

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:
JULY 7, 2015

CLERK OF COUNCIL USE ONLY:

TITLE:
SANTA ANA/GARDEN GROVE
STREETCAR MOU
(NON-GENERAL FUND)
{STRATEGIC PLAN NOS. 3, 2C; 3, 4B;
6, 1G}

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____



CITY MANAGER

CONTINUED TO _____
FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager to execute a Memorandum of Understanding between the Orange County Transportation Authority and the City of Santa Ana, subject to non-substantive changes approved by the City Manager and the City Attorney, that defines the understanding of the general terms, conditions, and funding responsibilities for the design, right-of-way acquisition, construction, and operations and maintenance of the Santa Ana/Garden Grove Streetcar Project.

DISCUSSION

The Orange County Transportation Authority (OCTA) Go Local Program was initiated in 2006 as a process to provide transportation options which are conceived at the local level. That program was a partnership between OCTA and local agencies, and the process was anticipated to foster local transit connectivity and extend the reach of Metrolink. In addition, the process was a competitive one between local agencies to help identify the best projects for funding consideration.

The Santa Ana/Garden Grove Streetcar Project was one of two fixed rail projects selected to proceed to a Feasibility Study, which was completed in 2007. In fall 2009, OCTA and the City authorized development of an alternatives analysis and a draft environmental impact report (DEIR). Analysis continued through early 2014 with DEIR release for public comment on May 23, 2014. After a 45-day review, the public comment period ended on July 7, 2014. The following milestones have been completed in the last year since the close of the public comment period:

Action	Approving Agency	Date
Approval / Adoption of Locally Preferred Alternative (LPA)	Santa Ana	08/05/14
Approval of OCTA serving as the lead agency for project development, implementation, operations and maintenance	OCTA	08/11/14
Approval of the completion of project milestones (alternatives analysis, draft environmental document and approval/adoption by Santa Ana City Council of the LPA)	OCTA	09/22/14
Certification of California Environmental Quality Act (CEQA) portion of Revised Environmental Assessment/Final Environmental Impact Report (REA/FEIR) and approval of the project	Santa Ana	01/20/15
Adoption of LPA	Garden Grove	02/10/15
Submittal of Finding of No Significant Impact (FONSI) to Federal Transit Administration (FTA)	OCTA	02/18/15
Approval of Project Management Consultant for Santa Ana/Garden Grove Streetcar	OCTA	02/23/15
Issuance of FONSI	FTA	03/10/15
Approval to enter Santa Ana/Garden Grove Streetcar in FTA New Starts Program	OCTA	05/05/15
<i>Select Design Consultant for Santa Ana/Garden Grove Streetcar</i>	OCTA	<i>Anticipated Fall 2015</i>

Following completion of the environmental document, lead agency responsibilities for the project have transitioned to OCTA. A copy of the latest OCTA fact sheet for the project is attached as Exhibit 1.

Staff is currently working with OCTA to review and finalize a Memorandum of Understanding (MOU), attached as Exhibit 2, which provides details of high-level project roles and responsibilities by both agencies moving forward. The draft MOU covers a wide range of project delivery aspects. As is standard practice in large, complex, and multijurisdictional rail projects, this MOU will serve as the basis for development of subsequent agreements detailing more specific roles and responsibilities ahead of major project development phases, including design,

construction, testing, operations, and maintenance. Each follow-up agreement will contain a Work Plan covering a corresponding project development phase. Some of the key highlights of the MOU terms are as follows:

General

- OCTA shall be responsible for the design and construction of the project and the operations, maintenance, and ownership of the Streetcar System once operational.
- More detailed agreements shall be developed to specifically address design and construction, public way use, and operations and maintenance.
- OCTA shall be responsible for project procurements. City shall have one representative on the selection/evaluation committee for design services, construction management, and outreach procurements.
- OCTA Executive Director and the City Public Works Executive Director shall participate on a senior-level technical steering committee focused on budget, schedule, quality, and compliance with the terms and conditions of this MOU to ensure successful delivery of the project.
- OCTA shall be responsible for all right-of-way (ROW) acquisition activities with City assistance with eminent domain proceedings if needed and requested by OCTA.
- Both OCTA and the City shall develop and participate in a public outreach program for the project.
- Establish the framework for the implementation of a comprehensive public way use agreement. The public way use agreement is intended to be in place prior to construction.
- Establish the framework for the implementation of a comprehensive operations and maintenance agreement. The operations and maintenance agreement is intended to be in place prior to revenue service.

Financial

- OCTA is responsible for securing and administering project funding.
- The City is responsible for all betterment costs requested by the City.
- OCTA shall reimburse the City, on a time-and-material basis, for administrative, design, and construction support. The specifics of reimbursements shall be detailed in subsequent design and construction cooperative agreements.
- OCTA shall reimburse the City for any ROW support associated with eminent domain proceedings on a time-and-materials basis. ROW support shall be requested and approved on a case-by-case basis and must be authorized by OCTA in advance.
- OCTA shall reimburse the City for other costs incurred, on a time-and-materials basis, on a case-by-case basis, and when authorized by OCTA for City support on any hazardous waste issues or needed environmental clearance updates.

