



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 1/17/2012

Report Type: Consent

Title: Agreement: 6th Street Roadway Project Memorandum of Understanding with IA Sacramento Holdings

Report ID: 2012-00054

Location: Downtown Railyards, District 3

Recommendation: 1) Pass a Motion authorizing the City Manager or his designee to execute a memorandum of understanding (MOU) with IA Sacramento Holdings, L.L.C. (IA Holdings) regarding the 5th Street and 6th Street roadway project, and 2) adopt a Resolution increasing the authorized funding for 6th Street Bridges design work by \$4,069 for a total authorization of \$1,158,740 to account for additional design costs and authorizing payment to Quincy Engineering, Inc. in an amount not to exceed \$4,069.

Contact: Jerry Way, Director of Transportation (916)808-7100

Presenter: None

Department: Transportation Department

Division: Planning & Policy

Dept ID: 15001041

Attachments:

- 1-Description/Analysis
- 2-Background Information
- 3-Contract Status Form
- 4-Resolution
- 5-Location Map
- 6-Memorandum of Understanding with IA Sacramento Holdings

City Attorney Review

Approved as to Form
Michael T. Sparks
1/13/2012 4:49:10 PM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 1/13/2012 3:47:49 PM

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk
John F. Shirey, City Manager

Russell Fehr, City Treasurer



Description/Analysis

Issue: Before proceeding with the completion of 5th Street and 6th Street extensions, the City and IA Holdings desire to memorialize certain understandings related to the 5th and 6th Streets in a memorandum of understanding (MOU). Also, final payment for the design of the overcrossing of the 6th Street Project needs to be made.

While pertinent to both projects, the MOU is particularly relevant for obtaining construction funding on the 6th Street roadway (Project). On September 22, 2010, the California Transportation Commission (CTC) awarded the City \$7.865 million in funding under the State Proposition 1B Highway Railroad Crossing Safety Account (HRCSA) 2010 Program for construction of the roadway segment of the 6th Street extension from H Street to the proposed alignment of Railyards Boulevard. Previously, the City constructed the 6th Street bridge with HRCSA funding following a similar process. Also, the State previously awarded State Proposition 1C related to the 5th Street bridge (already constructed) and its roadway connections, which are to be designed and constructed by the developer.

The City will construct the roadway connections to complete 6th Street as required by the HRCSA Baseline Agreement for the project with the State. However, due to the change in ownership of the Railyards property and pending resolution of other issues between the City and IA Holdings, it does not appear that the milestones contained in the Baseline Agreement are achievable. Therefore, the City will ask the CTC to amend the Baseline Agreement to extend the design and construction phases of the Project, as well as ask for a June 2012 funding allocation. In order to do this, the City must submit, a construction allocation package to the CTC and Caltrans by April 20, 2012. This requires completed plans and right-of way certification approved by the City. It ties back to the MOU because before IA Holdings submits the final Project plans to the City for approval, an executed MOU is desired.

Policy Considerations: The action requested is consistent with the City of Sacramento Strategic Plan goal of enhancing livability and improving access to transportation.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Project was subject to environmental review as part of the Railyards specific plan environmental impact report, which was certified on December 11, 2007. No new information or changed conditions requires any supplemental environmental review for the proposed action.

Sustainability Considerations: The Project will provide access to smart growth, infill, brownfield, transit-oriented development in the Railyards and is related to relocation of the mainline rail tracks, which will contribute to the

development of the Sacramento Intermodal Transportation Facility and improve opportunities for public transit and passenger rail operations.

Commission/Committee Action: None.

Rationale for Recommendation: In advance of embarking on the next steps of the 5th Street and 6th Street Projects, the City and IA Holdings desire to address and clarify certain items about the Project. These are contained in the MOU and include such items as the roles and responsibilities of parties, maintenance of mechanically stabilized earth (MSE) walls that are part of the 5th and 6th Street roadways as they rise to meet the bridges over the rail corridor, dedication of street right-of-way and maintenance easements, and provision of various infrastructure plans to the City.

Financial Considerations: On September 22, 2010, the CTC awarded the City \$7.865 million in HRCSA funds as part of the State's Proposition 1B FY2010 program for construction of the roadway portion of the 6th Street extension project. This is approximately half of the total funding needed for the Project. On December 7, 2010, City Council approved the 6th Street Roadway Project Escrow Agreement (Escrow Agreement) between IA Holdings, the City, and Chicago Title, which provided for IA to deposit \$7.865 million into escrow to match the HRCSA funds on a 1:1 basis. On December 20, 2010, IA Holdings deposited those funds into escrow. They will be used to fund design, construction, and construction management costs associated with the Project. When the City and the CTC enter into the HRCSA funding agreement, revenue and expenditure budgets for the State funds (Fund 3704) in the 6th Street Overcrossing Roadway Project (T15116200) will be established.

Through several Resolutions (2008-771, 2009-644, and 2011-472), the City Council authorized payment for project design funding for the 6th Street bridges project, for a total of \$1,154,671. In an oversight, an invoice to Quincy Engineering for \$4,069 was not included in the amount authorized for reimbursement. Consequently, authorization for an additional \$4,069 is requested and the revised total authorization would be \$1,158,740. As of January 10, 2012, the 6th Street Bridges Project (T15098800) has an unobligated balance of \$1,296,267, which is sufficient to pay the invoice. There are no general funds planned or allocated to this project.

Emerging Small Business Development (ESBD): Not applicable at this time.



Attachment 1

Background Information:

As part of the infrastructure needed to support development of the Intermodal Station and the Sacramento Railyards, the City and Railyards owner have successfully obtained various grant funds for infrastructure, including relocation of the mainline tracks, and construction of the bridges and connections for 5th and 6th Streets over the future realigned tracks. Much of this is underway or completed. Remaining items include connections of 5th and 6th Streets to the completed overcrossings once the rail realignment is completed.

The extension of 6th Street north from H Street in downtown Sacramento to the future Railyards Boulevard is a major Railyards infrastructure improvement that will provide a means to access the new development and to link communities. The overall 6th Street project includes an overcrossing of the relocated rail right-of-way, a bridge over the light rail transit tracks on F Street, and roadway segments north and south of the rail corridor. The project is eligible for State Proposition 1B HRCSA funding because it avoids a new at-grade crossing of a mainline railroad. Under the HRCSA program, a public agency is required to apply for the funding and handle the project construction, even in a situation like the Railyards where construction of the street itself is a development requirement of IA Holdings' Railyards project. IA Holdings is still responsible for designing the Project.

The 5th Street Bridges and roadway connections are funded through State Proposition 1C, and these are being designed and constructed by the developers.

Due to the need to complete construction of the overcrossing before the new tracks are placed into service and to the timing of funding, the 6th Street extension project was divided into two parts. The bridges component proceeded first and has been completed. Similarly, the 5th Street bridge component was constructed, while its roadway extension needs to be completed.

The 6th Street roadway component (the Project) shifted to the second round of HRCSA funding and on September 22, 2010, the CTC approved \$7.865 million for construction of the Project. As a result, the City, the CTC, and Caltrans entered into a HRCSA Baseline Agreement for the Project, which contains performance milestones. In December 2010, the City, IA Holdings and Chicago Title executed an Escrow Agreement that provided for IA Holdings to match the HRCSA funds on a 1:1 basis and to deposit those funds into escrow. Shortly thereafter, IA Holdings made the escrow deposit. During the past year, the City and IA Holdings have been working on issues involving design, provision for maintenance of the roadway's MSE walls, dedication of the roadway, maintenance easements, and other items.

