

TO: James L. App, City Manager
FROM: Doug Monn, Public Works Director
SUBJECT: Union Pacific Flagging Invoice
DATE: November 21, 2006

NEEDS: For the City Council to consider appropriating funds to pay an invoice to Union Pacific Railroad (UPRR) for flagging, inspection and signal installation costs associated with the 24th Street bridge seismic retrofit.

- FACTS:**
1. On June 11, 1999, the City and UPRR entered into an agreement for the City to encroach on UPRR property in order to seismically retrofit the bridge over the railroad tracks at 24th Street.
 2. The Agreement required that the City pay for a Union Pacific flagger to be present at all times construction was underway. The cost estimate provided by UPRR for this service was \$9,000.
 3. The City completed the project on June 5, 2000. The City received an invoice in the amount of \$11,452.93 (\$2,452.93 more than the \$9,000 estimate). The City paid the invoice in full.
 4. On June 8, 2006, the City received a letter notifying us that we were in arrears for \$22,085.26 for additional costs for flagging, inspection and signal installation for the same project for a total cost of \$33,538.19.

**ANALYSIS &
CONCLUSION:**

The above matter was referred to the City Attorney's office for follow-up with UPRR. It is the City Attorney's experience that it is not uncommon for UPRR to send an invoice long after a project is complete, and the City could take either of the following actions: (1) pay the invoice, (2) pursue a statute of limitations defense.

Paying the invoice would resolve the situation without further staff or legal cost to the City.

Contesting the invoice based on the submittal date and UPRR's failure to adhere to its estimate would require the City to expend additional attorney fees and could affect the City's relationship with UPRR on future projects. Legal fees could quickly add up to a substantial portion of the amount in dispute.

**FISCAL
IMPACT:**

The project cost to seismically retrofit the 24th Street bridge over the railroad tracks was over \$100,000. The project was fully funded by a Caltrans Bridge Rehabilitation Grant. All charges were paid in June of 2005 at the completion of the project and a Notice of Completion filed. Payment of this most recent invoice will require an appropriation from City Council in an amount of \$22,100.

- OPTIONS:**
- a. Adopt Resolution No. 06-xx appropriating a one time amount of \$22,100 to Budget No. 200.910.5452.445 from the Gas Tax Fund and directing staff to pay UPRR \$22,085.26 for flagging, inspection and signal installation costs for the 24th Street bridge seismic retrofit.
 - b. Amend, modify, or reject the above option.

Prepared by:
Ditas Esperanza, P.E., Capital Projects Engineer

Attachments (1)
1) Resolution

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROPRIATING FUNDS TO PAY UNION PACIFIC RAILROAD FOR FLAGGING COSTS
RELATED TO SEISMIC RETROFIT OF THE 24TH STREET BRIDGE

WHEREAS, in June 1999, the City and Union Pacific Railroad (UPRR) entered into an agreement for the City to encroach on UPRR property in order to seismically retrofit the bridge over the railroad tracks at 24th Street.; and

WHEREAS, the Agreement required the City to pay for a flagger, inspection and signal installation, at an estimated cost of \$9,000; and

WHEREAS, after completing the project, the City received an invoice on June 5, 2000 in the amount of \$11,452.93 for flagging, inspection and signal installation costs, and the City paid the invoice in full; and

WHEREAS, on June 8, 2006, the city received a notice that the City owes another \$22,085.26 for additional flagging, inspection and signal installation costs for the same project; and

WHEREAS, the City Attorney's office reviewed the notice, and it is their opinion that it is not uncommon for UPRR to send an invoice long after a project is complete, and the City could either pay the invoice or pursue a statute of limitations defense; and

WHEREAS, it is staff's opinion that it would be prudent to pay the invoice; and

WHEREAS, the project cost of over \$100,000 to seismically retrofit the 24th Street bridge was fully funded by a Caltrans Bridge Rehabilitation Grant; and

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles does hereby appropriate a one time amount of \$22,100 to Budget No. 200.910.5452.445 from Gas Tax Fund reserves.

SECTION 2. The City Council does hereby direct staff to pay Union Pacific Railroad \$22,085.26 for flagging, inspection and signal installation costs for the 24th Street bridge seismic retrofit.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 21st day of November 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Deborah D. Robinson, Deputy City Clerk