



Folsom City Council Staff Report

MEETING DATE:	6/13/2023
AGENDA SECTION:	Consent Calendar
SUBJECT:	Resolution No. 11039 - A Resolution Authorizing the City Manager to Execute an Agreement with the Sacramento and San Joaquin Drainage District, Acting by and Through the Central Valley Flood Protection Board of the State of California, for the Reimbursement of Road Usage in Relation to the Folsom Dam Raise Project
FROM:	Public Works Department

RECOMMENDATION / CITY COUNCIL ACTION

The Public Works Department recommends that the City Council pass and adopt Resolution No. 11039 - A Resolution Authorizing the City Manager to Execute an Agreement with the Sacramento and San Joaquin Drainage District, Acting by and Through the Central Valley Flood Protection Board of the State of California, for the Reimbursement of Road Usage in Relation to the Folsom Dam Raise Project.

BACKGROUND / ISSUE

The Army Corps of Engineers (ACOE), working together with the California Department of Water Resources (DWR), will begin the Folsom Dam Raise Project, a construction project to raise the earthen dams of Folsom Lake by 3 feet, 6 inches. The project is planned to begin in 2023 and will continue through 2027.

The project will require the import of a large volume of material that will be hauled over various roadways in Folsom. There will be two haul routes from Highway 50; East Bidwell Street to Oak Avenue Parkway to Blue Ravine Road and Folsom Boulevard to Folsom-Auburn Road to Folsom Lake Crossing. These two routes consist of sections of roadways that are identified as truck routes and other sections that are not identified as truck routes. During negotiations pertaining to the use of Folsom roadways, the DWR advised they would not be

able to legally reimburse the city for the use of any roadway that is on a truck route; and therefore, an analysis of potential traffic volumes and/or resulting pavement distresses was not completed for the sections of roadway identified as a truck route.

There are two sections of the proposed haul routes that the US Government has easement access and use rights to, that will not be eligible for use reimbursement. Those sections are the portion of Folsom-Auburn Road between Folsom Lake Crossing and the northern city limit, and the entirety of Folsom Lake Crossing. Staff has reviewed these easement documents and concurs that the US Government has usage rights on these roadways.

There remains one section of roadway on the proposed haul routes that is neither a truck route or excluded through existing easements: Folsom-Auburn Road between Greenback Lane and Folsom Lake Crossing. The city performed a count of existing traffic volumes and vehicle classes of this roadway in November 2022. The DWR provided anticipated truck counts and vehicle classes for the project, which was used in the analysis to determine anticipated vehicle loading of the pavement, resulting pavement distresses and associated costs to mitigate the additional usage

In addition to the reimbursement being made to the city as part of this agreement, the ACOE's contractors will also be required to obtain a City of Folsom Extra Legal Trip Transportation Permit for any load that exceeds the maximum size or weight allowable. No encroachment permit will be required since none of the work is taking place on city property.

FINANCIAL IMPACT

Per the agreement, a payment in the amount of \$40,797 will be made to the city to be used for future pavement rehabilitation projects.

ENVIRONMENTAL REVIEW

This agreement is exempt from the requirements of the California Environmental Quality Act.

ATTACHMENTS

1. Resolution No. 11039 - A Resolution Authorizing the City Manager to Execute an Agreement with the Sacramento and San Joaquin Drainage District, Acting by and Through the Central Valley Flood Protection Board of the State of California, for the Reimbursement of Road Usage in Relation to the Folsom Dam Raise Project
2. Agreement for Reimbursement of Road Usage and Related Costs between Sacramento and San Joaquin Drainage District, acting by and Through the Central Valley Flood Protection Board of the State of California and City of Folsom

Submitted,

Mark Rackovan, PUBLIC WORKS DIRECTOR

Attachment 1

Resolution No. 11039

RESOLUTION NO. 11039

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, ACTING BY AND THROUGH THE CENTRAL VALLEY FLOOD PROTECTION BOARD OF THE STATE OF CALIFORNIA, FOR THE REIMBURSEMENT OF ROAD USAGE IN RELATION TO THE FOLSOM DAM RAISE PROJECT

WHEREAS, the Army Corps of Engineers (ACOE), working with the California Department of Water Resources (DWR), desires to utilize Folsom roadways to haul materials to be used in the construction of the Folsom Dam Raise Project; and

WHEREAS, the Folsom Dam Raise Project is a Federal Project that will raise the elevation of earthen dams by 3 feet, 6 inches; and

WHEREAS, the DWR has stated they are unable to make any financial reimbursement for the roadways that are identified as a truck route; and

WHEREAS, the City conducted vehicle traffic counts and classifications on Folsom-Auburn Road to identify pre-project traffic volume conditions; and

WHEREAS, a pavement analysis was performed to determine the anticipated distress and resultant reimbursement to mitigate for the ACOE's use of roads that are either not designated truck routes or exempt through easements; and

WHEREAS, a payment in the amount of \$40,797 will be made to the City of Folsom upon execution of this agreement and the payment will be used for future pavement rehabilitation projects; and

WHEREAS, the agreement will be in a form acceptable to the City Attorney:

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Folsom hereby authorizes the City Manager to Execute an Agreement with the Sacramento and San Joaquin Drainage District, acting by and Through the Central Valley Flood Protection Board of the State of California, for the Reimbursement of Road Usage in Relation to the Folsom Dam Raise Project.

PASSED AND ADOPTED this 13th day of June 2023, by the following roll-call vote:

AYES: Councilmember(s):
NOES: Councilmember(s):
ABSENT: Councilmember(s):
ABSTAIN: Councilmember(s):

Rosario Rodriguez, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

Attachment 2

Agreement for Reimbursement of Road Usage and Related Costs

AGREEMENT FOR REIMBURSEMENT OF ROAD USAGE AND RELATED COSTS
BETWEEN
SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, ACTING BY AND
THROUGH THE CENTRAL VALLEY FLOOD PROTECTON BOARD OF THE STATE
OF CALIFORNIA
AND
CITY OF FOLSOM

IN RELATION TO
FOLSOM DAM RAISE PROJECT

THIS AGREEMENT FOR REIMBURSEMENT OF ROAD USAGE AND RELATED COSTS (hereinafter the “Agreement”) is entered into this _____ day of _____, _____ (“Effective Date”), by and between SACRAMENTO AND SAN JOAQUIN DRAINAGE DISTRICT, ACTING BY AND THROUGH THE CENTRAL VALLEY FLOOD PROTECTION BOARD OF THE STATE OF CALIFORNIA, (hereinafter “BOARD”), and the CITY OF FOLSOM (hereinafter “CITY”).

This Agreement is established for the purpose of defining specific terms and conditions under which BOARD will compensate the CITY for reimbursable costs identified below arising in connection with the United States Army Corps of Engineers’ (USACE)’s Folsom Dam Raise Project (“Project”).

RECITALS:

- A. WHEREAS, USACE is responsible for the implementation of Folsom Dam Raise Project (“Project”); and
- B. WHEREAS, USACE and BOARD entered into a Project Partnership Agreement on March 29, 2019 for the Folsom Dam Raise Project (“Project”); and
- C. WHEREAS, per the terms of the Project Partnership Agreement referenced in Recital B, Board is responsible for acquiring all Lands, Easements, Rights-of-Way, Relocations, and Disposals (“LERRDs”) necessary for the implementation of the Project; and
- D. WHEREAS, the USACE directed BOARD to acquire all LERRDs necessary to construct the Project in a “Notice to Provide Certain Lands, Easements, and Rights-of-Way and Perform Relocations (LERRDs) for Folsom Dam Raise (City of Folsom haul routes)” dated September 29, 2022; and
- E. WHEREAS, the Project is a public safety flood risk protection project that consists of a 3.5-foot combination earthen raise of reservoir dikes 1-7 and Mormon Island Auxiliary Dam (MIAD), a 3.5 foot raise of the Left Wind Dam (LWD) and Right Wing Dam (RWD) via installation of concrete floodwalls, refinements to existing emergency and service spillway Tainter gates and related structural modification at the main dam (Folsom Dam); and

- F. WHEREAS, local roads within the CITY are roads that are not designated as Haul Truck Routes within the jurisdiction of the California Department of Transportation. For the purposes of this Agreement Folsom Lake Crossing and Folsom Auburn Road are collectively referred to herein as the “Local Roads” as show in Exhibit A; and
- G. WHEREAS, the Project will require the use of the Local Roads, of which a portion of the Folsom Lake Crossing and its underlying land the United States has the reserved rights of access and use for Project purposes without payment for severance/damages (i.e., the portion of Folsom Lake Crossing that is covered under Contract and Grant Easement dated December 8th, 2006), as shown in Exhibit B, attached hereto and incorporated herein by this reference; and
- H. WHEREAS, BOARD has asserted that it is not required to obtain permits from local agencies for use of public roads for the Project ; and
- I. WHEREAS, BOARD has asserted that it is not responsible for any potential diminution of useful road life for travel over Haul Truck Routes during the course of the Project; and
- J. WHEREAS, Folsom Lake Crossing and Folsom Auburn Road are classified as Local Roads and not Haul Truck Routes. BOARD agrees to compensate CITY for the expected diminution of useful road life to Folsom Lake Crossing and Folsom Auburn Road caused by travel over such roads by trucks and equipment serving the Project; and
- K. WHEREAS, portions of Folsom Lake Crossing Road and its underlying land: (a) is owned in fee title by the City of Folsom; (b) which is not a designated haul route; and (c) to which the United States does not have a reserved right of use for Project purposes without payment for severance/damage, as shown in Exhibit B, attached hereto and incorporated herein by this reference; and
- L. WHEREAS, portions of Folsom Auburn Road is covered under Contract for Relocation dated February 9th 1950 and Easement Deed, as shown in Exhibit C, attached hereto and incorporated herein by this reference; and
- M. WHEREAS, CITY owns the public roadway facilities (i.e., Local Roads), as shown in Exhibits A and B; and
- N. WHEREAS, access to a portion of City’s Local Roads identified in Exhibit B of this Agreement is also necessary to support Project construction, operation, and maintenance (Use), and the Local Roads in Exhibit B will be directly impacted by such Use necessitating alteration, relocation, rearrangement and/or modification (Alteration) of CITY’s Local Roads; and
- O. WHEREAS, CITY is willing to permit Use of its underlying land in Exhibit B and its Local Roads located in Exhibit C and Exhibit B by the BOARD for the Project, and Use by the U.S. Army Corps of Engineers, the U.S. Bureau of Reclamation, and their independent contractors (collectively Beneficiaries) for the Project; and

- P. WHEREAS, CITY shall issue USACE's contractor Transportation Permits and all other permits deemed necessary by CITY for the non-standard use of Local Roads; and
- Q. WHEREAS, the parties wish to define the specific terms and conditions by which BOARD will perform the obligations described above and reimburse CITY for costs identified below during the Project.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE, IT IS MUTUALLY AGREED as follows:

General Provisions

1. BOARD shall compensate CITY \$40,797.00 for the expected diminution of useful road life to Local Roads caused by travel of trucks and other equipment serving the Project, as calculated and shown in Exhibit D. Payment shall be made by BOARD to CITY upon execution of this agreement. CITY agrees that consideration in the amount of \$40,797.00, receipt of which is hereby acknowledged (Consideration), constitutes full, just, and complete compensation for, the following:
 - a. Use and the acquisition through Alteration of CITY's Local Roads, rights and property by Government for Beneficiaries; and
 - b. Any and all damages and/or impacts that have been or may be caused to the Local Roads altered by Government and Beneficiaries for the Project; and
 - c. CITY further agrees to save and hold harmless and release the BOARD and Beneficiaries from any and all causes of action, suits-at-law or equity or claims or demands, and from any liability of any nature whatsoever for and on account of any Use, damages and/or impacts to said Local Roads altered hereunder. Owner additionally acknowledges and agrees that Owner has no recourse against Beneficiaries, which are third-party beneficiaries of this Agreement with a right of enforcement of the terms of this Agreement as against Owner and BOARD, including but not limited to, this Section 1.c entitled "Release," even though Beneficiaries are not signatories to this Agreement.
2. CITY shall issue USACE's contractor Transportation Permits, and all other permits deemed necessary by CITY for the non-standard use of Local Roads.
3. Except as otherwise stated in Section 1.c, BOARD and CITY each agree to indemnify and hold the other harmless from any loss, damage, expense and liability resulting from injuries to persons and damage or destruction of property arising out the actions of their respective employees, agents, contractors, or invitees resulting from this Agreement; however, where

negligence is contributory, principles of comparative negligence will apply and each party shall bear the proportionate cost of any loss, damage, expense or liability attributable to that party's negligence or fault.

4. This Agreement shall not create any rights in any person, entity or organization not a party hereto; nor may any third party maintain any lawsuit for personal injuries, injunction, property damages or breach of this Agreement.

5. This Agreement sets forth the entire understanding between the parties as to the subject matter of this Agreement and supersedes all prior discussions, negotiations, letters of understanding, or other promises, whether oral or in writing. The interpretation and performance of this Agreement shall be governed by California law.

6. The drafting and negotiation of this Agreement has been participated in by each of the parties and/or their counsel and for all purposes this Agreement shall be deemed to have been drafted jointly by the parties.

7. The signatories to this Agreement hereby represent that they are authorized to enter into and to bind their respective parties to this Agreement on behalf of the party for which they sign. Each party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.

8. The parties agree that any remedy provided under this Agreement is in addition to and not in derogation of any other legal or equitable remedy available as a result of breach of this Agreement, whether such breach occurs before or after completing of the project, and exercise of any remedy provided by this Agreement shall not preclude either party from pursuing any legal remedy or right which would otherwise be available.

9. If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable by a court of final jurisdiction, all other provisions of this Agreement shall be construed to remain fully valid, enforceable and binding on all parties.

Assignment/Amendments

10. Neither the CITY nor BOARD may assign or delegate any right or obligation hereunder without first having received the written and duly executed consent of the other party. This Agreement shall bind and shall inure to the benefit of any successors or assigns of either party following such consent but shall not otherwise create duties or obligations to or rights in third parties not parties to this Agreement, nor shall this Agreement affect the legal liability of any party by imposing any standard of care different from that otherwise imposed by law.

11. This Agreement may be amended or modified only by a written amendment, signed by duly authorized representatives of BOARD and the CITY.

Notices

12. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by first class mail, addressed as follows:

TO DWR: Attn: Angelica Aguilar
 Manager, Real Estate Branch
 715 P Street, Room 4-205
 Sacramento, California 95814
 (800) 600-4397
 Angelica.Aguilar@water.ca.gov

TO CITY: City of Folsom
 Attn: Mark Rackovan, P.E.
 Public Works Director
 50 Natoma Street
 Folsom, CA 95630
 (916) 461-6711
 mrackovan@folsom.ca.us

Execution

13. Each party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out their respective obligations under this Agreement.

14. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may also be delivered by portable document format (pdf), provided that each party shall deliver its original executed counterpart of the Agreement to the other Party.

15. This Agreement may be executed by electronic signature(s) and transmitted either by facsimile or in a portable document format (pdf) version by email and such electronic signature(s) shall be deemed as original for purposes of this Agreement and shall have the same force and effect as a manually executed original.

- signatures appear on following page –

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by DWR.

CALIFORNIA DEPARTMENT OF
WATER RESOURCES

CITY OF FOLSOM

BY: _____
Angelica Aguilar, Manager
Real Estate Branch

BY: _____
Elaine Andersen
City Manager

DATE: _____

DATE: _____

Approved as to Legal Form
And Sufficiency

Approved as to Form

Attorney _____
John Wheat, Attorney

By: _____
Steven Wang, City Attorney

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to facilitate double-sided printing.*



CITY OF
FOLSOM
DISTINCTIVE BY NATURE