

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

August 8, 2023

FROM

DAVID MYERS, Director, Museum

DON DAY, Director, Project and Facilities Management Department

SUBJECT

Grant Agreement with the California Natural Resources Agency for the California Museum Grant Program

RECOMMENDATION(S)

1. Approve Grant **Agreement No. 23-844** with the California Natural Resources Agency, including non-standard terms, for the California Museum Grant Program to receive \$500,000 for the expansion of the Agua Mansa Cemetery Rehabilitation Project.
2. Affirm delegation in Resolution No. 2022-238 appointing the Museum Director, as agent to conduct all negotiations, execute and submit all documents, including but not limited to, applications, agreements, including the Grant Agreement referenced in Recommendation No. 1, payment requests and other documents, which may be necessary for the completion of the Activating the Agua Mansa Story Through Rehabilitation, Public Engagement, and Interpretation Project, now referred to as the Agua Mansa Cemetery Rehabilitation Project.
3. Approve a budget increase to the Capital Improvement Program Project No. 23-044, for the Agua Mansa Cemetery Rehabilitation Project (WBSE 10.10.1335), in the amount of \$550,000, from \$559,775 to \$1,109,775.
4. Approve appropriation and revenue adjustments to fund the Capital Improvement Program Project No. 23-044 and authorize the Auditor-Controller/Treasurer/Tax Collector to post the necessary budget adjustments, as detailed in the Financial Impact section (Four votes required).
5. Direct the Museum Director to transmit the Grant Agreement to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: David Myers, Director, 798-8601)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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

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 additional Discretionary General Funding (Net County Cost). The grant funds of \$500,000, and \$50,000 from the Minor Capital Improvement Program (MCIP) fund, will be used to fund the expansion of the current Activating the Agua Mansa Story Through Rehabilitation, Public Engagement, and Interpretation Project, now referred to as the Agua Mansa Cemetery Rehabilitation Project (Project). The San Bernardino

**Grant Agreement with the California Natural Resources Agency for the
California Museum Grant Program
August 8, 2023**

County Museum's (Museum) grant proposal includes a match of \$72,106 of budgeted staff time and supplies. The necessary budget adjustments are requested as follows:

Fund Center	Commitment Item	Description	Action	Amount	WBSE
6510001000	40408840	State Other	Increase	\$500,000	-
6510001000	55305030	Operating Transfer Out	Increase	\$500,000	-
7701003100	40909999	Residual Equity Transfers Out	Decrease	\$50,000	-
7701003100	54304030	Structures & Improvements to Structures	Decrease	\$50,000	-
7700003100	40909995	Residual Equity Transfers In	Increase	\$50,000	10.10.1335
7700003100	40909975	Operating Transfers In	Increase	\$500,000	10.10.1335
7700003100	54304030	Structures & Improvements to Structures	Increase	\$550,000	10.10.1335

BACKGROUND INFORMATION

Acceptance of the California Natural Resources Agency, California Museum Grant Program grant award and use of MCIP funds will enable the Museum to rehabilitate the historic Agua Mansa Cemetery, a California State Historic Landmark, by completing restoration of a partial number of headstones determined most at risk from environmental damage and using ground penetrating radar to map the cemetery site. The Project goal is to increase public engagement and education in the regional history and enjoyment of the open space. This will expand the scope of the current capital improvement program project, which includes updating signage, beautifying the cemetery entrance and surrounding landscape, making repairs to the asphalt drive, and installation of a new entrance gate.

The selection process for the California Natural Resources Agency, California Museum Grant Program, through the California Cultural & Historical Endowment, consists of a multi-step approach. The Museum completed step one, submission of an online application and project proposal in March 2022, as approved by the Chief Executive Officer (CEO), per County Policy 05-13. Step two was a virtual site meeting completed in July 2022. Ratification of the CEO approved application was required by the California Natural Resources Agency as part of step three as more particularly described below.

On December 13, 2022 (Item No. 46), the San Bernardino County (County) Board of Supervisors (Board), as required by step three of the process, approved the following actions: (1) ratification of the submission of the initial grant application, (2) approval of the filing of additional documentation and submission of a final binding grant application in the amount of \$500,000, (3) adoption of Resolution No. 2022-238 authorizing the Museum Director to conduct all negotiations and execute and submit all documents necessary for completion of the grant funded Project, (4) authorization of the Museum Director to execute and submit all documents necessary for completion of the grant funded Project, and (5) direction to the Museum Director to transmit all amendments related to the grant to the Clerk of the Board of Supervisors within 30 days of execution.

**Grant Agreement with the California Natural Resources Agency for the
California Museum Grant Program
August 8, 2023**

The Grant Agreement (Agreement) contains terms that differ from the standard County contract and omits certain County standard contract terms.