As a result of the change in ownership of the Railyards and attempting to resolve these other issues related to the Project, it does not appear that the milestones contained in the Baseline Agreement are achievable. Therefore, the City will ask the CTC to amend the Baseline Agreement to extend the design and construction phases of the Project, as

well as ask for a June 2012 funding allocation. However, before IA Holdings submits the final Project plans to the City for approval, the City and IA Holdings desire to stipulate certain understandings related to the Project in a memorandum of understanding (MOU).

At this time, Council is being asked to authorize the City Manager to execute the MOU with IA Holdings to memorialize agreements reached on these items. Once the MOU is executed, IA Holdings will direct its consultant, Kimley Horn & Associates, to complete design of the Project so that the City can submit its construction allocation package to the CTC and Caltrans by April 20, 2012, which is the deadline for CTC action in June 2012.

In the MOU, both parties are seeking to clarify and protect their interests in regard to the construction and maintenance of the roadway and the future construction of buildings next to these walls. For example, IA Holdings agrees that the City will be provided easements to access the walls under the various conditions of adjacent construction. The City agrees to maintenance of the MSE walls and to indemnify IA Holdings and future property owners against defects in the MSE walls. The MOU also requires IA Holdings to dedicate the necessary roadway and maintenance easements, to obtain other infrastructure approvals (such as for water, sewer, drainage and soil management) and to provide temporary detention and construction easements, as specified in Attachment 2 of the MOU.

In prior actions, the City had appropriated and authorized reimbursement for the design work for the 6th Street Bridges Project (T15098800), totaling \$1,154,671. Through an oversight, an invoice for \$4,069 to Quincy Engineering was omitted from the total authorized. Therefore, increased authorization is requested to reimburse Quincy for this payment. The revised total authorization will be \$1,158,740.



Status of Contract Requiring Council Approval

**** Form to be completed by City Attorney****

- The contract is signed by the other party(ies), is approved as to form by the City Attorney, and is attached to this report.

Contract Title

The contract recommended for award by the City Council is for a public project (SCC Ch. 3.60); is NOT signed by the contractor; is in a form that the City Attorney will approve upon proper execution by the contractor; and is attached to this report.

Contract Title

- The contract is with another governmental agency or agencies that require approval and execution by the City prior to execution by the other agency(ies). In this case, the contract is NOT signed by the other agency(ies), but is in a form that the City Attorney will approve upon proper execution by the agency(ies), and is attached to this report.

Contract Title

- The contract is NOT signed by the other party(ies); however, due to special circumstances documented in writing by the Department presenting the contract, the City Attorney has confirmed in writing the legal propriety of the City Council approving and authorizing the action recommended. The unsigned contract:
 - is attached to this report.
 - is NOT attached to this report.

Contract Title

1/13/2012

X Michael T. Sparks



RESOLUTION NO.

Adopted by the Sacramento City Council

FUNDING AND PAYMENT AUTHORIZATION FOR 6TH STREET OVERCROSSING DESIGN

BACKGROUND

A. On October 13, 2009, the City Council appropriated \$1 million for the design work for the 6th Street Extension project from the Railyards/Richards/Downtown Impact A Contingency (Fund 3202) (Resolution 2009-664).

B. Initially, S. Thomas Enterprises of Sacramento, LLC (“Thomas”) was to design and construct the 6th Street bridges and contracted for design services with Kimley-Horn and Associates, Inc., (“KHA”) and Quincy Engineering, Inc. (“Quincy”), but the City eventually agreed to construct the 6th Street bridges. Resolution 2009-644 approved an increase in the allocation for design authorization to a total of \$1,132,726.21 to cover additional foundation design costs, and it also authorized the City Manager to pay KHA directly for costs incurred in preparing the final plans for the 6th Street bridges.

C. In spring 2010, KHA and Quincy incurred additional costs as a result of the City’s decision to proceed with the 6th Street bridges project separately from the Track Relocation project and to provide increased surveying required for design.

D. On August 16, 2011, the City Council in Resolution 2011-472 authorized an additional \$21,943.82 for the additional design costs.

D. In an oversight, an additional Quincy design invoice for \$4,069 was found and exceeds the design authorization approved for the project by that amount.

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

Section 1. The funding for the 6th Street bridges design work is increased by \$4,069 for a total authorization of \$1,158,740 to account for additional design costs.

Section 2. The City Manager or his designee is authorized to make final payment to Quincy Engineering, Inc., in the amount not to exceed \$4,069 for the preparation of final design plans for the 6th Street bridges.



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



Map Contact: S. Tobin
Date: June, 2004



5TH STREET AND 6TH STREET ROADWAY PROJECT MEMORANDUM OF UNDERSTANDING

This 5th Street and 6th Street Roadway Project Memorandum of Understanding (this "MOU") is dated January __, 2012, and is between the City of Sacramento ("City") and IA Sacramento Holdings, L.L.C., ("IA Holdings") for the 6th Street Roadway Project (the "Project"). IA Holdings and the City are sometimes collectively called the "Parties."

The Parties desire to enter into this MOU to memorialize certain understandings reached by the Parties with respect to (1) the actions needed in order for the City to move forward with an application to the California Transportation Commission ("CTC") to request (a) a construction start date extension and (b) a June 2012 funding allocation from the CTC for the Project and (2) certain understandings reached by the Parties with respect to the 5th Street Roadway Project (the "5th Street Project") to be completed by IA Holdings.

Therefore, the Parties agree to the following:

- 1) **Attachment 1** to this MOU sets forth the Parties' understanding of their roles and responsibilities regarding the Project.
- 2) IA Holdings shall grant the City exclusive maintenance easements (the "Maintenance Easements") in a mutually acceptable form over each parcel that will adjoin a mechanically stabilized earth wall ("MSE Wall") included in the Project. In addition, IA Holdings will similarly grant such Maintenance Easements with respect to parcels which adjoin the MSE Wall to be constructed in connection with the 5th Street Project. The purpose of the Maintenance Easements is to provide the City with access to inspect, maintain, and repair the MSE Walls; additional terms of the Maintenance Easements applicable to the Project are set forth on Attachment 2. The Parties shall endeavor to agree upon the specifics of the Maintenance Easements for the Project by March 31, 2012. The City acknowledges that IA Holdings' ability to satisfy the foregoing delivery dates is contingent upon the City's timely review of the proposed form of Maintenance Easement.
- 3) If IA Holdings grants the Maintenance Easements as described above, then once the Project is completed and the City has accepted the dedication of the 6th St. right-of-way or the 5th Street Project is completed and the City has accepted the right-of-way associated with the 5th Street Project, the City shall inspect, maintain, and repair the MSE Walls associated with the Project and/or the 5th Street Project, as the case may be, and neither IA Holdings nor any future property owner will be responsible for maintenance and repair of the MSE Walls and neither IA Holdings nor any future property owner shall be required to release or indemnify the City with respect to defects in the MSE Walls, including, without limitation, any structural failure of the MSE Walls. However, in performing such inspections, maintenance, and repairs, the City shall not be responsible to IA Holdings or any future property owners for (i) direct or consequential damages resulting from loss of use, loss of access from a particular access point, or similar losses, that may be alleged by such future property owners in connection with the City's performance of such inspection, maintenance, and/or repair, or (ii) any damages caused by water seepage or mold or similar occurrence that is caused solely by the proximity of the MSE Walls to any building that may be constructed on an adjoining parcel. IA Holdings or its successors and the City shall record covenants that are consistent with the foregoing on each parcel that adjoins or will adjoin a

MSE Wall prior to completion of the Project or the 5th Street Project and the date the City accepts the 6th Street right-of-way and the 5th Street right-of-way, as applicable.

