



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 17, 2014

Agenda Item 6-K

Approvals:

City Manager AS
Dept. Head WEL
Attorney JD
Finance SV

Department: Public Works / Engineering
Prepared By: Tom Bonigut, Assistant City Engineer TB

Subject: **APPROVE AMENDMENT NO. 1 TO AGREEMENT NO. C-3-1528 BETWEEN THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) AND CITY OF SAN CLEMENTE FOR BEACH TRAIL CROSSING SAFETY ENHANCEMENTS AND AUDIBLE WARNING SYSTEM, AND APPROVE SUBMITTAL OF A REQUEST TO THE FEDERAL RAILROAD ADMINISTRATION (FRA) FOR A WAIVER OF THE TRAIN HORN RULE.**

Fiscal Impact: Yes. Approval of the agreement amendment will reduce the City's cost share of the trail crossing safety enhancements by about \$224,000. There is no cost to the City associated with submittal of the waiver request.

Summary: Staff recommends City Council approval of an amendment to the City-OCTA agreement for construction of Beach Trail safety improvements which will significantly reduce the City's share of the project costs. Staff also recommends City Council approval to submit a request to the FRA to waive certain requirements of the "Train Horn Rule" to quiet train horns through San Clemente as further discussed below.

Discussion: On April 16, 2013 the City Council approved Cooperative Agreement No. C-3-1528 with OCTA to construct safety improvements and an Audible Warning System (AWS) at seven crossings along the Beach Trail. The original estimated total project cost was \$4.2 million and the City's share was \$504,000. OCTA has completed the project although there was about \$249,000 in additional construction costs. Also, during construction OCTA and the City incurred legal expenses to address challenges regarding jurisdictional decision authority between the California Public Utilities Commission (CPUC) and the FRA associated with approval of an AWS. However, OCTA has agreed to reduce the City's total project cost-sharing obligation by the amount the City expended on legal expenses to support the CPUC hearings. The attached Amendment No. 1 updates the original agreement to reflect the City's revised cost-sharing obligation of about \$280,000, which results in a net reduction of about \$224,000.

The AWS was an alternate approach to a Quiet Zone for train horns because the seven crossing south of the North Beach pedestrian crossing don't meet the criteria for a Federal Quiet Zone. However, the State Court of Appeals ruled in late 2013 that the CPUC did not have jurisdiction to approve an AWS. The CPUC petitioned the Appeals Court for a re-hearing which was not granted, and the State Supreme Court declined to review the CPUC's petition of the Appellate Court decision. Given this outcome and the improved safety resulting from extensive improvements to the Beach Trail railroad crossings, City and OCTA staff believe that the FRA may be receptive to

considering exceptions to establish a Quiet Zone or similar result to quiet train horns through the City. The FRA has a process for such consideration, which involves submitting a written request to waive certain requirements associated with the Train Horn Rule. OCTA is preparing this request which must be submitted by the City as the local agency. Accordingly, staff recommends City Council approval to submit the waiver request to pursue relief from train horn sounding via FRA's administrative process.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:

1. Approve Amendment No 1. to Agreement No. C-3-1528 between the Orange County Transportation Authority (OCTA) and City of San Clemente for Beach Trail Crossing Safety Enhancements and Audible Warning System; and
2. Approve and authorize the City Manager to submit an application to the Federal Railroad Administration requesting a waiver of the Train Horn Rule.

Attachment: Amendment No. 1 to Agreement No. C-3-1528.

Notification: John Dorey, Kirk Steele, Marv Tiano, Heather Goulet, and Stephen McVeigh.

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**AMENDMENT NO. 1 TO
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**

AMENDMENT NO. 1 is made effective on the ____ day of _____, 2014, 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 92672 (herein after referred to as "CITY"). AUTHORITY and CITY are hereinafter collectively referred to as "PARTIES" or individually referred to as "PARTY".

