



County of Fresno

Hall of Records, Rm. 301
2281 Tulare Street
Fresno, California
93721-2198

Legislation Text

File #: 20-0571, **Version:** 1

DATE: July 7, 2020

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Encroachment and Temporary Construction Permit Agreements for the James Bypass Bridges Replacement Project BRLO-5942(233)

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a Facilities Encroachment Agreement which includes a five-year Temporary Construction Permit with the James Irrigation District in order to construct the James Bypass Bridges Replacement Project effective upon execution with no specific termination date (\$1,500); and**
- 2. Approve and authorize the Chairman to execute a Floodway Encroachment Agreement which includes a five-year Temporary Construction Permit with Reclamation District 1606 in order to construct the James Bypass Bridges Replacement Project effective upon execution with no specific termination date (\$10,250).**

Approval of the recommended actions will approve the encroachment agreements and temporary construction permits necessary to construct two bridge replacements.

ALTERNATIVE ACTION(S):

If the recommendation actions are not approved, the bridge replacements may be cancelled or delayed.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The bridge replacements are 100% funded with Federal Highway Bridge Program (HBP) funds. Sufficient funds for the cost of the administrative fees of \$1,000 to the James Irrigation District (JID) and \$3,000 to Reclamation District 1606 (RD1606) for plan review as well as \$500 to JID and \$7,250 to RD1606 for Temporary Construction Permits will be included in the Department's Proposed FY 2020-21 Roads Org 4510 Budget.

DISCUSSION:

The two bridges on Manning Avenue over James Bypass Floodway, three miles east of the nearest city limits of the City of San Joaquin, were built in 1957 and will be replaced in 2021 with new bridges built to current design standards. Construction of the bridges will have temporary and permanent impacts to the James Main Canal owned and operated by the JID and the James Bypass Floodway owned by RD1606. The temporary construction permits for each respective agency are effective for five years to allow for completion of construction. The encroachment agreements are effective in perpetuity or as long as the bridges remain in place.

The Floodway Encroachment Agreement with RD1606 requires the County to construct the bridges in accordance with a permit that will be obtained from the Central Valley Flood Protection Board and to monitor the floodway during construction. The Facilities Encroachment Agreement requires that the County not interfere with water flow from the James Main Canal. Each agreement requires the County to: submit construction plans for review and approval; inspect the bridges at regular intervals; remove debris, repair erosion, and notify each agency of any hazardous conditions.

Each agreement also contains two provisions that are distinguishable from those normally included in agreements between the County and other local public agencies. Each agreement includes an attorney's fees clause, which entitles the prevailing party in any lawsuit arising from the agreement to collect attorney's fees, in such amount as the court determines reasonable, from the losing party. This clause is generally not included in County agreements; however, JID and RD1606 requested its inclusion. In the event a lawsuit should arise as a result of the construction of these bridges, the County presumably would be able to seek indemnification from its construction contractor and file claims against the contractor's insurance company. In addition, although the County's agreements with other local agencies generally include a provision for mutual indemnification, these two agreements require the County to indemnify each of the respective Districts, with no reciprocal obligation in favor of the County. In this case, the indemnity provisions were viewed as unobjectionable because the agreements allocate the majority of the obligations, including performance of the construction work, to the County, while each District's obligation is essentially limited to granting the County a temporary construction permit. County Counsel reviewed and approved each agreement as to legal form.

OTHER REVIEWING AGENCIES:

JID and RD1606 each approved the agreements at their respective April 16, 2020, board meetings.

REFERENCE MATERIAL:

BAI #56, January 21, 2020

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map

On file with Clerk - Agreement with James Irrigation District

On file with Clerk - Agreement with Reclamation District 1606

CAO ANALYST:

Debbie Paolinelli