- During operations, the City shall compensate OCTA 10 percent of operating costs less any fare box revenue the OCTA collects.

These MOU terms highlight Santa Ana's desire to ensure the project is implemented with the original intent of the REA/FEIR adopted by the City Council. Additionally, the MOU serves to ensure that Santa Ana is compensated for staff and consultant time in support of the project.

The draft MOU has been reviewed by staff from both OCTA and the City. It has also received legal review by both agencies. Following adoption of the MOU by City Council, it will then be presented to the OCTA Transit Committee on July 9 with the OCTA Board to review and consider adoption on July 27.

STRATEGIC PLAN ALIGNMENT

Approval of this item supports 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).

Approval of this item supports 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).

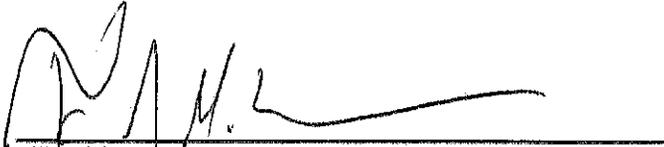
Approval of this item also supports the City's efforts to meet Goal #6 Community Facilities & Infrastructure, Objective #1 (establish and maintain a Community Investment Plan for all City assets), Strategy G (develop and implement the City's Capital Improvement Program in coordination with the Community Investment and Deferred Maintenance Plans).

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action.



Fred Mousavipour
Executive Director
Public Works Agency

FM/EWG/jg

- Exhibits:
1. OCTA Santa Ana/Garden Grove Streetcar Fact Sheet
 2. Santa Ana/OCTA Santa Ana/Garden Grove Streetcar MOU

OC STREETCAR PROJECT

Santa Ana – Garden Grove



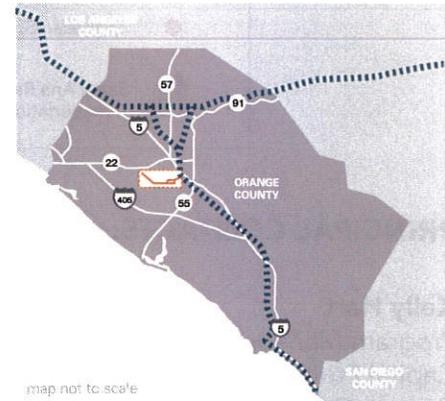
PROJECT UPDATE AND DESCRIPTION

In cooperation with the cities of Santa Ana and Garden Grove, OCTA will build a streetcar system between the bustling Santa Ana Regional Transportation Center and a new multimodal hub at Harbor Boulevard/Westminster Avenue in Garden Grove. Earlier this year, the Orange County Transportation Authority (OCTA) became the lead agency for project development, engineering, construction, operations, and maintenance of the OC Streetcar Project.

The 4.15 mile locally preferred alternative will provide convenient “last mile” transit connectivity between the Santa Ana Regional Transportation Center (SARTC), which provides regional rail, OCTA bus, and intercity and international bus service, through Santa Ana’s central business district and Civic Center, and northwest on the disused former path of the old Pacific Electric streetcar over the Santa Ana river to Garden Grove, where it meets OCTA’s busiest bus line on Harbor Boulevard. It will also serve as a circulator for visitors, employees and residents within the service area and support economic development and job creation. While the project is significantly funded through Measure M, Orange County’s half-cent sales tax for transportation improvements, OCTA is also pursuing other funding including Federal Transit Administration New Starts.

ABOUT THE PROJECT AREA

Located in the center of Orange County, California, Santa Ana is the county seat and the fifth most densely populated city in the United States with a population of 300,000 or more. The streetcar will serve the historic downtown of this thriving, energetic city which includes government offices, federal, state and local courthouses, unique restaurants and shops, an artists’ village, several colleges, and a variety of community enrichment organizations. The selected alignment will travel along Santa Ana Boulevard and 4th Street. On the way to Garden Grove’s busy International West tourist corridor along Harbor Boulevard, the streetcar will connect directly with 18 OCTA bus routes, including the seven busiest routes in the county.



PLANNED PROJECT FEATURES	SCHEDULE	
• Route length: 4.15 miles	May - July 2014	Public circulation of EA/DEIR
• Population density per square mile: 17,380	January 2015	EIR certification and LPA adoption
• Transit dependency of study area: 17.8%	March 2015	Completion of federal environmental clearance
• Ridership estimated: 3,400 (opening year)	May 2015	FTA acceptance into New Starts Project Development
• Number of stations: 12	May 2015	Design RFP release
• Fleet size: 6-7 vehicles	Summer 2015	Design award
• Peak/Off-Peak headways: 10/15 minutes	Fall 2017	Construction
• Capital cost: \$250 million (year of expenditure)	Fall 2019	Operations
• Annual operating cost: \$5.9 million (opening day)		

EXHIBIT 1

OC STREETCAR PROJECT



LEGEND

- Streetcar Route
- Study Area
- LOSSAN Rail Corridor
- Proposed Stop
- Operations and Maintenance Facility
- Santa Ana Regional Transportation Center
- NORTH

PRINCIPAL CONTACTS:

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For additional information, please refer to ocstreetcar.net.



