



Agenda Item 6F

Approvals:
City Manager [Signature]
Dept. Head [Signature]
Attorney SS
Finance [Signature]

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: October 6, 2015

Department: Public Works / Engineering
Prepared By: Tom Bonigut, Deputy Public Works Director [Signature]

Subject: *APPROVE AGREEMENT NO. C-5-XXXX BETWEEN THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) AND CITY OF SAN CLEMENTE FOR BEACH TRAIL FENCING.*

Fiscal Impact: Yes. Approval of this agreement will require a City cost-sharing contribution of about \$46,000, however there are sufficient funds in the approved project budget for this expense.

Summary: Staff recommends City Council approval of an agreement with OCTA for construction of additional Beach Trail fencing as discussed below.

Background: There are nine at-grade crossings of the railroad track that runs along the San Clemente coast as shown in Attachment 1. There is an established Quiet Zone for the Senda de la Playa and North Beach crossings, meaning that train horns are not routinely sounded at these two crossings. To obtain relief from train horn noise at the other seven crossings, which don't qualify for a Quiet Zone designation under current FRA rules, the City submitted a request to FRA to waive certain train horn rules. In April 2015, the FRA granted a waiver to the City with two conditions. The first is that a Pedestrian Audible Warning System (PAWS) be used to provide a localized audible warning at the crossings. A PAWS was recently installed at each of the seven crossings under a separate cost-sharing agreement with OCTA. The City will be responsible for operation and maintenance of the PAWS and an agreement with Metrolink defining specific responsibilities will be presented to the City Council soon. Although there will still be an audible warning at the crossings with operation of the PAWS, overall noise will be greatly reduced since the train horns will not be routinely sounded at each crossing. The other condition required installation of about 2,600 linear feet of additional fencing along the Beach Trail, mostly south of the T-Street crossing. The plans and specifications and CEQA clearance for the new fencing have been completed, and the Coastal Commission is expected to approve a permit for the fencing at its October meeting.

Discussion: To install the new fencing as quickly as possible, OCTA has offered to have its current maintenance contractor install the fence per the plans and specifications developed by the City. The attached cooperative agreement (Attachment 2) is similar to that used for construction of the PAWS, and specifies the roles and responsibilities of the City and OCTA for construction of the new fencing. The agreement also includes cost-sharing of the estimated \$318,000 project cost with OCTA responsible for 88% of the cost (\$335,280) and the City responsible for 12% of the cost (\$45,720). Due to savings

from the prior PAWS project, the existing project budget has sufficient funds for the City's cost-sharing obligation under this proposed cooperative agreement.

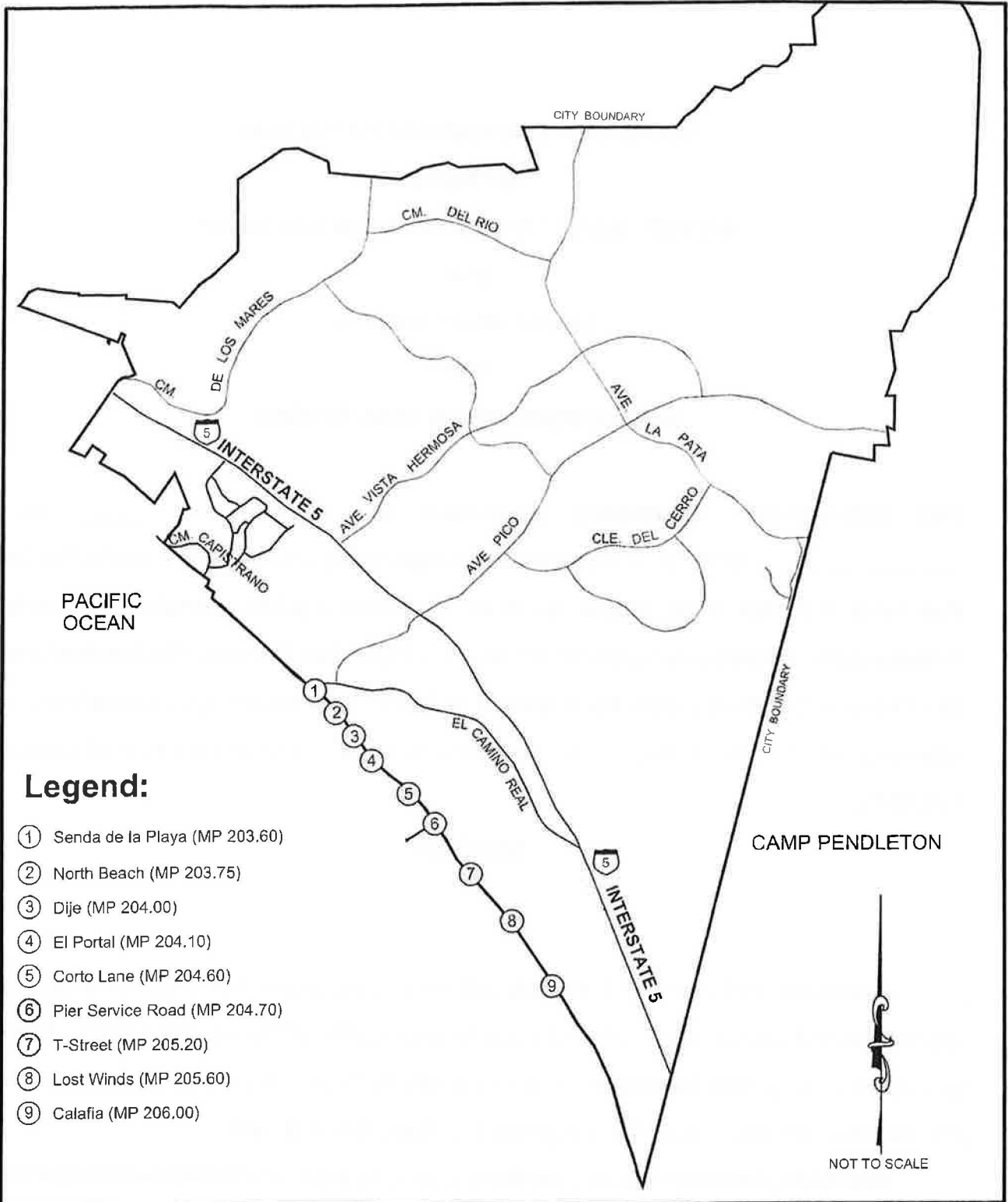
Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute Agreement No. C-5-xxxx between the Orange County Transportation Authority (OCTA) and City of San Clemente for Beach Trail Fencing.

Attachments: 1. Map of at-grade railroad crossings within San Clemente.
2. Agreement No. C-5-xxxx.

Notification: Interested parties distribution list.

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Legend:

- ① Senda de la Playa (MP 203.60)
- ② North Beach (MP 203.75)
- ③ Dije (MP 204.00)
- ④ El Portal (MP 204.10)
- ⑤ Corto Lane (MP 204.60)
- ⑥ Pier Service Road (MP 204.70)
- ⑦ T-Street (MP 205.20)
- ⑧ Lost Winds (MP 205.60)
- ⑨ Calafia (MP 206.00)



City of San Clemente

910 Calle Negocio, Suite 100
 San Clemente, CA 92673
 Tel (949) 361-6100
 Fax (949) 361-8318

LOCATION MAP
LOSSAN Rail Corridor
At-Grade Crossings
in the City of San Clemente

Attachment 2

COOPERATIVE AGREEMENT NO. C-5-XXXX

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN CLEMENTE

FOR

SAN CLEMENTE BEACH TRAIL FENCING

THIS COOPERATIVE AGREEMENT (Agreement), is effective this _____ day of _____, 2015, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California (herein referred to as "AUTHORITY") and the City of San Clemente, 100 Avenida Presidio, San Clemente, CA 92672 (hereinafter referred to as "CITY") each individually known as "Party" and collectively known as the "Parties". The San Clemente beach trail fencing is herein referred to as "PROJECT."

