

## FLOODWAY ENCROACHMENT AGREEMENT

THIS AGREEMENT is made effective as of July 7, 2020 by and between RECLAMATION DISTRICT NO. 1606, a California Reclamation District, hereinafter referred to as "RD 1606", and the COUNTY OF FRESNO, hereinafter referred to as "COUNTY" with respect to the following facts:

WHEREAS, RD 1606 owns certain real property, commonly referred to as the James Bypass, for the purpose of maintaining a floodway and providing flood protection for lands within the boundaries of RD 1606;

WHEREAS, the James Bypass is a Designated Floodway as defined by Title 23 of the California Code of Regulations and is under the jurisdiction of the Central Valley Flood Protection Board ("CVFPB");

WHEREAS, the CVFPB requires a permit for encroachments within a Designated Floodway, such as the James Bypass;

WHEREAS, the COUNTY seeks to replace bridge structures crossing the James Bypass along Manning Avenue and these bridge structures will encroach onto the James Bypass;

WHEREAS, consistent with the CVFPB encroachment permitting process, RD 1606 and COUNTY desire by this Agreement to establish conditions under which the COUNTY will operate and maintain the floodway encroachment.

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

1. Permitted Facilities. The facilities permitted to encroach upon the James Bypass under this Agreement shall only include the roadway, bridge structures and associated structures and appurtenances approved by RD 1606 under this Agreement, hereinafter referred to as "Permitted Facilities". The Permitted Facilities shall be located within the boundaries shown on the attached Exhibit A ("Permit Boundaries"). No structures other than the Permitted Facilities, either within or outside of the Permit Boundaries, are authorized or permitted under this Agreement to encroach upon the James Bypass.
2. Term. This Agreement shall continue in effect for the duration of the existence of any portion of the Permitted Facilities and shall terminate only upon the complete removal of the Permitted Facilities and restoration of the underlying property to original conditions.
3. No Grant of Rights. The Parties acknowledge that this Agreement only governs the operation and maintenance of the Permitted Facilities, and does not grant any rights in the underlying real property, or affect the rights of any third party to such property. The COUNTY warrants to RD 1606 that it possesses the right in the underlying real property to construct, operate, and maintain the Permitted Facilities.

4. Encroachment Conditions. The COUNTY shall construct, operate, and maintain the Permitted Facilities at all times in accordance with the following terms and conditions:

a. Construction. The COUNTY shall construct the Permitted Facilities in accordance with the Encroachment Permit Application submitted to the Central Valley Flood Protection Board, and in particular with the drawings entitled “Federal Bridge Replacement Project – James Bypass at Manning Avenue” included as part of said Application, hereinafter referred to as “Construction Drawings”. Any subsequent revisions to the Construction Drawings or to the design of the structures comprising the Permitted Facilities shall be approved in writing by RD 1606. Nothing herein shall obligate RD 1606 to review the Construction Drawings for quality, design, compliance with applicable law or any other matters, and RD 1606 shall have no liability or responsibility whatsoever in connection with the review of the Construction Drawings, including but not limited to any omissions or errors contained therein.

b. Construction Monitoring. The COUNTY is solely responsible for monitoring existing and forecasted weather and flow conditions and taking appropriate actions to protect the integrity of the floodway, channels and levees throughout the construction period.

c. Debris. The COUNTY shall be responsible for the removal and clearance of all debris which lodges or collects against any portion of the Permitted Facilities. Debris shall be removed and shall not be dislodged and allow to flow downstream. Removed debris shall be properly disposed outside the limits of the James Bypass and RD 1606 property.

d. Erosion. The COUNTY shall be responsible for repairing erosion which occurs at or within the Permitted Facilities. The COUNTY shall also be responsible for repairing erosion adjacent to the Permitted Facilities if the erosion is caused by water flow conditions caused by the Permitted Facilities. All repairs shall include revetment or other protective measures to prevent future erosion and shall be approved in advance by RD 1606.

e. Inspection. The COUNTY acknowledges that conditions within the floodway can change significantly in a short period of time when flood releases are occurring and periodic inspections are required to avoid damage to the Permitted Facilities or damage caused by the Permitted Facilities. Accordingly, the COUNTY shall inspect the Permitted Facilities at reasonable intervals based on flow conditions. All inspections shall include but shall not be limited to inspecting for scour at bridge pilings, debris accumulations, and erosion adjacent to or caused by the Permitted Facilities. The COUNTY shall report any hazardous conditions to RD 1606 and shall make all inspection reports available to RD 1606 upon request.

f. RD 1606 reserves unto itself and for its landowners the right to use the property situated within the Permit Boundaries for any purpose whatsoever, and to grant to others easements and other rights in and to all or any portion thereof, provided that such uses

and rights do not and will not materially interfere with the Permitted Facilities or the exercise of COUNTY's rights under this Agreement.