MEMORANDUM OF UNDERSTANDING
ORANGE COUNTY TRANSPORTATION AUTHORITY AND CITY OF SANTA ANA
FOR SANTA ANA/GARDEN GROVE STREETCAR PROJECT

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made this _____ day of _____, 2015 (the “Effective Date”), by and between the Orange County Transportation Authority (“OCTA”), a public corporation of the State of California and the City of SANTA ANA, a municipal corporation duly organized and existing under the laws of the State of California (“Santa Ana” or “City”). OCTA and Santa Ana may be collectively referred to as “Parties” and individually as “Party”.

SECTION 1 RECITALS

WHEREAS, OCTA, in cooperation with the Federal Transit Administration and the City of Santa Ana, is proposing to design, construct, operate and maintain the Santa Ana/Garden Grove Streetcar. The Santa Ana/Garden Grove Streetcar refers to the Locally Preferred Alternative as identified by the Santa Ana City Council on August 5, 2014 and approved through the certification of the Environmental Impact Report by the Santa Ana City Council on January 20, 2015 (“Project”). A map of the alignment is included as EXHIBIT A.

WHEREAS, this MOU defines the understanding of the general terms, conditions and funding responsibilities between OCTA and the City for the design, right-of-way acquisition, construction and operations and maintenance of the Project.

WHEREAS, OCTA anticipates utilizing design-bid-build as the delivery method for the Project.

WHEREAS, the Parties intend to enter into a Design Agreement and Construction Agreement to establish the roles, responsibilities and expectations during the design, construction, start up and testing of the Project.

WHEREAS the Parties intend to enter into a Public Way Use Agreement to establish the roles, responsibilities and expectations of the Streetcar System operating in the Santa Ana public way. The Federal Transit Administration requires a grantee to have a perpetual right to operate in the public way.

WHEREAS the Parties intend to enter into an Operations and Maintenance Agreement to establish the roles, responsibilities and expectations of each Party for the operations and maintenance of the Streetcar System and adjacent streets.

WHEREAS, Parties agree to execute a Public Way Use Agreement prior to the commencement of construction activity for the Project and an Operations and Maintenance Agreement prior to entering Revenue Service.

EXHIBIT 2

WHEREAS, the OCTA Board of Directors approved this MOU on ___ day of _____, 2015.

WHEREAS, the City Council approved this MOU on ___ day of _____, 2015.

SECTION 2 DEFINITIONS

The following terms shall have the following meanings:

1. "Actual Project Cost" means the actual amount of funds expended to design and construct the Project. Estimated at approximately \$250 million in Year of Expenditure (YOE)- dollars and to be refined at the time of submittal of Project application to Federal Transit Administration. Actual Project Costs include environmental re-evaluation reviews and approvals, engineering design, right-of-way, utilities, rolling stock, systems, track, stations, support facilities, site work, demolition, site clearance/preparation, construction, construction design support, construction management, professional services and contingencies. Actual Project Costs do not include betterments.
2. "Betterment" means any work that is requested by Santa Ana or a third party that is not required to implement the Project as defined in this MOU, increases Project costs unnecessarily beyond the minimum standard established by OCTA. Betterments must i) not be prohibited by a governing state or federal standard ii) not adversely impact the operation of the Project and iii) not unreasonably delay or interfere with the Project Schedule.
3. "Construction Agreement" means the cooperative agreements between the Parties established to define the roles responsibilities and expectations during the construction, start up and testing of the Project.
4. "Construction Contractor and Construction Manager Contractor" means the firm(s) procured by OCTA to construct the project and the firm(s) to provide construction management services.
5. "Construction Documents" means all work products submitted to OCTA by the Design Consultant for the design of the Project or by the Construction Contractor/Construction Manager for the construction of the Project.
6. "Design Agreement" means the cooperative agreements between the Parties established to define the roles responsibilities and expectations during the design of the Project.
7. "Design Consultant" means the firm(s) procured by OCTA to perform preliminary and/or final design services.

