licensee is allowed by the condemning authority to continue its operations in the License Area, this Agreement shall terminate as of the date title to the Property vests in the condemning authority or Licensee is required to cease its operations, whichever is earlier. If any property described herein or hereinafter added hereto is taken in eminent domain, the entire award shall be paid to Licensor.

Section 5.02 Termination

- (a) For Cause: This Agreement may be terminated on fifteen (15) days prior written notice as follows: (1) by either party upon a default of any covenant or term hereof by the other party, which default has been noticed and is not cured within thirty (30) days of receipt of written notice of default, provided that the grace period for any monetary default is only ten (10) days from receipt of notice; or (2) by Licensee if Licensee is unable to occupy and utilize the License Area due to any action of the Interstate Commerce Commission or the Department of Transportation.
- (b) Without Cause: Either party may terminate this Agreement with ninety (90) days prior written notice to the other party.

ARTICLE 6 – ASSIGNMENT, ABANDONMENT, DEFAULT, INSOLVENCY

Section 6.01 Assignment

Licensee may not assign this Agreement. This Agreement is personal to Licensee, and Licensee will not assign, transfer or sell this Agreement or any privilege hereunder in whole or in part, and any attempt to do so will be void and confer no right upon any third party. Licensee shall have the right to enter into contractual agreements with independent contractor acting as agent, package deliverers, telegraphic, monetary or other transmittal operators.

Section 6.02 Abandonment by Licensee

Should Licensee breach this Agreement and abandon the License Area prior to the expiration of the Term or Renewal Term, Licensor may:

- (a) Continue this License in effect by not terminating Licensee's right to the License Area, in which event Licensor shall be entitled to enforce all of its rights and remedies under this Agreement, including the right to recover the compensation/consideration specified in this Agreement as it becomes due under this Agreement; or
- (b) Terminate this Agreement and recover from Licensee:
 - 1. The worth at the time of award of the unpaid compensation which has been earned or the sum of one (1) year's compensation, whichever is greater, at the time of termination of the Agreement; or
 - 2. The worth at the time of award of the amount by which the unpaid compensation which would have been earned after termination of the Agreement until the time of award exceeds the amount of compensation loss that Licensee proves could have been reasonably avoided; or
 - 3. The worth at the time of award of the amount by which the unpaid compensation for the balance of the term of this Agreement after the time of award; and,
 - 4. Any other amount necessary to compensate Licensor for all detriment proximately caused by Licensee's failure to perform its obligations under this Agreement.

Section 6.03 Default by Licensee

Should Licensee default in the performance of any of the terms, conditions, or obligations contained in this Agreement, Licensor may, in addition to the remedies specified in Section 6.02 of this License, re-enter and regain possession of the License Area in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Section 6.04 Insolvency of Licensee

The insolvency of Licensee as evidenced by a receiver being appointed to take possession of all or substantially all of the property of Licensee, or the making of a general assignment for the benefit of creditors by Licensee, or the filing of a petition in bankruptcy shall terminate this Agreement and entitle Licensor to re-enter and regain possession of the License Area.

Section 6.05 Cumulative Remedies

The remedies given to Licensor in this Agreement shall not be exclusive, but shall be cumulative and in addition to all remedies now and hereafter allowed by law or elsewhere provided in this Agreement.

Section 6.06 Waiver of Breach

The waiver by Licensor of any breach by Licensee of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach by Licensee either of the same or another provision of this Agreement.

ARTICLE 7 –HAZARDOUS MATERIALS

Section 7.01

At the time of execution of this License, Licensor warrants that the License Area is clean and contains no known hazardous materials. Licensee represents and warrants that it will comply with all environmental laws during the term of this License; its use of the License Area herein will not generate any hazardous substance, and it will not store or dispose on the License Area nor transport to or over the License Area any hazardous substance. Licensee further agrees to clean-up and remediate any hazardous substance on the License Area and Property caused by Licensee, and hold Licensor harmless from and indemnify Licensor against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

ARTICLE 8 – MISCELLANEOUS

Section 8.01 Force Majeure – Unavoidable Delays

Should the performance of any act required by this Agreement to be performed by either Licensor or Licensee be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused, provided, however, that nothing contained in this section shall excuse the prompt payment of compensation by Licensee as required by this Agreement or the performance of any act rendered difficult solely because of the financial condition of the party, Licensor or Licensee, required to perform the act.