5. Temporary Construction Permit. In order to facilitate construction of the Permitted Facilities within the Permit Boundaries, the COUNTY shall be granted a Temporary Construction Permit for the duration of construction with the rights and obligations as set forth below:

a. Access. Permission is hereby granted to the COUNTY or its authorized agent to enter upon RD 1606 land where necessary within that certain area totaling 11.903 acres (Parcels 2 and 5) and shown on the attached Exhibit A ("Permit Boundaries"), attached hereto and made part hereof, for the purpose of constructing the Permitted Facilities, and for no other purpose.

b. Surrender. The COUNTY will leave the area within the Temporary Construction Boundaries in a reasonably neat and clean condition upon completion of Construction of the Permitted Facilities.

c. Term. The term of this Temporary Construction permit shall commence upon execution by RD 1606 and shall terminate five years thereafter.

d. Fee. The COUNTY shall pay RD 1606 a sum of \$7,250.00 for the Temporary Construction Permit.

5. Specific Performance. Each party agrees that the other party will not have an adequate remedy at law if this Agreement is not performed in accordance with its terms, and that any damages available at law for breach of this Agreement would not be an adequate remedy. Therefore, each party's obligations under this Agreement are enforceable by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith. These remedies and all other remedies provided for in this Agreement are cumulative and not exclusive and are in addition to any other remedies that such party may have under this Agreement. Provided, that the party claiming a breach has occurred shall provide the other party with notice and a reasonable opportunity to cure the alleged breach before the initiation of any proceedings seeking specific performance or any other remedy for an alleged breach,

6. Indemnification. The COUNTY and its successors and assigns shall indemnify and defend RD 1606, and its officers, directors, employees, agents, successors and assigns from and against all claims (including challenging the propriety of this Agreement), losses and other expenses, including without limitation reasonable attorneys' fees and court costs (collectively, "Damages") resulting from any acts or omissions by the COUNTY or its officers, directors, employees, agents or contractors in carrying out of rights under this Agreement, except to the extent such Damages result from the negligent, unlawful or wrongful acts of RD 1606 or its officers, directors, employees, agents or contractors.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto. No rights or duties

under this Agreement may be assigned or delegated by a party without the express written consent of the other party.

8. No Agency or Partnership. Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any other association between or among any of the parties. No part of this Agreement shall be construed as creating any rights in the general public, nor shall any part be deemed to be a gift or dedication for public use of any portion of the properties described in this Agreement.

9. Severability. If any term, covenant, condition or restriction of this Agreement is determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of the remaining terms, covenants, conditions and restrictions contained in this Agreement.

10. Governing Law. This Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes to be proper only in the County of Fresno, State of California.

11. Construction and Interpretation. This Agreement has been arrived at through negotiation and each of the parties has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting parties shall not apply in the construction or interpretation of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements and understandings, written or oral.

13. Administrative Fee. The COUNTY shall pay RD 1606 the sum of \$3,000.00 upon execution of this Agreement as a fee for the preparation of this Agreement.


14. Waiver of Breach. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver or a waiver of any breach of the same or another provision of this Agreement.

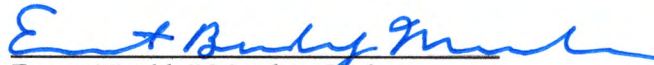
15. Attorney's Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

RECLAMATION DISTRICT NO. 1606

COUNTY OF FRESNO

By  4/16/2020  
Steven P. Stadler, Manager

By   
Ernest "Buddy" Mendes, Chairman  
County of Fresno Board of Supervisors

ATTEST:

Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By:   
Deputy

For Accounting Use Only:

Fund/Org/Subclass: 0010/4510/11000

Temporary Construction Permit:  
Account/Program: 8110/91276

Encroachment Fees:  
Account/Memo: 7260/107

T. 15 S., R. 17 E., M.D.B. & M.

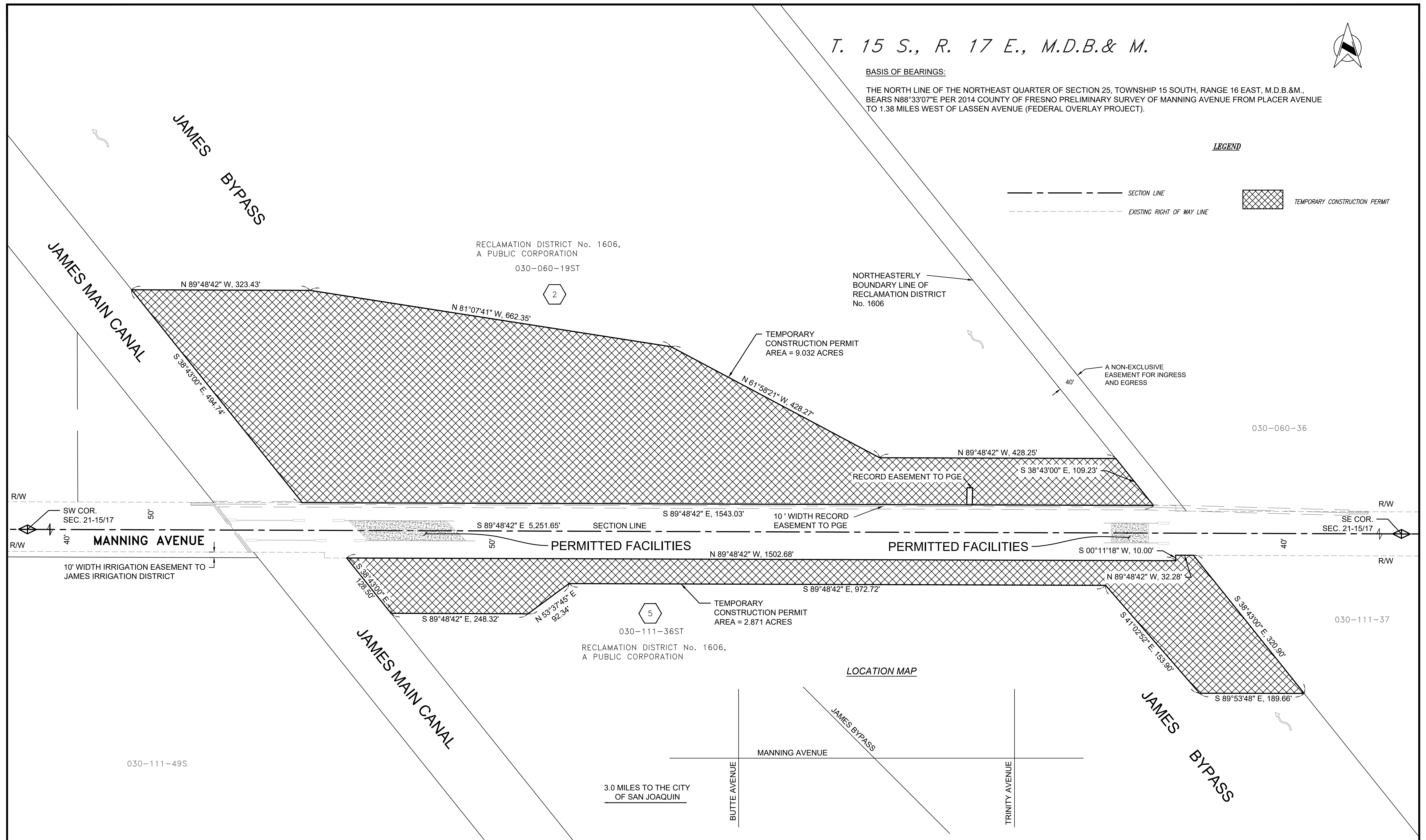


**BASIS OF BEARINGS:**

THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 15 SOUTH, RANGE 16 EAST, M.D.B. & M., BEARS N88°33'07"E PER 2014 COUNTY OF FRESNO PRELIMINARY SURVEY OF MANNING AVENUE FROM PLACER AVENUE TO 1.38 MILES WEST OF LASSEN AVENUE (FEDERAL OVERLAY PROJECT).

**LEGEND**

- SECTION LINE
- - - - - EXISTING RIGHT OF WAY LINE
- TEMPORARY CONSTRUCTION PERMIT



RECLAMATION DISTRICT No. 1606,  
A PUBLIC CORPORATION  
030-060-19ST

NORTHEASTERLY  
BOUNDARY LINE OF  
RECLAMATION DISTRICT  
No. 1606

TEMPORARY  
CONSTRUCTION PERMIT  
AREA = 9.032 ACRES

A NON-EXCLUSIVE  
EASEMENT FOR INGRESS  
AND EGRESS

030-060-36

JAMES MAIN CANAL

JAMES BYPASS

MANNING AVENUE

PERMITTED FACILITIES

PERMITTED FACILITIES

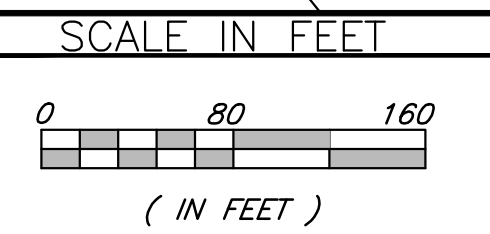
JAMES MAIN CANAL

JAMES BYPASS

**LOCATION MAP**

3.0 MILES TO THE CITY  
OF SAN JOAQUIN

DESIGNED:	DATE
GM	02/18
DRAWN:	DATE
JD	03/18
CHECKED:	DATE
MR	11/19



PROJECT	
<b>JAMES BYPASS</b>	
MANNING AVENUE BRIDGES	
ROAD NO.	BRIDGE NO.



DEPARTMENT OF PUBLIC WORKS AND PLANNING		
<b>FLOODWAY ENCROACHMENT</b>		
DRAWING NO.	SHEET NO. 01	TOTAL: 01

FOR R/W DATA AND ACCURATE ACCESS DETERMINATION SEE R/W RECORDS AT PUBLIC WORKS