



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

www.co.monterey.ca.us

Board Order

A motion was made by Supervisor Chris Lopez, seconded by Supervisor Luis A. Alejo, as modified, to to:

Agreement No.: A-16192

- a. Approve and authorize the County Administrative Officer to execute the Advance Funding Agreement between the County of Monterey and the San Ardo Water District (District) for funding of emergency repairs to the District's Wastewater Treatment Facility incurred during the January to February 2023 atmospheric river storms in the amount up to \$1,187,500 effective from date of execution until all funds are repaid to the County; and
- b. Approve staff's recommendation to utilize Strategic Reserve Funds in the amount up to \$1,187,500 for advance funding to the District for emergency repairs; and
- c. Approve request to increase appropriations and estimated revenue by \$1,187,500 in the FY 2022-23 County Administrative Office Adopted Budget 001-1050-CAO005-8541 (4/5ths vote required).

PASSED AND ADOPTED on this 14th day of March 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez, Askew, and Adams

NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting March 14, 2023.

Dated: March 15, 2023

File ID: 23-231

Agenda Item No.: 19.1

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Emmanuel H. Santos, Deputy



County of Monterey

Item No.

Board Report

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

Legistar File Number: 23-231

March 14, 2023

Introduced: 3/8/2023

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

- a. Approve and authorize the County Administrative Officer to execute the Advance Funding Agreement between the County of Monterey and the San Ardo Water District (District) for funding of emergency repairs to the District's Wastewater Treatment Facility incurred during the January to February 2023 atmospheric river storms in the amount up to \$1,187,500 effective from date of execution until all funds are repaid to the County; and
- b. Approve staff's recommendation to utilize Strategic Reserve Funds in the amount up to \$1,187,500 for advance funding to the District for emergency repairs to the Wastewater Treatment Facility; and
- c. Approve request to increase appropriations and estimated revenue by \$1,187,500 in the FY 2022-23 County Administrative Office Adopted Budget 001-1050-CAO005-8541 (4/5ths vote required).

It is recommended that the Board of Supervisors:

- a. Approve and authorize the County Administrative Officer to execute the Advance Funding Agreement between the County of Monterey and the San Ardo Water District (District) for funding of emergency repairs to the District's Wastewater Treatment Facility incurred during the January to February 2023 atmospheric river storms in the amount up to \$1,187,500 effective from date of execution until all funds are repaid to the County; and
- b. Approve staff's recommendation to utilize Strategic Reserve Funds in the amount up to \$1,187,500 for advance funding to the District for emergency repairs; and
- c. Approve request to increase appropriations and estimated revenue by \$1,187,500 in the FY 2022-23 County Administrative Office Adopted Budget 001-1050-CAO005-8541 (4/5ths vote required).

SUMMARY/ DISCUSSION:

The San Ardo Water District (District) provides water and wastewater services to the unincorporated San Ardo Community. During the January to February 2023 atmospheric river events, the wastewater treatment plant was damaged, requiring a need to transport wastewater by means of a tanker truck to another treatment facility. The transport of wastewater poses a public health and safety issue to the residents of the San Ardo community due to the absence of a proper wastewater disposal system, and to the public at large who may live or work along the transportation route, in the event there is a crash or other event that could cause a spill of the wastewater which is considered a hazardous material. The District does not have sufficient funds to complete the emergency repairs needed to the wastewater treatment facility. The current cost estimate for pumping and removal of wastewater to another treatment facility is \$5,000 per day. To date, the District has incurred \$339,219 in expenses

for this activity which the State of California has agreed to provide to the District as part of the emergency response operations. Emergency repair costs are estimated to be \$1,187,500 and may be reimbursable through the Federal Emergency Management Agency (“FEMA”), the California Disaster Assistance Act (“CDAA”), or other State of California resources, due to the federal and state proclamations of emergency and designation of the County of Monterey as eligible for the Public Assistance Program administered by FEMA.

Completing the necessary emergency repairs to the wastewater treatment facility will provide significant public benefits to the residents of San Ardo and broader County population by protecting their health, safety, welfare and property. The District serves a historically underserved community in the Monterey County and simply does not have the financial means to complete necessary emergency reports. Staff recommends the County Board of Supervisors consider approving execution of the Advance Funding Agreement between the County and the District to provide the funding necessary to complete emergency repairs to their wastewater treatment facility under the expectation that the District will seek reimbursement from FEMA, CDAA, or other State of California financial resources to repay the County in accordance with the Advance Funding Agreement.

OTHER AGENCY INVOLVEMENT

The County Administrative Office, the Office of the County Counsel, the San Ardo Water District, the County of Monterey Health Department, the County of Monterey Department of Emergency Management, and the State Office of Emergency Services are working together to identify a solution to assure residents in San Ardo have access to a functioning wastewater treatment facility.

