

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



ITEM
3.64
(ID # 6418)

MEETING DATE:

Tuesday, February 27, 2018

FROM : TLMA-TRANSPORTATION:

SUBJECT: TRANSPORTATION AND LAND MANAGEMENT AGENCY/ TRANSPORTATION:

Approval of the Joint Community Facilities Agreement by and among Riverside Unified School District, Riverside County Flood Control and Water Conservation District, County of Riverside, MRF-Groves Development, LP and Spring Mountain Investments, LLC, relating to Community Facilities District No. 29, Districts 2, 5. [\$0] (Companion to MT 6431 RCFCWCD)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the subject Joint Community Facilities Agreement (JCFA) by and among Riverside Unified School District (RUSD), Riverside County Flood Control and Water Conservation District (Flood Control District), County of Riverside, MRF-Groves Development, LP and Spring Mountain Investments, LLC (Developer), relating to Community Facilities District (CFD) No. 29; and
2. Authorize the Chairman of the Board to execute the same.

ACTION: Policy

Patricia Romo, Director of Transportation 2/14/2018

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: February 27, 2018
xc: Transp., Flood

(Companion Item 11.5)

Kecia Harper-Ihem
Clerk of the Board
By:
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment: No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Developer petitioned Riverside Unified School District to form CFD No. 29, which is located in the Spring Mountain Ranch development area of the County. The proposed boundaries of CFD No. 29 are the same as the boundaries of the Developer's Tract Map Nos. 33410 and 34592 (Tracts), which provides for the development of approximately 210 single-family residential lots.

The proposed CFD will provide the means for financing of the construction and acquisition of certain public improvements associated with the Tracts, including certain streets, storm drains, and related public improvements that will be constructed by the Developer and owned and maintained by the County in part and that will be owned and maintained by Flood Control District in part, collectively the Project Facilities, upon completion by the Developer and acceptance by the respective jurisdictions.

The JCFA establishes the responsibilities for the construction, inspection, acceptance, operation and maintenance of the Project Facilities and reimbursement for the costs of completed Project Facilities from the proceeds of the sale and issuance of special tax bonds by the CFD.

By entering into the JCFA, the County is not assuming any liability with regard to the formation of the CFD or the sale and issuance of any special tax bonds. The County Executive Office, County Transportation Department and Flood Control District have participated in the negotiation and preparation of the JCFA and recommend that it be approved.

A companion item is on the Riverside County Flood Control and Water Conservation District's Board agenda this same date.

Impact on Residents and Businesses

N/A

SUPPLEMENTAL:


Additional Fiscal Information

The Project Facilities constructed under this JCFA will be funded by the proceeds from the sale of special tax bonds issued by Riverside Unified School District Community Facilities District No. 29.

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

ATTACHMENTS:

RUSD Vicinity/Boundary Map
RUSD Joint Community Facilities Agreement
RUSD Exhibit G
RUSD Exhibit H



Gregory V. Priamos, Director County Counsel 2/15/2018

**BOUNDARIES OF
COMMUNITY FACILITIES DISTRICT NO. 29 OF
RIVERSIDE UNIFIED SCHOOL DISTRICT
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA**

(1) Filled in the office of the Clerk of the Board of Education of Riverside Unified School District this ___ day of ___, 2018.

Clerk of the Board of Education
Riverside Unified School District

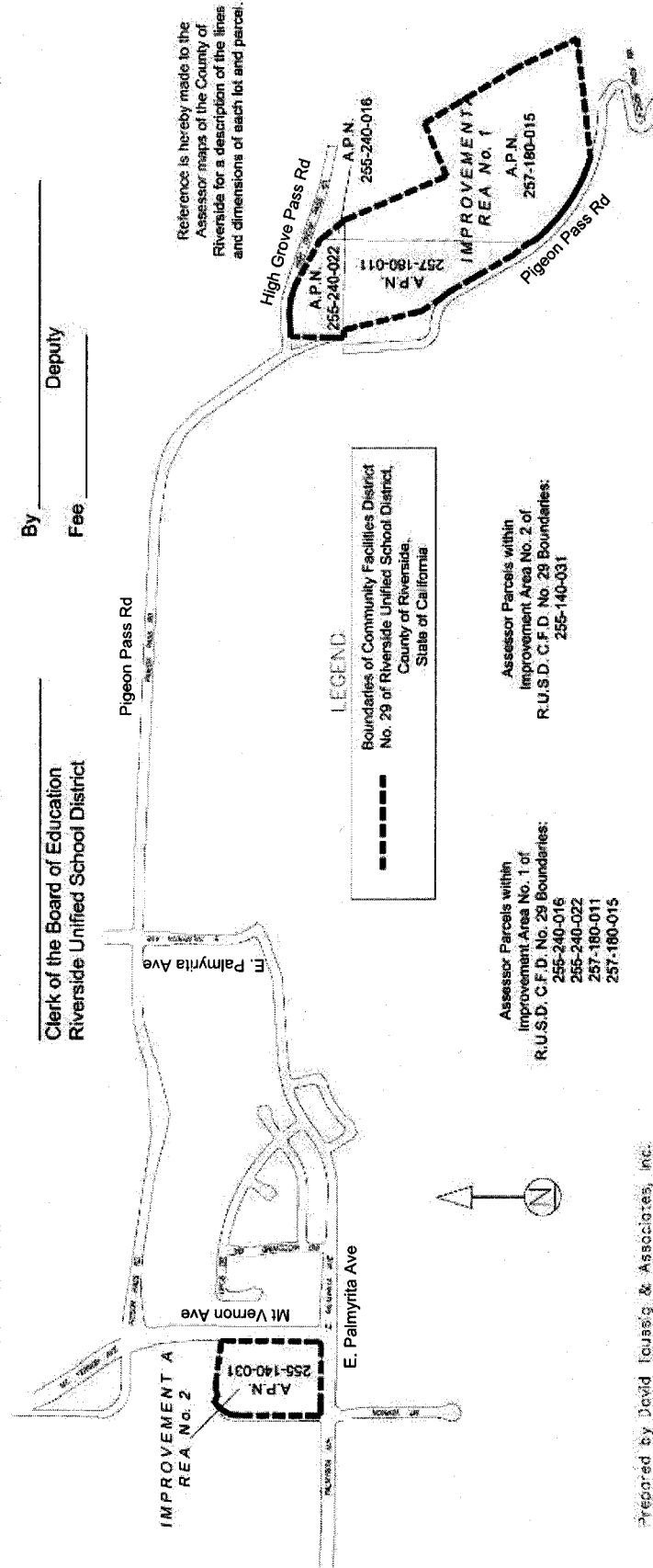
(2) I hereby certify that the within map showing the boundaries of Community Facilities District No. 29 of Riverside Unified School District, County of Riverside, State of California, was approved by the Board of Education of Riverside Unified School District at a regular meeting thereof, held on the ___ day of ___, 2018, by its Resolution No. _____

Clerk of the Board of Education
Riverside Unified School District

(3) Filed this ___ day of ___, 2018, at the hour of o'clock ___ m. in Book ___ of Maps of Assessment and Community Facilities Districts at page ___ and as Instrument No. ___ in the office of the County Recorder of Riverside County, State of California.

Peter Aldana
Assessor-County Clerk-Recorder of Riverside County

By _____ Deputy
Fee _____



COPY

**JOINT COMMUNITY FACILITIES AGREEMENT
(Flood Control and Transportation Improvements
and Sewer Collection System – CSA 152C)**

by and among

RIVERSIDE UNIFIED SCHOOL DISTRICT,

**RIVERSIDE COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT,**

COUNTY OF RIVERSIDE,

**MRF-GROVES DEVELOPMENT, LP,
a Texas Limited Partnership,**

AND

**SPRING MOUNTAIN INVESTMENTS, LLC,
a California Limited Liability Corporation**

Dated as of March 1, 2018

**Relating to:
Community Facilities District No. 29
of Riverside Unified School District**

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JOINT COMMUNITY FACILITIES AGREEMENT

THIS JOINT COMMUNITY FACILITIES AGREEMENT (this “Joint Community Facilities Agreement”) is made and entered into as of March 1, 2018 by and among Riverside Unified School District, a school district organized and existing pursuant to the laws of the State of California (hereinafter, the “School District”), the Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code (hereinafter, the “Flood Control District”), County of Riverside, a political subdivision of the State of California (the “County”), acting for itself and by and through Riverside County Service Area 152C, a county service areas (the “CSA”), MRF-GROVES DEVELOPMENT, LP, a Texas Limited Partnership (“MRF”) and SPRING MOUNTAIN INVESTMENTS, LLC, a California limited liability corporation (collectively with MRF, “Developer”).

RECITALS

A. Pursuant to a petition executed by the Developer, which owns approximately 7.9 acres of land located within the City of Riverside, the Board of Education of the School District (the “Board of Education”) has initiated proceedings (the “Proceedings”) to form a community facilities district to be identified as “Community Facilities District No. 29 of Riverside Unified School District” (the “Community Facilities District”) under the Mello-Roos Community Facilities Act of 1982 (the “Act”) (commencing with Section 53311 of the California Government Code (the “Code”) and one or more improvement areas therein. The proposed boundaries of the Community Facilities District and each improvement area therein are shown on Exhibit A and are coterminous with the boundaries of the acreage owned by the Developer that comprises approved Tract Map Nos. 33410 and 34592 (the “Tracts”) allowing for the construction of approximately 210 dwelling units.

B. The Developer requested and proposed that the Community Facilities District and any improvement areas therein, be formed for the purpose of providing the means of financing certain school mitigation fees for the construction of certain school facilities to be constructed by the School District, certain road and street improvements (the “County Transportation Facilities”) to be constructed by the Developer and subsequently acquired by the County and certain flood control and storm water drainage facilities (the “Flood Control Facilities”), to be constructed by the Developer and certain wastewater discharge facilities collection system to be constructed by the Developer (the “Sewer Collection System”). The County Transportation Facilities are to be owned, operated and maintained by the County upon completion of construction thereof by the Developer and acceptance thereof by the County. The Flood Control Facilities are to be owned, operated and maintained by the Flood Control District upon the completion of the construction thereof by the Developer and the acceptance thereof by the County and the Flood Control District. The Sewer Collection System to be owned by the County, acting by and through CSA, and maintained and operated by the City upon the completion of the construction thereof by the Developer and the acceptance thereof by both the County and the City. The County Transportation Facilities, the Flood Control Facilities and the Sewer Collection System are shown in concept and their estimated acquisition costs are stated in Exhibit B attached hereto and incorporated herein by this reference and will only be related to the improvement area that includes the area in Tract Map Nos. 33410 and 34592.

C. The CSA has been formed pursuant to Chapter 2.2, Part 2, Division 2, Title 3 of the Code (commencing at Section 25210.1) and is authorized, among other things, to provide wastewater treatment and collection services.

D. The County and the Developer have entered into an agreement entitled "Amended and Restated Sanitation System Installation and Service Agreement," dated as of June 18, 2004 (the "Sewer Installation Agreement"), that provides for the terms under which the Developer agrees to design, engineer and construct or to cause the design, engineering and construction of the Sewer Collection System and the terms under which this is to be accomplished. A full and true copy of the Sewer Installation Agreement is attached hereto and marked as Exhibit G.

E. In addition, the City and the County have entered into an agreement entitled "Operation and Maintenance Agreement," dated June 22, 2004, that provide the terms and conditions under which the City will operate and maintain the Sewer Collection System (the "Operation and Maintenance Agreement"), a full and true copy of which is attached hereto, marked as Exhibit H.

F. Section 53313.5 of the Code provides that a community facilities district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body of the community facilities district, before the resolution of formation to establish the community facilities district is adopted pursuant to Section 53325.1 of the Code, except that a community facilities district may finance the purchase of facilities completed after the adoption of a resolution of formation if the facility is constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency that will own or operate in such facility.

G. Alternatively, Section 53314.9 of the Code provides that at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds or work in-kind from any source, including, but not limited to, private persons or entities, and may provide, by resolution, for the use of those funds or that work in-kind for any authorized purpose, under all of the following conditions: (a) the proposal to repay the funds or the value or cost of the work in-kind, whichever is less, is included in both the resolution of intention to establish the community facilities district adopted pursuant to Section 53321 of the Code and in the resolution to establish the community facilities district pursuant to Section 53325.1 of the Code, (b) any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and (c) any work in-kind accepted pursuant to Section 53314.9 of the Code shall have been performed or constructed as if the work had been performed or constructed under the direction and supervision, or under the authority, of the local agency.

H. Pursuant to the Act, the Board of Education may adopt a resolution (the "Resolution of Intention") stating that it is the intention of the School District to cause the proposed Community Facilities District, and any improvement areas therein, to be established, and if established, the Community Facilities District will use its best efforts to sell and issue special tax bonds the proceeds of which will be used in part to pay the Developer the purchase price of the Sewer Collection System, the County Transportation Facilities and the Flood Control Facilities provided all of the conditions of Sections of 53313.5 and 53314.9 of the Code are satisfied and that the purchase price shall only be paid from the proceeds of special tax bonds and/or special taxes collected within the proposed Community Facilities District, if any are sold and issued by the proposed Community Facilities District and the Improvement Areas therein.

I. The Act provides that the proposed Community Facilities District may finance the Flood Control Facilities, the County Transportation Facilities and the Sewer Collection System only pursuant to a Joint Community Facilities Agreement adopted pursuant to Sections 53316.2, 53316.4 and 53316.6 of the Code.

J. The School District, the Flood Control District, the County for itself and on behalf of the CSA, and the Developer desire to enter into this Joint Community Facilities Agreement, as required by the aforementioned sections of the Code and prior to the adoption by the Board of Education of the resolution establishing the Community Facilities District. The provisions of this Joint Community Facilities Agreement are intended to apply only to the Flood Control Facilities, the County Transportation Facilities and the Sewer Collection System, unless expressly stated otherwise.

K. The School District, the County for itself and on behalf of the CSA, and the Flood Control District have determined that this Joint Community Facilities Agreement will be beneficial to the respective residents of the Flood Control District, the County and the School District.

NOW, THEREFORE, for and in consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Unless the context otherwise requires, the terms defined in this Article I shall have the meaning herein specified when used in this Joint Community Facilities Agreement:

“Acceptable Title” means title to land, or an easement therein, delivered free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether any such item is recorded or unrecorded, except those non-monetary items which are reasonably determined by the County and/or the Flood Control District not to interfere with the intended use of such land or easement and therefore are not required to be cleared from title.

“Acceptance Date” means, with respect to any Facility, the date that the Flood Engineer or County Engineer, as appropriate, provides written notice, pursuant to Section 4.10, that the Flood Control Facility or County Transportation Facility has been accepted by the Flood Control District or the County, respectively, into its maintained system and with respect to the Sewer Collection System, the date the Sewer Collection System is accepted by the County for ownership and the City as to operation and maintenance.

“Acquisition Account” means the acquisition account, by that or a similar name, established within the “Improvement Fund” or fund or account of similar name to be established by the Indenture to hold Bond proceeds to be applied to pay the Purchase Price for the Flood Control Facilities and the County Transportation Facilities.

“Acquisition Cost” means, with respect to a Flood Control Facility and a County Transportation Facility, the amount specified as the Acquisition Cost for such Flood Control Facility or County Transportation Facility in Exhibit B attached hereto, as the same may be modified by one

or more supplements thereto entered into in accordance with Section 3.4 hereof or augmented as a result of cost savings pursuant to Section 3.5 hereof.

“Act” means the Mello-Roos Community Facilities Act of 1982, constituting Section 53311 *et seq.* of the Code, as amended.

“Actual Cost” means, with respect to any Facility, an amount equal to the sum of (a) the Developer’s actual, reasonable cost of constructing such Facility, including labor, material and equipment costs and any additional costs incurred by Developer pursuant to Section 4.3 hereof, (b) the Developer’s actual reasonable cost of designing and preparing the Plans for such Facility, including engineering services provided in connection with designing and preparing such Plans, (c) the Developer’s actual, reasonable cost of environmental evaluations required specifically for such Facility, (d) the amount of any fees actually paid by the Developer to governmental agencies in order to obtain permits, licenses or other necessary governmental approvals and reviews for such Facility, (e) the Developer’s actual reasonable cost for professional services directly related to the construction of such Facility, including engineering, legal, inspection, construction staking, materials testing and similar professional services, (f) the Developer’s actual, reasonable cost for construction management bid administration services which shall not exceed 5% of construction costs, (g) the Developer’s actual reasonable cost of payment, performance or maintenance bonds, maintenance costs incurred prior to transfer of any Facility and insurance (including any title insurance required hereby) for such Facility, (h) the Developer’s actual, reasonable cost of any real property or interest therein acquired after the date on which the Community Facilities District is established pursuant to the Act from a party other than the Developer, which real property or interest therein is either necessary for the construction of such Facility (e.g., temporary construction easements, haul roads, etc.) or is required to be conveyed with such Facility in order to convey Acceptable Title thereto to the Flood Control District or the County, all as specified in a Payment Request that is to be reviewed and approved by the Flood Engineer or County Engineer, as appropriate; provided, however, that (x) no item of cost relating to a Facility shall be included in more than one category of cost specified in clauses (a) through (h) of this definition, and (y) each item of cost shall include only amounts actually paid by the Developer to third parties and shall not include overhead or other internal expenses of the Developer, except that, if Developer employees perform construction management, bid administration or contract administration services with respect to a Facility, the actual reasonable cost of the salaries and benefits paid by the Developer to such employees for performing such services may be included as an item of cost relating to such Facility for the category of cost specified in clause (f) of this definition and subject to the 5% limitation specified in clause (f).

“Administrator” means the Director of Planning and Development of the School District, or her/his designee.

“Board of Education” means the Board of Education of the School District.

“Board of Supervisors” means the Board of Supervisors of the Flood Control District and the County.

“Bonds” means the bonds that the Community Facilities District may sell and issue in one or more series if the Proceedings are approved, a portion of the proceeds of which will be used to acquire, among other authorized facilities, the Facilities.

“Business Day” means a day which are not a Saturday or Sunday or a day of the year on which the Flood Control District and the County is not required or authorized to be open.

“CEQA” means the California Environmental Quality Act (CEQA), constituting Section 21000 *et seq.* of the California Public Resources Code, as amended.

“City” means the City of Riverside, California.

“City Engineer” means an authorized representative from the City’s Public Works Engineering Department.

“Code” means the California Government Code.

“Community Facilities District” means Community Facilities District No. 29 of Riverside Unified School District, a community facilities district to be organized and existing under the laws of the State, including any improvement areas therein.

“Construction Site” means the site on which the Facilities are to be constructed, including off site staging areas and material storage areas.

“Contract Administrator” means the Assistant County Executive Officer/Economic Development Agency (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee as specified in the written certificate.

“County” means the County of Riverside, a political subdivision of the State, and its successors.

“County Transportation Facility” or **“County Transportation Facilities”** means one or more of those public improvements within Tract No. 33410 that are identified and described in Exhibit B attached hereto and are to be owned, operated and maintained by the County.

“County Engineer” means the Director of Transportation of the County (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee.

“CSA 152C” means Community Service Area 152C formed pursuant to Chapter 2.2, Part 2, Division 2, Title 3 of the Code (commencing at Section 25210.1).

“Developer” means collectively MRF-Groves Development, LP, a Texas Limited Partnership and Spring Mountain Investments, LLC, a California limited liability company, and either of their successors and assigns, acting as a developer of infrastructure within the Community Facilities District, including but not limited to the Facilities.

“Developer’s Representative” means the person or persons designated as such in a certificate signed by the Developer and delivered to the School District, the County, the Community Facilities District, and the Flood Control District, which certificate shall contain an original or specimen signature of each person so designated.

“Engineer” means either the City Engineer, the County Engineer or the Flood Engineer, depending on the Facility to which reference is being made.

“Facility” or “Facilities” means either a County Transportation Facility, the Sewer Collection System or a Flood Control Facility, depending on the Facility to which reference is being made.

“Flood Control District” means the Riverside County Flood Control and Water Conservation District, a public agency organized and existing pursuant to Chapter 48 of the Appendix to the California Water Code.

“Flood Control Facility” or “Flood Control Facilities” means one or more of those public improvements to be located within Tract 33410 that are identified and described in Exhibit B attached hereto and are to be owned, operated and maintained by the Flood Control District.

“Flood Engineer” means the General Manager-Chief Engineer of the Flood Control District (or any successor to the responsibilities thereof if such office is no longer in existence), or his/her designee.

“General Prevailing Wage Rates” means those rates as determined by the Director of the Department of Industrial Relations of the State.

“Hazardous Material” means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State or the United States Government, including, without limitation, any material or substance which is (a) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (33 U.S.C. § 1321), (b) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (42 U.S.C. § 6903), (c) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, (d) petroleum, or (e) asbestos.

“Indenture” means the indenture, trust agreement, resolution, fiscal agent agreement or similar instrument, regardless of title, pursuant to which bonds, notes or other evidences of indebtedness of the Community Facilities District or any improvement area therein have been issued and are outstanding, as originally executed or as the same may from time to time be supplemented or amended pursuant to the provisions thereof.

“Joint Community Facilities Agreement” means this Joint Community Facilities Agreement, as of the date hereinabove first written, by and among the School District, the Flood Control District, the County, and the Developer, as originally executed or as the same may be amended from time to time in accordance with its terms.

“Legislative Body” means the Board of Education of the School District, acting *ex officio* as the legislative body of the Community Facilities District.

“Mitigation Agreement” means “School Facilities Mitigation Agreement” to be entered into by and between the School District and the Developer, as originally executed or as the same may be amended or assigned from time to time in accordance with its terms.

“Operation and Maintenance Agreement” means the Operation and Maintenance Agreement, dated June 22, 2004, that provides the terms and conditions under which the City will

operate and maintain the Sewer Collection System; a full, true and correct copy of which is attached hereto as Exhibit H.

“Payment Request” means the document to be provided by the Developer to substantiate the Purchase Price of one or more the Facilities, which shall be substantially in the form of Exhibit F attached hereto.

“Plans” mean the plans and specifications for the Facilities prepared or to be prepared at the direction of the Developer pursuant to Section 4.1 hereof.

“Proceedings” means those proceedings to be undertaken by the Board of Education to consider the formation of the Community Facilities District and the approval by the Board of Education and the qualified electors of the Community Facilities District of the authorization to levy special taxes therein pursuant to the Rate and Method and by the Legislative Body to sell and issue the Bonds.

“Property” means the real property located within the Community Facilities District.

“Purchase Price” means, subject to the provisions of Section 3.2 hereof, the lesser of the Actual Cost or the Acquisition Cost of a Facility, allowing for the application of the provisions of Section 3.5 which provides for the modification of the Acquisition Cost and the provisions of Section 3.6 which specifies the circumstances in which additional monies may be made available to pay the Purchase Price.

“Rate and Method” means any rate and method of apportionment of special taxes authorized to be levied within the Community Facilities District or any improvement area therein pursuant to the Proceedings.

“Sewer Collection System” shall have the meaning ascribed to the term "Collection System" in the Sewer Installation Agreement and the Operation and Maintenance Agreement and as described in Exhibits G and H hereto.

“Sewer Collection System Account” means the account established pursuant to an Indenture providing for the issuance of Bonds for an Improvement Area to hold that portion of Bond proceeds to be applied to pay all or a portion of the Purchase Price for the Sewer Collection System.

“Sewer Installation Agreement” means the Amended and Restated Sanitation System Installation and Service Agreement, dated as of June 18, 2004, as amended by The First Amendment to the Amended and Restated Sanitation System and Service Agreement dated March 19, 2013, each by and between the County and the Developer that provides for the terms under which the Developer agrees to design, engineer and construct or to cause the design, engineering and construction of the Sewer Collection System and the terms under which this is to be accomplished; a full, true and correct copy of said Agreement is attached hereto as Exhibit G.

“State” means the State of California.

“School District” means Riverside Unified School District, a school district organized and existing pursuant to laws of the State.

ARTICLE II

CONDITIONS PRECEDENT

Section 2.1 Formation Proceedings. The Developer has submitted to the School District a petition requesting that the Proceedings be initiated by the School District with regard to the formation of the Community Facilities District and one or more improvement areas therein for the purpose of financing the acquisition or construction of certain public facilities, including the Facilities, to authorize the levy of special taxes within the Community Facilities District pursuant to one or more Rate and Methods and incurrence of bonded indebtedness to finance the construction and acquisition of said public facilities and for the Legislative Body to authorize the sale and issuance of the Bonds. The Developer has deposited \$4,000 with the County Executive Office for the processing and administration of this Joint Community Facilities Agreement which amounts shall be eligible for reimbursement from bond or special tax proceeds as part of any reimbursement for formation or issuance costs (to the extent of available funds therefor).

Should the formation of the Community Facilities District be approved, the Legislative Body will use its best efforts to cause to be sold and issued, pursuant to the terms of the Act and Indenture, the Bonds in one or more series and a portion of the proceeds of the Bonds are intended to provide funds that will allow the Community Facilities District to finance the acquisition of the Facilities. Should the Board of Education not form the Community Facilities District and/or the Legislative Body not sell and issue the Bonds within five years of the date hereof, the School District, the County, the Flood Control District, and the Developer will not be bound by the terms of this Joint Community Facilities Agreement and it shall be considered null and void by the parties to it.

The Developer acknowledges that the decision of the Board of Education to approve the formation of the Community Facilities District and of the Legislative Body to authorize the sale and issuance of the Bonds is an exercise of the legislative discretion of the Board of Education and Legislative Body, respectively, and that the School District may not enter into a contract or obligate either the Board of Education or the Legislative Body to exercise its legislative discretion in a particular manner. This Joint Community Facilities Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the Board of Education to approve the formation of the Community Facilities District or the Legislative Body to authorize the sale and issuance of the Bonds.

Should the Developer elect to abandon the Proceedings, the Developer shall provide written notification of such election to the School District, the County and the Flood Control District.

The Board of Education and the Legislative Body shall have the jurisdiction to and shall be solely responsible for undertaking the Proceedings consistent with the provisions of the Act, the Indenture and the applicable provisions of the Mitigation Agreement.

Section 2.2 CSA No. 152C; Ownership of the Sewer Collection System. The cost of CSA 152C to perform its obligations pursuant to the Sewer Installation Agreement and the Operation and Maintenance Agreement will not be provided by the County unless the Developer makes application for the annexation of the Tracts into CSA No. 152C. The construction and development of the Sewer Collection System is one of the conditions that have been placed on the development of the Tracts within the Community Facilities District. Once constructed the Sewer Collection System is completed consistent with the terms of this Joint Community Facilities Agreement it is to be

owned by County on behalf of the CSA. Annexation to the CSA is to occur consistent with the procedures established by the Local Area Formation Commission ("LAFCO") and the administrator for the CSA. Annexation of a Tract will be determined complete when the administrator for the CSA has received notice from LAFCO that the annexation process has been completed.

Section 2.3 Addendum to Exhibit B of this Joint Community Facilities Agreement for Modification of the Sewer Collection System. It is the intent of both the Developer and the Community Facilities District to cause one or more series of Bonds to be issued for each Improvement Area. All of the Sewer Collection System to be authorized for financing by the Community Facilities District are identified in Exhibit B in general terms and will be further defined as the improvement plans for the Tracts are submitted for review. Each Improvement Area shall be authorized to finance all or a portion of the Sewer Collection System. Further refinement of the description of such Sewer Collection System may be addressed through an addendum to Exhibit B that is to be prepared by the Contract Administrator and executed by the Contract Administrator, the County Engineer, the City Engineer and the Developer and would not require further amendment to this Joint Community Facilities Agreement. Other than the modifications described in the previous sentence, should there be additional amendments deemed necessary by the County or the City to be made to this Joint Community Facilities Agreement, said amendments are to be made pursuant to Section 6.4., hereof, and such amendments shall be made prior to the authorization by the Legislative Body to sell and issue any additional Bond series the proceeds of which will be used to finance all or a portion of the Sewer Collection System.

ARTICLE III

ACQUISITION OF FACILITIES

Section 3.1 Acquisition of Facilities. The Developer hereby agrees to transfer to the Flood Control District or the County, as appropriate, a Facility and the Purchase Price shall be paid solely through proceeds of the Bonds or special taxes collected to the extent available, subject to the terms and conditions hereof. Acceptable Title to any parcels on which any Facility is constructed and for which title is not presently held by the Flood Control District, the County and/or the City as well as the Facility financed pursuant hereto shall be transferred to the Flood Control District or the County, as appropriate, as of the Acceptance Date; provided, however, that notwithstanding such transfer, as provided in Section 4.11 hereof, the Developer shall be solely responsible for the maintenance of said Facility until the Acceptance Date of said Facility.

The Purchase Price of the Facilities is to be paid solely from the amount special taxes collected to the extent available and the amount of net bond proceeds and earnings thereon held in the Acquisition Account, and the Community Facilities District shall not be obligated to pay the Purchase Price of the Facilities except from such amounts in the Acquisition Account. Neither the School District, the Community Facilities District, the Flood Control District, the County nor the City make any warranty, either expressed or implied, that the amounts held in the Acquisition Account available for the payment of the Purchase Price of the Facilities will be sufficient for such purpose.

Notwithstanding any other provision of this Joint Community Facilities Agreement, the fact that there may not be sufficient funds available in the Acquisition Account to pay the Purchase Price for one or more Facilities will not relieve the Developer from its obligation consistent with the conditions of approval for the Tract Nos. 33410 and 34592 to construct the Facilities.

Section 3.2 Determination of Purchase Price; Processing Payment Requests. The determination of the Purchase Price and its payment shall be made consistent with the provisions of this Section 3.2.

In order to receive the Purchase Price for a completed Facility, the Developer shall deliver to the Engineer:

- (a) A complete Payment Request for said Facility, together with all attachments and exhibits to be included therewith;
- (b) A copy of the documents conveying or which previously conveyed to the Flood Control District and/or the County Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 3.4 hereof;
- (c) A copy of the Notice of Completion for said Facility that will be filed in accordance with Section 3093 of the California Civil Code, if applicable. Final lien releases must be received by the Engineer prior to the Engineer executing the Payment Request which determines the Purchase Price for said Facility and authorizes payment;
- (d) The Developer's civil engineer of record or construction civil engineer of record duly registered in the State shall provide to the Flood Control District or the County, as appropriate, redlined "as-built" plans and profile sheets for the Facility. After the Flood Control District's or the County's, as applicable, approval of the redlined "as-built" drawings, the Developer's engineer shall schedule with the Flood Control District or the County, as appropriate, a time to transfer the redlines onto the Flood Control District's or the County's original mylars at the Flood Control District's or the County's office, after which, said engineer shall review, stamp and sign the original mylars "Record Drawings."

Notwithstanding anything to the contrary contained herein, no determination of the Purchase Price for any Facility shall be made unless the Flood Control District or the County, as appropriate, has by written notice to the Community Facilities District stated that the Flood Control District or the County is willing to accept the Facility as constructed into its maintained system as of the Acceptance Date. Prior to issuance of said notice of acceptance of a Facility for ownership, operation and maintenance by the Flood Control District, the County or the City, as appropriate, each of the following shall be furnished or completed by the Developer to the satisfaction of the Engineer:

- (i) Documents by which the Developer conveys or causes to be conveyed to the Flood Control District an easement, including ingress and egress, in a form approved by the Flood Control District, for the rights of way shown in concept cross-hatched blue on Exhibit D, and policies of title insurance, in an amount not less than fifty percent (50%) of the estimated fee value, as determined by the Flood Control District, for each parcel so conveyed have been provided to the Flood Control District;
- (ii) Acceptance by County of all dedicated rights of way deemed necessary by the County and Flood Control District for the operation and maintenance of said Facility;
- (iii) Facility must be in a satisfactorily maintained condition.

Once the Engineer has been provided with a complete Payment Request Form and all other documents as required by him to determine the Purchase Price, the Engineer will sign the Payment Request Form, identifying the Purchase Price to be paid and (i) forward said document to the Administrator for payment and (ii) provide written notice to the Community Facilities District and the School District. Upon receipt of such a completed Payment Request from the Engineer, the Administrator shall within 5 days thereof submit it to the fiscal agent or trustee for the [Acquisition] Account from which the Purchase Price is to be paid and/or to the Community Facilities District to be paid from the Allocated Special Taxes, together with such other information as the fiscal agent or trustee or the Community Facilities District may require to authorize payment of the Purchase Price. If at the time such a Payment Request is received by the Administrator, there are not sufficient funds to pay the Purchase Price for the identified Facility, the Administrator shall notify the Engineer and the Developer of the amount of funds that are to be applied to payment of a portion of the Purchase Price for such Facility, and shall authorize the fiscal agent or trustee or the Community Facilities District to pay the available amount to the Developer or its assigns as a partial payment of the Purchase Price for such Facility. Nothing in this Joint Community Facilities Agreement shall relieve the Developer from transferring the Facility to the County in the event of Bond proceeds are insufficient to pay the Purchase Price.

