

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

723



FROM: Economic Development Agency

SUBMITTAL DATE:
March 7, 2013

SUBJECT: Spring Mountain Ranch – Wastewater Treatment and Sewer Installation Agreements

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the First Amendment to Agreement for Wastewater Treatment for Highgrove Community by and between the City of Riverside and the County acting by and through CSA 152-C and to authorize the Chairman to execute the agreement; and
2. Approve the First Amendment to the Amended and Restated Sanitation System and Installation Agreement by and between SFI SMR, LLC and the County acting by and through CSA 152-C and to authorize the Chairman to execute the agreement.

BACKGROUND: (Commences on Page 2)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY:
Jennifer L. Sargent

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: March 19, 2013
xc: EDA

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

Prev. Agn. Ref.:

District: 2/2

Agenda Number:

3-12

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
BY: Dale A. Gardner 2/27/13
DATE: 2/27/13
Departmental Concurrence

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

BACKGROUND:

On June 22, 2004 the City of Riverside and the County of Riverside entered into an Agreement for Wastewater Treatment for the Highgrove Community. The County purchased the right to deliver wastewater generated by the Highgrove Community to the City for treatment and disposal, and the City agreed to accept, treat and dispose of wastewater generated by the Highgrove Community, subject to the terms and conditions set forth in the Treatment Agreement.

Incorporated into the agreement was a separate Agreement between the County of Riverside and SMR Ventures LLC., the developer of the Spring Mountain Ranch project. Under that Agreement, SMR Ventures agreed to pay sewer connection fees to the City of Riverside for 1,631 Equivalent Development Units (EDU's) in five scheduled installments. To date the developer has paid for 1,276 EDU's but has not made any connections to the sewer system.

The current owner of the Spring Mountain Ranch development has requested to defer the final payment for the remaining 355 EDU's until such time that they seek issuance of a building permit for the 1,277th EDU connection. The dollar amount due on the final installment will be based on the fee schedule in effect at the time of payment. The attached Amendment to the Agreement for Wastewater Treatment for the Highgrove Community amends the payment schedule as outlined above.

**FIRST AMENDMENT TO AGREEMENT FOR
WASTEWATER TREATMENT FOR HIGHGROVE COMMUNITY**

This First Amendment to Agreement for Wastewater Treatment for Highgrove Community (this "**Amended Treatment Agreement**"), dated as of March 19, 2013 ("**Effective Date**"), is made by and between the City of Riverside, a California charter city and municipal corporation ("**City**") and the County of Riverside, a political subdivision of the State of California ("**County**").

RECITALS

City and County entered into that certain Agreement for Wastewater Treatment for Highgrove Community, dated June 22, 2004, (the "**Treatment Agreement**") whereby County purchased the right to deliver wastewater generated by the Highgrove Community to the City for treatment and disposal, and the City agreed to accept, treat and dispose of wastewater generated by the Highgrove Community, subject to the terms and conditions set forth in the Treatment Agreement.

A. Unless otherwise defined in this Amended Treatment Agreement, all capitalized terms used herein shall have the defined meanings ascribed to them in the Treatment Agreement.

B. County and SMR Ventures, LLC ("**SMR**") entered into that certain Amended and Restated Sanitation Installation and Service Agreement, dated June 22, 2004 ("**Amended Installation Agreement**"), whereby SMR agreed to design and construct the sanitation collection system, including the necessary infrastructure for collection and delivery of wastewater to the City system for approximately 1,631 EDUs on that certain property commonly known as Spring Mountain Ranch. In Paragraph 3(c) of the Amended Installation Agreement, SMR acknowledges that the Treatment Agreement provides for the payment of certain Sewer Connection Fees and incorporates the Treatment Agreement by reference.

C. On July 27, 2009, SMR assigned all right, title and interest in the Amended Installation Agreement to SFÍ SMR, LLC, a Delaware limited liability company (the "**Developer**"), which assignment has been approved by County in accordance with the Amended Installation Agreement.

D. Exhibit "E" to the Treatment Agreement sets forth the Sewer Connection Fees and Schedule of Payment to be paid by, or on behalf of the Highgrove Community property owners or their assigns at the time of, or prior to, the issuance of building permits. Pursuant to Paragraph 11(a) of the Treatment Agreement, the Sewer Connection Fees are fixed for a period of five (5) years from the Commencement Date.

E. SMR has agreed to pay Sewer Connection Fees in an amount of \$4,729,900. Through the date of this Amended Treatment Agreement, Developer has paid \$3,700,400 dollars, representing 1,276 EDU's of the Sewer Connection Fees to the County and City for the Spring Mountain Ranch Project, as described in Exhibit "E" to the Treatment Agreement.

F. City and County now desire to amend Exhibit "E" of the Treatment Agreement in order to extend the payment schedule for the remaining Sewer Connection Fees to be paid by Developer.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and County hereby agree as follows:

1. Paragraph 1 of the Schedule of Payment set forth on Exhibit "E" of the Treatment Agreement shall be amended to read as follows:

"1. Spring Mountain Ranch

County shall request that Developer, and its successors and assigns, the owner and/or developer of the Project known as Spring Mountain Ranch, which is legally described in the "Amended and Restated Sanitation System Installation and Service Agreement," dated June 22, 2004, by and between County of Riverside and Developer, pay all connection charges for users within such project according to actual build out or the following schedule, whichever occurs first:

a. 22% of Project Connection Fees on or before November 22, 2006
b. 18% of Project Connection Fees on or before November 22, 2006
c. 20% of Project Connection Fees on or before March 1, 2007
d. 18% of Project Connection Fees on or before July 2, 2008
e. the Project Connection Fees for the remaining EDUs on or before the date of issuance of a building permit for the 1,277th EDU in the Spring Mountain Ranch project, which shall thereafter be paid in accordance with the current City fee schedule in effect at the time of payment."

2. A copy of the current 2012 Sewer Connection Fees are attached hereto for reference.

3. Except as expressly amended, modified or supplemented by this Amended Treatment Agreement, all provisions of the Treatment Agreement remain unchanged and in full force and effect. In the event of any inconsistency between this Amended Treatment Agreement and the Schedule of Payment set forth in Exhibit "E" of the Treatment Agreement, the terms of this Amended Treatment Agreement shall control.

4. This Amended Treatment Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile or electronic transmission), but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and County have executed this Amended Treatment Agreement as of the date first set forth above.

City of Riverside, a California charter city and municipal corporation

County of Riverside, a political subdivision of State of California, acting by and through the Riverside County Service Area 152-C

By: *Deanna Lorson*
Name: Deanna Lorson
Title: Assistant City Manager

By: *John J. Benoit*
Name: JOHN J. BENOIT, Chairman
Title: Board of Supervisors

ATTEST

By: *C. Nicol*
Name: Colleen J. Nicol
Title: City Clerk

ATTEST

By: _____
Name: _____
Title: _____

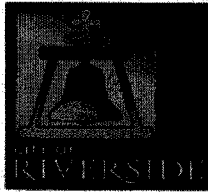
APPROVED AS TO FORM

Anthony L. Beaumon
Name: Anthony L. Beaumon
Title: Deputy City Attorney

APPROVED AS TO FORM

Dale A. Gardner
Name: Dale A. Gardner
Title: Deputy County Counsel

ATTEST:
KECIA HARPER-IHEM, Clerk
By: *Kecia Harper-Ihem*
DEPUTY



City of Riverside

HIGHGROVE SEWER CAPACITY CHARGE (CONNECTION FEES)

Residential and Commercial Capacity Charge Schedule

User Rate Categories	Capacity Charge	
	Per/ Units	Effective July 1, 2012
Residential Sewer Capacity Charge		
Basic Multi-Family Dwelling Unit	Unit	\$5,257
Basic Single Family Dwelling Unit	Unit	\$5,823
Commercial Sewer Capacity Charge		
Basic Commercial (Flat Rate)	Unit	\$5,823
Commercial Sewer Capacity Charge Structure		
Department & Retail Stores	1,000 S.F.	\$389
Hotels & Motels	Unit	\$2,133
Laundromats	1,000 S.F.	\$14,517
Laundries	1,000 S.F.	\$13,248
Markets	1,000 S.F.	\$3,270
Mortuaries	1,000 S.F.	\$8,926
Professional Offices	1,000 S.F.	\$564
Repair Shops & Service Stations	1,000 S.F.	\$6,390
Restaurants	1,000 S.F.	\$14,082
Other Commercial	1,000 S.F.	\$939
Hospitals	1,000 S.F.	\$2,323
Churches & Halls	1,000 S.F.	\$2,368
Schools "B"	1,000 S.F.	\$774
Other Commercial "A"	1,000 S.F.	\$2,443
Other Commercial "B"	1,000 S.F.	\$583
Warehouse	1,000 S.F.	\$162

**FIRST AMENDMENT TO THE AMENDED AND RESTATED
SANITATION SYSTEM AND INSTALLATION AGREEMENT**

This First Amendment to the Amended and Restated Sanitation System and Installation Agreement (this "**First Amendment to the Amended Installation Agreement**"), dated as of March 19, 2013 ("**Effective Date**"), is made by and between the County of Riverside, a political subdivision of the State of California, acting by and through The Riverside County Service Area 152-C, a county service area ("**County**") and SFI SMR LP, a Delaware limited partnership, and its successors and assigns ("**Developer**"). The County and Developer are sometimes collectively referred to herein as "**Parties**" or individually as a "**Party**".

RECITALS

A. Developer owns certain real property located in the County of Riverside, State of California and legally described on Exhibit "A" of that certain Amended and Restated Sanitation System and Installation Agreement, dated June 22, 2004, (the "**Amended Installation Agreement**") and by this reference incorporated herein (commonly known as "**Spring Mountain Ranch**").

B. County and predecessor-in-interest SMR Ventures, LLC had previously entered into that certain Sanitation System and Installation Agreement, dated April 30, 2004 ("**Installation Agreement**"), as amended and restated by the Amended Installation Agreement whereby SMR Ventures, LLC agreed to construct a certain wastewater collection system on Spring Mountain Ranch property.

C. On July 27, 2009, SMR Ventures, LLC assigned all right, title and interest in the Amended Installation Agreement to Developer.

D. Unless otherwise defined in this First Amendment to the Amended Installation Agreement, all capitalized terms used herein shall have the defined meanings ascribed to them in the Amended Installation Agreement.

E. On June 22, 2004, the City of Riverside ("**City**") and County entered into that certain Agreement for Wastewater Treatment for Highgrove Community ("**Treatment Agreement**") which provided for the payment by Developer of certain connection charges based on the Sewer Connection Fees and Amounts Schedule. Paragraph 3 (c) of the Amended Installation Agreement incorporates the terms of the Treatment Agreement by reference.

F. On _____, 2012, the City and the County entered into a "First Amendment to Agreement for Wastewater Treatment for Highgrove Community ("**Amended Treatment Agreement**") to extend the time of payment for the remaining Sewer Connection Fees for the development of Spring Mountain Ranch.

G. Developer and County agree to acknowledge the terms of the Amended Treatment Agreement and to incorporate the terms into this First Amendment to the Amended Installation Agreement by reference.

First Amendment to the Amended Installation Agreement

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and County hereby agree as follows:

1. The reference to the Treatment Agreement between the City and the County set forth in Paragraph 3 (c) of the Amended Installation Agreement shall be amended to reference the Amended Treatment Agreement.

2. Developer and County hereby acknowledge and agree that Developer has paid \$3,700,400 dollars of the Sewer Connection Fees to the City, and pursuant to the terms of the Amended Treatment Agreement, this payment vests the right for Developer as to 1,276 equivalent dwelling units ("EDUs") applicable to the Spring Mountain Ranch project.

3. Pursuant to the Amended Treatment Agreement, the City and County agree to modify the payment schedule of the Sewer Connection Fees, such that the date of payment of the remaining Sewer Connection Fees is extended until the date on or before issuance of building permits for the 1,277th residential unit for the Spring Mountain Ranch project, which may thereafter be paid in accordance with the current City fee schedule in effect at the time of payment.

4. Developer and County hereby acknowledge that the Sewer Connection Fee set forth in Paragraph 3 above shall be payable on or prior to the date of issuance of the referenced building permits.

5. All notices, requests, demands or other communications under this First Amendment to the Amended Installation Agreement shall be in writing and sent to the addresses set forth in Paragraph 11 of the Amended Installation Agreement, except that the addresses for Developer shall be deleted and replaced with the following:

Developer:

SFI SMR LP
c/o iStar Financial Inc.
2425 Olympic Blvd, Suite 520E
Santa Monica, CA 90404
Attn: Steven H. Magee
Telephone: (949) 567-8066
E-mail: smagee@istarfinancial.com

with a copy to:

Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles CA 90067
Attn: Benzion J. Westreich, Esq.

First Amendment to the Amended Installation Agreement

Telephone: (310) 788-4409
E-mail: benny.westreich@kattenlaw.com

and to:

Jeffer Mangels Butler & Mitchell, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles CA 90067
Attn: David P. Waite
Telephone: (310) 203-8080
E-mail: dwaite@jmbm.com

6. Except as expressly amended, modified or supplemented by this First Amendment to the Amended Installation Agreement, all provisions of the Amended Installation Agreement apply to this First Amendment to the Amended Installation Agreement and remain unchanged and in full force and effect. In the event of any inconsistency between this First Amendment to the Amended Installation Agreement and the Amended Installation Agreement, the terms of this First Amendment to the Amended Installation Agreement shall control.

7. This First Amendment to the Amended Installation Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile or electronic transmission), but which together shall constitute one and the same instrument.

First Amendment to the Amended Installation Agreement

IN WITNESS WHEREOF, County and Developer have executed this First Amendment to the Amended Installation Agreement as of the date first set forth above.

County of Riverside, a political subdivision of State of California, acting by and through the Riverside County Service Area 152-C

SFI SMR LP, a Delaware limited partnership

By: [Signature]
JOHN J. BENOIT, Chairman
Board of Supervisors

By: [Signature]
Name: Stephen Wylder
Title: Vice President

ATTEST

ATTEST

By: _____
Name: _____
Title: _____

By: [Signature]
Name: Sheri Borselle
Title: Attorney, Jeff M. Angeli, B. Alan McNeil

APPROVED AS TO FORM

[Signature]
Name: Dale A. Gardner
Deputy County Counsel

ATTEST:
KECIA HARPER-IHEM, Clerk
By: [Signature]
DEPUTY