

# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Amendment To The Joint Powers Agreement Establishing The San Joaquin Regional Rail Commission And Approval Of Lease Lease-Back Transaction Regarding ACE Rolling Stock

**MEETING DATE:** December 1, 1998

**PREPARED BY:** Public Works Director

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**RECOMMENDED ACTION:** That the City Council adopt the attached resolutions amending the Joint Powers Agreement (JPA) establishing the San Joaquin Regional Rail Commission and approving the lease lease-back transaction regarding ACE rolling stock.

**BACKGROUND INFORMATION:** The San Joaquin Regional Rail Commission is requesting that the Joint Powers Agreement (JPA) establishing the Commission be amended in order to have more flexibility with their finances and equipment. If amended, the Commission would have revenue opportunities that are not available under Section 12 of the original JPA. This future flexibility will enable the Commission to manage their assets efficiently and profitably. The attachments from the Commission staff are provided in order to assist you in consideration of this item.

Additionally, the Commission is asking that all the members to the current JPA approve a resolution, which authorizes a lease lease-back transaction related to the ACE rolling stock. This action is needed at this time to comply with the current requirements of the JPA.

**FUNDING:** None required.



Richard C. Prima Jr.  
Public Works Director

RCP/RAH/jmp

APPROVED: \_\_\_\_\_

*Janet S. Ketter for*  
H. Dixon Flynn -- City Manager



SAN JOAQUIN REGIONAL RAIL COMMISSION

5000 South Airport Way
P.O. Box 31360
Stockton, California 95213
(209) 468-5600 / FAX (209) 468-5610

November 19, 1998

MEMORANDUM

TO: All Parties to the Joint Powers Agreement of the San Joaquin Regional Rail Commission
FROM: Stacey Mortensen, SJRRC Executive Director
RE: Request for Amendment to Section 12 "Assignability" of the Joint Powers Agreement and approval of a lease lease-back transaction relating to the ACE rolling stock.

Section 12, "Assignability", of the Rail Commission Joint Powers Agreement (JPA), is broadly worded to only allow the assignment of Rail Commission property upon the approval of the governing bodies of each of the Parties that are signatory to the JPA. This section severely limits the ability of the Rail Commission to take advantage of certain opportunities, such as the loan, lease or assignment of property or equipment that may further the purposes of the Rail Program, particularly in terms of opportunities for revenue generation.

If, for example, the Rail Commission had an opportunity to lease equipment to another commuter rail agency, or to participate in a lease lease-back transaction such as those entered into by nearly all other publicly owned commuter rail services, it would be necessary to obtain the approval of each of the Parties to the JPA. Often, these opportunities present themselves with little time to accommodate the process of obtaining approvals in each of the eight jurisdictions.

Currently the Rail Commission is negotiating a lease lease-back transaction on the ACE rolling stock in conjunction with Santa Clara Valley Transportation Authority. Due to a newly proposed change in a tax regulation that would take effect after December 16, 1998, the transaction must be closed prior to December 16th. Any changes in tax regulations require the transactions to be initiated all over again under new protocols. The Santa Clara agency has just closed their transaction under the current regulations. Since the value of the Rail Commission's lease transaction is much smaller than the minimum transaction size available in the market, the Rail Commission's transaction must be closed in conjunction with, and using the same document structure as was used with Santa Clara.

COMMISSIONERS

ROBERT J. CABRAL
San Joaquin County
Board of Supervisors

GARY PODESTO
City of Stockton

PHILLIP PENNINO
City of Lodi

BRENT H. IVES
City of Tracy

WILLIAM PERRY
City of Manteca

EXECUTIVE DIRECTOR

Stacey Mortensen

Because of the crucial timing, the Rail Commission is requesting two (2) actions by the governing bodies of the Parties to the JPA at the earliest available date. The first and most important request, is a resolution approving the lease lease-back transaction (See attached Rail Commission staff report for anticipated terms and conditions and sample resolution). The approval by all of the Parties will allow this particular transaction to move forward by the December 16th deadline. There is no fiscal impact to the Parties, as the JPA specifically states that the debts, liabilities or obligations of the Commission shall not be debts, liabilities or obligations of the Parties, either singly or collectively.

The second request is a resolution amending Section 12 of the Rail Commission JPA as proposed on the attached sample resolution. The amendment continues to require the approval of all Parties when "all or substantially all of such rights or property" are assigned. This approval will provide the Rail Commission the necessary flexibility to take advantage of profitable opportunities that may arise with the loan, lease or assignment of equipment or property.

Your assistance on this matter is greatly appreciated.

