



**SAN JOAQUIN
REGIONAL
RAIL COMMISSION**

Chair, **Nancy Young**, City of Tracy
Vice Chair, **Lisa Craig-Hensley**, City of Lodi
Commissioner, **Jose Nuño**, City of Manteca
Commissioner, **Miguel Villapudua**, San Joaquin County

Executive Director, **Stacey Mortensen**

Commissioner, **Kimberley Warmesley**, City of Stockton
Commissioner, **Leo Zuber**, City of Ripon
Commissioner, **John Marchand**, City of Livermore
Commissioner, **Lily Mei**, City of Fremont

SAN JOAQUIN REGIONAL RAIL COMMISSION BOARD MEETING

Friday, December 6, 2024 – 8:00 am

Robert J. Cabral Station
Board Room
949 E. Channel Street
Stockton, CA 95202

Teleconference Locations 📞

1719 Monte Diablo Avenue
Stockton, CA 95203

Members of the public may attend the meeting at the above address, or may observe the meeting by using the link or dial-in information below:

Join Zoom Meeting

<https://us06web.zoom.us/j/87961933868?pwd=xwE0QHvDQaCzeTUsYcJja5JLSXIWIh.1>
Passcode: 390198

Or Telephone: +1 669 444 9171 US
Webinar ID: 879 6193 3868
Passcode: 390198

Persons wishing to address the Commission on any item of interest to the public regarding rail shall state their names and address and make their presentation. The Commission cannot take action on matters not on the agenda unless the action is authorized by Section 54954.2 of the Government Code. Materials related to an item on the Agenda submitted to the Board of Commissioners after distribution of the agenda packet are available for the public inspection in the Commission Office at 949 E. Channel Street during normal business hours. These documents are also available on the San Joaquin Regional Rail Commission website at <https://www.sjrrc.com/events/> subject to staff's ability to post the documents prior to the meeting. If a member of the public wishes to make a public comment:

1. Submit written comments to SJRRC staff via email at clerk@sjrrc.com, in which staff will read the comment aloud during the public comment period.
2. Complete a Request to Speak form (available at the entrance to the Board Room) and give it to the SJRRC Board Clerk before the Item is considered by the Board.
3. Join from the Zoom meeting link and notify SJRRC staff by alerting them via the "Raise hand" or "Chat" function; call +1 669 444 9171, enter Webinar ID: 879 6193 3868#, enter Meeting Passcode: 390198#, dial *9 to raise your hand when you wish to speak, and dial *6

to unmute when you are requested to speak. Please note that if participating using Zoom, all members of the public will be placed on mute until such times allow for public comments to be made.

Public comments should be limited to five (5) minutes per comment.

This Agenda shall be made available upon request in alternative formats to persons with a disability, as required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132) and the Ralph M. Brown Act (California Government Code § 54954.2). Persons requesting a disability related modification or accommodation in order to participate in the meeting should contact San Joaquin Regional Rail Commission (SJRRRC) staff, at (209) 944-6220, during regular business hours, at least twenty-four hours prior to the time of the meeting.

All proceedings before the Commission are conducted in English. Anyone wishing to address the SJRRRC Board is advised to have an interpreter or to contact SJRRRC during regular business hours at least 48 hours prior to the time of the meeting so that SJRRRC can provide an interpreter. Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available upon request in both English and Spanish for public inspection at the Office of the Executive Director located at 949 East Channel Street, Stockton, California, 95202 during normal business hours or by calling (209) 944-6220. The Agenda is available on the San Joaquin Regional Rail Commission website: www.sjrrc.com.

Disclosures: *Commissioners shall disclose any agenda item in which they have a conflict of interest under State law and acknowledge whether they will recuse from hearing that item. Among other State laws, the Levine Act (Gov. C. §84308) may require recusal on agenda items involving a contract or entitlement before the Commission where a campaign donor is a participant, and the campaign contribution totals more than \$250 within the 12-month period before the decision on the item.*

1. Safety Briefing

(Cameron Paler)

2. Call to Order, Pledge of Allegiance, Roll Call

Chair Young

Roll Call: Marchand, Mei, Nuño, Villapudua, Warmesley, Zuber, Vice Chair Craig-Hensley, Chair Young

Ex- Officios: Zwahlen, Clifford, Magsayo, Nguyen

3. Public Comment

Persons wishing to address the Commission on any item of interest to the public regarding rail shall state their names and addresses and make their presentation. Please limit presentations to five minutes. The Commission cannot take action on matters not on the agenda unless the action is authorized by Section 54954.2 of the Government Code. Materials related to an item on the Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the Commission Office at 949 E. Channel Street during normal business hours. These documents are also available on the San Joaquin Regional Rail Commission website at <https://www.sjrrc.com/events/> subject to staff's ability to post the documents prior to the meeting.

