

# REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:  
APRIL 18, 2017

CLERK OF COUNCIL USE ONLY:

TITLE:

APPROVE AMENDED AND RESTATED  
SARTC STATION COOPERATIVE  
AGREEMENT WITH THE ORANGE  
COUNTY TRANSPORTATION AUTHORITY  
(NON-GENERAL FUND)  
{STRATEGIC PLAN NOS. 3, 2C, 4B; 6, 1G}

APPROVED

- As Recommended
- As Amended
- Ordinance on 1<sup>st</sup> Reading
- Ordinance on 2<sup>nd</sup> Reading
- Implementing Resolution
- Set Public Hearing For \_\_\_\_\_

CONTINUED TO \_\_\_\_\_

FILE NUMBER \_\_\_\_\_

  
CITY MANAGER

## RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute an amendment to the SARTC Station Cooperative Agreement with the Orange County Transportation Authority to incorporate provisions for the OC Streetcar, subject to nonsubstantive changes approved by the City Manager and City Attorney.

## DISCUSSION

On October 17, 1994, the City of Santa Ana and the Orange County Transportation Authority (OCTA) entered into an agreement (Station Agreement) related to the design, construction, maintenance, and security for improvements to the existing Commuter/Intercity Rail Station located in Santa Ana, known as the Santa Ana Regional Transportation Center (SARTC). Since the cooperative agreement was executed, additional improvements have been made to the SARTC commuter/intercity rail station, including but not limited to a parking structure, pedestrian bridge, and an additional station platform.

With the identification of SARTC as the terminus station of the OC Streetcar project (Project), which provides an important connection between the Metrolink and Amtrak services and the cities of Santa Ana and Garden Grove, a series of improvements are required to accommodate the Project. These improvements include tracks, a station platform, ticket vending machines, lighting, and the overhead contact system. The improvements will also include a traction power substation at SARTC that was originally proposed at West Garfield Street and Santa Ana Boulevard.

Given the above modifications that have occurred since the agreement execution, an amended and restated Agreement is appropriate to:

- Restate the provisions for the maintenance and security of the SARTC Commuter/Intercity Rail Station as it relates to service including the improvements made since the execution of the original agreement;
- Set forth additional provisions for the use of SARTC for the design, construction, operations, and maintenance (O&M) of the Project.

Amending and restating the Agreement addresses all O&M responsibilities for the SARTC commuter/intercity rail station and the Project's elements at SARTC.

Consensus has been reached between OCTA and the City on the specific terms and conditions of the amended and restated Agreement, and the following provides a summary of the key provisions:

- OCTA is responsible for the O&M of specific commuter rail/intercity rail facilities including, but not limited to, the tracks, signage, ticket vending machines, and other facilities.
- OCTA is responsible for the O&M of all the Project's facilities, including tracks, a station platform, an overhead contact system, bumping posts, a traction power substation, and other streetcar supporting infrastructure within proposed easement areas yet to be negotiated.
- The City is responsible for the O&M of all other facilities at SARTC, not specifically defined as an OCTA responsibility.
- The City and all third parties must secure a permit from OCTA when working within controlled work access limits around the streetcar facilities, generally 10 feet from the overhead contact system (poles, span wires, and contact wire) and within 4 feet of any rail.
- The City and all third parties must secure a permit from the Southern California Regional Rail Authority when working within the OCTA Right-of-Way (ROW).

Staff will return to the Council for approval of any additional required agreements with the OCTA, including an operations and maintenance agreement.

### **STRATEGIC PLAN ALIGNMENT**

Approval of this item supports the City's efforts to meet the following Strategic Plan Goals:

1. Goal #3 - Economic Development, Objective #2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies), Strategy C (support business development and job growth along transit corridors through the completion of critical transit plans/projects including: The Fixed Guideway Project, Santa Ana Regional Transportation Center Master Plan, Complete Streets and General Plan Circulation Element update).

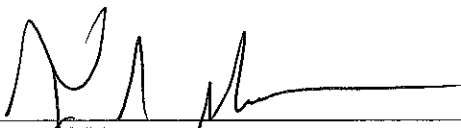
2. Goal #3 - Economic Development, Objective #4 (continue to pursue objectives that shape downtown Santa Ana into a thriving, culturally diverse, shopping, dining, and entertainment destination), Strategy B (create a comprehensive program to manage parking that includes innovative strategies to provide parking, create revenue and enhance accessibility in the downtown).
3. Goal #6 - Community Facilities & Infrastructure, Objective #1 (establish and maintain a Community Investment Plan for all City assets), Strategy G (develop and implement the City's Capital Improvement Program in coordination with the Community Investment and Deferred Maintenance Plans; e.g., transit vision, street car, fixed guideway project, SARTC master plan, Bristol Street widening, neighborhood streets, traffic improvements, park facilities, sport fields, soccer fields, senior centers, bike master plan, etc.).

**ENVIRONMENTAL IMPACT**

There is no environmental impact associated with this action.

**FISCAL IMPACT**

There is no fiscal impact associated with this action.



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Fred Mousavipour  
Executive Director  
Public Works Agency

FM/EWG/JG

Exhibit: 1. Amended & Restated SARTC Station Cooperative Agreement



1                   **AMENDED AND RESTATED COOPERATIVE AGREEMENT No. C-94-859**

2                                   **BETWEEN**

3                                   **THE ORANGE COUNTY TRANSPORTATION AUTHORITY**

4                                   **AND**

5                                   **THE CITY OF SANTA ANA**

6                                   **FOR**

7                   **THE SANTA ANA REGIONAL TRANSPORTATION CENTER AND THE OC STREETCAR**

8

9                   **THIS AMENDED AND RESTATED AGREEMENT** (hereinafter the "Agreement") is  
10 made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Orange  
11 County Transportation Authority, a public entity, 550 South Main Street, P.O. Box 14184,  
12 Orange, California, 92613-1584 (hereinafter referred to as "AUTHORITY") and the City of Santa  
13 Ana, 20 Civic Center Plaza, P.O. Box 1988, Santa Ana, California, 92702, a charter city and  
14 municipal corporation organized and existing under the Constitution and laws of the State of  
15 California (hereinafter referred to as the "CITY"). AUTHORITY and CITY may be mutually  
16 referred to as "Parties", or individually as "Party".

17                                   **RECITALS**

18                   **WHEREAS**, the Parties entered into Cooperative Agreement No. C-94-859 dated  
19 October 17, 1994 (1994 Agreement) which set forth the Parties' agreement relating to the  
20 design, construction, maintenance, and security for improvements to the existing  
21 Commuter/Intercity Rail Station (SARTC) located in Santa Ana; and

22                   **WHEREAS**, the Parties desire to amend and restate the 1994 Agreement with this  
23 Agreement and that upon the effective date of this Agreement, the 1994 Agreement will be  
24 replaced in its entirety with this Agreement; and

25                   **WHEREAS**, the Parties agree to hereby adopt the roles, responsibilities and  
26 understandings previously established by Agreement No. A-2004-136, entitled "Agreement  
27 Between the City of Santa Ana and the Southern California Regional Rail Authority for

1 Construction and Maintenance of Station Platform and Pedestrian Bridge”, dated July 6, 2004;  
2 and

3 **WHEREAS**, the Santa Ana/Garden Grove Streetcar Locally Preferred Alternative was  
4 identified by the CITY’s City Council at its public meeting on August 5, 2014; and

5 **WHEREAS**, the Parties entered into a Memorandum of Understanding C-5-3295 dated  
6 August 31, 2015 for the design, construction, operations, and maintenance of the “OC Streetcar  
7 System” (MOU); and

8 **WHEREAS**, the CITY will be granting AUTHORITY easements at SARTC which will  
9 permit AUTHORITY to use a portion of SARTC for the construction, operation and maintenance  
10 of the OC Streetcar System; and

11 **WHEREAS**, the Parties have entered into or will be entering into various cooperative  
12 agreements for the design, construction, use of CITY right of way, and operation and  
13 maintenance of the OC Streetcar System; and

14 **WHEREAS**, the AUTHORITY’s Board of Directors authorized its Chief Executive Officer  
15 to execute this Agreement on \_\_\_\_ day of \_\_\_\_\_, 2017; and

16 **WHEREAS**, the CITY’s City Council approved this Agreement on \_\_\_\_ day of  
17 \_\_\_\_\_, 2017.

18 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY AND CITY  
19 as follows:

20 **ARTICLE 1. DEFINITIONS**

21 As used in this Agreement, the following terms, phrases, words and their derivations,  
22 shall have meanings set forth herein. Words used in the present tense include the future tense.  
23 Words used in the singular shall include the plural, and the plural words shall include the  
24 singular. Words not specifically defined shall be given their common and ordinary meaning.

25 a. “Communication Shelter” refers to the communication shelter owned and  
26 operated by OCTA/SCRRA Identified as Operating Property within Exhibit A, attached hereto  
27 and incorporated herein by this reference.

1           b.     "Commuter/Intercity Rail Station" refers to the commuter/intercity rail passenger  
2 terminal which includes Operating Property, Non-Operating Property, and the OC Streetcar  
3 System and is as depicted in Exhibit B, attached hereto and incorporated herein by this  
4 reference.

5           c.     "Non-Operating Property" refers to all property not listed as Operating Property or  
6 OC Streetcar System Property including but not limited to the items listed in Exhibit C, attached  
7 hereto and incorporated herein by this reference.

8           d.     "OC Streetcar System" refers to the OC Streetcar passenger transportation  
9 system to be owned, operated, and maintained by the AUTHORITY including all streetcar  
10 tracks, stations, streetcar vehicles, conduits, electric lines, traction power poles, traction power  
11 substations, cross-span wires, streetcar signal equipment, and other functionally related and  
12 appurtenant equipment and facilities. The OC Streetcar System elements are contained within  
13 the OC Streetcar System Property.

14          e.     "OC Streetcar System Property" shall refer to the property described in Exhibit  
15 "F", which property will be located upon an exclusive easement that CITY will provide  
16 AUTHORITY in connection with AUTHORITY's construction, operation and maintenance of the  
17 OC Streetcar System, which easement area is generally depicted as OC Streetcar System  
18 Property in Exhibit B, Commuter/Intercity Rail Station.

19          f.     "OCTA/SCRRA" refers to the provision of certain elements contained in this  
20 Agreement through the AUTHORITY's relationship with the Southern California Regional Rail  
21 Authority (SCRRA), a joint powers agency of which AUTHORITY is a member.