1. The Agreement provides that if the County breaches the Agreement, the return of the grant funds would be inadequate compensation for the breach and requires the County to agree that specific performance of the Agreement is the appropriate remedy in the event of a breach by the County unless the State otherwise agrees.
 - Standard County policy does not in any way limit the remedies available to the County in the event of a breach or dispute.
 - Potential Impact: In the event of a breach of the Agreement by County, the State could require the County to specifically perform its obligations under the Agreement, which means completing the Project for which the grant funds were provided, regardless of the reason for the breach. The County may be obligated to complete the Project without exception or regard for issues such as available funding, unless the State agrees otherwise.
2. The County is required to waive all claims against the State, except for claims arising from the State's gross negligence.
 - Standard County policy does not in any way limit the remedies available to the County in the event of a claim or dispute.
 - Potential Impact: In the event of a claim or dispute, the County will have no recourse against the State and cannot expect any contribution for loss or damage. The County will have sole financial responsibility for loss or damage arising from the Agreement.
3. The County is required to indemnify, hold harmless and defend the State, against any and all claims arising out of the Project, except for liability arising out of the gross negligence of the State.
 - Standard County policy requires entities with whom the County contracts to indemnify the County in accordance with County Policy 11-07.
 - Potential Impact: Indemnity will not be provided to the County by the State. Additionally, the County will be required to indemnify the State for any claims arising from the Project, except for liability arising out of the State's gross negligence. This means that the County will be solely responsible for damages arising from third-party claims relating to the Project.
4. If both the County and State are found liable because of their gross negligence, an apportionment of liability to pay the judgement shall be made by a court of competent jurisdiction. Neither the County nor State shall request a jury apportionment.
 - Standard County policy does not limit the County's remedies, including access to the courts and jury decisions.
 - Potential Impact: If both the County and State are found liable due to their respective gross negligence, apportionment of damages will be decided by a judge rather than a jury. Neither party may request a jury apportionment.
5. There is a restriction which states that the real property on which the project is located may not be sold or transferred without the written approval of the State, acting through the Natural Resources Agency. Such approval shall not be unreasonably withheld provided the purposes for which the grant was awarded are maintained.

**Grant Agreement with the California Natural Resources Agency for the
California Museum Grant Program
August 8, 2023**

- The County currently has the right to sell the real property on which the Project is located without restriction.
 - Potential Impact: The County may not sell the real property on which the Project is located without the consent of the State. The State's main concern is to ensure that the purposes for which the grant was awarded are maintained.
6. The County may not use the real property on which the project is located for environmental mitigation measures without the written permission of the State and may not use the real property on which the Project is located as security for any debt.
- The County currently has the right to use the real property on which the Project is located without restriction.
 - Potential Impact: The County's right to use the real property on which the Project is located will be restricted, and in certain circumstances require State consent.
7. The County may not assign its rights under the Agreement. There is no restriction on the State's right to assign its rights under the Agreement.
- Standard County policy provides that the County must approve any assignment of the contract.
 - Potential Impact: The State could assign the Agreement without the County's consent. This could allow the Agreement to be assigned to a business with which the County is legally prohibited from doing business due to issues of federal debarment or suspension and conflict of interest. This is unlikely given the State's role as a governmental entity. Ultimately, the County has the right to terminate with 30 days written notice.
8. In the event of a dispute, and if the issue cannot be informally resolved with the Agency Grants Administrator, the County is required to submit the issue to the Deputy Assistant Secretary for Bonds and Grants for the Natural Resources Agency. If the County disagrees with the resulting decision, it must thereafter submit a letter of appeal to the Assistant Secretary. The decision of the Assistant Secretary shall be final.
- Standard County policy requires a non-binding form of dispute resolution.
 - Potential Impact: In the event of a dispute, the County will be subject to a binding decision of the Assistant Secretary of the State. The County's right to challenge that decision in the courts will be limited.
9. The Agreement does not contain insurance provisions.
- Standard County policy provides that insurance terms must mirror the insurance provisions in County Standard Practice 11-07.
 - Potential Impact: The County is not provided specific information regarding the State's insurance approach though it is likely a self-insured public entity as is the County. The State is unlikely to be underinsured with the result that there is no perceived potential impact.
10. Venue is not addressed in the Agreement.
- Standard County policy requires venue to be in the courts of San Bernardino County and as an alternative in any California County.
 - Potential Impact: If venue is not set, it is arguable by any party to a lawsuit. Given that both the State and County are California public entities, the likelihood of a party

**Grant Agreement with the California Natural Resources Agency for the
California Museum Grant Program
August 8, 2023**

arguing for venue outside of California is unlikely. The Agreement states that the governing law is California.

At this time Museum is recommending approval of the Agreement with the California Natural Resources Agency, including non-standard terms, for the California Museum Grant Program to receive \$500,000 in order to complete the Museum's Project, and requesting related budget adjustments and appropriation and revenue adjustments.

PROCUREMENT

No procurement activities are required at this time. Any future procurement activities related to this Project will be done in accordance with the California Public Contract Code, County Policy, and Purchasing Department requirements.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Katherine Hardy, Deputy County Counsel, 387-5455) on June 29, 2023; Auditor-Controller/Treasurer/Tax Collector (Vanessa Doyle, Chief Deputy Controller, 382-3195) on July 26, 2023; Project and Facilities Management Department (Robert Gilliam, Chief of Project Management, 387-5000) on June 29, 2023; Finance (Elias Duenas, Administrative Analyst, 387-4052) on June 29, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on July 26, 2023.

**Grant Agreement with the California Natural Resources Agency for the
California Museum Grant Program
August 8, 2023**

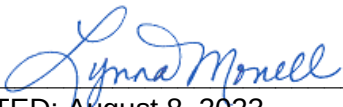
Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: August 8, 2023



cc: Museum- Myers w/agree for sign
Contractor- C/O Museum w/agree
File- w/agree
LA 08/10/2023