



Board Agenda Item 42

DATE: September 6, 2022

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Release of Security for Undergrounding Utilities along Millerton Road between Sky Harbour and Winchell Cove Roads to Table Mountain Rancheria

RECOMMENDED ACTION:

- 1. Approve and authorize Chairman to execute the Amendment to Escrow Agreement, amending the April 2, 2020 Escrow Agreement with Wells Fargo Bank, N.A. and Table Mountain Rancheria, providing a mechanism to release the \$1,000,000.00 security (along with any interest) held in escrow by Wells Fargo Bank, N.A. and required under Security Agreement No. 09-615, between the County and Table Mountain Rancheria, for the now-completed undergrounding of utilities along Millerton Road between Sky Harbour Road and Winchell Cove Road; and**
- 2. Following approval of Recommended Action No. 1, authorize each of the County officers specified in Exhibit B-3 to the recommended Amendment to Escrow Agreement to provide notice under Section 1.6 of the April 2, 2022, Escrow Agreement, as amended by the recommended Amendment to Escrow Agreement, to Wells Fargo Bank, N.A. and Table Mountain Rancheria authorizing Wells Fargo Bank, N.A. to release the above-described \$1,000,000.00 security; and**
- 3. Approve and authorize Chairman to execute the attached Reconveyance of the Deed of Trust, reconveying to Table Mountain Rancheria the County's deed of trust (Document No. 98114187) recorded on August 14, 1998, as to four parcels along Millerton Road between Sky Harbour Road and Winchell Cove Road.**

Approval of the Recommended Actions Nos. 1 and 2 will provide a mechanism to release Table Mountain Rancheria (TMR) from security obligations arising under Security Agreement No. 09-615 ("Agreement") and will authorize the release of the security in the amount of \$1,000,000.00 ("Security") by Wells Fargo Bank, N.A. ("Wells Fargo") to TMR. Wells Fargo held the Security for the benefit of the County to ensure TMR's faithful completion of the undergrounding of utilities ("Work") performed and completed on assessor's parcel numbers (APN's): 300-350-03S, 300-350-04S, 300-350-05S and 300-350-07S. The approval of Recommended Action No. 3 will reconvey (*i.e.*, deliver to the original owner) the deed of trust, Document No. 98114187 in the official records of the Fresno County Recorder ("Deed of Trust"), held by the County to secure TMR's obligation to perform the Work, back to TMR. This would extinguish the County's rights to the Deed of Trust. This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

Section 5 of Agreement requires the County to release the Security upon completion of the Work. Under

section 3 of the Agreement, the County was to reconvey the Deed of Trust upon acceptance of the Security. If Your Board determines that the preconditions to perform the recommended actions have not been met, your Board may deny any or all of the recommended actions. Denial will require your Board to identify the action or actions being denied and to direct staff accordingly.

FISCAL IMPACT:

There is no Net County cost associated with the recommended actions. If approved, the Security held by Wells Fargo will be released directly to TMR.

DISCUSSION:

Amendment of Escrow Agreement and Release of Security

On December 1, 2009, the Board approved the Agreement, which modified and superseded an August 4, 1998, Assumption, Clarification, and Security Agreement ("Assumption Agreement"), by increasing the security amount from \$612,000.00 to \$1,000,000.00 among other things. Under the terms of the Agreement, TMR was required to perform the Work, and had the option to secure the full and faithful performance of the Tribe's obligation by furnishing the sole cost through either (i) a performance bond for \$1,000,000.00, (ii) cash deposit for the same amount through an irrevocable escrow account, or (iii) an irrevocable standby letter of credit from a bank in the same amount.

TMR deposited the Security into an escrow account established at Wells Fargo, subject to a April 2, 2010, Escrow Agreement ("Escrow Agreement"). Under the Escrow Agreement, the Security was payable to and for the benefit of the County to ensure it would remain in effect until the completion of the Work.

Section 5 of the Agreement requires that the County provide a release of the Security upon the completion of the Work. The Work has been completed, and TMR is requesting that the Security be released.

However, the Escrow Agreement presently lacks an obvious mechanism to release the Security following successful completion of the Work. The proposed Amendment to Escrow Agreement resolves that issue, providing that certain specified County officers may notify the escrow agent and TMR that the County no longer needs the Security. Following that notification, the proposed Amendment to Escrow Agreement provides that Wells Fargo is required to deliver the Security to TMR. The proposed Amendment to Escrow Agreement further provides that the County, relying on the representation of TMR that the Work has been completed, has fifteen days to provide such notice.

Reconveyance of Deed of Trust

The Assumption Agreement required that TMR secure its obligations to perform the Work with a first deed of trust on APN's. 300-350-03S, 300-350-04S, 300-350-05S and 300-350-07S.

On August 14, 1998, TMR recorded the Deed of Trust with the Fresno County Recorder, as Document No. 98114187.

Section 3 of the Agreement required that the County reconvey the Deed of Trust upon acceptance of the above-described Security. However, that was not done at the time the County accepted the Security. TMR has requested the reconveyance of the Deed of Trust.

REFERENCE MATERIAL:

BAI # 37, December 1, 2009

ATTACHMENTS INCLUDED:

Attachment A - Location Map

On file with Clerk - Amendment to Escrow Agreement

On file with Clerk - Reconveyance of Deed of Trust

CAO ANALYST:

Salvador Espino