

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # B-4

Urgent

Routine

AGENDA DATE January 13, 2009

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval of a Payment Agreement with PCCP West Park Obligating it to Pay All Supplemental Funding Required by a Project Baseline Agreement with the California Transportation Commission for Development of a Short Haul Rail/Inland Port Project at the Crows Landing Air Facility, and Adoption of a Resolution to Commit Supplemental Funding for the Project

STAFF RECOMMENDATIONS:

1. Approve the Payment Agreement with PCCP West Park designating West Park's responsibility for payment of all Supplemental Funding Requirements as set forth in the California Transportation Commission (CTC) Baseline Funding Agreement for the development of an Inland Port/Short Haul Rail Project at the County owned Crows Landing Air Facility.
2. Authorize the Chairman, or the Vice-Chairman in his absence, to sign the Payment Agreement with PCCP West Park.
3. Adopt a Resolution whereby through the parameters of the Payment Agreement the County agrees to commit to the California Transportation Commission the availability of Supplemental Funding.

- CONTINUED -

FISCAL IMPACT:

The payment agreement between Stanislaus County and PCCP West Park identifies and obligates West Park to provide all necessary funding to supplement the California Transportation Commission (CTC) grant and to pay for all of the County's obligations and costs under the Project Baseline Agreement. Given the Supplemental Funding and cost reimbursement obligations imposed on PCCP West Park pursuant to the payment agreement, there is no fiscal impact to the County associated with this payment agreement.

BOARD ACTION AS FOLLOWS:

No. 2009-60

On motion of Supervisor Monteith, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, and Monteith

Noes: Supervisors: Chairman DeMartini

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of a Payment Agreement with PCCP West Park Obligating it to Pay All Supplemental Funding Required by a Project Baseline Agreement with the California Transportation Commission for Development of a Short Haul Rail/Inland Port Project at the Crows Landing Air Facility, and Adoption of a Resolution to Commit Supplemental Funding for the Project

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RECOMMENDATIONS Continued:

4. Authorize the Chief Executive Officer to submit all documentation and Board Resolution as part of the Project Baseline Agreement.

DISCUSSION:

On September 26, 2006, the Board of Supervisors directed staff to issue a Request for Proposals (RFP) for a master developer for the Crows Landing Air Facility. The intention of the RFP was to solicit development proposals for the former air facility from private interests that would be consistent with the guiding principles outlined by the Crows Landing Steering Committee. Staff received two proposals, one from PCCP West Park, LLC (West Park) and another from Hillwood, a Ross Perot Company. A screening committee and the full Crows Landing Steering Committee reviewed each proposal.

Because only two firms responded, both of which were highly qualified, and because both had requested exclusivity, the Board of Supervisors invited each firm to provide an informational presentation on February 13, 2007. On February 27, 2007, the Board of Supervisors approved an exclusive negotiation with West Park.

Subsequently, at the Board of Supervisors meeting on March 6, 2007, the Chairman of the Board appointed Supervisor Monteith (District 4) and Supervisor DeMartini (District 5) as an Ad Hoc Committee to oversee the negotiation process. Staff members from the County Crows Landing Development Team (multiple County departments) and West Park (Developer planning team) worked directly with the Ad Hoc Committee through March of 2008.

On January 15, 2008 the County submitted an application to the California Transportation Commission (CTC) for the Trade Corridor Infrastructure Fund (TCIF) for the San Joaquin Valley Short Haul Rail/ Inland Port Project. On April 2, the County submitted supplemental information to the application and on April 10, 2008 the Commission by resolution (TCIF-P-0708-01) adopted the program of projects for TCIF, which included the Short Haul Rail/Inland Port project in Stanislaus County.

Pursuant to the grant process established by the CTC, part of that initial programming required the development of a Project Baseline Agreement by and between the California Transportation Commission and the County of Stanislaus, which includes a project description, scope, budget and delivery schedules which have been prepared. The Project Baseline Agreement also requires a Memorandum of Understanding (MOU)

Approval of a Payment Agreement with PCCP West Park Obligating it to Pay All Supplemental Funding Required by a Project Baseline Agreement with the California Transportation Commission for Development of a Short Haul Rail/Inland Port Project at the Crows Landing Air Facility, and Adoption of a Resolution to Commit Supplemental Funding for the Project

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agreement between the project proponent and the Union Pacific Railroad (UPRR) securing track rights of way on existing UPRR track between the Port of Oakland and the Crows Landing project location. To date, neither the County nor PCCP West Park have initiated negotiations with UPRR. Finally, the Project Baseline Agreement requires that the County (as project applicant) provide a resolution supporting the availability of supplemental funding (estimated to be approximately \$34,967,000) related to the CTC grant award of \$22,467,000 for project construction. The required resolution is attached to this report.

The Project Baseline Agreement will require the County to provide any supplemental funds that are needed to complete the Inland Port Project (Supplemental Funding). Accordingly, the County and West Park have agreed to terms of a Payment Agreement, pursuant to which West Park will provide all Supplemental Funding and security for payment of such Supplemental Funding.

Terms of the Payment Agreement:

1. Supplemental Funding

Pursuant to the Payment Agreement, West Park is obligated to pay all amounts necessary to provide the Supplemental Funding required by the Project Baseline Agreement. Based on the amount of the CTC Grant, West Park will provide an estimated amount of \$34,967,000 in Supplemental Funding. The amount of Supplemental Funding may increase or decrease based on the actual costs of the Inland Port Project, but in any event, West Park will pay all amounts necessary to develop and construct the Inland Port Project and satisfy the County's obligations to the CTC.

2. Additional Costs

In addition to the Supplemental Funding, West Park will pay for all obligations and costs (i.e., legal costs, any costs/fees imposed on the County and costs to amend the Project Baseline Agreement) incurred by the County under the Project Baseline Agreement.

3. Project Baseline Agreement Negotiation and Approval Rights

Since West Park is obligated to provide all of the County's Supplemental Funding, the Payment Agreement does provide West Park the right to participate with the County in the negotiations of the Project Baseline Agreement and any amendments to the Project Baseline Agreement. In addition, prior to submission of a Project Baseline Agreement or any amendments to the Board of Supervisors for consideration, West Park will have a limited right to reasonably approve the terms of the Project Baseline Agreement if the draft Project Baseline Agreement or amendment thereto is inconsistent, materially changes or adds material costs to the obligations that have already been identified in

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previous CTC documents, specifically: the County's TCIF Bond Application to the CTC, the TCIF Program Guidelines adopted in November 2007 and the CTC's resolution that adopted TCIF Program of Projects. Because additional costs or obligations imposed by the CTC may impact the feasibility of the Inland Port Project, this right provides West Park the opportunity to decide whether to move forward with the Inland Port Project, but before the County must enter into the Project Baseline Agreement or any amendment thereto.

In addition, pursuant to the Payment Agreement, the County will use its best efforts to negotiate with the CTC to include a clause in the Project Baseline Agreement that permits the County to terminate the Project Baseline Agreement (rather than be in default thereunder) if the Project Approvals are not obtained by West Park or if West Park does not post the required security with the County.

4. Performance and Payment Security

Pursuant to a Project Baseline Agreement, the County will likely be required to provide all Supplemental Funding for the Inland Port Project. The County's source of funding will be through PCCP West Park as required pursuant to the Payment Agreement. To secure West Park's ability to provide the Supplement Funding, West Park will have the obligation to provide a payment bond or other surety instrument, irrevocable letter of credit, or other type of funding guaranty ("Security") for the Supplemental Funding obligation. In the event West Park cannot provide the Supplemental Funding, but the County is still obligated under the Project Baseline Agreement, the Security will provide the County with the necessary funds to provide the Supplemental Funding. Pursuant to the Agreement, West Park's obligations to provide Security is triggered after West Park receives all necessary county, state and federal approvals for the Inland Port Project and before any of following events:

- (i) the County issues grading or building permits for the Inland Port,
- (ii) a request by the County for reimbursement from the CTC Grant, or
- (iii) if the County has a legal obligation and must actually appropriate and provide the Supplemental Funds.

Furthermore, pursuant to the Payment Agreement, West Park agrees that the County has no obligation to seek reimbursement from the CTC or using the CTC Grant until West Park has provided the full amount of the Security.

5. No Effect on Approval of the Inland Port

By approving the Payment Agreement, the Board of Supervisors is not obligated or committed to any future decisions or approvals related to the Inland Port Project. The Payment Agreement specifically acknowledges that the County is presently preparing an

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environmental impact report for the Project and the related development and that any final action approving development of the Project or any related development will first require certification of an EIR. The Payment Agreement only relates to the County's Supplemental Funding obligation pursuant to the Project Baseline Agreement.

6. Termination

West Park only has the right to terminate the Payment Agreement if (i) the County has the authority to terminate the Project Baseline Agreement and is relieved of its obligation to provide the Supplemental Funding, or (ii) the County elects to choose another entity to undertake the Inland Port project and assume West Park's obligations. If West Park terminates the Payment Agreement, it is still required to pay all additional costs incurred by the County. The County is obligated to use its best efforts to negotiate a clause in the Project Baseline Agreement that will allow the County to terminate the Project Baseline Agreement without any financial obligations. This clause is fully stated in the attached resolution language. If the County elects to choose another entity to proceed with the Inland Port Project, West Park is required to provide the County will all plans, reports and studies related to the Inland Port Project.

POLICY ISSUES:

The Board of Supervisors should consider the approval of this Payment Agreement with PCCP West Park and the support resolution to the California Transportation Commission and determine whether this effort is consistent with the stated Board objective of developing a Strong Local Economy.

STAFFING IMPACTS:

The Chief Executive Office continues to facilitate a multi-department team that includes direct input and participation by Planning and Community Development, Redevelopment staff, Public Works, County Counsel, other County departments and third party consultants as required. All staffing impacts are identified in current department budgets.

