



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: April 16, 2013

Agenda Item 8A
Approvals:
 City Manager [Signature]
 Dept. Head [Signature]
 Attorney [Signature]
 Finance [Signature]

Department: Community Development
Prepared By: James Holloway, Community Development Director

Subject: **IMPLEMENTATION OF AUDIBLE WARNING SYSTEM (AWS) UPDATE - CONSTRUCTION SCHEDULE; OCTA COOPERATIVE AGREEMENT**

Summary:

Discussion:

Construction schedule and issues:

Orange County Transportation Authority (OCTA) and the City of San Clemente have completed plans for construction of safety enhancements and installation of an Audible Warning System (AWS). The system will be installed at seven pedestrian crossings along the San Clemente Beach Trail (SCBT). Approval of a Cooperative Agreement with OCTA, and funding to complete legal work at the (California Public Utilities Commission) CPUC level is needed in order to complete this project. Those issues are discussed later in this report. The following schedule for construction is dependent upon the readiness of other construction projects, along the line, due to the need to coordinate and minimize track closures, necessary to complete work that is being planned. However, the tentative schedule is as follows:

- | | | |
|--|----------------|--------|
| • OCTA Board to give work go-ahead | 3/25/2013 | (Done) |
| • Metrolink Board to give go-ahead | April 2013 | |
| • Mobilization and order materials and equipment | May 2013 | |
| • On-site work commences | June 2013 | |
| • Finish civil work | July 2013 | |
| • Punch list and testing | August 2013 | |
| • Commence operation of AWS | September 2013 | |

The majority of the civil engineering work will be done on six crossings, over three weekends in June and possibly July. The significant civil work that is required at the Pier Bowl crossing has already been completed. The weekend work will go on night and day, with train traffic being halted or curtailed. Two pedestrian crossings will be closed, each of the three weekend work time periods. The most heavily used crossings will be worked on first. Work will not be done on holiday weekends. Staff recommends that we work with OCTA to stipulate in the cooperative agreement that no work will occur on the 4th of July weekend (July 6th & 7th 2013).

Cooperative Agreement:

In order for work to commence, the City needs to approve the attached Cooperative Agreement, between the City and OCTA. The agreement provides that funding up to a maximum of \$4,200,000 will be provided to complete the project; and the City will pay 12%

of the final construction cost. The agreement also discusses construction access details. Funding of the City's 12 percent share of construction cost has already been budgeted. Therefore, no appropriation is needed to cover that obligation.

The City Attorney has several comments and concerns that he has expressed concerning detailed language and some issues regarding indemnification language. Staff suggests that Council approve this DRAFT agreement, and authorize the City Manager to sign a final agreement when the agreement is satisfactory to the City Manager and City Attorney.

Legal expenses for CPUC processing related to approval of the AWS:

Unfortunately, despite overwhelming evidence that the SCBT has dramatically improved safety along the SCBT corridor, BNSF rail road has fought to kill the SCBT project and the AWS project. Because of the opposition of BNSF, gaining of approval from the CPUC to install the AWS has become a long, arduous and expensive legal process. However, we have every reason to believe we will ultimately prevail. The most recent delay has added time and expense to the effort but we now expect a Preliminary Determination (PD) from the Administrative Law Judge (ALJ) no later than April 30, 2013. Thirty (30) days after the ALJ issues his PD the CPUC will hear and presumably confirm the PD. This will be the last step necessary for gaining approval to operate the AWS. In the meantime, the construction schedule discussed in this report will commence. Issues related to the legal expenses will be dealt with separately at a later date.

Miscellaneous:

Staff and OCTA are processing a Coastal Development Permit (CDP) for installation of the system. We expect to receive CCC Approvals of the CDP shortly.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council:

1) Authorize the City Manager to execute Cooperative Agreement No C-3-1528 between the City and OCTA for construction of safety improvements and installation of an Audible Warning System, with City cost in the amount equal to 12 percent of the total project cost, (\$504,000 maximum City share) with project cost not to exceed \$4,200,000 subject to: (a) negotiations with OCTA, (b) the agreement being satisfactory to the City Manager and City Attorney, and (c) with the stipulation that no work will occur between July 3rd and July 8th.

Fiscal Impact:

No additional budget request at this time.

Attachments:

Cooperative Agreement

Notification:

Kirk Steele
Marv Tiano
Stephen McVeigh
Heather Goalet

SA-2



March 14, 2013

To: Transit Committee

From: Darrell Johnson, Chief Executive Officer

Subject: Cooperative Agreements for Construction of San Clemente Beach Trail Crossings Safety Enhancements Along San Clemente Beach Trail and Installation of an Audible Warning System

Overview

The Orange County Transportation Authority, in partnership with the City of San Clemente, has completed plans, specifications, and cost estimates for construction of the San Clemente beach trail crossings safety enhancements and installation of an audible warning system. The system is intended to provide safety enhancements at seven pedestrian crossings along the San Clemente beach trail. The Southern California Regional Rail Authority will be the lead agency for construction of this project. Cooperative agreements are required to define roles and responsibilities for project implementation.

Recommendations

- A. Authorize the Chief Executive Officer to execute Cooperative Agreement No. C-3-1527 with the Southern California Regional Rail Authority, in an amount not to exceed \$4,200,000, to define the roles and responsibilities for construction of safety enhancements at pedestrian crossings and installation of an audible warning system along the San Clemente Beach Trail and Orange County Transportation Authority right-of-way in the City of San Clemente.
- B. Authorize the Chief Executive Officer to execute Cooperative Agreement No. C-3-1528 with the City of San Clemente for construction of safety enhancements at pedestrian crossings and installation of an audible warning system along the San Clemente Beach Trail and Orange County Transportation Authority right-of-way in the City of San Clemente, with the City of San Clemente funding in an amount equal to 12 percent of total project costs.

Cooperative Agreements for Construction of San Clemente Beach Trail Crossings Safety Enhancements Along San Clemente Beach Trail and Installation of an Audible Warning System

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- C. Authorize a budget transfer in the Orange County Transportation Authority Fiscal Year 2012-13 Budget of \$4,200,000 from capital expenditures to the services category to facilitate the agreements with Southern California Regional Rail Authority for construction of San Clemente Beach Trail crossings safety enhancements along San Clemente Beach Trail and installation of an audible warning system.

Discussion

On August 27, 2007, the Orange County Transportation Authority (OCTA) Board of Directors (Board) approved the implementation strategy for the comprehensive Rail-Highway Grade Crossing Safety Enhancement Program (OCX Program) at 52 at-grade rail-highway crossings, including additional improvements needed to meet Federal Railroad Administration (FRA) standards for quiet zones.

As part of this initiative, the Board also directed staff to work with the Southern California Regional Rail Authority (SCRRA), City of San Clemente (City), FRA, and the California Public Utilities Commission to determine the applicability of the final federal rule on the use of locomotive horns at pedestrian crossings in the City. The affected agencies have developed a strategy to implement safety enhancements at seven pedestrian crossings, and reduce the noise impacts of train horns in the communities along the San Clemente Beach Trail.

On October 22, 2012, the Board authorized the release of an invitation for bids (IFB) by OCTA for construction of this project. A single bid was received in response to the IFB. The bid price exceeded the available funding for this project by \$1,088,600. In performing the bid analysis, it was determined that a major issue impacting the delivery of this project and the associated costs related to limited windows available for railroad track construction, as well as constrained access to the site. Given that the constraints identified cannot be easily remedied, it was determined that the most effective approach to project delivery was to have SCRRA, through its contractors, construct the improvements. SCRRA's contractors are responsible for the ongoing maintenance and repair of railroad tracks and structures, which allows SCRRA's contractors to consolidate this work with upcoming work windows for other projects, request work windows, and to work on the right-of-way while trains are operating. Furthermore, SCRRA has direct access to the construction area via the railroad tracks. The City supports this approach to project implementation.

Cooperative Agreements for Construction of San Clemente Beach Trail Crossings Safety Enhancements Along San Clemente Beach Trail and Installation of an Audible Warning System

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The safety enhancements and audible warning system in the City are funded through a Highway-Railroad Crossing Safety Account (HRCSA) grant. Originally, the grant required that a contract be awarded prior to December 31, 2012. However, in light of the single bid that was received, OCTA was granted a time extension through May 2013. The proposed cooperative agreement with SCRRA would allow the construction to begin before May 2013, and would also address the issues previously discussed that are associated with project delivery (Attachment A).

OCTA will also enter into a cooperative agreement with the City. The OCX Program requires the City to contribute 12 percent of total project costs, which is addressed in the cooperative agreement (Attachment B).

Funding Impact

The funding for this project is included in OCTA's Fiscal Year 2012-13 Budget, Capital Programs Division, Account 0017-TR021-TA5-9084 and funded through Measure M2 and HRSCA. Staff recommends that funds, in the amount of \$4,200,000, be transferred from the Account 0017-TR021-TA5-9084 to Account 0017-TR021-TA5-7831. This transfer will allow the funds to be used for the cooperative agreement.

Summary

Staff requests Board of Director's approval for the Chief Executive Officer to execute Cooperative Agreement No. C-3-1527 with the Southern California Regional Rail Authority, in an amount not to exceed \$4,200,000, for construction of San Clemente Beach Trail crossings safety enhancements and installation of an audible warning system, and Cooperative Agreement No. C-3-1528 with the City of San Clemente to define roles and responsibilities related to implementation of the project. Staff also requests a budget transfer of \$4,200,000 from capital expenditures to the services category to allow funds to be used for the cooperative agreement.

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Cooperative Agreements for Construction of San Clemente Beach Trail Crossings Safety Enhancements Along San Clemente Beach Trail and Installation of an Audible Warning System

Attachments

- A. Cooperative Agreement No. C-3-1527 Between Orange County Transportation Authority and Southern California Regional Rail Authority for San Clemente Beach Trail Crossings Safety Enhancements and Audible Warning System

- B. Cooperative Agreement No. C-3-1528 Between Orange County Transportation Authority and City of San Clemente for San Clemente Beach Trail Crossings Safety Enhancements and Audible Warning System

Prepared by:

Approved by:

Dinah Minter
Manager, Metrolink Expansion Program
(714)560-5740

Jim Beil, P.E.
Executive Director, Capital Programs
(714) 560-5646

Virginia Abadessa
Director, Contracts Administration and
Materials Management
(714) 560-5623

COOPERATIVE AGREEMENT NO. C-3-1528

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN CLEMENTE

FOR

SAN CLEMENTE BEACH TRAIL CROSSINGS SAFETY ENHANCEMENTS

AND

AUDIBLE WARNING SYSTEM

THIS COOPERATIVE AGREEMENT, is made and entered into ____ day of _____, 2013, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, CA 92863-1584, a public corporation of the State of California (herein after referred to as "AUTHORITY"), and the City of San Clemente, 100 Avenida Presidio, San Clemente, CA 92673 (herein after referred to as "CITY"). AUTHORITY and CITY are hereinafter collectively referred to as "PARTIES" or individually referred to as "PARTY".

RECITALS:

WHEREAS, AUTHORITY, at its June 13, 2005 Board of Directors' meeting, adopted the recommendation to proceed with the selected implementation strategy for a comprehensive Rail-Highway Grade Crossing Safety Enhancement Program ("PROGRAM") as set forth therein; and

WHEREAS, AUTHORITY, CITY, California Public Utilities Commission (CPUC) and Southern California Regional Rail Authority (SCRRA) conducted field diagnostic review meetings between May 22 and May 24, 2006 for all grade crossings under the jurisdiction of the CITY; and

WHEREAS, SCRRA is an independent joint powers authority created and existing pursuant to California Public Utilities Code Section 130255 and California Government Code Sections 6500 et seq.; and

WHEREAS, SCRRA will be responsible for the construction of the PROJECT in accordance

1 with the scope of work and cooperative agreement established with the AUTHORITY; and

2
3 **WHEREAS**, AUTHORITY, at its April 23, 2012 Board of Directors' meeting, adopted a
4 recommendation to continue support for implementation of the PROJECT improvements designed to
5 enable CITY to replace the routine sounding of train horns with an audible warning system at seven (7)
6 crossings, consisting of six (6) pedestrian-only rail crossings along the San Clemente Beach Trail (Dije,
7 El Portal, Corto, T Street, Lost Winds and Calafia) and one (1) highway-rail grade crossing at the San
8 Clemente Pier; and

9 **WHEREAS**, AUTHORITY and CITY agree to certain improvements, as designed by
10 AUTHORITY or its consultants, as identified in Exhibit A, "San Clemente Beach Trail Crossing Safety
11 Enhancements"; and

12 **WHEREAS**, CITY and AUTHORITY desire to cooperate and complete pedestrian-rail grade
13 crossing safety enhancements and installation of an audible warning system, as set forth in Exhibit A, at
14 grade crossings under the jurisdiction of the CITY, herein referred to as the "PROJECT"; and

15 **WHEREAS**, the AUTHORITY and CITY agree to a cost sharing formula of 88 percent provided
16 by the AUTHORITY and 12 percent provided by the CITY for the PROJECT and improvements within
17 the CITY's jurisdiction; and

18 **WHEREAS**, the intent of the PARTIES is that the PROJECT shall be implemented with the
19 least amount of disruption to pedestrian, bicycle, vehicle and rail traffic; and

20 **WHEREAS**, CITY and AUTHORITY wish to enter this Agreement to specify the roles,
21 responsibilities, terms, and conditions under which the PROJECT is to be financed and constructed;
22 and

23 **WHEREAS**, CITY and AUTHORITY acknowledge that AUTHORITY's obligation is to fund and
24 oversee the PROJECT under this Agreement and AUTHORITY'S obligations under this Agreement are
25 contingent upon CITY's approval of environmental review of the PROJECT pursuant to the California
26 Environmental Quality Act; and

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2 **WHEREAS**, AUTHORITY's obligations under this Agreement are subject to CITY'S review of
3 the PROJECT pursuant to the California Environmental Quality Act, Public Resources Code section
4 21000 *et seq* ("CEQA"). AUTHORITY shall have no obligations under this Agreement, and the
5 Agreement shall have no force and effect, unless and until AUTHORITY determines, in its sole and
6 absolute discretion, that CITY has completed and approved all applicable CEQA reviews and made any
7 and all appropriate and applicable findings under CEQA as required by law; and

8 **WHEREAS**, the San Clemente City Council approved this Agreement on _____,
9 2013; and

10 **WHEREAS**, the AUTHORITY's Board of Directors approved this Agreement on
11 _____, 2013.

12 **NOW, THEREFORE**, it is mutually understood and agreed by CITY and AUTHORITY as
13 follows:

14 **ARTICLE 1. COMPLETE AGREEMENT**

15 A. This Agreement, including any attachments incorporated herein and made applicable by
16 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this
17 agreement between AUTHORITY and CITY and it supersedes all prior representations,
18 understandings, and communications. The invalidity in whole or in part of any term or condition of this
19 Agreement shall not affect the validity of other term(s) or conditions(s) of this Agreement. The above
20 referenced Recitals are true and correct and are incorporated by reference herein.

