



REPORT TO COUNCIL

City of Sacramento

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915 I Street, Sacramento, CA 95814-2604
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CONSENT
November 17, 2009

**Honorable Mayor and
Members of the City Council**

**Title: Agreements: Track Relocation Project - Amendment to Track Relocation
and Financing Agreement, and Private Utilities Service Agreement**

Location/Council District: Downtown near Sacramento Valley Station (District 1)

Recommendation: Adopt: 1) a **Resolution** approving the First Amendment to the Track Relocation and Financing Agreement (Agreement No. 2006-1406) with S. Thomas Enterprises of Sacramento, LLC; and 2) a **Resolution** approving the Private Utilities Service Agreement with S. Thomas Enterprises of Sacramento, LLC.

Contact: Fran Halbakken, Operations Manager, (916) 808-7194

Presenters: Fran Halbakken

Department: Transportation

Division: Office of the Director

Organization No: 15001141

Description/Analysis

Issue: The Track Relocation Project (T15029005) is needed to upgrade freight and passenger rail service, improve safety, extend the street system into the Railyards and facilitate the transformation of the existing Sacramento Valley Station into a multi-modal regional transportation facility. In order to meet funding deadlines for the Track Relocation Project, certain agreements and actions are required to relocate the existing Union Pacific Railroad (UPRR) mainline tracks, build new passenger platforms and access tunnels, relocate existing and install new utilities and obtain access rights from adjacent land owners and tenants.

Amendment of the existing Track Relocation and Financing Agreement (TRFA) with S. Thomas Enterprises of Sacramento, LLC (Thomas) is proposed to clarify each party's obligations in implementing and funding this project. The amendment addresses changes in roles, project scope and costs, and specifies scope additions that the City will also construct for the Railyards development

project which Thomas is to fund separately. This amendment is consistent with the original terms of the TRFA.

In particular, the project scope includes an added Service Tunnel (and cost split beyond the grant amount received from Amtrak), and Thomas is obligated to fund the added West Tunnel to the extent that City does not receive sufficient funding from other sources (to fully pay the Proposition 1B grant match). In addition, Thomas is obligated to fund the costs for the utility improvements to be constructed as part of the Track Relocation Project within UPRR's easement which serve Thomas' Railyards development.

The major change proposed in project delivery is that the City will bid, administer construction and manage the project instead of Thomas. This change is needed because of the requirement to follow public works contracting procedures in utilizing federal and state funding sources with which the City is familiar.

In addition, there are existing private utilities which provide services to and connect the Depot and Central Shops buildings which will be protected, relocated or upgraded as part of the Track Relocation project. Until separate meters for electric and water services are installed, the parties will need to continue splitting utility costs based on audits and estimates of their respective use. Existing private utilities for the Central Shops buildings will need to remain within the Intermodal site until new utility services are provided from Camille Lane. The proposed Private Utilities Service Agreement formalizes the current billing arrangement and addresses the rights of each party to continued utility services from the shared private utility lines and meters.

Policy Considerations: The proposed actions are consistent with the City's Strategic Plan goals of achieving sustainability and enhancing livability, and expanding the economy and with the City's 2030 General Plan to promote development of an integrated, multi-modal transportation system to reduce air pollution and greenhouse gases.

Environmental Considerations:

California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA): On June 2, 2009, the City Council approved a Mitigated Negative Declaration under CEQA and a Notice of Determination was filed on June 8, 2009. On August 31, 2009, Federal Highway Administration issued a Finding of No Significant Impact (FONSI) and authorized the City to implement Phases 1 and 2 of the Intermodal project. Requirements of CEQA, NEPA and Sections 4(f) and 106 under federal law have been met and no further environmental review is required to approve the proposed actions.

Sustainability Considerations: The Sacramento Intermodal Transportation Facility (SITF) project will provide facilities to accommodate freight and passenger rail trains, light rail transit, intercity and local buses,

and taxis, bicycles and pedestrians, and future modes such as streetcars and California High Speed Rail. The Track Relocation Project is consistent with the City's sustainability goals to provide better accessibility to public transportation.

Other: None.

Commission/Committee Action: None.

Rationale for Recommendation: Approval of the amendment to the TRFA is necessary to allow for the Track Relocation Project to proceed into the construction bidding phase based on Caltrans and FHWA approvals. These actions are needed to meet the deadlines for the federal stimulus funding.

Financial Considerations: Future Council action will be required to authorize project construction and award bids. Additional federal grant applications are pending. Any balance will be provided in accordance with funding commitments under the TRFA, as amended. The Private Utilities Services Agreement establishes each party's responsibility for payment of their respective share of the electric, water and sewer services which are currently jointly metered.