8. "Fare Box Revenue" means all revenue generated through passenger fares collected through onboard fare boxes, online ticket sales, or through stop ticket vending machines or any retail outlet.
9. "Maintenance Expenses" includes the costs associated with, but not limited to, long-term maintenance of vehicles/facilities/systems/supporting infrastructure after the system has entered revenue service.
10. "Mitigation Monitoring and Reporting Program" means the program for the implementation of the mitigation measures adopted for the Project as identified by the City of Santa Ana in the Revised Environmental Assessment (REA)/Final Environmental Impact Report (FEIR) approved by the Santa Ana City Council on January 20, 2015.
11. "Operations and Maintenance Agreement" means the cooperative agreement between OCTA and Santa Ana establishing the roles, responsibilities, and expectations with respect to the operations and maintenance of the Streetcar System once the Streetcar System enters Revenue Service.
12. "Operating Expenses" includes the costs associated with, but not limited to, operations of vehicles/facilities/systems/supporting infrastructure, preventative maintenance of vehicles/facilities/systems/supporting infrastructure, ticketing and fare collection, marketing, administrations and support after the system has entered Revenue Service.
13. "Parties" means OCTA and the City of Santa Ana.
14. "Project" is defined as the Locally Preferred Alternative identified by the Santa Ana City Council on August 5, 2014 and approved through the certification of the Environmental Impact Report by the Santa Ana City Council on January 20, 2015 and entails the design, construction, start-up and testing of the Project. The Project becomes the "Streetcar System" upon the initiation of revenue service.
15. "Project Assets" mean all assets related to implementation of the Project, including, vehicles, track, roadway pavement encompassing track, bridges, roadway crossings, stations, maintenance facility, systems and supporting infrastructure.
16. "Public Way Use Agreement" means the cooperative agreement between OCTA and Santa Ana for the use of the public rights of way for the portions of the Streetcar System within the public rights of way.
17. "Revenue Service" means the streetcar is operational and providing service to the public as intended.

18. "Site Plan Review" is the process by which City agencies review development project submittals and identify the requirements and conditions of approval for a development project.
19. "Start Up and Testing" means the testing of the streetcar infrastructure by operations personnel in preparation for revenue service.
20. "Streetcar System" is the operating streetcar and all streetcar infrastructure including the track, the overhead contact system (wires, poles, conduits, and appurtenances), the traction power system (substations, conduits, controllers, and appurtenances), streetcar signage, stations or stops (lighting, shelters, and all stop features) and utilities supporting the streetcar system from point of service.
21. "Total Project Cost" means the Actual Project Cost plus the cost of Betterments.
22. "Work Plan" is defined as that document which the Parties agree is the scope of non-duplicative work and services performed by City staff to be funded by OCTA.

SECTION 3 GENERAL

1. This MOU shall be effective upon approval of both Parties, and shall continue in full force and effect through final acceptance of the Project or June 30, 2020, whichever is later, unless superseded by subsequent agreements which will control in the event of conflicting language.
2. OCTA shall be responsible for the delivery of this Project including the design, right-of-way engineering, right-of-way acquisition and utility relocations, construction, start up, operations, procurements, management, and administration. If necessary, OCTA and the City shall cooperate in implementing eminent domain proceedings as discussed in 6.3.1. Once operational, OCTA is responsible for the ownership, operations, maintenance, insurance and liability of the Streetcar System.
3. The Parties agree to work in partnership during the implementation of the Project.
4. The Parties shall comply with all applicable laws, statues, ordinances and regulations of any governmental authority having jurisdiction over the Project.
5. The Parties shall in good faith negotiate the Design Agreement and Construction Agreement to address the roles, responsibilities, and expectations during the design and construction phase of the Project. Additionally, the Parties shall in good faith negotiate a Public Way Use Agreement and Operations and Maintenance Agreement which shall address OCTA's use of the Santa Ana public way and the Streetcar System operations and maintenance. Each agreement shall expand on the concepts outlined and contemplated in this MOU.

6. OCTA is responsible to meet all of the requirements of the Federal Transit Administration associated with the funding received, which is anticipated to be New Starts program funding.
7. Santa Ana shall deliver to OCTA, the completed and approved environmental document for Project, including all supporting engineering and technical drawings and reports.
8. Disputes on the terms of this MOU shall be resolved at the lowest possible level. If a dispute cannot be resolved, it shall be elevated promptly to the next resolution level. The three levels of dispute resolution shall be at both agency's project manager level (lowest), executive director level, and Chief Executive Officer/City Manager level (highest).

SECTION 4 PROJECT MANAGEMENT/ADMINISTRATION

1. OCTA shall develop procedures for meetings, project controls, contracts and procurements, quality, safety, invoicing, reporting, and risk assessments.
2. OCTA shall be responsible for all procurement activities required for the Project. Santa Ana will have one (1) representative on the consultant selection/evaluation committee on the following procurements: design services, construction management and outreach. The Santa Ana representative shall be available for the procurement activities as scheduled.
3. OCTA shall conduct a regularly scheduled meeting, weekly or as otherwise agreed to, to provide a forum with the City to discuss all aspects of the Project.
4. OCTA shall establish a senior level committee focused on the successful delivery of the Project. The scope of the committee shall be any and all issues that may impact the Project's budget, schedule, quality, and compliance with the terms and conditions of this MOU and subsequent agreements. The committee should include, at minimum, the City Public Works Director as well as OCTA's Executive Director of Capital Programs.

SECTION 5 FINANCIAL

5.1 Funding

OCTA is responsible for securing and administering all funding, including federal, state, and local funding, for all phases of the Project.

5.2 Project Cost

OCTA is responsible for all Project costs which in sum account for the Actual Project Cost. OCTA is not responsible for Betterment costs.

OCTA is responsible for the operations and maintenance costs of the Streetcar System excluding the City's operating contribution as defined in Article 5.3.8.

5.3 Santa Ana Costs

OCTA shall compensate or reimburse Santa Ana, as the case may be for work described in each of the following cost categories. The Parties agree that a Work Plan will be developed for each of these cost categories in the subsequent Design Agreement and Construction Agreement with the exception of Section 5.3.1 and 5.3.8. Section 5.3.1 defines an interim Work Plan and Section 5.3.8 will be developed in the Operations and Maintenance Agreement

5.3.1 Pre-Design Period Costs

During the period between execution of this MOU and the execution of the Design Agreement, the City shall track the time and materials expended in providing Project support. The City will submit a monthly report to OCTA, within two weeks following the month reported, identifying the work performed and the time and material costs expended. The City and OCTA shall address the pre-design period cost reimbursement in the Design Agreement with the understanding that it is the parties' intent to fully reimburse the City for such costs to the extent permitted by law.

5.3.2 *Administrative and Design Support*

OCTA agrees to compensate Santa Ana on a time and materials basis for Administrative and Design Support for the duration of the Project.

Administrative and Design Support includes, but is not limited to, Santa Ana administrative staff and design review time spent participating in Project meetings, design reviews, public outreach efforts, and all other costs incurred related to the Project. Administrative and Design Support does not include time and materials related to construction inspection, materials testing, or other costs associated with construction inspection and/or monitoring, eminent domain proceedings support, environmental document updates, hazardous waste restitution, and/or operations and maintenance costs.

5.3.3 *Right-of-Way Acquisition*

OCTA agrees to compensate Santa Ana for Santa Ana staff participation, if any, in site acquisition or eminent domain proceedings necessary to complete the Project. The Parties will include specific acquisition responsibilities, obligations and reimbursement processes in a subsequent agreement as more information becomes available.

5.3.4 Construction Support

OCTA agrees to compensate Santa Ana on a time and materials basis for Construction Support for the duration of the Project construction.

Construction Support includes, but is not limited to, construction oversight, traffic engineering, police services and other related activities. OCTA will provide the necessary construction inspection and testing services for the Project. However, the Parties agree that inspection on water main modifications is required to be performed by the City as steward of the City's potable water supply. The specifics and details of this inspection will be detailed in the Construction Agreement.

Construction Support shall also include, on a time and materials basis, permit compliance building inspection and testing related to the Streetcar System Maintenance and Storage Facility site improvements and any other improvements requiring building permits.

OCTA and Santa Ana shall cooperate in preparing the scope of work descriptions for these services. The Parties shall develop a Construction Support Work Plan during the development of the Construction Agreement.

5.3.5 Building and Street Work Permit Fees and Development Impact Fees

Permit Fees: OCTA, and/or its Contractor(s), shall not be charged for Santa Ana's fixed-cost permit issuance fees for building and street work permits deemed necessary for the Project.

OCTA shall pay on a time and materials basis for Planning and Building services including but not limited to, Site Plan Review and grading, landscape, mechanical, plumbing, electrical and building plan review costs associated with the issuance of permits for the Streetcar System Maintenance and Storage Facility site improvements and any other improvements requiring building permits.

OCTA and its Contractor(s) shall pay on a time and materials basis for construction oversight costs associated with the issuance of permits for site improvements and improvements in the public right-of-way related to this project.

In addition, City costs for such services may be compensated through the various Project agreements as defined in Sections 5.3.2 and 5.3.4 above.

Development Impact Fees: OCTA shall pay for City-adopted and third party development impact fees such as water and sewer connections, among others, which are related to site improvements for individual stations, maintenance facilities and other similar structures supporting the Project.

5.3.6 Hazardous Waste Restitution

Upon identification of hazardous materials located on Santa Ana owned properties which materials must be removed or remediated before commencement of the Project, Santa Ana shall seek restitution for removal of such hazardous materials and shall reimburse OCTA for Project costs recovered, less Santa Ana's costs incurred in such restitution recovery efforts.

5.3.7 Environmental Updates

In the event that OCTA deems it necessary to make significant changes to the Project descriptions as submitted to the Federal Transit Administration or used for purposes of the Environmental Impact Report, OCTA shall notify Santa Ana of the reasons for the changes. Santa Ana shall be responsible for supporting and coordinating with OCTA in completing any additional environmental review required under State or federal law and OCTA shall reimburse Santa Ana for costs incurred to make the necessary amendments to the environmental documents.

5.3.8 Operating Costs

Santa Ana shall be responsible for funding 10% of operating costs less Fare Box Revenue for the Streetcar System. This amount shall be paid to OCTA on an annual basis. The invoicing and payment process shall be developed jointly and will be further defined in the Operations and Maintenance Agreement.

5.4 Santa Ana Reimbursements

Santa Ana reimbursements shall be addressed in cooperative agreements. The Parties shall identify the methods and information to support a valid invoice for reimbursement. For example, what each invoice shall contain, such as the names, labor pay rates, hours spent, applicable expenses, and a description of work performed and when it was performed. Santa Ana shall follow OCTA's expense reimbursement guidelines which at a minimum must be consistent with federal guidelines and will be detailed in the design and construction agreements. Santa Ana shall invoice OCTA not less than every two months for all requested reimbursements.

Legal costs submitted in an invoice associated with condemnation support must include the written authorization to proceed with condemnation provided by OCTA.

Final cost accounting on Santa Ana reimbursements shall be conducted jointly during Project closeout.

5.5 Betterments

To request a Betterment, the requesting entity must submit a written justification along with a cost estimate for OCTA's approval. If approved, the entity requesting the

Betterment shall be responsible for all incremental costs incurred as a result of the Betterment.

SECTION 6 DESIGN & CONSTRUCTION

This Section is intended to provide general terms and conditions between the Parties for the design and construction phase of the Project. A Design Agreement and Construction Agreement shall in good faith be developed between the Parties to define in more detail the roles, responsibilities, and expectations during the design and construction phase of the Project. Topics to be addressed in detail in the Design Agreement and Construction Agreement shall include, but not limited to, the following:

Project Management

- Project Administration
- Schedule
- Reporting
- Public Outreach/Relations
- Meetings
- Records Management
- Procurements
- Project Closeout

- Traffic Management
- Art in Transit
- Maintenance & Storage Facility

- Legal Descriptions/Plats
- Property Surveys
- Utility Relocations
- Relocation Assistance Program
- Property Management
- Demolition
- Eminent Domain Proceedings

Construction

- Construction Phasing
- Construction Access
- Street Closures
- Traffic Management
- Construction Coordination
- Public Notification
- City Construction Inspection
- OCTA Construction Insp.
- Construction Acceptance
- Permits
- Safety
- Quality

Design

- Design Criteria
- Design Coordination
- City Utilities
- Non-City Utilities
- Roadways
- Stations/Stops
- Landscape/Irrigation
- Traffic Signals
- Signage/Striping
- Traction Power
- Track
- Street Lighting
- Design Reviews

Startup & Testing

Financial

- Funding
- Budget
- Cost Tracking
- Contingencies
- City Reimbursements
- Betterments

General Provisions

Real Estate

- Property Acquisitions
- Right of Way Engineering

6.1 Design

6.1.1 Project Configuration

The exhibits in the MOU showing the configuration of Project are based on the approved environmental document and may not reflect the final configuration of the facilities. The Parties will work together during design to explore other configuration options that may reduce the impact of Project on adjacent properties, reduce cost and that may enhance operational efficiencies and safety.

6.1.2 Design Criteria

OCTA will develop design criteria and standards for the Project that are consistent with City design standards. The Project design criteria shall include the technical requirements and provisions for the Project and include which standards, specifications, and other requirements will be adhered to by OCTA's Consultants and Contractors. Santa Ana shall review and approve design criteria that affects City owned assets.

6.1.3 Design Review Times

Santa Ana will be provided a 30-day review period to review the Construction Documents provided by OCTA for improvements in the public right-of-way. The 30-day period begins when Santa Ana receives the complete package of Construction Documents at each design stage.

Santa Ana will be provided a 60-day review period to review the Construction Documents provided by OCTA for the Streetcar System Maintenance and Storage Facility site improvements and any other improvements requiring building permits. The 60-day period begins when Santa Ana receives the complete package of Construction Documents at each design stage. The design of the Project intends to incorporate an on-going, over-the-shoulder review process.

6.1.4 Meetings

OCTA shall hold regular technical, design, traffic management, public relations, and various other Project meetings to brief Santa Ana on the status of the Project, to solicit input, and to provide a forum to discuss and resolve project and local agency issues.

6.1.5 Traffic Management Plan

OCTA shall prepare a Traffic Management Plan (TMP) for Santa Ana's review and approval that addresses, to the extent appropriate, construction-related impacts to Santa Ana's existing street traffic. The TMP will include normal traffic handling requirements during construction of the Project, including staging, lane closures, detours, signage, Intelligent Transportation Systems (ITS), and signalization and will specify requirements for communicating with the public and local agencies during construction.

Santa Ana shall be responsible for the proper implementation of the agreed upon portion of the approved TMP provided by OCTA for work within the jurisdictional

boundaries of Santa Ana. Any costs associated with this effort shall be paid as defined in Section 5.3 of this agreement.

6.1.6 Art in Transit

OCTA agrees to include an Art in Transit program in the Project. The specifics of the Art in Transit program will be detailed in the Design Agreement.

6.1.7 Landscaping

OCTA shall meet Santa Ana existing guidelines for landscaping and aesthetics. Design reviews by Santa Ana shall be the City's opportunity to comment on the proposed landscape design. Any requests from Santa Ana exceeding established standards will be deemed a Betterment.

6.1.8 Drainage

OCTA shall mitigate any additional surface storm water drainage needs generated from the trackway or other impervious areas added by the Project. The mitigation of additional surface storm water drainage for the Project shall meet the City's National Pollutant Discharge Elimination System (NPDES) permit standards and will be subject to the City's storm water management requirements. Upgrades to existing drainage systems, beyond that needed for the Project, are considered a Betterment. The Parties agree to review the Project drainage criteria during the Design Agreement process taking into consideration environmental documents, design criteria and Project impacts to drainage.

6.1.9 Utilities

Santa Ana shall cooperate with OCTA for the relocation, protection, and construction of any City-owned utilities and any utilities that are the subject of franchise agreements approved by Santa Ana. Santa Ana shall review and approve design criteria that affect these City owned assets and all costs associated with their relocation, protection, and construction shall be eligible project expenditures.

OCTA shall initiate discussions with each public utility to rearrange or relocate its public utility facilities that may be determined by OCTA and Santa Ana to conflict with the Project. In the event the public utility fails to agree or fails to make the rearrangement or relocation in a timely manner, Santa Ana shall exercise, assign and invoke its rights under any state laws or under any applicable franchise as requested by OCTA to effectuate such rearrangement or relocation to permit OCTA to rearrange or relocate the utility in a timely manner. Santa Ana shall cooperate with OCTA, shall provide assistance to OCTA as needed, and shall join with OCTA as a party in the prosecution or defense of Santa Ana's and OCTA's rights under the laws of the State of California to cause such rearrangements or relocations. OCTA shall underground only those overhead utilities found in conflict with the proposed Project elements. Additional

undergrounding of overhead utilities, if not in conflict with the Project, shall be considered a Betterment.

6.2 Construction

6.2.1 Hazardous Materials

If OCTA encounters hazardous materials or contamination or protected cultural resources within the Project's limits during the said investigation or in the course of construction, OCTA shall notify Santa Ana and responsible control agencies of such discovery. OCTA shall stop work in the affected area until a qualified professional evaluates the nature and significance of the find, and a plan is approved by OCTA for the removal or protection of that material or resource. Cost of remediation shall be included as an eligible project expenditure in accordance with this MOU.

6.2.2 Permits

OCTA shall require the Construction Contractor(s) to secure construction permits from Santa Ana for any work done within the jurisdictional boundaries of Santa Ana. Santa Ana agrees to issue permits in a timely manner, no more than 30 days after submittal of permit application. See Section 5.3.5 for permit fees.

6.2.3 Construction Final Acceptance

OCTA shall include Santa Ana in the construction walk-through and punch list development/closeout. Final as-builts shall be delivered to Santa Ana in an agreed upon format.

6.2.4 Environmental Monitoring

Pursuant to CEQA Guidelines Section 15097(a), Santa Ana delegates Santa Ana's reporting and monitoring responsibilities as set forth in the Mitigation Monitoring and Reporting Program to OCTA, and OCTA accepts the delegation of those reporting and monitoring responsibilities. Santa Ana shall participate in meetings related to the Mitigation Monitoring and Reporting Program as needed and receive regular updates on the progress. OCTA shall provide copies of all environmental reporting and monitoring reports to Santa Ana to ensure compliance is maintained. In accordance with CEQA Guidelines Section 15097(a), Santa Ana ultimately remains responsible for ensuring that the mitigation measures in the Mitigation Monitoring and Reporting Program are implemented.

6.2.5 Construction Staging Areas

OCTA shall be responsible for selecting construction staging areas. Santa Ana may identify vacant properties owned by Santa Ana that may be leased by OCTA for Project storage, staging and office space.

6.2.6 Construction Signage

Construction signage plans shall be developed by OCTA and submitted as part of the Traffic Management Plan, see Section 6.1.5.

6.3 Right of Way

6.3.1 Right of Way Acquisition

OCTA shall be responsible for all Right of Way activities. If necessary, OCTA and the City shall cooperate in implementing eminent domain. If upon request by OCTA, the City shall conduct public hearings to hear resolutions of necessity and agrees to exercise its rights under eminent domain, to assign all of its rights, to join OCTA in litigation if necessary. The City's compensation for eminent domain proceedings shall be as defined in Section 5.3.3 above.

6.3.2 Excess Land

The disposition of any excess land as a result of property acquisitions is the responsibility and at the discretion of OCTA. Any revenues from the disposition of excess land will be reimbursed to the Project.

6.4 Public Relations

The Parties shall jointly develop and participate in a public awareness campaign (PAC) that includes business outreach that advises businesses, residents elected officials, motorists, and media of project status, construction impacts including street detours and all other construction related information. PAC will take into consideration Santa Ana's special event schedules. The City's compensation for public relations shall be as defined in Section 5.3 above.

SECTION 7 PUBLIC WAY USE

This Section is intended to provide an understanding of general terms and conditions between the Parties for the use of Santa Ana's public way for the Streetcar System. A Public Way Use Agreement shall in good faith be developed between the Parties to define in detail the roles, responsibilities, and expectations regarding OCTA's use of Santa Ana's public way for as long as the Streetcar System is providing service as intended. Topics to be addressed in detail in the Public Way Use Agreement shall include, but not limited to, the following:

OCTA Use of Property

- Limits of Use
- As-Built Records
- Future Expansion/Future Work
- Term of Use
- Reference of O&M Agreement
- Termination of Operations
- Duty to Restore

General Provisions

Streetcar System Map

- Indemnification
- Insurance
- Issue Resolution

7.1 Authorization to Construct

In the event the Public Way Use Agreement is not in place prior to the initiation of construction activities, OCTA is authorized to advance construction activities, contingent upon the Santa Ana’s approval of design plans and authorization of construction permits. Santa Ana shall not unreasonably withhold approvals or construction permits if OCTA has met Santa Ana’s existing standards and regulations. Unless related to public safety, the City’s standards shall be those in place at the beginning of design.

SECTION 8 OPERATIONS & MAINTENANCE

This Section is intended to provide an understanding of general terms and conditions between the Parties for the operations and maintenance of the Streetcar System within the jurisdiction of Santa Ana. An Operations and Maintenance Agreement shall in good faith be developed between the Parties to define in detail the roles, responsibilities, and expectations regarding the operations and maintenance of the Streetcar System and adjacent Santa Ana facilities for as long as the Streetcar System is providing service as intended. Topics to be addressed in detail in the Operations and Maintenance Agreement shall include, but not limited to, the following:

Operations

- System Operations
- Streetcar/Traffic Signal Coordination
- Adjacent City Facilities
- City Access to Streetcar Track Area
- Right of Way Permits
- Fire/Life/Safety/Security Coordination
- Emergency Procedures
- Emergency Drills
- Emergency Access
- Fare Collection
- Special Events
- Displays and Attachments
- Advertising
- OCTA Operating Costs
- City Operating Costs
- Service Agreements

- Fare/Revenue Policies

Maintenance

- Protection of Adjacent Facilities
- Notice and Approvals
- OCTA Maintenance Responsibilities
- City Maintenance Responsibilities
- Lighting
- Track
- OCS
- Traction Power
- Structures
- Pavement
- Street Lights
- Artwork
- Storm Drainage
- Utilities
- Maintenance Costs
- Service Agreements

Track Access Permit Procedures

- Permit Process
- Training
- Safety

General Conditions

Streetcar System Map

8.1 Operations

OCTA is responsible for the operations and operational costs for the Streetcar System with the exception of Santa Ana's contribution as specified in Section 5.3.8 unless stated otherwise herein.

8.2 Maintenance

OCTA is responsible for all maintenance and maintenance costs for the Streetcar System unless stated otherwise herein.

Any work performed by Santa Ana on Santa Ana streets where Streetcar System operates, will be coordinated with OCTA and if feasible will be conducted during non-operational hours of Project.

SECTION 9 INDEMNIFICATION

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

liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (OCTA's employees included), for damage to property, including property owned by the City, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct of OCTA, its officers, directors, employees, contractors or agents in connection with or arising out of the performance of this Agreement.

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

SECTION 10 NOTICES

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

To City:

City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92701
ATTENTION: Fred Mousavipour Executive
Director, Public Works

Tel: (714) 647-5654
Email : fmousavipour@santa-ana.org

Cc: Jason Gabriel, Project Manager
Tel: (714) 647-5664
Email: jgabriel@santa-ana.org

To OCTA:

Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
ATTENTION: Lydia Bilynsky
Contracts Administration and
Materials Management

Tel: (714) 560 – 5568
Email: lbilynsky@octa.net

Cc: Kelly Hart, Project Manager
Tel: (714) 560-5725
Email: khart@octa.net

(This section intentionally blank)

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding No. C-5-3295 to be executed on the date first above written.

CITY OF SANTA ANA	ORANGE COUNTY TRANSPORTATION AUTHORITY
By: _____ David Cavazos City Manager	By: _____ Darrell Johnson Chief Executive Officer
ATTEST: By: _____ Maria D. Huizar City Clerk APPROVED AS TO FORM: By:  _____ Sonia R. Carvalho City Attorney Date: _____	APPROVED AS TO FORM: By: _____ James M. Donich General Counsel APPROVAL RECOMMENDED: By: _____ Jim Bell, P.E. Executive Director, Capital Programs Date: _____

EXHIBIT A – PROJECT MAP