FINANCING:

The State Office of Emergency Services is currently providing financial assistance to the District in the amount of \$339,219 to fund necessary pumping and transport of the District’s wastewater at a daily cost of \$5,000. If staff’s recommendation to execute an Advance Funding Agreement in the amount up to \$1,118,750 is approved, the advance payment will be made to the District in Fiscal Year 2022-23. The District will seek reimbursement for emergency repairs to their wastewater treatment facility from FEMA and State of California. The approval by the State of California and FEMA is contingent upon meeting various State and Federal requirements. As part of the Advance Funding Agreement the District will agree to adhere to those requirements with the understanding that reimbursement for emergency repairs is not guaranteed and the District will have to identify an alternative funding source to repay the County for advance payment.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

Legistar File Number: 23-231

Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Tracy Molfino, Interim Emergency Services Manager, x1901

DocuSigned by:
Tracy Molfino
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3/10/2023 | 7:43 PM PST

Approved by: Nick Chiulos, Assistant County Administrative Officer, x5145

DocuSigned by:
Nick Chiulos
910D1286CA694A8...

3/10/2023 | 7:30 PM PST

Attachments:

Board Report

Attachment A Advance funding agreement San Ardo District

ADVANCE FUNDING AGREEMENT

between

THE COUNTY OF MONTEREY

and

THE SAN ARDO WATER DISTRICT

for

FUNDING OF EMERGENCY REPAIRS TO THE DISTRICT'S WASTEWATER TREATMENT FACILITY INCURRED DURING THE JANUARY – FEBRUARY 2023 ATMOSPHERIC RIVER STORMS

This advance funding agreement (“Agreement”) is entered into as of the effective date herein by and between the County of Monterey and the San Ardo Water District.

WHEREAS, the County of Monterey (“County”) is a political subdivision of the State of California with duties and responsibilities set forth in various provisions of the California Constitution, and state laws and regulations; and,

WHEREAS, the San Ardo Water District (“District”) is a California Special District providing water and wastewater services to the unincorporated San Ardo Community; and,

WHEREAS, the County and District (separately a “Party”, collectively the “Parties”) are separate legal entities, with separate and distinct duties and responsibilities as set forth in their respective organic laws; and,

WHEREAS, the District owns and operates a wastewater treatment plant that was damaged during the January 2023 atmospheric river events; and,

WHEREAS, the damage to the facility prevents the facility from operating and created the need to transport via tanker truck wastewater for appropriate disposal along surface roads and federal highway; and,

WHEREAS, such transport presents a public health and safety issue to the residents of the San Ardo community due to the absence of proper wastewater disposal, and to the public who may live or work along the transport route in the event there is a crash or other event that cause a spill of the wastewater which is a hazardous material; and,

WHEREAS, the District does not have the financial resources to cause the necessary

repairs to be made to the facility (“Repairs”); and,

WHEREAS, a portion of the costs of the Repairs may be eligible for reimbursement through the Federal Emergency Management Agency (“FEMA”), the California Disaster Assistance Act (“CDA”), or other State of California resources, due to the federal and state proclamations of emergency and designation of the County of Monterey as eligible for the Public Assistance Program administered by FEMA; and,

WHEREAS, the Repairs will provide significant public benefits to the citizens of the County by protecting their health, safety, welfare and property; and,

WHEREAS, due to the benefits accruing to the County and the District as a whole from the Repairs, the County is prepared to advance the necessary funds for such work on the condition that the County shall be repaid such funds incurred implementing the Repairs as may reimbursed by FEMA, CDA, or other State of California resources;

NOW THEREFORE,

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the District agree as follows:

1. Reimbursement and Funding.

Subject to all other terms of this Agreement the County shall advance to the District up to the sum of \$1,187,500 (the “Advance”) for the purpose of funding the Repairs.

The Advance shall be provided to the District periodically as necessary for cashflow purposes upon receipt of District documentation verifying the need for the expenditures (e.g. invoices from contractors) and that the expenditures are for debris removal, maintenance and approved associated costs related to FEMA Declared Disaster DR4683, that took place during the incident period from December 27, 2022 to January 31, 2023. Documentation shall be submitted to the County Administrative Office.

2. Effective Date and Term.

The effective date of this Agreement shall be the date last signed by either of the Parties. This Agreement shall be effective until all funds are repaid to the County pursuant to Paragraph 3 or the Agreement is terminated early pursuant to Paragraph 4.

3. Repayment.

To the extent permitted by law, at such time as the Repairs are reimbursed from other sources, the District shall repay to the County the Advance (or the portion thereof having been paid to the District at the time of reimbursement of the Repairs) within 15 business days receipt of the reimbursement. If there is no such outside reimbursement, or portion of reimbursement, the parties

shall meet and confer in good faith regarding the ability of the District to repay the Advance and the appropriate terms of such repayment. Notwithstanding the foregoing, the County shall have no obligation to provide any Advances beyond June 30, 2023.