4. Consent Calendar

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| 4.1 | Minutes of SJRRC Board Meeting November 1, 2024
(Regular and Special Voting Members) | ACTION |
| 4.2 | Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Adopting the 2025 ACE® Service Holidays.
(Regular and Special Voting Members) | ACTION |
| 4.3 | Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Approving the 2025 San Joaquin One Voice® Application for the North Lathrop Transfer Station and Authorizing the Executive Director to Execute Any and All Documents Related to the Application
(Regular and Special Voting Members) | ACTION |
| 4.4 | Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Authorizing the Executive Director to Negotiate and Execute Any and All Grant Agreements, Standard Agreements, Program Supplemental Agreements, Fund Exchange Agreements, and/or Fund Transfer Agreements to Obtain Bay Area Air Quality Management District's Carl Moyer Memorial Air Quality Standards Attainment Program Funding in the Amount of \$8,000,000 Towards the Zero Emission Benefitting Rail Advancement Project
(Regular and Special Voting Members) | ACTION |
| 4.5 | Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Approving an Agreement with GradeTech Inc. For:
1. Construction of the Tracy ACE Station Improvements Project for an Amount Not-to-Exceed \$872,837 and Authorizing the Executive Director to Negotiate, Award, and Execute Any and All Agreements and Documents Related to the Project; and
2. Authorizing the Executive Director to Approve Any and All Change Orders thereto within Her Spending Authority and Issue Field Instructions within the Contracts' Work Allowances and Authorizing her to Delegate that Authority to a member of staff or a representative of the Rail Commission
(Regular and Special Voting Members) | ACTION |

4.6	Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Amending Resolution SJRRC-R-21/22-55 Delegating Authority to the Executive Director, to Negotiate and Purchase all Right of Way Real Property Interests, Including Fee Title, Easements, and/or Relocations, and/or Leases as set Forth in Attachment A REV 1, Necessary for the Stockton Diamond Grade Separation Project, Including Executing Certificates of Acceptance and Complying with all Legal Obligations Associated with the Purchases, within the Budgetary Authority Provided by the Board on August 4, 2023 (Regular Voting Members Only)	ACTION
4.7	Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Approving Amendment 04 to the Agreement with Pennino Management Group for Project Delivery Support Services (formally known as Rail Engineering Services) for the Valley Rail Program Increasing the Compensation Amount by \$500,000 for a New Amount Not-To-Exceed \$4,115,146 and Authorizing the Executive Director to Negotiate, Award, and Execute Any and All Agreements and Documents Related to the Project including Approving Any and All Amendments thereto within Her Spending Authority (Regular Voting Members Only)	ACTION
4.8	Rail Commission/ACE® Monthly Expenditure	INFORMATION
4.9	ACE® Monthly Fare Revenue	INFORMATION
4.10	ACE® Ridership	INFORMATION
4.11	ACE® On-Time Performance	INFORMATION
4.12	Washington Update	INFORMATION
4.13	Monthly Marketing and Outreach Report	INFORMATION
4.14	San Joaquin Regional Rail Commission Station/Facilities Development Committee Monthly Report Out	INFORMATION
5.	Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Approving a Cost Plus contract with Transit America Services, Inc. (TASI) for Services for ACE Operations and Maintenance for an Amount Estimated at \$154,365,245 for the Initial 10-year Contract Term and Authorizing the Executive Director to Negotiate, Award, and Execute Any and All Agreements and Documents Related to the Project including Any and All Amendments thereto within Her Spending Authority (Nathan Alastra/Autumn Gowan) (Regular and Special Voting Members)	ACTION

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| <p>6. Adopt a Resolution of the Board of Commissioners of the San Joaquin Regional Rail Commission Approving an Agreement with Kal Krishnan Consulting Services, Inc. for Staff Augmentation Chief of Construction for an Amount Not-To-Exceed \$1,065,892 and Authorizing the Executive Director to Negotiate, Award, and Execute Any and All Agreements and Documents Related to the Project Including Approving Any and All Amendments thereto within Her Spending Authority, Including Any and All Amendments thereto within Her Spending Authority
(Autumn Gowan) (Regular Voting Members Only)</p> <p>7. Recognition of Service of Outgoing Commissioners</p> <p>8. Board Member Comments</p> <p>9. Ex-Officio Comments</p> <p>10. Executive Director's Report</p> <p>11. CLOSED SESSION
Pending Litigation: Government Code §54956.9(a); One Case; Cesar Toledo v. San Joaquin Regional Rail Commission, et al., Santa Clara County Superior Court, Case No. 21CV382290.
(Regular and Special Voting Members)</p> <p>12. CLOSED SESSION
Public Employee Performance Evaluation
AND CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Sections 54957 and 54957.6
Agency Designated Representative: Nancy Young, Board Chair
Unrepresented Employee: Executive Director
(Regular and Special Voting Members)</p> <p>13. CLOSED SESSION
Public Employee Performance Evaluation
AND CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Sections 54957 and 54957.6
Agency Designated Representative: Nancy Young, Board Chair
Unrepresented Employee: General Counsel
(Regular and Special Voting Members)</p> <p>14. CLOSED SESSION
Threatened or Anticipated Litigation: Government Code §54956.9(d)(2); One Case; Conference with Legal Counsel regarding Letter from Attorneys for Stronghold Engineering, Inc., Alleging Monetary Claims Regarding Project 22-R-1700, Regional Rail Maintenance Facility Expansion (Letter attached per Government Code §54956.9(e)(3)).
(Regular Voting Members Only)</p> | <p>ACTION</p> <p>PRESENTATION</p> |
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15. Return to Open Session and Disclosure of Action

(Janice D. Magdich)

16. Adjournment

The next regular meeting is scheduled for January 3, 2025, at 8:00 am.

SAN JOAQUIN REGIONAL RAIL COMMISSION

Meeting of December 6, 2024

STAFF REPORT

Item 14

CLOSED SESSION

Threatened or Anticipated Litigation: Government Code §54956.9(d)(2); One Case; Conference with Legal Counsel regarding Letter from Attorneys for Stronghold Engineering, Inc., Alleging Monetary Claims Regarding Project 22-R-1700, Regional Rail Maintenance Facility Expansion (Letter attached per Government Code §54956.9(e)(3))

Letter from Attorneys for Stronghold Engineering, Inc. attached for reference.

October 21, 2024

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED and
E-MAIL

Stacey Mortensen- Executive Director
San Joaquin Regional Rail Commission
949 E. Channel St.
Stockton CA 95202
Email: stacey@acerail.com

Re: The Rail Maintenance Facility (RMF) Expansion 22-R-17-00

Subject: BAA TIA Delay Approval Status

Dear Ms. Mortensen:

This law firm has been retained to represent Stronghold Engineering, Inc. ("SEI") in connection with the referenced matter.

We have reviewed the contract documents, general and special conditions, plans and specifications, and numerous items of correspondence and communications including our client's notices, claims, reports, schedules, time impact analyses, analytical commentary and explanations, requests for additional time, requests for additional compensation, requests for information and clarification, and voluminous supporting materials regarding these and related topics. We have also evaluated the reports from meetings and telephone calls involving the San Joaquin Regional Rail Commission ("Owner") representatives at various levels. We have also considered the responses offered by Owner, and/or the absence thereof.

Based on our review and analysis, it is apparent that the Owner is in material breach of contract for numerous and varied reasons, including without limitation the Owner's continuing failure to meet one of its most fundamental legal obligations: to review, analyze, and respond to claims, notices, inquiries and requests. Most recently, the Owner refused to address the issues raised in SEI's claims correspondence no. 83 dated August 22, 2024 and SEI's claim correspondence no. 84 dated September 27, 2024 including its detailed schedule analysis. Further copies of both items of correspondence are attached.

The Owner's conduct in this regard violates the applicable provisions of the Contract, the Public Contract, and the Implied Covenant of Good Faith and Fair Dealing, including, without


Stacey Mortensen- Executive Director
October 21, 2024
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limitation, Sections 1-13b.7 and 1-13.g.2 of the General Conditions, and Sections 9204 and 20104 et. seq. of the Public Contract Code.

The Owner's refusal to promptly and responsibly address these critical issues represents a direct and ongoing threat to SEI's ability to prosecute the contract work. Please be further advised that if Owner continues to refuse to engage in the agreed process for resolving these long-standing issues, our client will take appropriate legal action, and reserves its right to suspend project work pending direction and resolution of the issues.

The foregoing is without prejudice to all rights, remedies, claims, demands, defenses, entitlements, and causes of action to which SEI is or may be entitled, all of which are reserved.

Sincerely,


RUTAN & TUCKER, LLP
Steven A. Nichols

SAN:cs
Attachments