

AGENDA ITEM NO.

COUNCIL MEETING
APPROVED BY
DEPARTMENT DIRECTOR

CITY MANAGER

March 6, 2007

FROM: JON R. RUIZ, Interim Public Works Director
Public Works Department

BY: SCOTT L. MOZIER, PE, Assistant Public Works Director
Public Works Department, Engineering Services

SUBJECT: APPROVE A COOPERATIVE AGREEMENT WITH THE SAN JOAQUIN VALLEY RAILROAD FOR THE REPAIR OF SIXTEEN (16) RAILROAD CROSSINGS WITHIN THE CITY AND ADOPT A RESOLUTION AUTHORIZING THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE AGREEMENT AND ALL RELATED DOCUMENTS ON BEHALF OF THE CITY OF FRESNO (PROPERTY LOCATED IN COUNCIL DISTRICTS 3 AND 5)

KEY RESULT AREA

Public Safety

RECOMMENDATION

Approve a Cooperative Agreement with the San Joaquin Valley Railroad for the repair of sixteen (16) railroad crossings within the City and adopt a resolution authorizing the Public Works Director for his designee to sign the agreement and all related documents on behalf of the City of Fresno.

EXECUTIVE SUMMARY

The attached Cooperative Agreement identifies sixteen (16) locations where the City of Fresno and San Joaquin Valley Railroad (SJVR) will work together to repair rough at-grade railroad crossings. Most of the crossings listed on Exhibit "A" of the agreement have been the subject of numerous complaints from the driving public for the past several years. The crossings not only represent a nuisance to drivers, but are a public safety issue as well.

Staff discussions with Rail Safety officials from the California Public Utilities Commission (CPUC) including several field meetings have emphasized the need for at-grade crossing maintenance and repair.

Under City threat of filing a formal complaint with the CPUC, SJVR has offered to begin crossing repairs on a one per month basis. The City plans to work with SJVR by providing the paving transitions to the track area. This plan will result in a three (3) fiscal year effort, starting in March, 2007, and ending in October, 2008. The agreement provides for the repair of additional

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crossings by mutual consent after completion of the initial sixteen (16) crossings listed on Exhibit "A".

KEY OBJECTIVE BALANCE

The recommendation emphasizes the concern for public safety and the need to repair rough railroad crossings within the City. The Cooperative Agreement reflects collaboration with the SJVR and a common objective of repairing rough at-grade railroad crossings at the sixteen (16) identified locations within the City.

BACKGROUND

The SJVR, a California Corporation, is a small short haul railroad with its main office in Boca Raton, Florida. It has an office in Exeter, California from where it oversees the operation of approximately 347 miles of track in the southern San Joaquin Valley. The tracks were formerly operated by either the Atchison Topeka and Santa Fe Railway or the Southern Pacific Railroad, but the track use rights were sold to short haul railroads while the large railroads concentrated on more profitable long haul business.

The crossings that are the subject of this agreement have not been maintained or repaired for many years (possibly as many as 20+ years) and have been the subject of numerous telephone calls to staff by the frustrated public.

Staff has transmitted the complaints to SJVR and the CPUC on every occasion, but thus far no repair work other than a few shovels of cold asphalt mix needed to temporarily fill a hole has been provided from SJVR. Pursuant to CPUC General Order 72-B, the City is prohibited from working within the track area, so the burden of crossing repair and/or maintenance lies with the operating railroad. The City's obligation is to provide a smooth pavement transition to the track area.

Under the terms of the Cooperative Agreement, the SJVR will begin and complete the repair of one crossing per month as scheduled on Exhibit "A". All work by the Railroad shall conform to CPUC General Order 72-B. The complementing City work shall include traffic control for vehicular traffic and paving a smooth asphalt transition to the track area. In order to minimize the driving public's inconvenience, all work is planned to start on Mondays and be completed by the following Friday.

The primary purpose of the Cooperative Agreement is to ensure that each party to the agreement fulfills their obligation so that the driving public does not have to endure the rough crossings any longer than absolutely necessary.