The County and Flood Control District, as applicable, will cooperate in good faith with the Developer to provide timely review of all documentation and/or evidence required to be submitted to them pursuant to this Section and shall accept and/or inspect, as required the dedicated rights of way, Acceptable Title and the Facility as soon as such is offered for dedication, provided or completed for review and/or inspection.

Section 3.3 Accounting.

School District or the Community Facilities District agrees to maintain full and accurate records of all amounts, and investment earnings, if any, expended from the Acquisition Account. School District or the Community Facilities District will, upon request, provide the County Flood Control District and/or the Developer with access to School District's or the Community Facilities District's records related to the Acquisition Account.

Section 3.4 Dedication of Property and Easements to the Flood Control District and the County. For purposes of this Section, the applicability of the references to the Flood Control District or the County is to be determined by the Facility for which Acceptable Title is required. Acceptable Title to all property not presently held by the Flood Control District or the County on, in or over which the Facility will be located shall be deeded over to the Flood Control District or the County by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such easement is approved by Flood Control District or the County as being a sufficient interest therein to permit Flood Control District or the County to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Joint Community Facilities Agreement.

The Developer shall furnish to the Flood Control District, the County and/or the City, as applicable, a title report for such property not previously dedicated or otherwise conveyed to the Flood Control District, the County or the City for review and approval not more than thirty (30) calendar days prior to or concurrent with the notice required by Section 4.7 hereof. The Flood Control District and the County shall review the title report and determine if it reveals a matter that, in the sole reasonable judgment of the Flood Control District and the County, could materially affect

the Flood Control District's, the County's use and enjoyment of any part of the property or easement covered by the title report. The City may review the title report in accordance with its rights and obligations under the Operation and Maintenance Agreement. In the event the Flood Control District or the County does not approve such title report, the Flood Control District or the County shall notify the Administrator and the Developer in writing and the Flood Control District or the County shall not be obligated to accept title to said Facility, and the School District, acting for and on behalf of the Community Facilities District, shall not be obligated to pay any portion of the Purchase Price for said Facility until the Developer has cured such objections to title to the reasonable satisfaction of the Flood Control District or the County.

Consistent with the preceding paragraph, the Developer shall obtain and provide, or cause to be obtained or provided, to the Flood Control District or the County duly executed irrevocable offer(s) of dedication to the public for flood control or drainage purposes, including ingress and egress, for rights of way deemed necessary by the Flood Control District or the County for the construction, inspection, operation and maintenance of the Facilities as identified in Exhibit B, and as shown in concept, cross-hatched in blue, on Exhibit D which is attached hereto and by this reference incorporated herein. The irrevocable offer(s) of dedication shall be in a form approved by the Flood Control District or the County and shall be executed by all legal and equitable owners described in the offer.

Section 3.5 Modifications to the Facilities and Stated Acquisition Cost. The Administrator, the Flood Control District, the County and the Developer may make modifications in the composition and description of any Facility, or in the amount of the Acquisition Cost for said Facility, whenever the Administrator, the Flood Engineer, the County and the Developer deem such modifications to be appropriate; provided, however, that such Facility, as so modified, must be fully functioning and capable of being used for its intended purpose and must be consistent with the description of the Facility in the Proceedings. Any such modification shall be approved and implemented by the Administrator, on behalf of the Community Facilities District, the Flood Engineer, on behalf of the Flood Control District, the County Engineer, on behalf of the County, the City Engineer, on behalf of the City, and the Developer by executing a supplement to Exhibit B containing a description of the modified Facility and, if applicable, the adjusted Acquisition Cost. Upon the execution of any such supplement to Exhibit B, the description of the Facility and, if applicable, the adjusted Acquisition Cost in Exhibit B shall be deemed to have been modified in accordance therewith. Any modification made pursuant to this Section shall not be deemed to be an amendment of this Joint Community Facilities Agreement for purposes of Section 6.4 hereof. No Facility may be deleted from or added to Exhibit B pursuant to this Section 3.4. The deletion or addition of a Facility from Exhibit B constitutes an amendment to this Joint Community Facilities Agreement and may only be made pursuant to Section 6.4 hereof.

Section 3.6 Application of Realized Savings. If the Purchase Price paid for a Facility is less than the Acquisition Cost of said Facility, then the difference is to be identified as "savings" that are available and can be applied to increase the Purchase Price of another Facility or other improvements authorized to be financed with the proceeds of the Bonds, provided that said Purchase Price shall not exceed the actual cost of said Facilities. The determination as to whether an adjustment to the Acquisition Cost pursuant to this Section 3.6 is to be made by the Administrator and an appropriate supplement to Exhibit B is to be prepared by the initiating party and approved by the Administrator, on behalf of the School District, the Flood Engineer on behalf of the Flood Control District, the County Engineer, on behalf of the County, and the Developer.

ARTICLE IV

CONSTRUCTION OF THE FACILITIES

Section 4.1 Preparation and Approval of Plans. To the extent that the Developer has not already done so, it shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans from the Flood Engineer, the City Engineer, as required by the Operation and Management Agreement and/or the County Engineer, as required. The Engineer shall provide review and approval or written disapproval and comments to the Developer. The County Engineer and the City Engineer shall provide review and approval or written disapproval and comments to the Developer after submission of such Plans and Specifications to the County Engineer and the City Engineer, in accordance with the Operation and Management Agreement. Should changes need to be made, the County Engineer and the City Engineer, as applicable, will review any additional submissions of the Plans and Specifications and provide written approval or disapproval and comments thereon. The Developer shall provide a copy of all such Plans to the Flood Engineer, the City Engineer, as required by the Operation and Management Agreement, and the County Engineer. Once the Plans have been approved, no changes are to be made thereto without prior written consent of the Flood Control District and/or the County and the City Engineer, as required by the Operation and Management Agreement, as applicable.

Section 4.2 Duty of Developer to Construct. Should Developer proceed with construction of any of such Facilities, the Developer shall construct or cause to be constructed such Facilities in accordance with the Plans approved by the Flood Engineer, the City Engineer and/or the County Engineer. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of the Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing commercially reasonable efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. Notwithstanding the foregoing, nothing set forth in this Joint Community Facilities Agreement shall be construed (i) to require the Developer to perform any work requiring a contractor's license, nor shall the Developer be deemed to be performing construction services pursuant to this Joint Community Facilities Agreement or (ii) to require the Developer to cause the Plans to be prepared for the Facilities at a specific time or in a manner other than as required by the approved conditions for the development of the Property.

Section 4.3 Bid and Construction Requirements.

(a) In order to ensure that a Facility is constructed as if it had been constructed under the direction and supervision, or under the authority of, a public agency, so that they may be acquired pursuant to Section 53313.5 of the Code, the Developer shall comply with all of the requirements set forth in Exhibit C. The provisions of this Section 4.3 and Exhibit C, which is attached hereto and by this reference incorporated herein, shall be applicable for each Facility.

(b) Prior to awarding a construction contract for any Facilities, the Developer shall submit a bid packet for review to the Flood Engineer, City Engineer and the County Engineer, as appropriate. The contract for construction of any Facility is to be awarded to the responsible bidder submitting the lowest responsive bid after notice inviting sealed bids. Sealed bids are to be publicly solicited consistent with the provisions of Exhibit C. The

Flood Control District, the County and/or the City, as appropriate, is to be provided with copies of all bids received to assure that the Developer adheres to the applicable legal requirements for public works projects.

(c) The Developer shall require, and the Plans, bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on a Facility, to pay not less than General Prevailing Wage Rates to all workers employed in the execution of the contract, to post a copy of the General Prevailing Wage Rates at the job-site in a conspicuous place available to all employees and applicants for employment, and to otherwise comply with applicable provisions of the California Labor Code, the Code and the California Public Contract Code relating to General Prevailing Wage Rates as required by the specifications approved by the Engineer. General prevailing Wage Rates are available from the California Department of Industrial Relations (DIR). Refer to Exhibit C for DIR's website and additional DIR requirements.

(d) The Developer shall require each principal contractor to provide proof of insurance coverage satisfying the requirements of Section 4.12 hereof throughout the term of the construction of the Facilities. Rather than requiring its principal contractors to provide such insurance, the Developer may elect to provide the same for the benefit of its principal contractors.

(e) Each principal contractor engaged to perform work on any Facility shall be required to furnish (i) labor and material payment bonds, and (ii) contract performance bonds, each in an amount equal to 100% of the contract price naming the Developer, the Community Facilities District, the Flood Control District, the School District, the County and the City as obligees and issued by a California admitted surety having a current A.M. Best A:VIII (A:8) rating or an admitted surety insurer which complies with the provisions of Section 995.660 of the California Code of Civil Procedure. All such bonds shall be in a form as shown in Exhibit E. The bonds tendered pursuant to this sub-section are to be accepted and held by the County Engineer. Rather than requiring its principal contractors to provide such bonds, the Developer may elect to provide the same for the benefit of its principal contractors.

(f) The Developer shall comply, and shall cause each contractor, subcontractor, vendor, equipment operator and owner operator, in each such case to the extent such individual or entity is engaged to perform work on the Facilities, to comply, with such other requirements relating to the construction of the Facilities as the Flood Control District or the County, as appropriate, may impose by written notification delivered to the Developer, to the extent legally required as a result of changes in applicable federal, State or County laws, rules or procedures.

(g) The Developer shall require, and the Plans and bid and contract documents shall require, all contractors, subcontractors, vendors, equipment operators and owner operators, in each such case to the extent such individuals or entities are engaged to perform work on the Facilities, to submit certified weekly payroll records or other proof of payment of General Prevailing Wage Rates to the Developer for inspection by the Administrator, and to furnish certified payroll records or such other proof of payment of General Prevailing Wage Rates to the Engineer promptly upon request.

(h) All change orders for an amount over \$25,000 shall be reviewed and approved by the Engineer for the purpose of ensuring that they comply with Flood Control District or County standards, which review and approval shall not be unreasonably withheld. In order for a change order to be accepted as an eligible element of the Purchase Price of a Facility, the provisions of Sections 3.4 and 3.5 hereof shall first be satisfied.

(i) The Developer shall provide proof to the Administrator and the Engineer, at such intervals and in such form as the Administrator or the Engineer may require, that the foregoing requirements have been satisfied as to all of the Facilities.

(j) Prior to submission of any Plans, right of way or approval documents, the Developer shall deposit with the Flood Control District and/or the County, as appropriate a sufficient dollar amount to cover the anticipated costs, deemed necessary and reasonable, associated with the review and approval of the Plans, the review and approval of right of way and conveyance documents (the "Plan Review and Conveyance Costs"). The Developer, within thirty (30) days after receipt of an additional billing for any Plan Review and Conveyance Costs, will forward the billed amount to the Flood Control District or the County, as appropriate.

(k) At the time the Developer submits a "Notice of Intent" to commence construction as set forth in Section 4.7 below, the Developer shall deposit with Flood Control District (Attention: Business Office – Accounts Receivable) or with the County, as appropriate, the estimated cost of providing construction inspection for the Facilities (the "Construction Inspection Deposit"), in an amount as determined and approved by Flood Control District or the County in accordance with Ordinance Nos. 671 and 749 of the County, including any amendments thereto, based upon the bonded value of Facilities to be inspected, operated and maintained by Flood Control District or the County, as applicable.

Section 4.4 Licenses, and Regulatory Permits. Prior to commencement of Construction of the Facilities the Developer shall secure all necessary licenses, agreements, permits, rights of entry and temporary construction easements (collectively "Licenses") that may be needed for the construction, inspection, operation and maintenance of the Facilities. The Developer is to secure all permits approvals or agreements, if any, required by the various Federal, State, and local resource and/or regulatory agencies (collectively, the "Regulatory Permits") for the construction, operation and maintenance of the Facilities. The Regulatory Permits include, but are not limited to, those permits issued by the U.S. Army Corps of Engineers, the State Water Resources Control Board ("SWRCB"), California State Department of Fish and Wildlife and the Regional Water Quality Control Board. All Licenses and Regulatory Permits secured by the Developer shall be reviewed by the Engineer prior to execution or acceptance by the Developer to determine whether the conditions they specify are satisfactory to the Flood Control District, the County or the City, as applicable, to allow it to operate and maintain the Facilities.

Section 4.5 NPDES Compliance. The Developer shall prepare and implement, or cause to be prepared and implemented, a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the latest State's National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities and any amendments thereto (the "General Permit"). The General Permit is issued by Order of and adopted by the State Water Resources Control Board. The General Permit

regulates both stormwater and non-stormwater discharges associated with construction activities required for the Facilities covered by this Joint Community Facilities Agreement.

The SWPPP shall identify site specific "Best Management Practices" ("BMPs") to be implemented during and after construction to control pollution of Stormwater runoff and receiving waters. The identified BMPs shall include, but not be limited to, "good housekeeping" practices for the Construction Site such as establishing stabilized construction access points, providing adequate sanitary/septic waste management, designating vehicle and equipment cleaning/maintenance areas, employing proper material handling and storage practices, maintaining adequate soil stabilization and erosion control practices to control the discharge of pollutants from the Construction Site and any activities thereon. The SWPPP shall also stipulate to an ongoing program for monitoring and maintenance of all BMPs.

The Developer shall be solely responsible throughout the duration of constructing the Facilities for placing, installing, constructing, inspecting and maintaining all BMPs identified in the SWPPP and amendments thereto and for removing and disposing of temporary BMPs.

The Developer shall become fully informed of and comply with the applicable provisions of the General Permit, Federal, State and local regulations that govern the Developer's activities and operation pertaining to both stormwater and non-stormwater discharges from the Construction Site of the Facilities and any area of disturbance outside said Construction Site relating to the Facilities. The Developer shall, at all times, keep copies of the General Permit, approved SWPPP and all amendments at the Construction Site. The SWPPP shall be made available upon request of a representative of the SWRCB, Santa Ana Regional Water Quality Control Board, or the United States Environmental Protection Agency. The Developer shall, at reasonable times, allow authorized agents of the above sited agencies, upon the presentation of credentials to: (i) enter upon the Construction Site; (ii) have access to and copy any records required to be kept as specified in the General Permit, (iii) inspect the Construction Site and determine whether related soil stabilization and sediment control BMPs have been implemented and maintained, and (iv) sample or monitor stormwater or non-stormwater runoff for purposes of ensuring compliance with the General Permit.

The Developer shall be solely and exclusively responsible for any arrangements made between it and other property owners or entities that result in disturbance of land at the Construction Site.

The Developer shall be responsible for all costs and for any liability imposed by law as a result of its failure to comply with the requirements set forth in this Section, including but not limited to, compliance with the applicable provisions of the General Permit and Federal, State and local regulations. For the purpose of this Section, costs and liabilities include, but are not limited to, fines, penalties and damages whether assessed against the Flood Control District, the County, the City, the School District, the Community Facilities District or the Developer, including those levied under the Federal Clean Water Act and the State's Porter-Cologne Water Quality Act.

Section 4.6 Cal/OSHA, Confined Space Entry. At all times during the construction of the Facilities, the Developer shall require all contractors to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintenance of a safe working environment for the Flood Control District, the County, the School District and their respective employees on the site. This will include the preparation of a confined space procedure specific for all storm drain facilities. The procedure shall comply with requirements contained in Sections 5156,

5157 and 5158 of Title 8 of the California Code of Regulations and the Flood Control District's "Confined Space Procedure, SOM-18" and the County Program Agency Policy 13. The confined space procedure is to be reviewed and approved by the Engineer before proceeding with construction of the Facilities.

Section 4.7 Notice of Intent to Commence Construction. Not less than twenty (20) Business Days prior to the date on which it intends to commence construction on a Facility, the Developer is to provide written "Notice of Intent" to the Engineer. Construction of a Facility may not proceed until the Engineer issues a written "Notice to Proceed" to the Developer. The "Notice of Intent" is to include the following documents:

(a) Copies of all Licenses and Regulatory Permits secured pursuant to Sections 4.4 and 4.5, above, including a copy of the Notice of Intent ("NOI") and waste discharge identification number ("WDID No.") received from the SWRCB pursuant to Section 4.5, above.

(b) County's written confirmation of its approval and acceptance of the bonds required by Section 4.3(e), above.

(c) Construction Inspection Deposit required by Section 4.3(k), above. The Flood Control District's construction inspection staff is limited and, therefore, the issuance of a Notice to Proceed with regard to Flood Control Facilities is subject to staff availability. In the event the Developer wishes to expedite issuance of the Notice to Proceed with regard to Flood Control Facilities, the Developer may elect to furnish an independent qualified construction inspector. The Developer shall furnish appropriate documentation of the individual's credentials and experience to the Flood Control Engineer for review and approval. The Flood Control Engineer shall review the individual's qualifications and experience and, upon approval, said individual shall be "deputized" and authorized to act on the Flood Control District's behalf on all construction inspection and quality control matters. If the Developer's initial construction inspection deposit furnished pursuant to Section 4.3(k) exceeds the amount of \$5,000, the Flood Control District shall refund to the Developer up to eighty percent (80%) of the Developers initial inspection deposit within forty-five (45) days of the Flood Engineer's approval of the "deputized" inspector; however, a minimum balance of \$5,000 shall be retained in the account

(d) Duly executed irrevocable offer(s) of dedication to the public for flood control purposes, including ingress and egress, for the rights of way deemed necessary by the Flood Control District, the County and/or the City for the construction, inspection, operation and maintenance of the Facilities.

(e) Preliminary reports of title dated not more than thirty (30) days prior to date of submission for all property described in the irrevocable offer(s) of dedication.

(f) A complete list of all contractors and subcontractors to be performing work on the Facilities, including the corresponding license number and license classification of each. On said list, the Developer shall also identify its designated superintendent for construction of the Facilities.

(g) A construction schedule which shall show the order and dates in which the Developer and the Developer's contractor proposes to carry on the various parts of work, including estimated start and completion dates. As the construction progresses, the Developer shall update said construction schedule upon request.

(h) The final mylar plan and profile sheets for the Facilities and assign their ownership to the Flood Control District or the County, as appropriate, prior to the start of construction of each Facility.

(i) Certificates of insurance and endorsements as required by Section 4.12. below.

(j) The confined space entry procedure as required by Section 4.6, above.

Section 4.8 Bonding Requirements. The Developer shall post such subdivision bonds as are required by the County in connection with the recording of all subdivision maps for the Property.

Section 4.9 Additional Conditions to be Satisfied during Construction.

(a) The Developer shall make a good faith effort to complete construction of the Facilities within twenty-four (24) consecutive months after the date of issuance of the Bonds. It is expressly understood that since time is of the essence in this Joint Community Facilities Agreement, failure of the Developer to perform the work within the agreed upon time shall constitute authority for the Flood Control District, the City and/or the County, as appropriate, to cause the remaining work to be performed and the cost thereof to be paid from the Acquisition Account, and should the amounts held in the Acquisition Account prove insufficient to complete the Facilities, the Flood Control District, the City and/or the County, as appropriate, may require the Developer's surety to pay to the Flood Control District the penal sum of any and all bonds.

(b) Construction of the Facilities shall be on a five (5) day, forty (40) hour workweek with no work on Saturday, Sundays or days designated by the Flood Control District, the County and the City as legal holidays, unless otherwise approved by the Flood Control District, the City or the County. If the Developer feels it is necessary to work more than normal forty (40) hour workweek or on holidays, the Developer shall make a written request for permission from the Flood Control District, the City or the County to work the additional hours (with a copy to the County Engineer). The request shall be submitted to the Flood Control District, the City or the County at least 72 hours prior to the request date for additional work hours and state the reasons for the overtime and the specific time frames required. The decision granting permission for overtime work shall be made by the Flood Control District, the City or the County immediately, at its sole discretion and shall be final. If permission is granted, the Developer will be charged the cost incurred at the overtime rates for additional inspection time required in connection with the overtime work in accordance with Ordinances Nos. 671 and 749 of the County, including any amendments thereto.

Section 4.10 Inspection; Completion of Construction. The Engineer shall have primary responsibility for providing inspection of the work of construction of the Facilities to ensure that the work of construction is accomplished in accordance with the Plans approved by the Flood Control

District, the City and/or the County. The Engineer, or his/her designee, shall have access to the Construction Site at all reasonable times for the purpose of accomplishing such inspection.

Upon completion of construction of a Facility, the Developer is to provide the Engineer with written notice that it considers construction of said Facility to have been completed consistent with the approved Plans and, upon receipt of said notice, the Engineer, or his/her designee, shall perform a final inspection of said Facility. Upon finding that construction of said Facility is completed in accordance with the County, the City and Flood Control District approved Plans and the provisions of this Joint Community Facilities Agreement the Engineer, or his/her designee, shall provide written confirmation to the Developer that construction of said Facility has been satisfactorily completed.

Upon receipt of both written notices, the Engineer will in a timely manner notify both the Developer and the School District that the Facility has been satisfactorily completed and that the Developer is to proceed with the recording of a Notice of Completion with respect to such construction pursuant to Section 3093 of the California Civil Code. The Developer is to provide a duplicate copy of the recorded Notice of Completion to the Administrator and the Flood Control District, the City or the County, as appropriate.

Section 4.11 Maintenance of Facilities; Warranties. The Developer shall maintain any Facility in good and safe condition until the Acceptance Date of said Facility. Prior to the Acceptance Date, the Developer shall be solely responsible for maintaining said Facility in proper operating condition, and shall perform such maintenance on said Facility as the Engineer reasonably determines to be necessary. As of the Acceptance Date, the performance bond provided by the Developer for said Facility pursuant to Section 4.3(e) hereof shall be reduced to an amount equal to 10% of the original amount thereof and shall serve as a warranty bond to guarantee that said Facility will be free from defects due to faulty workmanship or materials for a period of 12 months from the Acceptance Date, or the Developer may elect to provide a new warranty bond or cash in such an amount, and said warranty bond will be discharged 12 months from the Acceptance Date. At the conclusion of said 12 month period, the Developer shall assign to Flood Control District, the City or the County, as appropriate, all of the Developer's rights in any warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to said Facility.

Section 4.12 Insurance Requirements. Without limiting or diminishing the Developer's obligation to indemnify or hold the Flood Control District, the City, the County, Community Facilities District and the School District harmless pursuant to Section 5.5 hereof, the Developer shall procure and maintain or cause to be procured and maintained, at its sole cost and expense the following insurance coverages, or alternate coverages acceptable to the County's Risk Manager, relating to the construction of the Facilities pursuant to this Joint Community Facilities Agreement:

(a) *Commercial General Liability:* Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations, explosion, collapse, use of cranes, and other heavy equipment and underground hazards, personal and advertising injury covering claims which may arise from or out of the Developer's performance of its obligations hereunder. The policy shall name by endorsement the Flood Control District, the City, the County, the Community Facilities District, the School District, their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than \$2,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it

shall apply separately to this Joint Community Facilities Agreement or be no less than two (2) times the occurrence limit.

(b) *Vehicle Liability:* The Developer shall maintain liability insurance for all owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Joint Community Facilities Agreement or be no less than two (2) times the occurrence limit. Policy shall name by endorsement the Flood Control District, the City, the County, the Community Facilities District, the School District, their respective directors, officers, Board of Supervisors, Board of Education, Legislative Body, elected officials, employees, agents or representatives as Additional Insureds.

(c) *Worker's Compensation Insurance:* The Developer shall maintain Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupation Disease with limits not less than \$1,000,000 per person per accident. Policy shall be endorsed to waive subrogation in favor of the Flood Control District, the City, the County, the Community Facilities District, the School District; and if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

General Insurance Provisions - all lines:

(i) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State and have an A.M. Best rating of not less than an A:VIII (A:8) unless such requirements are waived, in writing, by the County's Risk Manager.

(ii) The Developer's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the County's Risk Manager before the commencement of construction of the Facilities under this Joint Community Facilities Agreement. Upon notification of deductibles or self-insured retentions which are deemed unacceptable to the Flood District, the City and/or County, at the election of the County's Risk Manager, the Developer's carriers shall either: (i) reduce or eliminate such deductibles or self-insured retentions as respects the Facilities or coverage required by this Joint Community Facilities Agreement with the Flood District, the City and the County, as applicable, or (ii) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses in relation to the Facilities or coverage required by this Joint Community Facilities Agreement.

(iii) The Developer shall cause its insurance carrier(s) to furnish the Flood Control District, the City and the County with (i) a properly executed original certificate(s) of insurance and certified original copies of endorsements effecting coverage as required herein; or (ii) evidence of coverage acceptable to the County's Risk Manager that may include original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect.

(iv) Further, said certificate(s) and endorsements to policies of insurance shall contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Flood Control District, , the City, the County and the School District

prior to any material modification or cancellation of such insurance that contravenes the coverage required in this Section 4.12. In the event of a material modification or cancellation of coverage, this Joint Community Facilities Agreement shall terminate forthwith, unless the Flood Control District, the City, the County and the School District receive, prior to such effective date, another properly executed original certificate of insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance required herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the certificate of insurance.

(v) *The Developer shall not commence construction of the Facilities until the Flood Control District, the City and the County have been furnished either original certificate(s) of insurance and certified original copies of endorsement, policies of insurance including all endorsements and any and all other attachments as required in this Section, or other evidence of coverage acceptable to County's Risk Manager.*

(vi) It is understood and agreed by the parties hereto and the Developer's insurance company(s) that the certificate(s) of insurance and policies shall so covenant and shall be construed as primary insurance, and the Flood Control District, the City and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

Section 4.13 Ownership of Facilities. (a) Notwithstanding the fact that some or all of the Facilities may be constructed in dedicated street rights of way or on property which is owned by or has been or will be dedicated to the Flood Control District, the City or the County, the Facilities shall be and remain the property of the Developer until Acceptable Title to parcels not owned by the Flood Control District, the City or the County is conveyed to the Flood Control District or the County, as appropriate, as provided herein. Ownership of said parcels by the Developer or other third parties shall likewise not be affected by any agreement that the Developer may have entered into or may enter into with the County pursuant to the provisions of the Subdivision Map Act, Section 66410 *et seq.* of the Code, and the provisions of this Section shall control.

(b) The County is to own, maintain and operate those catch basins, storm drain pipes, connector pipes and laterals within those street rights-of-way in which the Flood Control Facilities are located. The County, by execution of this Agreement, grants to the Developer the right to construct the Facilities and to the Flood Control District the right to construct, inspect, operate and maintain the Flood Control Facilities located within those County rights-of-way in which the Flood Control Facilities are located.

(c) Consistent with the Sewer Installation Agreement and the Operation and Maintenance Agreement, the County, by execution of this Joint Community Facilities Agreement, grants to the Developer the right to construct the Sewer Collection System with their respective rights-of-way. The County, by the execution of this Joint Community Facilities Agreement, grants to the City the right to inspect, operate and maintain the Sewer Collection System located within those County rights-of-way in which the Sewer Collection System is located. The County shall be granted the right to own those portions of the Sewer Collection System which are located in the City's rights-of-way in accordance with the Operation and Maintenance Agreement.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS; INDEMNIFICATION

Section 5.1 Representations, Warranties and Covenants of the Developer. The Developer makes the following representations, warranties and covenants for the benefit of the Flood Control District, the County, the School District, and the Community Facilities District, when formed, as of the date hereof:

(a) Organization. MRF-Groves Development, LP represents and warrants that it is a limited partnership duly organized and validly existing under the laws of the State of Texas, is in good standing under the laws of such state, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

Spring Mountain Investment, LLC represents and warrants that it is a limited liability company duly organized and validly existing under the laws of the State of California, is in good standing under the laws of such state, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

(b) Authority. The Developer represents and warrants that it has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all action necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the Developer.

(c) Binding Obligation. The Developer represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the Developer and is enforceable against the Developer in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(d) Compliance with Laws. The Developer covenants that, while the Facilities are owned by the Developer or required pursuant to this Joint Community Facilities Agreement to be maintained by the Developer, it will not commit, suffer or permit any of its agents, employees or contractors to commit any act to be done in, upon or to the Facilities in violation in any material respect of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Facilities.

(e) Payment Requests. The Developer represents and warrants that (i) it will not request payment from the Community Facilities District under this Joint Community Facilities Agreement for the acquisition of any improvements that are not part of a Facility, and (ii) it will diligently follow all procedures set forth in this Joint Community Facilities Agreement and the Mitigation Agreement.

(f) Financial Records. Until the determination of the Purchase Price of all Facilities to be financed by the Community Facilities District, the Developer covenants to maintain proper books of record and account for the Facilities and all costs related thereto.

The Developer covenants that such accounting books will be maintained in accordance with generally accepted accounting principles, and will be available for inspection by the Community Facilities District, the Flood Control District, the City, the County and the School District, and their respective agents, at any reasonable time during regular business hours on two (2) Business Days' prior written notice, subject to mutually acceptable arrangements regarding the confidentiality of proprietary data.

(g) Hazardous Materials. The Developer represents and warrants that neither the Developer, nor any subcontractor, agent or employee thereof will use, generate, manufacture, procure, store, release, discharge or dispose of any Hazardous Material on, under or about the Construction Site or the Facilities or transport any Hazardous Material to or from the Construction Site or the Facilities in violation of any federal, state or local law, ordinance, regulation, rule, decision or policy statement regulating Hazardous Material.

(h) Permits. The Developer covenants that it will pursue in a commercially reasonable manner all governmental or other permits or licenses required to proceed with the construction of the Facilities and that it will pay all fees relating thereto. The Developer represents and warrants that to the best of the Developer's knowledge, as of the date hereof, there is no material legal impediment to the Developer's proceeding with and completing the construction of the Facilities or to the development of the Construction Site as contemplated by the Developer, except for government or other permits to be obtained.

(i) Environmental Matters. The Developer represents and warrants that it has complied with, or has caused compliance with, CEQA as required for the construction, operation, and maintenance of the Facilities and their conveyance to the Flood Control District or the County, as appropriate.

Section 5.2 Representations, Warranties and Covenants of the School District. The School District makes the following representations, warranties and covenants for the benefit of the Flood Control District, the County, the Community Facility District, when formed, and the Developer:

(a) Authority. The School District represents and warrants that the School District has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all actions necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the School District.

(b) Binding Obligation. The School District represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the School District and is enforceable against the School District in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Payment Requests. The School District represents and warrants that the School District will follow all procedures set forth in the Mitigation Agreement and this Joint Community Facilities Agreement.

(d) Financial Records. Until the final Acceptance Date, the School District covenants to maintain, or cause to be maintained, proper books of record and account for the special taxes and the Bonds. The School District covenants that such accounting books will be maintained in accordance with generally accepted accounting principles applicable to governmental entities, and will be available for inspection by the Developer and its agents at any reasonable time during regular business hours on two Business Days' prior written notice.

Section 5.3 Representations, Warranties and Covenants of the Flood Control District. The Flood Control District makes the following representations, warranties and covenants for the benefit of the School District, the County, the Community Facilities District, when formed, and the Developer:

(a) Authority. The Flood Control District represents and warrants that the Flood Control District has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all action necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the Flood Control District.

(b) Binding Obligation. The Flood Control District represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the Flood Control District and is enforceable against the Flood Control District in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Completion of Flood Control Facilities. The Flood Control District covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required of it in issuing permits, processing and approving Plans and inspecting the Flood Control Facilities in accordance with this Joint Community Facilities Agreement.

Section 5.4 Representations, Warranties and Covenants of County. The County makes the following representations, warranties and covenants for the benefit of the School District, the Flood Control District, the Community Facilities District, when formed, and the Developer:

(a) Authority. The County represents and warrants that the County has the power and authority to enter into this Joint Community Facilities Agreement, and has taken all action necessary to cause this Joint Community Facilities Agreement to be executed and delivered, and this Joint Community Facilities Agreement has been duly and validly executed and delivered on behalf of the County.

(b) Binding Obligation. The County represents and warrants that this Joint Community Facilities Agreement is a valid and binding obligation of the County and is enforceable against the County in accordance with its terms, subject to bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights in general and by general equity principles.

(c) Debt Policy Compliance. The County represents and warrants that it is, or prior to the issuance of Bonds by the Community Facilities District it shall be, in compliance

with the requirements of establishing a debt policy as set forth in Senate Bill No. 1029 chaptered on September 12, 2016.

(d) Completion of the County Transportation Facilities. The County covenants that it will use its reasonable and diligent efforts to take expeditiously all actions that may be lawfully required of it in issuing permits and processing and approving Plans in accordance with this Joint Community Facilities Agreement.

(e) CEQA Compliance. The County represents and warrants that it has taken all actions necessary under CEQA to allow for the development of Tract Map Nos. 33410 and 34592 and the construction of the public improvements, including the Flood Control Facilities.

Section 5.5 Indemnification. The Developer (the "Indemnifier") agrees to protect, indemnify, defend and hold the School District, the Community Facilities District, when formed, the Flood Control District, the City, the County, and their respective directors, officers, Board of Supervisors, Board of Education, the Legislative Body, elected officials, employees, and representatives (the "Indemnified Parties" and individually, an "Indemnified Party"), and each of them, harmless from and against any and all claims, liabilities, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorney's fees, and court costs which an Indemnified Party, or any combination thereof, may suffer or which may be sought against or recovered or obtained from an Indemnified Party, or any combination thereof, as a result of or by reason of or arising out of or in consequence of (a) the approval of this Joint Community Facilities Agreement, (b) the design, acquisition, construction, or installation of any Facility, (c) an assertion, pursuant to Article I, Section 7 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seek to impose any other liability or damage whatsoever, from the diversion of the waters from their natural drainage patterns, or from the discharge of drainage from the Facilities, (d) the untruth or inaccuracy of any representation or warranty made by the Developer in this Joint Community Facilities Agreement or in any certifications delivered by the Developer hereunder, or (e) any act or omission of the Developer or any of its contractors, subcontractors, or their respective officers, employees or agents, in connection with the design and/or construction of the Facilities. If the Developer fails to do so, the Indemnified Parties, or each of them, shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including reasonable attorney's fees or court costs, to and recover the same from the Developer.

Notwithstanding the foregoing, no indemnification is required to be paid by the Developer for any claim, loss or expense (a) arising directly from the willful misconduct or active negligence of the Indemnified Party or (b) arising from the use or operation of a Facility after the Acceptance Date of said Facility, unless such claim, loss or expense results from the defective or improper design, acquisition, construction or installation of such Facility by the Indemnifier or their agents.

The provisions of this Section shall survive the discharge or other termination of this Joint Community Facilities Agreement.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Developer as Independent Contractor. In performing under this Joint Community Facilities Agreement, it is mutually understood that the Developer is acting as an independent contractor, and not as an agent of the School District, the Community Facilities District, the Flood Control District, the City or the County. Neither the School District, the Flood Control District nor the County shall have any responsibility for payment to any contractor, subcontractor or supplier of the Developer. The School District, acting for and on behalf of the Community Facilities District, shall not have any responsibility for payment to any contractor, subcontractor or supplier of the Developer, unless such entity or individual is specifically listed as a payee on the Payment Request submitted by Developer pursuant to this Joint Community Facilities Agreement in which case the School District, acting for and on behalf of the Community Facilities District, shall be responsible for making such payment only if such Payment Request is approved pursuant to the provisions of this Joint Community Facilities Agreement and only from funds available in the Acquisition Account.

Section 6.2 Other Agreements. Nothing contained herein shall be construed as affecting the Flood Control District, the City, the County, School District, or the Developer's respective duty to perform its respective obligations under other agreements, land use regulations or subdivision requirements relating to the development of the Property, which obligations are and shall remain independent of the Developer's rights and obligations, and the Flood Control District, the School District and the County's rights and obligations, under this Joint Community Facilities Agreement; provided, however, that the Developer shall use its reasonable and diligent efforts to perform each and every covenant to be performed by it under any lien or encumbrance, instrument, declaration, covenant, condition, restriction, license, order, or other agreement, the nonperformance of which could reasonably be expected to materially and adversely affect the acquisition, construction and installation of the Facilities.

Section 6.3 Binding on Successors and Assigns. The Developer may assign its duties and obligations pursuant to this Joint Community Facilities Agreement to one or more purchasers of its property, except the purchaser of a single-family residential unit, the owner of a multi-family residential complex or the end user of a non-residential parcel. Such a purchaser and assignee shall enter into an assignment agreement with the Developer, the County, the Flood Control District and the School District and the Community Facilities District, once formed, in a form acceptable to such parties, whereby such purchaser agrees, except as may be otherwise specifically provided therein, to assume the duties and obligations of the Developer pursuant to this Joint Community Facilities Agreement and to be bound thereby. Neither this Joint Community Facilities Agreement nor the duties and obligations of the School District, the Flood Control District, the County or the Community Facilities District hereunder may be assigned to any person or legal entity, without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. The agreements and covenants included herein shall be binding on and inure to the benefit of any partners, permitted assigns, and successors-in-interest of the parties hereto.

Section 6.4 Amendments. This Joint Community Facilities Agreement can only be amended by an instrument in writing executed and delivered by the School District, the Flood Control District, the County, and the Developer. Notwithstanding the foregoing, Exhibit B may be supplemented consistent with Section 3.5 above.

Section 6.5 Waivers. No waiver of, or consent with respect to, any provision of this Joint Community Facilities Agreement by a party hereto shall in any event be effective unless the same shall be in writing and signed by such party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 6.6 No Third Party Beneficiaries. Other than the Community Facilities District and the City, when formed, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Joint Community Facilities Agreement (either expressed or implied) is intended to confer upon any person or entity, other than the School District, the Community Facilities District, when formed, the Flood Control District, the City, the County, and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Joint Community Facilities Agreement.

Section 6.7 Notices. Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

Flood Control District:

Riverside County Flood Control and
Water Conservation District
Attn: Contract Services
1995 Market Street
Riverside, California 92501
Telephone: (951) 955-1200
Fax: (951) 955-788-9965

School District and Community
Facilities District:

Riverside Unified School District
Attn: Ana Gonzalez, Director, Planning and
Development
3070 Washington Street
Riverside, Ca 92504
Telephone: (951) 788-7496 ext. 84003

City/City Engineer:

City of Riverside
Attn: Deputy Public Works Director/City
Engineer
3900 Main Street
Riverside, California 92501
Telephone: (951) 826-5575
Fax: (951) 826-2046

County:

Director of Transportation
County of Riverside
4080 Lemon Street, 8th Floor
Riverside, California 92501
Telephone: (951) 955-6740
Fax: (951) 955-3198

Developer:

MRF-Groves Development, LP
c/o of Shopoff Realty Investment
2 Park Plaza, Suite 700
Irvine, CA 92614
Attn: Tom Bitney and Brian Rupp
Telephone: (949) 417-4462; and
(949) 231-5068

Developer:

Spring Mountain Investments, LLC
c/o of Shopoff Realty Investment
2 Park Plaza, Suite 700
Irvine, CA 92614
Attn: Tom Bitney and Brian Rupp
Telephone: (949) 417-4462; and
(949) 231-5068

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of a document confirming satisfactory transmission, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

Section 6.8 Jurisdiction and Venue. Each of the School District, the Community Facilities District, the Flood Control District, the County, and the Developer (a) agrees that any suit action or other legal proceeding arising out of or relating to this Joint Community Facilities Agreement shall be brought in state court in the County of Riverside or in the Courts of the United States of America in the district in which said County is located, (b) consents to the jurisdiction of each such court in any suit, action or proceeding, and (c) waives any objection that it may have to the laying of venue or any suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the School District, the Community Facilities District, the Flood Control District, the City, the County, and the Developer agrees that a final and non-appealable judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 6.9 Attorneys' Fees. If any action is instituted to interpret or enforce any of the provisions of this Joint Community Facilities Agreement, the party prevailing in such action shall be entitled to recover from the other parties thereto reasonable attorney's fees and costs of such suit (including both prejudgment and postjudgment fees and costs) as determined by the court as part of the judgment.

Section 6.10 Governing Law. This Joint Community Facilities Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State applicable to contracts made and performed in the State.

Section 6.11 Usage of Words. As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

Section 6.12 Counterparts. This Joint Community Facilities Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.13 Interpretation. The parties to this Joint Community Facilities Agreement and their counsel have reviewed and revised this Joint Community Facilities Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be employed in the interpretation of this Joint Community Facilities Agreement.

Section 6.14 Designation of Party's Representative. Each party is to prepare a certificate designating the person or persons that are to serve as the liaison between the Flood Control District, the County, the Developer, and the Community Facilities District regarding design, engineering and construction of the Facilities. The certificates are to contain an original and specimen signature of each designated person. The certificates are to be provided to the Flood Control District, the City, the County, the Developer, and the Community Facilities District at the time the Bonds are issued.

IN WITNESS WHEREOF, the parties hereto have executed this Joint Community Facilities Agreement as of the day and year first hereinabove written.

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

RECOMMEND FOR APPROVAL:

By: _____
JASON E. UHLEY
General Manager-Chief Engineer


By: _____
MARION ASHLEY, Chairman
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: 
DALE A. GARDNER
Deputy County Counsel

By: _____
Deputy

(SEAL)

COUNTY OF RIVERSIDE

RECOMMEND FOR APPROVAL:

By: _____
PATRICIA ROMO
Director of Transportation

By: _____
CHUCK WASHINGTON
Chairman, Board of Supervisors

ATTEST:
KECIA HARPER-IHEM
Clerk of the Board

By: _____
Deputy

[Signatures continued on next page.]

RIVERSIDE UNIFIED SCHOOL DISTRICT

By: _____
Superintendent

ATTEST:

By: _____
Clerk of the Board of Education

DEVELOPER

**MRF-GROVES DEVELOPMENT, LP,
a Texas limited partnership**

By: _____
Name: _____
Title: _____

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

**SPRING MOUNTAIN INVESTMENTS, LLC,
a California limited liability corporation**

By: _____
Name: _____
Title: _____

(ATTACH NOTARY WITH
CAPACITY STATEMENT)

EXHIBIT A

**Proposed Boundary Map of
Community Facilities District No. 29
of Riverside Unified School District**

SHEET 1 OF 1

**BOUNDARIES OF
COMMUNITY FACILITIES DISTRICT NO. 29 OF
RIVERSIDE UNIFIED SCHOOL DISTRICT
COUNTY OF RIVERSIDE
STATE OF CALIFORNIA**

(1) Filed in the office of the Clerk of the Board of Education of Riverside Unified School District this _____ day of _____, 2018.

Clerk of the Board of Education
Riverside Unified School District

(2) I hereby certify that the within map showing the boundaries of Community Facilities District No. 29 of Riverside Unified School District, County of Riverside, State of California, was approved by the Board of Education of Riverside Unified School District at a regular meeting thereof, held on the _____ day of _____, 2018, by its Resolution No. _____

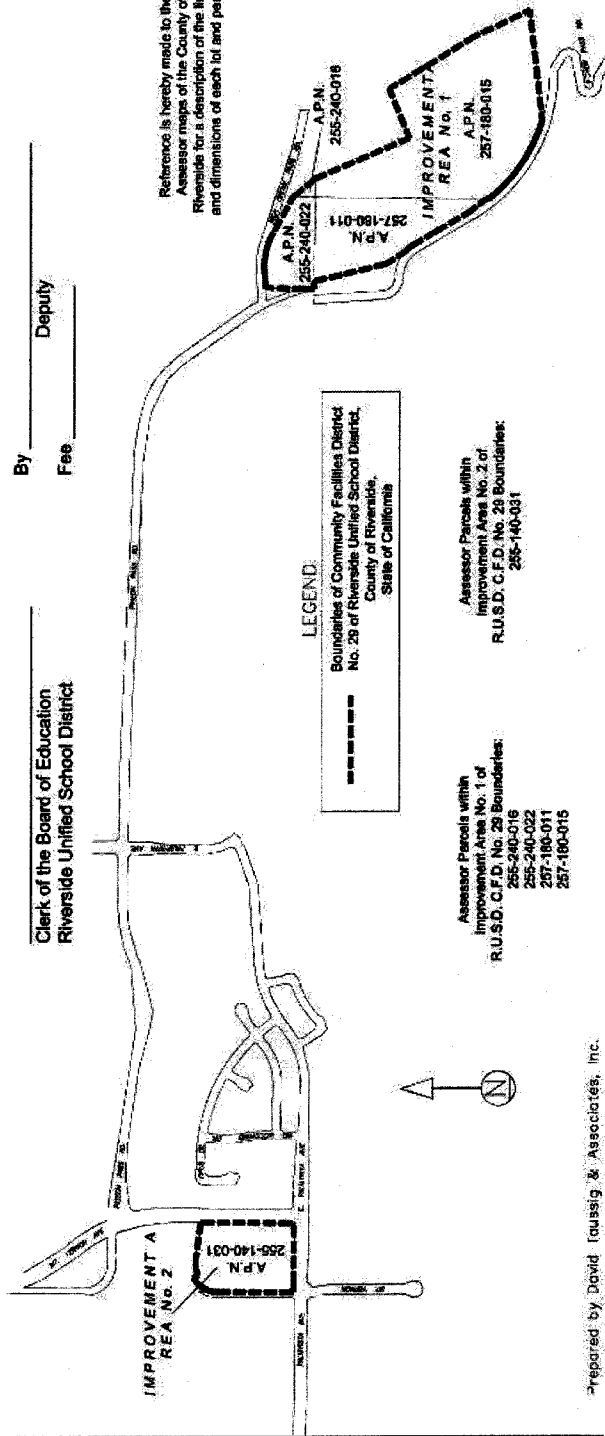
Clerk of the Board of Education
Riverside Unified School District

(3) Filed this _____ day of _____, 2018, at the hour of _____ o'clock _____ m. in Book _____ of Maps of Assessment and Community Facilities Districts at page _____ and as Instrument No. _____ in the office of the County Recorder of Riverside County, State of California.

Peter Aldana
Assessor-County Clerk-Recorder of Riverside County

By _____ Deputy
Fee _____

Reference is hereby made to the Assessor maps of the County of Riverside for a description of the lines and dimensions of each lot and parcel.



LEGEND:

Boundaries of Community Facilities District No. 29 of Riverside Unified School District, County of Riverside, State of California

Assessor Parcels within Improvement Area No. 1 of R.U.S.D. C.F.D. No. 29 Boundaries:
255-240-016
255-240-022
257-180-011
257-180-015

Assessor Parcels within Improvement Area No. 2 of R.U.S.D. C.F.D. No. 29 Boundaries:
255-140-031

Prepared by David Taussig & Associates, Inc.

EXHIBIT B

FACILITIES

**Community Facilities District No. 29
of Riverside Unified School District**

**Flood Control Facilities
(Tract No. 33410)**

	<u>Total Cost</u>
<u>Storm Drain System</u>	
Storm Drain Move-In-Backbone	\$ 2,500
Cast in Place Pipe – 96 Inch – Backbone	610,750
Storm Drain – Manhole 60 Inch Diameter – Backbone	45,500
Manhole Adjust to Grade – Backbone	3,500
Headwall w/ Wingwall – 96 Inch Pipe – Backbone	80,000
Outlet Structure w/ Dissipater – 96 Inch Pipe – Backbone	155,000
Headwall w/ Wingwall – Double 8x8 Foot Box Culvert – Backbone	100,000
Double Reinforced Concrete Box – 8 Feet by 8 Feet – Backbone	203,500
Outlet Structure w/ Dissipater – Double 8x8 Foot Box Culvert – Backbone	175,000
1/4 Ton UngROUTED Rip Rap – Backbone	42,750
Concrete Channel – Backbone	68,000
Concrete Channel Headwall w/ Wingwall	45,000
Traffic Control – Backbone	2,500
Prevailing Wage for Storm Drain System – Total	<u>230,100</u>
Storm Drain System Total	\$1,764,100
<u>Repairs for Bond Release</u>	
Storm Drain System Clean & Repair – Total	\$ <u>17,641</u>
Repairs for Bond Release Total	\$ 17,641
<u>Direct Contingency</u>	
Storm Drain System Contingency – Total	\$ 153,400
Repairs for Bond Release Contingency – Total	<u>1,764</u>
Direct Contingency Total	\$ 155,164
<u>Site Preparation</u>	
Clearing & Grubbing	\$ 5,757
Debris Removal	3,070
Temporary Construction Fencing	<u>7,508</u>
Site Preparation Total	\$ 16,334

County Transportation Facilities
(Tract No. 33410)

	<u>Total Cost</u>
<u>Rough Grading</u>	
Mobilization	\$ 3,470
Construction Water – Reclaimed	2,082
Removals – Younger Alluvium	5,440
Removals – Older Alluvium	20,825
Overexcavation – Older Alluvium	175
Mass Excavation – Younger Alluvium	7,360
Mass Excavation – Older Alluvium	25,725
Site Finishing	50,151
Balance Trench Spoils Onsite	6,800
Relocate Power Pole	0
Rough Grading Total	\$ 122,028
 <u>Erosion and Dust Control</u>	
Dust Control – (PM-10)	\$ 11,513
Erosion Control	15,351
Erosion & Dust Control Maintenance	19,188
Silt Fence	6,930
Street Cleanup – Backbone	5,070
Erosion and Dust Control Total	\$ 58,052
 <u>Street Improvements – Concrete</u>	
Balance ROW – Concrete – Backbone	\$ 4,196
Sidewalk Move-In – Backbone	4,000
Sidewalk – Double Formed – 5.5 Feet Wide, 4 Inch Thick – One Side - Backbone	33,545
Sidewalk – Double Formed – 10 Feet Wide, 4 Inch Thick – One Side – Backbone	46,170
Sidewalks and Walkways – Subgrade – Backbone	11,188
Curb and Gutter Move-In – Backbone	4,000
Curb and Gutter – 6 Inch – Backbone	27,285
Curb and Gutter – Subgrade – Backbone	2,140
Handicap Ramps w/ Truncated Domes – Backbone	3,820
Traffic Control – Backbone	1,250
Prevailing Wage for Street Improvements – Concrete – Total	20,639
Street Improvements – Concrete Total	\$ 158,232

Street Improvements – Asphalt

Asphalt – Move-In – Backbone	\$ 3,000
Balance ROW – Asphalt – Backbone	8,366
Backbone Street – 33 Feet AC ROW – 2.5 Inch AC Over 9 Inch – Pigeon Pass Road – Frontage	127,080
AC Subgrade Preparation – Backbone	11,154
AC Cap w/ Fog Seal – 1 Inch – Backbone	35,589
Sawcut AC and Join Existing Pavement – Backbone	320
AC Cap Only – 1 Inch – Backbone	16,919
Street Sign/Striping – Backbone	3,380
Street Name Signs w/ Base – Backbone	600
Stop Signs w/ Base – Backbone	600
Access Road – 15 Feet – Backbone	113,295
Traffic Control – Backbone	2,500
Street Clearing – Backbone	2,789
Prevailing Wage for Street Improvements – Asphalt – Total	<u>48,839</u>
Street Improvements – Asphalt Total	\$374,429

Landscaping

Parkway Landscaping – Backbone	\$ 86,275
Landscape Maintenance – 6 Months – Backbone	4,930
Prevailing Wage for Landscaping – Blue Top	<u>13,681</u>
Landscaping Total	\$104,886

Repairs for Bond Release (estimated repairs for agency acceptance)

Street Improvements – Concrete Clean & Repair – Total	\$ 7,912
Street Improvements – Asphalt Clean & Repair – Total	9,361
Landscaping Clean & Repair – Total	<u>1,049</u>
Repairs for Bond Release Total	\$ 18,321

Direct Contingency

Site Preparation Contingency – Total	\$ 1,633
Rough Grading Contingency – Total	12,203
Erosion and Dust Control Contingency – Total	5,805
Street Improvements – Concrete Contingency – Total	13,759
Street Improvements – Asphalt Contingency – Total	32,559
Landscaping Contingency – Total	9,121
Common Costs Contingency – Total	3,240
Repairs for Bond Release Contingency – Total	1,832
Dry Utilities Contingency – Total	<u>9,871</u>
Direct Contingency Total	\$ 95,151

Sewer Collection System (Tract 33410)

Remove and Replace Pavement – Offside	\$ 41,250
PVC Pipe – 8 Inch – Intract	158,760
PVC Pipe – 8 Inch – Offsite	34,000
TV Test Sewer Mains – Intract	11,340
TV Test Sewer Mains – Offsite	2,550
Sanitary Sewer – Deep 12-20 Feet – Offsite	15,000
Sanitary Sewer – Manhole – 48 Inch – Intract	98,000
Sanitary Sewer – Manhole – 48 Inch – Offsite	19,600
Extra Depth Manhole – Deep 12-20 Feet- Offsite	4,000
Manholes – Adjust to Grade – Intract	14,000
Manholes – Adjust to Grade – Offsite	2,800
Backwater Valves – One per 10 DU – Intract – Allowance	13,160
PVC Sewer House Laterals – Detached	110,400
Box Culvert Crossing – Offsite	36,000
Shoring in Pavement – Offsite	75,000
Prevailing Wage for Sanitary Sewer System – Total	<u>95,379</u>
Sanitary Sewer System Total	\$731,239

Repairs for Bond Release

Sanitary Sewer System Clean & Repair – Total	\$ 7,312
Repair for Bond Release Total	\$ 7,312

Direct Contingency

Sanitary Sewer System Contingency – Total	\$ 63,586
Repairs for Bond Release Contingency – Total	<u>731</u>
Direct Contingency Total	\$ 64,317

Sanitary Collection System (Tract 34592)

Remove and Replace Pavement – Intract	\$ 2,750
Balance Trench Spoils Onsite	3,350
PVC Pipe – 8 Inch – Intract	72,495
TV Test Sewer Mains – Intract	5,370
Sanitary Sewer – Manhole – 48 Inch – Intract	34,320
Manholes – Adjust to Grade – Intract	5,500
PVC Sewer House Laterals – Detached	54,000
Connect to Existing – Intract	10,000
Traffic Control – Intract	1,500
Prevailing Wage for Sanitary Sewer System – Total	<u>27,890</u>
Sanitary Sewer System Total	\$217,175

Repairs for Bond Release (estimated repairs for agency acceptance)

Sanitary Sewer System Clean & Repair – Total	\$ 2,172
Repairs for Bond Release Total	\$ 2,172

Direct Contingency

Sanitary Sewer System Contingency – Total	\$ 21,718
Repairs for Bond Release Contingency – Total	<u>217</u>
Direct Contingency Total	\$ 21,935

EXHIBIT C

Public Works Bidding Requirements

Contract Bidding by Developer

Public funding reimbursement or approval by the County of Riverside (County) and the Riverside County Flood Control and Water Conservation District (Flood Control District) requires the following, in addition to any additional requirements of State and Federal law:

- 10 consecutive day advertisement in a newspaper of general circulation (This generally requires a minimum bid period of 14 days to achieve. A three week bid period is recommended). Proof of publication should be submitted to the County and Flood Control District for verification of advertisement as required. (Pub. Cont. Code §20125). Failure to advertise the project in a newspaper of general circulation will disqualify the developer from receiving reimbursement from public funds.
- Requirement for contractors and subcontractors to be registered with the State of California Department of Industrial Relations (DIR) in order to be qualified to bid on, be listed in a bid proposal, or to perform public work (Labor Code §1725.5). Online application for registration with DIR can be found at the following website: <http://www.dir.ca.gov/Public-Works/Contractor-Registration.html>. Failure to comply with this requirement will disqualify the developer from receiving reimbursement from public funds.
- Requirement for payment of general prevailing wages and certified payroll (Labor Code §1770-§1774). General prevailing wage rates are available from the Department of Industrial Relations website at: <http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. Failure to comply with this requirement will disqualify the developer from receiving reimbursement from public funds.
- Requirement for certified payroll records (Labor Code §1776). Requirements for reporting certified payroll records are available at the following Department of Industrial Relations website: <http://dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>.
- Bonds
 - Bid Bond 10% (recommended)
 - Performance Bond 100% (mandatory) (Pub. Cont. Code §20129).
 - Payment Bond 100% (mandatory) (Civil Code §3247).
 - Surety to be required to be an admitted surety in the State of California
 - The bonds shall include the County of Riverside as co-beneficiary.
- Required State Contractor's license shall be specified in the notice inviting bids (Pub. Cont. Code §3300). License shall be verified before award. (Pub. Cont. Code §6100).
- Proprietary and brand specific items shall not be specified (Pub. Cont. Code §3400).
- Standard County and Flood Control District bid items and units of measurement should be utilized. Failure to do so will delay reimbursements authorized by County and Flood Control

District.

- Sufficient liability insurance, naming the County and Flood Control District as additional insured for both General and Automobile liability policies. Insurance company to be required to be an admitted insurance company in the State of California and to have a Best Guide rating of A with a financial size of VIII or greater. General liability insurance coverage to be at least \$2 Million Aggregate and \$2 Million per occurrence (or higher if exposure is great).
- Hold Harmless Clause (Specifically naming the County of Riverside and Riverside County Flood Control and Water Conservation District).
- The bid items should be only for the public works improvements. On site work should not be included in the scope of work.
- Construction plans and specifications shall be signed and stamped by a duly registered engineer prior to advertisement (Bus. & Prof. Code §6735).
- Construction plans shall be signed as approved by the County of Riverside Transportation Department and/or the Flood Control District, as appropriate, prior to advertisement.
- NPDES requirements.
- Bid exclusions are not allowed. Bids must be required for all items of work in order for a proper, legal and fair determination of who is the lowest responsive bidder.
- Time and place of bid opening must be made known to the bidders. Sealed bids shall be opened in a public forum and read aloud. (Pub. Cont. Code §20393)
- Working days and liquidated damages should be clearly noted in the Notice Inviting Bids and/or other prominent location in the general conditions. Liquidated damages should be calculated using Caltrans methodology, or other industry standard means.
- Non-collusion affidavit shall be required of each bidder. (Pub. Cont. Code §7106).
- Advertisement in trade Journals (F.W. Dodge, CMD, etc.). A listing of plan rooms is available upon request.
- All sub-contractors shall be listed. (Pub. Cont. Code §4104)
- Bids shall be required to be prepared in ink, signed, with the name, address, phone number and contractor's license number provided.
- Addenda should be reviewed and approved by the County of Riverside Transportation Department and Flood Control District for all addenda that either modify any bidding requirements or modify any item addressed herein. Addenda shall be signed and stamped by a Civil Engineer duly registered in the State of California.
- Addenda issued within 72 hours of bid closing, and which contain material changes, shall extend the bidding period by at least 72 hours. (Pub. Cont. Code §4104.5).

- A summary of bids is to be prepared, summarizing each bid item, the unit price bid and the total price bid for each bid item, as well as the total sum bid. The bid summary should include the engineer's estimate of unit prices. The bid summary shall include a summary of alternate bid schedules, if applicable.
- Award to the lowest responsive and responsible bidder. (Pub. Cont. Code §20128 and §6100 et seq.) Contract to be kept on file by the Developer, and provided to the County and Flood Control District upon request.

Additional Information and Requirements

- County and Flood Control District review and approval are required prior to advertisement, and, separately, prior to award.
- Submission of an Engineer's Estimate of quantities, unit costs and extended totals should be made with the Developer's first request for review of the bid documents.
- All work shall be coordinated with the Flood Engineer and County's Construction Engineer (951) 955-6885. The Flood Engineer and the County's Construction Engineer, or their respective designated subordinates, will provide oversight inspection. Approval of the final quantities shall be obtained from the Flood Control District and the County's Construction Engineer prior to final payment. Contract Change Orders shall be reviewed and approved by the Flood Engineer and the County's Construction Engineer prior to execution.
- Bidding and contract records shall be maintained for a period of not less than three years, and shall be made available upon request to the County and the Flood Control District. Documents to be retained shall include:
 1. Bid documents
 2. Addenda issued
 3. Bidders list, including date and time of bid submissions
 4. Each bid received
 5. Summary of bids
 6. Executed contracts
 7. Certified payroll records
 8. Other pertinent documents.

The following items shall be provided to the County and the Flood Control District after bid opening:

1. Proof of Publication - Advertisement in the Press Enterprise.
2. Developer's written certification of Public Bid Opening.
3. Log of bids received including date/time of receipt.
4. Tabulated Bid Summary.
5. Copy of low-bidder's proposal.

The following items shall be provided to the County and the Flood Control District after award:

1. Copy of Insurance Certificate, meeting the above requirements, and naming the County of Riverside, the Riverside County Flood Control and Water Conservation

- District, et al., as additional insured.
2. Copy of contract, performance bond and payment bond.

Questions or requests for additional information may be directed to:

Alvin G. C. Medina
County of Riverside
Transportation Department
4080 Lemon Street, 8th Floor
Riverside, CA 92501
(951) 955-1667
almedina@rivco.org

EXHIBIT D

Easements to be Conveyed to the Flood Control District

PARCEL 1

Portion lot "A" (Pigeon Pass Road), TTM 33410

PARCEL 2

Lot "E", TTM 33410

PARCEL 3

Portion lot "G" (street) together with a strip of land 60'x 100' lying perpendicular to each side of the centerline of lot "G", of TTM 33410

PARCEL 4

Open Space Drainage area, containing 1.08 acres more or less, and located southwest portion of TTM 33410

EXHIBIT E
PAYMENT BOND

(Public Work - Civil Code Section 3247 et seq.)

The makers of this Bond are _____ as Principal and Original Contractor and _____, a corporation, authorized to issue Surety Bonds in California, as Surety, and this Bond is issued in conjunction with that certain public works contract dated as of _____, between Principal, _____, as owner, for _____ dollars (\$ _____) the total amount payable. THE AMOUNT OF THIS BOND IS 100% OF SAID SUM. Said contract is for public work of those certain _____ as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Riverside Unified School District, Riverside County Flood Control And Water Conservation District, County of Riverside, MRF-GROVES DEVELOPMENT, LP, a Texas Limited Partnership and Spring Mountain Investment, LLC, a California limited liability company" dated as of _____, 201_.

The beneficiaries of this Bond are as is stated in 3248 of the Civil Code and the requirements and conditions of this Bond are as is set forth in Sections 3248, 3249, 3250 and 3252 of said Code. Without notice, Surety consents to extension of time for performance, change in requirements, amount of compensation, or prepayment under said Contract.

Signed and Sealed this _____ Day of _____ 201_

(Firm Name - Principal)

(Business Address)

By: _____

(Signature - Attach Notary's Acknowledgment)

(Title)

Affix Seal
if
Corporation

(Corporation Name - Surety)

(Business Address)

By: _____

(Signature - Attached Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

Affix
Corporate
Seal

PERFORMANCE BOND

The makers of this Bond, _____ as Principal, and _____ as Surety, are held and firmly bound unto _____, hereinafter called the Owner, in the sum of _____ Dollars (\$ _____) for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a certain contract, hereto attached, with the Owner, dated as of _____, 20__ for those certain _____ as defined and described in said agreement entitled: "Joint Community Facilities Agreement by and among Riverside Unified School District, Riverside County Flood Control and Water Conservation District, County of Riverside, MRF-GROVES DEVELOPMENT, LP, a Texas Limited Partnership and Spring Mountain Investment, LLC, a California limited liability company" dated as of _____, 2017.

Now therefore, if the Principal shall well and truly perform and fulfill all the undertakings covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extension thereof that may be granted by the Owner, with or without notice to the Surety, and during the file of any guarantee required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said Contract that may thereafter be made, then this obligation to be void, otherwise to remain in full force and virtue. Without notice, Surety consents to extension of time for performance, change in requirements, change in compensation or prepayment under said Contract.

Signed and Sealed this _____ Day of _____, 20__

(Firm Name - Principal)

(Business Address)

By: _____

(Signature - Attach Notary's Acknowledgment)

(Title)

Affix Seal
if Corporation

(Corporation Name - Surety)

(Business Address)

By: _____

(Signature - Attach Notary's Acknowledgment)

ATTORNEY-IN-FACT
(Title-Attach Power of Attorney)

Affix
Corporate
Seal

EXHIBIT F

FORM OF PAYMENT REQUEST

Community Facilities District No. 29 of Riverside Unified School District

_____ hereby requests payment of the Purchase Price for the Facility described in Attachment A attached hereto. Capitalized undefined terms shall have the meanings ascribed thereto in the Joint Communities Facilities Agreement, dated as of _____, 2017 (the "Joint Community Facilities Agreement"), by and among the Riverside Unified School District (the "School District"), Riverside County Flood Control and Water Conservation District (the "Flood Control District"), the County of Riverside (the "County"), MRF-GROVES DEVELOPMENT, LP, a Texas limited partnership and SPRING MOUNTAIN INVESTMENTS, LLC, a California limited liability company (the "Developer"). In connection with this Payment Request, the undersigned hereby represents and warrants to the Contract Administrator as follows:

1. The undersigned has been authorized by the Developer and is qualified to execute this request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.
2. The Developer has submitted or submits herewith to the Contract Administrator, and the Engineer as-built drawings or similar Plans and specifications for the Facility for which payment is requested, and such drawings or plans and specifications, as applicable, are true, correct and complete.
3. The Facility has been constructed in accordance with the Plans therefor, and in accordance with all applicable [County/Flood Control District] standards and the requirements of the Joint Community Facilities Agreement, and the as-built drawings or similar Plans and specifications referenced in paragraph 2 above.
4. The true and correct Actual Cost of the Facility is set forth in Attachment A.
5. Attached hereto are invoices, receipts, worksheets, certified payroll, and other evidence of costs, which are in sufficient detail to allow the Engineer to verify in the Actual Cost of each Facility for which payment is requested.
6. There has not been filed with or served upon the Developer notice of any lien, right to lien or attachment upon, or claim affecting the right to receive the payment requested herein which has not been released or will not be released simultaneously with the payment of such obligation, other than material men's or mechanics' liens accruing by operation of law. Copies of lien releases for all work for which payment is requested hereunder are attached hereto.
7. The representations and warranties of the Developer set forth in Section 5.1 of the Joint Community Facilities Agreement are true and correct on and as of the date hereof with the same force and effect as if made on and as of the date hereof.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

Date: _____

[COMPANY NAME]

By: _____

Name: _____

Title: _____

ATTACHMENT A PAYMENT REQUEST - ACTUAL COSTS

Developer is to complete Columns 1 through 7

CFD / Tract Number: _____
 Facility Description: _____

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Invoiced	7 Amount Invoiced	8 Quantity Calculated By Flood District or County, as appropriate	9 Amount Calculated By Flood District or County, as appropriate	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	
2			0.00	0	0	0.00	0	0.00	0.00	
3			0.00	0	0	0.00	0	0.00	0.00	
4			0.00	0	0	0.00	0	0.00	0.00	
5			0.00	0	0	0.00	0	0.00	0.00	
6			0.00	0	0	0.00	0	0.00	0.00	
7			0.00	0	0	0.00	0	0.00	0.00	
8			0.00	0	0	0.00	0	0.00	0.00	
9			0.00	0	0	0.00	0	0.00	0.00	
10			0.00	0	0	0.00	0	0.00	0.00	
11			0.00	0	0	0.00	0	0.00	0.00	
12			0.00	0	0	0.00	0	0.00	0.00	
13			0.00	0	0	0.00	0	0.00	0.00	
14			0.00	0	0	0.00	0	0.00	0.00	
15			0.00	0	0	0.00	0	0.00	0.00	
16			0.00	0	0	0.00	0	0.00	0.00	
17			0.00	0	0	0.00	0	0.00	0.00	
18			0.00	0	0	0.00	0	0.00	0.00	
19			0.00	0	0	0.00	0	0.00	0.00	
20			0.00	0	0	0.00	0	0.00	0.00	

Total: _____
 Amount Requested: _____

0.00 0.00 0.00

APPROVAL BY THE ENGINEER

The Engineer confirms that the Facility described in Attachment A-1 has been constructed in accordance with the Plans therefor. The Actual Cost of the Facility as described in Attachment A-1 has been reviewed, verified and approved by the Engineer. The Purchase Price for said Facility is established at \$ _____. Payment of the Purchase Price of the Facility is hereby approved.

Date: _____

ENGINEER

By: _____

Name: _____

Title: _____

ATTACHMENT A-1 PAYMENT REQUEST - ACTUAL COSTS

Flood Control District or County, as appropriate, to complete Columns 8 through 11

CFD / Tract Number: _____
 Facility Description: _____

1 Bid Item No.	2 Bid Item Description	3 Unit of Measure	4 Unit Price	5 Original Contract Quantity	6 Quantity Invoiced	7 Amount Invoiced	8 Quantity Calculated By Flood District or County, as appropriate	9 Amount Calculated By Flood District or County, as appropriate	10 Difference	11 Actual Cost
1			0.00	0	0	0.00	0	0.00	0.00	
2			0.00	0	0	0.00	0	0.00	0.00	
3			0.00	0	0	0.00	0	0.00	0.00	
4			0.00	0	0	0.00	0	0.00	0.00	
5			0.00	0	0	0.00	0	0.00	0.00	
6			0.00	0	0	0.00	0	0.00	0.00	
7			0.00	0	0	0.00	0	0.00	0.00	
8			0.00	0	0	0.00	0	0.00	0.00	
9			0.00	0	0	0.00	0	0.00	0.00	
10			0.00	0	0	0.00	0	0.00	0.00	
11			0.00	0	0	0.00	0	0.00	0.00	
12			0.00	0	0	0.00	0	0.00	0.00	
13			0.00	0	0	0.00	0	0.00	0.00	
14			0.00	0	0	0.00	0	0.00	0.00	
15			0.00	0	0	0.00	0	0.00	0.00	
16			0.00	0	0	0.00	0	0.00	0.00	
17			0.00	0	0	0.00	0	0.00	0.00	
18			0.00	0	0	0.00	0	0.00	0.00	
19			0.00	0	0	0.00	0	0.00	0.00	
20			0.00	0	0	0.00	0	0.00	0.00	

Total: 0.00 0.00 0.00 0.00

Amount Requested: _____

EXHIBIT G

SEWER INSTALLATION AGREEMENT

EXHIBIT H
OPERATION AND MAINTENANCE AGREEMENT

**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.

RECEIVED

APR 05 2013

BACKGROUND: (Commences on Page 2)

Robert Field

Robert Field
Assistant County Executive Officer/EDA

Public Works

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*
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 *Kecia Harper-Ihem*
Deputy

Prev. Agn. Ref.:

District: 2/2

Agenda Number:

3-12

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL

BY *Walter A. Gardner* 2/27/13

DATE

Departmental Concurrence

DALE A. GARDNER

Policy

Policy

Consent

Consent

Dep't Recomm.:

Per Exec. Ofc.:

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 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 Bonstelle
Title: Attorney, Jeffrey Margels, Richard Mitchell

APPROVED AS TO FORM

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

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

**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 SFI 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*
JOHN J. BENOIT, Chairman
Board of Supervisors

ATTEST

ATTEST

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

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM

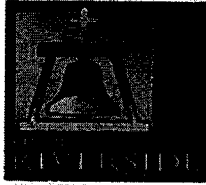
APPROVED AS TO FORM

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

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

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

ATTACHMENT 1
2012 Sewer Connection Fees



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.	\$336
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.	\$8,390
Restaurants	1,000 S.F.	\$14,662
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

"Highgrove"

Exhibit B
- awarded
1.2.04

AGREEMENT FOR WASTEWATER TREATMENT FOR HIGHGROVE COMMUNITY

THIS AGREEMENT ("Agreement") is made this 22 day of JUNE, 2004 ("Effective Date") by and between the City of Riverside, a municipal corporation ("City") and the County of Riverside, a political subdivision of the State of California ("County"). The City and County are sometimes collectively referred to herein as the "Parties" or, individually, as a "Party."

RECITALS

- A. City is a charter city and municipal corporation duly organized and existing under the laws of the State of California and the charter of the City of Riverside.
- B. City provides wastewater treatment and collection service within its service area, and owns and operates a wastewater treatment plant and related facilities commonly known as the Riverside Regional Water Quality Control Plant ("RWQCP"). The RWQCP is located at 5950 Acorn Street in Riverside, California.
- C. County, acting by and through the Riverside County Service Area 152-C, a county service area, shall, subject to the Collection System Installation and Service Agreement(s) listed on Exhibit "A" attached hereto and by this reference incorporated herein ("Collection System Agreements"), own and operate a wastewater collection system (the "Collection System") to service the currently unincorporated Highgrove area, (the "Highgrove Community"). The boundaries of the Highgrove Community are depicted on Exhibit "B" attached hereto and by this reference incorporated herein. Subsequent to the execution of this Agreement, the parties shall provide a more detailed description of the Highgrove Community.
- D. Although the County shall own the Collection System (or any replacement thereof or addition thereto) and shall be the service provider for the Highgrove Community, the City shall operate and maintain the Collection System and provide sanitary sewer service pursuant to the terms of a collateral agreement between the Parties.
- E. Notwithstanding anything contained in this Agreement, the Parties recognize that the City shall be responsible for operating all facilities related to the RWQCP, including any appurtenances now existing or hereafter created.
- F. At the current time the Parties anticipate that the portion of the Collection System to be constructed pursuant to the Collection System Agreements shall follow the route described in the Collection System Agreements. In the event the route materially deviates from the route shown in the Collection System Agreements, the Parties shall have the rights set forth therein with respect to changes or deviations to the route.

G. County may cause one of more owners or developers to be responsible for the design and construction of the Collection System or payment therefore. In such event, City shall final plan check the design plans and/or specifications for compliance with City standards. City shall complete its initial review of design plans submitted by County pursuant to this Agreement within thirty (30) calendar days after plan submittals. In the event of disapproval, City shall provide County within the thirty (30) calendar day period, with the detailed, specific reasons for disapproval. City shall inspect the Collection System construction. City will perform and certify a final field inspection of the Collection System upon substantial completion of construction, or in no event later than three (3) business day period after County notified City that construction is complete. In the event of disapproval, City shall provide County with the detailed, specific reasons for disapproval. The foregoing procedures shall be continued until the design plans and/or specifications have been approved by City.

H. COUNTY desires to obtain the right to deliver wastewater to the RWQCP for treatment and disposal in an amount not to exceed Four Million Four Hundred Thousand (4.4) gallons per day ("MGD") generated by the Highgrove Community to the RWQCP ("Treatment Right"), subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree to the following:

1. Incorporation of Recitals. All of the above Recitals are made a part of this Agreement and are incorporated herein by this reference.
2. Purpose and Intent. The purpose of this Agreement is for City to accept, treat and dispose of wastewater generated by the Highgrove Community.
3. Purchase of Right to Deliver Wastewater for Treatment Through Payment of Connection Fees. County hereby purchases from the City and City hereby sells to the County, the right to deliver a certain amount of wastewater, pursuant to the limits and terms and conditions of this agreement. As consideration, County shall cause all connection fees for sanitary sewer services in the Highgrove Community be paid to or be collected by the City. City shall receive and accept from County that volume of discharge specified herein. City shall be solely responsible, at its sole cost and expense, for the receipt, treatment and disposal of the wastewater received from the Highgrove Community, pursuant to the limits and terms and conditions of this agreement.
4. Conditions Precedent to City's Acceptance of Wastewater for Treatment.
 - 4.1 Effectiveness of Entire Agreement. This Agreement shall not become effective until the following conditions precedent are met:
 - a. Compliance by the City of all environmental laws arising out of or in connection with the acceptance and treatment of wastewater under this Agreement. The term "environmental laws" shall include, without limitation, the California Environmental Quality Act

and all other applicable state and federal environmental laws.

b. Adoption or execution by County of an appropriate Pretreatment Ordinance and Pretreatment Agreement, as specified herein, as well as enactment of an appropriate Pre-Treatment program by County for the Highgrove Community. County can satisfy the condition precedent regarding the Pretreatment Program by become a party to the City's EPA-approved program, as provided herein.

4.2 City's Acceptance of Wastewater from Particular Developments The City's obligation to accept for treatment and disposal any wastewater generated by any property located within the Highgrove area shall not be effective until:

a. Such property owner has complied with all environmental laws arising out of or in connection with any and all development of such property. The term "environmental laws" shall include, without limitation, the California Environmental Quality Act and all other applicable state and federal environmental laws.

b. Execution of an indemnification agreement by the owner and developer of any property located within the Highgrove area for which such compliance with environmental laws has not been completed. Said indemnification agreement shall be in substantially the same form as the indemnification agreement attached hereto as Exhibit C.

5. Points of Connection. The County shall be responsible for or cause the construction, operation and maintenance of conveyance facilities which are required for the delivery of the wastewater to the RWQCP. Such conveyance facilities shall consist of any facilities necessary for the delivery of wastewater from the Highgrove Community to the RWQCP (the "Highgrove Collection System"). Such delivery shall take place at designated "Points of Connection" to be mutually agreed upon by the City and County prior to the acceptance of such wastewater.

6. Discharge and Treatment Rights. County shall have the right to deliver, at the Points of Connection, an amount not to exceed Four Million Four Hundred Thousand (4.4) MGD of wastewater, generated by the Highgrove Community provided, however, the resultant peak flow of said discharge shall not exceed Six and Eighty-Two/100 (6.82) cubic feet per second. Such right is contingent upon satisfaction of the conditions precedent identified in Section 4, hereto.

7. Pretreatment Program.

7.1 City operates the RWQCP pursuant to NPDES Permit No. CA0105350 (ANPDES Permit@) issued by the California Regional Water Quality Control Board B Santa Ana Region ("NPDES Permit") which requires the City to enter into contractual agreements with all

contributory agencies to the RWQCP to give the City the authority to implement and enforce an EPA-approved Pretreatment program within the City's wastewater system service area, including those portions of any community service district's service area that is tributary to the RWQCP.

7.2 County, through its CSA, shall either establish a Pretreatment Program that satisfies the requirements of and has been approved by the Regional Board or become a party to the City's EPA-approved Pre-Treatment program and shall adopt an appropriate Pretreatment Ordinance. The parties' obligations under this Agreement are subject to the establishment by County of either a Pretreatment Program or, in the alternative, becoming a party to the City's Pretreatment Program and adoption of a Pretreatment Ordinance. The proposed Pretreatment Ordinance shall be in substantially the same form as Chapter 14.12 of the Riverside Municipal Code, as amended from time to time. After adoption, County shall not materially amend the Pretreatment Program or Pretreatment Ordinance as it relates to the Highgrove Community without the express written consent of the City and any applicable regulatory agencies, which consent shall not be unreasonably withheld, conditioned or delayed.

7.3 County shall delegate to City, prior to the City's acceptance of any wastewater from the Highgrove Community for treatment under this Agreement, the authority to implement and enforce the EPA-approved Pretreatment Program within the Highgrove Community, and to allocate jurisdiction and enforcement obligations of the Pretreatment Program between the City and the County with respect to the County's delivery of wastewater of the RWQCP. To this end, County and City shall execute, concurrent with this Agreement, an agreement entitled "Pre-Treatment Agreement to Implement, Administer and Enforce an Industrial Wastewater Pretreatment Program."

8. Quantity Exceedance by County.

Pursuant to the terms of this Agreement, the City is obligated to accept, for treatment and disposal, wastewater generated by the Highgrove Community in an amount not to exceed 4.4 MGD. The City, at no cost or expense to County, shall meter such wastewater at the mutually agreed upon points of connection. When the amount of such wastewater exceeds Three Million Eight Hundred Thousand gallons per day (3.8 MGD), the City shall notify County. The parties shall then meet and confer, in good faith, and enter into an agreement, if necessary, to take certain measures to mitigate any future increased growth which shall or may generate wastewater in excess of 4.4 MGD, including the establishment of a temporary moratorium on development in the Highgrove Community until either the City or another entity is able to provide wastewater treatment for the amounts in excess of the 4.4 MGD.

9. Measurement And Records Of Wastewater. City shall meter and determine the quantity of wastewater, which is delivered into RWQCP by County, and shall also measure and determine both the quantity and the quality of effluent discharged from the RWQCP. County shall require, as part of either the Collection System Installation and Service Agreement(s) or the permitting process for the construction of the Collection System, the installation of such measuring devices and equipment. City thereafter shall maintain and operate, such measuring devices and equipment as may be necessary, at the mutually agreed-upon points of connection.

The measuring devices shall be examined, tested and serviced regularly to insure their accuracy. Accurate records of wastewater flow measurements shall be kept. County shall incur no cost or expense in the fulfillment of the duties and obligations of this section.