21 B. AUTHORITY'S failure to insist on any instance(s) of CITY's performance of any term(s)
22 or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's
23 right to such performance or to future performance of such term(s) or condition(s), and CITY's obligation
24 in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall
25 not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized
26 representative of AUTHORITY by way of a written amendment to this Agreement and issued in
accordance with the provisions of this Agreement.

C. CITY's failure to insist on any instance(s) of AUTHORITY's performance of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of CITY's right to such performance or to future performance of such term(s) or condition(s), and AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon CITY except when specifically confirmed in writing by an authorized representative of CITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. SCOPE OF SERVICES

A. This Agreement specifies the procedures that AUTHORITY and CITY will follow in connection with the work to be performed. AUTHORITY agrees to provide all improvements identified in Exhibit A, which by this reference is incorporated into this Agreement subject to ARTICLE 5. Both AUTHORITY and CITY agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any other supplemental agreements.

B. The work in Exhibit A relating to safety enhancements and audible warning system, is based upon the diagnostic meetings noted above, as well as subsequent discussions and recommendations by SCRRA. Enhancements to be included as part of this Agreement are limited to those described in Exhibit A only.

ARTICLE 3. RESPONSIBILITIES OF THE AUTHORITY

AUTHORITY agrees to the following responsibilities for PROJECT, subject to the requirements of ARTICLE 5 of the Agreement:

A. AUTHORITY will enter into and maintain an agreement with SCRRA for CPUC crossing modification applications, construction management, material procurement, cost estimates and construction of pedestrian-rail grade crossing safety enhancements, which include safety related improvements and audible warning system related improvements set forth in Exhibit A.

B. AUTHORITY will fund the actual cost of improvements, excluding CITY costs, in an amount not to exceed Four Million Two Hundred Thousand Dollars (\$4,200,000.00) as approved by

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2 the AUTHORITY'S Board of Directors using funding provided by Highway-Railroad Crossing Safety
3 Account funds, Renewed Measure M funds, and the required 12 percent funding match provided by
4 CITY.

5 C. AUTHORITY will retain program oversight by controlling the funding and by
6 establishing program milestones and overseeing the PROJECT implementation.

7 D. AUTHORITY staff will maintain active communications with CITY staff and provide
8 CITY with public outreach support for the PROJECT. AUTHORITY will assist in building consensus
9 among affected PARTIES in regard to the required enhancements.

10 E. AUTHORITY will submit detailed invoices to CITY bi-monthly for payment of CITY's
11 required twelve percent local matching funds.

12 F. AUTHORITY shall obtain, prepare, and furnish to CITY appraisal and legal
13 descriptions (including maps) depicting the location and extent of temporary construction easements
14 to be acquired and preliminary title reports for each such parcel from a title insurance company
15 acceptable to CITY.

16 **ARTICLE 4. RESPONSIBILITIES OF CITY**

17 CITY agrees to the following responsibilities for PROJECT, subject to the requirements of
18 ARTICLE 5 of the Agreement:

19 A. CITY will advise AUTHORITY as early as possible of current, and a minimum of thirty
20 (30) days in advance of any planned work in the vicinity of the crossings during the term of the
21 PROJECT.

22 B. CITY, as the improvements desired herein are in part funded by CITY and therefore
23 considered in part CITY improvements, shall be responsible for arranging for the relocation or
24 protection of all private and public utilities impacted by the PROJECT and enforcing all utility
25 agreements entered into by the AUTHORITY in accordance with the PROJECT schedule.

26 C. CITY will review and approve final plans and as-builts for all street, civil, and traffic signal
improvements, including providing a CITY approval signature on final plans, in a timely manner, at no

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2 cost to AUTHORITY, SCRRA or the PROJECT. Reviews and approvals by CITY shall be complete
3 within 5 days of receipt of plan submittals. CITY will ensure all applicable CITY departments, including
4 field representatives, participate in said reviews.

5 D. CITY will not charge any fees or assessment to SCRRA for any permits or licenses
6 required for implementation of this PROJECT.

7 E. CITY is responsible for acquisition of Temporary Construction Easements, any and all
8 environmental clearances, and securing any and all necessary environmental, California Coastal
9 Commission or other approvals for the PROJECT.

10 F. CITY will provide construction inspection services, at its discretion, in a timely fashion,
11 and at no cost to AUTHORITY, SCRRA, or the PROJECT, as necessary to satisfy CITY that work is
12 being conducted in accordance with CITY-approved plans. Should CITY fail to provide services within
13 seven (7) days of the request for service, the AUTHORITY may take necessary action to perform
14 inspection services and will furnish CITY with a report of such service, if requested.

15 G. CITY will, during the construction phase of the PROJECT, work with SCRRA, and
16 SCRRA's construction contractor(s) to approve requests by SCRRA and/or SCRRA's contractor(s) to
17 temporarily close individual grade crossings over weekend work windows (work windows will be from
18 Friday night, no earlier than 8:00 pm, to Monday morning, no later than 6:00 am), for the purposes of
19 constructing the PROJECT. At least 30 day advance notice shall be provided to CITY by SCRRA
20 and/or SCRRA's contractor(s) for any desired closures.

21 H. CITY will, within thirty (30) days of submittal to CITY, review and approve SCRRA's
22 and/or SCRRA's contractor(s) traffic control plans for closing a crossing and detouring traffic.

23 I. CITY will pay to AUTHORITY, within 30 days of submittal of invoice(s) from
24 AUTHORITY, the requested portion of the CITY's 12 percent local matching funds for the PROJECT.
25 Invoices shall be based on actual costs and shall not be limited to current estimated costs at the time of
26 the Agreement.

J. CITY will be responsible for implementing a Public Awareness Campaign (PAC), which

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2 advises city, local businesses, residents, motorists, and media of PROJECT and construction-related
3 activities.

4 K. The estimated expenditure schedule for CITY's local matching funds is as follows:

FISCAL YEAR	CITY'S SHARE
2012/2013	\$403,200
2013/2014	<u>\$100,800</u>
Total	\$504,000

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9 L. CITY will pay to AUTHORITY the entire cost of any CITY-requested betterments or
10 enhancements not included in the improvements described in Exhibit A.

11 M. CITY will, prior to allocation of any construction funding by AUTHORITY or
12 commencement of any construction activity, enter into a separate Construction and Maintenance
13 Agreement (C&M Agreement) with SCRRA. The C&M Agreement will establish the rights and
14 obligations of each party relating to the construction and maintenance of the subject crossings.

15 **ARTICLE 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

16 AUTHORITY's obligations under this AGREEMENT are subject to CITY'S successful
17 completion of CITY's review of the PROJECT pursuant to the California Environmental Quality Act,
18 Public Resources Code section 21000 et seq ("CEQA"). AUTHORITY shall have no obligations under
19 this Agreement, and the Agreement shall have no force and effect, unless and until AUTHORITY
20 determines, in its sole and absolute discretion, that CITY has completed all applicable CEQA review
21 and made any and all appropriate and applicable findings under CEQA as required by law.

22 **ARTICLE 6. DELEGATED AUTHORITY**

23 The actions required to be taken by CITY in the implementation of this Agreement are
24 delegated to its City Manager, or his designee, and the actions required to be taken by AUTHORITY in
25 the implementation of this Agreement are delegated to its Chief Executive Officer.

26 **ARTICLE 7. AUDIT AND INSPECTION**

AUTHORITY and CITY shall maintain a complete set of records in accordance with generally

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2 accepted accounting principles. Upon reasonable notice, AUTHORITY shall permit the authorized
3 representatives of the CITY to inspect and audit all work, materials, payroll, books, accounts, and other
4 data and records of AUTHORITY for a period of four (4) years after final payment, or until any on-going
5 audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of
6 CITY's payment of AUTHORITY's final billing (so noted on the invoice) under this Agreement. CITY
7 shall have the right to reproduce any such books, records, and accounts. The above provision with
8 respect to audits shall extend to and/or be included in contracts with AUTHORITY'S contractors,
9 including SCRRA and its contractors.