22          g.     "OCTA/SCRRA Right of Way" means the railroad right of way owned by the  
23 AUTHORITY for operating commuter rail service where the Commuter/Intercity Rail Station  
24 provides the public access to such commuter service.

25          h.     "Operating Property" refers to that property essential to OCTA/SCRRA railroad  
26 operations, including but not limited to the items listed in Exhibit A.

27          i.     "Platform Fixtures" refers to the fixtures attached to the Standard Platform,

1 including but not limited to lighting fixtures, trash cans, benches, bench shelters, and signs  
2 which are categorized as Non-Operating Property.

3 j. "Standard Platform" refers to the station platform(s) at the Commuter/Intercity  
4 Rail Station supporting the commuter/intercity rail service in the OCTA/SCRRA Right of Way.  
5 The Standard Platforms are categorized as Non-Operating Property.

6 k. "Ticket Vending Machines" are the ticket vending machines owned and operated  
7 by OCTA/SCRRA located at the Commuter/Intercity Rail Station and include any ticket vending  
8 machine support facilities. Ticket Vending Machines and ticket vending support facilities are  
9 categorized as Operating Property.

## 10 **ARTICLE 2. PURPOSE OF COOPERATIVE AGREEMENT**

11 The purpose of this Agreement is (1) to set forth provisions for the maintenance and  
12 security for the Commuter/Intercity Rail Station as it relates to the provision of  
13 commuter/intercity rail service; and (2) to set forth provisions for the AUTHORITY's use of  
14 SARTC for the design, construction, operations, and maintenance of the OC Streetcar System;  
15 and (3) to reflect improvements that have been made to SARTC since the 1994 Agreement and  
16 the Parties relative obligations relating thereto.

## 17 **ARTICLE 3. RESPONSIBILITIES OF THE CITY**

18 3.01 Commuter/Intercity Rail Station Construction. The City shall be the lead agency for the  
19 construction of future Commuter/Intercity Rail Station improvements with the exception of  
20 improvements within the OC Streetcar System Property. Any future construction affecting  
21 Operating Property shall be coordinated with the AUTHORITY prior to construction.

22 3.02 Planning, Zoning, and Permits. The CITY shall obtain and comply with any and all  
23 approvals, permits, licenses and authorizations required by applicable law to enable it to fulfill its  
24 responsibilities as set forth in this Section 3 and shall comply with all federal, state and local  
25 laws, regulations, rules and ordinances. Moreover, the CITY agrees to act as the lead agency  
26 on all planning, zoning and permit activities as required by California law, unless specified to the  
27 contrary in paragraph 3.04 OCTA/SCRRA Right of Entry. The CITY will apply for and secure, at



1 the sole expense of the CITY, all permits required for the operation of the Commuter/Intercity  
2 Rail Station.

3 3.03 Maintenance and Repair. The CITY agrees, at no cost to the AUTHORITY, to maintain  
4 and repair the Non-Operating Property that is described in Exhibit C as well as that portion of  
5 OC Streetcar System Property that is described in Exhibit C, in good condition and order, and  
6 free from refuse, for the benefit of the public and the persons using the Commuter/Intercity Rail  
7 Station for so long as the AUTHORITY shall serve commuter/intercity rail passengers at the  
8 Commuter/Intercity Rail Station pursuant to this Agreement.

9 3.04 OCTA/SCRRA Right of Way Right of Entry. CITY shall, and shall require its contractors,  
10 to notify and receive prior permission from the SCRRA in advance of any work to be performed  
11 on the SCRRA/OCTA Right of Way. Additionally, the CITY and its contractors shall comply with  
12 all SCRRA safety requirements and obtain appropriate SCRRA Right of Entry documents.

13 3.05 OC Streetcar System Property Right of Entry. All work activities, either those of the  
14 CITY or third parties, within the controlled work access zone limits depicted and described in  
15 Exhibit D, Streetcar Controlled Work Access, require a permit issued by the AUTHORITY prior  
16 to work commencing. The CITY shall not issue any permits to any third parties to work in the  
17 Streetcar Controlled Work Access area, within the controlled work access zone without prior  
18 evidence of a current AUTHORITY access permit.

19 3.06 Insurance. The CITY shall, during the term of this Agreement, maintain adequate liability  
20 insurance and in no event less than two million dollars (\$2,000,000) per occurrence and in the  
21 aggregate, for claims relating to bodily injury, death, property damage and all automotive  
22 operations, which arise out of CITY's obligations under this Agreement. Such insurance may be  
23 in the form of a policy of commercial insurance, self-insurance, joint powers insurance authority  
24 or combination thereof. The AUTHORITY, its officers, agents and employees shall be named as  
25 an additional insureds on the CITY's policies. The requirement for insurance shall not limit or  
26 otherwise modify the CITY's defense and indemnity obligations as set forth in Section 3.07  
27 hereof.

1 3.07 Indemnity. Neither the AUTHORITY nor the SCRRA nor any officers, employees or  
2 agents thereof shall be responsible for any damage or liability occurring by reason of anything  
3 done or omitted to be done by the CITY in connection with the CITY's responsibilities under this  
4 Agreement. The CITY shall be responsible for handling and processing any and all claims  
5 relating to the CITY's responsibilities under this Agreement. It is also understood and agreed  
6 that, pursuant to Government Code Section 895.4, the CITY shall fully indemnify, defend and  
7 hold the AUTHORITY and/or SCRRA harmless from any liability imposed for injury (as defined  
8 by Government Code Section 810.8), occurring by reason of anything done or omitted to be  
9 done by the CITY in connection with the CITY's responsibilities under this Agreement.

10 3.08 Station Security. The CITY shall arrange for and fund the provision of security for the  
11 Non-Operating Property. CITY standards shall be used to determine the level of security to be  
12 provided for the Non-Operating Property.

13 3.09 Commuter/Intercity Rail Parking. The CITY will perform all the appropriate planning,  
14 zoning, and permit activities necessary to ensure sufficient station parking is reserved for rail  
15 commuters. The CITY shall make good faith efforts to provide a minimum of three hundred  
16 (300) spaces for commuter rail parking at SARTC. Should OCTA establish through a parking  
17 study that passenger rail parking utilization has reached 85% capacity for a period of six (6)  
18 months, the CITY shall make good faith efforts to provide a minimum number of spaces for  
19 commuter rail parking as determined in the study up to a maximum of five hundred (500)  
20 spaces. In the event that an increase in parking is required, OCTA shall provide all parking  
21 control equipment necessary to control access.

22 3.10 Sublease. The CITY may sublease or grant privileges or concessions at SARTC;  
23 excepting therefrom the Standard Platform and the OC Streetcar System Property. The CITY  
24 may sublease or grant privileges or concessions on the Standard Platform or the OC Streetcar  
25 System Property as mutually agreed, in writing, between the AUTHORITY and the CITY.

26 3.11 Grant of Easement. The CITY shall, at no cost, grant to AUTHORITY an exclusive  
27 easement(s) for use of the OC Streetcar System Property for those purposes set forth in this

1 Agreement in the area generally depicted as OC Streetcar System Property in Exhibit B,  
2 Commuter Rail/Intercity Rail Station. The precise terms and conditions of the easement(s) shall  
3 be as agreed upon by the Parties and set forth therein. Upon recordation of the easement(s), it  
4 shall be attached to this Agreement and be incorporated herein as Exhibit E, entitled "OC  
5 Streetcar System Property Easements". To the extent that any terms and conditions of the  
6 easement(s) are inconsistent with this Agreement, then the easement(s) shall control.

7 3.12 Assignment to Another Party. The Parties hereby acknowledge and agree that at some  
8 future date, the CITY may, at its option, assign its rights, interest, duties, and obligations under  
9 this Agreement to another Party as it relates to the Commuter/Intercity Rail Station, provided  
10 that no such assignment shall be effective unless the CITY provides thirty (30) days prior written  
11 notice to AUTHORITY. With respect to any such assignment of the CITY's obligations relating  
12 to the OC Streetcar System Property, such assignment shall be subject to the assignment  
13 provisions in Article 14, entitled, "Assignment", of Cooperative Agreement No. C-6-1433 Use of  
14 the City Right of Way by and between the Parties (ROW Agreement), and any amendments  
15 thereto, which Article 14 is incorporated herein by reference.

#### 16 **ARTICLE 4. RESPONSIBILITIES OF AUTHORITY**

17 4.01 Platform Lease. The AUTHORITY shall lease the Standard Platform to the CITY for one  
18 dollar (\$1.00) per year. This Agreement constitutes the lease agreement between the  
19 AUTHORITY and the CITY.

20 4.02 Insurance. The OCTA/SCRRA shall, during the term of this Agreement, maintain  
21 adequate liability insurance and in no event less than two million dollars (\$2,000,000) per  
22 occurrence and in the aggregate, for claims relating to bodily injury, death, property damage  
23 and all automotive operations, which arise out of OCTA/SCRRA's obligations under this  
24 Agreement. Such insurance may be in the form of a policy of commercial insurance, self-  
25 insurance, joint powers insurance authority or combination thereof. The CITY, its officers,  
26 employees and agents shall be named as an additional insured on the OCTA/SCRRA and  
27 AUTHORITY policies. The requirement for insurance shall not limit or otherwise modify OCTA's

1 defense and indemnity obligations as set forth in Section 4.03 hereof.

2 4.03 Indemnity. Neither the CITY nor any officers, employees or agents thereof shall be  
3 responsible for any damage or liability occurring by reasons of anything done or omitted to be  
4 done by the AUTHORITY or the SCRRA in connection with the OCTA/SCRRA's responsibilities  
5 for the Commuter/Intercity Rail Station or AUTHORITY's responsibilities for the OC Streetcar  
6 System Property under this Agreement. It is also understood and agreed that, pursuant to  
7 Government Code Section 895.4, the AUTHORITY shall fully indemnify, defend and hold the  
8 CITY harmless from any liability imposed for injury (as defined by Government Code Section  
9 810.8), occurring by reason of anything done or omitted to be done by the AUTHORITY or the  
10 SCRRA in connection with the OCTA/SCRRA's responsibilities for the Commuter Rail/Intercity  
11 Rail Station under this Agreement. This same indemnification, defense and hold harmless  
12 obligation is imposed upon AUTHORITY, but not SCRRA, with respect to anything done or  
13 omitted to be done by AUTHORITY in connection with AUTHORITY's responsibilities for the OC  
14 Streetcar System.

15 4.04 Assignment to Another Party. The Parties to this Agreement hereby acknowledge and  
16 agree that at some future date, the AUTHORITY may, at its option, assign its rights, interest,  
17 duties, and obligations under this Agreement as it relates to the Commuter/Intercity Rail Station  
18 to another Party, provided that no such assignment shall be effective unless the AUTHORITY  
19 has given thirty (30) days prior written notice to CITY. With respect any such assignment of  
20 AUTHORITY's use, operation and maintenance of the OC Streetcar System Property, such  
21 assignment shall be subject to the same assignment provisions set forth in Section 3.12 of this  
22 Agreement.

23 4.05 OCTA/SCRRA Maintenance and Repair The AUTHORITY agrees, at no cost to the  
24 CITY, to maintain and repair the Operating Property (Exhibit A) and the OC Streetcar System  
25 Property (Exhibit F), in good condition and order, and free from refuse, for the benefit of the  
26 public and the persons using the Commuter/Intercity Rail Station for so long as the AUTHORITY  
27 shall serve commuter/intercity rail passengers at the Commuter/Intercity Rail Station pursuant to

1 this Agreement.

2 4.06 OC Streetcar System Design and Construction. The AUTHORITY shall fund and  
3 implement the design and construction of the OC Streetcar System on the OC Streetcar System  
4 Property consistent with the provisions of Cooperative Agreement No. C-5-3583 by and  
5 between the Parties for the design phase of the OC Streetcar Project” and upon execution by  
6 the Parties, Cooperative Agreement C-6-1516, which agreements are, and upon the Parties’  
7 execution thereof, incorporated herein by reference to the extent applicable to the OC Streetcar  
8 System Property.

9 4.07 OC Streetcar System Operations and Maintenance. The AUTHORITY shall be  
10 responsible for operations and maintenance of the OC Streetcar System. The standards for  
11 operations and maintenance shall be as provided for in the MOU and upon execution, the  
12 cooperative operations and maintenance agreement to be entered into by the Parties, which  
13 are, to such extent, incorporated herein by reference.

14 4.08 OC Streetcar System Security. The AUTHORITY shall arrange for and fund the  
15 provision of security for the OC Streetcar System Property . The AUTHORITY’s responsibility  
16 for funding security does not supersede or reduce the CITY’s responsibility for funding operating  
17 costs as identified in the MOU.

18 **ARTICLE 5. NOTICES**

19 Any notices, requests, or demands made between the Parties pursuant to this  
20 Agreement shall be in writing and delivered by certified mail. Phone and e-mail may be used for  
21 convenience but are not considered as official notice. Notice information may be changed by  
22 either Party at any time upon written notification being received by the other Party of the change  
23 in notice information with the information provided below. Notices are to be directed as follows:

<p>24 <b>To CITY:</b> 25 City of Santa Ana 26 Attention: Clerk of the Council 27 20 Civic Center Plaza</p>	<p><b>To AUTHORITY:</b> Orange County Transportation Authority 550 South Main Street P.O. Box 14184</p>
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1 2 3	P.O. Box 1988 Santa Ana, CA 92701	Orange, CA 92863-1584
4 5 6 7 8 9	ATTENTION: SARTC Property Manager 1000 E. Santa Ana Blvd., Suite 108 Santa Ana, CA 92701 Email: glomell@santa-ana.org	ATTENTION: Bridget Carman Contracts Administration and Materials Management Tel: (714) 560-5478 E-Mail: bcarman@octa.net
10 11 12 13 14 15	Cc: Fred Mousavipour Executive Director, Public Works Agency Tel: (714) 647-5654 E-Mail: fmousavipour@santa-ana.org Cc: City Attorney	Cc: James G. Beil Executive Director, Capital Programs Tel: (714) 560-5646 E-Mail: JBeil@octa.net

16 **ARTICLE 6. MISCELLANEOUS**

17 6.01 Consents and Approvals. Any and all consents and approvals provided for or permitted by  
18 this Agreement shall be in writing, and a signed copy thereof shall be filed and kept with the  
19 records of this Agreement.

20 6.02 Entire Agreement. This document, the attachments hereto, and the documents or portions  
21 thereof incorporated herein by reference, contain and constitute the entire understanding and  
22 agreement between the Parties with respect to the subject matter hereof. This AGREEMENT  
23 supplements and does not supersede Contract No. 172225 between the CITY and the  
24 AUTHORITY as successor in interest to the Atchison, Topeka and Santa Fe Railway Company  
25 as it applies to the Commuter/Intercity Rail Station.

26 6.03 Amendments. This Agreement may be amended or modified only by an instrument in  
27 writing, stating the amendment or modification, signed by the Parties hereto.

1 6.04 Severability. If any term, provision, covenant or condition of this Agreement is held to be  
2 invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction,  
3 the remainder of this Agreement shall not be affected thereby, and each term, provision,  
4 covenant or condition of this Agreement shall be valid and enforceable to the fullest extent  
5 permitted by law.

6 6.05 Headings and Subtitles. Headings and subtitles of this Agreement have been used for  
7 convenience only and do not constitute matter to be considered as interpreting this Agreement.

8 6.06 Attorneys Fees. In the event of any dispute hereunder or any proceeding to enforce the  
9 provisions hereof, the prevailing Party in such dispute or proceeding shall be entitled to recover,  
10 among other things, all costs, reasonable attorney's fees and reasonable disbursements,  
11 regardless of whether such dispute or proceedings are handled by attorneys or employees of  
12 such Party or outside counsel. "Prevailing Party in dispute or proceeding" shall be the Party  
13 who obtains substantially all the relief sought by such Party in such action or proceedings,  
14 regardless of whether final court judgment is entered.

15 6.07 No Waiver on Default. No waiver of any right or failure to exercise any remedy with  
16 respect to any matter or event which is the subject of this Agreement shall be or be deemed to  
17 be a waiver of such right or remedy with respect to any other matter or event, or to constitute a  
18 precedent for purposes of interpretation of this Agreement.

19 6.08 Governing Law. This Agreement shall be governed by and shall be construed in  
20 accordance with the laws of the State of California.

21 **ARTICLE 7. TERMINATION OF AGREEMENT**

22 This Agreement shall commence on the date this Agreement is executed by both Parties  
23 and shall constitute the Parties' agreement with respect to the matters addressed herein from  
24 that date forward. The term of the Agreement shall continue until:

25 a. The AUTHORITY or a properly designated assignee of AUTHORITY  
26 discontinues to utilize SARTC to serve commuter/intercity passengers.

27 b. The sale or transfer of title of the Commuter/Intercity Rail Station;

1 c. The assignment by a Party without providing prior written notice to the other  
2 Party of any of the rights, title, or obligations set forth in this Agreement as it relates to the  
3 Commuter/Intercity Rail Station shall give rise to the right of the non-assigning Party to  
4 terminate;

5 d. The involuntary transfer by a Party of any of the rights, title or obligations set  
6 forth in this Agreement as it relates to the Commuter/Intercity Rail Station shall give rise to the  
7 right of the non-transferring Party to terminate;

8 e. Any material default or breach of this Agreement by either Party which has not  
9 been cured within thirty (30) days after notice of such default by the other Party, or such later  
10 time as is reasonable necessary if the default cannot be reasonably cured within such thirty (30)  
11 day period.

12 **ARTICLE 8. TERMINATION OF EASEMENT**

13 The provisions of Article 7 shall not apply to those provisions of this Agreement  
14 governing the Parties' agreement relating to AUTHORITY's use of and easement interests in  
15 the OC Streetcar System Property. Article 6, entitled "Termination" of the ROW Agreement,  
16 shall govern the termination of that portion of this Agreement relating to the OC Streetcar  
17 System Property, which Article 6 is incorporated herein by reference.

18 **ARTICLE 9. ACCEPTANCE**

19 The undersigned, having read the foregoing, accept and agree to the terms set forth  
20 therein.

21 **CITY OF SANTA ANA**

**ORANGE COUNTY TRANSPORTATION  
22 AUTHORITY**

23  
24  
25 By: \_\_\_\_\_

By: \_\_\_\_\_

26 Gerardo Mouet

Darrell Johnson

27 Acting City Manager

Chief Executive Officer



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**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

By: John M. Frank  
Sonia R. Carvalho  
City Attorney

By: \_\_\_\_\_  
James M. Donich  
General Counsel

**APPROVAL RECOMMENDED:**

**APPROVAL RECOMMENDED:**

By: \_\_\_\_\_  
Fred Mousavipour  
Executive Director, Public Works  
Agency

By: \_\_\_\_\_  
James G. Beil  
Executive Director, Capital Programs

Date: \_\_\_\_\_

Date: \_\_\_\_\_

/

EXHIBITS

- Exhibit A – Operating Property
- Exhibit B – Commuter/Intercity Rail Station
- Exhibit C – Non-Operating Property
- Exhibit D – Streetcar Controlled Work Access
- Exhibit E – OC Streetcar System Property Easements
- Exhibit F – OC Streetcar System Property