RECITALS:

WHEREAS, by Cooperative Agreement C-3-1528 dated August 16, 2013, AUTHORITY and City of San Clemente entered into a Cooperative Agreement for the implementation of an audible warning system at seven (7) pedestrian crossings, referred to as "San Clemente Beach Trail Crossing Safety Enhancement" project; and

WHEREAS, the AUTHORITY and CITY have agreed to amend the project cost estimates, to include the additional expenses related to project construction and the California Public Utilities Commission (CPUC) approval process; and

WHEREAS, AUTHORITY has agreed to reimburse the CITY for actual legal expenses incurred as a result of the CITY's application to the California Public Utilities Commission (CPUC) for

**AMENDMENT NO. 1 TO
COOPERATIVE AGREEMENT NO. C-3-1528**

1 implementation of the project; and

2 **WHEREAS**, CITY and AUTHORITY have agreed to revise the local matching funds estimates
3 to reflect the aforementioned increases to project cost estimates; and

4 **WHEREAS**, the AUTHORITY's Board of Directors approved this Amendment on May 12, 2014;

5 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY that
6 Cooperative Agreement No. C-3-1528 is hereby amended in the following particulars only:

7 1. Amend **ARTICLE 3. RESPONSIBILITIES OF THE AUTHORITY**, Page 4 of 12, lines 23 and
8 24, paragraph B, to delete "Four Million, Two Hundred Thousand Dollars (\$4,200,000.00)" and in lieu
9 thereof, insert "Four Million, Eight Hundred and One Thousand, and Nine Hundred Thirty-Three Dollars
10 (\$4,801,933.00)".

11 2. Amend **ARTICLE 4. RESPONSIBILITIES OF THE CITY**, Page 7 of 12, lines 2 through 6,
12 paragraph K, to delete the paragraph in its entirety and in lieu thereof insert the following;

13 "K. The PROJECT estimated expenditure schedule for the CITY's local matching funds and
14 any adjustments thereto, shall be in accordance with Exhibit B, entitled "Schedule I – Project Cost and
15 Cost Sharing Allocation Summary", which is attached to and by this reference, incorporated into and
16 made part of this agreement.

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**AMENDMENT NO. 1 TO
COOPERATIVE AGREEMENT NO. C-3-1528**

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

2 The balance of the Agreement remains unchanged.

3 **IN WITNESS WHEREOF**, the PARTIES hereto have caused this Amendment No. 1 to
4 Agreement No. C-3-1528 to be executed on the date first above written.

5 **CITY OF SAN CLEMENTE**

ORANGE COUNTY TRANSPORTATION

AUTHORITY

7 By: _____
8 Tim Brown
9 Mayor

By: _____
Darrell Johnson
Chief Executive Officer

10 By: _____
11 Joanne Baade
12 City Clerk

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

13 **APPROVED:**

APPROVAL RECOMMENDED:

14 By: _____
15 City Attorney

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

16 Dated: _____
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San Clemente Beach Trail Crossings Safety Enhancements and Audible Warning System Project

SCHEDULE I - PROJECT COST AND COST SHARING ALLOCATION SUMMARY

Cooperative Agreement No. C-3-1528	Project Scope	Project Scope Changes	Project Cost Adjustments	Project Cost	Orange County Transportation Authority Share (originally 88%)	City of San Clemente Local Matching Fund Share (originally 12%)
	Initial Project Cost			\$4,200,000	\$3,696,000	\$504,000
Amendment No. 1	Scope Changes	1 Construction Cost Increase	\$249,000		\$219,120	\$29,880
		2 OCTA Consultant Expenses to support California Public Utilities (CPUC) Hearings	\$57,000		\$50,160	\$6,840
		3 City of San Clemente legal expenses to support California Public Utilities (CPUC) Hearings	\$295,933		\$260,421	\$35,512
		Total Additional Costs	\$601,933	\$601,933		
	Project Cost and Matching Fund Allocation (with items 1,2,3 only) - revised Subtotal			\$4,801,933	\$4,225,701	\$576,232
	Revise Local Matching Fund Share	4 Amend Cooperative Agreement to reduce City's matching fund obligation, in the amount of \$295,933 (Reference item 3 above). Increase Authority's share by same amount as approved by Orange County Transportation Authority Board of Directors on May 12, 2014.			\$295,933	(\$295,933)
	Project Cost and Matching Fund Allocation (after item 4 only) - revised Total			\$4,801,933	\$4,521,634	\$280,299