Section 8.02 Notice

Any written notice or required submittals, given under the terms of this Agreement, shall be delivered personally, or mailed, certified mail, postage prepaid, addressed to the party concerned as follows:

To Licensor:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Telefacsimile (714) 647-6956

With courtesy copies to:

Deputy City Manager for Development Services
City of Santa Ana
20 Civic Center Plaza (M-25)
P.O. Box 1988
Santa Ana, CA 92702
Telefacsimile (714) 647-6549

and,

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, CA 92702
Telefacsimile (714) 647-6515

To Licensee:

Orange County Transportation Authority
550 S. Main Street
Orange, CA 92863-1584
Attn: Ryan Erickson

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

Section 8.03 Contract Administrator

The Executive Director of the Community Development Agency, or his/her designee, shall be City's License Administrator for this Agreement and all approval and notices required to be given herein shall be so directed and addressed.

Section 8.04 Compliance with Laws

Licensee shall at Licensee's own cost and expense comply with all statutes, ordinances, regulations, and requirements of all governmental entities, including federal and state, county and municipal, relating to Licensee's use and occupancy of the License Area and Licensee's equipment whether such statute, ordinances, regulations, and requirements be now in force or hereinafter enacted. The judgment of any court of competent jurisdiction, or the admission by Licensee in a proceeding brought against Licensee by any government entity, that Licensee has violated any such statute, ordinance, regulation, or requirement shall be conclusive as between Licensor and Licensee and shall be considered grounds for termination of this Agreement by Licensor. Licensee will obtain all permits and other governmental approvals, required in connection with Licensee's activities hereunder, and update such permits/approvals as necessary.

Section 8.05 Binding on Heirs and Successors

This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto. The provisions of this Section shall not be deemed to be a waiver of any of the conditions against assignment set forth herein.

Section 8.06 Partial Invalidity

Should any provision of this Agreement be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding, so long as the reasonable expectations of the parties hereto are not materially impaired.

Section 8.07 Waste or Nuisance

Licensee shall not commit or permit the commission by others of any waste on the License Area. Licensee shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined in Section 3479 and/or Section 3480 of the *California Civil Code* on the Premises or License Area; and Licensee shall not use or permit the use of the License Area for any unlawful purpose.

Section 8.08 Repairs

Licensee shall be required to make any repairs to the License Area occurring from damages caused by Licensee, its employees, agents, contractors, and subcontractors.

Section 8.09 Time of Essence

Time is expressly declared to be of the essence in this Agreement.

Section 8.10 Governing Law

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

Section 8.11 Survival

Terms and conditions of this Agreement which by their sense and context survive the termination or expiration of this Agreement, shall so survive.

Section 8.12 State of Emergency/Public Necessity

Due to the fact that The Depot has been designated a Homeland Security Evacuation Center, upon the declaration of a state of emergency/public necessity, Licensor may, give immediate notice in writing to Licensee to suspend or revoke normal operation under this Agreement without liability to Licensee when the emergency/public necessity so requires, or to suspend operation immediately hereunder temporarily in the event of such public emergency, as may be determined by the City Manager. Such suspension will terminate as soon as the public necessity or emergency no longer exists. Licensee shall

be compensated for any time of suspended use or operation by Licensor in the form of an equal amount of time added onto the term of the License by Licensor (i.e. Licensee suspends operation for 2 months due to state of emergency, License is extended an additional 2 months).

Section 8.13 Conflict of Interest

Licensee covenants that it presently has no interest and shall not have interests, direct or indirect, which would conflict in any manner with performance of this License Agreement specified herein.

Section 8.14 Attorney's Fees

In the event suit is brought by either party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees.

Section 8.15 Exclusivity and Amendment

This Agreement constitutes the entire agreement and understanding between Licensor and Licensee respecting the License Area, the licensing of the License Area to Licensee, or the License Term herein specified, and correctly sets forth the obligations of Licensor and Licensee to each other as of its date. Any agreements or representations respecting the License Area or their licensing between the parties not expressly set forth in this instrument are null and void. This Agreement or any part of it may not be changed, altered, modified, limited or extended orally or by any Agreement between the parties, unless such Agreement is expressed in writing, signed and acknowledged by Licensor and Licensee, or their successors in interest.

Section 8.16 Captions

Captions used in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement.

Section 8.17 Non-Discrimination

Licensee shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or mental or physical disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Licensee affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

6736
Karen

DO NOT RECORD

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first written above.