Emerging Small Business Development (ESBD): All project contracts will comply with the applicable federal DBE requirements and with any applicable ESBD requirements for contracts that are not federally funded.

Respectfully Submitted by: Francesca Halbakken
Francesca Halbakken
Operations Manager

Approved by: Jerry Way
Jerry Way
Director of Transportation

Recommendation Approved:

Ray Kerridge
Ray Kerridge
City Manager

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Attachment 1**Background Information:**

The Track Relocation Project (T15029005) relocates and reconfigures the current Union Pacific Railroad (UPRR) mainline and passenger tracks and the passenger platforms to the north, between the I Street bridge and 7th Street. This will improve the mainline heavy rail capacity and reliability, for both freight service and passenger rail service. In addition, separating the freight tracks from the passenger platforms and limiting access to the platforms by means of the new passenger and service tunnels will improve safety. Relocation of the existing UPRR tracks will also allow extension of 5th and 6th Streets to open the Railyards area for development and connect the area to downtown Sacramento.

Prior Track Relocation Agreements - The scope of the Track Relocation Project was initially set out in an agreement between UPRR, the National Railroad Passenger Corporation (Amtrak), the Capitol Corridor Joint Powers Authority (CCJPA), the California Department of Parks and Recreation on behalf of the California State Railroad Museum (CSRM) and S. Thomas Enterprises of Sacramento, LLC (Thomas) dated July 13, 2006. The UPRR tracks would move northward, a new passenger tunnel would be built to provide access to the relocated platforms, and a new crossing and spur track would be built for CSRM to provide continued access for movement of their historic rail cars between their Old Sacramento Museum and their maintenance facility in the Central Shops.

On December 13, 2006 the City and Thomas entered into the Track Relocation and Financing Agreement (City Agreement No. 2006-1406) to allocate responsibilities for funding and construction of the Track Relocation Project. The City agreed to fund the first \$40 million of project costs and the parties would split costs above \$40 million. At that time, the project was estimated to cost \$45 million and Thomas was to be responsible for the construction of the project.

Project Scope Changes - The scope of the project has changed since the agreements were executed to add: (1) the West Tunnel (pedestrian access underneath UPRR tracks between Old Sacramento and the Central Shops) to implement the Railyards project entitlements; and (2) the Service Tunnel for Amtrak's use for baggage carts and service vehicles to access the platforms separately from the passengers. The West Tunnel design costs were funded by allocating \$300,000 in park funds from Market Plaza, as approved by Thomas and the City Council on February 3, 2009 (City Agreement No. 2008-0409-1). Approximately half of the costs to construct the West Tunnel will be covered under the state Proposition 1B allocation and the remaining cost is addressed in the proposed amendment to the Track Relocation and Financing Agreement (TRFA). Under the terms of the City-Amtrak agreement, Amtrak will contribute \$2.67 million to the project to cover the design and half of the approximately \$4 million cost to construct the Service Tunnel, with the remaining construction costs funded by the project.

During the design phase, it was discovered that service and utility relocations would be required for fiber optics and for existing utility connections between the Central Shops and the Depot building (electric, gas, water, sewer and telephone). This work and these expenses are part of the additional project scope and costs to be split by the parties.

Also, UPRR requires that all improvements needed for the Railyards development, such as storm drains and other buried utilities (or encasements for installation of future utilities), which would cross under tracks or lie parallel to their tracks within their reserved easement, and all overcrossings (5th and 6th Streets bridges) must also be constructed concurrently before UPRR will operate on the new rail tracks. The TRFA amendment addresses payment by Thomas for those utility costs incurred by City which only benefit the Railyards project and which are not needed for Station or future Intermodal operations, and payment of Thomas' costs to construct the 5th and 6th Street bridge supports which were part of the original project scope.

The TRFA amendment addresses the changes in assignment of project responsibilities and cost sharing. Resulting costs will be calculated subsequently based on actual costs and the amount of federal and state grants received. Currently, the city is programmed to receive \$44 million in such grants for the project and approximately \$5.266 million for the additional scope of work (i.e., West Tunnel).

Also, design and construction of the 5th Street bridge crossing is funded under the City's Proposition 1C Transit Oriented Development (TOD) grant and half of the cost for the 6th Street Bridge is to be funded under a separate City Proposition 1B grant. The transfer of these state grant funds to Thomas for the 5th and 6th Street extensions occurred under the Assignment Agreement and the First Amendment to that agreement which were previously approved by the Council. To the extent that this work is not fully funded under those grants, the costs of the bridge supports would be subject to the cost sharing provision of the TRFA, as amended.

RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING FIRST AMENDMENT TO TRACK RELOCATION AND FINANCING AGREEMENT WITH S. THOMAS ENTERPRISES OF SACRAMENTO, LLC

BACKGROUND

- A. The City of Sacramento has completed environmental studies and preliminary design plans for the Track Relocation Project, which is the first phase of the Sacramento Intermodal Transportation Facility Project.
- B. The Track Relocation Project involves relocating the Union Pacific Railroad Company's (UPRR) freight tracks and building new passenger tracks and platforms to the north to allow for expansion of the existing Sacramento Valley Station, provide rail safety improvements and enhance the comfort and convenience for rail and intercity bus passengers.
- C. As set out in the Track Relocation and Financing Agreement (TRFA) (Agreement No. 2006-1406), the City is responsible for funding the initial \$40 million in costs for the Track Relocation Project and half of the costs above \$40 million; this amount is increased to \$44 million in the amended agreement.
- D. S. Thomas Enterprises of Sacramento, LLC (Thomas) is obligated under the TRFA to pay for half of the Track Relocation Project costs above \$40 million, as well as the costs for the project components which only serve its Railyards development and which are not eligible for funding under the City's federal, state and local grants. However, the scope of the Track Relocation Project has changed and Thomas is now obligated to fund some of the added components, such as the Service Tunnel. The additional Track Relocation Project costs which are only for the Railyards development includes approximately half of the construction costs for the West Tunnel and utility improvements to serve future development within the Central Shops District.
- E. In addition under the TRFA, to the extent the City obtains federal and state grants for the project, both parties will benefit from such grants. Currently, the City is scheduled to receive a total of \$44 million, hence Thomas' obligation to pay a portion of the project costs would be measured as one-half above this amount.

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

Section 1. The City Manager is authorized to execute the First Amendment to the Track Relocation and Financing Agreement (Agreement No. 2006-1406) with S. Thomas Enterprises of Sacramento, LLC (Thomas) for the Track Relocation Project to provide for: (1) City to undertake construction of the project, (2) to add the Service Tunnel to the project scope, (3) Thomas to pay half of the cost for construction of the West Tunnel, (4) Thomas to pay for UPRR's license fees required for the Longitudinal Pipeline Encroachment Agreement (wet utilities) and West Tunnel in the amount of \$66,000, (5) Thomas to pay for the costs of the pipelines and encasements for those utilities installed by City under the UPRR Longitudinal Pipeline Encroachment Agreement, and (6) Thomas to pay one-half of the Track Relocation project costs which exceeds \$44 million.

RESOLUTION NO.

Adopted by the Sacramento City Council

**APPROVING PRIVATE UTILITIES SERVICE AGREEMENT WITH S. THOMAS
ENTERPRISES OF SACRAMENTO, LLC**

BACKGROUND

- A. In December of 2006, the City purchased the Sacramento Valley Station property, which includes the Depot building used for Amtrak's operations. This property was previously owned by the Southern Pacific and Union Pacific Railroads as part of a larger 240 acre parcel of land.
- B. The utility services to the Depot building and to the Central Shops buildings owned by S. Thomas Enterprises of Sacramento, LLC (Thomas) are connected by pipelines which traverse the City's Station property. There is only one meter for electric service located at the Central Shops and one meter for water service located at the Depot, and these meters track the combined utility usages. Thomas previously conducted an audit of the electric use and determined that the Depot's share is 73%. City has paid Thomas for the Depot electric use under prior action of the City Council (Resolution No. 2009-365) and thereafter City has been paying the same proportionate share of the SMUD bill. City staff has estimated the quantity of water used by Thomas and the Private Utilities Services Agreement establishes Thomas' obligation to pay its proportionate share of the City's water and sewer costs.
- C. The Track Relocation Project includes relocating the existing utilities serving the Depot and Central Shops, some of which will be located into public utility easements and some will remain as private utilities. The Private Utilities Services Agreement addresses the City's obligation to insure that the private utilities will remain in place on the Station property to serve the Central Shops until Thomas constructs new service extensions when Camille Lane is constructed.
- D. To maintain service to the Depot during the Track Relocation Project, the City is also undertaking work to install new electric service and meter and a new separate water line and meter for the Depot building. Thereafter, each party's actual utility usage of such utilities will be metered and invoiced per the terms of the Private Utilities Services Agreement.

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

- Section 1. The City Manager is authorized to execute the Private Utilities Service Agreement with S. Thomas Enterprises of Sacramento, LLC to provide for continued utility services to the Depot and Central Shops buildings and to address payment of each party's respective share for utility services.