

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

March 1, 2022

FROM

BRENDON BIGGS, Chief Flood Control Engineer, Flood Control District

SUBJECT

Takeover Agreement with Arch Insurance Company for the Completion of the Cactus Basins 4 and 5 Project in the Rialto Area

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Flood Control District, approve the Takeover **Agreement No. 22-113**, including a non-standard term, with Arch Insurance Company for the completion of the Cactus Basins 4 and 5 Project in the Rialto area.

(Presenter: Brendon Biggs, Chief Flood Control Engineer, 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.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The Cactus Basins 4 and 5 Project (Project) is funded by a \$3 million grant from the Federal Emergency Management Agency (FEMA). Additionally, the City of Rialto, the San Bernardino County Transportation Authority, and the California Department of Transportation (Caltrans) are jointly contributing \$8 million and the remaining cost of \$3,574,460 is funded by the San Bernardino County Flood Control District (District) Zone 2 with property tax revenue. Sufficient appropriation and revenue have been included in the District's 2021-22 budget.

BACKGROUND INFORMATION

The Project is located within the City of Rialto, South of Interstate 210, between Cactus Avenue and Ayala Drive and south of Renaissance Boulevard. The Project consists of excavation and construction of a dam and outlet-works to create temporary holding capacity for storm run-off. This Project will help mitigate impacts from the construction of the Interstate 210 freeway by reducing the downstream peak storm flows. This Project is immediately upstream of the previously constructed Cactus Basins 3 and 3A Project, which was approved by the Board of Supervisors (Board) for construction on August 11, 2015 (Item No. 46) and completed on October 12, 2017. The previously constructed project as well as this Project are, together, a major component of the overall flood control system designed to provide 100-year flood protection to residences, businesses, and public infrastructure adjacent to the Cactus Channel and Rialto Channel in the cities of Rialto and Colton.

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Following a competitive bidding process, on January 29, 2019 (Item No. 47), the Board awarded Contract No. 19-51 (Contract) to RockForce Construction, LLC (RockForce), in the amount of \$14,574,460 for construction of the Project. As required by the Contract, RockForce provided a performance bond issued by Arch Insurance Company (Arch). On July 28, 2021, the District terminated the Contract due to RockForce's defaults under the Contract, and thereafter sought completion of the Project from Arch through the performance bond.

Arch and the District negotiated a Takeover Agreement to provide for completion of the Project by another contractor selected by Arch. Under the Takeover Agreement the District will pay Arch the undisputed balance of the contract with RockForce in the amount of \$1,660,314.41. Arch and the District have agreed to reserve for future negotiation the disputed amount of \$1,177,046.95 for District staff costs, partial liquidated damages and attorney's fees. The District is also retaining \$1,095,441.64 until all the outstanding stop payment notices received from subcontractors and suppliers are resolved. The Takeover Agreement reimburses the District in the amount of \$80,831.95 for costs incurred to have a third-party contractor secure and protect the Project site.

The proposed Takeover Agreement includes a term that differs from the standard District contract. The non-standard term is as follows:

1. The Takeover Agreement and the performance bond issued by Arch provide that the prevailing party in any dispute shall be entitled to its costs, including reasonable attorneys' fees.
 - The District's standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
 - Potential Impact: If either party institutes any legal proceedings related to the Takeover Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total Contract amount.

The District recommends approval of the Takeover Agreement with Arch, including the non-standard term, as Project completion would benefit County residents and businesses.

The approval of the Takeover Agreement aligns with the County and Chief Executive Officer's goals and objectives as it will allow for the completion of the Project in a fiscally responsible manner and the Project will ensure the development of a well-planned, balanced and sustainable County, as well as provide for the safety, health, and social service needs of County residents.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel 387-5455) on February 11, 2022; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on February 11, 2022; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on February 14, 2022.

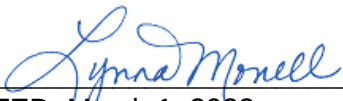
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Record of Action of the Board of Supervisors
San Bernardino County Flood Control District

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 1, 2022



cc: Flood - Biggs w/agree
Contractor - C/O Flood w/agree
File - w/agree
CCM 03/2/2022