CITY OF SANTA ANA

**ORANGE COUNTY
TRANSPORTATION AUTHORITY**

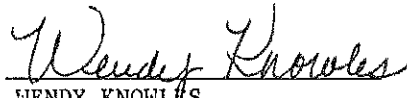

DAVID N. REAM
City Manager


JAMES S. KENAN
Interim Chief Executive Officer

ATTEST:

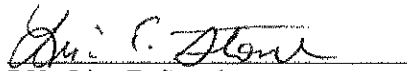
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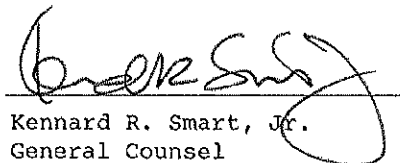

PATRICIA E. HEALY
Clerk of the Council


WENDY KNOWLES
Clerk of the Board

APPROVED AS TO FORM:
Joseph W. Fletcher
City Attorney

APPROVED AS TO FORM:


BY: Lisa E. Storck
Assistant City Attorney


Kennard R. Smart, Jr.
General Counsel

RECOMMENDED FOR APPROVAL:


Cynthia J. Nelson, Deputy City Manager
for Development Services

By:
Title:
Tax ID #

**FIRST AMENDMENT TO SITE LICENSE AGREEMENT BETWEEN THE
CITY OF SANTA ANA AND ORANGE COUNTY TRANSPORTATION AUTHORITY**

THIS FIRST AMENDMENT TO SITE LICENSE AGREEMENT BETWEEN THE CITY OF SANTA ANA AND ORANGE COUNTY TRANSPORTATION AUTHORITY ("License Agreement") is made and entered into this 3rd day of May, 2016, by and between the above-referenced parties.

RECITALS

- A. On June 1, 2009, the City of Santa Ana ("Licensor") entered into Agreement #N-2009-046 with the Orange County Transportation Authority ("Licensee") for the purpose of licensing bus bays 1, 2, 3, and 10 to Licensee at the City-owned Santa Ana Regional Transportation Center ("SARTC"), which is also known as "The Depot".
- B. The original term of the License Agreement was 5 years, from June 1, 2009 through May 31, 2014, with 5 one-year extension options to be granted at Licensor's sole discretion.
- C. Through such options, the Agreement remains in effect through May 31, 2016 and is subject to three remaining one-year options at Licensor's sole discretion.
- D. The parties now wish to amend the Agreement to include a fifth bus bay to the "License Area" that is defined in the License Agreement by reference to Exhibit B to the License Agreement.

The Parties therefore agree:

- 1. The original Exhibit B to the License Agreement shall be superseded in its entirety by the Site Plan that is attached to this First Amendment bearing the same exhibit title and depicting bus bays 1, 2, 3, 9, and 10. All references to the "License Area" shall mean the new Site Plan and more specifically these five numbered bus bays. There is no Exhibit A to this First Amendment.
- 2. Section 1.03(a), **Consideration/Maintenance Fee**, is amended to read in its entirety:

"Licensee shall pay to Licensor an annual Maintenance Fee for the maintenance and upkeep of the License Area in the amount of Two Thousand Two Hundred Eighty-Two Dollars (\$2,282.00) payable effective June 1, 2016, and thereafter, in its entirety on June 1st of each year of this Agreement. Licensee may choose to pay said Maintenance Fee on a monthly basis with payments in the amount of \$190.17 per month. Payments will be due upon execution of this First Amendment and thereafter on or before the 10th of each month, payable to "The City of Santa Ana" and remitted to: The Depot at Santa Ana, 1000 East Santa Ana Blvd, Suite 108, Santa Ana, CA 92701. A late charge of ten percent (10%) shall be applied after any payment hereunder is due but unpaid."
- 3. Except as modified by this First Amendment, the terms and conditions of the License Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement the date and year first written above.

CITY OF SANTA ANA

ORANGE COUNTY TRANSPORTATION
AUTHORITY

David Cavazos
City Manager

Name:
Title:

ATTEST


ATTEST

Maria D. Huizar
Clerk of Council

Name:
Title:

APPROVED AS TO FORM

APPROVED AS TO FORM



John M. Funk
Assistant City Attorney

Name:

RECOMMENDED FOR APPROVAL:

Fred Mousavipour
Executive Director
Public Works Agency

Exhibit B

Site Plan
The Santa Ana Regional Transportation Center
OCTA Assigned Bus Bays 1-3, 9-10