R-98- 09

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SAN JOAQUIN REGIONAL RAIL COMMISSION RECOMMENDING AMENDMENT OF SECTION 12 OF THE JOINT POWERS AGREEMENT ESTABLISHING THE SAN JOAQUIN REGIONAL RAIL COMMISSION**

WHEREAS, the Board of Commissioners of the San Joaquin Regional Rail Commission have deemed it necessary and proper to amend the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission, in such a way as to increase the flexibility with which the Commission may assign rights to property, for the purpose of financing, subject to the Joint Powers Agreement, and;

WHEREAS, it is necessary for each of the Parties to the Joint Powers Agreement to consent to, and approve of, its the amendment.

NOW THEREFORE BE IT RESOLVED THAT, The Board of Commissioners of the San Joaquin Regional Rail Commission hereby recommends to each of the Parties to the SJRRC JPA that Section 12 of the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission, be amended to read in full as contained in the attached amendment.

PASSED AND ADOPTED by the Board of Commissioners this 20th day of November, 1998, by the following vote:

AYES: 3 Perry, Pennino, Cabral

NOES: 0

ABSENT: 2 Ives, Podesto

ABSTAINING:

ATTEST:

  
By: STACEY MORTENSEN  
Executive Director

SAN JOAQUIN REGIONAL  
RAIL COMMISSION

By:   
ROBERT CABRAL, Chair

R-98-10

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SAN JOAQUIN REGIONAL RAIL COMMISSION RECOMMENDING AND REQUESTING RESOLUTIONS FROM THE PARTIES TO THE JOINT POWERS AGREEMENT ESTABLISHING THE SAN JOAQUIN REGIONAL RAIL COMMISSION APPROVING THE LEASE LEASE-BACK TRANSACTION RELATED TO THE ACE ROLLING STOCK**

WHEREAS, the Board of Commissioners of the San Joaquin Regional Rail Commission has determined that entering into a lease lease-back transaction related to the ACE rolling stock will result in the receipt of substantial revenue to SJRRC, and in so doing will further the purpose of the SJRRC JPA, and;

WHEREAS, Section 12 of the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission reads in relevant part: "With the approval of, and upon the terms agreed upon by, the governing body of each party to this Agreement, all or any of the rights and property subject to this Agreement may be assigned to further the purpose of this Agreement." and;

WHEREAS, the ACE rolling stock is property subject to the SJRRC JPA, and;

WHEREAS, the Board of Commissioners of the San Joaquin Regional Rail Commission has recommended and requested resolutions from the Parties to the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission, approving a lease lease-back transaction related to the ACE rolling stock, and;

NOW THEREFORE BE IT RESOLVED THAT, The Board of Commissioners of the San Joaquin Regional Rail Commission hereby recommends and requests resolutions from the Parties to the SJRRC JPA approving the lease-lease back transaction related to the ACE rolling stock.

PASSED AND ADOPTED by the Board of Commissioners of the San Joaquin Regional Rail Commission this 20th day of November, 1998, by the following vote:

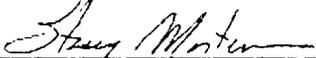
AYES: 3 Perry, Pennino, Cabral

NOES: 0

ABSENT: 2 Ives, Podesto

ABSTAINING:

ATTEST:

  
By: STACEY MORTENSEN  
Executive Director

SAN JOAQUIN REGIONAL RAIL COMMISSION

By:   
ROBERT CABRAL, Chair

RESOLUTION NO. 98-178

A RESOLUTION OF THE LODI CITY COUNCIL OF THE CITY OF LODI AMENDING SECTION 12 OF THE JOINT POWERS AGREEMENT ESTABLISHING THE SAN JOAQUIN REGIONAL RAIL COMMISSION

WHEREAS, the Board of Commissioners of the San Joaquin Regional Rail Commission have deemed it necessary and proper to amend the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission, in such a way as to increase the flexibility with which the Commission may assign rights to property, for the purpose of financing, subject to the Joint Powers Agreement; and

WHEREAS, it is necessary for each of the Parties to the Joint Powers Agreement to consent to, and approve of, the amendment; and

WHEREAS, the City Council of the City of Lodi is a Party to the SJRRC JPA.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lodi hereby agrees that Section 12 of the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission, be amended to read in full as contained in the attached amendment; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lodi hereby directs that the required signatures be affixed to the attached amendment.

