

**REGIONAL TRANSIT ISSUE PAPER**

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
5	02/27/12	Open	Action	02/24/12

Subject: Whether to delegate authority to the General Manager/CEO to execute a Purchase and Sale Agreement with Union Pacific Railroad Company for the South Sacramento Corridor Phase 2 Project

ISSUE

Whether to delegate authority to the General Manager/CEO to execute a Purchase and Sale Agreement with Union Pacific Railroad Company for the South Sacramento Corridor Phase 2 Project.

RECOMMENDED ACTION

Adopt Resolution No. 12-02-\_\_\_\_, Delegating Authority to the General Manager/CEO to Execute a Purchase and Sale Agreement with Union Pacific Railroad Company for the South Sacramento Corridor Phase 2 Project.

FISCAL IMPACT

Budgeted:	Yes	This FY:	\$	<b>564,304.26</b>
				<del>562,760.00</del>
Budget Source:	Capital	Next FY:	\$	
Funding Source:	New Starts, Prop 1B, STA, and Measure A	Annualized:	\$	
Cost Cntr/GL Acct(s) or Capital Project #:	410.05.06.01	Total Amount:	\$	<b>564,304.26</b>
				<del>562,760.00</del>
Total Budget:	\$ <b>564,304.26</b>			
	<del>562,760.00</del>			

DISCUSSION

The South Sacramento Corridor Phase 2 Project is a 4.3-mile extension of the existing South Sacramento Corridor Phase I project, beginning at the existing Meadowview Station and ending at Cosumnes River College. The Project includes four stations located at Morrison Creek, Franklin Boulevard, Center Parkway, and Cosumnes River College.

To construct the Project, RT must acquire property interests from the Union Pacific Railroad Company ("UP"). The required interests include a purchase of a portion of the UP right of way in fee and the acquisition of both temporary construction easements and permanent easements for the sound wall and light rail overpass.

Approved:

Presented:

Revised Final 2/24/12  
General Manager/CEO

AGM Engineering and Construction  
J:\Board Meeting Documents\2012\February 27, 2012\Union Pacific Purchase and Sale Agreement.doc

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The portion of UP’s property to be acquired in fee is a continuation of the corridor RT acquired from UP in 1999 for the initial South Sacramento Corridor Phase I Project. The General Manager/CEO, with prior authorization from the Board, has been negotiating with UP since 2009 for acquisition of the required property interests. The parties are near agreement on the transaction documents and only a few minor issues remain to be resolved.

Based on the appraisal obtained by RT, RT’s offer to UP was \$526,188.67 for all of the required interests. Because of differences in the valuation of the temporary construction easements (TCEs), UP presented a counteroffer of \$562,760. Staff believes this counteroffer is reasonable and is asking that the Board approve the purchase price of \$562,760. ***Due to newly-acquired information regarding the acquisition, Staff is recommending that RT pay an additional \$1,544.26 to clear an easement interest affecting part of the property to be purchased.***

Among other terms and conditions, the Purchase and Sale Agreement would:

1. Reserve to UP all mineral rights in the property transferred; however, UP cannot enter on RT’s property to exercise those rights and may not damage the transferred property or interfere with RT’s use of the property;
2. Reserve to UP the rights to existing fiber facilities in the corridor;
3. Obligate RT to assume all obligations of UP under existing agreements related to the acquired property, even if those agreements are not disclosed to RT;
4. Release UP from any liability, vis-à-vis RT, for any pre-existing issues with the property, including hazardous material contamination.
5. Include a provision that would transfer fee interest of a portion of the right of way previously accepted as easement from the Phase I project (area is located near Sacramento City College).

As part of its acquisition of the original corridor in 1999, RT was required to enter into an “Operations and Maintenance Agreement” (“O&M Agreement”) with UP to govern the rights and obligations of the parties in the corridor. With the acquisition of the additional property for SSCP2 the O&M Agreement would be amended to extend to the new property. In addition, UP has requested some substantive modifications to the O&M Agreement that would affect both the old and new segments of the corridor, specifically:

1. An increase in the insurance RT is required to maintain, both during construction and operations on the corridor. These insurance limits are identical to the requirements that apply to RT’s current lease of Track 150 for the Green Line (which was anticipated to end within a few years). The most significant element is a requirement to maintain liability insurance in the amount of \$200 million per claim and \$400 million in the aggregate. Previous insurance requirement was \$100 million per occurrence.

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2. Under the original O&M Agreement, the parties agreed to a distribution of indemnity and liability obligations based on the cause of the claim, who was injured and the amount of the claim. Under the amendment, RT would agree to indemnify and hold harmless UP for any claims that “would not have occurred but for the construction, operation, or maintenance of the RT light rail facilities”, regardless of whether the claim was caused by UP’s negligence.
  
3. In the unlikely event that Positive Train Control requirements are imposed on UP solely as a result of its shared corridor with RT, RT would be obligated to compensate UP for the full cost of complying with such requirements.

Because there is no shared rail corridor at the location of the light rail overpass (the easement is for two small areas required for the overpass supports), that area would be governed entirely by a Flyover Easement Agreement and would not be included in the amended O&M Agreement. The Flyover Easement Agreement contains many of the same requirements as the amended O&M Agreement with respect to insurance, access, and liability. It would also include a requirement that RT relocate its aerial structure, at UP’s cost, in the event that UP determines that the structure interferes with UP’s use of its property.

While the terms of this transaction are less favorable than the 1999 acquisition and RT’s other acquisitions for SSCP2, UP will not give any further concessions and these properties, specifically the overpass easements, are required for construction of the aerial structure, which may begin as soon as May, assuming an Letter of No Prejudice (LONP) is received from the FTA.

Staff is requesting that the Board delegate authority to the General Manager/CEO to execute the Purchase and Sale Agreement and all other documents related to acquisition of the required interests from UP upon successful conclusion of the negotiations.

RESOLUTION NO. 12-02-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

February 27, 2012

**DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO EXECUTE A  
PURCHASE AND SALE AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY  
FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE  
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Board hereby delegates authority to the General Manager/CEO to execute a Purchase and Sale Agreement with Union Pacific Railroad Company (therein "Seller") whereby Seller agrees to transfer property interests (in fee and easement) to the Sacramento Regional Transit District (therein "Purchaser") necessary to construct the South Sacramento Corridor Phase 2 Project, for a price not to exceed ~~\$562,760.00~~ **\$564,304.26**.

THAT, the General Manager/CEO is authorized to execute any other documents, including but not limited to a First Amendment to Operations and Maintenance Agreement between Sacramento Regional Transit District and Union Pacific Railroad Company, necessary to effectuate the transfer of property interests to RT pursuant to a Purchase and Sale Agreement.

\_\_\_\_\_  
BONNIE PANNELL, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary

## AGENDA ITEM REVIEW

**AGENDA ITEMS NOT RECEIVING APPROPRIATE SIGN-OFF OR  
NOT RECEIVED BY DEADLINE WILL NOT BE INCLUDED IN AGENDA PACKET**

ISSUE PAPER TITLE:	Delegating authority to the General Manager/CEO to execute a Purchase and Sale Agreement with Union Pacific Railroad Company for South Sacramento Corridor Phase 2 Project
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MANAGER/DIRECTOR of ORIGINATING DEPT

\_\_\_\_\_  
Initials Date

RESPONSIBLE EMT PERSON\*

\_\_\_\_\_  
Initials Date

PARALEGAL – Documents Received \_\_\_\_\_ Yes

\_\_\_\_\_  
Initials Date

CLERK TO THE BOARD

\_\_\_\_\_  
Initials Date

CHIEF LEGAL COUNSEL

\_\_\_\_\_  
Initials Date

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CHIEF ADMIN. OFFICER

\_\_\_\_\_  
Initials Date

GENERAL MANAGER

\_\_\_\_\_  
Initials Date

CHIEF FINANCIAL OFFICER

\_\_\_\_\_  
Initials Date

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Comments:

RESOLUTION NO. 12-02-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

February 27, 2012

**DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY FOR THE SOUTH SACRAMENTO CORRIDOR PHASE 2 PROJECT**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Board hereby delegates authority to the General Manager/CEO to execute a Purchase and Sale Agreement with Union Pacific Railroad Company (therein "Seller") whereby Seller agrees to transfer property interests (in fee and easement) to the Sacramento Regional Transit District (therein "Purchaser") necessary to construct the South Sacramento Corridor Phase 2 Project, for a price not to exceed \$564,304.26.

THAT, the General Manager/CEO is authorized to execute any other documents, including but not limited to a First Amendment to Operations and Maintenance Agreement between Sacramento Regional Transit District and Union Pacific Railroad Company, necessary to effectuate the transfer of property interests to RT pursuant to a Purchase and Sale Agreement.

\_\_\_\_\_  
BONNIE PANNELL, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary