



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 19, 2019

Agenda Item 9A
Approvals:
City Manager [Signature]
Dept. Head _____
Attorney _____
Finance [Signature]

Department: City Attorney
Prepared By: Scott C. Smith, City Attorney

Subject: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING CHAPTER 12.40, TRAIN STATIONS, TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO TICKET-REQUIRED AREAS OF THE CITY'S TRANSIT FACILITIES

Fiscal Impact: This ordinance may result in some cost to the City for sign posting, striping, and enforcement.

Summary: Staff recommends the City Council consider and introduce an ordinance to amend San Clemente Municipal Code Title 12, Streets, Sidewalks and Public Places, to add Chapter 12.40, Train Stations, which will require persons to have a valid ticket or other lawful transportation purpose in order to enter the train station platform or other ticket-required area.

Background: There are two train stations within the City of San Clemente:

- The North Beach Station at 1850 Avenida Estacion; and
- The Pier Bowl Station at 615 Avenida Victoria.

For both stations, the City entered into cooperative agreements with the Orange County Transportation Authority. For the North Beach Station, Cooperative Agreement No. C-5-0302 was executed on October 2, 2006. For the Pier Bowl Station, Cooperative Agreement No. C-2-1988 was executed on June 13, 2013. The cooperative agreements create certain obligations for the City with respect to the stations:

- **Maintenance.** The City is obligated to maintain in good condition and order, free from refuse, the stations' "Non-Operating Property" for the benefit of the public and persons using the station. (Art. 4, § A of both cooperative agreements.)
- **Security.** The City is obligated to provide security for stations as well as the "Non-Operating Property." (Art. 4, § B of both cooperative agreements.)

Both cooperative agreements define "Non-Operating Property" to mean "property and facilities (excluding Operating Property), which includes support facilities [stations] adjacent to the Operating Property such as parking, Platform Fixtures, landscaping and the Standard Platform." (Art. 1, § B of both cooperative agreements, except that

the North Beach Station Cooperative Agreement also includes "Passenger Service Building" in the list of "Operating Property.")

Discussion: The City has experienced difficulties in connection with use of its Metrolink rail stations for purposes other than rail transportation. Members of the public complain frequently about difficulties and concerns about ingress and egress to the stations as persons with no transit business occupy or camp on the transit platforms and boarding area. Rail passengers approaching, awaiting, and boarding trains prior to dawn or after dusk have expressed concern for their own safety and security. These passengers have no means to evade close contact with these individuals because the entrances to trains are fixed. This ordinance would add Chapter 12.40, Train Stations to the Municipal Code. Consistent with the City's obligations and authority under the Cooperative Agreement, Chapter 12.40 requires that "[A] person must have a valid ticket or have a lawful transportation purpose in order to enter the train station platform or other ticket-required area."

This ordinance will allow staff to designate and post the areas of the train platform beyond the entrance stairs as areas where individuals must either possess transit tickets, be in the process of purchasing a ticket, or be meeting or dropping off another passenger.

There are two parts to the above requirement:

- **"[V]alid ticket or have a lawful transportation purpose."** The ordinance defines a "lawful transportation purpose" to mean "heading to a kiosk to purchase a ticket; waiting in line to purchase a ticket at a kiosk; purchasing a ticket at a kiosk or via electronic device; assisting, meeting, or seeing off passengers with valid tickets; or similar activity."
- **"[T]rain station platform or other ticket-required area."** The ordinance sets the parameters of "ticket-required area" to include beyond the train station platform: "Area beyond a gate that requires fare for entry; the [a]rea beyond a kiosk for purchasing or validating tickets; or [i]f posted as such, an area designated by authorized officials."

Recommended

Action:

STAFF RECOMMENDS THAT the City Council (1) consider and introduce AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING CHAPTER 12.40, TRAIN STATIONS, TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO TICKET-REQUIRED AREAS OF THE CITY'S TRANSIT FACILITIES and (2) instruct staff to prepare and post adequate demarcation and signage at the City's train stations.

Attachments:

1. Draft Ordinance;
2. North Beach Station Cooperative Agreement No. C-5-0302
3. Pier Bowl Station Cooperative Agreement No. C-2-1988

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING CHAPTER 12.40, TRAIN STATIONS, TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO TICKET-REQUIRED AREAS OF THE CITY'S TRANSIT FACILITIES

WHEREAS, on June 13, 2013, the City of San Clemente and the Orange County Transportation Authority entered into Cooperative Agreement No. C-2-1988 for the Pier Bowl Train Station at 615 Avenida Victoria, San Clemente, CA 92672;

WHEREAS, Section B of Article 1 of the Agreement defines "Non-Operating Property" to mean "property and facilities (excluding Operating Property), which includes support facilities for the STATION adjacent to the Operating Property such as parking, Platform Fixtures, landscaping and the Standard Platform;"

WHEREAS, Section A of Article 4 of the Agreement obligates the City to "maintain in good condition and order, free from refuse, the Non-Operating Property portion of the STATION, for the benefit of the public and the persons using the STATION;"

WHEREAS, Section B of Article 4 of the Agreement obligates the City to "provide security for Non-Operating Property and STATION;"

WHEREAS, California Penal Code Section 640 allows the City to demark areas of a public transit system in which individuals may be cited for evading payments of fares and to cite persons for urinating or defecating in a transit system facility.

WHEREAS, the City desires to amend the Municipal Code to require persons to have a valid ticket or other lawful transportation purpose in order to enter the train station platform or other ticket-required area;

WHEREAS, on November 19, 2019, the City Council considered the agenda report, the written and oral testimony received, and other evidence in the record for this Ordinance;

NOW, THEREFORE, the City Council of the City of San Clemente does ordain as follows:

Section 1. Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA Findings. The City Council finds that this ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

- A. This Ordinance is not "project" within the meaning of State CEQA Guidelines, section 15378, because it has no potential for resulting in direct or indirect physical change in the environment.
- B. This Ordinance is exempt under section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

Section 3. Title 12 Amendment. San Clemente Municipal Code title 12, Streets, Sidewalks and Public Places, is hereby amended to add chapter 12.40, Train Stations, to read as follows:

"Chapter 12.40 - TRAIN STATIONS

12.40.010 - Definitions.

For purposes of this chapter, the following words and phrases shall have the following meanings:

"Ticket" means a ticket issued by or on behalf of a train operation for a fare to travel, including, whether printed or electronic, tickets, passes, transfers, vouchers, or similar form.

"Ticket-required area" means an area of the train station as provided by section 12.40.030.

"Transportation purpose" means heading to a kiosk to purchase a ticket; waiting in line to purchase a ticket at a kiosk; purchasing a ticket at a kiosk or via electronic device; assisting, meeting, or seeing off passengers with valid tickets; or similar activity.

12.40.020 - Valid ticket required.

A person must have a valid ticket or have a lawful transportation purpose in order to enter the train station platform or other ticket-required area, as provided in section 12.40.030.

12.40.030 - Ticket-required areas.

The following areas constitute ticket-required areas for purposes of section 12.40.020:

- A. The train station platform;
- B. Area beyond a gate that requires fare for entry;

- C. Area beyond a kiosk for purchasing or validating tickets; or
- D. If posted as such, an area designated by authorized officials.”

Section 4. Existing Code Provisions. All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 5. Publication. The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within fifteen (15) days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

Section 6. Records. The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council’s findings and determinations are based are located at City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

Section 7. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimately waived, and duly passed and adopted at a regular meeting of the City Council held on the _____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

Attachment 2
Distributed 10-3-06
B. Gilliland
L. Hunter
~~T. Gilliland~~ *Jana*
Dept. *Bill Mack*
P.A. *Sarah*
Albe M.

COOPERATIVE AGREEMENT NO. C-5-0302

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN CLEMENTE

THIS AGREEMENT is made and entered into this 2 day of October

2006, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public entity (hereinafter referred to as "AUTHORITY"), and the City of San Clemente, 910 Calle Negocio, Suite 100, San Clemente, CA 92673 (hereinafter referred to as "CITY").

WITNESSETH:

WHEREAS, AUTHORITY provides commuter rail service between Oceanside and Los Angeles by agreement with the Southern California Regional Rail Authority (SCRRA); and

WHEREAS, CITY and AUTHORITY jointly desire to provide commuter rail access to the City of San Clemente residents and employers to the Commuter Rail Station in the CITY; and

WHEREAS, AUTHORITY is a member entity of SCRRA; and

WHEREAS, this Agreement defines the roles and responsibilities of the AUTHORITY and CITY for the Commuter Rail Station located at 1850 Avenida Estacion in the City of San Clemente;

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

ARTICLE 1. COMPLETE AGREEMENT

This Agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of the agreement between AUTHORITY and CITY and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall

1 not affect the validity of other term(s) or condition(s). Changes hereto shall not be binding upon both
 2 parties except when specifically confirmed in writing by an authorized representative of each party.

3 **ARTICLE 2. DEFINITIONS**

4 DEFINITIONS: As used in this Agreement, the following terms, phrases, words and their
 5 derivations, shall have meanings set forth herein. Words used in the present tense shall include future
 6 tense. Words used in the singular shall include the plural, and the plural words include the singular.
 7 Words not specifically defined shall be given their common and ordinary meaning.

8 a. "Operating Property" is defined as the "Orange Subdivision", real property owned by
 9 AUTHORITY that is used for railroad operations, including but not limited to rails, ties and ballast.

10 b. "Non-Operating Property" is defined as property and facilities (excluding Operating
 11 Property), which includes support facilities for the Commuter Rail Station adjacent to the Operating
 12 Property such as parking, Platform Fixtures, Passenger Service Building, landscaping and the Standard
 13 Platform.

14 c. "Standard Platform" the certain type of rail passenger platform, the size, dimensions,
 15 and materials of which are required by SCRRA and set forth in specifications on file with SCRRA.

16 d. "Platform Fixtures" are the fixtures attached to the Standard Platform, including, but not
 17 limited to, light poles, benches, bench shelters and signs.

18 e. "Commuter Rail Station" is defined as to the commuter rail passenger terminal, including
 19 Non-Operating Property, Standard Platform, Passenger Service Building and Platform Fixtures,
 20 associated therewith, but not including other property nor the ticket vending machines and
 21 communication shelter located at 1850 Avenida Estacion, San Clemente, California.

22 f. "Right-of-Way" the Right-of-Way shown in the attached Exhibit A, entitled "Right-of-
 23 Way," attached hereto and, by this reference, incorporated herein and made a part hereof.

24 g. "Ticket Vending Machine" and "Communication Shelter" are the ticket vending machines
 25 and the communication shelter owned and operated by AUTHORITY and SCRRA located in the
 26 Commuter Rail Station.

1 **ARTICLE 3. TERM OF AGREEMENT**

2 This Agreement shall commence upon execution by both parties, and shall continue in full force
3 and effect unless terminated as provided in this Agreement.

4 **ARTICLE 4. RESPONSIBILITES OF THE CITY**

5 A. Maintenance and repair: CITY agrees at no cost to AUTHORITY, to maintain in good
6 condition and order, free from refuse, the Non-Operating Property, as well as the Commuter Rail
7 Station, for the benefit of the public and the persons using the commuter rail station for so long as the
8 AUTHORITY shall serve commuter rail passengers at the Commuter Rail Station identified herein and
9 pursuant to this Agreement. If the CITY intends to perform work on the portion of the Standard Platform
10 within ten (10) feet from the centerline of track, the CITY shall get written permission from SCRRA and
11 make arrangements to comply with all SCRRA safety regulations.

12 B. Commuter rail station security: At its sole cost, CITY shall provide security for Non-
13 Operating Property and Commuter Rail Station, via the Orange County Sheriff's Department contract
14 with the CITY.

15 C. Commuter rail parking: CITY shall make available a minimum of 150 parking spaces for
16 use by commuter rail passengers at the San Clemente Commuter Rail Station. Parking availability is
17 based upon a shared use concept whereby commuters use parking primarily on weekdays and beach
18 goers use parking primarily on weekends.

19 **ARTICLE 5. RESPONSIBILITES OF AUTHORITY**

20 A. Platform Lease: AUTHORITY shall lease the area of the AUTHORITY's Right-of-Way to
21 the CITY for One Dollar (\$1.00) per year for the purpose of maintenance of the Standard Platform.
22 CITY shall have the right to sublease or grant privileges or concessions within the Non-Operating
23 Property, and shall be entitled to retain all revenues derived therefrom. This Agreement constitutes the
24 lease agreement between AUTHORITY and CITY.

25 /

26 /

1 B. Ticket Vending Machine and Communication Shelter Maintenance: AUTHORITY shall
2 provide funding for the maintenance of Ticket Vending Machines, Communication Shelter, and related
3 equipment provided and maintained by SCRRA.

4 C. Bus Service: AUTHORITY will provide bus service to the Commuter Rail Station.

5 **ARTICLE 6. NOTICES**

6 All notices hereunder and communications regarding the interpretation of the terms of this
7 Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing
8 said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid
9 and addressed as follows:

10 To CITY:

11 City of San Clemente
12 910 Calle Negocio, Suite 100
13 San Clemente, CA 92673

14
15 ATTENTION: City Manager

To AUTHORITY:

Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584

ATTENTION: Sarah Strader

Procurement Administrator

(714) 560-5633 (email: sstrader@octa.net)

16
17
18 **ARTICLE 7. INSURANCE**

19 A. CITY Insurance: CITY agrees to obtain liability insurance or self-insurance for
20 covering liability of all personal injury and property losses, including any and all maintenance related
21 losses at the Commuter Rail Station, any portion of AUTHORITY's Right-of-Way used for the parking
22 lot and any other Non-Operating Property, and maintain this insurance in full force and effect. CITY
23 shall provide the following insurance coverage:

24 1. Commercial General Liability, to include Products/Completed and
25 Personal Injury Liability with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00
26 general aggregate;

1 2. Automobile Liability Insurance to include owned, hired and non-owned
2 autos with a combined single limit of \$1,000,000.00 each accident;

3 3. Workers' Compensation with limits as required by the State of California
4 including a waiver of subrogation in favor of AUTHORITY, its officers, directors, employees and agents;

5 4. Employers' Liability with minimum limits of \$1,000,000.00; and

6 5. Proof of insurance coverage must be received by AUTHORITY within ten
7 (10) calendar days from effective date of this Agreement with the AUTHORITY.

8 B. CITY shall be responsible for handling and processing any and all liability claims,
9 including but not limited to any claims arising in, on or about the parking facilities, or other Non-
10 Operating Property located at or near the Commuter Rail Station.

11 C. AUTHORITY insurance: AUTHORITY, as a member of SCRRA, shall maintain
12 insurance or self-insurance for the Right-of-Way Operating Property and the Ticket Vending Machines
13 and Communication Shelter.

14 **ARTICLE 8. TERMINATION**

15 A. AUTHORITY or CITY may terminate this Agreement at any time by providing the
16 other party with ninety (90) calendar days written notice of its intent to terminate.

17 B. AUTHORITY or CITY may terminate this Agreement for any default or breach of this
18 Agreement by the other party which has not been cured within thirty (30) days after notice of such
19 default by the other party, or such later time as is reasonably necessary if the default cannot be
20 reasonably cured within such thirty (30) day period.

