

# REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

DECEMBER 5, 2017

CLERK OF COUNCIL USE ONLY:

TITLE:

**AMENDMENT TO OC STREETCAR USE  
OF RIGHT OF WAY COOPERATIVE  
AGREEMENT (PROJECT 17-6766)  
(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 \_\_\_\_\_

CITY MANAGER

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

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

## RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute a first amendment to the Use of Right of Way Cooperative Agreement with the Orange County Transportation Authority to facilitate the operation of the OC Streetcar Project in City right of way, subject to nonsubstantive changes approved by the City Manager and City Attorney.

## DISCUSSION

On February 7, 2017, City Council approved a Use of Right of Way Cooperative Agreement with the Orange County Transportation Authority (OCTA) for the OC Streetcar Project. The agreement defines the limits of use and each agency's roles, responsibilities, and commitments as they relate to OCTA's facilities in the public right of way. The Cooperative Agreement was subsequently executed by OCTA on March 13, 2017 (Exhibit 1).

The Federal Transit Administration (FTA), the primary funding agency, expressed concerns about language in the right of way cooperative agreement between the City of Santa Ana and OCTA regarding the disposition of streetcar system property, specifically with the language in Exhibit B, Section 9.0, DUTY TO RESTORE. The concern was that the language gave the City the option to require OCTA to keep in place streetcar improvements at no cost to the City, should OCTA wish to discontinue service, and that this language did not comply with the disposition requirements for federally assisted property.

This first amendment to the Use of Right of Way Cooperative Agreement modifies "Exhibit B, Use of City Right of Way." Section 9.0 of the amended Exhibit B includes new language stipulating that, once the agreement has expired or terminated, the City shall have the option to leave any federally assisted property in place, provided that the City purchase the property in accordance with applicable law and FTA grant requirements. The amendment does not impact the City's right to have OCTA remove OC Streetcar infrastructure and restore the property and the

adjoining streets or other public facilities to a condition consistent with City standard plans, at the sole cost of OCTA.

### **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.

 FOR F.M.

Fred Mousavipour  
Executive Director  
Public Works Agency

FM/EWG/JG/ST

- Exhibits:
1. Use of Right of Way Cooperative Agreement
  2. Use of Right of Way Cooperative Agreement Amendment

Distributed: 3-22-17  
Accounting  
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FPA  
PM  
Vendor  
CA *L. Bilynsky*

COOPERATIVE AGREEMENT NO. C-6-1433

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF SANTA ANA

FOR

USE OF THE CITY RIGHT OF WAY

THIS COOPERATIVE AGREEMENT ("Agreement"), is effective this 17 day of March, 2017, by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange California 92863-1584, a public entity of the State of California (herein referred to as "AUTHORITY") and the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the laws of the State of California (hereinafter referred to as "CITY") each individually known as "Party" and collectively known as the "Parties".

RECITALS:

WHEREAS, the AUTHORITY and the CITY entered into a Memorandum of Understanding ("MOU") on August 31, 2015 for the OC Streetcar Project, which MOU provides, among other things, for the Parties to work in partnership for the implementation of the OC Streetcar Project and the grant from the CITY to the AUTHORITY of a perpetual right to operate the OC Streetcar System within City Right of Way ("ROW");

WHEREAS, the AUTHORITY and the CITY agree that the use of City ROW for the OC Streetcar Project constitutes a use of such right of way for street purposes;

WHEREAS, the AUTHORITY and the CITY entered into a Design Agreement for the design phase of the OC Streetcar Project;

WHEREAS, the AUTHORITY and the CITY intend to enter into a Construction Agreement for the construction phase for the OC Streetcar Project;

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EXHIBIT 1

Page 1 of 14

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1           **WHEREAS**, the AUTHORITY and the CITY intend to enter into an Operations and  
2 Maintenance Agreement for the operations and maintenance phase of the OC Streetcar System;

3           **WHEREAS**, the CITY is the owner of various City ROW where the OC Streetcar System is  
4 proposed;

5           **WHEREAS**, the AUTHORITY, proposes to occupy and use a portion of such City ROW for the  
6 construction of the OC Streetcar Project and the operation, and maintenance of the OC Streetcar  
7 System;

8           **WHEREAS**, this Agreement defines the roles, responsibilities, commitments, obligations, and  
9 expectations for the AUTHORITY and the CITY as they relate to the Authority's Use Rights, including  
10 financial obligations; and

11           **WHEREAS**, the CITY desires by this Agreement to grant such rights and privileges to the  
12 AUTHORITY, and to document the terms and conditions upon which such City ROW may be used by  
13 the AUTHORITY for the construction, operation, and maintenance of the OC Streetcar System.

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

16           **ARTICLE 1. DEFINITIONS**

17           The following definitions shall apply throughout this Agreement, which includes those  
18 attachments hereto that are incorporated by reference.

19           A.       **"Authority Use Rights"** means the rights to use the City ROW, as granted to the  
20 AUTHORITY in this Agreement.

21           B.       **"City ROW"** means the CITY's right of way, including streets and other improvements  
22 thereto, which is owned or controlled by the CITY and to which CITY is granting Authority Use Rights  
23 as generally depicted in Exhibit A.

24           C.       **"Construction Agreement"** means the cooperative agreement that will be put in place  
25 between the AUTHORITY and the CITY which will document the terms and conditions pursuant to  
26 which the OC Streetcar Project will be constructed.

1 D. "Contractor" means any contractor or consultant who executes an agreement with the  
2 AUTHORITY for design and/or construction activities related to the OC Streetcar Project.

3 E. "Design Agreement" means Cooperative Agreement C-5-3583 between Authority and  
4 CITY for the design phase of the OC Streetcar Project, dated May 9, 2016, which sets forth the terms  
5 and conditions to which the OC Streetcar Project will be designed.

6 F. "Effective Date" means the date this Agreement is executed by both Parties.

7 G. "Occupied City ROW" means that portion of City ROW to be physically occupied by OC  
8 Streetcar System improvements in accordance with this Agreement, the Design Agreement, the  
9 Construction Agreement, and Project Submittals.

10 H. "OC Streetcar Project" or "Project" means the planning, design, financing, construction,  
11 and installation of the OC Streetcar System as set forth in the Design Agreement and/or Construction  
12 Agreement. The OC Streetcar Project becomes the OC Streetcar System upon initiation of Revenue  
13 Service.

14 I. "OC Streetcar System" means the OC Streetcar passenger transportation system to  
15 be owned, operated, and maintained by the AUTHORITY including all tracks, stations, streetcar  
16 vehicles, conduits, electrical lines, traction power poles, traction power substations, cross-span wires,  
17 streetcar signal equipment, maintenance facilities, and other functionally related and appurtenant  
18 equipment and facilities.

19 J. "Operations and Maintenance Agreement" means the cooperative agreement to be  
20 entered into between the AUTHORITY and the CITY establishing the roles, responsibilities, and  
21 expectations with respect to the operations and maintenance of the OC Streetcar System.

22 K. "Plans and Specifications" means the Project plans, specifications, and special  
23 provisions prepared by the AUTHORITY providing the information necessary to construct the Project  
24 which relate to the interests of the CITY under the Design Agreement.

25 L. "Project Submittals" means all shop drawings, product data, test data, construction  
26 submittals, construction schedules, fabrication drawings, erection drawings or similar documents

1 which are produced by the AUTHORITY's Contractor during the construction of the Project, which  
2 relate to the interests of the CITY under the Construction Agreement, and which are reviewed by the  
3 CITY according to procedures and standards set forth in the Construction Agreement.

4 M. "Revenue Service" means the point at which the OC Streetcar System is operational  
5 and providing service to the public as intended.

6 **ARTICLE 2. COMPLETE AGREEMENT**

7 A. This Agreement (which includes the above Recitals and those attachments  
8 incorporated herein by reference), the Design Agreement, Construction Agreement, and Operations  
9 and Maintenance Agreement executed or intended to be executed by the Parties that are incorporated  
10 herein by reference, constitute the entire terms and conditions for the subject matter addressed in this  
11 Agreement between the AUTHORITY and the CITY. The invalidity in whole or in part of any term or  
12 condition of this Agreement shall not affect the validity of other terms or conditions of this Agreement.  
13 To the extent there is any conflict as between this Agreement and other agreements entered into by  
14 the Parties that are referenced herein, this Agreement shall control with respect to the subject matter  
15 covered herein.

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

23 C. The CITY's failure to insist on any instances of the AUTHORITY's performance of any  
24 terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of the  
25 CITY's right to such performance or to future performance of such terms or conditions, and the  
26 AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any

1 portion of this Agreement shall not be binding upon the CITY except when specifically confirmed in  
2 writing by an authorized representative of the CITY by way of a written amendment to this Agreement  
3 and issued in accordance with the provisions of this Agreement.

4 **ARTICLE 3. SCOPE OF AGREEMENT**

5 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the  
6 AUTHORITY's use of City ROW. Both the AUTHORITY and the CITY agree that each will cooperate  
7 and coordinate with the other in all activities covered by this Agreement and any other supplemental  
8 agreements that may be required to facilitate the purposes thereof.

9 **ARTICLE 4. CONSIDERATION**

10 In consideration for the Authority Use Rights granted by the CITY to the AUTHORITY  
11 hereunder, the AUTHORITY agrees to construct, operate and maintain the OC Streetcar System as  
12 set forth in or as to be set forth in the Design Agreement, Construction Agreement, Plans and  
13 Specifications, Project Submittals, and Operations and Maintenance Agreement.

14 **ARTICLE 5. TERM**

15 Beginning on the Effective Date, this Agreement and the Authority Use Rights herein granted  
16 shall be operative for a period of 50 years (the "Initial Term"), subject to earlier termination as provided  
17 by Article 6. AUTHORITY may, in its discretion, extend this Agreement upon the same terms and  
18 conditions existing at the time of such extension for an additional term of up to 20 years ("Extended  
19 Term"). To exercise its right to the Extended Term, AUTHORITY shall provide written notice to the  
20 CITY no later than 24 months prior to the expiration of the Initial Term. For any period beyond the  
21 Extended Term, this Agreement may be extended by mutual consent of the Parties at any time prior  
22 to the expiration of the Extended Term, to the extent permitted by law.

23 **ARTICLE 6. TERMINATION**

24 A. This Agreement may not be terminated by either Party for convenience.

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1           B.       This Agreement, and the Authority Use Rights granted hereby, shall be subject to  
2 termination at the option of the CITY and by written notice delivered to the AUTHORITY upon the  
3 occurrence of any of the following events:

4                   (i) The AUTHORITY shall fail to advance the Streetcar Project to begin Revenue  
5 Service no later than December 31, 2025, provided any such discontinuation is not caused by  
6 Force Majeure as described in Article 13, or

7                   (ii) The AUTHORITY shall intentionally abandon the Occupied City ROW, or expressly  
8 disavow the Authority Use Rights, or

9                   (iii) The AUTHORITY shall discontinue regular OC Streetcar System operations for a  
10 consecutive period of one year consistent with the Operations and Maintenance Agreement  
11 and requirements of the Federal Transit Administration, provided any such discontinuance is  
12 not caused by Force Majeure as described in Article 13 or for other reasons outside  
13 AUTHORITY's reasonable control.

14           C.       AUTHORITY may terminate this Agreement if the AUTHORITY determines, upon  
15 reasonable notice to and concurrence by the CITY, that the OC Streetcar System is not a viable mode  
16 of transportation either due to lack of passengers, lack of revenue, lack of funding, other modes of  
17 transportation that are developed making the OC Streetcar System relatively inefficient, or other  
18 similar reasons.

19           **ARTICLE 7. DEFAULT**

20           Either Party may be deemed in default under this Agreement by the other Party upon the failure  
21 of such Party to observe or perform any material covenant, condition or agreement on its part to be  
22 observed or performed hereunder, and the continuance of such default for a period of ninety (90) days  
23 from the date the failing Party has received written notice from the other Party. Such notice shall  
24 specify the default and request that it be remedied within 90 days or such other longer time as may  
25 be set forth in the notice. The Party giving such notice may agree in writing to an extension of such  
26 time period. If the failure identified in such notice cannot be corrected within the applicable period, it



1 shall not give rise to a default hereunder if appropriate remedial action is promptly instituted within the  
2 applicable period and diligently pursued until such default is corrected. In the event of a default  
3 hereunder that is not remedied by the defaulting party in accordance with this provision, the non-  
4 defaulting Party shall have a breach of contract claim and remedy against the other in addition to any  
5 other remedy provided or permitted by law, provided that no remedy which would have the effect of  
6 amending any provisions of this Agreement shall become effective without the formal amendment of  
7 this Agreement.

8 **ARTICLE 8. COMPLIANCE**

9 To the extent required, the AUTHORITY and the CITY shall comply with all applicable federal,  
10 state, and local laws, statues, ordinances and regulations of any governmental authority having  
11 jurisdiction over the Project.

12 **ARTICLE 9. INDEMNIFICATION**

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

23 B. To the fullest extent permitted by law, the AUTHORITY shall defend (at the  
24 AUTHORITY's sole cost and expense with legal counsel reasonably acceptable to the CITY),  
25 indemnify, protect, and hold harmless the CITY, its officers, directors, employees, and agents from  
26 and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration

1 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and  
2 attorney fees, including but not limited to claims arising from injuries to or death of persons (the  
3 AUTHORITY's employees included), for damage to property, including property owned by the CITY,  
4 or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the  
5 negligent acts, omissions or willful misconduct of the AUTHORITY, its officers, directors, employees  
6 or agents in connection with or arising out of the performance of this Agreement.

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

9 **ARTICLE 10. LEGAL AUTHORITY**

10 The persons executing this Agreement on behalf of the AUTHORITY and the CITY represent  
11 that they are authorized to execute this Agreement on behalf of their respective Parties and that, by  
12 so executing this Agreement, the Parties hereto are formally bound to the provisions of this  
13 Agreement.

14 **ARTICLE 11. SEVERABILITY**

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

19 **ARTICLE 12. COUNTERPARTS OF AGREEMENT**

20 This Agreement may be executed and delivered in any number of counterparts, each of which,  
21 when executed and delivered shall be deemed an original and all of which together shall constitute  
22 the same agreement. Facsimile or emailed PDF documents with signatures will be permitted.

23 **ARTICLE 13. FORCE MAJEURE**

24 Either Party shall be excused from performing its obligations under this Agreement due to any  
25 event beyond the control of the Party to the extent the event materially and adversely affects a Party's  
26 ability to perform its obligations under this Agreement and could not have been avoided by reasonable

1 due diligence. Force Majeure events shall include, but not be limited to: (i) discovery of any resources  
2 or a change in law which requires a state or federal approval that was not previously required for the  
3 Project; (ii) regulatory and technical changes not previously required for the Project; (iii) fire, flood,  
4 earthquake, or other natural disaster; (iv) strikes and labor disputes of greater than 30 days; (v) delays  
5 caused by permitting agencies that exceed the reasonably anticipated review times; (vi) failure of  
6 utilities to relocate in a reasonable time; and (vii) war, terrorist activities, government sanctions,  
7 embargos, civil unrest, and material or labor shortages. A Party's performance will only be excused  
8 for the length of the delay and any reasonable time thereafter that is necessary to commence  
9 performance of a Party's obligations under this Agreement.

10 **ARTICLE 14. ASSIGNMENT**

11 Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority  
12 hereunder may be assigned in whole or in part by either Party without the prior written consent of the  
13 other Party. Any such attempt of assignment shall be deemed void and of no force and effect.  
14 Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the  
15 waiver of any right to consent to such subsequent assignment. Notwithstanding the foregoing,  
16 AUTHORITY may assign this Agreement to another public entity provided that it provides notice to  
17 CITY at least six (6) months prior to the effective date of such assignment. The notice shall include  
18 evidence that such public entity is authorized by law to operate the Streetcar System and has the  
19 financial capability, infrastructure and personnel to meet AUTHORITY's obligations under this  
20 Agreement. CITY shall approve such assignment within 45 days of such notice from AUTHORITY,  
21 unless CITY reasonably determines that the proposed assignee cannot meet the obligations of this  
22 Agreement. AUTHORITY shall provide such additional information as is reasonably required by CITY  
23 to make its determination.

24 **ARTICLE 15. SUBCONTRACTING**

25 AUTHORITY may, in its sole discretion, enter into contracts with third parties to perform any  
26 of its obligations under this Agreement, provided that AUTHORITY notifies CITY of such contract prior

1 to entering into a contract with any contractor. AUTHORITY shall include in such contracts the  
2 obligation of the contractor to comply with all applicable terms of this Agreement, including without  
3 limitation insurance and indemnity requirements. Notwithstanding the foregoing, AUTHORITY shall  
4 remain primarily responsible for performance of all obligations and exercise of all rights assigned to  
5 AUTHORITY under this Agreement.

6 **ARTICLE 16. GOVERNING LAW AND VENUE**

7 The laws of the State of California and applicable local and federal laws, regulations and  
8 guidelines shall govern this Agreement. The Parties agree that Orange County, California shall be  
9 the venue for any action or proceeding that may be brought in connection with this Agreement.

10 **ARTICLE 17. DISPUTE RESOLUTION**

11 All disputes arising under this Agreement shall be resolved in accordance with the dispute  
12 resolution process in this article. The Parties shall diligently cooperate with each other in an effort to  
13 resolve any dispute during the dispute resolution process. If a dispute arises under this Agreement,  
14 either Party may file a written request with the other Party to invoke the dispute resolution  
15 process. Upon receipt of such a request each Party shall designate a staff representative, which  
16 representatives shall meet within 14 days of the date of the written request in an effort to resolve the  
17 dispute. If the dispute has not been resolved within 14 days or any extension thereof mutually agreed  
18 upon by the Parties, the dispute shall be referred to each Party's Executive Director, who shall  
19 meet within 14 days of the referral in an effort to resolve the dispute. If the Executive Directors are  
20 unable to resolve the dispute within 14 days or any extension thereof mutually agreed upon by the  
21 Parties, then the dispute shall be referred to the AUTHORITY's Chief Executive Officer and the CITY's  
22 City Manager, who shall meet within 14 days of the referral in an effort to resolve the dispute. If the  
23 dispute remains unresolved within such 14 days or any extension thereof mutually agreed upon by  
24 the Parties, either Party may initiate litigation.

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**ARTICLE 18. LITIGATION FEES**

Should any 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.

**ARTICLE 19. NOTICES**

Any notices, requests, or demands made between the Parties pursuant to this Agreement shall be in writing and delivered by certified mail. Phone and email may be used for convenience but are not considered as official notice. Notices are to be directed as follows:

<p><b>To CITY:</b>                  City of Santa Ana                  20 Civic Center Plaza                  P.O. Box 1988                  Santa Ana, CA 92701</p>	<p><b>To AUTHORITY:</b>                  Orange County Transportation Authority                  550 South Main Street                  P.O. Box 14184                  Orange, CA 92863-1584</p>
<p><b>ATTENTION:</b>                  Maria D. Huizar                  Clerk of the Council                  Tel. (714) 647-6520</p>	<p><b>ATTENTION:</b>                  Bridget Carman                  Senior Contract Administrator                  Contracts Administration and Materials                  Management                  Tel: (714) 560-5478                  E-Mail: bcarman@octa.net</p>
<p><b>Cc:</b>                  Fred Mousavipour                  Executive Director, Public Works Agency                  Tel: (714) 647-5654                  E-Mail: fmousavipour@santa-ana.org                  Cc: City Attorney</p>	<p><b>Cc:</b>                  James G. Beil                  Executive Director, Capital Programs                  Tel: (714) 560-5646                  E-Mail: JBeil@octa.net</p>



**ARTICLE 21. INCORPORATION OF EXHIBITS**

This Agreement in its entirety includes the Exhibits listed below, all of which are, by this reference, incorporated herein and made part hereof as though fully set forth. The Exhibits of this Agreement are:


EXHIBIT A – CITY ROW

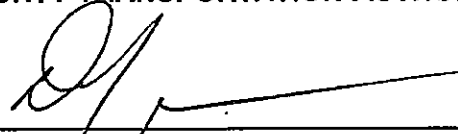
EXHIBIT B – USE OF CITY ROW

EXHIBIT C – CONTROLLED WORK ACCESS ZONE

**CITY OF SANTA ANA**


**ORANGE COUNTY TRANSPORTATION AUTHORITY**

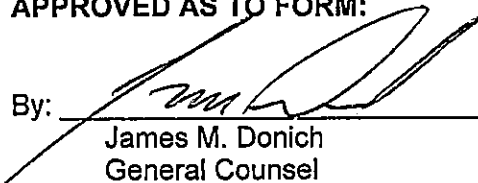
By:   
Gerardo Mouet  
Acting City Manager

By:   
Darrell Johnson  
Chief Executive Officer

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**


By:  for  
Sonia 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

Dated : 2/14/17

Dated : 3/13/17

**ATTEST:**

By:   
Maria D. Huizar  
Clerk of the Council

Dated : 2/15/2017



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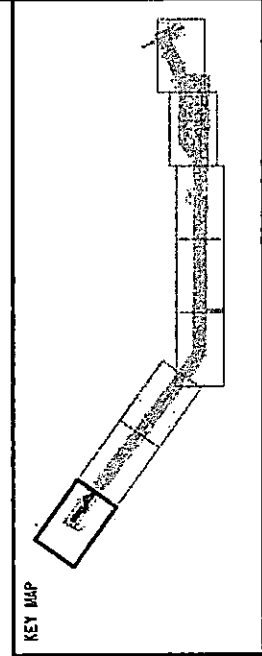
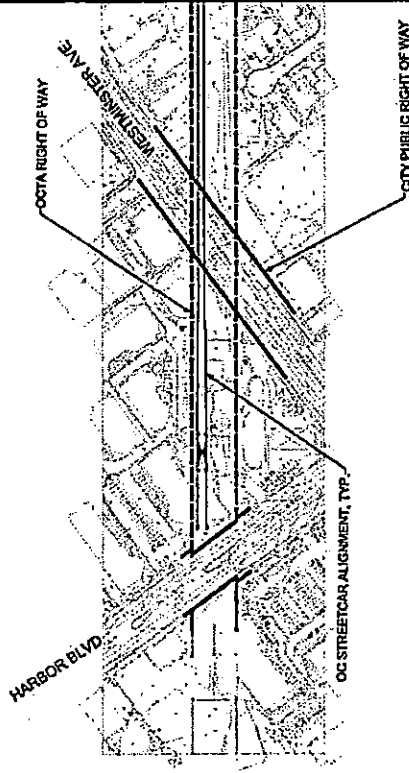
**LIST OF EXHIBITS**

- Exhibit A – CITY ROW
- Exhibit B – Use of City ROW
- Exhibit C -- Controlled Work Access Zone

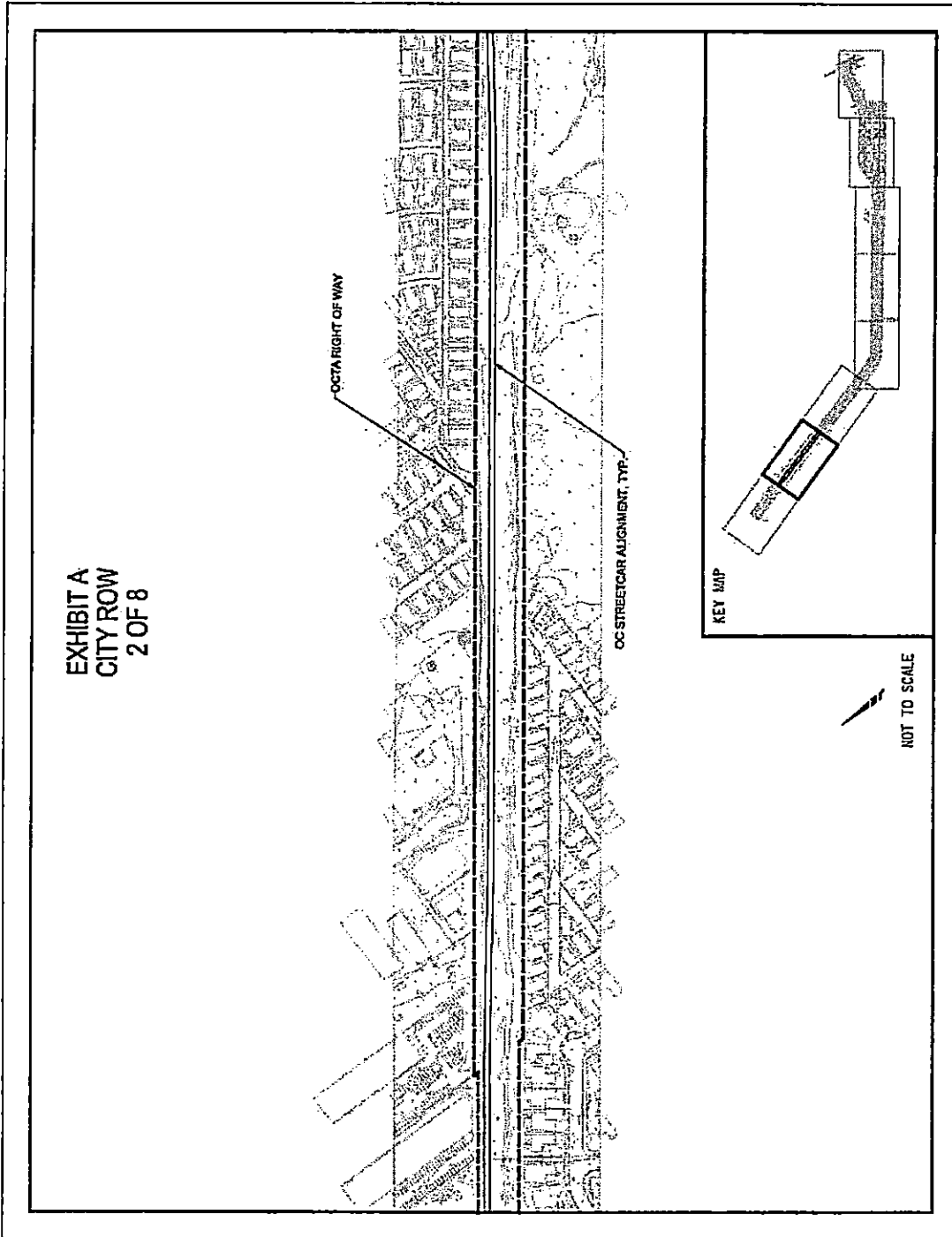


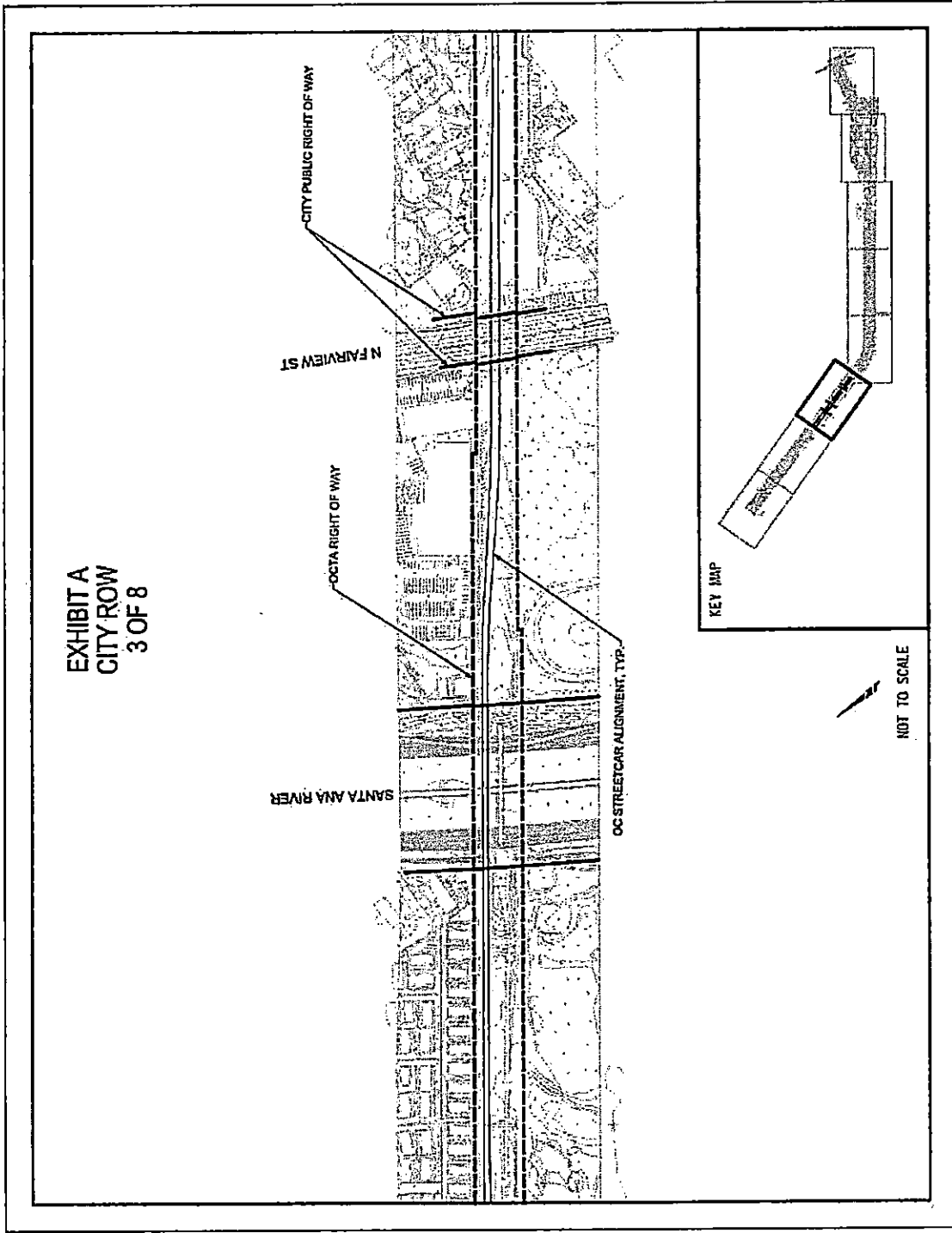
CITY ROW

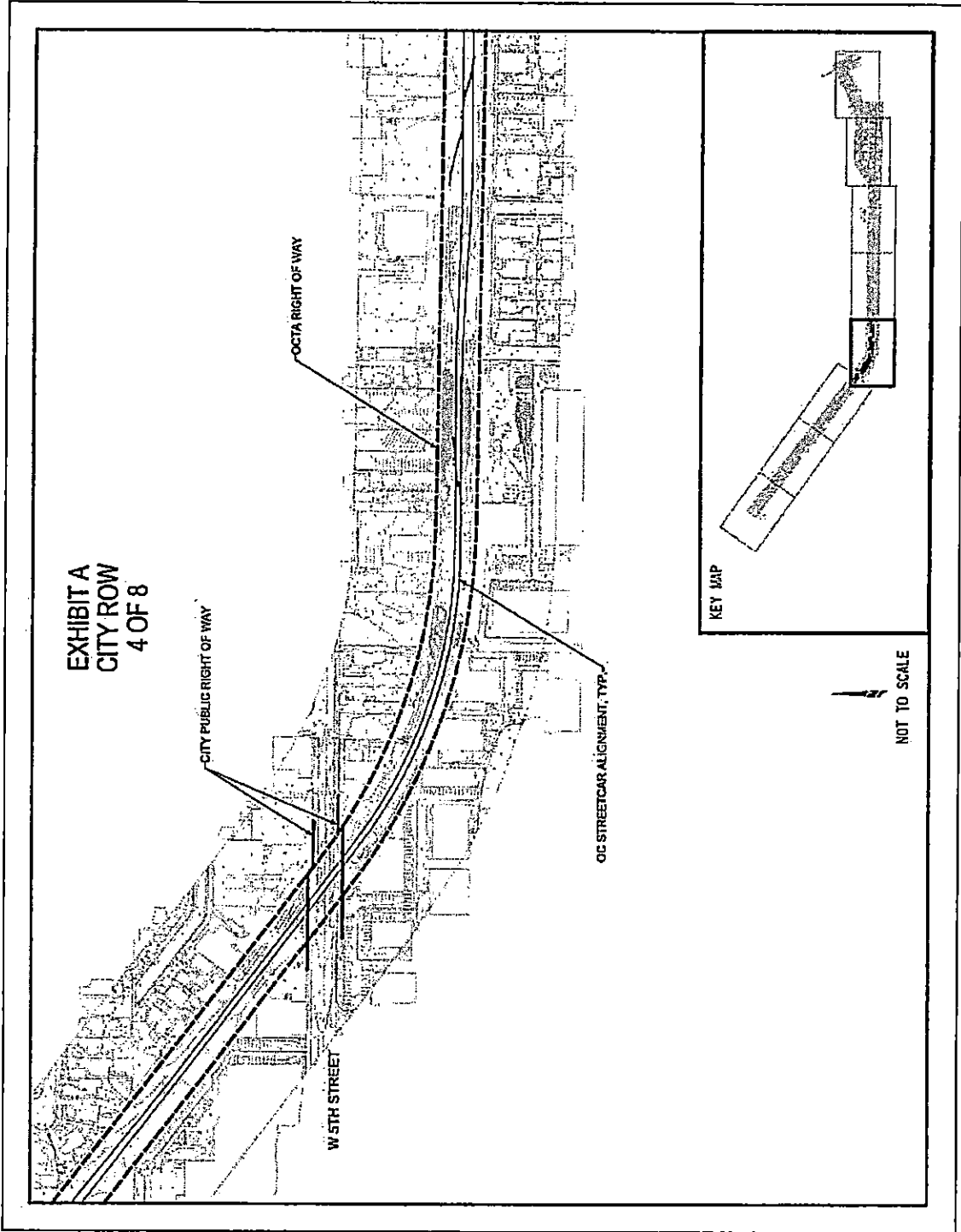
EXHIBIT A  
CITY ROW  
1 OF 8

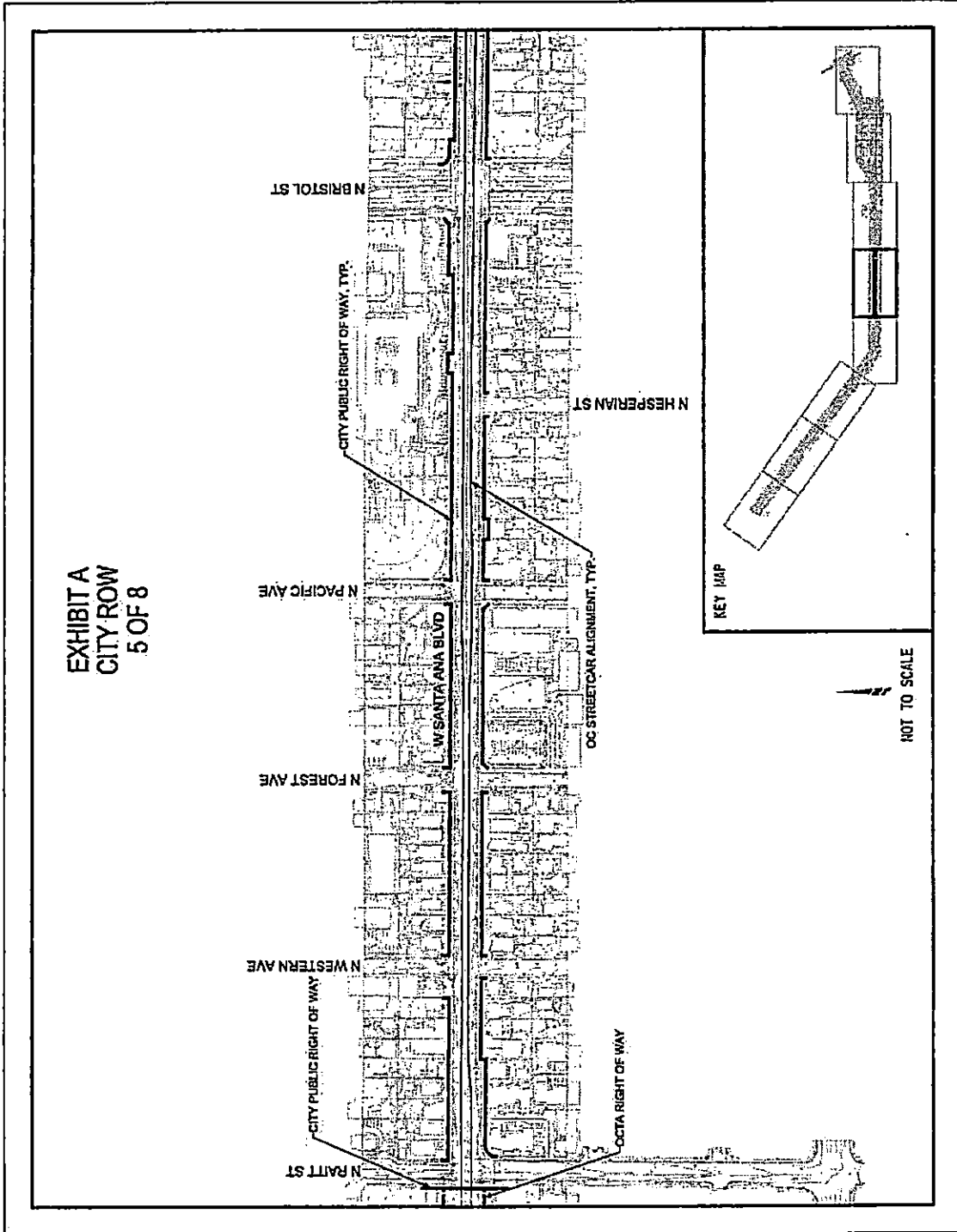


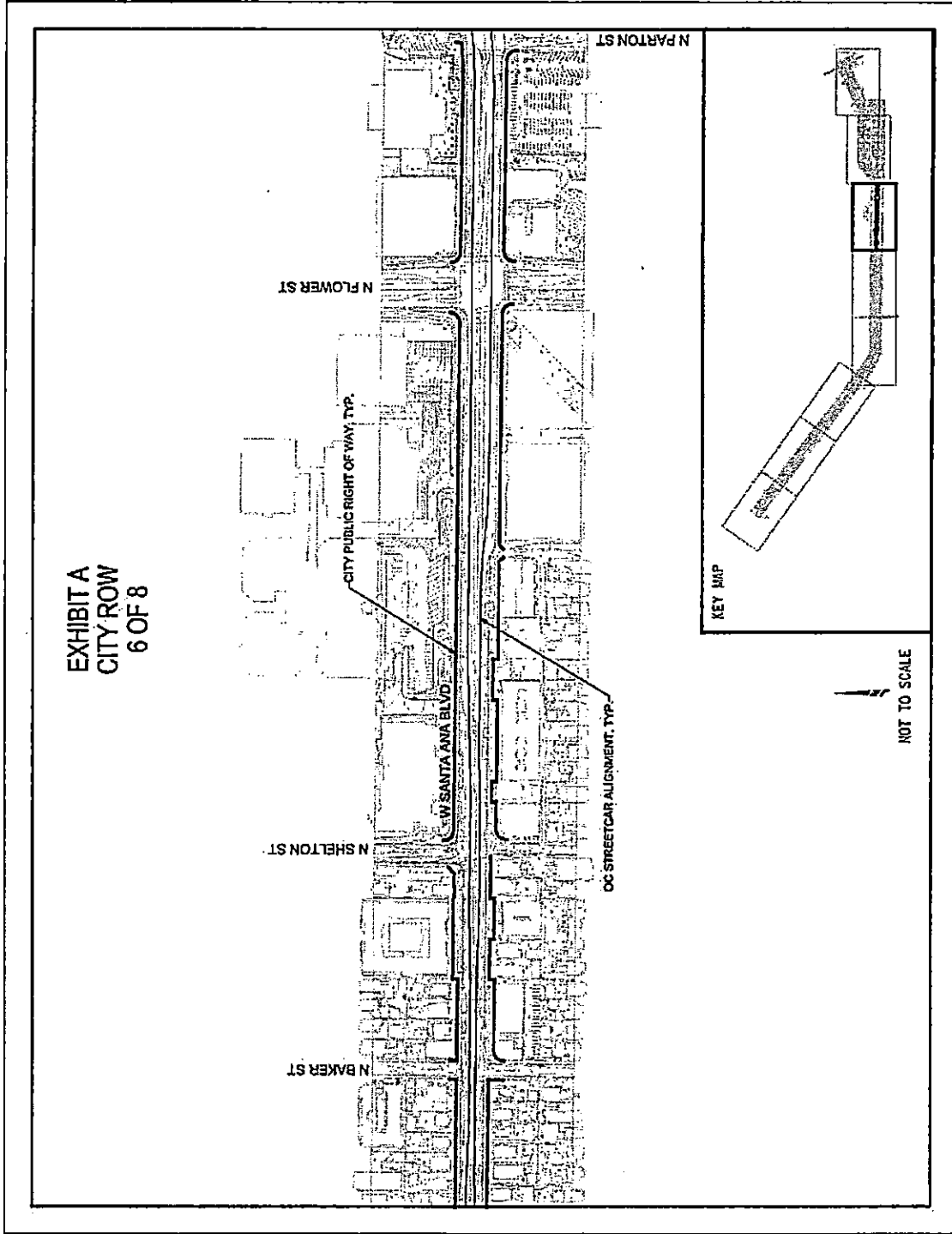
NOT TO SCALE

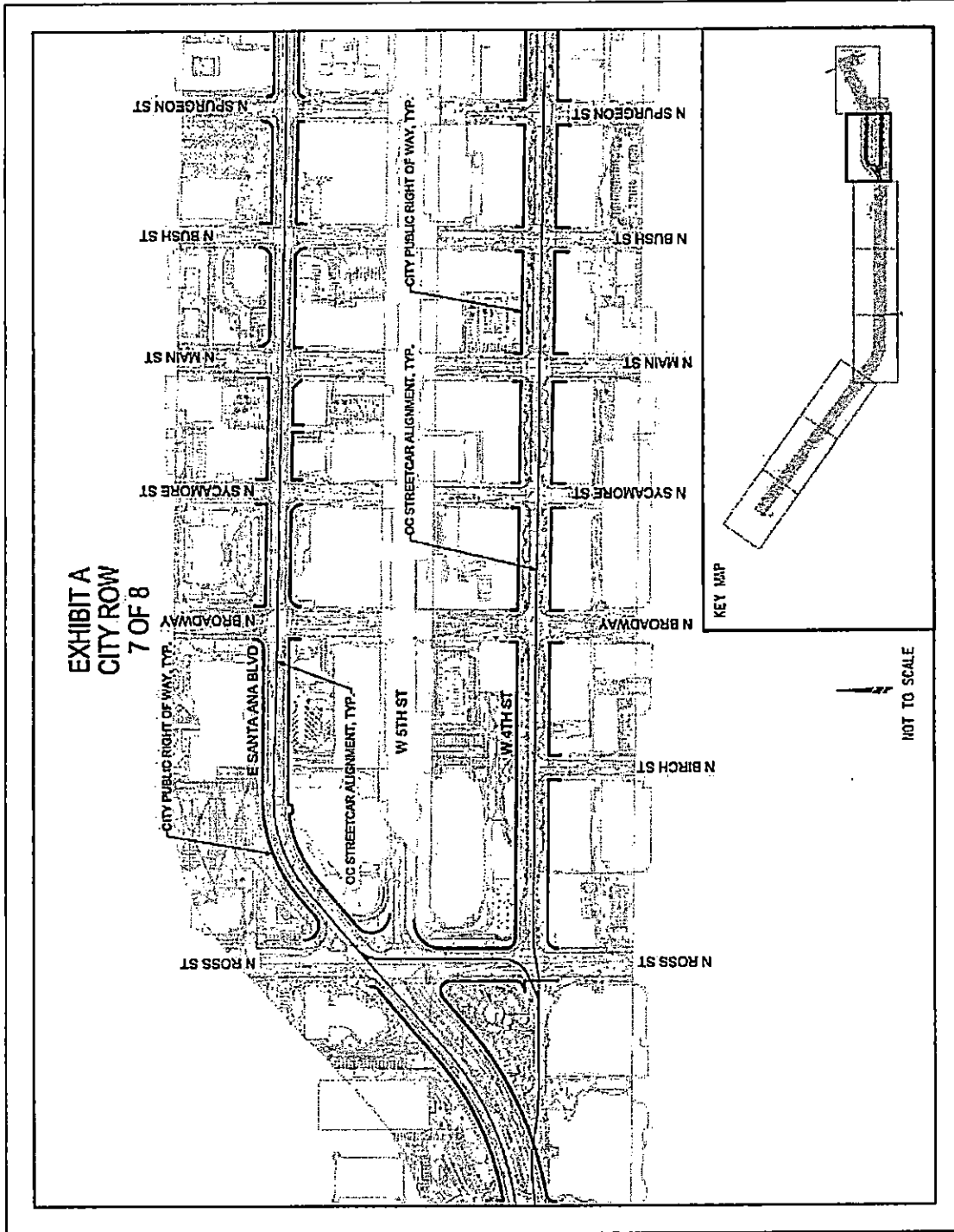


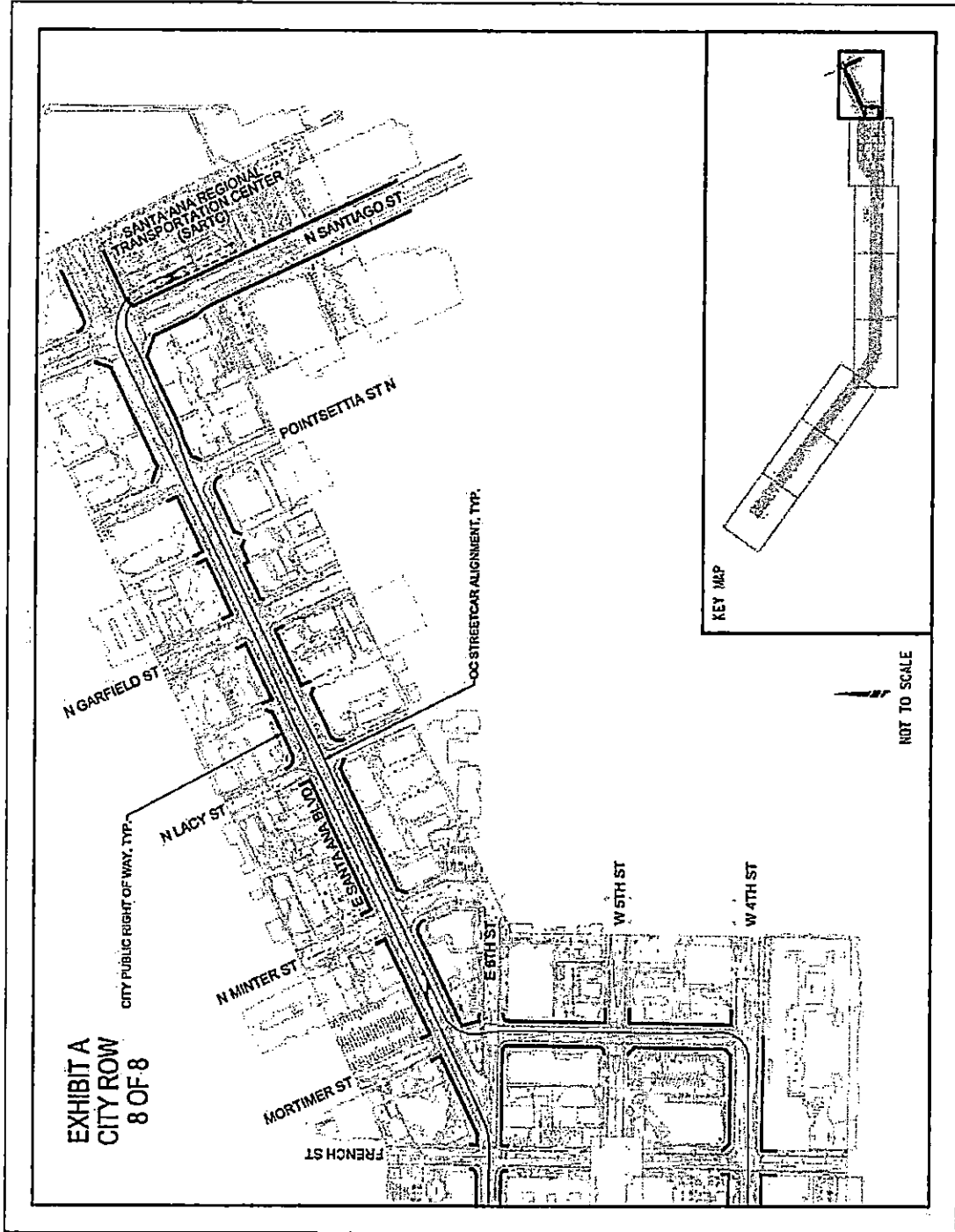














## USE OF CITY RIGHT OF WAY

### 1.0 DEFINITIONS

All capitalized terms used in this Exhibit B shall have the same meaning ascribed to them in Article 1 of the Agreement.

### 2.0 USE OF CITY ROW

A. CITY hereby grants to AUTHORITY a non-exclusive use of the City ROW, necessary to accommodate the construction of the OC Streetcar Project and the operation and maintenance of the OC Streetcar System. Authority Use Rights shall be limited to the terms, conditions, limitations and restrictions contained in this Agreement.

B. The location and extent of the City ROW which may be utilized by the AUTHORITY for the construction of the OC Streetcar Project and the operation and maintenance of the OC Streetcar System, and the scope and nature of such use, shall be governed by this Agreement, the Design Agreement, Construction Agreement, Plans and Specifications, Operations and Maintenance Agreement and in accordance with the Project Submittals.

C. The CITY has previously granted licenses or permits affecting all or portions of the City ROW to persons and/or entities not a party to this Agreement which may impact the Authority Use Rights. Nothing contained in this Agreement shall be construed as granting AUTHORITY any rights or claims for damages against the CITY relating in any way to the existence of any such licenses or permits. To the extent that CITY may be required to grant a license, permit, or other rights in City ROW it shall notify AUTHORITY of any planned use which could potentially impact AUTHORITY's operations and cooperate with AUTHORITY to implement terms for such use to eliminate, to the extent practicable, any such impacts.

D. The CITY may use the Occupied City ROW for its own purposes, but only to the extent that such use does not materially interfere with Authority Use Rights. To the extent the City uses the Occupied City ROW for its own purposes, it shall notify AUTHORITY of any planned use which could

potentially impact AUTHORITY'S operations and cooperate with AUTHORITY to implement terms for such use to eliminate, to the extent practicable, any such impacts.

E. The Authority Use Rights are exclusive to the AUTHORITY and AUTHORITY shall not assign except as provided in this Agreement any interest, rights or benefits in City ROW that is the subject of this Agreement, and shall not sublease, sell utility or other telecommunication permits, licenses, franchises, excess capacity easements or in any way use City ROW for any purpose other than as specifically described in this Agreement.

F. The Authority Use Rights shall not be subject to any franchise fee, license fee, rental charge or any other such fee or charge for AUTHORITY's use of the City ROW for the OC Streetcar System operations and routine maintenance activities. This shall not preclude the CITY from charging fees for plan checks, inspections or other types of services on routine maintenance involving lane closures and capital improvement projects the AUTHORITY initiates in amounts that it charges other persons for similar services.

### **3.0 COORDINATION OF ADJACENT PROJECTS**

The CITY agrees to keep the AUTHORITY informed on projects, outside of the City ROW, that CITY determines may interfere with the Project or OC Streetcar System, to the extent CITY is aware of such projects. This includes, but is not limited to, utility projects, communication projects, development projects, and other improvement projects.

### **4.0 OPERATIONS AND MAINTENANCE**

Operations and maintenance activities will be as agreed in the Operations and Maintenance Agreement entered into between the CITY and AUTHORITY.

### **5.0 FUTURE STREETCAR CONSTRUCTION BY AUTHORITY**

The AUTHORITY agrees that the CITY shall have the right to review and approve all future additions, changes and alterations to, and modifications and replacements of, any OC Streetcar System improvements on Occupied City ROW which would materially change the OC Streetcar

System or Authority Use Rights. The AUTHORITY shall not make such additions, changes, alterations, modifications or replacements without first obtaining written approval from the CITY.

#### **6.0 FUTURE PROJECTS IMPACTING STREETCAR**

The CITY agrees that the AUTHORITY shall have the right to review and approve all future additions, changes and alterations to, and modifications and replacements of, CITY and third party facilities or use thereof which would materially interfere with the AUTHORITY's operation of the OC Streetcar System or otherwise adversely affect the rights of the AUTHORITY under this Agreement. Subject to any requirement by law for the CITY to act, the CITY shall not issue permits, licenses or other authorizations to third parties which would materially interfere or otherwise adversely affect the rights of the AUTHORITY without first obtaining written approval from the AUTHORITY, which approval shall not be unreasonably withheld.

#### **7.0 OC STREETCAR CONTROLLED WORK ACCESS ZONE**

All work activities, either those of the CITY or third parties, within the controlled work access zone limits depicted and described in Exhibit C, require a permit issued by the AUTHORITY prior to work commencing. The CITY shall not issue any permits to any third parties to work in the City ROW, within the controlled work access zone depicted and described in Exhibit C, without prior evidence of a current AUTHORITY access permit. The specific rules and regulations related to such AUTHORITY access permits shall be delineated in a future agreement between the Parties.

#### **8.0 TRAFFIC REGULATIONS**

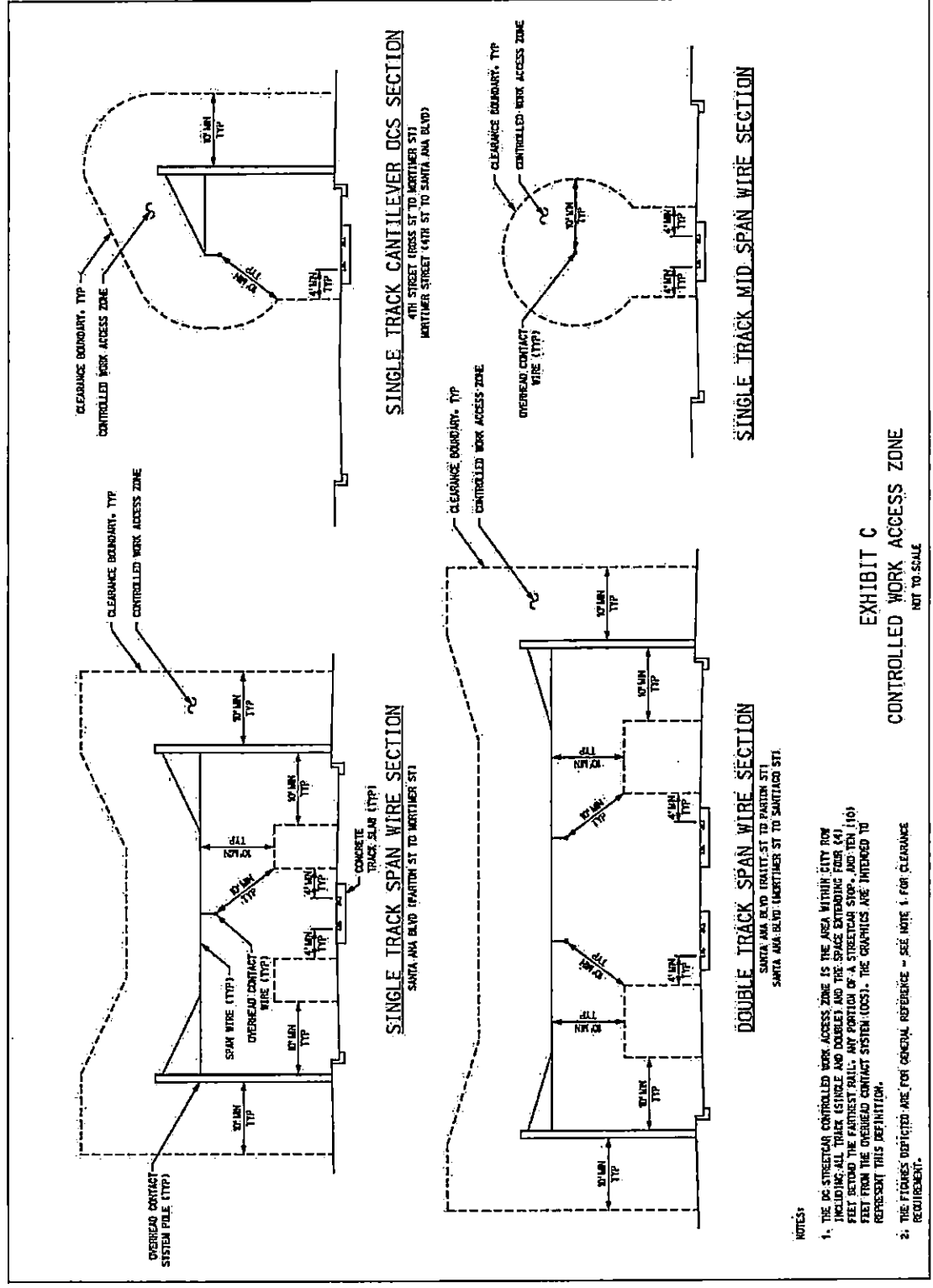
Streetcar vehicles traveling on CITY streets shall be subject to all generally applicable speed limits and other traffic control ordinances and regulations, consistent with state and federal law.

#### **9.0 DUTY TO RESTORE**

Upon the expiration of this Agreement, or earlier termination or partial termination of Authority Use Rights and/or this Agreement, all OC Streetcar System improvements located on Occupied City ROW as to which Authority Use Rights have been terminated shall, at the option of the CITY, as to

any or all of the OC Streetcar System improvements, be removed by the AUTHORITY, and the Occupied City ROW shall be restored to a condition consistent with CITY standard plans and the then current condition of adjoining streets or other public facilities with respect to grade, appearance, quality, finish, and type of construction, at the sole cost and expense of the AUTHORITY. Restoration shall be performed within one hundred eighty (180) days of such expiration or termination, or such longer period as shall be required by the nature of the work and agreed to by the CITY and the AUTHORITY. For any improvements left intact at the option of the CITY, CITY shall retain all ownership and possession thereof at no cost to CITY.

CONTROLLED WORK ACCESS ZONE



NOTES:  
1. THE DC STREETCAR CONTROLLED WORK ACCESS ZONE IS THE AREA WITHIN CITY ROW INCLUDING ALL TRACK (SINGLE AND DOUBLE) AND THE SPACE EXTENDING FOUR (4) FEET BEYOND THE FARTHEST RAIL. ANY PORTION OF A STREETCAR STOP AND TEN (10) FEET FROM THE OVERHEAD CONTACT SYSTEM (OCS). THE GRAPHICS ARE INTENDED TO REPRESENT THIS DEFINITION.  
2. THE FIGURES INDICATED ARE FOR GENERAL REFERENCE - SEE NOTE 1 FOR CLEARANCE REQUIREMENT.

EXHIBIT C  
CONTROLLED WORK ACCESS ZONE  
NOT TO SCALE





1           WHEREAS, the AUTHORITY and the CITY desire to amend the Agreement to make its  
2 provisions consistent with FTA grant requirements relating to the disposition of OC Streetcar System  
3 property that meets the definition of Federally Assisted Property.

4           NOW, THEREFORE, it is mutually understood and agreed upon by the AUTHORITY and CITY  
5 that Agreement No. C-6-1433 is hereby amended in the following particulars only:

6           1. Amend **ARTICLE 1. DEFINITIONS**, to insert the following :

7                   "N. 'Federally Assisted Property' means the OC Streetcar System improvements which  
8 are paid in whole or part with FTA grant funds."

9           2. Amend "Exhibit B, Use of City Right of Way", by deleting in its entirety paragraph 9.0  
10 entitled "Duty to Restore", and replace with "Amendment No. 1 to Exhibit B, Use of City Right of  
11 Way", paragraph 9.0 Duty to Restore, which is attached hereto and by this reference incorporated  
12 herein.

13           **IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment No. 1 to  
14 Agreement No. C-6-1433 to be executed on the date first written above.

15           **CITY OF SANTA ANA**

15           **ORANGE COUNTY  
TRANSPORTATION AUTHORITY**

16           By: \_\_\_\_\_

16           By: \_\_\_\_\_

17           Cynthia J. Kurtz  
Interim City Manager

17           Meena Katakia  
Manager, Capital Projects

18           **APPROVED AS TO FORM:**

18           **APPROVED AS TO FORM:**

19           By: John M. Frank  
20           Sonia Carvalho  
21           City Attorney      for

19           By: [Signature]  
20           James M. Donich  
21           General Counsel

22           **ATTEST:**

23           By: \_\_\_\_\_

24           Maria D. Huizar  
Clerk of the City Council

25           Dated: \_\_\_\_\_  
26

*[Handwritten initials]*



USE OF CITY RIGHT OF WAY

9.0 DUTY TO RESTORE

A. Upon the expiration of this Agreement, or earlier termination or partial termination of Authority Use Rights and/or this Agreement, all OC Streetcar System improvements located on Occupied City ROW as to which Authority Use Rights have been terminated shall, at the option of the CITY, as to any or all of the OC Streetcar System improvements, be removed by the AUTHORITY, and the Occupied City ROW shall be restored to a condition consistent with CITY standard plans and the then current condition of adjoining streets or other public facilities with respect to grade, appearance, quality, finish, and type of construction, at the sole cost and expense of the AUTHORITY. Restoration shall be performed within one hundred eighty (180) days of such expiration or termination, or such longer period as shall be required by the nature of the work and agreed to by the CITY and the AUTHORITY. For any improvements left intact at the option of the CITY, CITY shall retain all ownership and possession thereof at no cost to CITY.

B. Notwithstanding the foregoing, any OC Streetcar System improvements which constitute Federally Assisted Property, as defined below, shall remain the property of AUTHORITY and AUTHORITY shall have the right to remove all such Federally Assisted Property at its sole cost and expense. The CITY shall have the option to purchase such Federally Assisted Property and/or have AUTHORITY leave the Federally-Assisted Property in place, provided that the CITY'S purchase of the Federally Assisted Property is in accordance with applicable law and Federal Transit Administration ("FTA") grant requirements. AUTHORITY is required to comply with FTA regulations when disposing of any OC Streetcar Systems improvements that are financed in whole or part with FTA assistance ("Federally Assisted Property"). The FTA grant requirements set forth a process and methodology for disposing of the Federally Assisted Property, calculating the Federal interest, and returning to the FTA proceeds from the sale of such Federally Assisted Property."

