



Monterey County

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

Board Report

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Matter Type: General Agenda Item

Approve the release of Indemnification Bond for Stormwater, Grading, and Erosion Control in the amount of \$1,000,000, Bond No. SUR0043485, related to said improvements in accordance with Combined Development Permit No. PLN030204 Condition of Approval No. 235 and *Indemnification Agreement* terms.

RECOMMENDATION:

It is recommended that the Board of Supervisors approve the release of Indemnification Bond for Stormwater, Grading, and Erosion Control in the amount of \$1,000,000, Bond No. SUR0043485, related to said improvements in accordance with Combined Development Permit No. PLN030204 Condition of Approval No. 235 and *Indemnification Agreement* terms.

SUMMARY:

The recommended action will release Developer Indemnification Bond No. SUR0043485 for Stormwater, Grading, and Erosion Control in the amount of \$1,000,000, in accordance with Combined Development Permit No. PLN030204 Condition of Approval No. 235 and *Indemnification Agreement* terms.

DISCUSSION:

The East Garrison Specific Plan Project Combined Development Permit No. PLN030204 Condition of Approval No. 235, states, in part, the following:

The applicant agrees as a condition and in consideration of the approval of this discretionary development permit that it will defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees in connection with any erosion, flooding, stormwater runoff, grading or discharge as a result of the project. The indemnification shall include the cost of independent outside counsel if engaged by the County to defend any such action. The property owner will reimburse the County for any and all court costs, fines, penalties or attorney's fees, to the extent allowed by law, which the County may be required to by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action, but such participation shall not relieve applicant of his obligations under this condition. Without limiting the obligation to defend,

indemnify, and hold the County harmless, the applicant shall secure this concurrent with applicant entering into defense and indemnity agreement, with a bond or irrevocable letter of credit from an accredited financial institution in the amount of one million dollars (\$1,000,000), in a form acceptable to the County. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof.

On December 12, 2017, the Board of Supervisors approved an *Indemnification Agreement* with UCP East Garrison, LLC. related to erosion, flooding, stormwater runoff, grading or discharge, as required by Combined Development Permit No. PLN030204 Condition of Approval No. 235, which was recorded on January 24, 2018, Document No. 2018002994. As stated in the *Indemnification Agreement* for release of the bond:

It is further agreed that upon transfer of ownership to any and all successors in interest, that the then current owner of the real property and improvements thereon which are subject to this agreement shall concurrently petition County to release the bond and or letter of credit subject to this agreement and that the County shall so release said bond or letter or credit provided that the successor in interest has obtained such security pursuant to this agreement prior to the transfer of ownership and to the satisfaction of the County.

The County of Monterey accepted infrastructure improvements including on-site and off-site drainage for Phase One on March 26, 2013; Phase Two on March 1, 2016; and Phase Three on December 11, 2018. East Garrison Community Services Districts (EGCSD) accepted said drainage improvements from the County on March 26, 2013 for Phase One and July 9, 2019 for Phases Two and Three, in accordance with the Final Subdivision Maps for East Garrison Phases One, Two, and Three, the *Urban Services Agreement* as amended, and the approved *Operation and Maintenance Plan*.

Acceptance of the completed East Garrison drainage improvements by the County and EGCSD satisfies the Combined Development Permit No. PLN030204 Condition of Approval No. 235 and *Indemnification Agreement* terms, allowing for release of the Developer's indemnification bond for erosion, flooding, stormwater runoff, grading, or discharge.

OTHER AGENCY INVOLVEMENT:

On July 16, 2019, the Monterey County Board of Supervisors, acting as the Board of Directors of the East Garrison Community Services District, will consider accepting from the County of Monterey, the completed East Garrison Phase Two and Three on-site drainage improvements into the EGCSD maintenance system.

FINANCING:

No impact to General Fund for this action.

Funding for EGCSD is budgeted in Fund 181, Budget Unit 8522, Appropriation Unit RMA106, and is derived from the special tax imposed upon residential properties within East Garrison.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

The recommended action complies with the Board of Supervisors' FY 2015-16 Strategic Initiatives for Infrastructure and Health and Human Services, "Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results," by improving the quality of life of County residents through management of drainage and stormwater facilities within the East Garrison development.

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

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Reviewed by: Melanie Beretti, Property Administration/Special Programs Manager

Approved by: Shawne Ellerbee, RMA Deputy Director of Administrative Services

Approved by: Carl P. Holm, AICP, RMA Director

Attachments:

Attachment 1 - Indemnification Agreement

Attachment 2 - Indemnification Bond No. SUR0043485

Attachment 3 - Monterey County Phase One Infrastructure Improvement Acceptance

Attachment 4 - Monterey County Phase Two Infrastructure Improvement Acceptance

Attachment 5 - Monterey County Phase Three Infrastructure Improvement Acceptance

Attachment 6 - EGCSO Phase One Storm Drainage Acceptance

(Attachments on file with the Clerk of the Board)