Dated: December 1, 1998

I hereby certify that Resolution No. 98-178 was passed and adopted by the City Council of the City of Lodi in a special meeting held December 1, 1998, by the following vote:

- AYES: COUNCIL MEMBERS – Johnson, Land, Mann, Pennino and Sieglock (Mayor)
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None

*Alice M. Reimche*  
ALICE M. REIMCHE  
City Clerk

AMENDMENT TO THE JOINT POWERS AGREEMENT  
ESTABLISHING THE SAN JOAQUIN REGIONAL RAIL COMMISSION

Section 12 of the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission which formerly read:

Section 12. ASSIGNABILITY

With the approval of, and upon the terms agreed upon by, the governing body of each party to this Agreement, all or any of the rights and property subject to this Agreement may be assigned to further the purpose of this Agreement. Provided, however, no right or property of the Commission shall be assigned without compliance with all conditions imposed by any federal entity from whom the Commission has received financial assistance.

is hereby amended to read as follows:

Section 12. ASSIGNABILITY

The rights or property subject to this Agreement may be encumbered, hypothecated, leased, or assigned, as security or otherwise, for value received, upon approval of the Rail Board, but all or substantially all of such rights or property may not otherwise be transferred or assigned except with the approval of, and upon the terms agreed upon by, the governing body of each party to this Agreement, including also, compliance with all conditions imposed by any state or federal entity having jurisdiction over such transfer or assignment.

IN WITNESS WHEREOF, the Parties to the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission have caused this Amendment to be executed by their respective officers as of:

ATTEST: \_\_\_\_\_  
Clerk of the Board of Supervisors  
of the County of San Joaquin,  
State of California

COUNTY OF SAN JOAQUIN, a  
political subdivision of  
the State of California

By: \_\_\_\_\_  
Deputy Clerk

By \_\_\_\_\_  
\_\_\_\_\_, Chairman  
Board of Supervisors,  
"County"

Date: \_\_\_\_\_

\*\*\* SIGNATURES CONTINUED ON NEXT PAGE \*\*\*

ATTEST: \_\_\_\_\_  
City Clerk of the City of Escalon

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Lathrop

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Manteca

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**CITY OF ESCALON**, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of Escalon

**CITY OF LATHROP**, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of Lathrop

**CITY OF MANTECA**, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of Manteca

\*\*\* SIGNATURES CONTINUED ON NEXT PAGE \*\*\*

ATTEST: \_\_\_\_\_  
City Clerk of the City of Lodi

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

CITY OF LODI, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
H. Dixon Flynn, City Manager  
City of Lodi

ATTEST: \_\_\_\_\_  
City Clerk of the City of Ripon

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

CITY OF RIPON, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of Ripon

ATTEST: \_\_\_\_\_  
City Clerk of the City of Stockton

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

CITY OF STOCKTON, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of Stockton

\*\*\* SIGNATURES CONTINUED ON NEXT PAGE \*\*\*

ATTEST: \_\_\_\_\_  
City Clerk of the City of Tracy

CITY OF TRACY, a  
municipal corporation of  
the State of California

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor  
City of Tracy

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
\_\_\_\_\_  
Assistant County Counsel  
San Joaquin County

By: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney for the  
City of Escalon

By: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney for the  
City of Lathrop

By: Randall A. Hays  
Randall A. Hays  
City Attorney for the  
City of Lodi

By: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney for the  
City of Manteca

By: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney for the  
City of Ripon

By: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney for the  
City of Stockton

By: \_\_\_\_\_  
\_\_\_\_\_  
City Attorney for the  
City of Tracy

RESOLUTION NO. 98-179

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
THE LEASE LEASE-BACK TRANSACTION RELATED TO THE  
ACE ROLLING STOCK

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WHEREAS, Section 12 of the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission reads in relevant part: "With the approval of, and upon the terms agreed upon by, the governing body of each party to this Agreement, all or any of the rights and property subject to this Agreement may be assigned to further the purpose of this Agreement"; and

WHEREAS, the Board of Commissioners of the San Joaquin Regional Rail Commission has recommended and requested resolutions from the Parties to the Joint Powers Agreement Establishing the San Joaquin Regional Rail Commission, approving a lease lease-back transaction related to the ACE rolling stock; and

WHEREAS, the ACE rolling stock is property subject to the SJRRC JPA; and

WHEREAS, the City Council of the City of Lodi is a Party to the SJRRC JPA.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lodi hereby approves the lease lease-back transaction related to the ACE rolling stock.

Dated: December 1, 1998

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I hereby certify that Resolution No. 98-179 was passed and adopted by the City Council of the City of Lodi in a special meeting held December 1, 1998, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Land, Mann, Pennino and  
Sieglock (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

  
ALICE M. REIMCHE  
City Clerk