Attachments:

Payment Agreement: PCCP West Park/County of Stanislaus
CTC Resolution: Grant Funding Match Support

PAYMENT AGREEMENT
(SAN JOAQUIN VALLEY SHORT HAUL RAIL/INLAND PORT PROJECT)

This Payment Agreement (this "**Agreement**") dated and made effective as of this 3th day of Jan. 2009 (the "**Effective Date**"), is entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "**County**" and PCCP West Park, LLC, a Delaware limited liability company, hereinafter collectively referred to as "**West Park.**" County and West Park are collectively referred to as the "**Parties.**"

RECITALS

A. County is or will be the owner of 1524 acres of that certain real property located in the County of Stanislaus and known as the Crows Landing Naval Air Facility as shown on the map attached hereto as Exhibit A and incorporated herein by this reference (the "**Property**").

B. West Park has proposed the development and construction of an intermodal inland port facility on approximately 170 acres of the Property (known as the San Joaquin Valley Short Haul Rail/Inland Port Project – hereinafter the "**Project**") along with a commercial, industrial and business park development and related infrastructure on the Property. This Agreement does not authorize the proposed construction of the Project or any other construction and will not result in either a direct or reasonably foreseeable indirect physical change in the environment; rather, this Agreement only commits West Park to certain funding obligations. The County, pursuant to the California Environmental Quality Act, is preparing an environmental impact report to evaluate the potential environmental impacts of the proposed development. No construction will be authorized until (i) the County has prepared, certified as adequate and approved an environmental impact report (ii) the County has approved the land use entitlements required for the Project, and (iii) any agreements or regulatory permits required by any other applicable regulatory agencies have been obtained.

C. Pursuant to Resolution TCIF-P-0708-01 dated April 10, 2008, the California Transportation Commission (the "**CTC**") programmed the Trade Corridors Improvement Fund (the "**TCIF**") and included the Project nominated by the County. The CTC appropriated \$22,467,000 from the TCIF ("**CTC Grant**") for development and construction of the Project.

D. County intends to enter into a Project Baseline Agreement with the CTC and the California Department of Transportation to document the Project's cost, schedule, scope, benefits and funding plan (the "**Project Baseline Agreement**"). Pursuant to the TCIF Guidelines, the Project Baseline Agreement's funding plan must contain an identified and committed source of funding to supplement the CTC Grant. Any reference in this Agreement to the Project Baseline Agreement includes any amendments, modifications or successor agreement to said Project Baseline Agreement.

E. The Parties intend that West Park will provide all necessary funding to supplement the CTC Grant and pay for all of the County's obligations and costs under the Project

Baseline Agreement, subject to possible reimbursement and credits as set forth in this Agreement.

AGREEMENT

Now, therefore, in consideration of the foregoing, and the covenants, promises, and premises hereinafter set forth, the Parties agree as follows:

1. **Incorporation of Recitals**

The foregoing recitals are incorporated into this Agreement by reference.

2. **Term**

The term of this Agreement shall commence upon the Effective Date and terminate upon the termination or expiration of the Project Baseline Agreement, unless this Agreement is terminated earlier pursuant to Section 7.

3. **Supplemental Funding; Additional Costs**

a. **Supplemental Funding.** As of the Effective Date of the Project Baseline Agreement, West Park shall be obligated to pay for and fund all Project costs to the extent necessary and when required to satisfy all of the County's funding obligations as set forth in the Project Baseline Agreement (hereinafter "**Supplemental Funding**"). The amount of the Supplemental Funding is estimated to be Thirty Four Million Nine Hundred Sixty Seven Thousand United States Dollars (\$34,967,000). The Parties acknowledge that the estimated amount of Supplemental Funding is based on the amount of the CTC Grant and the estimated total costs of the Project and that West Park's obligation to provide Supplemental Funding and the Supplemental Funding amount identified herein may increase or decrease based on the actual total costs of the Project and any other additional grant funding received by the County and/or West Park for the Project. County acknowledges that West Park will be using its best efforts to reduce the amount of Supplemental Funding through a variety of mechanisms, including the leasing rather than the purchase of certain equipment. West Park shall fund any such increases in the Supplemental Funding or be entitled to any savings resulting from decreases in the Supplemental Funding. Since West Park will be paying all Supplemental Funding obligations under the Project Baseline Agreement on behalf of the County, West Park shall have the right to participate in the negotiation of the Project Baseline Agreement and all significant amendments thereto; provided, however, in addition to the right to participate in the negotiation of the Project Baseline Agreement, West Park shall have the right to reasonably approve the Project Baseline Agreement and all significant amendments thereto prior to their submission to the County's Board of Supervisors for its approval to the extent that the terms, conditions and/or legal obligations of the County pursuant to the Project Baseline Agreement are inconsistent with, materially change or add material costs to the obligations and/or representations set forth in: (i) the Program Guidelines for the TCIF adopted by CTC Resolution TCIF-G-0708-001 on December 12, 2007, attached hereto as Exhibit A, (ii) the County's TCIF Bond Application dated January 17, 2008, submitted to the CTC, attached hereto as Exhibit B, and (iii) Resolution

TCIF-P-0708-01 dated April 10, 2008, adopting the Program of Projects for the TCIF, attached hereto as Exhibit C.

b. Additional Costs. In addition to its Supplemental Funding obligations hereunder, commencing on the Effective Date of this Agreement, West Park shall pay for all obligations and costs ("**Additional Costs**") of any kind whatsoever, known and unknown, for which County is or becomes responsible for under the Project Baseline Agreement in the amount required to be paid by the County. The Additional Costs may include but are not limited to the following:

- i. All legal costs associated with legal challenges to the Project;
- ii. County costs to amend the Project Baseline Agreement; and
- iii. All other costs, expenses, and/or fees imposed on the County and arising out of the Project Baseline Agreement.

