



Monterey County Board of Supervisors

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1st Floor
Salinas, CA 93901
831.755.5066
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Board Order

A motion was made by Supervisor Mary L. Adams, seconded by Supervisor Glenn Church to:

Agreement No.: A-16192 ; Amendment No.: 1

- a. Approve and authorize the County Administrative Officer to execute an Amendment No. 1 to 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 financed by the general fund strategic reserve in the amount of \$1,187,500 in the FY 2023-24 Department of Emergency Management Adopted Budget 001-1040-DEM001-8588 (4/5ths vote required).

PASSED AND ADOPTED on this 11th day of July 2023, by roll call vote:

AYES: Supervisors Alejo, Church, Lopez, Askew, and Adams
NOES: None
ABSENT: None
(Government Code 54953)

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 July 11, 2022.

Dated: July 12, 2023
File ID: 23-574
Agenda Item No.: 41

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: 23-574

July 11, 2023

Introduced: 6/30/2023

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

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- 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 financed by the general fund strategic reserve in the amount of \$1,187,500 in the FY 2023-24 Department of Emergency Management Adopted Budget 001-1040-DEM001-8588 (4/5ths vote required).

RECOMMENDATION:

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 to the Wastewater Treatment Facility; and
- c. Approve request to increase appropriations financed by the general fund strategic reserve in the amount of \$1,187,500 in the FY 2023-24 Department of Emergency Management Adopted Budget 001-1040-DEM001-8588 (4/5ths vote required).

SUMMARY:

In March of 2023 the Board of Supervisors approved an Advanced Funding Agreement between the San Ardo Water District and the County of Monterey Department of Emergency Management (DEM) for \$1,187,500 to cover repairs the District incurred in the January to February 2023 atmospheric river event. Due to delays and further storm events in March and ongoing, the project was delayed and anticipated to be completed in Fiscal Year 2023-24. Department of Emergency Management (DEM) is requesting to amend the Advance Funding agreement and request the Board of Supervisors

to authorize a fund transfer of \$1,187,500 in Fiscal Year 2024, and an increase of DEM's Fiscal Year 2024 appropriations to cover the repairs no expenses have been incurred in FY 2022-23 and will not be reimbursed until FY 2023-24.

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 estimated cost 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. Anticipated emergency repair costs are estimated to be \$1,187,500 and potentially 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 County of Monterey and simply does not have the financial means to complete necessary emergency reports. Monterey County Board of Supervisors approved an Advanced Funding Agreement in March 2023, due to project delays the repairs are now anticipated to be completed in Fiscal Year 2024. Staff recommends the Board of Supervisors consider approve an amendment to the current 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 amended 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 has provided 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 amendment to the approved Advance Funding Agreement, a payment advance in the amount up to \$1,187,500 will be made to the District in Fiscal

Legistar File Number: 23-574

Year 2023-24. 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:

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

Prepared by: Bonnie Perez, Finance Manager I, x1974

DocuSigned by:
Bonnie Perez
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Approved by: Kelsey A. Scanlon, MS Director Department of Emergency Management, x1902

DocuSigned by:
Kelsey Scanlon
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Approved by: Sonia M. De La Rosa, County Administrative Officer, x 5312

DocuSigned by:
Sonia M. De La Rosa
9353DBA6C4ED434...

Attachments:

Attachment A: Advanced Funding Agreement San Ardo District

**AMENDMENT NO. 1 TO
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 Amendment No. 1 is made to the 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 (“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; 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, CDAA, or other State of California resources; and,

WHEREAS, an Advanced Funding Agreement to complete the emergency repairs was approved in March 2023; and,

WHEREAS, an amendment to the Advanced Funding Agreement is necessary to fund the emergency repairs in Fiscal Year 2024 due to project delays; and,

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, 2024.

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.

9. Indemnification.

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 Jujhar Kaur Khalsa
5E93BA9A95991401
[Name] Jujhar Kaur Khalsa
[Title] Project Manager, OIT

DocuSigned by:
By Soma M. De La Rosa
9382D6A6C4E11464
Soma M. De La Rosa
County Administrative Officer

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

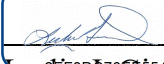
Date : 11/16/2023 | 2:35 PM PST

Approved as to form:

San Ardo Water District

County of Monterey

By _____
[Name]
District Counsel

DocuSigned by:


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: