

SUBMITTAL TO THE BOARD OF DIRECTORS OF THE
REDEVELOPMENT AGENCY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

920



FROM: Redevelopment Agency

SUBMITTAL DATE:
August 19, 2010

SUBJECT: Reimbursement Agreement with the City of Riverside for the Highgrove Center Street Trunk Sewer Project

RECOMMENDED MOTION: That the Board of Directors:

1. Approve and Authorize the Chairman of the Board to execute the attached agreement between the Redevelopment Agency of the County of Riverside and the City of Riverside to reimburse the Agency for sewer improvements within the City of Riverside; and
2. Authorize the Executive Director of the Redevelopment Agency, or designee, to execute and take all necessary steps to implement this agreement, including signing subsequent necessary and related documents to complete this transaction.

BACKGROUND: (Commences on Page 2)

Robert Field

Robert Field
Executive Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30 ☐

Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION: APPROVE

BY: *Jennifer L. Sargent*

County Executive Office Signature

MINUTES OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY

On motion of Supervisor Stone, seconded by Supervisor Tavaglione and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: August 31, 2010
xc: RDA

Kecia Harper-Ihem
Clerk of the Board

By: *Deputy*
Deputy

Prev. Agn. Ref.: 3.41, 4.2 of 5/4/10

District: 1, 5

Agenda Number:

4.6

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RP-EDA-001a-FRM11.doc
Form 11 (Rev 06/2003)

FORM APPROVED COUNTY COUNSEL
BY: MICHELLE CLACK
DATE: 8/19/10
Departmental Concurrence

Dep't Recomm.: ☐ Consent
Per Exec. Ofc.: ☐ Consent
Policy ☒ Policy

BACKGROUND:

The Highgrove community is an older community that lacks sewer infrastructure for existing residents and new development. The Redevelopment Agency determined that without Agency assistance, this infrastructure could not be developed. On July 15, 2008, the Redevelopment Agency entered into an agreement with Krieger and Stewart, Inc., to prepare plans and specifications for the Highgrove Center Street Trunk Sewer Project. The plans and specifications for the project have been completed. A portion of the sewer will reside within the City of Riverside. The city desires to reimburse the county for those improvements.

A Mitigated Negative Declaration and Notice of Determination were posted on May 12, 2009, in accordance with state CEQA guidelines. Plans and specifications and Notice Inviting Bids were approved by the Board of Directors on January 5, 2010. The notice inviting bids for the project was advertised on February 5, 2010, and February 12, 2010, and posted on Agency's website from January 26, 2010, through March 4, 2010. On May 4, 2010, the Board of Supervisors approved the construction contract with TBU, Inc., and made findings in accordance with Health and Safety Code Section 33445. The project is now under construction.

Staff recommends approval of the attached agreement so that the Agency can regain some of its investment.

**AGREEMENT BY AND BETWEEN THE REDEVELOPMENT AGENCY
FOR THE COUNTY OF RIVERSIDE AND THE CITY OF RIVERSIDE
FOR THE HIGHGROVE BACKBONE SEWER PROJECT**

THIS AGREEMENT is entered into on this ____ day of _____, 2010, by and between the Redevelopment Agency for the County of Riverside (hereinafter referred to as "Agency") and the City of Riverside, a California charter city and municipal corporation (hereinafter referred to as "City") for the Highgrove Backbone Sewer Project.

WITNESETH

WHEREAS, Agency is a redevelopment agency duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the provisions of the Community Redevelopment Law ("CRL") which is Part 1 of Division 24 of the California Health and Safety Code (commencing with Section 33000 et seq.); and

WHEREAS, Section 33445 of the California Health and Safety Code provides that a redevelopment agency may pay all or part of the cost of the construction of any building, facility, structure or other improvement which is to be publicly owned and is located within or outside of a redevelopment project area upon making certain findings; and

WHEREAS, the Riverside County Board of Supervisors adopted, by Ordinance No. 783, on November 24, 1998, a redevelopment plan for an area identified as the Highgrove Amendment Area of the Interstate 215 Project Area (hereinafter referred to as "Project Area"); and

WHEREAS, a redevelopment plan was adopted for the Project Area in order to eliminate blight and revitalize the substandard physical and economic conditions that exist within the Project Area (hereinafter referred to as the "Redevelopment Plan"); and

WHEREAS, Section 33220 of the Community Redevelopment Law permits the Agency and City to cooperate and assist each other in certain redevelopment activities that are the subject of this Agreement; and

//

1 **WHEREAS,** the Agency and City have determined that there is a great need for sanitary
2 sewer infrastructure in the Project Area; and

3 **WHEREAS,** the construction of the proposed improvements will significantly improve
4 public health and safety, encourage economic development and eliminate blight within the
5 Project Area; and

6 **NOW, THEREFORE,** in consideration of the foregoing, and the covenants, conditions,
7 provisions, and mutual promises contained herein, the parties hereto do hereby agree as follows:

8 **SECTION 1. Purpose of the Agreement.** The purpose of this Agreement is to install
9 sanitary sewer infrastructure in the Project Area and set forth the terms and conditions by which
10 City will contribute funding to the Agency for the design and construction of the Highgrove
11 Trunk Sewer Project (hereinafter the "Project").

12 **SECTION 2. Location of the Project.** The portion of the Project that is subject to this
13 Agreement is located in the incorporated City of Riverside within the boundaries of the Project
14 Area and is more specifically detailed in Exhibit "A", which is attached hereto and incorporated
15 herein by this reference.

16 **SECTION 3. Scope of Work.** The work to be performed by the Agency and the
17 consultant(s) and/or construction contractors Agency selects is described in detail in Exhibit "B"
18 which is attached hereto and incorporated herein by this reference.

19 **SECTION 4. Construction of the Project.** The consultants and/or construction
20 contractors for the Project shall be selected by the Agency. The Agency shall cause the
21 construction of the Project to be carried out in compliance with all applicable laws, including,
22 but not limited to, all applicable federal, state and local environmental; occupational, safety and
23 health standards; nondiscrimination requirements; accessibility for the disabled; and prevailing
24 wage laws.

25 **SECTION 5. Project Funding.** City shall reimburse Agency for the actual cost of the
26 design and construction of the improvements completed within the portion of the Project Area
27 that resides within the City Limits pursuant to this Agreement for an amount not to exceed **One**
28 **Million Five Hundred Thousand Dollars (\$1,500,000.00).** Said amount shall be based on the

1 actual costs of the portion of the line residing within the City Limits which is from
2 approximately Villa Road to Palmyrita Road. The funding shall include, but is not limited to, all
3 of Agency's costs for design and construction as pertains to the sewer within the City Limits.

4 Agency will be reimbursed upon City's receipt of invoices issued by Agency for the work
5 specified in this Agreement. Appropriate backup documentation must be submitted with each
6 invoice. All costs incurred by Agency must be billed to City within **Three Hundred Sixty-Five**
7 **(365) days** from completion of construction of the project. Any invoice received after this time
8 will be returned to Agency without payment.

9 **SECTION 6. Local, State and Federal Laws.** The Agency shall carry out the
10 construction of the Project in conformity with all applicable laws, including all applicable federal
11 and state labor standards for the payment of prevailing wage rates.

12 **SECTION 7. Construction Engineering Services.** Agency agrees to permit City to
13 monitor, participate and oversee the selection of a construction engineering firm for the Project.
14 Agency agrees to consider any request by the City to avoid a contract award or discontinue
15 services of any personnel considered by City to be unqualified on the basis of credentials,
16 professional expertise, failure to perform, and./or other pertinent criteria.

17 **SECTION 8. City Review of Plans and Specifications.** Construction of the City's
18 portion of the Project, detailed on Exhibit "A" hereto, shall not commence until Agency's plans,
19 specifications, and estimates ("PS&E") for the work have been reviewed and accepted, which
20 acceptance shall not be unreasonably withheld, by City and encroachment permits have been
21 issued to Agency and its construction contractor.

22 **SECTION 9. Construction Change Orders.** Project PS&E changes shall only be
23 implemented by contract change orders that have been reviewed and approved by City, which
24 approval shall not be unreasonably withheld. All changes affecting the design and
25 specifications, and all major changes, shall be approved by the City in advance of performance
26 of the work. All changes shall be shown on the "As-Built" plans.

27 **SECTION 10. Cooperation.** During Project construction, City, Agency and Agency's
28 construction contractor shall cooperate and consult with one another to ensure that all Project

1 work is accomplished according to the Project PS&E. Satisfaction of these requirements shall be
2 verified by City, whose representatives are authorized to enter Agency's property at their own
3 risk for the purpose of monitoring and coordinating construction activities. However, nothing in
4 this SECTION 10 shall relieve Agency of its indemnification obligations herein for patent or
5 latent dangerous conditions existing on the Project Area or the violation of state occupation and
6 safety regulations. **SECTION 11. Project Sign.** Agency agrees to erect a project sign
7 identifying the Project as a joint project funded by the Agency and the City. The sign shall
8 include an Agency logo. Agency shall submit a mock up of the sign layout for approval by City
9 prior to fabrication of the sign.

10 **SECTION 12. City and Other Governmental Agency Permits.** Agency agrees to
11 obtain, secure or cause to be secured any and all permits and/or clearances which may be
12 required by any federal, state or local governmental or regulatory agency relating to the
13 improvements that are the subject of this Agreement.

14 **SECTION 13. Principal Contact Persons.** The following individuals are hereby
15 designated to be the principal contact persons for their respective Parties:

16 **Agency:** Andy Frost, Project Manager
17 Riverside County Economic Development Agency
18 P.O. Box 1180, Riverside, CA 92502-1180
19 (951) 955-8916, (951) 955-6686

20 **City:** Tom Boyd, City Engineer
21 City of Riverside
22 3900 Main Street
23 Riverside, CA 92522
(951) 826-5575, tboyd@riversideca.gov

24 **SECTION 14. Conflict of Interest.** No member, official or employee of Agency or
25 City shall have any personal interest, direct or indirect, in this Agreement nor shall any such
26 member, official or employee participate in any decision relating to this Agreement which affects
27 his or her personal interests or the interests of any corporation, partnership or association in
28 which he or she is directly or indirectly interested.

1 **SECTION 15. Interpretation and Governing Law.** This Agreement and any dispute
2 arising hereunder shall be governed and interpreted in accordance with the laws of the State of
3 California. This Agreement shall be construed as a whole according to its fair language and
4 common meaning to achieve the objectives and purposes of the parties hereto, and the rule of
5 construction to the effect that ambiguities are to be resolved against the drafting party shall not
6 be employed in interpreting this Agreement, all parties having been represented by counsel in the
7 negotiation and preparation hereof.

8 **SECTION 16. No Third Party Beneficiaries.** This Agreement is made and entered
9 into for the sole protection and benefit of the parties hereto. No other person or entity shall have
10 any right of action based upon the provisions of this Agreement.

11 **SECTION 17. Indemnification.** Except as to the sole negligence, active negligence or
12 willful misconduct of the City, Agency shall indemnify and hold the City, and its employees,
13 officers, managers, agents and council members, harmless from any and all loss, damage, claim
14 for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related
15 to, or is in any manner connected with, the performance of work, activities, operations or duties
16 of Agency, its construction contractor, or anyone employed by or working under either of them,
17 and from all claims by anyone employed by, or working under Agency, or its construction
18 contractor, for services rendered to Agency in the performance of this Agreement,
19 notwithstanding that the City may have benefited from their services. This indemnification
20 provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether
21 active or passive, on the part of Agency or of anyone employed by, retained by, or working
22 under Agency.

23 The parties expressly agree that any payment, attorneys' fees, costs or expense
24 that the City incurs or makes to or on behalf of an injured employee under the City's
25 self-administered workers' compensation is included as a loss, expense or cost for the purposes
26 of this Section, and that this Section shall survive the expiration or early termination of the
27 Agreement.
28

1 **SECTION 18. Duty to Defend.** Agency agrees, at its cost and expense, to promptly
2 defend the City and the City's employees, officers, managers, agents and council members
3 (collectively the "Parties to be defended") from and against any and all claims, allegations,
4 lawsuits or other legal proceedings which arise out of, or are related to, or are in any manner
5 connected with: 1) the work, activities, operations, or duties of Agency, its construction
6 contractor, or of anyone employed by or working under either of them, or 2) any breach of this
7 Agreement by Agency. This duty to defend shall apply whether or not such claims, allegations,
8 lawsuits or proceedings have merit or are meritless, or which involve claims or allegations that
9 any of the Parties to be defended were actively, passively or concurrently negligent, or which
10 otherwise assert that the parties to be defended are responsible, in whole or in part, for any loss,
11 damage or injury. Agency agrees to provide this defense immediately upon written notice from
12 the City, and with well qualified, adequately insured and experienced legal counsel acceptable to
13 the City.

14
15 **SECTION 19. Insurance.** Agency and City are Self-insured. Upon written request
16 from either party, proof of such insurance shall be provided to the other party through its Risk
17 Management.

18 **SECTION 20. Construction Contractor's Insurance.** Agency shall ensure that its
19 construction contractor maintains in force, until completion and acceptance of the Project,
20 commercial general and automobile liability insurance to protect construction contractor from
21 claims for damages for personal injury, including accidental death, as well as from claims for
22 property damage which may arise from or which may concern operations under its construction
23 contract with Agency, whether such operations be by or on behalf of construction contractor, any
24 subcontractor or anyone directly or indirectly employed by, connected with or acting for or on
25 behalf of any of them.

26 All liability insurance shall be issued by an insurance company or companies authorized
27 to transact liability insurance business in the State of California with a policy holder's rating of A
28 or higher and a Financial Class of VII or larger and shall cover commercial general and

1 automobile liability for both bodily injury (including death) and property damage, including but
2 not limited to aggregate products, aggregate operations, aggregate protective and aggregate
3 contractual with the following minimum limits:

4 Commercial General \$1,000,000 per occurrence
5 \$2,000,000 aggregate

6
7 Automobile \$1,000,000 per occurrence
8

9 The policies shall not be canceled unless thirty (30) days prior written notification
10 of intended cancellation has been given to Agency by certified or registered mail.

11 The insurance policy or policies shall also comply with the following provisions:

- 12 A. Policies shall include premises/operations, products completed operations,
13 independent contractors, owners and contractors' protection, explosion,
14 collapse, underground hazard, broad form contractual, personal injury
15 with employment exclusion deleted, and broad form property damage.
- 16 B. The policy shall be endorsed to waive any right of subrogation against the
17 Agency and the City of Riverside, and their sub-consultants, employees,
18 officers, agents and directors for work performed under this Agreement.
- 19 C. If policies are written on a claims-made basis, the certificate should so
20 specify and the policy must continue in force for one year after completion
21 of the project. The retroactive date of the coverage must also be listed.
- 22 D. The policy shall specify that the insurance provided by Contractor will be
23 considered primary and not contributory to any other insurance available
24 to the Agency or City of Riverside
- 25 E. **The policy shall be endorsed to name Agency and the City of**
26 **Riverside as additional insureds.**

27 Agency shall further ensure that its construction contractor maintains Workers
28 Compensation Insurance at the statutory limits for the duration of the Project.