RECITALS:

WHEREAS, on April 14, 2015, the Federal Railroad Administration (FRA) Railroad Safety Board (BOARD) granted a joint petition by the CITY and Southern California Regional Rail Authority (SCRRA) for a waiver of compliance from certain provisions of Title 49 Code of Federal Regulations (CFR) Part 222, Use of Locomotive Horns at Public Highway-Rail Grade Crossings; and

WHEREAS, the waiver includes a condition requiring the installation of additional fencing at seven specific locations totaling approximately 2,700 linear feet; and

WHEREAS, the AUTHORITY has partnered with the CITY to implement the pedestrian audible warning system (PAWS) and other safety enhancements along the San Clemente beach trail; and

1 **WHEREAS**, AUTHORITY and CITY agree on a cost-sharing formula of eighty-eight percent
2 (88%) AUTHORITY share and twelve percent (12%) CITY share consistent with previous agreements
3 related to the PAWS, and

4 **WHEREAS**, AUTHORITY AND CITY agree to utilize the AUTHORITY's agreement with its
5 contractor, Joshua Grading & Excavating, Inc., PO Box 292329, Phelan California 92329 (hereinafter
6 referred to as "CONTRACTOR") to perform the work for PROJECT per attached plans and specifications;
7 and

8 **WHEREAS**, CITY agrees to be responsible for maintenance of PROJECT infrastructure during
9 and after PROJECT is completed; and

10 **WHEREAS**, CITY IS THE LEAD AGENCY FOR THE California Environmental Quality Act
11 (CEQA); and

12 **WHEREAS**, AUTHORITY and CITY agree to enter into this agreement to identify roles and
13 responsibilities related to the installation of fencing to meet the conditions of the FRA BOARD.

14 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY as follows:
15

16 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

1 representative of AUTHORITY by way of a written amendment to this Agreement and issued in
2 accordance with the provisions of this Agreement

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

10 **ARTICLE 2. SCOPE OF AGREEMENT**

11 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the
12 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate and
13 coordinate with the other in all activities covered by this Agreement and any other supplemental
14 agreements that may be required to facilitate purposes thereof.

15 **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

16 AUTHORITY agrees to the following responsibilities:

- 17 A. Serve as lead agency in the performance of the PROJECT.
- 18 B. Utilize agreement C-4-1361 between AUTHORITY and CONTRACTOR for PROJECT
19 and to manage work performed under this agreement.
- 20 C. Perform the PROJECT in accordance with CITY-provided Plans, Specifications &
21 Estimates (PS&E).
- 22 D. Complete the PROJECT and all associated activities in a good and competent manner
23 and in compliance with all applicable federal, state, and local laws and regulations, and
24 railroad standards, policies, practices, and guidelines where applicable.
- 25 E. Coordinate with SCRRRA and CITY in the performance of the PROJECT.
- 26

1 F. Invoice CITY for 12% of total costs, currently estimated at three hundred eighty one
2 thousand dollars (\$381,000), upon completion of the PROJECT and include all
3 supporting documentation.

4 **ARTICLE 4. RESPONSIBILITIES OF CITY**

5 CITY agrees to the following responsibilities:

- 6 A. Reimburse AUTHORITY for 12% CITY share of costs estimated at forty five thousand
7 seven hundred twenty five dollars (\$45,720) for final invoice/payment based on actual expenses.
- 8 B. Provide PROJECT construction oversight and inspection as necessary to ensure quality
9 performance and consistency with CITY's PS&E.
- 10 C. Continue to own and maintain the PROJECT in a state of good repair after the
11 PROJECT completion.
- 12 D. Be responsible for any fees, permits, licenses, easement, environmental clearance, and
13 other approvals required for the PROJECT
- 14 E. Secure necessary approvals or permits including Coastal Commission and
15 environmental compliance prior to commencement of PROJECT.

16
17 **ARTICLE 5. DELEGATED AUTHORITY**

18 The actions required to be taken by CITY in the implementation of this Agreement are delegated
19 to its City Manager, or designee, and the actions required to be taken by AUTHORITY in the
20 implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or designee.

21 **ARTICLE 6. AUDIT AND INSPECTION**

22 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
23 accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized
24 representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and
25 other data and records of CITY for a period of four (4) years after final payment, or until any on-going
26 audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of
CITY's payment of AUTHORITY's final billing (so noted on the invoice) under this Agreement.

1 AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above
2 provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor.

3 **ARTICLE 7. INDEMNIFICATION**

4 A. To the fullest extent permitted by law, AUTHORITY shall defend indemnify, protect, and
5 hold harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties").
6 from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments,
7 arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal
8 costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to
9 or death of persons (AUTHORITY's employees included), for damage to property, including property
10 owned by AUTHORITY, or from any violation of any federal, state, or local law or ordinance, alleged to
11 be caused by the negligent acts, omissions or willful misconduct of CITY, its officers, directors, employees
12 or agents in connection with or arising out of the performance of this
13 Agreement.

14 B. To the fullest extent permitted by law, CITY shall defend, indemnify, protect, and hold
15 harmless AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified
16 Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs,
17 judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses
18 including legal costs and attorney fees (collectively "Claims"), including but not limited to claims arising
19 from injuries to or death of persons (CITY's employees included), for damage to property, including
20 property owned by CITY, or from any violation of any federal, state, or local law or ordinance, alleged to
21 be caused by the negligent acts, omissions or willful misconduct of AUTHORITY, its officers, directors,
22 employees or agents in connection with or arising out of the performance of this Agreement.

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

25 **ARTICLE 8. ADDITIONAL PROVISIONS**

26 A. Term of Agreement: This Agreement shall be effective in full force through June 30, 2016,
or upon AUTHORITY'S receipt of payment from CITY, whichever is first.

- 1 B. Termination: In the event either Party defaults in the performance of their obligations
2 under this Agreement or breaches any of the provisions of this Agreement, the non-
3 defaulting Party shall have the option to terminate this Agreement upon thirty (30) days'
4 prior written notice to the other Party.
- 5 C. Termination for Convenience: Either Party may terminate this Agreement for its
6 convenience by providing thirty (30) days' prior written notice of its intent to terminate for
7 convenience to the other Party.
- 8 D. AUTHORITY and CITY shall comply with all applicable federal, state, and local laws,
9 statutes, ordinances and regulations of any governmental authority having jurisdiction over
10 the PROJECT.
- 11 E. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
12 execute this Agreement on behalf of said Parties and that, by so executing this
13 Agreement, the Parties hereto are formally bound to the provisions of this Agreement.
- 14 F. Severability: If any term, provision, covenant or condition of this Agreement is held to be
15 invalid, void or otherwise unenforceable, to any extent, by any court of competent
16 jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term,
17 provision, covenant or condition of this Agreement shall be valid and enforceable to the
18 fullest extent permitted by law.
- 19 G. Counterparts of Agreement: This Agreement may be executed and delivered in any
20 number of counterparts, each of which, when executed and delivered shall be deemed an
21 original and all of which together shall constitute the same agreement. Facsimile
22 signatures will be permitted.
- 23 H. Force Majeure: Either Party shall be excused from performing its obligations under this
24 Agreement during the time and to the extent that it is prevented from performing by an
25 unforeseeable cause beyond its control, including but not limited to; any incidence of fire,
26 flood; acts of God; commandeering of material, products, plants or facilities by the federal,
state or local government; national fuel shortage; or a material act or omission by the other

Party; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the Party not performing.

- I. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.
- J. Governing Law: The laws of the State of California and applicable local and federal laws, regulations and guidelines shall govern this Agreement.
- K. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.
- L. Notices: Any notices, requests, or demands made between the Parties pursuant to this Agreement are to be directed as follows:

To CITY (City of San Clemente)	To AUTHORITY:
City of San Clemente	Orange County Transportation Authority
910 Calle Negocio Suite 100 San Clemente, CA 92673	550 South Main Street P. O. Box 14184 Orange, CA 92863-1584
Attention: Tom Bonigut, P.E. Deputy Public Works Director (949) 361-6187 BonigutT@san-clemente.org	Attention: Mr. Michael Le Associate Contract Administrator Tel: (714) 560-5314 E-mail: mle1@octa.net

This Agreement shall be made effective upon execution by both Parties.

1 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No C-5-XXXX to be
2 executed as first written above.

3 **CITY of SAN CLEMENTE**

ORANGE COUNTY TRANSPORTATION AUTHORITY

4
5 _____
6 CHRIS HAMM
7 Mayor

DARRELL JOHNSON
Chief Executive Officer

8 **ATTEST:**

APPROVED AS TO FORM:

9
10 _____
11 JOANNE BAADE
12 City Clerk

JAMES DONICH
General Counsel

13 **APPROVED AS TO FORM:**

RECOMMENDED FOR APPROVAL:

14
15 _____
16 BEST BEST & KRIEGER
17 City Attorney

JIM BEIL, P.E.
Executive Director, Capital Programs