County shall provide verbal and written notice to West Park of any Additional Costs as soon as possible after County learns of the Additional Costs.

c. Reimbursement. If County pays for any Additional Costs, West Park agrees to pay within twenty (20) days after receipt of an invoice from County all amounts paid by County. If any such Additional Costs paid by West Park are reimbursable from the CTC Grant or third parties, County shall return such funds to West Park when they are received by County.

4. Performance and Payment Security for Supplemental Funding.

a. After receiving all County approvals (other than building or grading permits) for the development of the Project and the Property included in Phase A (as defined in the draft Disposition and Development Agreement attached to the Memorandum of Understanding dated April 16, 2008) and all State and Federal approvals for the Project (and the referendum periods having expired on all such County approvals) (collectively, "**Project Approvals**"), and prior to the earlier of (1) issuance of the first grading or building permit for any portion of the Project, (2) any request by the County for expenditure of any portion of the CTC Grant, or (3) when the County has a legal obligation to and must actually appropriate and provide County funds for the Supplemental Funding pursuant to the Project Baseline Agreement, West Park will deliver to the County copies of payment bond(s) or other surety instruments, acceptable to the County in its sole discretion, issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the Supplemental Funding. The bond or other surety instrument shall name County as co-obligee. The County agrees not to take any action that causes the initial expenditure of any portion of the CTC Grant or request the initial expenditure of any portion of the CTC Grant without the written approval of West Park. West Park acknowledges and agrees that the County will not, and has no obligation to, request a reimbursement from the CTC and/or CalTrans of any portion of the CTC Grant for the Project unless and until West Park provides the full amount of the security for the Supplemental Funding as set forth in this Section 4.

b. In lieu of such performance and payment bonds, and within the same time periods set forth in Section 4(a), West Park may submit evidence satisfactory to the County of West Park's ability to satisfy the Supplemental Funding commitment in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, and/or other marketable securities held by a broker or other financial institution, with signature authority of the County required for withdrawal, or at County's option, a funding guaranty in a form and from a guarantor acceptable to the County. Such evidence must be submitted in approvable form in sufficient time to allow the County to review and approve or reject the proposed documents within the time periods set forth in Section 4(a).

c. In the event that West Park fails to pay any Supplemental Funding amount due pursuant to the Project Baseline Agreement or this Agreement at the time such amount is due, the County may recover the unpaid amount from the payment bond or other form of security provided to the County. Except as otherwise provided herein, the County may exercise its rights provided in this section without prior approval by West Park.

5. No Effect on Project Approval

West Park understands that amounts paid for the Project pursuant to this Agreement shall in no way influence the decision of the County concerning the planning, zoning, or development of any real property within the County, or any decision concerning any public improvements, whether publicly or privately financed. No promises, representations, or warranties have been made, expressly or impliedly, by the County, its officers, agents, or employees, regarding the approval of the Project and related entitlements. It is further specifically understood and agreed that no person has the authority to make any such promise, representation, or warranty. West Park understands and agrees that the agreement by West Park to pay the Supplemental Funding and Additional Costs shall not influence any decision of the County, or guarantee any recommendation which is favorable to, or which benefits, West Park.

6. Accounting and Reporting

West Park shall perform the accounting under the Project Baseline Agreement and provide accounting reports to the County on a quarterly basis in accordance with the Project Baseline Agreement. West Park shall provide the County progress reports, engineering and financial data, or any other information required under the Project Baseline Agreement for the purpose of reporting to the CTC and CalTrans.

7. Termination

a. At any time prior to the posting of the security by West Park for payment of the Supplemental Funding pursuant to Section 4(a) and 4(b), West Park may terminate this Agreement, provided that (i) the County has the authority to terminate the Project Baseline Agreement and is relieved of its obligation to provide the Supplemental Funding, or (ii) the County elects, in its sole discretion, to transfer West Park's obligations pursuant to this Agreement to a third-party that has agreed to assume West Park's obligations pursuant to this Agreement. In such event, West Park shall remain liable for all Additional Costs incurred by the

County after the date of the termination. The County will use its best efforts to negotiate with the CTC to include a clause in the Project Baseline Agreement that permits the County to terminate the Project Baseline Agreement (rather than be in default thereunder) if the Project Approvals are not obtained by West Park or if West Park does not post the required security with the County pursuant to Section 4.

b. Provided that West Park has satisfied its obligations under this Agreement, West Park may terminate this Agreement if, at no fault of West Park, the Project Baseline Agreement is terminated based upon a default under the Project Baseline Agreement by the County, CTC or CalTrans and said default continues beyond the expiration of any applicable cure period.

c. In the event West Park fails to comply with any terms of this Agreement, the County shall send written notice of such failure to West Park. Such notice shall identify the specific act constituting the lack of compliance and delineate how compliance may be achieved. If the lack of compliance is not resolved within twenty (20) business days of receipt of such notice, the County may terminate this Agreement immediately thereafter upon written notice to West Park.

d. If this Agreement is terminated pursuant to this Section for reasons other than the default of the County which was not caused by West Park, West Park shall (i) pay all Supplemental Funding and Additional Costs incurred or required to be paid by County under the Project Baseline Agreement up to and including the date of termination of this Agreement, and (ii) upon written request by the County, deliver to the County copies of any development and/or construction plans, reports and studies related to the Project ("**Project Documents**") within thirty (30) days of the date of written notice of termination of this Agreement. If the County requests and obtains the Project Documents from West Park and elects to use the Project Documents, County shall indemnify, release, hold harmless and defend West Park from and against all Claims (as defined in Section 9) arising out of or in connection with the County's use of Project Documents, provided that West Park (i) pays for all consultant costs related to the Project Documents and incurred prior to termination of this Agreement and (ii) adds the County as a third-party beneficiary to all contracts with consultants for Project Documents.

e. No failure or delay by either Party in asserting any of its rights or remedies hereunder shall operate as a waiver of any default or of any such right or remedy, nor deprive such Party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies. Without limiting the generality of the foregoing, the failure or delay by either Party in providing a notice of default shall not constitute a waiver of any default.

8. No Right to Reimbursement

Except as otherwise provided herein, West Park has no right to reimbursement from the County for any payments made pursuant to this Agreement. Nothing in this Section, however, limits West Park's ability to benefit from future public or private grants or reimbursements made with respect to the Project, provided that West Park is not in default pursuant to this Agreement.

9. Indemnity

West Park shall defend, indemnify, and hold harmless the County and its agents, officers, representatives and employees (all of the foregoing, “**Indemnitees**”) from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter “**Claims**”) as a result of County's obligations under the Project Baseline Agreement and West Park's obligations under this Agreement. This indemnity does not obligate West Park to defend, indemnify, and hold harmless the County from claims that result from actions by the County after termination of this Agreement. This section shall survive termination of this Agreement. Notwithstanding anything to the contrary in this Agreement, West Park shall have no obligation to defend, indemnify or hold harmless the Indemnitees from any Claims arising from the County's fraud or intentional misconduct.

10. No Joint Venture or Third Party Benefits

a. No partnership, joint venture, or other association of any kind with the County is formed or intended by this Agreement.

b. The payments made by West Park under this Agreement are made solely for direct costs attributable to the Project to supplement the CTC Grant. No person who is not a party to this Agreement shall have any claim to the benefits, burdens, rights, or obligations created hereunder.

11. Notices

Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery; or

(b) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

County: County of Stanislaus
1010 Tenth Street, Suite 6800
Modesto, CA 95354
Attn: Richard Robinson, Chief Executive Officer
Telephone: (209) 525-6333
Facsimile: (209) 525-6226

with a copy to: The Office of County Counsel
1010 Tenth Street, Suite 6400
Modesto, CA 95354
Attention: John Doering, County Counsel
Telephone: (209) 525-6376
Facsimile: (209) 525-4473

West Park: PCCP West Park, LLC
111249 Gold Country Blvd, Suite 190
Gold River, CA 95670
Attn: Gerry Kamilos
Phone: (916) 631-8440
Facsimile: (916) 631-8445

with a copy to: Trainor Fairbrook
980 Fulton Avenue
Sacramento, CA 95825
Attn: Charles W. Trainor
Phone: (916) 929-7000
Facsimile: (916) 929-7111

12. Amendments

This Agreement may be amended only by a written instrument by the Parties or their successors in interest. Notwithstanding the foregoing, if the CTC requires an amendment to the Project Baseline Agreement or modifies the allocation procedures of the CTC Grant, West Park shall agree (i) not to unreasonably withhold its consent to such amendment or modification and (ii) to amend this Agreement in accordance with the requirements of such modifications to the Project Baseline Agreement or allocation procedures to satisfy all County obligations thereunder.

13. Jurisdiction

This Agreement shall be administered and interpreted under the laws of the State of California, and any action brought hereunder shall be brought in the Superior Court in and for the County of Stanislaus.

14. Severability

If any part of this Agreement is declared invalid, illegal, or unenforceable for any reason, it shall not affect the validity, legality, or enforceability of the rest of the Agreement. The other parts of the Agreement shall remain in effect as if the Agreement had been executed without the invalid part. The parties hereby declare that they intend and desire that the remaining parts of the Agreement continue to be effective without any part or parts that have been declared invalid.

15. Successors and Assigns

This Agreement shall be binding upon the successors and assigns of West Park. Except as otherwise provided herein, West Park may not assign any right or obligation under this Agreement without the prior written consent of the Board of Supervisors, County of Stanislaus, the granting of which shall be in the County's reasonable discretion. West Park may assign this Agreement, without the prior approval of the County to another entity which West Park creates to develop the Project so long as West Park has a fifty percent (50%) ownership interest therein.

16. Construction

This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address or interpret any uncertainty.

17. Representation on Authority of Parties/Signatories

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other parties that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

18. Entire Agreement

This Agreement represents the final agreement between the County and West Park as to the subject matter hereof and supersedes all prior oral and written agreements.

19. Counterparts

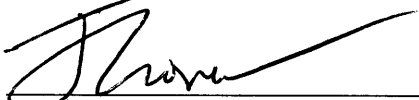
This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

SIGNATURES ON THE NEXT PAGE

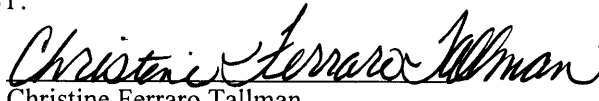
IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

COUNTY

COUNTY OF STANISLAUS, a political subdivision of the State of California

By: 
Jeff Grover
Vice- Chairman, Board of Supervisors

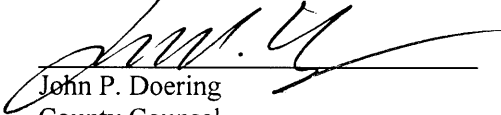
ATTEST:

By: 
Christine Ferraro Tallman
Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: 
Richard W. Robinson
Chief Executive Officer

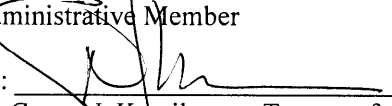
APPROVED AS TO FORM:

By: 
John P. Doering
County Counsel

WEST PARK

PCCP WEST PARK, LLC,
a Delaware limited liability company

By: WESTPARK HOLDINGS, LLC,
a Delaware limited liability company,
Administrative Member

By: 
Gerry N. Kamilos, co-Trustee of the
Gerry and Karen Kamilos Family Trust u/t/a
dated August 31, 1998, sole Member

1128491.16

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Date: January 13, 2009

No. 2009-60

On motion of Supervisor Monteith Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, and Monteith

Noes: Supervisors: Chairman DeMartini

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # B-4

**RESOLUTION TO COMMIT SUPPLEMENTAL FUNDING FOR THE
SAN JOAQUIN VALLEY SHORT HAUL RAIL/INLAND PORT PROJECT
AND TO APPROVE THE RELATED PAYMENT AGREEMENT**

WHEREAS, County of Stanislaus ("**County**") is or will be the owner of 1524 acres of that certain real property located in the County and known as the Crows Landing Naval Air Facility (the "**Property**"); and

WHEREAS, PCCP West Park LLC ("**West Park**") has proposed the development and construction of an intermodal inland port facility on approximately 170 acres of the Property (known as the San Joaquin Valley Short Haul Rail/Inland Port Project (hereinafter the "**Project**") along with a commercial, industrial and business park development and related infrastructure on the Property; and

WHEREAS, the County nominated West Park's proposed Project for grant funding by the California Transportation Commission (the "**CTC**") through the Trade Corridors Improvement Fund (the "**TCIF**"); and

WHEREAS, pursuant to Resolution TCIF-P-0708-01 dated April 10, 2008, the CTC programmed the TCIF and appropriated \$22,467,000 from the TCIF ("**CTC Grant**") for development and construction of the Project nominated by the County; and

WHEREAS, pursuant to the TCIF Guidelines, the County is required to enter into a Project Baseline Agreement with the CTC and the California Department of Transportation ("**CalTrans**") to document the Project's cost, schedule, scope, benefits and funding plan (the "**Project Baseline Agreement**"); and

WHEREAS, pursuant to the TCIF Guidelines, the Project Baseline Agreement's funding plan must contain an identified and committed source of funding to supplement the CTC Grant in an amount at least equal to the CTC Grant; and

WHEREAS, West Park has agreed to provide all necessary funding to supplement the CTC Grant, pay for all of the County's obligations and costs under the Project Baseline Agreement, and to provide security for all supplemental funding to the CTC Grant; and

(Continued)

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
Stanislaus County Board of Supervisors,
State of California



WHEREAS, the County and West Park have agreed to enter into an agreement to set forth the terms and conditions of West Park's obligation to provide the supplemental funding for the Project (the "Payment Agreement"), which Payment Agreement is incorporated herein by reference; and

WHEREAS, the County and West Park will jointly participate in the negotiations of the Project Baseline Agreement between the CTC and the County; and

WHEREAS, the County will use its best efforts to negotiate with the CTC to include a clause in the Project Baseline Agreement that permits the County to terminate the Project Baseline Agreement (rather than be in default thereunder) if West Park does not obtain the necessary approvals for the Project or does not post the required security with the County pursuant to the Payment Agreement; and

WHEREAS, the Payment Agreement only commits West Park to certain funding obligations and does not authorize the proposed construction of the Project or any other construction and will not result in either a direct or reasonably foreseeable indirect physical change in the environment; and

WHEREAS, approval of the Payment Agreement will not result in any direct or indirect physical change in the environment. The County, pursuant to the California Environmental Quality Act, is preparing an environmental impact report to evaluate the potential environmental impacts of the proposed development, and no construction will be authorized until (i) the County has prepared, certified as adequate and approved an environmental impact report (ii) the County has approved the land use entitlements required for the Project, and (iii) any agreements or regulatory permits required by any other applicable regulatory agencies have been obtained.

NOW THEREFORE, THE COUNTY OF STANISLAUS DOES RESOLVE AS FOLLOWS:

Section 1. The County hereby finds and determines that the above recitals are true and correct.

Section 2. The County hereby authorizes the Chief Executive Officer to execute the Payment Agreement between the County and West Park, in substantially the form on file with the Clerk of the Board, with such changes therein as shall be approved by the County Counsel.

Section 3. The County hereby certifies that the funding for the Project as set forth in the Project Programming Request is committed and expected to be available for all Supplemental Funding, including without limitation, Project cost increases, as more particularly set forth in the Payment Agreement between the County and West Park.

FAX

First Page

January 13, 2009

For Board of Supervisors

From WS-PACE.org

Urgent, please distribute for this
mornings board meeting
consideration



January 13, 2009

Stanislaus County Board of Supervisors
1010 Tenth Street
Modesto, California 95354
Fax: (209) 525-4410

Mr. John Doering, County Counsel
Office of County Counsel, County of Stanislaus
1010 Tenth Street, Suite 6400
Modesto, California 95354
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Mr. Richard Robinson, CEO
County of Stanislaus
1010 Tenth Street, Suite 6400
Modesto, California 95354
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Fax: (209) 544-6226

Mr. Keith Boggs
Stanislaus County Redevelopment Agency
Deputy Executive Officer – Economic Development
1010 Tenth Street, Suite 6800
Modesto, California 95354
E-mail address: boggsk@stancounty.com

Re: Board Agenda #B-4, PCCP West Park LLC and the County of Stanislaus, Inland Port Project, Payment Agreement (Final)

Via: Fax and E-mail 1.13.09

Members of the Board, Mr. Doering, Mr. Robinson, and Mr. Boggs,

We are writing to request that you continue this item for the following reasons:

- 1) There is significant public opposition to this project;
- 2) While Stanislaus County may have met the minimum legal standard required under the Brown Act, members of the community who have a direct interest and demonstrated concern

regarding this project did not have sufficient notice nor access to the appropriate documents in order to meaningfully participate in today's hearing;

- 3) This contract represents yet another discretionary approval further limiting and narrowing the alternatives associated with the redevelopment of the Crows Landing Navel Base; and
- 4) We object to any future approvals which commit Stanislaus County resources to a project in advance of CEQA review.

We request that the county make available for public review all documents for which this contract is reliant well in advance of the continued hearing. Finally, we request that this letter be included in the record.

Sincerely,



Ron Swift, President
WS-PACE.org
P.O. Box 1044
Patterson, California 95363

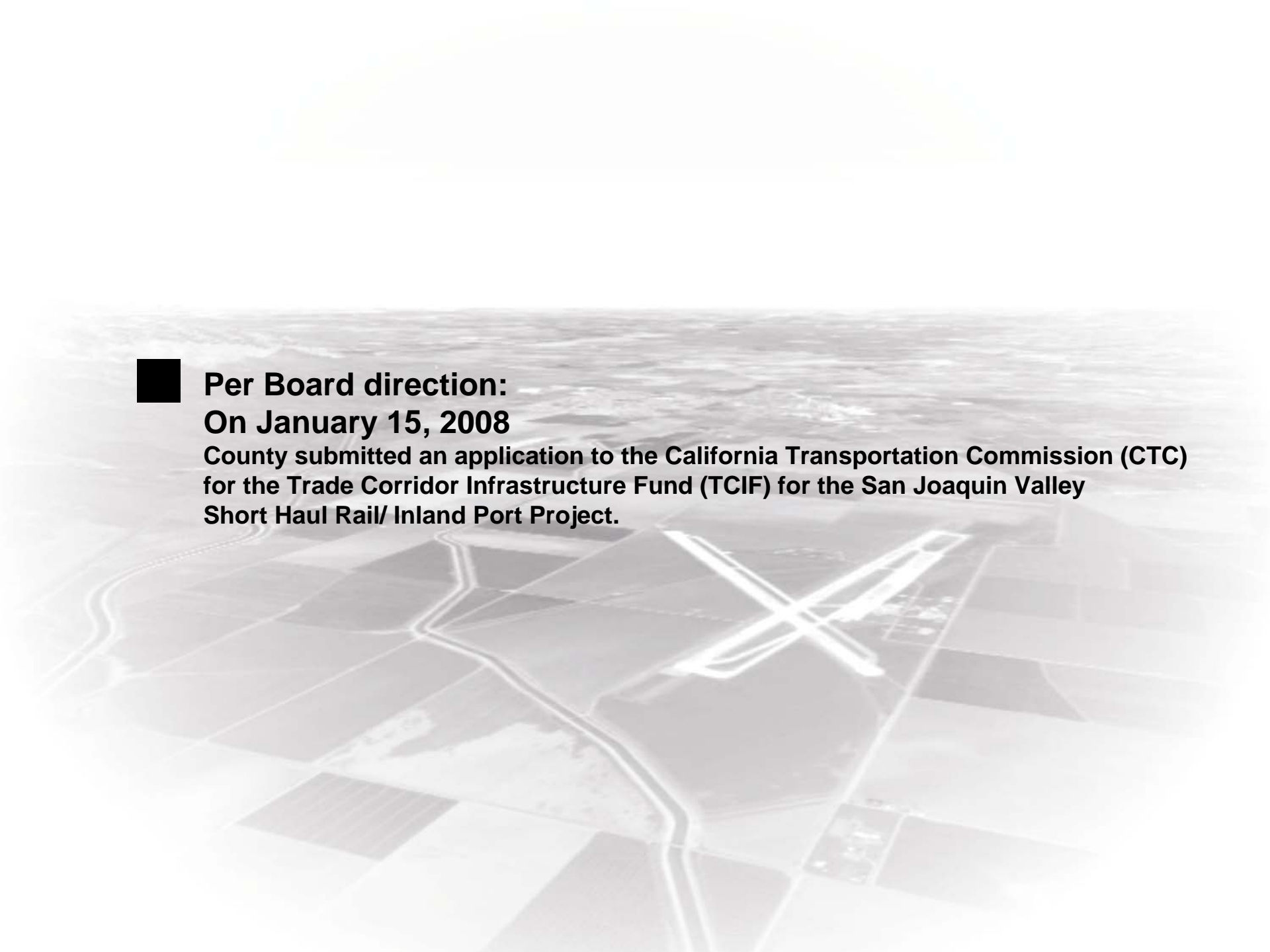
cc: Interested parties

An aerial photograph of a coastal area, likely a wetland or marsh, with a road winding through it. The terrain is flat and appears to be a mix of natural and developed land. The sky is bright and overcast.

■ CROWS LANDING/WEST PARK


**California Transportation Commission CTC
Baseline Agreement
Payment Agreement Summary**

Board Summary January 13, 2009

An aerial photograph of a rural landscape, likely agricultural fields, with a prominent white 'X' shape overlaid on the center. The text is positioned on the left side of the image.

**Per Board direction:
On January 15, 2008**

**County submitted an application to the California Transportation Commission (CTC)
for the Trade Corridor Infrastructure Fund (TCIF) for the San Joaquin Valley
Short Haul Rail/ Inland Port Project.**

An aerial photograph of a rural landscape, likely Stanislaus County, showing a patchwork of agricultural fields. A prominent white 'X' is overlaid on the image, centered over a large field. The background is a light, hazy sky.


On April 10, 2008:

The CTC Commission by resolution adopted the program of projects for TCIF, Which included the Short Haul Rail/Inland Port project in Stanislaus County.

An aerial photograph of a rural landscape, likely agricultural fields, with a prominent white 'X' overlaid on the center. The fields are arranged in a grid-like pattern, and the overall scene is in grayscale. The 'X' is formed by two intersecting lines that are slightly thicker than the surrounding field boundaries.

Pursuant to the grant process:

Programming requires the development of a Project Baseline Agreement by and between the California Transportation Commission and Stanislaus County.

An aerial photograph of a rural landscape, showing a network of roads and fields. A large white 'X' is drawn on the ground in the center-right of the image. The text is overlaid on the left side of the image.

The Project Baseline Agreement

requires the County (as project applicant) to provide a resolution supporting the availability of supplemental funding.

An aerial photograph of a rural landscape, likely agricultural fields, with a prominent white 'X' overlaid on the center. The fields are arranged in a grid-like pattern, and the 'X' is formed by two intersecting white lines. The background is a light, hazy sky.

■ The Project Baseline Agreement

will require the County to provide any supplemental funds that are needed to complete the Inland Port project.

An aerial photograph of a rural landscape, likely a farm or agricultural area. The terrain is divided into various rectangular plots, some of which appear to be fields or pastures. A prominent white 'X' is overlaid on the center of the image, extending from the top-right to the bottom-left and from the top-left to the bottom-right. The background shows a hazy horizon under a bright sky.

Accordingly:

The County and West Park have agreed to terms of a Payment Agreement pursuant to which West Park will provide all supplemental funding and security for payment of such funding.

An aerial photograph of a rural landscape with a grid of roads and fields. A prominent white 'X' is overlaid on the image, centered on a road intersection. The background is a soft, hazy landscape with a light sky.

■ The Payment Agreement identifies and obligates West Park to provide all necessary funding to supplement the California Transportation Commission Grant and to pay for all of the County's obligations and costs under the Project Baseline Agreement.

An aerial photograph of a rural landscape with a grid of fields and roads. A large, white, glowing 'X' is superimposed over the center of the image. The background is a light, hazy sky.

Given the Supplemental Funding

and cost reimbursement obligations imposed upon PCCP West Park pursuant to the Payment Agreement, there is no fiscal impact to the County associated with this Payment Agreement.