1 **SECTION 21. Construction Contractor's Bonds.** Agency shall ensure that its
2 construction contractor furnishes payment and performance bonds naming Agency as obligee in
3 an amount equal to 100% of the Project construction costs. Agency shall defend, indemnify and
4 hold harmless City and its employees, officers, managers, agents and council members from all
5 claims and suits by stop notice claimants related to construction of the Project.
6

7 **SECTION 22. Termination.** The City may terminate this Agreement upon the
8 occurrence of the following events and Agency's failure to cure such events within thirty (30)
9 calendar days of Agency's receipt of written notice by City:

- 10 (1) Agency's construction contractor fails promptly to begin the work; or
- 11 (2) Agency's construction contractor fails to perform the work in accordance
12 with the PS&E documents, or refuses to remove and replace rejected
13 materials or unacceptable work; or
- 14 (3) Agency's construction contractor discontinues performance of the work;
15 or
- 16 (4) Agency's construction contractor fails to make payment to subcontractors
17 for materials or labor in accordance with applicable law; or
- 18 (5) Agency's construction contractor disregards laws, ordinances, or rules,
19 regulations, or orders of a public authority having jurisdiction; or
- 20 (6) Agency's construction contractor becomes insolvent, is adjudicated
21 bankrupt, or makes a general assignment for the benefit of creditors and
22 fails to provide Agency with adequate assurances of its ability to satisfy its
23 contractual obligations.
24

25 The Agency may terminate this Agreement if City fails to perform, keep or observe any
26 of its duties or obligations hereunder provided; however, that City shall have thirty (30) calendar
27 days in which to correct such breach or default after written notice thereof has been served on it
28 by Agency.

1 **SECTION 23. Section Headings.** The Section headings herein are for the convenience
2 of the parties only, and shall not be deemed to govern, limit, modify or in any manner affect the
3 scope, meaning or intent of the provisions or language of this Agreement.

4 **SECTION 24. Time Limit.** Agency shall complete the work that is the subject of this
5 Agreement within a period of thirty six (36) months after the date of execution of this
6 Agreement. In the event said thirty six (36) month period expires prior to the completion of the
7 work, the terms of this Agreement may be extended upon written consent of both parties.
8 Nothing in this Section shall be deemed a waiver of any or all claims or other actions by either
9 party in regard to any breach of this Agreement.

10 **SECTION 25. Entire Agreement.** This Agreement is intended by the Parties hereto as
11 a final expression of their understanding with respect to the subject matter hereof and as a
12 complete and exclusive statement of the terms and conditions thereof and supersedes any and all
13 prior and contemporaneous agreements and understandings, oral or written, in connection
14 therewith. Any amounts to or clarification necessary to this Agreement shall be in writing and
15 acknowledge by all parties to the Agreement.

16 **SECTION 26. Amendments to the Agreement.** This Agreement shall not be amended
17 or modified unless agreed upon by both parties and incorporated in written amendments to this
18 Agreement.

19 **SECTION 27. Assignment.** Agency shall not assign or transfer in any other form with
20 respect to this Agreement without the prior written approval of the City.

21
22 **SECTION 28. Non-Discrimination.** Except as provided in Section 12940 of the
23 California Government Code, during Agency's performance of this Agreement, Agency shall not
24 discriminate on the grounds of race, religious creed, color, national origin, ancestry, age,
25 physical handicap, medical condition including the medical condition of Acquired Immune
26 Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual
27
28

1 orientation in the selection and retention of employees and subcontractors and the procurement
2 of materials and equipment. Agency shall also comply with the requirements of the Americans
3 with Disabilities Act in the performance of this Agreement.

4
5 **SECTION 29. Independent Contractor.** Agency and its agents, servants, employees
6 and subcontractors shall act at all times in an independent capacity during the term of this
7 Agreement, and shall not act as, and shall not be, nor shall they in any manner be construed to
8 be agents, officers or employees of City, and further, Agency, its agents, servants, employees
9 and subcontractors, shall not in any manner incur or have the power to incur any debt,
10 obligation, or liability against the City.

11 **SECTION 30. Jurisdiction and Venue.** Any action at law or in equity arising
12 under this Agreement or brought by a party hereto for the purpose of enforcing, construing or
13 determining the validity of any provision of this Agreement shall be filed in Riverside County,
14 and the parties hereto waive all provisions of law providing for the filing, removal or change of
15 venue to any other court of jurisdiction. In the event either party hereto shall bring suit to
16 enforce any term of this Agreement or to recover any damages for and on account of the breach
17 of any term or condition of this Agreement, it is mutually agreed that the prevailing party in such
18 action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court
19 in such action.
20
21

22
23 **SECTION 31. Severability.** Each paragraph and provision of this Agreement is
24 severable from each other provision, and if any provision or part thereof is declared invalid, the
25 remaining provisions shall remain in full force and effect.

26 **SECTION 32. Waiver.** Failure by a party to insist upon the strict performance of any
27 of the provisions of this Agreement by the other party, or failure by a party to exercise its rights
28 upon the default of the other party, shall not constitute a waiver of such party's right to insist and

CLERK'S COPY

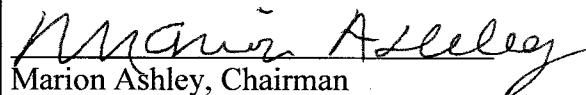
to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

demand strict compliance by the other party with the terms of this Agreement thereafter.

SECTION 33. Authority to Execute. The persons executing this agreement or exhibits attached hereto on behalf of the parties to this Agreement hereby represent that they have the authority to bind the respective parties to this Agreement to the performance of its obligations hereunder.

IN WITNESS WHEREOF, Agency and City have executed this Agreement as of the date first above written.

**REDEVELOPMENT AGENCY FOR
THE COUNTY OF RIVERSIDE**


Marion Ashley, Chairman

**THE CITY OF RIVERSIDE, a
California charter city and municipal
corporation**

Executive Director

**APPROVED AS TO FORM:
PAMELA J. WALLS
Agency Counsel**

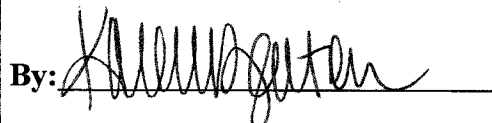
APPROVED AS TO FORM:

 8/5/10
By: Michelle Clack, Deputy

Raychele B. Sterling,
Agency General Counsel

**ATTEST:
KECIA HARPER-IHEM
Agency Secretary
Clerk of the Board**

ATTEST:

By: 

By: _____
Agency Secretary

S:\RDACOM\DISS\HIGHGROVE\HIGHGROVE SEWER & INFRASTRUCTURE STUDY\BIDDING\REIMBURSEMENT AGREEMENT WITH CITY OF RIVERSIDE\HIGHGROVE
REIMBURSEMENT AGREEMENT FINAL.DOCX

Exhibit "A"

Highrove Trunk Sewer

**"IMPORTANT"**

Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

REPORT PRINTED ON...Tue Jan 12 17:39:57 2010

EXHIBIT "B"

Project Description: The project will consist of constructing approximately 10,300 linear feet of sewer main entirely in portions of East La Cadena Drive from Palmyrita to Highgrove Place to Center Street then easterly on Center Street to Michigan.

The work within the City of Riverside includes construction of approximately 3,160 LF of 15" and 18" diameter gravity sewer and appurtenances (six sewer laterals and ten sewer manholes) running from Palmyrita, which is the point of connection to the City of Riverside's treatment system, to approximately Villa Road including:

- Three connections to the existing sewer system
- Boring and jacking a 36" diameter casing under two existing parallel 60" diameter storm drains and installation of the gravity sewer pipe inside the casing
- Relocation of an existing 30" diameter storm drain and a 48" diameter storm drain
- Installation of a metering manhole, approximately 270 linear feet of electrical service, and metering equipment including a flow meter and SCADA instrumentation all within an exterior equipment enclosure.
- Abandonment of approximately 2,800 linear feet of existing 8" and 10" diameter gravity sewers and eight sewer manholes
- Street restoration