

GRADE CROSSING IMPROVEMENTS AGREEMENT

AGREEMENT entered into this 20th day of November, 2008, by and between THE SAN JOAQUIN VALLEY RAILROAD, called herein "SJVR" and THE CITY OF FRESNO, CALIFORNIA, called herein "City".

WHEREAS, the City desires to improve the existing grade crossing at Clovis Avenue by installing precast concrete crossing surface with the corresponding track structure to support it; and

WHEREAS, SJVR is agreeable to completing the at grade crossing improvement work performed subject to the following terms and conditions of this Agreement;

NOW, THEREFORE, the parties agree as follows:

1. The total estimated cost for this project is \$165,250, as shown on the estimate attached, as Exhibit "A", and incorporated by this reference. City's obligation under this Agreement shall not exceed the estimated cost, without further approval by the City. Prior to SJVR performing any work on this project, City will deposit with SJVR the amount of \$109,188 to cover the estimated costs of material as shown on estimate attached hereto as Exhibit "A". Should the bids for material, labor, equipment, and other expenses exceed the estimate in aggregate; the SJVR shall submit a written request to the City for an increase in the project cost. If permission cannot be obtained from the City, the SJVR shall return all funds advanced from the City and this Agreement shall be considered terminated pursuant to Section 6. Upon completion of the work SJVR will bill for actual labor, equipment, and other costs in an amount not to exceed the estimated labor, equipment, and other costs without further approval by the City. Should the actual material costs be less than estimated, then SJVR will apply the difference against the final bill for actual labor costs, with a written accounting of the final costs, and the City will reimburse SJVR for the net actual costs of the project with 45 days of receipt of the bill.
2. Work is to be done during normal working hours and will require a 48 hour closure for each street crossing. If the City requires the surface improvement work to be performed on a weekend, City agrees to pay for any additional costs incurred due to overtime pay for SJVR and/or Contractors or any other extra expenses associated with the weekend work. City will install asphalt road approaches and be responsible for any required notification of the public.
3. This Agreement shall commence upon execution of this Agreement by both parties and shall continue for 240 calendar days, subject to prior termination as hereinafter described.

4. If either party shall default in any of the agreements contained in this document the other may terminate this Agreement by serving ten (10) days notice in writing upon the defaulting party. Any waiver by the non-defaulting party of any default shall not constitute a waiver of the right to terminate this Agreement for any subsequent defaults, nor shall any such waiver in any way affect the parties' ability to enforce any sections of this Agreement. The remedy set forth in this section shall be in addition to and not in limitation of any other remedies the parties may have at law or in equity.
5. This agreement may be terminated by either party, at any time, by serving ten (10) days written notice of termination on the other party.
6. The parties shall observe and comply with any and all federal, state, and local laws and regulations in the performance of this Agreement.
7. This Agreement is the full and complete Agreement between the parties and supersedes any and all other agreements between the parties hereto relating the installation of the improvements at the grade crossings.

REMAINDER OF PAGE INTENTIONALL LEFT BLANK,

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate the day and year first above written.

THE SAN JOAQUIN VALLEY RAILROAD

CITY OF FRESNO

By: [Signature]
Randy Perry
General Manager

Date: 11-19-08

By: [Signature]
Print: Ehren Banuelos
Title: Asst. Dir. of Public Works
Date: 11/20/08

ATTEST:
REBECCA E. KLISCH
City Clerk

By: [Signature]
Deputy 11/20/08

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: [Signature]
Laurie Avedisian
Deputy City Attorney

- Attachments: 1. Exhibit "A", Grade Crossing Widening Cost Estimate
2. Exhibit "B", Signature Authority

Exhibit "A"

SAN JOAQUIN VALLEY RAILROAD GRADE CROSSING WIDENING COST ESTIMATE FOR THE CITY OF FRESNO, CALIFORNIA

The following are conditions/clarifications for the proposed road crossing surface improvements:

- 1) Perform necessary field engineering in order to locate and reference stake existing alignment and profile. We will restake for new top of rail profile if necessary as designated by others.
- 2) Provide the necessary traffic control and detours in order to execute the work.
- 3) Sawcut existing asphalt 7' each side of track centerline. Excavate asphalt within sawcut lines, load and dispose of off site.
- 4) Remove approximately 154 track feet (TF) existing single track.
- 5) Excavate for new track bed, 7' each side of track centerline where the new concrete panels will be installed, down to 30" below proposed top of rail. Excavated materials to be spread adjacent to the work area on the SJVRR right-of-way.
- 6) Place and compact 8" of ¾" Class II asphalt base material within the area where the new concrete panels will be installed.
- 7) Reconstruct the 154 TF using the following materials:
 - 112# Welded Relay Rail (Will extend out 20' past the ends of the new concrete crossing).
 - Relay Compromise Joint Bars w/New Track Bolts/Nuts/Lockwashers
 - New 7"x9"x10' Ties Within the Crossing Area
 - New 7"x9"x9' Transition Ties (10 each off each end of the crossing)
 - Relay 5-1/2" Double Shoulder Tie Plates
 - New Track Spikes
 - Relay Rail Anchors (Every tie to be box anchored)
 - New Crushed Ballast Rock (8" under the crossing ties)
- 8) Furnish and install full depth 112# lag down concrete crossing panels – 113.75 TF total.
- 9) Place and compact asphalt in order to temporarily restore the driving surface until others place permanent asphalt surface.
- 10) Raise and tamp an additional 100TF off each end of the new crossing in order to provide for a smooth transition.

LABOR, ADDITIVES, MATERIAL, EXPENSES, EQUIPMENT, ACCOUNTING & ENGINEERING	Qty	Unit Price	Total
LABOR with additives, required for supervision and field installation	1 LOT	\$57,902	\$57,902
EQUIPMENT CHARGES for pick up trucks, backhoes, boom truck, and any rental equipment required	1 LOT	\$24,815	\$24,815
CROSSING AND TRACKWORK MATERIALS - Precast concrete crossing panels, crossties, anchors, tie plates, track spikes, and ballast	1 LOT	\$50,410	\$50,410
OTHER EXPENSES - Engineering, asphalt saw cutting, removal of excavated material, etc.	1 LOT	\$17,100	\$17,100
PROJECT CONTINGENCIES 10%	1 LOT	\$15,023	\$15,023
TOTAL ESTIMATED COST FOR CLOVIS AVENUE			\$165,250

EXHIBIT "B"

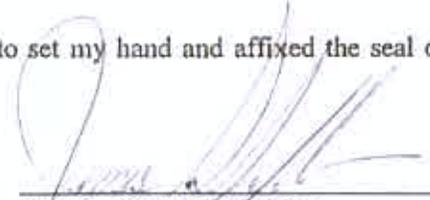
SAN JOAQUIN VALLEY RAILROAD CO.

Incumbency Certificate

OFFICER	TITLE	SPECIMEN SIGNATURE
Randall Perry	Vice President-General Manager	

I, James Shefelbine, the duly elected, qualified and acting Secretary of San Joaquin Valley Railroad Co., a California corporation, do hereby certify that the above and foregoing is an officer of San Joaquin Valley Railroad Co., duly elected to and now holding the office set opposite his name, and the given signature above set opposite his name is his genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation as of October 16, 2008.


Name: James Shefelbine
Title: Secretary