21 **ARTICLE 9. INDEMNIFICATION**

22 A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
23 employees, member agencies, subcontractors or suppliers, and agents from and against any and all
24 claims, actions, damages, liabilities and expenses (including attorney's fees and reasonable expenses
25 for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of
26 use of property, caused by negligent acts, omissions, or willful misconduct by the CITY, its officers,

1 directors, employees, agents, subcontractors or suppliers in connection with or arising out of the
 2 performance of this Agreement that are asserted or claimed against AUTHORITY, its officers, directors,
 3 employees, agents, member agencies, subcontractors or suppliers.

4 B. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,
 5 employees, subcontractors or suppliers, and agents from and against any and all claims, actions,
 6 damages, liabilities and expenses (including attorney's fees and reasonable expenses for litigation or
 7 settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of
 8 property, caused by negligent acts omissions or willful misconduct by AUTHORITY, its officers,
 9 directors, employees, agents, subcontractors or suppliers in connection with or arising out of the
 10 performance of this Agreement that are asserted or claimed against CITY, its officers, directors,
 11 employees, agents, member agencies, subcontractors or suppliers.

12 **ARTICLE 10. ASSIGNMENT**

13 Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CITY
 14 either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by
 15 CITY, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed
 16 to relieve CITY of its obligations to comply fully with all terms and conditions of this Agreement.

17 **ARTICLE 11. FEDERAL, STATE AND LOCAL LAWS**

18 CITY warrants that in the performance of this Agreement, it shall comply with all applicable
 19 federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations
 20 promulgated thereunder.

21 **ARTICLE 12. FORCE MAJEURE**

22 Either party shall be excused from performing its obligations under this Agreement during the
 23 time and to the extent that it is prevented from performing by an unforeseeable cause beyond its
 24 control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material,
 25 products, plants or facilities by the federal, state or local government; national fuel shortage; or a
 26 material act or omission by the other party; when satisfactory evidence of such cause is presented to

1 the other party, and provided further that such nonperformance is unforeseeable, beyond the control
2 and is not due to the fault or negligence of the party not performing.


3 This Agreement shall be made effective upon execution by both parties.

4 IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-5-0302 to be
5 executed on the date first above written.

6 CITY OF SAN CLEMENTE

ORANGE COUNTY TRANSPORTATION AUTHORITY

7 By



By



8 Wayne Egelston
9 Mayor

Virginia Abadessa, Manager
Contracts Administration and Materials Management

11 APPROVED AS TO FORM :

APPROVED AS TO FORM:

12 By



By

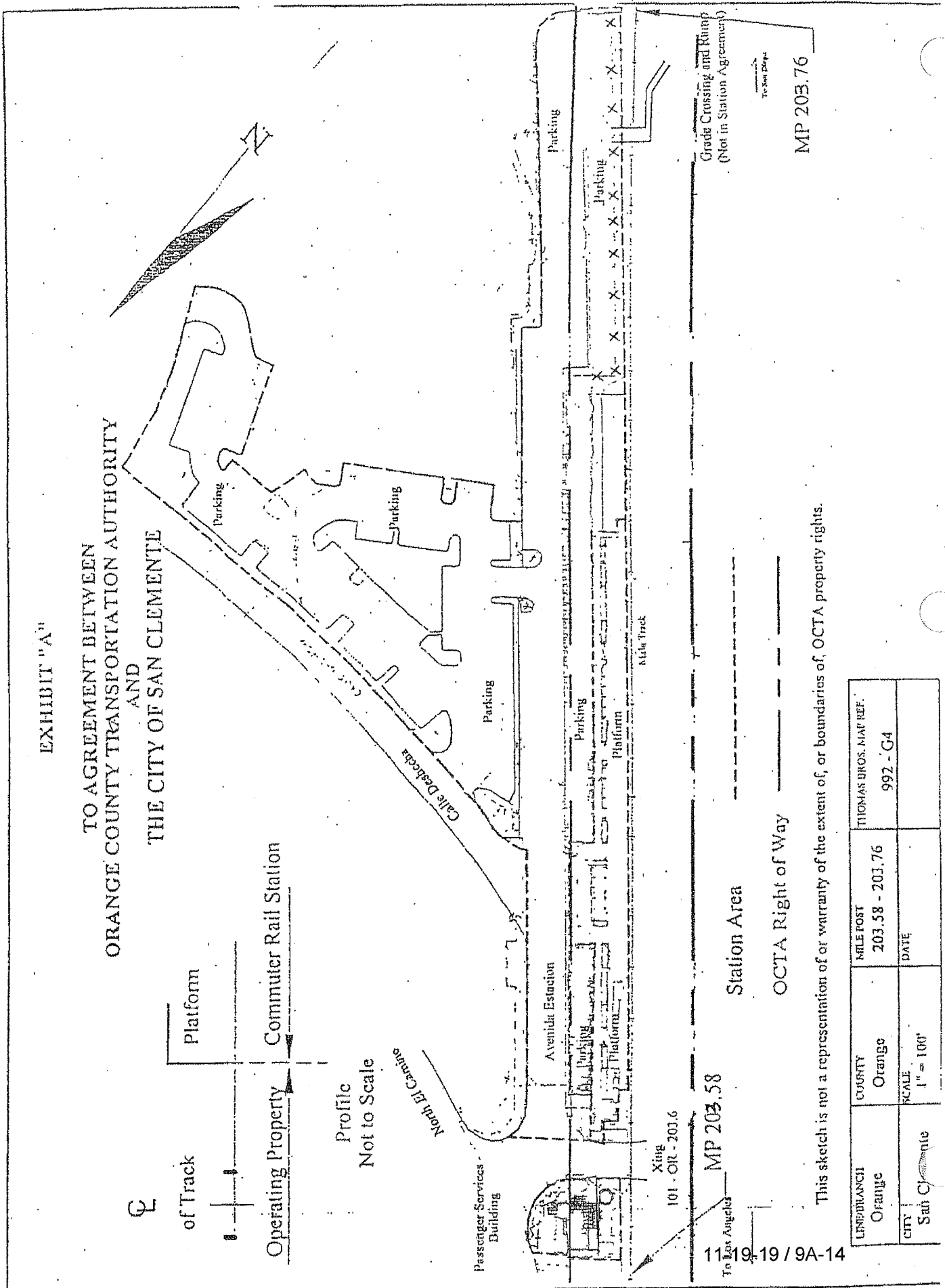


13 *for* Jeffrey Oderman
14 City Attorney

Kennard R. Smart, Jr.
General Counsel

EXHIBIT "A"

TO AGREEMENT BETWEEN
ORANGE COUNTY TRANSPORTATION AUTHORITY
AND
THE CITY OF SAN CLEMENTE



☉

of Track

Platform

Operating Property

Commuter Rail Station

Profile
Not to Scale

North El Camino

Passenger Services Building

Avenida Estacion

Parking

Platform

Multi Track

Xing
101 - OR - 203.6

MP 203.58

Grade Crossing and Ramp
(Not in Station Agreement)

To San Diego

MP 203.76

Station Area

OCTA Right of Way

This sketch is not a representation of or warranty of the extent of, or boundaries of, OCTA property rights.

1119-19/9A-14

UNSPONSORED	COUNTY	MPLE POST	TITIMAN BROS. MAP REF.
Orange	Orange	203.58 - 203.76	992 - G4
CITY	SCALE	DATE	
San Clemente	1" = 100'		

C-5-03

17:25:32 01-20-05

BUYER : 18 ABBE A MC CLENAHAN

REQ NUMBER REQUESTER TEL NO EXT NUMBER

30037 JOANNA FOLZ

O C T A R E Q U I S I T I O N

PAGE 26

DEPT APPROVAL
LINDA L HUNTER

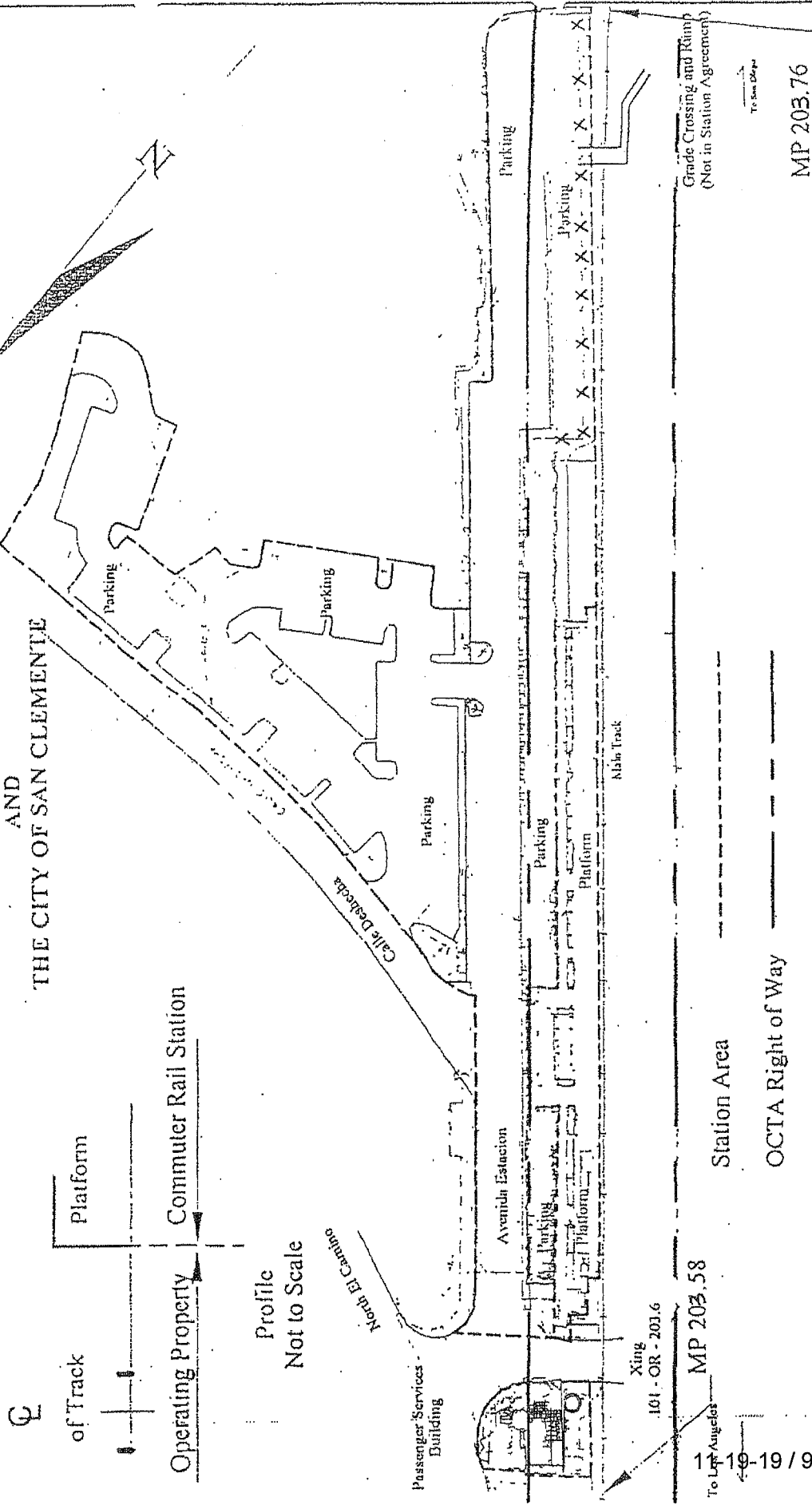
ACTION CODE

LINE STOCK NO 1 DIRECT
DESCRIPTION
PREPARE CO-OP WITH CITY OF SAN CLEMENTE TO GO 01/21/05
VERN THE CONSTRUCTION, OPERATION, AND MAINTEN VENDOR :
ANCE OF A COMMUTER RAIL STATION IN SAN CLEMEN
TE. THE STATION IS BUILT AND IN SERVICE AND T
HE TOTAL COST HAS BEEN FULLY FUNDED.
DELIVER TO: JOANNA FOLZ. PM IS BILL MOCK x5737.

QTY U/M EST-UNIT-COST ACCOUNT-NUMBER % DIST TAX
1 EA 0.00 0010-7831-F3304-F10 100.00

EXHIBIT "A"

TO AGREEMENT BETWEEN
ORANGE COUNTY TRANSPORTATION AUTHORITY
AND
THE CITY OF SAN CLEMENTE



Grade Crossing and Ramp
(Not in Station Agreement)

MP 203.76

To Los Angeles
19-19/9A-16

Xing
101 - OR - 201.6
MP 203.58

Station Area

OCTA Right of Way

This sketch is not a representation of or warranty of the extent of, or boundaries of, OCTA property rights.

LIN/DRAWING	COUNTY	DATE	TITLONAS DROS. MAP REF.
Orange	Orange	203.58 - 203.76	992 - C4
CITY	SCALE	DATE	
San Clemente	1" = 100'		

ATTACHMENT 3

RECORDED
CMM
FPA
PM M Taylor / S Carish
Vendor
CA R. Hansen

COOPERATIVE AGREEMENT NO. C-2-1988

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SAN CLEMENTE

FOR

COMMUTER RAIL STATION

THIS AGREEMENT is made and entered into this 13th day of June, 2013, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584, a public entity (hereinafter referred to as "AUTHORITY"), and the City of San Clemente, 910 Calle Negocio, Suite 100, San Clemente, CA 92673 (hereinafter referred to as "CITY"). Herein, AUTHORITY and the CITY are sometimes referred to as "PARTY" and collectively as "PARTIES".

WITNESSETH:

WHEREAS, AUTHORITY, through the Southern California Regional Rail Authority (SCRRA), provides commuter rail service between Oceanside and Los Angeles; and

WHEREAS, CITY and AUTHORITY jointly desire to ensure that San Clemente residents and businesses have access to commuter rail service in the City of San Clemente at a convenient Commuter Rail Station in the CITY; and

WHEREAS, AUTHORITY is a member entity of SCRRA; and

WHEREAS, the commuter rail station (STATION) located at 615 Avenida Victoria in the City of San Clemente requires repairs to bring it into compliance with the Americans with Disabilities Act (ADA) and the Federal Railroad Administration standards for transportation facilities; and

WHEREAS, SCRRA will be implementing the necessary improvements through a separate agreement with AUTHORITY, at no cost to the CITY; and

WHEREAS, CITY shall lease STATION from AUTHORITY for an annual fee of One Dollar

1 (\$1.00); and

2 WHEREAS, CITY shall maintain, as defined in this Agreement, STATION after improvements
3 are made at STATION; and

4 WHEREAS, this Agreement defines the roles and responsibilities of the AUTHORITY and CITY
5 and sets forth the provisions for the operation and maintenance of the STATION after the necessary
6 improvements have been made;

7 NOW, THEREFORE, it is mutually understood and agreed by AUTHORITY and CITY as
8 follows:

9 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

24 C. CITY's failure to insist on any instance(s) of AUTHORITY'S performance of any
25 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of
26 CITY's right to such performance or to future performance of such term(s) or condition(s), and

COOPERATIVE AGREEMENT NO. C-2-1988

1 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any
2 portion of this Agreement shall not be binding upon CITY except when specifically confirmed in
3 writing by an authorized representative of CITY by way of a written amendment to this Agreement
4 and issued in accordance with the provisions of this Agreement.

5 **ARTICLE 2. SCOPE OF AGREEMENT**

6 This Agreement specifies the terms, conditions, funding roles and responsibilities of the Parties
7 as they pertain to the subjects, projects addressed herein. Both AUTHORITY and CITY agree that
8 each will cooperate and coordinate with the other in all activities covered by this Agreement and any
9 other supplemental agreements that may be required to facilitate purposes thereof.

10 **ARTICLE 3. DEFINITIONS**

11 DEFINITIONS: As used in this Agreement, the following terms, phrases, words and their
12 derivations shall have meanings set forth herein. Words used in the present tense shall include future
13 tense. Words used in the singular shall include the plural, and the plural words include the singular.
14 Words not specifically defined shall be given their common and ordinary meaning.

15 a. **"Operating Property"** is defined as the "Orange Subdivision", real property owned by
16 AUTHORITY that is used for railroad operations, including but not limited to rails, ties, ballast, platform
17 tactile strips, painted guidelines, communication shelter, and ticket vending machine.

18 b. **"Non-Operating Property"** is defined as property and facilities (excluding Operating
19 Property), which includes support facilities for the STATION adjacent to the Operating Property such as
20 parking, Platform Fixtures, landscaping and the Standard Platform.

21 c. **"Standard Platform"** the certain type of rail passenger platform, the size, dimensions,
22 and materials of which are required by SCRRA and set forth in specifications on file with SCRRA.

23 d. **"Platform Fixtures"** are the fixtures attached to the Standard Platform, including, but not
24 limited to, light poles, benches, bench shelters and signs.

25 e. **"Commuter Rail Station"** (STATION) is defined as to the commuter rail passenger
26 terminal, including Non-Operating Property, Standard Platform, and Platform Fixtures, associated

1 therewith, but not including other property nor the ticket vending machines and communication shelter
2 located at 615 Avenida Victoria, San Clemente, California 92672.

3 f. "Right-of-Way" the Right-of-Way shown in the attached Exhibit A, entitled "San
4 Clemente Pier Train Station Right-of-Way," attached hereto and, by this reference, incorporated herein
5 and made a part hereof.

6 g. "Ticket Vending Machine" and "Communication Shelter" are the ticket vending machines
7 and the communication shelter owned and operated by AUTHORITY and SCRRA located in the
8 STATION.

9 **ARTICLE 4. RESPONSIBILITIES OF THE CITY**

10 CITY agrees to the following responsibilities for the STATION:

11 A. Maintenance and repair: CITY agrees at no cost to AUTHORITY, to maintain in good
12 condition and order, free from refuse, the Non-Operating Property portion of the STATION, for the
13 benefit of the public and the persons using the STATION for so long as the AUTHORITY shall serve
14 commuter rail passengers at the STATION identified herein and pursuant to this Agreement. If the
15 CITY intends to perform work on the portion of the Standard Platform within ten (10) feet from the
16 centerline of track, the CITY shall get written permission from SCRRA and make arrangements to
17 comply with all SCRRA safety regulations.

18 B. Commuter rail station security: At its sole cost, CITY shall provide security for Non-
19 Operating Property and STATION in the amount and at a level which CITY and, if security is being
20 provided by the Orange County Sheriff's Department, the Orange County Sheriff's Department deem
21 appropriate in their sole and absolute discretion.

22 **ARTICLE 5. RESPONSIBILITIES OF AUTHORITY**

23 AUTHORITY agrees to the following responsibilities for the STATION:

24 A. Platform Lease: AUTHORITY shall lease the Station Platform area of the
25 AUTHORITY's Right-of-Way to the CITY for One Dollar (\$1.00) per year for the purpose of
26 maintenance of the Standard Platform. CITY shall have the right to sublease or grant privileges or

1 concessions within the Non-Operating Property, and shall be entitled to retain all revenues derived
2 therefrom. This Agreement constitutes the lease agreement between AUTHORITY and CITY.

3 B. Ticket Vending Machine and Communication Shelter Maintenance: AUTHORITY shall
4 provide funding to SCRRA for the maintenance of Ticket Vending Machines, Communication Shelter,
5 and related equipment which is or will be provided and maintained by SCRRA.

6 C. Bus Service: AUTHORITY will provide bus service to and from the STATION.

7 **ARTICLE 6. DELEGATED AUTHORITY**

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

11 **ARTICLE 7. AUDIT AND INSPECTION**

12 AUTHORITY and CITY shall maintain a complete set of records in accordance with generally
13 accepted accounting principles. Upon reasonable notice, AUTHORITY and CITY shall permit each
14 PARTY's authorized representatives to inspect and audit all work, materials, payroll, books, accounts,
15 and other data and records of the other PARTY for a period of four (4) years after final payment, or until
16 any on-going audit is completed. For purposes of audit, the date of completion of this Agreement shall
17 be the date of the AUTHORITY's final notice of project completion. Each PARTY shall have the right to
18 reproduce any such books, records, and accounts of the other PARTY relative to STATION. The
19 above provision with respect to audits shall extend to and be included in contracts with CITY's
20 contractors and subcontractors.

21 **ARTICLE 8. INDEMNIFICATION AND INSURANCE**

22 A. CITY shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
23 employees and agents from and against any and all claims (including attorney's fees and reasonable
24 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's
25 compensation subrogation claims, damage to or loss of use of property alleged to be caused by the
26

COOPERATIVE AGREEMENT NO. C-2-1988

1 negligent acts, omissions or willful misconduct by CITY, its officers, directors, employees or agents in
2 connection with or arising out of the performance of this Agreement

3 B. AUTHORITY shall indemnify, defend and hold harmless CITY, its officers, directors,
4 employees and agents from and against any and all claims (including attorney's fees and reasonable
5 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, worker's
6 compensation subrogation claims, damage to or loss of use of property alleged to be caused by the
7 negligent acts, omissions or willful misconduct by AUTHORITY, its officers, directors, employees or
8 agents in connection with or arising out of the performance of this Agreement.

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

11 D. CITY insurance: CITY agrees to obtain liability insurance or self-insurance covering
12 liability of all personal injury and property losses, including any and all maintenance related losses at all
13 portions of the Commuter Rail Station under CITY control, and covering CITY's indemnification and
14 defense obligations imposed by this Agreement, and maintain this insurance in full force and effect.
15 CITY shall provide the following insurance coverage:

16 1. Commercial General Liability, to include Products/Completed and Personal Injury
17 Liability with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate;

18 2. Automobile Liability Insurance to include owned, hired and non-owned autos with a
19 combined single limit of \$1,000,000 each accident;

20 3. Workers' Compensation with limits as required by the State of California including a
21 waiver of subrogation in favor of AUTHORITY, its officers, directors, employees and agents;

22 4. Employers' Liability with minimum limits of \$1,000,000; and

23 5. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar
24 days from effective date of this Agreement with the AUTHORITY.

25 6. CITY shall have AUTHORITY named as an additional insured on the insurance policy.

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COOPERATIVE AGREEMENT NO. C-2-1988

1 E. CITY shall be responsible for handling and processing any and all liability claims,
2 including but not limited to any claims arising in, on or about the parking facilities, or other Non-
3 Operating Property located at or near the Commuter Rail Station.

4 F. AUTHORITY insurance: AUTHORITY, as a member of SCRRRA, shall maintain
5 insurance or self-insurance for the Right-of-Way Operating Property and the Ticket Vending Machines
6 and Communication Shelter.

7 **ARTICLE 9. ADDITIONAL PROVISIONS**

8 The AUTHORITY and CITY agree to the following mutual responsibilities for the STATION:

9 A. Term of Agreement: This Agreement shall commence upon execution by both
10 PARTIES and continue in full force and effect through May 31, 2033 unless terminated by either
11 PARTY.

12 B. Termination: This Agreement may be terminated by either PARTY after giving thirty (30)
13 days written notice.

14 C. Amendments: This Agreement may be amended in writing at any time by the mutual
15 consent of both PARTIES. No amendment shall have any force or effect unless executed in writing by
16 both PARTIES.

17 D. Legal Authority: AUTHORITY and CITY hereto consent that they are authorized to
18 execute this Agreement on behalf of said PARTIES and that, by so executing this agreement,
19 the PARTIES hereto are formally bound to the provisions of this Agreement.

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

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

COOPERATIVE AGREEMENT NO. C-2-1988

1 G. Force Majeure: Either PARTY shall be excused from performing its obligations under
2 this Agreement during the time and to the extent that it is prevented from performing by an
3 unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts of
4 God; commandeering of material, products, plants or facilities by the federal, state or local government;
5 national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of
6 such cause is presented to the other PARTY, and provided further that such nonperformance is
7 unforeseeable, beyond the control and is not due to the fault or negligence of the PARTY not
8 performing.

9 H. Assignment: Except as otherwise provided for in Article 5, neither this Agreement, nor
10 any of the PARTIES' rights, obligations, duties, or authority hereunder may be assigned in whole or in
11 part by either PARTY without the prior written consent of the other PARTY in its sole and absolute
12 discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent
13 to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any
14 right to consent to such subsequent assignment.

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

18 J. Governing Law: The laws of the State of California and applicable local and federal
19 laws, regulations and guidelines shall govern this Agreement.

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

23 L. Successors and Assigns: The provision of this Agreement shall bind and inure to the
24 benefit of each of the PARTIES hereto and all successors or assigns of the PARTIES hereto.

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COOPERATIVE AGREEMENT NO. C-2-1988

M. Compliance: AUTHORITY and CITY shall comply with all applicable federal, state, and local laws, statues, ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.

N. Notices: All notices hereunder and communications regarding this Agreement, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered, or certified mail and addressed as follows:

To CITY:		To AUTHORITY:	
City of San Clemente		Orange County Transportation Authority	
910 Calle Negocio, Suite 100		550 South Main Street	
San Clemente, CA 92673		P.O. Box 14184	
		Orange, CA 92863-1584	
ATTENTION:	Tom Bonigut	ATTENTION:	Reem Hashem
	Assistant City Engineer		Principal Contract Administrator
Tel: (949) 361-6187		Tel: (714) 560-5446	
Email: bonigutt@san-clemente.org		Email: rhashem@octa.net	

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

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COOPERATIVE AGREEMENT NO. C-2-1988

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-2-1988 to be executed on the date first above written.

CITY OF SAN CLEMENTE

ORANGE COUNTY TRANSPORTATION AUTHORITY

By Robert Baker

By Meena Katakia

Robert Baker
Mayor

Meena Katakia
Manager Capital Projects

Attest:

Ajit S. Thind
San Clemente City Clerk
APPROVED AS TO FORM:

APPROVED AS TO FORM:

By Ajit S. Thind
Jeffrey Goldfarb
City Attorney

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

Attachment

EXHIBIT A San Clemente Pier Train Station Right-of-Way

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