4. Compliance with FEMA Requirements and Regulations

The District will comply with the rules and regulations established by Title 44 of the Code of Federal Regulations (Stafford Act § 325, 42 U.S.C. § 5165c; 44 C.F.R. § 1.4.), 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and the guidance in the Public Assistance Program and Policy Guide (PAPPG) to ensure the District receives the maximum possible eligible reimbursement amount.

5. Early Termination.

Should the County Board of Supervisors, in its sole discretion, determine that the Repairs or a portion of the Repairs: A) have been abandoned by the District; or B) are unlikely to be implemented; then the County Board of Supervisors may terminate this Agreement upon 10 days written notice to the District. The County shall have no obligation to make any further Advance for work performed after the date of termination, and any Advance already paid to the District shall not be repaid and shall be considered a County Contribution without repayment.

6. No Additional Payments.

Except as may be specifically agreed to in writing by the County, or as specifically set forth in this Agreement, the County shall not be liable to the District for any further advances, payments, costs or expenses of any kind with respect to the Repairs other than the Advance outlined in this Agreement.

7. No Further Obligations.

Nothing in this Agreement binds the County to any further obligations with respect to the Repairs.

8. Lead Agency.

Nothing in this Agreement shall obligate the County to be the Lead Agency for purposes of the California Environmental Quality Act regarding the Repairs. The District shall be the Lead Agency for all such purposes.

8. Indemnification.

To the maximum extent permitted by law, the District shall defend, indemnify and hold harmless the County, its officers, agents, and employees, from and against any and all demands, claims, causes of action, suits, judgments, liabilities, liens, losses, damages, expenses, fines, penalties

and assessments (collectively, “damages”) incurred or sustained by the County arising from or related to the performance by the District of its obligations under this Agreement excepting therefrom any damages arising from or related to the gross negligence or willful misconduct of the County, its officers, agents, or employees.

9. General Provisions.

A. No Assignment. The District shall not assign or transfer this Agreement, or any part thereof, without the written consent of the County, nor shall the District assign any monies due or to become due to the District hereunder without the previous written consent of the County.

B. Independent Contractor. Nothing in this Agreement shall be construed or interpreted to make the District, its employees, agents or contractors anything but independent contractors, and in all the District's activities and operations pursuant to this Agreement, the District, its employees, agents and contractors shall not, for any purposes, be considered employees or agents of the County.

C. Authority to Bind the County. It is understood that the District, in the performance of this Agreement, has no authority to bind the County to any agreements or undertakings with respect to any and all persons or entities with whom the District deals in the course of business.

D. Notices. All notices regarding performance under this Agreement shall be sent by hand delivery, electronic mail, or U.S. mail (certified mail, return receipt requested and postage prepaid) to the persons and addresses listed below. Either party may change the designated person by notice to the other party. If sent by U.S. mail, delivery shall be presumed 5 days following deposit with the U.S. Postal Service.

<p>District: San Ardo Water District</p> <p>Copy to: San Ardo Water District</p>	<p>County: Sonia M. De La Rosa County Administrative Officer 168 W. Alisal St., Third Floor Salinas, CA 93901 (831) 755-5115</p> <p>Copy to: Leslie J. Girard, County Counsel 168 W. Alisal St., 3rd Floor Salinas, CA 93901 (831) 755-5365</p>
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E. Modifications. This Agreement may be modified or amended only by written agreement of the parties. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

F. No Waiver. No covenant or condition of this Agreement can be waived except by the written consent of the County. Forbearance or indulgence by the County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the District. The County shall be entitled to invoke any remedy available to the County under this Agreement or by law or in equity despite said forbearance or indulgence.

G. Sole Agreement. This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

H. Venue. If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

I. Construed Pursuant to California Law. The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California.

J. Authority to Execute. The persons executing this Agreement on behalf of their respective party represent and warrant that they have, or have received, the proper authority to so execute this Agreement.

San Ardo Water District

County of Monterey

DocuSigned by:
By Jyhar Kaur Khalsa
5E98B9A9590740 [Name] Jyhar Kaur Khalsa
[Title] Project Manager, OIT

DocuSigned by:
By Sonia M. De La Rosa
9363DBA6C4E0434 [Name] Sonia M. De La Rosa
County Administrative Officer

Date : 11/14/2023 | 11:33 AM PST

Date : 11/16/2023 | 2:35 PM PST


Approved as to form:

San Ardo Water District

County of Monterey

By _____

[Name]
District Counsel

DocuSigned by:


2FF8DQ76F5547E
Leslie J. Girard
County Counsel

Date : _____

Date : 11/16/2023 | 10:02 AM PST

IN WITNESS WHEREOF, the County and the District have caused this Agreement to be executed: