



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: A 23-100

April 25, 2023

Introduced: 3/31/2023

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Approve and authorize a Memorandum of Agreement (“MOA”) between the County of Monterey and the Carmel Area Wastewater District (CAWD) for the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project (REF 140048) substantially similar to the proposed MOA; and
- b. Approve and authorize the Director of Housing and Community Development to sign the proposed MOA.

PRIOR CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ACTION:

Approval of the proposed MOA is not a Project under CEQA. The Environmental Impact Report (EIR) for the CRFREE Project was certified by the Board of Supervisors on January 20, 2020. The CRFREE Project was approved and the corresponding Mitigation Monitoring and Reporting Program (MMRP) was adopted by the Board of Supervisors on June 15, 2021.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize a Memorandum of Agreement (“MOA”) between the County of Monterey and the Carmel Area Wastewater District (CAWD) for the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project (REF 140048) substantially similar to the proposed MOA; and
- b. Approve and authorize the Director of Housing and Community Development to sign the proposed MOA.

SUMMARY/DISCUSSION:

The Carmel River Floodplain Restoration and Environmental Enhancement Project (CRFREE Project) is a comprehensive effort to improve flood control and restore native riparian habitat, floodplain habitat, and hydrologic function to a portion of the lower floodplain along the Carmel River. Key aspects of the CRFREE Project are to: 1) Create notches in the levees along the south bank of the lower Carmel River, 2) Restore the south lower Carmel River floodplain, and 3) Build a causeway along Highway 1, restoring connectivity between the lower Carmel River Floodplain and the south arm of the Carmel Lagoon. The Environmental Impact Report (EIR) was certified by the Board of Supervisors on January 20, 2020. The CRFREE Project was approved and the corresponding Mitigation Monitoring and Reporting Program (MMRP) was adopted by the Board of Supervisors on June 15, 2021.

CAWD facilities include a treated wastewater outfall pipeline and a sewage force main (hereafter, “CAWD Pipelines”) within the south arm of the Carmel Lagoon. The EIR/EA

identified that, in light of CAWD's need to ensure the long-term viability of its infrastructure taken together with the adverse impacts of the Project on the CAWD Pipelines, the preferred approach to protect the CAWD Pipelines from the potential increased flow velocity and woody debris is to place the CAWD Pipelines underground below the south arm of the Carmel Lagoon or other sufficient equivalent measure within the discretion of CAWD to determine ("Undergrounding Project"). As identified in the EIR and approved in June 2021, the implementation of mitigation measures HF-3, HF-4, and HF-5 will lessen the impact of the CRFREE Project to less than significant (Attachment A).

The terms and conditions in the proposed MOA have been extensively negotiated to accommodate CAWD's request that CAWD will not be required to advance any funds for their pipeline Undergrounding Project which is estimated to cost approximately \$8,000,000. Due to CAWD's request, the proposed MOA includes a provision which requires the County to process and pay certified construction contractor invoices from CAWD within 20 days of receipt of batched and certified construction contractor invoices. This expedited process, shortened from 30 to 20 days, will allow CAWD to pay their construction contractors utilizing funds from anticipated CRFREE Project grant funding sources for which applications have been processed by the County. The County will submit CAWD's certified construction contract invoices to the corresponding CRFREE grant funding sources for reimbursement. The Auditor Controller's Office has reviewed these terms and agrees with the caveat that Housing and Community Development (HCD) staff must promptly review and submit CAWD's certified invoices to the Auditor-Controller's Office for payment processing within five (5) days of receipt from CAWD. Funding to complete CAWD's Undergrounding Project will come from the CalOES/FEMA Hazard Mitigation grant, with supplemental funding from the California State Coastal conservancy grant if needed. Staff will return to the Board with a funding agreement with CAWD after the CalOES/FEMA grant is awarded. CAWD will then begin their bid process. CAWD will not go out to bid until a funding agreement is in place, and County will not enter a funding agreement until a grant agreement with CalOES/FEMA is in place.

CAWD has received all necessary permits for undergrounding the pipelines. Due to the sensitive environmental area, CAWD's construction season is constrained to March - October. It is expected that CAWD's pipeline Undergrounding Project will be completed in 2025.

On March 30, 2023, CAWD's Board of Directors voted to conditionally approve the proposed MOA. Per CAWD's General Manager, the CAWD Board of Directors wanted assurances that any contemplated value engineering would not leave CAWD with a pipeline that would require higher than normal operation and management costs. The proposed MOU was revised at Section 2.08 to include language to address CAWD's concerns as indicated below.

Section 2.08.

If, during the course of construction of the Undergrounding Project, cost overruns are incurred or anticipated to be incurred, CAWD shall promptly notify the County, and County and CAWD shall meet and confer as soon as practicable. CAWD will exercise due diligence and use commercially reasonable efforts to prevent or avoid cost overruns during construction, shall analyze change orders and claims by contractors that could result in cost overruns, and shall engage with its contractors to attempt to reduce or compromise contractor claims that could result in a cost overrun; provided however that

County acknowledges and agrees that CAWD shall have no obligation to consider or approve any changes to its plans and specifications for the Undergrounding Project that would compromise the engineering and/or structural integrity of the Undergrounding Project. If, after following this process, CAWD determines in good faith and documents that a cost overrun is required to complete the Undergrounding Project, County shall secure additional sources of funding to cover any such required cost overruns, and CAWD shall cooperate with the County in securing such additional funding, as reasonably requested by the County. County, in partnership with Project co-sponsor BSLT, shall make all commercially reasonable efforts to secure additional sources of funds to cover required cost overruns not covered by existing grant funds. If, despite such efforts, the County and BSLT are unable to secure necessary additional funds, the Parties and BSLT shall meet and develop a mutually agreeable resolution.

OTHER AGENCY INVOLVEMENT:

CAWD's Board of Directors voted to conditionally approve the proposed MOA on March 30, 2023. Section 2.08 of the proposed MOA was revised as indicated above and in the proposed MOA. CAWD will manage the undergrounding of their pipelines, including the bid process, permitting, hiring of contractors, and construction management. The Big Sur Land Trust (BSLT) is co-sponsor for the CRFREE Project. Through a Cooperative Agreement with Caltrans, the County of Monterey is acting as the Lead Agency under the California Environmental Quality Act (CEQA) for the CRFREE Project.

ENVIRONMENTAL REVIEW

Approval of the proposed MOA is not a Project under CEQA. Environmental review is complete for the CRFREE Project. The Project Environmental Impact Report (EIR) was certified by the Board of Supervisors during a public hearing on January 20, 2020. The CRFREE Project was approved and the corresponding Mitigation Monitoring and Reporting Program was adopted by the Board of Supervisors on June 15, 2021. Federal environmental review was completed on April 23, 2021, when Caltrans, as lead federal agency for the causeway portion of the CRFREE Project, issued a finding of no significant impact (FONSI) consistent with the action of the U.S. Fish & Wildlife Service (lead federal agency for the floodplain restoration portion of the CRFREE Project) which issued a FONSI on October 30, 2020.

FINANCING:

Based on an October 2022 ninety percent (90%) Design Engineer's estimate, the CAWD Pipeline Undergrounding Project is expected to cost \$8 million. (Attachment C). Based on the November 2022 ninety percent (90%) Design Engineer's estimate, the CRFREE Project is expected to cost approximately \$54.6 million to complete the final design, construction, and restoration efforts, and will be entirely grant funded. The County has been awarded \$17.2 million in unexpended grant funds. BSLT holds nearly \$1 million in grant funds available for the CRFREE Project. An additional \$1 million is pending award from Caltrans. CalOES/FEMA expects to award the County \$29.5 million in 2023. The County and BSLT are working to raise additional funds to meet the full CRFREE Project cost if necessary. The CRFREE Project is budgeted in Capital Project Fund 404, Unit 8564 (Attachment D). There is an impact to Fund 404 until HCD submits reimbursement claims.


BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

If approved, this action supports the Board of Supervisors' Strategic Initiatives for Administration and Infrastructure. The Project will provide sustainable physical infrastructure and associated flood risk reduction and habitat benefits to promote the safety of area residents and visitors.

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

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Approved by: Melanie Beretti, AICP, Principal Planner

Approved by: Craig Spencer, AICP, Acting HCD Director 

The following attachments are on file with the Clerk of the Board:

Attachment A - HF 3, 4, and 5

Attachment B - Proposed MOA

Attachment C - CAWD cost estimate

Attachment D - CRFREE grant summary