



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Update and Obtain Council Direction to Continue Negotiations with the Railroads on the Alternative Project Proposed by the Railroads to Implement the Lodi Central City Railroad Safety Improvement Project

MEETING DATE: January 15, 2003

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council direct staff to continue negotiations with the Railroads on the alternative project proposed by the Railroads to implement the Lodi Central City Railroad Safety Improvement Project.

BACKGROUND INFORMATION: The Lodi Central City Railroad Safety Improvement Project, as approved by the City Council in 2002, is based on a Memorandum of Understanding (MOU) between the City and the Railroads (Union Pacific, Burlington Northern & Santa Fe and Central California Traction Company).

The MOU provides the City will design improvements that include reactivating the unused Kentucky House Branch (KHB) line along Lockeford Street, thus eliminating the need for the CCT tracks in Lodi Avenue between the Union Pacific mainline and east of Beckman Road. This allowed the City to pave over and abandon the CCT tracks in Lodi Avenue last year. The City has appropriated \$7,269,000 for the project, \$6,694,000 of Measure K Grant Funds and \$815,000 of Local Street funds. The current MOU caps the City's contribution toward the project construction cost of \$6,694,000. The project cost does not include preliminary design, final design or land acquisition costs, which will be borne by the City.

The agreement included a provision that allowed the Railroads to offer a substitute project that meets the goals of the project as described in Section 7 of the MOU (copy attached). The Railroads have recently suggested such an alternative which would involve using the funds appropriated to rebuild the KHB, to rehabilitate the CCT tracks between Lodi and Stockton. This would allow CCT to haul larger/heavier train cars from the Railroads' main lines, while eliminating all east/west Central City train traffic between the UPRR main line and the CCT, significantly decreasing the number of rail crossings and increasing public safety.

If the Railroads agree to rehabilitate the CCT between Stockton and Lodi, the portion of the KHB between the UPRR main line and the CCT will not be needed. It is staff's recommendation that negotiations continue to include the abandonment of the KHB corridor and transfer the right-of-way to the City. A portion of this right-of-way is needed to accommodate future widening of State Highway 12 from the CCT westerly to State Route 99 and could become a pedestrian/bicycle corridor connecting to the downtown area.

APPROVED:

David Dixon Flynn -- City Manager

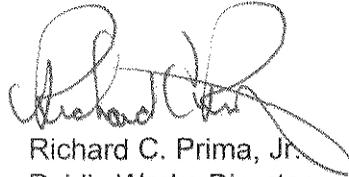
Update and Obtain Council Direction to Continue Negotiations with the Railroads on the Alternative Project
Proposed by the Railroad to Implement the Lodi Central City Railroad Safety Improvement Project

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Staff is prepared to continue to negotiate with the Railroads on this project. However, last year's success was in a large part due to Mayor Pennino's involvement and staff would welcome the Council designating one of their members to continue this role.

FUNDING: Not applicable.



Richard C. Prima, Jr.
Public Works Director

Prepared by Charles Swimley, Jr., Senior Civil Engineer

RCP/CS/pmf

Attachment

cc: Randy Hays, City Attorney
Wally Sandelin, City Engineer
Sharon Welch, Senior Civil Engineer
Wes Fujitani, Senior Civil Engineer
Paula Fernandez, Senior Traffic Engineer

MEMORANDUM OF UNDERSTANDING
City of Lodi, California
Removal of Tracks From Lodi Avenue

THIS MEMORANDUM OF UNDERSTANDING IS ENTERED INTO THIS 18th DAY OF September, 2002 by and among the City of Lodi, a municipal corporation of the State of California, (hereinafter referred to as "City") the Central California Traction Company ("CCT"), a California corporation owned jointly by The Burlington Northern and Santa Fe Railway Company ("BNSF") and the Union Pacific Railroad Company ("UP"), both UP and BNSF being Delaware corporations, (CCT, UP and BNSF hereinafter referred to collectively as "Railroads").

WHEREAS, City desires to remove the rail tracks owned and operated by the CCT from the center of Lodi Avenue between the connection to UP's Fresno Subdivision near Main St. and the east line of Beckman Road within the City of Lodi; and

WHEREAS, removal of the CCT rail tracks in Lodi Avenue involves reconstruction of the UP rail tracks and right of way between the crossing of the CCT main line near Brandywine station, (MP 105.2) and UP's Fresno Subdivision main line in Lodi, generally along Lockeford Street and State Highway 12 and also known as the former Southern Pacific Kentucky House Branch ("KHB") or providing a suitable alternative; and

WHEREAS, CCT and its owners, UP and BNSF, are agreeable to the removal of CCT's rail tracks located in Lodi Avenue in return for the City's agreement to fund a sufficient capacity plan to accommodate rail operations per this MOU.

NOW, THEREFORE, it is mutually agreed and understood by and between the City and Railroads:

1. City and Railroads have generally agreed on a conceptual replacement plan as shown on Exhibit A ("Rail Plan") attached hereto and by this reference made a part hereof. Within six (6) months following execution of this Memorandum, City shall, at no cost to Railroad, prepare engineered plans and specifications for construction of the Rail Plan, which shall be used by Railroads to obtain competitive bids for construction of the project. Railroads shall have the right, collectively, to review and approve the plans and specifications during preparation thereof, which process shall not be unreasonably delayed by Railroads. Railroads shall not be required to construct any portion of the Rail Plan that they have not previously approved through this process.
2. Railroads agree that upon execution of this Memorandum by all parties, the City shall enter into a contract for design and preparation of bidding specifications for Rail Plan. Upon execution of said contract by City and the selected design contractor, but after approval by the Surface Transportation Board of CCT's abandonment of the tracks in Lodi Avenue, City shall have the right to remove and/or pave over the tracks, ties, other track material and all appurtenant

track fixtures owned by CCT in Lodi Avenue, as shown in the Rail Plan. Upon execution of this Memorandum by City and Railroads, CCT shall, as quickly as possible, take all action necessary at its sole cost and expense to obtain authority as needed to abandon and retire in place the said railroad facilities in Lodi Avenue, in accordance with the Rail Plan. Thereafter, neither CCT individually nor the Railroads collectively or singly shall have any responsibility or duty to remove, dispose of, and/or pave over any CCT rail tracks or other facilities in Lodi Avenue, notwithstanding any franchise or ordinance requirements, if any, to the contrary. If City removes, disposes of, and/or paves over any CCT rail tracks or facilities in Lodi Avenue prior to attainment by CCT of all necessary regulatory authority, then City shall do so at its own risk and agrees to hold Railroads harmless from any cost, expense or fine incurred by the Railroads that is in any way related to such action by the City.

3. City agrees that Rail Plan design costs and the removal and appropriate disposal of rail ties and soil, and/or paving over of CCT's rail tracks and other facilities located in Lodi Avenue referred to in Section 2, shall be undertaken by City at City's sole cost and expense and such cost shall not be included in the Project Cost for the Rail Plan, nor shall Railroads have any liability whatsoever for the cost of such work or any liability, present or future, for the condition of the property.

4. CCT and UP shall provide, at no cost to the City, any real property owned by either of them that is necessary for track reconstruction or improvements to complete the Rail Plan. Excess CCT or UP right-of-way not necessary for the Rail Plan, or for any other railroad purpose, shall be made available to City as shown on the Rail Plan. This consists of strips of Railroad right-of-way for street purposes as shown in the Rail Plan which will be dedicated to City at no cost, as well as other parcels as identified in the Rail Plan which will be offered for sale to the City at fair market value.

5. City shall acquire in fee the real property necessary for the connection between the CCT main line and the east end of the reconstructed KHB near Brandywine Station along State Highway 12, meeting the specifications as shown in the approved Rail Plan. Said real property shall be conveyed by City to CCT at no cost to the Railroads, and the cost to acquire said real property in fee by City shall not be included in the Project Cost.

6. Railroads agree to obtain all required federal and California Public Utilities Commission regulatory approvals and to construct, or have constructed the Rail Plan as per the final plans and specifications for the Rail Plan. City shall use its best efforts to assist Railroads with obtaining such permits and approvals. City, through the San Joaquin Council of Governments, has obtained \$6,694,000 in Measure K funds for this project and will appropriate the additional funds necessary for design and land acquisition as necessary to implement this Memorandum of Understanding. Railroad will begin construction upon final approval, which shall not be unreasonably delayed, of construction contracts by City. Upon execution of construction contract(s) by Railroads, City shall advance ten percent (10%) of the contract amount to Railroads, and then pay upon invoice by Railroads for construction work, up to the maximum amount of the City's contribution toward Project Costs as set forth in Section 9. In the event the City makes payments later than thirty (30) days after invoice, the City agrees to pay the Railroads interest on the unpaid invoice balance at a rate of 1% per month.

7. Railroads may designate alternate improvements, meeting the goals of this project, but at a minimum, shall make the necessary improvements to:

- a) abandon the Lodi Ave. tracks west of the east Right-of-Way of Beckman Rd.;
- b) provide service to Lodi industries comparable to the existing service;
- c) provide an at-grade pedestrian crossing on the KHB at Central Ave, and;
- d) provide street right of way and property per Section 4.

8. If necessary to accomplish the goals of the Rail Plan, UP agrees to lease to CCT property it has available that is necessary to maintain efficient rail service to Lodi. This includes the KHB and property for the interchange tracks to be located along the Fresno Subdivision as depicted on the Rail Plan.

9. The City agrees to contribute not more than \$6,694,000 toward the "Project Cost" of the Rail Plan. City and Railroads agree the cost of the Rail Plan, along with unforeseen expenditures, shall collectively be referred to as "Project Costs". Deviations from approved plans do not constitute unforeseen expenditures as provided for herein. The party or parties requesting deviations (change orders) from the approved plans shall bear the cost of such changes, except that designated alternate improvements per Section 7 shall be considered Project Costs.

10. City and Railroads agree that all contractors hired by Railroads to complete the Rail Plan, shall be required to provide normal and customary insurance naming City and Railroads as additional insured. Railroads shall abide by all applicable wage laws in the construction of the Rail Plan.

11. Railroads shall give appropriate notice to their tenants to remove and/or relocate tenant facilities that are within areas of construction of the Rail Plan and said relocations shall be at no expense to City.

[Signatures on Following Page]

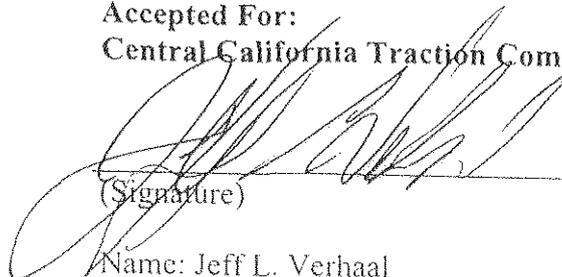
Accepted For:
City of Lodi, a municipal corporation


(Signature)

Name: H. Dixon Flynn

Title: City Manager

Accepted For:
Central California Traction Company


(Signature)

Name: Jeff L. Verhaal

Title: President

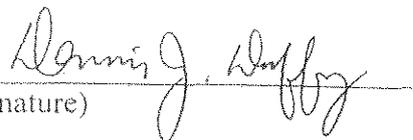
Approved as to Form:


Randall A. Hays, City Attorney

Attest:


Susan J. Blackston, City Clerk

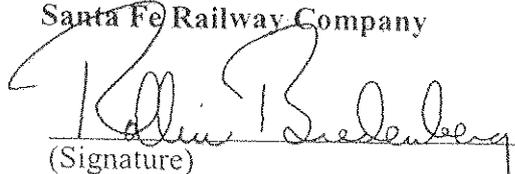
Accepted For:
Union Pacific Railroad Company


(Signature)

Name: Dennis J. Duffy

Title: Executive Vice President Operations

Accepted For:
The Burlington Northern and
Santa Fe Railway Company


(Signature)

Name: ROLLIN BREDBENBERG

Title: VICE PRESIDENT SERVICE DESIGN