



# City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 8/9/2012

**Report Type:** Consent

**Title:** Use and Operations and Maintenance Agreement, Track Relocation Project, Phase 1 of the Sacramento Intermodal Transportation Facility

**Report ID:** 2012-00666

**Location:** Downtown Railyards near Sacramento Valley Station, between I Street Bridge and 7th Street, District 3

**Recommendation:** Pass a Motion authorizing the City Manager or his designee to execute a use and operations agreement with the National Railroad Passenger Corporation ("Amtrak").

**Contact:** Jon Blank, Supervising Engineer, (916) 808-7914; Nicholas Theocharides, Engineering Services Manager, (916) 808-5065, Department of Public Works

**Presenter:** None

**Department:** Public Works Department

**Division:** Construction Inspect & Survey

**Dept ID:** 15001141

## **Attachments:**

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- 1- Description/Analysis
- 2 - Background Information
- 3 - Draft - Sacramento Station Use Agreement

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### **City Attorney Review**

Approved as to Form  
Joe Robinson  
8/2/2012 8:56:28 AM

### **City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
7/20/2012 11:27:35 AM

### **Approvals/Acknowledgements**

Department Director or Designee: Jerry Way - 7/31/2012 5:17:30 PM

## Description/Analysis

**Issue:** The Track Relocation Project, Phase 1 of the Sacramento Intermodal Transportation Facility (SITF), consists of realigning the mainline rail tracks, constructing new passenger platforms, and constructing passenger and service tunnels under the new rail corridor. The platforms, tunnels, and related passenger facilities are owned by the City of Sacramento. The use and operations agreement will allow Amtrak to utilize these new improvements until December 31, 2026, with the option to renew for up to three additional five-year terms.

**Policy Considerations:** The action requested herein is consistent with the Sacramento City Code, Title 3 and with the City of Sacramento Strategic Plan goals of achieving sustainability and neighborhood livability.

**Economic Impacts:** None.

### Environmental Considerations:

**California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA):** The Track Relocation, Phase I of the SITF Project is subject to review under both CEQA and NEPA. The City is the CEQA lead agency and the Federal Highway Administration (FHWA) is the NEPA lead agency. 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 March 27, 2009, FHWA released the Environmental Assessment and Section 4(f) Evaluation Report for public review. FHWA also consulted with the State Office of Historic Preservation (SHPO) in accordance with Section 106 and on August 28, 2009, entered into a Programmatic Agreement, including the City, Caltrans, the Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA) as signatories. On August 31, 2009, FHWA issued a Finding of No Significant Impact (FONSI) and authorized the City to implement Phases 1 and 2 of the Intermodal project. On March 15, 2010, FRA issued its separate FONSI.

Subsequent minor changes that involve historic resources have been submitted to Caltrans and SHPO per the terms of the Programmatic Agreement. Therefore, all requirements of CEQA, NEPA and Sections 4(f) and 106 under state and federal laws have been met and no further environmental review is required to approve the proposed actions.

**Sustainability Considerations:** The SITF project will provide facilities to accommodate rail freight movement, heavy passenger rail trains, light rail transit, intercity and local buses, and taxis, as well as bicycle and pedestrian transportation modes and future modes, such as streetcars and California High Speed Rail. The Track Relocation, Phase I of the SITF Project, will improve operations, safety, and convenience for passenger service and goods movement, as well as facilitate the future development of the Intermodal facility. The improvements are consistent with the City's sustainability goals to provide better accessibility to public transportation.

**Other:** None.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** A new use and operations agreement with Amtrak is necessary for Amtrak to use the new passenger platforms constructed and owned by the City in connection with the Track Relocation project.

**Financial Considerations:** This use and operations agreement is consistent with the existing budget for the project. The City will not pay or receive revenue associated with the use and operations agreement, except that the City will receive a \$1 use fee per year from Amtrak while the agreement is in effect. The City and Amtrak will negotiate a separate maintenance agreement to address the parties' maintenance obligations with respect to the areas described in the use and operations agreement. The maintenance agreement will be submitted to the City Council for approval.

**Disadvantaged Business Enterprise (DBE):** The SITF Project (T15029000) has federal funding and requires conformance with project participation guidelines for Disadvantaged Business Enterprise (DBE) /Underutilized Disadvantaged Business Enterprises (UDBE) in-lieu of the City of Sacramento Emerging and Small Business Enterprise (ESBE) program requirements.

## **Background Information:**

The Track Relocation Project 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, safety will improve due to the separation of the freight tracks from the passenger platforms and limiting access to the platforms by means of the new passenger and service tunnels. Relocating the existing UPRR tracks will also allow extension of 5<sup>th</sup> and 6<sup>th</sup> Streets and provision of the West Pedestrian Tunnel. This will improve access and circulation within downtown Sacramento and facilitate development of the Railyards project.

Amtrak is a current tenant of the City of Sacramento within the historic train depot. The current passenger platforms are owned by UPRR by means of an easement it has on the City's property. Amtrak uses the existing platforms by means of an agreement with UPRR. After the City finishes construction of the relocated platforms, tunnels and pedestrian connections, these facilities will be owned by the City of Sacramento. The use and operations agreement is necessary for Amtrak to use the new facilities for its passenger rail service.

This report requests authorization for the City Manager or his designee to execute the City/Amtrak use and operations agreement.



# DRAFT AGREEMENT

## BETWEEN CITY OF SACRAMENTO AND NATIONAL RAILROAD PASSENGER CORPORATION FOR THE USE AND OPERATION OF THE SACRAMENTO VALLEY STATION

This agreement, dated July 27, 2012, for reference, is between the **City of Sacramento**, a California municipal corporation (the "**City**"); and the **National Railroad Passenger Corporation ("AMTRAK")**, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, NE, Washington, DC 20002.

### 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 AMTRAK, the **Capital Corridor Joint Powers Authority ("CCJPA")**, and the **State of California Department of Parks and Recreation ("CSR")** entered into a track relocation agreement (the "**TRA**"). On November 23, 2009, the City and UPRR entered into a construction, maintenance, and operation agreement (the "**CMOA**") (City Agreement 2009-1044) pursuant to which the City assumed certain of Thomas' obligations under the TRA, as more particularly set forth in the CMOA. The TRA and the CMOA provided for, among other things, the relocation of 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, the City acquired the existing Sacramento Valley Station located at 401 I Street in Sacramento, which is commonly referred to as the Depot Property or Parcel A. On February 28, 2011, the 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.**" An aerial photograph and a drawing of the Intermodal Property showing Parcels A and B marked Attachment A is attached to, and made a part, this agreement. As provided in the CMOA, the City undertook construction of the Track Relocation Project within the Intermodal Property.

The City and AMTRAK desire to enter into this agreement to set forth their rights and responsibilities concerning the use and operation of the new passenger platforms, canopies, access tunnels, utilities, drainage, and other improvements constructed as part of the Project (collectively, the "**Improvements**") and the Intermodal Property in general (except for the passenger depot building, which building is subject to a separate agreement between the parties). The portion of the Intermodal Property that is subject to this agreement is referred to as the "**Premises.**" The Premises is shown in the exhibit marked as Attachment B, which is attached to, and made a part of, this agreement. The term Premises includes the Improvements located on, under, and above the Premises.

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

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## 1. Term of Agreement.

(a) The term of this agreement commences on the Effective Date, as defined in section 22, below, and ends on December 31, 2026, unless extended as provided in section 1(b), below.

(b) Provided that AMTRAK is not in default under this agreement, AMTRAK has the option to extend the term of this agreement for three additional five (5) year terms by giving notice of its intent to exercise this option at least sixty days before the end of the then current term. Any extended term will be governed by the provisions of this agreement.

## 2. Use of Premises.

(a) *Condition of Premises.* The City makes no representations or warranties of any kind, express or implied, written or oral, about any of the following: the physical condition of the Premises; the suitability of the Premises for AMTRAK's anticipated use; any limitations on AMTRAK's use of the Premises, including limitations arising from environmental laws or other laws, regulations, or governmental requirements; the costs of conducting AMTRAK's business on the Premises; or the condition of the soils or ground waters of the Premises. By using the Premises, AMTRAK accepts the Premises "as is" and acknowledges that the Premises are satisfactory for AMTRAK's purposes. AMTRAK has ascertained the condition of the Premises through its own independent investigation and has relied solely on that independent investigation when entering into this agreement.

(b) *Permitted Uses.* During the term of this agreement, AMTRAK may use the Premises for any lawful purpose reasonably related to the operation of rail passenger service and AMTRAK's business operations, except that AMTRAK shall not do any of the following without first obtaining the written approval of the City, which approval the City may withhold, grant, or grant with conditions in its sole discretion:

(1) Make any improvements to the Premises.

(2) Place or allow to be placed on the Premises any sign (as defined in Sacramento City Code section 15.148.1170, as it is currently written or as it may be amended).

(3) Place or allow to be placed on the Premises any personal property (including trade fixtures that is not directly related to the operation of rail passenger service or AMTRAK's business operations.

(c) *Non-exclusive Use.* AMTRAK's use of the Premises is not exclusive, and the City may use the Premises, or allow others to use the Premises, for any purpose that the City in its sole discretion determines does not unreasonably interfere with AMTRAK's use of the Premises.

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3. **Consideration.** As consideration for the rights and benefits it enjoys under this agreement, including the right to use the Premises, AMTRAK shall pay the City a use fee of one dollar per year while this agreement is in effect.
4. **Maintenance and Repairs.** AMTRAK shall negotiate in good faith with the City to either amend this agreement or enter into a separate agreement to address the parties' roles and responsibilities for maintenance and repair of the Improvements within the Premises.
5. **Utilities.** AMTRAK shall make arrangements for the provision of and pay for all private utility and solid waste collection necessary for its use of the Premises. AMTRAK shall pay the private utility and solid waste collection costs directly to the utility or waste collection companies. AMTRAK shall also pay for all City-provided utility fees that are attributable to its use of the Premises, except that there will be no charges for City sewer fees until such time as AMTRAK installs fixtures and equipment that feed into the City's sewer system.
6. **Compliance with Laws, Covenants, Agreements, Licenses.**
  - (a) AMTRAK shall comply with all laws, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and all agreements between AMTRAK and UPRR in effect during the term of this agreement that regulate AMTRAK's use and operation of the Premises.
  - (b) AMTRAK shall not use the Premises in any way that will cause the City to be in default or breach of (1) the CMOA or any other written agreement between the City and UPRR that affects the Premises or (2) any license granted by UPRR to the City that affects the Premises, including the license recorded in book 20120131, page 1669 in the Sacramento County Recorder's Office.
7. **Taxes.** Pursuant to 49 U.S.C. section 24301(l), AMTRAK is exempt from all state and local taxes, surcharges, or fees; however, to the extent that AMTRAK becomes subject to property taxation during the term of this agreement, then AMTRAK is responsible for and shall pay or otherwise discharge, without abatement or deduction, all taxes levied on, or related to, AMTRAK's use of the Premises. This obligation includes payment of any—
  - (a) sales or similar tax on AMTRAK's business operations;
  - (b) possessory-interest tax related to this agreement or to AMTRAK's use of the Premises; and
  - (c) personal-property tax levied on AMTRAK's personal property on the Premises.
8. **Additional Sources of Revenue.** AMTRAK agrees to cooperate with, and assist, the City in identifying and establishing additional sources of revenue to fund the ongoing and future maintenance and replacement of the Improvements.
9. **Notices.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 9 to the persons identified below. A notice or other communication that is mailed will be effective or will be considered to have been given on the third day after it is deposited in the U.S. Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A

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notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section 9.

*If to the City:*

City of Sacramento

Department of General Services

5730 24<sup>th</sup> Street, Building 4

Sacramento, California 95822

Attention: Facilities Manager

Division of Real Property and Facilities  
Management

*If to AMTRAK:*

National Railroad Passenger Corporation

530 Water Street, Fifth Floor

Oakland, CA 94607

Attn: Senior Director, State Partnerships

- 10. Indemnity.** The City shall indemnify, hold harmless, and defend AMTRAK, and each of AMTRAK’s officers, officials, employees, agents, contractors, and volunteers from all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by AMTRAK, and from all claims, demands, and actions in law or equity (including attorneys’ fees and litigation costs through final resolution on appeal), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of the City or any of the City’s officers, officials, employees, agents, or volunteers in the performance of this agreement; provided nothing in this section constitutes a waiver by the City of governmental immunities including California Government Code section 810 et seq.

AMTRAK shall indemnify, hold harmless, and defend the City, and each of the City’s officers, officials, employees, agents, contractors, and volunteers from all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by the City, and from all claims, demands, and actions in law or equity (including reasonable attorneys’ fees and litigation costs through final resolution on appeal, whether the City is represented by the Office of the City Attorney or by outside counsel), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of AMTRAK or any of AMTRAK’s officers, officials, employees, agents, contractors, or volunteers in the performance of this agreement.

In the event of concurrent negligence on the part of the City or any of its officers, officials, employees, agents, contractors, or volunteers, and AMTRAK or any of its officers, officials, employees, agents, contractors, or volunteers, the liability for any and all such claims, demands, and actions in law or equity

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for such losses, fines, penalties, forfeitures, costs, and damages shall be apportioned under California's theory of comparative negligence as the theory is presently established or as it may be modified.

The parties' obligations under this section 10 will survive termination of this agreement.

**11. INSURANCE.** While this agreement is in effect, AMTRAK shall maintain the insurance coverage described in this section 11.

(a) AMTRAK shall maintain at its sole cost and expense and maintain in full force the following insurance coverage:

- (1) General Liability Insurance on ISO Form CG00011093 or an equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, products completed, operations and liability assumed under any insured contract. The amount of the policy shall not be less than ten million dollars (\$10,000,000), Single Limit Per Occurrence, issued by an insurer, or insurers, with an A.M. Best rating of no less than A:VII, providing that the City of Sacramento, its officers, employees, and agents are to be named as "Additional Named Insureds" under the policy, and the policy shall stipulate that this insurance will operate as Primary Insurance and that no other insurance effected by AMTRAK, or other Named Insured, will be called on to contribute to a loss covered thereunder.
- (2) Worker's Compensation and Employer's Liability Insurance for all employees of AMTRAK shall be maintained in strict compliance with California law. The Workers' Compensation policy must include a waiver of subrogation in favor of CITY. Employer's Liability Insurance limit shall be not less than One Million Dollars (\$1,000,000).
- (3) On all AMTRAK's personal property, improvements, and alterations, in, on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of the full replacement value. The proceeds from any such policy shall be used by AMTRAK for the replacement of personal property or the restoration of AMTRAK's improvements or alterations.
- (4) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 with MCS-90 endorsement on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, and motor carrier public liability with limits of not less than ten million dollars (\$10,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.
- (5) Pollution Liability Insurance with a limit not less than ten million dollars (\$10,000,000) per occurrence covering Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services performed under this Agreement.

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Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

(b) AMTRAK shall furnish the City with certificate(s) of insurance, with original endorsements, or with a letter of self-insurance in a form acceptable to the City effecting coverage required by this section 11. The certificates, endorsements, or letter of self-insurance for each insurance policy are to signed by a person authorized by the insurer to bind coverage on its behalf. The certificates, endorsements, or letter of self-insurance is to be forwarded to the City's Risk Management Division, 915 I Street, 4<sup>th</sup> Floor, Sacramento, CA 95814, at least seven (7) days before beginning performance of this agreement. Failure to provide such certificate(s) or letter of self-insurance and keep such updated is a material breach by AMTRAK of this agreement. The policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or insured shall occur during the term of this agreement without thirty (30) days' written notice to the City prior to the effective date of such cancellation or change in coverage.

(c) AMTRAK may satisfy its obligations under this section 11 through a plan of self-insurance. In the event AMTRAK exercises its right to satisfy the insurance requirements of this section 11 through use of its self-insurance program, AMTRAK shall provide the City with a letter of self-insurance from AMTRAK, in a form that is acceptable to the City, stating that AMTRAK's self-insurance program adequately protects against liabilities and claims the types of which the insurance required by this section 11 are intended to protect against. The parties agree that if AMTRAK provides a letter of self-insurance in a form that is acceptable to the City, then the letter will be appended to this agreement as Exhibit C.

(d) The City does not represent that the insurance coverage and limits required by this agreement will necessarily be adequate to protect AMTRAK.

(e) Nothing in this section 11 limits AMTRAK's obligations under section 10.

## 12. Early Termination.

(a) Without prejudice to its other remedies at law or in equity, the City may terminate this agreement, at any time and in its sole discretion, effective 30 days after the City gives AMTRAK written notice of termination, if AMTRAK breaches its obligation to perform in accordance with any material provision of this agreement and (A) does not cure the breach within 30 days after the City serves it with a written notice of breach or, if the breach cannot reasonably be cured within 30 days, (B) does not begin work on a cure within 30 days after the City serves it with a written notice of breach and diligently pursue the cure to completion within 90 days after work begins.

(b) Without prejudice to their other remedies at law or in equity, either party may terminate this agreement if the other party —

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(1) has an order for relief entered with respect to it, commences a voluntary case, or has an involuntary case filed against it under any applicable bankruptcy, insolvency, or other similar law then in effect, and the order or case is not stayed, withdrawn, or settled within 60 days after it is entered, commenced, or filed (11 U.S.C. § 365(e)(2)(A), as amended, or any successor statute); or

(2) files for reorganization, becomes insolvent, or has a receiver or other officer with similar powers appointed for its affairs in any court with jurisdiction, whether or not with its consent (unless dismissed, bonded, or discharged within 60 days after appointment).

(c) Either party may terminate this agreement if UPRR terminates the right of AMTRAK to use the passenger tracks through the Premises.

**13. Assignments.** A party may not assign or otherwise transfer this agreement or any interest in it without the other party's prior written consent, which the other party shall not withhold, delay, or condition unreasonably. An assignment or other transfer made contrary to this section 13 is void.

**14. Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.

**15. Time of Essence.** Time is of the essence in the performance of this agreement.

**16. Force Majeure.**

(a) "Force Majeure Event" means a cause of delay that is not the fault of the party who is required to perform under this agreement and is beyond that party's reasonable control, including the elements (including floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding the City) or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

(b) Except as otherwise expressly provided in this agreement, if the performance of any act required by this agreement to be performed by either the City or AMTRAK is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. This Section 16(b) does not excuse either party's obligation to perform an act when performance is rendered difficult or impossible solely because of that party's financial condition.

**17. Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

**18. Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party's waiver of another party's breach of any provision in this agreement will not constitute a

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continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

- 19. **Interpretation and Venue.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Any litigation concerning this agreement must be brought and prosecuted in the United States District Court for the Eastern District of California, Sacramento Division.
- 20. **Attorneys' fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement, except as provided in section 10.
- 21. **No Third-Party Beneficiaries.** This agreement is solely for the benefit of the City and AMTRAK. It is not intended to benefit any third parties.
- 22. **Effective date.** This agreement is effective on the date both parties have signed it (the "**Effective Date**"), as indicated by the dates in the signature blocks below.
- 23. **Counterparts.** The parties may sign this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimiles, PDFs, and photocopies of signature pages of this agreement will have the same binding effect as originals.
- 24. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this agreement to be executed by their duly authorized representatives as of the day and year first hereinabove written.

**CITY OF SACRAMENTO**

**NATIONAL RAILROAD PASSENGER CORPORATION**

By: \_\_\_\_\_

John F. Shirey  
City Manager

By: \_\_\_\_\_

Joseph McHugh, Vice President  
Government Affairs and  
Corporate Communications

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

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By: \_\_\_\_\_  
Senior Deputy City Attorney

By: \_\_\_\_\_  
Amtrak Law Department

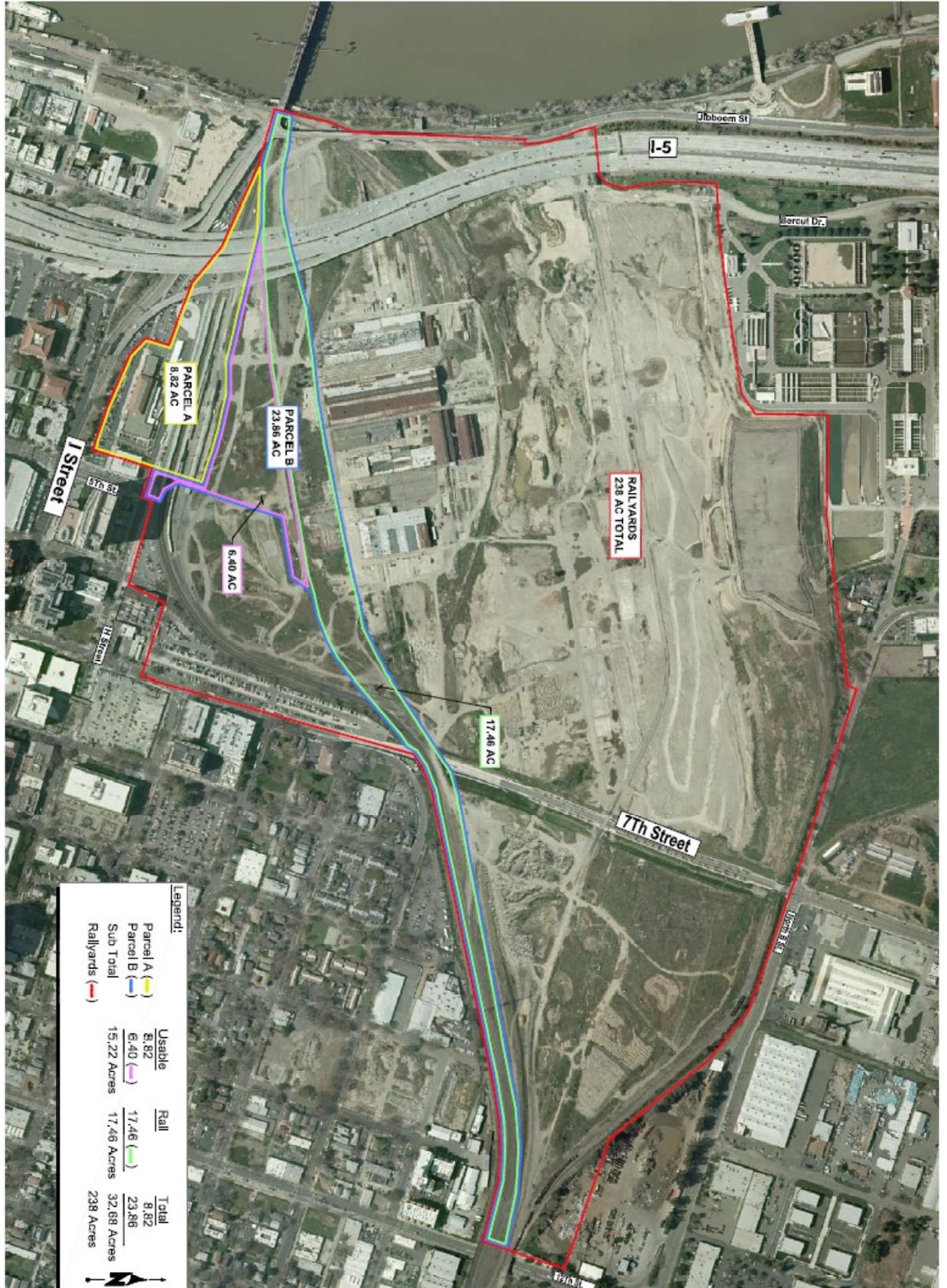
Attest:

By: \_\_\_\_\_  
City Clerk

S:\Facilities\Real Estate\Bill\UP Depot\Sacramento Station Use Agreement draft 6.19.12.docx

## ATTACHMENT 'A' INTERMODAL PROPERTY

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## **ATTACHMENT 'C' SELF INSURANCE LETTER**