FISCAL IMPACT

Entering into this agreement will not increase the General Fund contribution to the Public Works Department. Funding for the work required by City Forces will be spread over three (3) fiscal years. Costs related to the pavement transition work to be performed by the Street Maintenance Division, for the remaining months of FY 2007 will come from Traffic Congestion Relief Program

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funds already within their budget. Pavement transition work required in FY 2008 and 2009 will be budgeted as part of the Public Works Department's Budget. It is currently estimated that the City share of the cost to reconstruct the paved transitions at each crossing will be approximately \$25,000 per crossing (FY2007)=\$100,000; FY2008=\$200,000 & FY2009=\$100,000) resulting in a \$400,000 overall expenditure over the three (3) fiscal year period.

JRR/SLM/CJK/eam

Apprv Coop Agrmt SJVR Repair 16 RR Xings 3-6-07

Attachments: 1) Resolution
2) Cooperative Agreement for Railroad Crossing Repair

RESOLUTION No. _____

RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO
(1) APPROVING A COOPERATIVE AGREEMENT WITH SAN JOAQUIN VALLEY RAILROAD FOR THE REPAIR OF RAILROAD CROSSINGS WITHIN THE CITY AND (2) AUTHORIZING THE PUBLIC WORKS DIRECTOR OR HIS DESIGNEE TO SIGN THE AGREEMENT AND ALL RELATED DOCUMENTS ON BEHALF OF THE CITY OF FRESNO

WHEREAS, the San Joaquin Valley Railroad is comprised of approximately 347 miles of track that run throughout the southern San Joaquin Valley of the State of California; and

WHEREAS, the Railroad's track along the California Avenue alignment intersects several City streets, including but not limited to, Peach Avenue, Maple Avenue, Clovis Avenue, Willow Avenue, Cedar Avenue, Chestnut Avenue, and Fowler Avenue; and,

WHEREAS, besides the crossings on the California Avenue alignment, San Joaquin Valley Railroad tracks cross Hughes Avenue, Pacific Avenue, Cherry Avenue, Van Ness Avenue, "L" Street, Los Angeles Street, Monterey Street, "M" Street and Butler Avenue; and

WHEREAS, the manner in which the Railroad inspects, repairs and maintains its track, is regulated by the California Public Utilities Commission; and

WHEREAS, the California Public Utilities Commission has issued General Order No. 72-B that establishes rules governing the construction and maintenance of railroad crossings with public streets, roads and highways in the State of California; and

WHEREAS, since at least October, 2001 the City has informed the Railroad of the rough surfacing at the at-grade crossings in the City; and

WHEREAS, the Railroad has failed to repair and/or maintain the at-grade crossings noted above in compliance with General Order 72-B; and

WHEREAS, the City is permitted to file a complaint with the California Public Utilities Commission in order to compel the Railroad to repair and maintain the subject crossings in compliance with General Order 72-B; and

WHEREAS, the City and Railroad seek to avoid the time and expense associated with prosecuting and defending a complaint filed with the California Public Utilities Commission by reaching this agreement establishing a timeline and scope of work to repair and maintain the subject crossings.

NOW, THEREFORE, IT IS RESOLVED BY THE COUNCIL OF THE CITY OF
FRESNO AS FOLLOWS:

1. The City Council approves the Cooperative Agreement with the San Joaquin Valley Railroad for railroad crossing repair at the at-grade crossings noted above.
2. The City Council authorizes the Public Works Director or his designee to sign the Cooperative Agreement and all related documents on behalf of the City of Fresno.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) SS.
CITY OF FRESNO)

I REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2007.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

Mayor Veto: _____, 2007

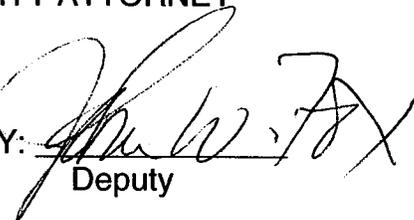
Council Override Veto: _____, 2007

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ
CITY ATTORNEY

BY:  _____
Deputy

COOPERATIVE AGREEMENT FOR

RAILROAD CROSSING REPAIR

THIS AGREEMENT is made this 14 day of February, 2007 by and between the City of Fresno, a Municipal Corporation ("City") and the San Joaquin Valley Railroad Co, a California Corporation whose principal place of business is 221 North "F" Street, Exeter, California, ("Railroad") which is a wholly owned subsidiary of RailAmerica, Inc. whose principal place of business is 5300 Broken Sound Blvd, NW., Boca Raton, Florida.

RECITALS

WHEREAS, the Railroad is comprised of approximately 347 miles of track that runs throughout the southern San Joaquin Valley of the State of California; and,

WHEREAS, the Railroad's track along the California Avenue alignment intersects with several City streets, including but not limited to, Peach Avenue, Maple Avenue, Clovis Avenue, Willow Avenue, Cedar Avenue, Chestnut Avenue, Fowler Avenue; and,

WHEREAS, besides the crossings on the California Avenue alignment, the Railroad's track intersects with Hughes Avenue, Pacific Avenue, Cherry Avenue, Van Ness Avenue, "L" Street, Los Angeles Street, Monterey Street, "M" Street and Butler Avenue; and

WHEREAS, the manner in which the Railroad inspects, repairs and maintains its crossings, is regulated by the California Public Utilities Commission ("CPUC"); and,

WHEREAS, the CPUC has issued General Order No. 72-B that establishes rules governing the construction and maintenance of railroad crossings with public streets, roads and highways in the state of California.

COOPERATIVE AGREEMENT FOR RAILROAD CROSSING REPAIR

WHEREAS, the City believes the Railroad has failed to maintain the at-grade crossings at Peach Avenue, Maple Avenue, Clovis Avenue, Willow Avenue, Cedar Avenue, Chestnut Avenue, Fowler Avenue, Hughes Avenue and Pacific Avenue, Cherry Avenue, Van Ness Avenue, "L" Street, Los Angeles Street, Monterey Street, "M" Street and Butler Avenue; (together "Subject Crossings") in compliance with General Order No. 72-B; and,

WHEREAS, since at least October, 2001 the City has informed the Railroad of the rough surfacing at at-grade crossings within the City; and,

WHEREAS, the City is permitted to file a complaint with the California Public Utility Commission in order to compel the Railroad to repair and maintain the Subject Crossings in compliance with General Order 72-B; and

WHEREAS, the City and Railroad seek to avoid the time and expense associated with prosecuting and defending a complaint filed with the California Public Utilities Commission by reaching this agreement establishing a timeline and scope of work to repair and maintain the Subject Crossings.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the terms contained below, the City and Railroad agree as follows:

1. The Railroad agrees to the following:

1.1 Repair the Subject Crossings in compliance with General Order 72-B pursuant to the Repair Schedule attached as Exhibit "A." The parties may amend this Repair Schedule to add or remove particular crossings by following the procedure set forth in paragraph 11.

1.2. Begin and complete the repairs to each crossing during the month corresponding to each crossing set forth in Exhibit "A". This work shall be completed as quickly as reasonably possible so as to limit the disruption of vehicular traffic utilizing the roadway where the crossing is located. It is agreed that, barring inclement weather or unusual circumstances, the completion of the repairs to a crossing should require no more than 5 working days. The Railroad shall be responsible for providing all material, labor and equipment to complete the repairs to each crossing, within the Railroad's area of maintenance obligation pursuant to General Order 72-B.

1.3 Cooperate with the City to insure a smooth transition between the portion of the roadway under the jurisdiction of the City and the area of the crossing under the jurisdiction of the railroad, by coordinating excavation, repair and paving activities with the City.

1.4 All work to repair the Subject Crossings shall meet the requirements and standards set forth in General Order 72-B and any other applicable standards and requirements established by the California Public Utilities Commission.

COOPERATIVE AGREEMENT FOR RAILROAD CROSSING REPAIR

1.5 The work performed pursuant to this Agreement shall commence on Mondays so that the work is completed by the end of the work day on the following Fridays. At least 14 days prior to the date the Railroad plans to commence repair work at a particular crossing, pursuant to this Agreement, the Railroad shall inform Amber Adams at the City's Public Works Department, by email (Amber.Adams@fresno.gov) or in writing (Amber Adams, Street Division Manager, 2101 "G" Street, Building E, Fresno, California, 93706), of the date and estimated time it intends to commence work.

1.6 Provide and pay for the flagmen for rail travel.

2. The City agrees to the following:

2.1 Provide traffic control for full closure of the road right-of-way during all repairs to the crossing and any necessary repairs to the approaches to the crossing to insure as smooth a transition as possible.

2.2 Provide all labor, equipment and material (e.g., hot asphalt and concrete) to complete repairs to street transition beyond 2 feet from the rails.

2.3. Complete repairs to the street transition during the time period that Railroad is repairing crossing.

3. **TIMELINES.** Time is of the essence with respect to this Agreement. Failure to meet a deadline is considered a material breach of this Agreement unless an extension in the deadline is accepted in writing by the non-breaching party prior to the initial deadline. Neither party shall unreasonably deny the other party's written requests for extensions of time to comply with the terms of this Agreement due to events not of the parties' making and beyond their reasonable control.

4. TERMINATION BY CITY FOR NON-APPROPRIATION. In the sole event of non-appropriation relating to this Agreement, City shall have the right to terminate or suspend this Agreement at the end of any fiscal year of City, in the manner and subject to the terms specified in this paragraph. City shall endeavor to give written notice of such termination or suspension not less than thirty (30) days prior to the end of such fiscal year, and shall notify the Railroad of any anticipated termination or suspension. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of City which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of City or City's governing body to appropriate money for any fiscal year of City sufficient for the continued performance of this Agreement by City. Should the City seek to lift the suspension, it shall provide the Railroad thirty (30) days notice of the date on which the suspension shall be lifted. Thereafter, the parties shall commence work not completed pursuant to the Agreement, during the month following the month in which the suspension is lifted and work shall proceed pursuant to the same time schedule set forth in Exhibit "A", adjusted to take into account the suspension period.

5. WAIVER. No provision of this Agreement may be waived unless the waiver is in writing and signed by all parties to this Agreement. Waiver of any one provision in this Agreement shall not be deemed to be a waiver of any other provision. The waiver by either party of a breach of the other of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

6. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action to enforce or interpret any provision of this Agreement shall be Fresno County, California.

7. INDEMNIFICATION. to the furthest extent allowed by law, Railroad shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and 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 City, Railroad or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done in and upon the railroad rights-of-way pursuant to this Agreement. Railroad's obligations under the preceding sentence shall apply regardless of whether Railroad or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Railroad should subcontract all or any portion of the services to be performed under this Agreement, Railroad shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement.

COOPERATIVE AGREEMENT FOR RAILROAD CROSSING REPAIR

8. SEVERABILITY. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the validity or enforceability of the other provisions.

9. ATTORNEYS FEES. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

10. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

11. EXTENT OF AGREEMENT. Each party acknowledges that they have read and fully understand the contents of this Agreement. This agreement represents the entire and integrated agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by the City and the Railroad.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written and the signatories warrant and represent that they have the authority to represent their respective parties in this matter and execute this Agreement on behalf of their respective parties.

Date 2/14/07

SAN JOAQUIN VALLEY RAILROAD CO.
A California Corporation

By: Keith Barksdale

~~Jack Gauthier~~ KEITH BARKSDALE
General Manager ASSISTANT GENERAL MANAGER

COOPERATIVE AGREEMENT FOR RAILROAD CROSSING REPAIR

CITY OF FRESNO, a municipal corporation

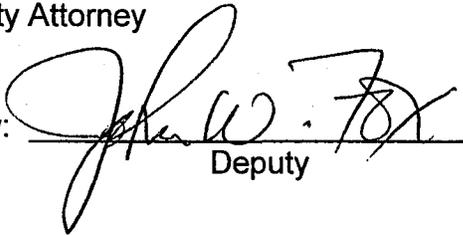
Date _____

By: _____
Mike Kirn
Assistant Director, Public Works

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

Date 2/7/2007

By:  _____
Deputy

[39266sz/jwf]

COOPERATIVE AGREEMENT FOR RAILROAD CROSSING REPAIR

EXHIBIT "A" - REPAIR SCHEDULE

The repairs pursuant to this Agreement shall be completed in accordance with the following schedule:

1. Peach Avenue Crossing – March, 2007;
2. Maple Avenue Crossing – April, 2007;
3. Clovis Avenue Crossing – May, 2007;
4. Willow Avenue Crossing – June, 2007;
5. Cedar Avenue Crossing – July, 2007;
6. Chestnut Avenue Crossing – August, 2007;
7. Fowler Avenue Crossing – September, 2007;
8. Hughes Avenue Crossing – October, 2007;
9. Pacific Avenue Crossing – March, 2008;
10. Cherry Avenue Crossing – April, 2008;
11. Van Ness Avenue Crossing – May, 2008;
12. "L" Street Crossing – June, 2008;
13. Los Angeles Street Crossing – July, 2008;
14. Monterey Street Crossing – August, 2008;
15. "M" Street Crossing – September, 2008;
16. Butler Avenue Crossing – October, 2008;

INITIALS: CITY _____; RAILROAD KB