

RESOLUTION NO. 2011-603

Adopted by the Sacramento City Council

November 1, 2011

APPROPRIATING FUNDING AND APPROVING A FUNDING AGREEMENT WITH CAPITOL CORRIDOR JOINT POWERS AUTHORITY FOR THE SACRAMENTO INTERMODAL FACILITY, TRACK RELOCATION PROJECT (T15029000) AND REPEALING SECTION 5 OF RESOLUTION 2011-169

BACKGROUND

- A. The project will relocate the existing Union Pacific Railroad (UPRR) mainline tracks, build new passenger platforms and access tunnels, relocate existing utilities, and install new utilities.
- B. Additional funding sources were found to fund two betterments that would improve operations.
- C. Funding is available in the City's Streetlight Investment Program project to fund additional LED lighting in the station.
- D. Capitol Corridor Joint Powers Authority (CCJPA) is contributing \$400,000, of which \$320,000 is provided through a Carl Moyer Memorial Air Quality Standards Attainment Program (California Health and Safety Code § 44275 et seq.) grant from the California Air Resources grant, for four additional wayside power cabinets.
- E. An earlier funding agreement that noted a different appropriation amount for the LED lighting and power cabinets was approved by Council in Section 5 of Resolution 2011-169 on March 22, 2011, but was never executed and is being replaced by the agreement and appropriation approved in this resolution.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Section 5 of Resolution 2011-169, is hereby repealed.
- Section 2. The City Manager or his designee is authorized to execute the \$400,000 funding agreement between the City and the Capitol Corridor Joint Powers Authority that is attached as Exhibit B of this Resolution.
- Section 3. The Track Relocation Project revenue and expenditure budgets (Fund 3702) are increased by \$400,000.
- Section 4. \$150,000 from the Streetlight Investment Program Project (T15013500) is appropriated for lighting upgrades in the Track Relocation Project.
- Section 5. Exhibits A and B are attached and are part of this Resolution.

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Exhibit A – Location Map

Exhibit B – Funding Agreement

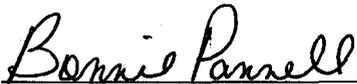
Adopted by the City of Sacramento City Council on November 1, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Pannell, Schenirer, Sheedy.

Noes: None.

Abstain: None.

Absent: Mayor Johnson.



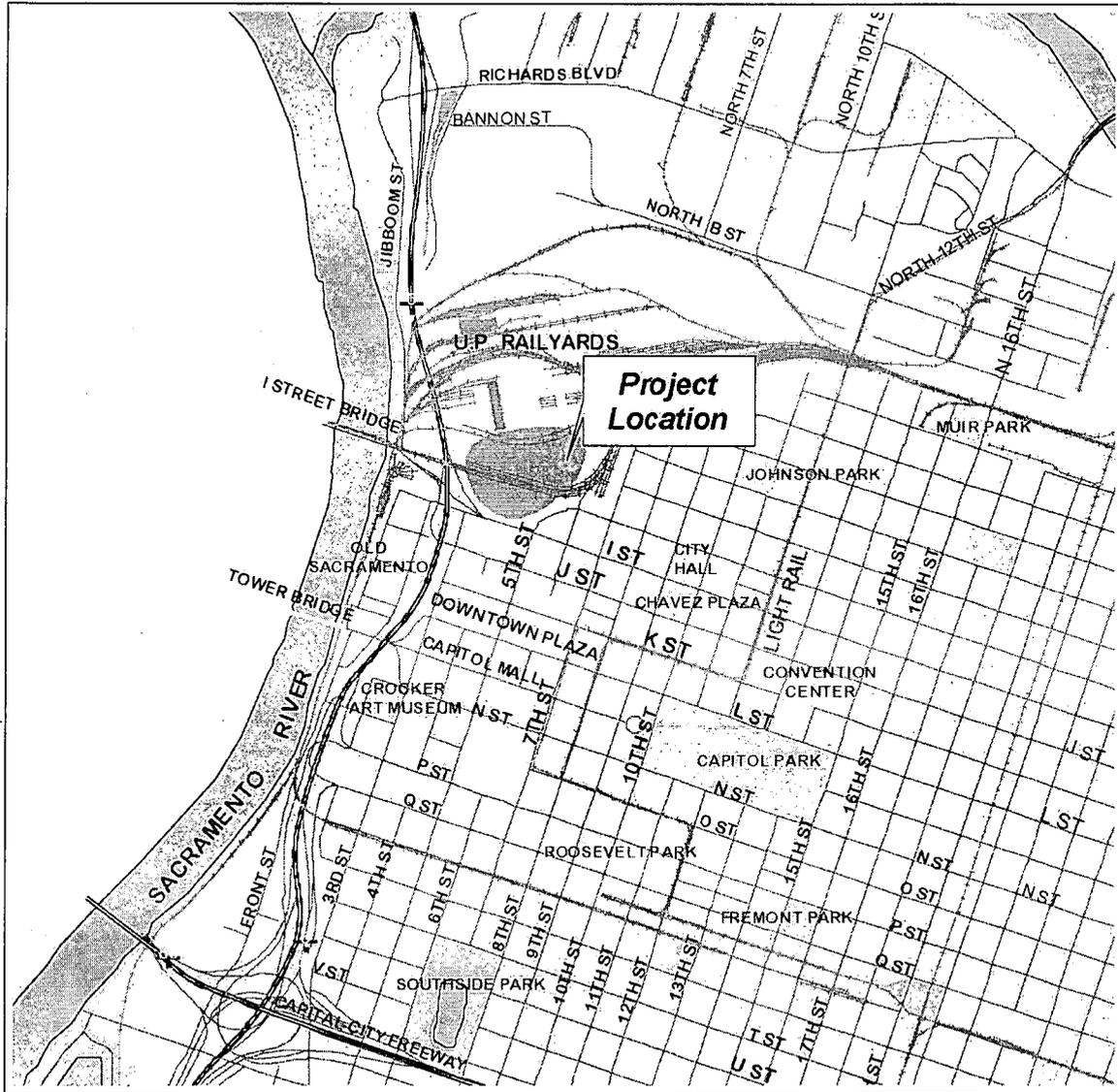
Bonnie Pannell, Vice-Mayor

Attest:



Shirley Concolino, City Clerk

Location Map for
**SACRAMENTO INTERMODAL
TRANSPORTATION FACILITY (SITF)**
(PN:CF41)



Map Contact: S. Tobin
Date: October, 2003

1000 0 1000 2000 Feet



SACRAMENTO VALLEY STATION – POWER CABINET FUNDING AGREEMENT

This agreement is dated _____, 2011, and is between the CITY OF SACRAMENTO, a municipal corporation ("CITY"), and CAPITOL CORRIDOR JOINT POWERS AUTHORITY, a public agency formed jointly by local agencies pursuant to Government Code Section 14076 *et seq.* ("CCJPA"). CITY and CCJPA may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

Background

S. Thomas Enterprises of Sacramento, LLC ("**Thomas**") was a prior owner of certain real property located in the City and County of Sacramento and commonly referred to as the Sacramento Railyards (the "**Property**"). On July 13, 2006, Thomas and the Union Pacific Railroad Company ("**UPRR**"), together with the National Railroad Passenger Corporation ("**AMTRAK**"), CCJPA, and the State of California Department of Parks and Recreation ("**CSRM**") entered into that certain Track Relocation Agreement (the "**TRA**"). Thereafter, CITY and UPRR entered into that certain Construction Operation and Maintenance Agreement dated November 23, 2009, (the "**COMA**") pursuant to which the CITY assumed certain of Thomas' obligations under the TRA, as more particularly set forth in the COMA. The TRA and the COMA provided for, among other things, the right to relocate UPRR's freight and passenger tracks and facilities and the performance of certain other obligations by the CITY and UPRR with respect to such tracks and facilities (the "**Track Relocation Project**" or "**Project**").

On December 28, 2006, CITY acquired the existing Sacramento Valley Station located at 401 I Street in Sacramento, which the Parties commonly refer to as the Depot Property or Parcel A. On February 28, 2011, CITY acquired an adjacent parcel of land known as Parcel B. Collectively Parcels A and B are referred to in this agreement as the "**Intermodal Property.**" CITY will undertake construction of the Track Relocation Project within the Intermodal Property.

CCJPA operates its Capitol Corridor rail passenger service under a contract with AMTRAK because AMTRAK has a master lease agreement with UPRR that allows AMTRAK to use the UPRR railroad tracks and related appurtenances and the facilities within UPRR's exclusive perpetual easement encumbering a portion of Parcel A.

CITY undertook the design of the Track Relocation Project in consultation with CCJPA, UPRR, AMTRAK and CSRM. At the request of CCJPA and Amtrak, CITY included eight 480 volt wayside power cabinets (the "**Power Cabinets**") within the Track Relocation Project. The Power Cabinets will support the substitution of diesel train powered energy to train cars while they are stationary for servicing, maintenance, and cleaning in favor of cleaner sources of electrical power not having their origin in diesel-consuming train engines, which will reduce the

generation of NOx and other precursor pollutants in the Sacramento Nonattainment Area as contemplated by the Carl Moyer Program Guidelines as implemented by the Sacramento Metropolitan Air Quality Management District.

