

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

September 24, 2024

FROM

NOEL CASTILLO, Director, Department of Public Works - Transportation

SUBJECT

Application and Agreement for Irrevocable Standby Letter of Credit with Wells Fargo Bank for the Glen Helen Parkway Bridge Replacement – Phase II Project in the Devore Area

RECOMMENDATION(S)

1. Approve Application for an Irrevocable Standby Letter of Credit between San Bernardino County and Wells Fargo Bank in favor of the California Department of Fish and Wildlife, in the amount of \$959,469.66, at an administrative cost not to exceed \$50,000, for the Glen Helen Parkway Bridge Replacement – Phase II Project in the unincorporated Devore area, for a term of October 1, 2024, through September 30, 2025, renewed annually until compensatory mitigation obligations have been satisfied.
2. Approve Irrevocable Standby Letter of Credit **Agreement No. 24-893**, including non-standard terms, between San Bernardino County and Wells Fargo Bank, in the amount of \$959,469.66, at an administrative cost not-to-exceed \$50,000, for the Glen Helen Parkway Bridge Replacement – Phase II Project in the unincorporated Devore area, for a term of October 1, 2024, through September 30, 2025, renewed annually until compensatory mitigation obligations have been satisfied.
3. Authorize the Director of the Department of Public Works to sign and execute amendments to the application for Irrevocable Standby Letters of Credit, and Irrevocable Standby Letter of Credit Agreement, subject to review by County Counsel, and required by the financial institution to issue final Irrevocable Standby Letters of Credit if such financial assurances are required as a condition of Federal or State regulatory environmental permits, for the Glen Helen Parkway Bridge Replacement – Phase II Project in the unincorporated Devore area.
4. Direct the Director of the Department of Public Works to transmit any amendments to the application for Irrevocable Standby Letters of Credit and Irrevocable Standby Letter of Credit Agreement required for the construction and maintenance of the Glen Helen Parkway Bridge Replacement – Phase II Project in the unincorporated Devore area, to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Noel Castillo, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Department of Public Works (Department) is financed by Gas Tax revenues, fee

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revenue, and other local, state, and federal funding. The cost associated with the proposed Irrevocable Standby Letter of Credit (Letter of Credit) for the Glen Helen Parkway Bridge Replacement – Phase II Project will be funded with Gas Tax revenue, administered by the Department. The estimated administrative cost, including the cost of issuance, for the Letter of Credit will not exceed \$50,000, which Wells Fargo will charge at 3.5% – 4.0% of the balance per year. Sufficient appropriation and revenue are included in Department's 2024-25 Road Operations budget (6650002000 H14646) and will be included in future recommended budgets.

BACKGROUND INFORMATION

An application and Letter of Credit Agreement (Agreement) must be executed to enable Wells Fargo to prepare a Letter of Credit that satisfies specific permit conditions under two different State permits received by the County from the California Department of Fish and Wildlife (CDFW) for the Glen Helen Parkway Bridge Replacement – Phase II Project in the unincorporated Devore area (Project). Recommendation No. 1 will approve the application for the Letter of Credit, while Recommendation No. 2 will approve the Agreement, which specifies the details of the Letter of Credit to be issued (e.g., interest rate, fees, etc.). Before construction, the Letter of Credit must be approved by CDFW.

The Glen Helen Parkway Grade Separation Phase II Project will construct the remaining portion of the proposed bridge from the existing (Phase I) over the Cajon Wash and join Glen Helen Parkway adjacent to the Glen Helen Amphitheater. The Project site encompasses approximately 48 acres and includes replacing the Glen Helen Parkway Bridge roadway with a cast-in-place pre-stressed concrete box girder superstructure over Cajon Wash.

The bridge will be widened to a total maximum width of approximately 94 feet. Cast-in-drilled hole concrete pilings will be constructed to support the bridge structure, driven steel piles will be used to support the western abutment. Rock slope protection will be placed at the bridge abutments for scour protection. Also, the construction of a maintenance access road and associated grading and landscaping on the north side of the bridge.

A new storm drain line will be installed as part of the Project underneath both railroad tracks. A concrete drainage structure will be constructed at the storm drain line outlet location along the eastern bank of the Cajon Wash, north of the bridge. The wash will also be graded and the existing levee upstream of the bridge will be removed. Various storm drain improvements, including bioswales and rock slope protection, will also be constructed at the western end of the Project near Glen Helen Parkway. Cajon Wash falls under the jurisdiction of CDFW.

Construction within the wash requires a Streambed Alteration Agreement (SAA) from CDFW per State Fish and Game Code Chapter 6, Section 1602. The Project is located within critical habitat for the San Bernardino Kangaroo Rat, a State and Federally listed endangered and threatened species. Section 2080.1 of the California Fish and Game Code requires an Incidental Take Permit (ITP) from CDFW for any "take" of species as a result of the Project construction activity. "Take" is defined under the Federal Endangered Species Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species. The County applied for and received an ITP in July 2024.

Both the SAA and ITP require the County to provide compensatory mitigation to offset the Project's environmental impacts to listed species. The County will offset impacts by providing compensatory mitigation through the establishment of 3.78 acres of conservation easement of

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Riversidean Alluvial Fan Sage Scrub habitat set aside for wildlife functions and values. Both the SAA and ITP include conditions that require the County to manage its mitigation sites in perpetuity and provide financial assurances to CDFW that the County will meet its mitigation obligations. CDFW and the County have determined that a Letter of Credit would be the appropriate vehicle to secure the County's mitigation and management obligations under the SAA and ITP.

Following approval of both the application for Letter of Credit and Agreement, Wells Fargo will draft the Letter of Credit in the amount of \$959,469.66 using the CDFW standard template. The draft will be submitted to CDFW for review and approval. Following CDFW approval of the Letter of Credit, the final Letter of Credit will be signed, executed, and submitted by the Director of the Department as authorized pursuant to Recommendation No. 3.

The Letter of Credit may be called upon by CDFW if the County does not fulfill its obligations under the SAA and ITP associated with the creation and long-term management of compensatory mitigation sites for the Project. The Letter of Credit will be renewed annually until compensatory mitigation obligations have been satisfied.

The Agreement with Wells Fargo includes the following terms that differ from the standard County's contract terms:

1. The Agreement does not require Wells Fargo to meet the insurance or indemnity standards as required by County Policy 11-07.
 - The standard contract does not include indemnification or defense by the County of a contractor and requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: By agreeing to indemnify Wells Fargo, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred as against the County, time limited or expense-limited could be brought against Wells Fargo without such limitations and the County would be responsible to defend and reimburse Wells Fargo for costs, expenses, and damages. In addition, the Agreement does not include County standard insurance requirements. This means that the County has no assurance that Wells Fargo will be financially responsible for claims that may arise from the Agreement, which could result in expenses to the County
2. Wells Fargo limits its liability under the Agreement to the amount paid by the County under the Agreement and excludes any liability for punitive, exemplary, consequential, indirect, or special damages.
 - The County standard contract does not limit a contractor's liability.
 - Potential Impact: Claims could exceed the liability cap, rendering the County financially liable for the excess. The County could also be responsible for punitive, exemplary, consequential, indirect or special damages resulting from the Agreement.
3. All disputes arising under the Agreement must be settled by binding arbitration, with the exception for claims falling under the jurisdiction of small claims court.
 - The County standard contract does not require arbitration.
 - Potential Impact: Arbitration decisions are not appealable.

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The Department recommends approval of this item, including the non-standard terms, as it allows the Department to satisfy its mitigation and management obligations to CDFW under the SAA and ITP.

The proposed expenditures under the Agreement are aligned with the County and the Chief Executive Officer's goals and objectives of operating in a fiscally-responsible and business-like manner by complying with financial assurance requirements outlined in the State regulatory permits for the Project; providing for the health and safety needs of county residents by constructing transportation improvements; and working with other agencies to minimize and mitigate environmental impacts through the establishment and long-term conservation of wildlife habitat.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on September 4, 2024; Risk Management (Loretta Acuna, Staff Analyst II, 386-9039) on August 28, 2024; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on September 4, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on September 9, 2024.


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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Curt Hagman, Joe Baca, Jr.
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 24, 2024



cc: PW/Trans - Chun w/agree w/application
 Contractor - c/o PW/Trans w/agree
 File - w/agree
MBA 09/24/2024