



Agenda Item 6-D

**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

## AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: August 19, 2014

**Department:** Public Works / Engineering  
**Prepared By:** Tom Bonigut, Assistant City Engineer [Signature]

**Subject:** **APPROVAL TO PAY LEGAL EXPENSES RELATED TO EFFORTS TO RECEIVE CPUC PERMITS TO ESTABLISH AN AUDIBLE WARNING SYSTEM (AWS) AT SEVEN PEDESTRIAN BEACH TRAIL CROSSINGS.**

**Fiscal Impact:** None. There are budgeted funds available for this expense as discussed below.

**Summary:** Staff recommends City Council authorization of a \$74,000 payment to the firm of Goodin, MacBride, Squeri, Day and Lamprey, LLP for services toward obtaining permits for an AWS along the San Clemente Pedestrian Beach Trail.

**Background:** The City's initial efforts to establish Quiet Zone status at the Pedestrian Beach Trail crossings to the beach included safety improvements at the two North Beach crossings (the vehicular crossing at Senda de la Playa and the pedestrian crossing at North Beach). The safety improvements were constructed in partnership with the Orange County Transportation Authority (OCTA), under which the City shared a portion of the improvement costs. To address the seven remaining pedestrian crossings, the City and OCTA entered into a cooperative agreement to construct safety improvements and an Audible Warning System (AWS) at seven crossings along the Beach Trail. The original estimated total project cost was \$4.2 million and the City's share was estimated at \$504,000.

The AWS was an alternate approach to a Quiet Zone for train horns because the seven crossing south of the North Beach pedestrian crossing didn't meet the criteria for a Federal Quiet Zone. The AWS required permits and approval by the California Public Utilities Commission (CPUC) and the City took the lead on this effort by using the legal services of Mike Day, attorney at Goodin, MacBride, Squeri, Day, and Lamprey, LLP, to help process and obtain the required permits and approvals. The first step was to process applications at the CPUC level to establish the CPUC's jurisdiction over permitting, and that effort was successful in the fall of 2012. The next step was to establish the decibel level that would be used by the AWS. This effort was intensively pursued over the winter of 2012-2013, with a hearing before the Administrative Law Judge (ALJ) on January 4, 2013. Along the way, BNSF railroad was strongly contesting the City's efforts to obtain approval of the AWS.

Unfortunately, before the CPUC process could be concluded, BNSF entered into civil litigation against the CPUC and ultimately BNSF prevailed. The City, and its attorney Mike Day, was not a party to the civil litigation between BNSF and the CPUC. However, the successful litigation brought by BNSF against the CPUC made the City's

efforts with the CPUC moot. As a result, City staff negotiated with Mike Day to pay 52% of the outstanding invoices related to those efforts. To date the City has paid \$142,500 to Goodin, MacBride, Squeri, Day, and Lamprey, LLP, and the recommended payment of \$74,000 will be the final payment.

**Discussion:** OCTA completed the additional safety improvements and AWS at the seven crossings along the Beach Trail. On June 17, 2014, the City Council approved an amendment to the cooperative agreement with OCTA which reduced the City's total cost-sharing obligation to about \$280,000 to account for the City's legal expenses pursuing CPUC approvals. Since the City may deduct legal services costs (already paid and pending) from the payments that are due to OCTA, there are funds available to complete payments owed to Goodin, MacBride, Squeri, Day, and Lamprey, LLP, and no additional budget appropriation is needed. Therefore staff recommends that the City Council authorize payment of \$74,000 to Mike Day for services rendered in good faith. The remaining amount of \$280,000 owed to OCTA will be paid upon receipt of OCTA's final invoice. After these payments, the existing Safety/Quiet Zone Improvements budget line item account will have a remaining balance of about \$370,000.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

1. Authorize staff to pay \$74,000 to Goodin, MacBride, Squeri, Day and Lamprey, LLP (52% of outstanding invoices) for services rendered towards efforts to receive CPUC permits for establishment of an AWS along the San Clemente Pedestrian Beach Trail; and
2. Direct that the \$74,000 payment be made from Account No. 001-203-45300-000-10812 (Safety and Quiet Zone Improvements).

**Attachments:** None.

**Notification:** None.