CITY has secured funding in the amount of \$392,000 to purchase and install four of the Power Cabinets (the "**CITY Cabinets**"), and CCJPA has submitted an application to the Sacramento Metropolitan Air Quality Management District for \$320,000 in funding through the Carl Moyer Memorial Air Quality Standards Attainment Program (California Health and Safety Code, § 44275 et seq.) (the "**Carl Moyer Grant Program**") to pay a portion of CITY's costs to purchase and install the remaining four Power Cabinets (the "**CCJPA Cabinets**"). CCJPA has identified an additional \$80,000 in other funds that it will use to pay CITY to purchase and install the CCJPA Cabinets and appurtenances, including electric meters, and other modifications necessary to monitor power usage as required by the Carl Moyer Grant Program.

It is the intent of the Parties that CITY's contribution of the CITY Cabinets at a cost of \$392,000 will be used to satisfy the CCJPA's match requirement under the Carl Moyer Grant Program. It is also the intent of the Parties that all eight Power Cabinets – the four CITY Cabinets and the four CCJPA Cabinets - will be the personal property of CCJPA, and that CITY will not assume any responsibility for the operation, maintenance, repair, or replacement of any of the Power Cabinets.

With these background facts in mind, the Parties agree as follows:

1. **CCJPA FUNDING COMMITMENT.** CCJPA shall provide CITY with \$400,000 to purchase and install the CCJPA Cabinets and appurtenances, including electric meters, and other modifications necessary to monitor power usage as required by the Carl Moyer Grant Program as part of CITY's Track Relocation Project (the "**CCJPA Funding Commitment**").
2. **DISBURSEMENT OF FUNDS.** CCJPA shall disburse the \$400,000 no later than forty-five (45) days after CCJPA's receipt of CITY's detailed invoice that verifies that the work funded by CCJPA has been completed and CITY has made payment to the Track Relocation Project contractor for such work. CCJPA may inspect the work to verify its completion as a precondition of making payment. Such inspection shall occur no later than ten (10) days after the date of CCJPA's receipt of CITY's invoice.
3. **COST OVERRUNS.** It is understood and agreed that the CCJPA Funding Commitment represents the full extent of CCJPA's obligation to contribute funds for the purchase and installation of the CCJPA Cabinets and that CCJPA will not be liable, responsible and/or expected to provide additional funding if there are any cost overruns or contractor claims related to the purchase and installation of the CCJPA Cabinets.
4. **INSPECTION OF BOOKS AND RECORDS.** It is understood and agreed that CCJPA shall have the right to access, inspect and audit CITY's (and its contractors') books and records relating to the purchase and installation of the CCJPA Cabinets upon reasonable

notice, during the course of the Track Relocation Project and for three (3) years after final completion.

5. OWNERSHIP AND CONTROL OF CABINETS.

- A. Upon (1) CCJPA's payment of CITY's invoice under section 2, or (2) the date on which one or more of the Power Cabinets are put into use, whichever is earlier, the CITY's property interest in the Power Cabinets – the CITY Cabinets and the CCJPA Cabinets - will vest in CCJPA without any further action required by the Parties (the "Transfer Date").
- B. Commencing on the Transfer Date, CCJPA at its sole expense shall (1) operate, maintain, and repair the Power Cabinets as required by the Carl Moyer Grant Program, and (2) comply with all other requirements of the Carl Moyer Grant Program that are applicable to the Power Cabinets, except that after the Transfer Date CCJPA may transfer ownership of the Power Cabinets, and any of the duties identified in this subsection 5.B., to Amtrak. Although such a transfer may occur, it will not relieve CCJPA of its obligations under this subsection 5.B.
- C. Upon the Transfer Date, CITY will be relieved of all obligations that it may have related to the Power Cabinets.

6. INDEMNIFICATION.

- A. In light of the fact that all design and construction work in connection with the Track Relocation Project is being performed by CITY and/or its contractors, CITY shall defend, indemnify and hold harmless and shall require its contractors (including any subcontractors) to defend, indemnify and hold harmless CCJPA, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively, the "Indemnified Parties") from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any of the Indemnified Parties may hereafter incur, be responsible for or pay as a result of:
 - (1) injury or death to any person arising in any manner, directly or indirectly, from or incidental to or in connection with activities of or work performed in connection with the Track Relocation Project construction by CITY and/or its officers, employees, agents, servants, contractors, subcontractors or any other person acting for or by permission of CITY, and
 - (2) damage (including environmental contamination and loss of use) to or loss of any property, including property of CCJPA arising in any manner, directly or indirectly, from or incidental to or in connection with work performed in connection with the Track Relocation Project construction

by CITY and/or its officers, employees, agents, servants, contractors, subcontractors or any other person acting for or by permission of CITY.

- B. In light of the fact that CCJPA is solely responsible for the operation, maintenance, and replacement of, and complying with all the Carl Moyer Grant Program requirements that are applicable to, the Power Cabinets, CCJPA shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this agreement by CCJPA, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CCJPA.

7. **INSURANCE.**

- A. CITY shall require its contractor(s) to name CCJPA as an additional insured on the insurance coverages required by CITY for construction of the Track Relocation Project.
- B. CCJPA shall require its contractors who enter onto CITY property for any purpose related to the Power Cabinets to name CITY as an additional insured on the insurance coverages required by the contract between CCJPA and the contractor.

8. **TERM.** This agreement is effective until it is terminated by mutual agreement of the Parties.

9. **NOTICES.** Notices to the Parties as provided by this agreement shall be given by United States mail, postage prepaid as follows:

TO CCJPA:

Capitol Corridor Joint Powers Authority

TO CITY:

City of Sacramento

300 Lakeside Drive, 14th Floor, East
Oakland, CA 94612
Attn: Managing Director

915 I Street, 5th Floor
Sacramento, CA 95814
Attn: City Manager

Notice will be deemed to have been served when it is deposited in the United States mail, postage prepaid, and addressed as above prescribed. Notwithstanding the foregoing, in the event either of the Parties provides notice to the other Party by means of electronic transmission, such notice will be deemed to have been served upon receipt by the sending Party of written or electronic acknowledgement of receipt thereof from the receiving Party.

10. **GOVERNING LAW AND VENUE.** This agreement is governed by and will be construed in accordance with the laws of the California. Any litigation concerning this agreement must be brought and prosecuted in the Sacramento County Superior Court.
11. **SUCCESSORS AND ASSIGNS.** This agreement may not be assigned by either Party without the other Party's prior written consent. The obligations in this agreement shall inure to and bind the successors of each Party.
12. **WARRANTIES AND REPRESENTATIONS.** Each person who signs this agreement on behalf of a Party warrants and represents that he or she has the capacity and legal authority to execute this agreement for that Party and to bind that Party to the obligations imposed on it by this agreement.
13. **NO THIRD PARTY BENEFICIARIES.** Nothing in this agreement shall be deemed to create any right in any person not a Party hereto other than permitted successors and assigns of a Party hereto, and this agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party, including, without limitation, AMTRAK and UPRR.
14. **ENTIRE AGREEMENT; MODIFICATION.** This document contains the entire agreement between the Parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration of the terms of this agreement will be valid unless approved in a writing signed by CITY and CCJPA.
15. **COUNTERPARTS.** This agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. Facsimiles, pdfs and photocopies of signature pages of the agreement shall have the same binding effect as originals.

CITY OF SACRAMENTO

**CAPITOL CORRIDOR JOINT
POWERS AUTHORITY BOARD**

By: _____
John F. Shirey
City Manager

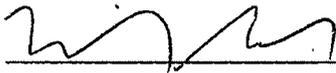
By: _____
David Kutrosky
Managing Director

Dated: October ____, 2011

Dated: October ____, 2011

Approved as to Legal Form:

Approved as to Legal Form:

By:  _____
Senior Deputy City Attorney

By: _____
Agency Counsel

Attest:

Attest:

By: _____
City Clerk

By: _____
Agency Clerk

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CITY OF SACRAMENTO

**CAPITOL CORRIDOR JOINT
POWERS AUTHORITY BOARD**

By: _____
John F. Shirey
City Manager

By: 
David Kutrosky
Managing Director

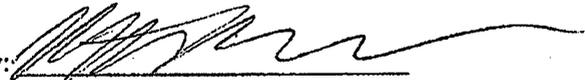
Dated: October __, 2011

Dated: October 26, 2011

Approved as to Legal Form:

Approved as to Legal Form:

By: _____
Senior Deputy City Attorney

By: 
Agency Counsel

Attest:

Attest:

By: _____
City Clerk

By: 
Patricia K. Williams
Agency Clerk