

City of Hesperia

STAFF REPORT



DATE: March 21, 2017

TO: Mayor and Council Members

FROM: Nils Bentsen, City Manager

BY: Michael Blay, Director of Development Services
David Burkett, Project Construction Manager

SUBJECT: Approve a Mitigation Funding Guarantee with the U.S. Army Corps of Engineers for the Ranchero Road & BNSF Grade Separation Project, C.O. No. 7046

RECOMMENDED ACTION

It is recommended that the City Council approve a Mitigation Funding Guarantee in an amount not to exceed \$500,000, approve the establishment of a \$500,000 trust fund, and authorize the City Manager to execute a Mitigation Financial Assurance Agreement with the U.S. Army Corps of Engineers related to the Ranchero Road & BNSF Grade Separation Project, C.O. No. 7046.

BACKGROUND

The City pursued construction of a grade separation of the BNSF Railroad at Ranchero Road since incorporation. In May 2009 the City received authorization from Caltrans to proceed with right of way acquisition necessary for construction of the project. Staff proceeded with the acquisition process and completed this phase of the work in December 2010. Caltrans signed the Right of Way Certification in January 2011. Concurrently with acquiring right of way, staff worked with the design engineer to finalize the plans and secure City approval of the street improvements and BNSF approval of the bridge plans.

With completion of the right of way phase, the project was able to move into the construction phase. Staff completed all forms and submitted a Request for Authorization to Proceed with Construction (RFA-CON) to Caltrans in January 2011. After several reviews by Caltrans and resubmittals of the RFA-CON package, the City received final authorization to proceed with construction of the Ranchero Road & BNSF Grade Separation Project (Project) from the federal government in June 2011. The Project was released for bids in June 2011, bids were opened in July 2011, and at its August 2, 2011 meeting the City Council awarded the bid to Riverside Construction Company, Inc. (RCC) for construction of the Project. Construction commenced in August 2011 and was completed in June 2013.

Staff also worked with the various resource permitting agencies in order to secure a U.S. Army Corps of Engineers Section 404 Permit, a California Department of Fish & Game Section 1602 Permit, a State Water Resources Control Board Section 401 Permit, a San Bernardino County Flood Control District Permit, and approval from the Mojave Water Agency to construct a roadway over their pipe line. The City was responsible for obtaining all regulatory permits from these outside agencies and ensuring compliance with these permits throughout the project.

ISSUES/ANALYSIS

Staff has been in discussions with the Army Corps of Engineers (ACOE) over the final requirements being imposed under the “Section 404” permit issued for the Project under the federal Clean Water Act. Under this permit, mitigation involving replacement of habitat and its restoration was to be provided along the embankment constructed as a part of the Project. A majority of this restoration work was to occur on property owned by the San Bernardino County Flood Control District (SBCFCD). However, the SBCFCD would not issue the City a permit to perform this mitigation work as they felt such restoration work would interfere with maintenance and proper operation of the flood control facilities constructed on their property.

After months of unsuccessful efforts to resolve the impasse with the SBCFCD, the City approached the ACOE with a request to replace the onsite mitigation requirements with mitigation at an existing offsite location. A site owned by the City was identified as an ideal location to perform this offsite restoration work as mitigation for the Ranchero Road & I-15 Interchange project was already being done on a portion of the property.

Initially the City was required to restore an area the size of 0.49 acres at the site, but when performing mitigation work at an offsite location the ACOE requires a larger area of mitigation, in this case an area the size of 3.05 acres. In addition to performing the initial mitigation work after completion of construction, the ACOE permit requires us to monitor the site for 5 years to ensure the restoration work is successful. The City contracted with Parsons to perform this mitigation work (planting, site restoration, signage, etc.) at a cost of \$230,300. This amount will need to be amended in the future to compensate Parsons for their additional efforts related to relocation of the mitigation site. The cost of this mitigation must be guaranteed with a “financial assurance” instrument. The ACOE has agreed to allow the City to maintain a separate “trust fund” with Finance that would be accessible in the event the City fails to meet the mitigation requirements.

In addition to mitigation restoration, the City must include the cost for an alternate site (beyond the selected mitigation site) to be included in the financial assurance, as required by Code of Federal Regulations section 33 CFR 332.3(n)(2). This is to cover the costs of purchasing an alternate site in the event mitigation efforts are unsuccessful at the selected site. Comparable property values have been estimated at approximately \$164,872. This amount, together with the \$230,300 mitigation and ACOE Costs and contingencies, brings the financial mitigation assurance amount to \$500,000.

This amount exceeds the financial threshold that can be approved by the City Manager. Consequently, staff requests that the City Council authorize the City Manager to execute the Mitigation Financial Assurance Agreement with a not-to-exceed amount of \$500,000.

FISCAL IMPACT

On June 21, 2016 the City Council approved the Fiscal Year 2016-17 Capital Improvement Program (CIP) Budget that contained the Ranchero Road & BNSF Grade Separation Project (C.O. No. 7046) and included funding for the proposed \$500,000 trust fund and the required mitigation work.

ALTERNATIVE(S)

1. Provide alternative direction to staff.

ATTACHMENT(S)

None