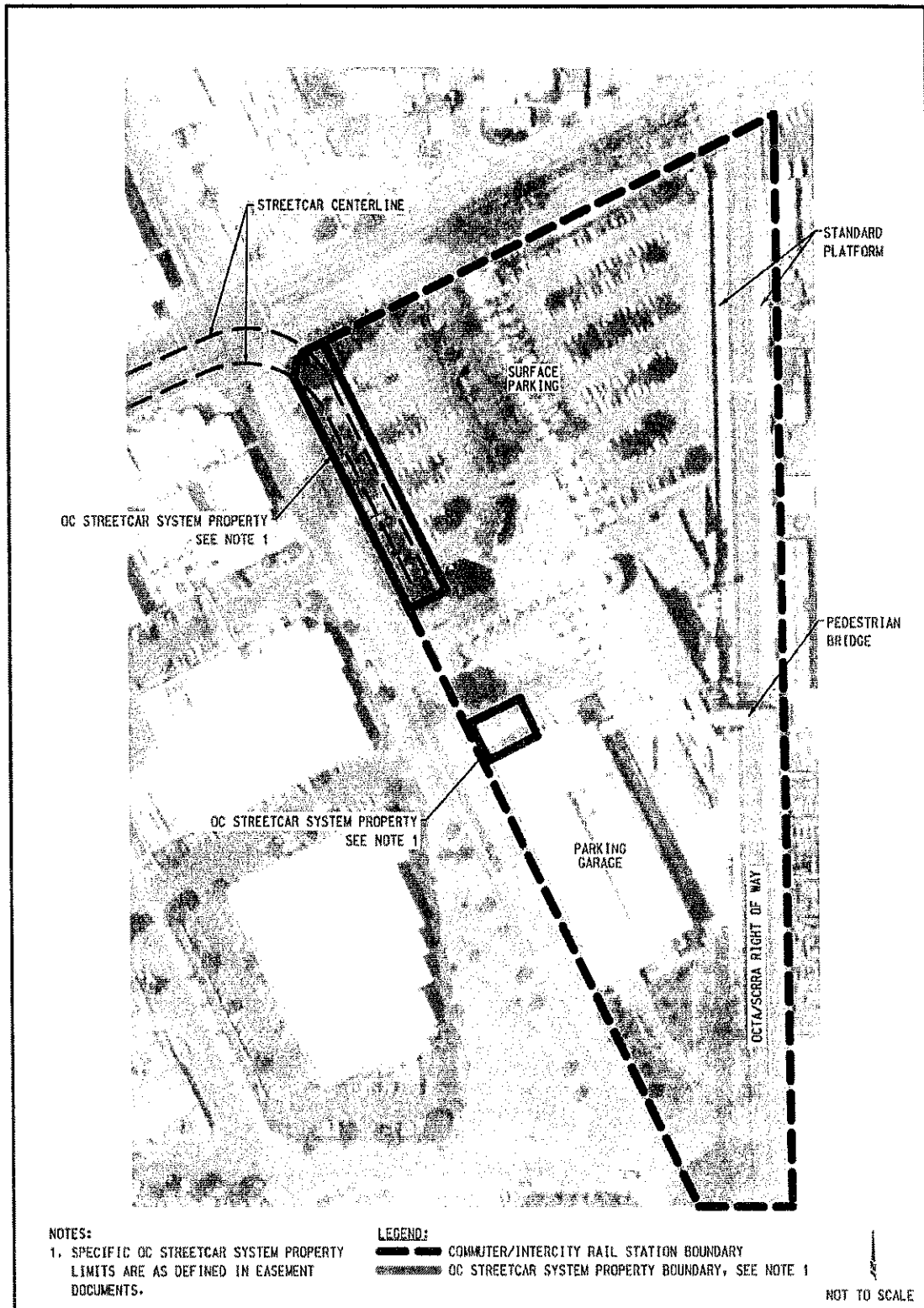
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**OPERATING PROPERTY**

OCTA/SCRRA is responsible for the maintenance of the following facilities:

- OCTA/SCRRA provided electronic information signage
- Communication Shelter
- Customer Information System (Metrolink Public Address and Electronic Changeable Message Signs)
- Operating Property Utility Costs
- Painted Guide Lines
- Painted "Stand Behind This Line" Messages
- Tactile Warning Strips
- Ticket Vending Machines & Support Facilities
- Track (Rails, Ties, and Ballast)
- Inter-Track Fence along OCTA/SCRRA Right of Way

COMMUTER/INTERCITY RAIL STATION



### NON-OPERATING PROPERTY

The CITY is responsible for maintaining all facilities at the Commuter/Intercity Rail Station that do not constitute Operating Property or OC Streetcar System Property including but not limited to:

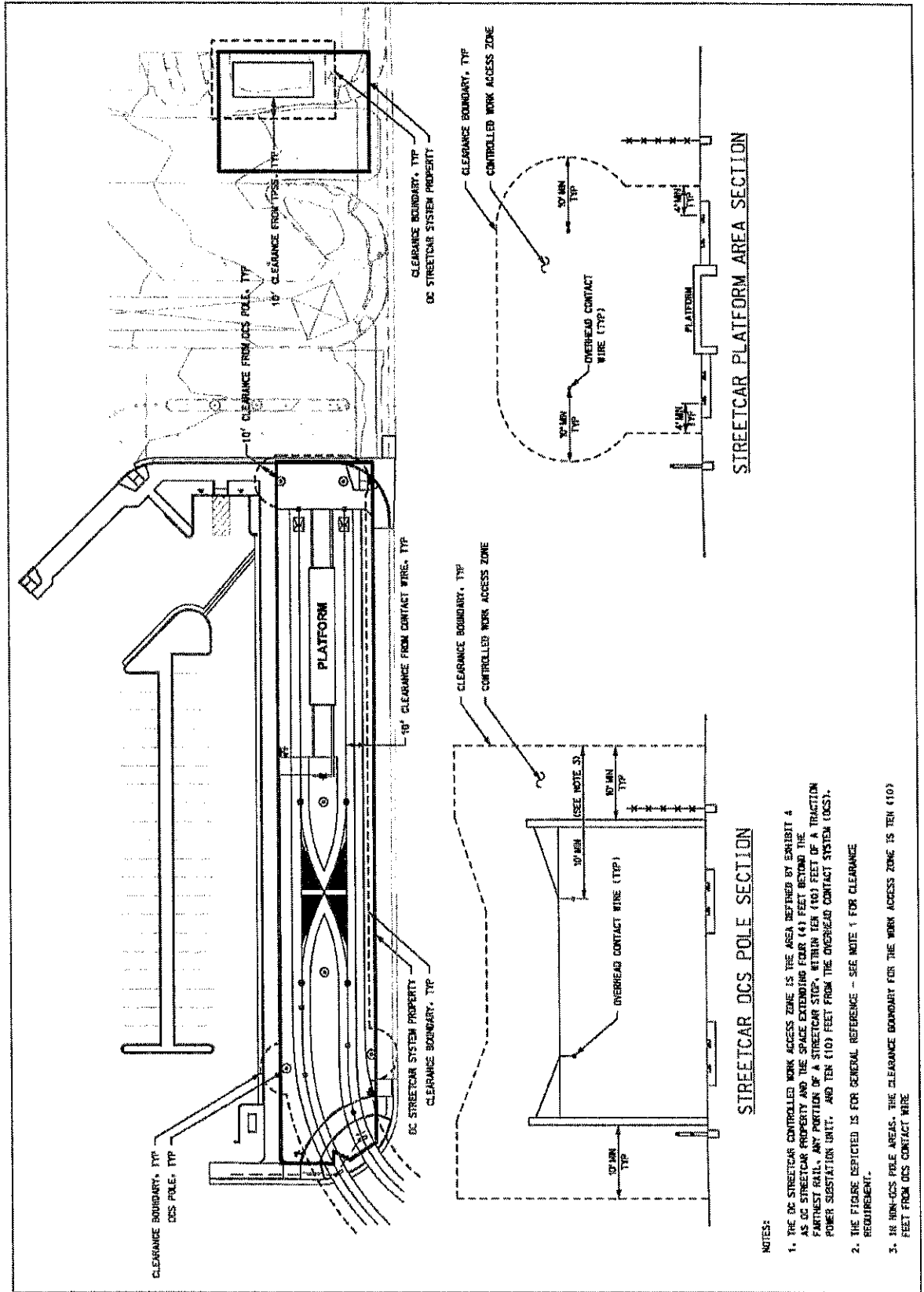
- Benches
- Bench Shelters
- City Public Address System
- Curbs, curb and gutters, and wheel stops
- Driveway pavement north of AUTHORITY's traction power substation within the OC Streetcar System Property
- Electronically Controlled Sliding Gates
- Fencing, excluding fencing on boundary of OC Streetcar System Property
- Landscaping (City Standards shall be used to determine level of maintenance to be provided)
- Lighting Fixtures
- Non-Operating Property Utility Costs
- Parking Garage
- Pavement
- Pedestrian Bridge Overpass including all associated equipment
- Sidewalks
- Signage
- Standard Platforms
- Surface Parking
- Trash Cans

#### *OC Streetcar System Property*

The CITY is responsible for maintaining the following elements within the OC Streetcar System Property:

- Curb and Gutter north of AUTHORITY's traction power substation within OC Streetcar System Property
- Driveway pavement at south end of OC Streetcar platform area
- Sidewalk and curb and gutter at south end of OC Streetcar platform area adjacent to SARTC driveway

STREETCAR CONTROLLED WORK ACCESS



NOTES:

1. THE DC STREETCAR CONTROLLED WORK ACCESS ZONE IS THE AREA DEFINED BY EXHIBIT 4 AS DC STREETCAR PROPERTY AND THE SPACE EXTENDING FOUR (4) FEET BELOW THE FARTHEST RAIL, ANY PORTION OF A STREETCAR STOP, WITHIN TEN (10) FEET OF A TRACTION POWER SUBSTATION UNIT, AND TEN (10) FEET FROM THE OVERHEAD CONTACT SYSTEM (OCS).
2. THE FIGURE DEPICTED IS FOR GENERAL REFERENCE - SEE NOTE 1 FOR CLEARANCE REQUIREMENT.
3. IN NON-OCS POLE AREAS, THE CLEARANCE BOUNDARY FOR THE WORK ACCESS ZONE IS TEN (10) FEET FROM OCS CONTACT WIRE.

OC STREETCAR SYSTEM PROPERTY EASEMENTS

**OC STREETCAR SYSTEM PROPERTY**

All facilities within the OC Streetcar System Property unless designated otherwise in Exhibit C Non-Operating Property including, but not limited to:

***OC Streetcar Platform Area***

- Cobble rock within OC Streetcar System Property at north end of OC Streetcar System Property
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- Conduit Pull Boxes located in pavement or sidewalks within the limits of the OC Streetcar
- Conduits supporting OC Streetcar System
- Contact Wire
- Drainage Inlets
- Landscaping
- Light Fixtures
- OCS Poles and associated support brackets and hardware
- Platform
- Sidewalks
- Signs
- Span Wires
- Streetcar Bumpers
- Streetcar Signal Equipment
- Streetcar Tracks (Rail, concrete, rubber boot, switches, switch boxes)
- Streetcar Vehicles
- Trash Cans
- Benches
- Bench Shelters

***Traction Power Substation Area***

- Ground Grid
- Landscaping within OC Streetcar System Property
- Light Fixtures
- Meters
- Signs
- Pull boxes and associated conduits
- Sidewalk on south side of traction power substation
- Switch Boxes
- Traction power substation

**25H-24**