

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

This Second Amendment ("Second Amendment") is to the "Memorandum of Understanding Between the County of Santa Clara and California Trolley and Railroad Corporation," effective April 29, 2014 ("MOU"), and First Amendment to the MOU, effective March 1, 2016.

The County of Santa Clara ("County") and California Trolley and Railroad Corporation ("CTRC") hereby agree to amend the MOU effective March 20, 2018.

1. Section 3 ("Term") is amended to provide as follows:

The effective date of this MOU is the date it is fully executed. The MOU will terminate on March 31, 2020, unless terminated sooner by the County or CTRC in accordance with Section 7 of this MOU.

2. Section 4.3 ("County Responsibilities and Obligations") is amended to provide as follows:

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, 2020.

3. Section 5 ("CTRC Responsibilities and Obligations") is amended to provide as follows:

5.1 CTRC understands and agrees that this MOU and the terms and conditions contained herein will expire on March 31, 2020. 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.

5.4 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 purpose 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, 2020.

5.5 If actual expenditures for the equipment and services described in Exhibit A are less than funding provided by the County, CTRC will return the unspent portion of the funds to the County no later than March 31, 2020.

#### 5.12 Wage Theft Prevention

- (1) Compliance with Wage and Hour Laws: CTRC must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.
- (2) Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.
- (3) Prior Judgments against CTRC: BY SIGNING THIS MOU, CTRC AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS MOU—THAT CTRC HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CTRC FURTHER AFFIRMS THAT IT HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.
- (4) Judgments During Term of MOU: If at any time during the term of this MOU, a court or investigatory government agency issues a final judgment, decision, or order finding that CTRC to perform work under this Agreement has violated any applicable wage and hour law, or CTRC learns of such a judgment, decision, or order that was not previously disclosed, CTRC must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. CTRC shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require CTRC to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

- (5) County's Right to Withhold Payment: Where CTRC has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to CTRC until such judgment, decision, or order has been satisfied in full.
- (6) Material Breach: Failure to comply with any part of this Section constitutes a material breach of this MOU. Such breach may serve as a basis for termination of this MOU and/or any other remedies available under this MOU and/or law.
- (7) Notice to County Related to Wage Theft Prevention: Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this MOU and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

4. Section 13 ("Authority to Execute") is amended to provide as follows:

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

13.2 Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed MOU, or an electronically signed MOU, has the same force and legal effect as an MOU executed with an original ink signature. The term "electronic copy of a signed MOU" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed MOU in a portable document format. The term "electronically signed MOU" means an MOU that is executed by applying an electronic signature using technology approved by the County.

All other terms and conditions of the MOU remain in full force and effect. In the event of a conflict among the original MOU, the First Amendment, and the Second Amendment, the terms and conditions of this Second Amendment control.

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SIGNATURES

COUNTY OF SANTA CLARA

APPROVED AS TO FORM AND  
LEGALITY


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S. Joseph Simitian, President  
Board of Supervisors

DocuSigned by:  
*Elizabeth G. Pianca*  
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\_\_\_\_\_  
Elizabeth G. Pianca  
Lead Deputy County Counsel

ATTEST:

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Megan Doyle, Clerk  
Board of Supervisors

CALIFORNIA TROLLEY AND RAILROAD CORPORATION

  
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Rod Diridon, Sr., President  
California Trolley and Railroad Corporation