- 4) Prior to the issuance of a building permit for construction of a building on a parcel adjoining a MSE Wall, the City may require the owner of the parcel to seek an encroachment permit as a condition of encroaching into the Maintenance Easement, but in no event shall either IA Holdings or any future property owner be required to release or indemnify the City with respect to defects in the MSE Walls, including without limitation any structural failure of the MSE Walls.
- 5) IA Holdings shall direct Kimley Horn & Associates (“KHA”) to begin work and shall endeavor to cause KHA to continue to work uninterrupted until all the engineering work is fully completed for the City to certify to the CTC by April 20, 2012, the Project’s right-of-way and that the plans, specifications and contract documents are ready to be listed for bids. The City acknowledges that IA Holdings’ ability to satisfy the foregoing delivery date is contingent upon the City’s review and comment on such engineering work in a timely manner.
- 6) The City acknowledges and accepts that the Grant Deed between Thomas Enterprises and UPRR dated December 28, 2006 provides that UPRR will quitclaim the track easement (Railroad Easement I) which crosses the proposed 6th Street right-of-way after UPRR accepts the new track in Railroad Easement II.
- 7) Before March 31, 2012, IA Holdings shall dedicate the 6th St. right-of-way and shall endeavor to complete the Maintenance Easements, gain the requisite City approvals, and execute the agreements listed in **Attachment 2**.
- 8) The Parties acknowledge that IA Holdings’ ability to dedicate the 5th and 6th St. rights-of-way is contingent on its ability to provide the City with written verification from the Department of Toxic Substances Control that the 5th and 6th St. rights-of-way have been properly remediated, as required by section 7 of the form offer of dedication attached as Exhibit I to the Development Agreement. The Parties agree to discuss whether this requirement affects IA Holdings’ ability to comply with the terms of this MOU.
- 9) The Parties acknowledge that this MOU does not limit the authority or discretion granted to the planning director under the Sacramento Railyards Special Planning District (City Code, Chapter 17.124).
- 10) This MOU does not modify or amend any of the other agreements between the Parties, nor does it waive or excuse performance of the Parties’ obligations under any of the other agreements between the Parties.
- 11) This MOU is governed by the laws of the State of California.
- 12) This MOU may not be changed or amended orally, but only by an agreement in writing signed by the Parties. No waiver will be effective unless given in writing, and waiver will not be inferred from conduct of either Party.
- 13) This MOU may be executed in identical counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles, pdfs and photocopies of signature pages of the agreement have the same binding effect as originals.

IA Sacramento Holdings, L.L.C., a Delaware limited liability company

By: IA Sacramento Development VP, L.L.C.,
a Delaware limited liability company, its sole member

By: Inland American Real Estate Trust, Inc.,
a Maryland corporation, its sole member

By: 
Its: Sacramento

City of Sacramento, a municipal corporation

By: _____
John Shirey
City Manager

Approved as to Legal Form:

By: 
Senior Deputy City Attorney

Attest:

By: _____
City Clerk

Attachment 1

1. IA Holdings' primary responsibilities with respect to the Project are as follows:

(a) IA Holdings has deposited \$7,865,000 with the Escrowee (as hereafter defined) under that certain 6th Street Roadway Project Escrow Agreement dated December 20, 2010 (the "**6th Street Agreement**") among IA Sacramento Holdings, L.L.C. ("**IA Holdings**"), the City of Sacramento (the "**City**") and Chicago Title Insurance Company ("**Escrowee**") which shall be used to pay a portion of the cost of the Project, as more particularly provided in the 6th Street Agreement. All defined terms in the 6th Street Agreement are used herein with the same meaning that such terms have in the 6th Street Agreement.

(b) IA Holding has retained Kimley-Horn and Associates, Inc. ("**KHA**") to prepare the Plans and Specifications for the Project, which Plan and Specifications are subject to the approval of the City, as provided in the 6th Street Agreement;

(c) As part of its contract for the Project, KHA will provide the City with certain construction support services for the Project; and

(d) IA Holdings is not obligated to provide any construction oversight or construction management services with regard to the Project.

2. The City's primary responsibilities with respect to the Project are as follows:

(a) Review and approval of the Plan and Specifications prepared by KHA as provided in the 6th Street Agreement;

(b) Retention of a construction manager to oversee the design and construction of the Project on behalf of the City;

(c) Solicit bids for the construction of the Project;

(d) Select and retain one or more contractors for the construction of the Project; and

(e) In conjunction with the construction manager selected by the City, oversee the implementation and administration of the construction of the Project, including, without limitation, inspection of the construction and coordinating with KHA with respect to change orders, design changes and the like.

Attachment 2

- | Number | Description |
|--------|--|
| 1. | Post Subdivision Modification reflecting the revised 6 th Street alignment. |
| 2. | Dedication of the 6 th Street right-of-way to the City by IA Holdings. |
| 3. | All development in the Railyards is governed by the Sacramento Railyards Special Planning District (City Code, Chapter 17.124), and as such, it requires a planning director urban development permit, which is discretionary in nature. The planning director may condition an urban development permit as follows: |

Future building improvements located on lots adjoining MSE Walls will be conditioned at time of building permit to comply with the general provisions shown below. Conditions will be implemented through issuance of an encroachment permit for encroachments on the Maintenance Easement, or through a modification or amendment of the Maintenance Easement, and will be more specifically developed at the time of the encroachment permit application. The maintenance easement must remain accessible from above until such time as a building improvement is proposed with a design adjacent to a MSE Wall at the elevation of the adjoining sidewalk (see section (c) below). The following three subsections provide specific provisions for future building improvements with different design conditions adjacent to the MSE Walls.

- (a) Improvements set back from MSE Walls - For those improvements proposed to be set back from a MSE Wall, provide a minimum six foot clear space from any and all obstructions and elements associated with the structure or the MSE Wall, and accessible from at least two points at either end of the property fronting the MSE Wall. The easement area is to be paved with concrete, have positive drainage to the satisfaction of the Department of Transportation, and is to be kept in good condition and free of debris. If access to the MSE Wall is obstructed from above, property owners of lots adjoining the MSE Wall must provide access from within their buildings. Access requirements may require the granting of additional easements and will be further developed at time of building permit and issuance of an encroachment permit.
- (b) Improvements built against MSE Walls - For those improvements proposed to be built against a MSE wall, or that may come into contact with a MSE Wall by settlement or deformation of the MSE wall, the structure is to be designed to withstand all forces that may be exerted by the MSE Wall. In addition, all surfaces of the MSE Wall that are not obscured by structural elements of the structure are to be left exposed and be fully accessible by the City or its contractors for inspection, maintenance, and/or repairs. Personnel and mechanical equipment access is to be provided for all enclosed MSE Wall areas not abutting the structural elements of the building, and is to be provided from within the building.
- (c) Improvements exceeding the height of the adjoining MSE Walls – For those improvements proposed to be built according to subsection (a), above, any part of the structure that will be built at or above the height of the adjoining sidewalk in the 6th Street right-of-way may be built to the property line. The specific design

of the improvements built to the property line, e.g., building entryway, will be conditioned at the time of the encroachment permit application.

4. Executed dry utility agreements for utility installations within the proposed 6th Street right-of-way.
5. Approval by the City Utility Department of water improvements within the Project consistent with an approved Master Water Plan.
6. Approval by the City Utility Department of sewer improvements within the Project consistent with an approved Master Sewer Plan.
7. Approval by the City Utility Department of interim drainage improvements consistent with an approved Master Drainage Plan.
8. Approval by the City Utility Department of the Project's storm water runoff treatment.
9. Executed Construction Agreement and recordation of easements for a temporary detention basin.
10. Executed Construction Agreement for method of construction of future utility stubs through the proposed MSE walls.
11. Executed Landscaping and Storm Water Pollution Prevention Maintenance Agreement.
12. Approved Soil Management Plan.
13. Executed Soil Management Agreement.
14. Executed Temporary Construction Easement Agreement for the Project's construction staging areas.
15. Executed 2nd Amendment to the 6th Street Project Escrow Agreement.