10 **ARTICLE 8. INDEMNIFICATION**

11 A. AUTHORITY shall defend, indemnify and hold harmless the CITY, its officers, agents,
12 elected officials, and employees, from all liability, claims, losses, and demands, including defense costs
13 and reasonable attorneys' fees, whether resulting from court action or otherwise, arising out of the acts
14 or omissions of AUTHORITY, its officers, agents, or employees, in the performance of the Agreement,
15 excepting acts or omissions directed by the CITY, its officers, agents, or employees, acting within the
16 scope of their employment, for which the CITY agrees to defend and indemnify AUTHORITY in a like
17 manner. CITY shall defend, indemnify and hold harmless the AUTHORITY, its officers, agents, elected
18 officials, and employees, from all liability, claims, losses, and demands, including defense costs and
19 reasonable attorneys' fees, whether resulting from court action or otherwise, arising out of the acts or
20 omissions of the CITY, its officers, agents, or employees, in the performance of the Agreement,
21 excepting acts or omissions directed by the AUTHORITY, its officers, agents, or employees, acting
22 within the scope of their employment, for which the AUTHORITY agrees to defend and indemnify CITY
23 in a like manner. This indemnity shall survive even after the termination of this Agreement.

24 B. CITY shall defend, indemnify and hold harmless the SCRRA and its member agencies,
25 including the AUTHORITY, as well as their respective board members, officers, agents, volunteers,
26 contractors, operating railroads, and employees (SCRRA Indemnities) from any and all liability, loss,
expense (including reasonable attorneys' fees and other defense costs), demands, suits, liens,

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2 damages, costs, claims, including but not limited to claims for bodily injury, death, personal injury, or
3 property damage, that are incurred by or asserted against the SCRRA. Indemnities arising out of or
4 connected with any negligent acts or omissions on the part of the CITY, its council, officers, agents,
5 contractors, or employees under or in connection with any work, authority or jurisdiction delegated to
6 the CITY related to establishment and operation of a Quiet Zone at a rail-highway grade crossing. This
7 indemnity shall survive even after the termination of this Agreement.

8 C. The indemnification and defense obligations of this Agreement shall survive its
9 expiration or termination.

10 **ARTICLE 9. ADDITIONAL PROVISIONS**

11 The AUTHORITY and CITY agree to the following mutual responsibilities for PROJECT:

12 A. AUTHORITY and CITY will jointly participate in progress, coordination and additional
13 field diagnostic team meetings as needed to implement the PROJECT.

14 B. Term of Agreement: All work must be completed no later than December 31, 2013. This
15 Agreement shall continue in full force and effect through December 31, 2014, unless terminated earlier,
16 or extended, by mutual written consent by both PARTIES.

17 C. Termination: In the event that either PARTY defaults in the performance of any of their
18 obligations under this Agreement or breaches any of the provisions of this Agreement, the non-
19 defaulting PARTY shall have the option to terminate this Agreement upon thirty (30) days' prior written
20 notice to the other PARTY.

21 D. Amendments: This Agreement may be amended in writing at any time by the mutual
22 consent of both PARTIES. No amendment shall have any force or effect unless executed in writing by
23 both PARTIES.

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2 E. Notices: Any notices, requests, or demands made between the PARTIES pursuant to
3 this Agreement are to be directed as follows:

4 **To CITY:**

5 Mr. William Cameron
6 City Engineer
7 Engineering Division
8 City of San Clemente
9 910 Calle Negocio, Suite 100
10 San Clemente, CA 92673
11 E-mail: cameronw@san-clemente.org
12 Telephone: (949) 361-6120
13 Facsimile: (949) 361-8316

To AUTHORITY:

Orange County Transportation Authority
550 South Main Street
P. O. Box 14184
Orange, CA 92863-1584
Attention: Bridget Carman
Contract Administrator
E-mail: bcarman@octa.net
Telephone: (714) 560-5478
c: Dinah Minter,
Manager, Metrolink Expansion Program

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15 F. Successors and Assigns: The provision of this Agreement shall bind and inure to the
16 benefit of each of the PARTIES hereto and all successors or assigns of the PARTIES hereto.

17 G. Severability: If any term, provision, covenant, or condition of this Agreement is held to be
18 invalid, void, or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the
19 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant, or
20 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21 H. Counterparts of Agreement: This Agreement may be executed and delivered in any
22 number of counterparts, each of which, when executed and delivered shall be deemed an original and
23 all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

24 I. Force Majeure – Either PARTY shall be excused from performing its obligations under
25 this Agreement during the time and to the extent that it is prevented from performing by an
26 unforeseeable cause beyond its control, including but not limited to; any incidence of fire; flood; acts of
God; commandeering of material, products, plants, or facilities by the federal, state, or local

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2 government; national fuel shortage; or a material act or omission by the other party; when satisfactory
3 evidence of such cause is presented to the other PARTY, and provided further that such
4 nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the
5 PARTY not performing.

6 J. Assignment: Neither this Agreement, nor any of the PARTIES rights, obligations, duties,
7 or authority hereunder may be assigned in whole or in part by either PARTY without the prior written
8 consent of the other PARTY in its sole, and absolute, discretion. Any such attempt of assignment shall
9 be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent
10 to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

11 K. Obligations To Comply with Law: Nothing herein shall be deemed nor construed to
12 authorize or require any Party to issue bonds, notes, or other evidences of indebtedness under the
13 terms, in amounts, or for purposes other than as authorized by local, state, or federal law.

14 L. Governing Law: The laws of the State of California and applicable local and federal
15 laws, regulations, and guidelines shall govern this Agreement.

16 M. Legal Authority: The persons executing this Agreement on behalf of the PARTIES
17 hereto warrant that they are duly authorized to execute this Agreement on behalf of said PARTIES and
18 that, by so executing this Agreement, the PARTIES hereto are formally bound to the provisions of this
19 Agreement.

20 N. Governing Law: The laws of the State of California and applicable local and federal
21 laws, regulations and guidelines shall govern this Agreement.

22 O. Headings: The headings of all sections of this Agreement are inserted solely for the
23 convenience of reference and are not part of and not intended to govern, limit or aid in the construction
24 or interpretation of any terms or provision thereof.

25 P. Successors and Assigns: The provision of this Agreement shall bind and inure to the
26 benefit of each of the PARTIES hereto and all successors or assigns of the PARTIES hereto.

Q. Compliance: AUTHORITY and CITY shall comply with all applicable federal, state, and

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2 local laws, statues, ordinances and regulations of any governmental authority having jurisdiction over
3 the PROJECT.

4 R. Litigation Fees: Should litigation arise out of this Agreement for the performance
5 thereof, each party shall be responsible for its own costs and expenses, including attorney's fees.

6 This Agreement shall be effective upon execution by both PARTIES.

7 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this Agreement No. C-3-1528 to
8 be executed on the date first above written.

9 **CITY OF SAN CLEMENTE**

**ORANGE COUNTY TRANSPORTATION
10 AUTHORITY**

11 By: _____
12 Robert Baker
13 Mayor

By: _____
Darrell Johnson
Chief Executive Officer

14 **ATTEST:**

APPROVED AS TO FORM:

15 By: _____
16 Joanne Baade
17 City Clerk

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

18 **APPROVED:**

APPROVAL RECOMMENDED:

19 By: _____
20 Jefferey Goldfarb
21 City Attorney

By: _____
Jim Beil, P.E.,
Executive Director, Capital Programs

22 Dated: _____
23
24
25
26

8A-18

