



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Flood Control
Department No.: 054
For Agenda Of: August 27, 2019
Placement: Administrative
Estimated Tme: N/A
Continued Item: No
If Yes, date from:
Vote Required: 4/5 Vote Required

TO: Board of Directors, Flood Control and Water Conservation District

FROM: Department Scott D. McGolpin, Public Works Director, 568-3010
Director(s)
Contact Info: Thomas D. Fayram, Deputy Public Works Director, 568-3436

SUBJECT: **Financial Performance Security for the Partnership for Resilient Communities Debris Nets Project, First Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

That the Board of Directors:

Recommended Actions:

- a) Adopt the attached Resolution, including the finding of public purpose, establishing a separate and distinct fund to segregate and restrict \$1,042,700 in Fund 2400 for purposes of providing performance security to the California Department of Fish and Wildlife for the Partnership for Resilient Communities' (Partnership) Debris Nets Project (Project);
- b) Approve the attached Budget Revision Request (BJE No. 0006575) to transfer \$1,042,700 in Fund 2400 from Restricted Purpose of Fund Balance to increase Restricted PRC Performance Security Fund Balance; (4/5 vote)
- c) Delegate authority to the County CEO, as Ex-Officio Clerk of the District, upon advice and consent of County Counsel and the Auditor-Controller, to take all actions necessary to complete the creation of the restricted fund balance as described in the attached Resolution, and to distribute such funds, if required, upon the terms set forth therein; and
- d) Find that the recommended actions to provide performance security for the Project are fiscal activities not constituting a "Project" within the meaning of the California Environmental Quality Act, as set forth in 14 CCR 15378(b)(4).

Summary Text:

This item is on the Board's agenda to adopt the attached resolution to provide performance security to the California Department of Fish and Wildlife ("CDFW") for the Partnership's permitted Debris Nets Project, as conditionally approved by the County.

The performance security would be in the form of a segregated and restricted District Fund Balance, payable to CDFW in the event of the Partnership's non-performance of its obligations under its Project permits. The District's provision of this performance security would be subject to the express condition that the District and/or County themselves would not be responsible for the completion of any of the Partnership's performance obligations under its permits, including the maintenance and removal of the nets. The Partnership will remain solely responsible for satisfying all Project conditions of approval, including maintenance and removal of the nets upon expiration of the Project term. If the Board of Directors approves the Recommended Actions to provide performance security through a Restricted PRC Performance Security Fund Balance, CDFW and the Partnership would then work through release of the performance security that the Restricted PRC Performance Security Fund Balance would be replacing.

On December 21, 2018, the Director of Planning and Development approved an Emergency Permit (18EMP-00000-00007), which authorized the installation, one year of maintenance, and the removal of eleven (11) Geobruigg flexible debris control nets in the three canyons north of the community of Montecito. Condition #9 of the Emergency Permit required the Applicant to post a performance security, in an amount and form approved by CDFW, to cover the full cost of all the obligations under the Emergency Permit, including the cost of one year of maintenance (i.e., debris removal) and removal of all the nets. To satisfy this Condition #9, the Partnership provided a cash deposit in an escrow account payable to CDFW.

As required by the Montecito Land Use and Development Code, the Partnership submitted an application for a "follow-on" Development Plan to affirm the temporary rights granted through the Emergency Permit. The project identified in the application for the Development Plan was limited to six (6) of the eleven (11) debris nets initially approved under the Emergency Permit. On June 19, 2019 the Montecito Planning Commission approved the Development Plan for the six debris nets, subject to the same conditions required under the Emergency Permit, including the requirement to provide performance security.

To date, the Partnership has installed four (4) of the six (6) debris nets approved under the Development Plan. In order to immediately install the two (2) remaining nets, the Partnership requested County assistance through posting the performance security required by the Emergency Permit and Development Plan so that the Partnership could use the existing funds in the cash deposit (to be released by CDFW) to complete the installation of the two additional debris nets approved under the Development Plan. To date, debris nets have been installed in San Ysidro, Cold Springs (2), and Buena Vista Watersheds. With the remaining two nets, the Partnership would install another net in San Ysidro Creek, and another in Buena Visa.

The Partnership's private Debris Nets Project is designed to contribute to the District's ongoing efforts, through public projects, to mitigate the potentially destructive impacts of additional debris flows below

the area impacted by the Thomas Fire. If the Board approves the recommended action to designate reserve funds to provide performance security for the Project, the Partnership would be able to install the two (2) remaining nets. This would potentially mitigate the potentially destructive impacts to life and property in the District in the event of additional debris flows.

The Partnership will remain responsible for satisfying all Project conditions of approval, including maintenance and removal of the nets upon expiration of the Project term. The Project is permitted through December 20, 2019. The Partnership is required to obtain additional permits (or other authorizations) from the County and other permitting agencies in order to extend the term of the Project. The Partnership has expressed its intention that the Project would be in place, at most, until the watershed above the community of Montecito is sufficiently revegetated, no more than five years.

While providing the performance security for the Project serves the public purpose of promoting public safety by facilitating the installation of debris nets that may potentially mitigate public harm in the event of additional debris flows, the Partnership and District have agreed that the Project remains a private project. The County will not own, operate, maintain, or remove the nets. In addition, the Partnership will be required to add the County to its insurance policy for the Project. The Partnership has identified the Project as a short-term treatment. As such, the Partnership is also supporting the County's efforts on additional long-term projects in Montecito, many of which have grant applications submitted.

As required by the Conditions of Approval in the Emergency Permit and Development Plan, if approved by the Board, the restriction of District funds to provide performance security for the Project will be subject to approval by CDFW. If it is not approved by CDFW, the Partnership will be required to maintain its existing Project performance security for the term of the Project.

Background:

Following the Thomas Fire and associated 1-9 Debris Flow, both public and private initiatives have been implemented to help reduce the risk area below the Thomas Fire. While the Partnership planned and implemented the Debris Nets Project, the County continued aggressively removing additional debris following each storm. In addition, the County made several grant applications for modification of existing basins, and installing new basins. Concurrently, private interests have organized to assist in these projects as well.

The Partnership's private Debris Net Project and the District's ongoing debris basin projects complement each other in both their locations (separate areas of work), and timing (short-term vs long-term). The further away from the Thomas Fire we get, there is a reduced risk of repeat debris flows, while the ongoing risk of debris-laden floods will then dominate the risk.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Narrative:

No General Funds are involved in the transaction. The funds for the security can be set aside in a restricted District Fund 2400 (not the South Coast Flood Zone) fund balance account over the performance security period without impacting other programs or projects.

Key Contract Risks:

In the event of non-performance by the Partnership of any of its obligations under the Emergency Permit and/or Development Plan, the District funds restricted to provide performance security would be payable to CDFW. Non-performance could occur either following a debris flow event or at the end of the Project term. The County permits for the Debris Net Project are currently set to expire on December 21, 2019, and separate County action is required to extend the term of the Project.

Because the Debris Nets Project is a private project, both funded and implemented by the Partnership, a private organization, the District would not control whether the Partnership fulfills its performance obligations under the Emergency Permit and/or Development Plan.

Special Instructions:

Direct the Clerk of the Board to send a copy of the Resolution and a copy of the minute order to the Flood Control District office, Attn: Christina Lopez.

Attachments:

- Attachment A - Resolution
- Attachment B- Budget Revision Request (BJE 0006575)
- Attachment C - Letter from Partnership for Resilient Communities dated 8.14.19
- Attachment D - Emergency Permit 18EMP-00000-00007 w/attachments

Authored by:

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