

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF BOARD GOVERNED COUNTY SERVICE AREAS
AND RECORD OF ACTION**

September 12, 2023

FROM

BRENDON BIGGS, Director, Department of Public Works – Special Districts

SUBJECT

Licensing Agreement with Union Pacific Railroad Company for an Underground Water Main Pipeline Crossing in County Service Area 70J Oak Hills.

RECOMMENDATION(S)

Acting as the governing body of County Service Area 70J Oak Hills, approve licensing **Agreement No. 23-939**, including non-standard terms, with the Union Pacific Railroad Company that provides the right to construct, maintain, and operate a water main pipeline crossing under the railroad on Ranchoero Road in Oak Hills for the one-time license fee of \$10,000, effective upon execution until terminated by either party.
(Presenter: Brendon Biggs, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.
Ensure Development of a Well-Planned, Balanced, and Sustainable County.
Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The licensing agreement requires County Service Area 70J Oak Hills (District) to pay the Union Pacific Railroad Company (Railroad) the one-time license fee of \$10,000. Sufficient appropriation for this payment is included in the District's 2023-24 operating budget.

BACKGROUND INFORMATION

In the 1970s, the District was granted an easement by the Railroad for the installation of an eight-inch water main pipeline under the railroad tracks located on Ranchoero Road in Oak Hills. The District has relied on that water main for the distribution of domestic water to the residents and businesses in Oak Hills. The City of Hesperia is currently widening Ranchoero Road, and a part of this expansion will allow the District to upsize their water main pipeline from an eight-inch to a 12-inch pipeline. As the community of Oak Hills grows and expands, the District's water mains must be upsized and infrastructure must be improved and updated.

The recommended licensing agreement provides for the District's use of the Railroad's right-of-way to construct, maintain, and operate a 12-inch water main pipeline at the railroad crossing on Ranchoero Road. This new licensing agreement will supersede the original agreement dated May 6, 1974, whereby the original agreement will terminate, and the terms and conditions of this new licensing agreement shall govern the use, maintenance, and repair of the pipeline crossing.

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The new licensing agreement includes terms that differ from the standard County contract terms. The non-standard terms include the following:

1. The prevailing party is entitled to recover attorneys' fees and costs.
 - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total agreement amount.

2. The District is required to indemnify the Railroad from and against any and all loss, even if groundless, fraudulent, or false, that directly or indirectly arises out of or is related to the District's construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, removal, presence, use, or operation of the District's facilities, including, but not limited to, any actual or alleged: (1) bodily harm, personal injury, or death of any persons; (2) damage to or the disturbance, loss, movement, or destruction of Railroad property, including loss of use and diminution in value; (3) removal of persons from Railroad property; (4) any delays or interference with track or the Railroad's use caused by the District's activities on Railroad property; (5) rights or interests granted pursuant to the licensing agreement; (6) contents escaping from the District's facilities, including, but not limited to, any actual or alleged pollution, contamination, breach, or environmental loss; (7) the District's breach of the license agreement or failure to comply with its provisions; and (8) any violation of laws, statutes, governmental administrative order, rule, or regulation, including without limitation all applicable Federal Railroad Administration regulations.
 - The County standard contract does not include any indemnification or defense by the County of the contracting party.
 - Potential Impact: By agreeing to indemnify Railroad, the District could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the District, time limited, or expense limited could be brought against the Railroad without such limitations and the County would be responsible to defend and reimburse the Railroad for costs, expenses, and damages, which could exceed the total agreement amount.

3. The agreement does not require the Railroad to meet the County's insurance standards as required pursuant to County Policy 11-07 and requires certain insurance requirements of the District, including Railroad Protective Liability Insurance.
 - The County Policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and set forth in the County standard contract.
 - Potential Impact: The agreement does not include County standard insurance requirements. This means that the County has no assurance that the Railroad will be financially responsible for claims that may arise from the agreement and potentially would require the District to provide additional insurance in connection with the use of the Railroad's right-of-way.

The Department of Public Works – Special Districts recommends approval of the licensing agreement, including the non-standard terms, in order to provide for the District's use of the

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Railroad's right-of-way to construct, maintain, and operate a water main pipeline at the railroad crossing for the distribution of domestic water to the residents and businesses in Oak Hills.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on August 11, 2023; Finance (Tom Forster, Administrative Analyst, 387-4635) on August 22, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on August 27, 2023.

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Record of Action of the Board of Supervisors
Board Governed County Service Areas

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman

Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 12, 2023



cc: SDD - Samaras w/ agrees for sign
Contractor c/o SDD
File w/ agree

JLL 09/12/2023