

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
COUNTY OF SANTA CLARA AND
CALIFORNIA TROLLEY AND RAILROAD CORPORATION
RELATING TO THE RESTORATION OF LOCOMOTIVE NO. 2479**

This is a Memorandum of Understanding (MOU) regarding one-time General Fund funding for the restoration of Locomotive No. 2479 and is made and entered into this 29th day of April, 2014, by and between the County of Santa Clara (County), a political subdivision of the State of California and California Trolley and Railroad Corporation (CTRC), a 501(c)(3) nonprofit public benefit corporation.

RECITALS

WHEREAS, the CTRC is an all-volunteer non-profit organization dedicated to the restoration of historically significant locomotives and trolleys; and

WHEREAS, Locomotive No. 2479 was built in 1923, and donated to the County by Southern Pacific in 1957. Locomotive No. 2479 is a notable piece of the County's and nation's transportation history because it was the fastest locomotive on the Southern Pacific System (SP) and pulled luxury passenger trains and freights shipping perishable Valley farm product from San Jose via Oakland to Ogden, Utah and the world; and

WHEREAS, Locomotive No. 2479 is owned by the County and located on the County Fairgrounds property, which is controlled by the Fairgrounds Management Corporation; and

WHEREAS, since 1982, Locomotive No. 2479 has been under the management of CTRC; and

WHEREAS, in June 2013, the CTRC applied for Historical Heritage Grant Program grants funds of \$50,000 to continue to restore Locomotive No. 2479. Although the County's Historical Heritage Commission deemed the project a worthwhile endeavor, the application was not eligible for funding under the current HHGP grant fund guidelines; and

WHEREAS, CTRC is proposing to use the \$50,000 to purchase machine parts and consultant services that would enable the CTRC to proceed with and attempt to complete the restoration of Locomotive No. 2479. The funds would be used for refurbishing valves, compression rings, and other components and to pay for a certified professional to complete the Federal Railroad Administration Form 4, which is a comprehensive Federal safety check that is required to permit Locomotive No. 2479 to be used on class one railroad track; and

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WHEREAS, upon complete restoration of Locomotive No. 2479, CTCRC hopes to have Locomotive No. 2479 shown as a static display and an operation unit on infrequent, but periodic excursion trains. CTCRC's objective is to encourage, especially among young people, the use of mass transportation instead of single passenger vehicles; and

WHEREAS, it is understood by the County and CTCRC that funding for Locomotive No. 2479 would not preclude any subsequent decision by the Board of Supervisors to relocate the locomotive and other related assets from the Fairgrounds for the purpose of any future Fairgrounds revitalization; and

WHEREAS, the County and CTCRC agree that this written MOU will benefit the residents of the county by preserving an important piece of County history.

NOW, THEREFORE, the parties agree to the following.

1. Memorandum of Understanding.

The County and CTCRC agree that the foregoing recitals of the MOU are the basis for and incorporated into this MOU by this reference.

2. County Funding.

Within ten days of the effective date of this MOU, the County will transfer to CTCRC FIFTY-THOUSAND DOLLARS ONLY (\$50,000.00) of General Fund moneys to be used in the manner provided herein.

3. Term.

The effective date of this MOU is the date it is fully executed. The MOU will terminate on March 31, 2016, unless terminated sooner by the County or CTCRC in accordance with Section 7 of this MOU.

4. County Responsibilities and Obligations.

4.1 The County's maximum financial obligation under this MOU is a total of \$50,000, which the County shall provide to CTCRC to purchase machine parts and consultant services to enable CTCRC to attempt to complete restoration of Locomotive No. 2479.

4.2 County designates Sylvia Gallegos from the Office of the County Executive as the County representative responsible for assuring payment of \$50,000 to CTCRC pursuant to this MOU.

4.3 County designates Sylvia Gallegos from the Office of the County Executive as the County representative responsible for obtaining a report of actual

expenditures with associated invoices or receipts by CTRC to the Board of Supervisors no later than March 31, 2016.

5. CTRC Responsibilities and Obligations.

5.1 CTRC understands and agrees that this MOU and the terms and conditions contained herein will expire on March 31, 2016. CTRC also understands and agrees that this MOU in no way obligates the County to make any future payments of County funds to CTRC. CTRC further understands that County's funding for Locomotive No. 2479 does not preclude any subsequent decision by the Board of Supervisors to relocate the locomotive and other related assets from the Fairgrounds for the purpose of any future Fairgrounds revitalization.

5.2 All funding from the County to CTRC under this MOU will be used solely for expenditures to purchase machine parts and consultant services for restoration of Locomotive No. 2479. No County funding will be used by CTRC to pay for management and administrative costs. CTRC understands and agrees that it will not make any additional request to the County for funding to restore Locomotive No. 2479 at any time during the term of this MOU.

5.3 The funding from the County to CTRC will be used to support CTRC Locomotive No. 2479 restoration efforts identified in Exhibit "A"—Project Scope, attached hereto and incorporated herein by reference.

5.4 CTRC will seek the best value when purchasing the equipment and services described in Exhibit A. CTRC will maintain adequate financial records to show that County's funds were used for the purposes consistent with this MOU. CTRC will provide the County with proof of actual expenditures for equipment and services as described in Exhibit A no later than March 31, 2016.

5.5 If actual expenditures for the equipment and services described in Exhibit A are less than the funding provided by the County, CTRC will return the unspent portion of the funds to the County no later than March 31, 2016.

5.6 If actual expenditures for the equipment and services described in Exhibit A exceed the funding provided by the County, the County is not obligated to provide any additional funds beyond the \$50,000 described in this MOU.

5.7 CTRC agrees to indemnify, defend, and hold harmless the County and its officers, employees, and agents from any claim, liability, injury, loss, or damage arising out of this MOU, excepting only loss, injury, or damage caused by the sole negligence or willful misconduct of personnel employed by the County. CTRC will reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred with respect to any litigation in which CTRC is obligated to indemnify, defend, and hold harmless the County under this MOU.

5.8 CTRC will comply with all applicable Federal, State, and local laws and regulations that include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 *et seq.*); and California Labor Code section 1101 and 1102. CTRC will not discriminate against any subcontractor or employee because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

5.9 CTRC will comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

5.10 CTRC will not use County funds to purchase beverages that do not meet the County's nutritional beverage criteria. The six categories of nutritional beverages that meet these criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g. soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounce per container) and (6) other low calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. CTRC will not provide sugar-sweetened beverages.

5.11 CTRC will not use County funds to purchase food that do not meet the County's healthier food options standards. "Healthier food options" include: (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, CTRC shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs, and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and CTRC should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 45% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

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6. Notices.

Any notices required or permitted must be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service addressed as follows or to such other place as the County and CTCRC hereto may designate by subsequent written notice to the other:

If to the County:

Sylvia Gallegos
Deputy County Executive
Office of the County Executive
70 West Hedding, East Wing, 11th Floor
San Jose, CA 95110
Voice: 408-299-5106
E-mail:sylvia.gallegos@ceo.sccgov.org

If to CTCRC:

Rod Diridon, Sr.
President
California Trolley and Railroad Corporation
c/o Mineta Transportation Institute
210 N. 4th Street, 4th Floor
San Jose, CA 95112
Voice: 408-924-7560
E-mail:rod.diridon@sjsu.edu

7. Termination.

7.1 The County and CTCRC may by written mutual agreement terminate this MOU prior to its expiration. Within thirty (30) calendar days of such termination, CTCRC will return to the County any unspent portion of County funding.

7.2 The County may terminate this MOU for its convenience at any time upon thirty (30) calendar days' written notice to CTCRC.

8. Entire Agreement.

This MOU is the entire understanding between the parties as to the subject matter contained herein and supersedes all other agreements, oral or written, relating to County funding to restore Locomotive No. 2479. This MOU, including Exhibit A, may not be amended or modified, except in writing signed by all parties to this MOU.

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9. Waiver.

Any waiver by the County or CTRC hereto of a breach of any of the terms of this MOU shall not be construed as a waiver of any succeeding breach of the same or other term of this MOU.

10. Binding.

This MOU shall be binding upon successors and assigns of the County and CTRC.

11. Interpretation.

This MOU shall be interpreted and construed in accordance only by the contents thereof, and there shall be no presumption or standard of construction in favor or against either the County or the CTRC. The invalidity or unenforceability of any provision of this MOU or the applicability or inapplicability to the County or CTRC, as determined by a court, will in no way affect the validity or enforceability of any of the remaining provisions hereof or their applicability to the other party. This MOU will be construed according to and governed by the laws of the State of California.

12. Counterparts.

This MOU may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.

13. Authority to Execute.

All parties signing below indicate they have authority to sign this MOU on behalf of his or her respective party.

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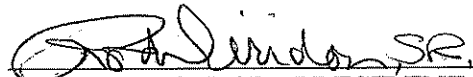
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IN WITNESS WHEREOF, the County and CTCRC hereto have executed this MOU on the dates written below.

COUNTY OF SANTA CLARA

CALIFORNIA TROLLEY AND RAILROAD CORPORATION

By: 
MIKE WASSERMAN, PRESIDENT
Board of Supervisors

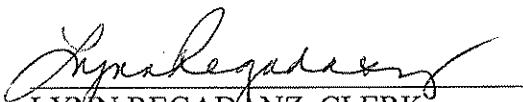
By: 
ROD DIRIDON, SR., PRESIDENT
California Trolley and Railroad Corporation

Date: APR 29 2014

Date: _____

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors

ATTEST:


LYNN REGADANZ, CLERK
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

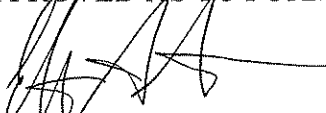

ELIZABETH G. PIANCA
Deputy County Counsel

Exhibit to this MOU—
Exhibit A—Project Scope