10. Right to Deliver Additional Amounts of Wastewater. City agrees that County will be allowed to acquire the right to deliver additional wastewater to the RWQCP, pursuant to the limits and terms and conditions of this agreement, to accommodate population growth of the Highgrove Community. County's right to deliver such additional wastewater may be exercised by giving written notice to City pursuant to the provisions of Paragraph 16, below. The notice shall include the amount of additional wastewater, measured by peak daily flow, County proposes to deliver to the RWQCP for treatment and the approximate time or times the County shall commence delivery. Within thirty (30) days after receipt of such written notice, City shall determine, in its reasonable discretion, if it can accept such wastewater and shall so advise County as to whether the City has the capacity to accept such wastewater. If the City can so accept, the parties shall execute an addendum to this agreement specifying the rate of flow and the source of such flow. The cost of the additional wastewater flows shall be subject to negotiation by the parties and shall not be limited to the charges set forth in Paragraph 12 below.

11. Payment and Fees.

(a) County shall cause to be paid to City a "Connection Charge(s)" for each connection as set forth in the "Sewer Connection Fees Amounts and Schedule of Payment" attached hereto as Exhibit "E". The Connection Charge shall remain fixed for a period of five (5) years from the Commencement Date. The Connection Charge will be levied by the City on behalf of County to the Highgrove Community property owners or their assigns at the time of, or prior to, the issuance of building permits. The Connection Charge covers payment for all capacity upgrades and capital improvements to City's wastewater treatment. No other fees will be imposed for capital or other expenditures to increase treatment plant capacity or upgrade City's existing facilities. Upon the expiration of the initial five-year period, the City shall revise the Connection Charge, based upon payment needed for all capacity upgrades and capital improvements to City's wastewater treatment facilities to support such flow.

(b) In addition to the Connection Charge, City shall charge all Highgrove residents who generate wastewater for treatment under this Agreement a monthly service charge according to the current fee schedule charged to City resident wastewater service customers, commencing after each customer is connected to the system, The current schedule of monthly service charges is included in Exhibit "D." City shall be responsible for billing of and collection from wastewater service customers the monthly service. City hereby covenants and agrees that, except as set forth herein, City shall not voluntarily or involuntarily modify or increase the monthly service charges without the written consent of County, which consent may be withheld in County's reasonable discretion. Notwithstanding the

foregoing, City may impose increases to the monthly service charge which City reasonably believes are necessary to pay the reasonable costs of operating and maintaining the RWQCP and Collection System, so long as such nondiscriminatory increases are applied equally to all customers discharging wastewater into the RWQCP.

12. Easements and Rights of Way. County will allow City to use County's public rights-of-way to implement this Agreement. City will obtain all necessary right-of-entry permits for such access. County will cooperate with City and obtain additional public rights-of-way to implement this Agreement, including, as necessary, exercising the County's power of eminent domain.

13. Reciprocal Access Rights. Each Party shall have the rights of ingress and egress over property owned or controlled by the other Party for access to facilities, equipment and appurtenances for the purpose of implementing this Agreement. Each Party agrees to indemnify, defend and hold harmless the other Party from any costs incurred or suffered as a result of damage or injury to persons or property as a result of the other Party exercising its rights of ingress and egress.

14. Agreement Perpetual. The commencement date of this Agreement shall be the date first written above. This Agreement shall be perpetual and may not be cancelled, terminated, or modified except on mutual consent by City and County.

15. Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (hereafter, the "Notice") shall be in writing and shall be validly given or made to another Party if served personally or if deposited in the United States mail, certified or registered, postage prepaid or if transmitted by telegraph, teletype or other electronic written transmission device. If the Notice is served personally, service shall be conclusively deemed made at the time of such personal service. If the Notice is given by mail, such shall be conclusively deemed given seventy-two (72) hours after the deposit thereof in the United States mail. If the Notice is sent by telegraph or if by other carrier service, the Notice shall be deemed given upon confirmation of delivery by the carrier. If the Notice is sent by an electronic transmission service, Notice shall be deemed given seventy-two (72) hours after sending the Notice, unless proof of earlier receipt is available. The Notice shall be addressed to the Party to whom such Notice is to be given as follows:

To CITY:

Attn: Director, Public Works Department
CITY OF RIVERSIDE
3900 Main Street, Fifth Floor
Riverside, CA 92522

To COUNTY:

County of Riverside

C/O Economic Development Agency
3525 Fourteenth Street
Riverside CA 92501
Attn: County Service Area 152C

Any Party hereto may change its address for the purpose of receiving Notices as herein provided by a written Notice given in the manner aforesaid to the other Party hereto.

16. Indemnification.

16.1 City's Indemnification Obligations

City hereby agrees to indemnify, defend and hold County, its supervisors, directors, officers, employees, agents, successors and assigns harmless from and against any and all claims, actions, costs, demands, lawsuits, causes of action, expenses (including attorneys' fees and court costs), liabilities, interest, taxes, penalties and any and all other damages (collectively, the "Claims") which any or all of them ever pays or is legally obligated to pay and which result from or arise out of, or in connection with the following events, unless such event is caused by the sole negligence or willful misconduct of County:

- (i) any neglect, fault, omission of City or its agents, contractors, employees or servants in the performance of its obligations under this Agreement; and
- (ii) any breach (including City's representations or warranties), default by City, or failure to perform any of the agreements, terms, obligations, covenants and conditions of this Agreement.

16.2 County's Indemnification Obligations

County hereby agrees to indemnify, defend and hold City, its council members, directors, officers, employees, agents, successors and assigns harmless from and against any and all Claims which any or all of them ever pays or is legally obligated to pay, may suffer and which result from or arise out of, or in connection with:

- (i) any neglect, fault, omission of County or its agents, contractors, employees or servants in the performance of its obligations under this Agreement; and
- (ii) Any breach (including County's representations or warranties) or default or failure by County to perform any of the agreements, terms, obligations, covenants and conditions of this

Agreement.

17. Representations and Warranties.

17.1 County's Representations and Warranties. County represents and warrants that:

- (a) County is a public body, corporate and political and existing in good standing under the laws of California; and
- (b) County has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement; and
- (c) The execution, delivery and performance of this Agreement by County has been or shall be duly authorized by County and will not contravene (1) any provision of applicable law, (2) any order of any court or other agency or government, or (3) any agreement or other instrument to which County is a party or by which it is bound or in breach of or constitute (with or without notice of lapse of time or both), a default under any such agreements or other instruments; and
- (d) This Agreement is, when executed and delivered, a legal, valid and binding obligation of County, enforceable in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, arrangements, moratorium or other similar laws relating to or affecting the rights of creditors generally, and of general principles of equity.

17.2 City's Representations and Warranties

City represents and warrants that:

- (a) City has the ability, power and authority to accept, for treatment, the required volume of wastewater from the Highgrove Community;
- (b) City is a public body, corporate and political and existing in good standing under the laws of California;
- (c) City has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement;

- (d) The execution, delivery and performance of this Agreement by City (A) have been or shall be duly authorized by City and (B) will not contravene (1) any provision of applicable law, (2) any order of any court or other agency or government, or (3) any agreement or other instrument to which City is a party or by which it is bound, or in breach of or constitute (with or without notice of lapse of time or both) a default under any such agreements or other instruments.
- (e) This Agreement is, when executed and delivered; a legal, valid and binding obligation of City, enforceable in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, arrangements, moratorium or other similar laws relating to or affecting the rights of creditors generally, and of general principles of equity.

17.3 All representations, warranties, covenants and agreements of the Parties contained in this Agreement, or in any instrument or other writing provided for herein, shall survive the execution and delivery of this Agreement.

18. Equitable Relief. It is agreed that the rights granted to the Parties hereunder are of a special and unique kind and character and that, if there is a breach by any Party of any material provision of this Agreement, the other Party would not have an adequate remedy at law. It is expressly agreed, therefore, that the rights of the Parties hereunder may be enforced by equitable relief as is provided under the laws of the State of California.

19. Independent Counsel. Each Party warrants and represents that it has been advised that it should be represented by counsel of its own choosing in the preparation and analysis of this Agreement; that it is fully aware that the other Party's counsel has not acted or purported to act on its behalf; that it has been represented by independent counsel or has had the opportunity to be represented by independent counsel; and that it has read this Agreement with care and believes that it is fully aware of and understands the contents thereof and its legal effect.

20. Attorney Fees. Should any Party hereto engage an attorney, whether or not the Party proceeds to institute any action or proceeding at law or in equity, or in connection with an arbitration, related to claims arising out of this Agreement, including an action for declaratory relief, or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision thereof, the prevailing Party shall be entitled to recover from the losing Party reasonable attorney fees and costs (including fees for experts) for services rendered to the prevailing Party in such action or proceeding.

21. Full Authority. Each of the Parties and signatories to this Agreement represents and warrants that he has the full right, power, legal capacity and authority to enter into and

perform the Parties' respective obligations hereunder and that such obligations shall be binding upon such Party without the requirement of the approval or consent of any other person or entity in connection herewith. Each person signing this Agreement on behalf of an entity represents and warrants that he has the full right, power, legal capacity and authority to sign this Agreement on behalf of such entity.

22. Time of the Essence. Time is of the essence of this Agreement, and in all the terms, provisions, covenants and conditions hereof.

23. Reasonable Notice. Unless expressly provided herein to the contrary, the reasonable time required in which to perform any act hereunder shall be thirty (30) days.

24. Applicable Law. This Agreement shall, in all respects, be governed by the laws of the State of California applicable to agreements executed and to be wholly performed within California.

25. Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail; but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

26. Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder to carry out the intent of the Parties hereto.

27. Modifications or Amendments. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties hereto.

28. Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns.

29. Entire Agreement. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are hereby merged herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement or any exhibits contemplated thereby, have been made by any Party hereto. No other agreements not specifically contained herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

30. Non-Waiver. No waiver by any Party hereto of a breach of any provision of this Agreement shall constitute a waiver of any preceding or succeeding breach of the same or any

other provision hereof.

31. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

32. Number and Gender. In this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so requires.

33. Captions. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section at the head of which it appears, the section and not such caption shall control and govern in the construction of this Agreement.

34. Expenses. Each of the Parties shall pay all of their own costs, legal fees, accounting fees, and any other expenses incurred or to be incurred by it or them in negotiating and preparing this Agreement, and closing and carrying out the transactions contemplated by this Agreement.

35. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any Party to this Agreement.

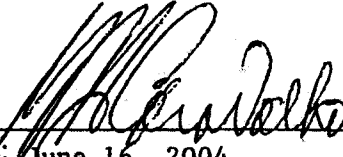
36. Records. Each of the Parties shall maintain and make available for inspection by the other Party, during regular business hours, accurate records pertaining to such Party's duties and obligations under this Agreement.

37. Exhibits. The following exhibit attached hereto are incorporated herein to this Agreement by this reference:

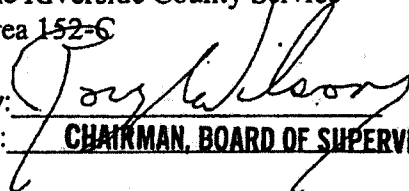
- Exhibit A: List of Sanitation System Installation and Service Agreement(s)
- Exhibit B: Map of Boundaries of the Highgrove Community
- Exhibit C: Indemnification Agreement
- Exhibit D: Schedule of Current Monthly Service Charges for Sanitary Sewer Service
- Exhibit E: Sewer Connection Fees - Amounts and Schedule of Payment

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

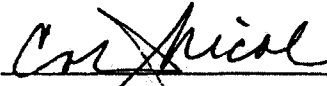
CITY OF RIVERSIDE,
a municipal corporation

By: 
Date: June 16, 2004
George Carvalho, City Manager


COUNTY OF RIVERSIDE, a
political subdivision of State of
California, acting by and through
The Riverside County Service
Area 152-6

By: 
Its: **CHAIRMAN, BOARD OF SUPERVISORS**

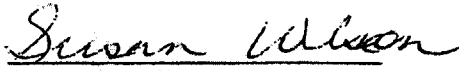
ATTEST

By: 
Date: June 16, 2004
City Clerk

Approved as to Form:
Redwine and Sherrill,
Special Counsel to County

By: 
Gerald W. Eagens, Esq.

APPROVED AS TO FORM


Susan D. Wilson
Deputy City Attorney

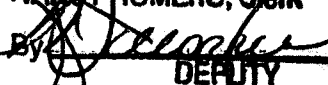
ATTEST:
NANCY ROMERO, Clerk
By: 
DEPUTY

Exhibit A *Step off*

List of Sanitation System Installation and Service Agreements

1. "Sanitation System Installation and Service Agreement," dated April 30, 2004, by and between County of Riverside, Springbrook Investments, L.P., and MRF - Groves Development, L.P.
2. "Sanitation System Installation and Service Agreement," dated April 30, 2004, by and between County of Riverside and SMR Ventures, LLC. *SMR Ventures*
-1/1/2004

Alexander

Exhibit B

**Map of Boundaries of the Highgrove Community
(Area marked as "Proposed Service Area" is the boundary)**

CITY OF RIVERSIDE DEVELOPMENT
INDEMNIFICATION AGREEMENT

This INDEMNIFICATION AGREEMENT ("Agreement") is made this _____ day of _____, by and between the CITY OF RIVERSIDE, a municipal corporation ("City") and _____, a _____, ("Developer").

RECITALS

A. The Developer is the owner of that certain real property ("Property") located within the currently unincorporated Highgrove area, County of Riverside, California. The Property is more particularly described in the legal description and map attached hereto as Exhibit "A" and incorporated herein by this reference.

B. The Developer, through the County of Riverside, shall receive from the City sanitary sewer service for the Property, which shall include collection, treatment and disposal of wastewater generated by development of the Property (the "Project").

C. As a condition of providing such sanitary sewer service, the City has required that Developer execute this Agreement, to defend, indemnify, including reimbursement, and hold harmless the City, its agents, officers and employees from any claim, action, or proceeding against the City, its agents, officers or employees, to attack, void or annul the City's provision of such sanitary sewer service.

NOW, THEREFORE, in accordance with the recitals set forth above and as consideration for the provision of sanitation service stated herein, the City and Developer agrees as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Developer have entered into this Agreement. The City and the Developer each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. Term. The term of this Agreement commences upon execution by City and County of Riverside of the "Agreement for Treatment of Wastewater for Highgrove Community" ("Treatment Agreement and shall continue until one year after the date of final compliance by Developer with all environmental laws arising out of or in connection with the Project and the Property. The term "environmental laws" shall include, without limitation, the California Environmental Quality Act and all other applicable state and federal environmental laws.

3. Indemnification. The Developer agrees to indemnify and hold harmless the City, its agents, officers, council members, employees, boards, commissions and their

members and the City Council from any claim, action or proceeding brought against any of the foregoing individuals or entities, the purpose of such litigation being to attack, set aside, void or annul any approval of or other related action to the City's provision of such sanitary sewer service, application or related decision, or the adoption of any environmental documents or negative declaration which relates to the approval. This indemnification shall include, but is not limited to, all damages, costs, expenses, attorney fees or expert witness fees that may be awarded to the prevailing party, and costs of suit, attorneys' fees, and other costs, liabilities and expenses arising out of or in connection with the approval of the application or related decision, whether or not there is concurrent, passive or active negligence of the part of the City, its agents, officers, council members, employees, boards, commissions and their members and the City Council.

4. City Notification. City shall promptly notify the Developer of any claim, action, or proceeding concerning the City's provision of such sanitary sewer service and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the City fails to promptly notify the Developer of any claim, action, or proceeding, or if the City fails to cooperate fully in the defense, the Developer shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

5. Settlement. The Developer shall not be required to pay or perform any settlement unless the settlement is approved by the Developer.

6. Severability. If for any reason, any portion of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

7. Assignability Limitations. This Agreement may be assigned by the Developer to any successor in interest for the Property or the Project, only after Developer has first notified the City Public Works Department and has provided to the City Public Works Director a signed acceptance of the assignment by the assignee.

8. Nonwaiver of Rights or Remedies. The failure of the City to exercise any right or remedies available to it pursuant to this Agreement, shall not constitute a waiver of that party's right to enforce that right or to seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by any party to this Agreement shall preclude that party from asserting any right or remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions shall be deemed to be an implied modification of the terms of this Agreement.

9. City Authority. Notwithstanding anything in this Agreement to the contrary, the City retains all authority and discretion granted to it by law to either approve, disapprove or modify any of the proposed uses of the Property in accordance with City ordinances and the approved General Plan.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Developer and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, but only by a writing signed by both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Riverside.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Developer and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's provision of such sanitary sewer service or the environmental process associated with such provision. The City shall retain sole and absolute discretion on whether or not it will defend any action filed which challenges the City's provision of such sanitary sewer service, or whether it will take any other course of action on the provision of such sanitary sewer service. The Developer may, however, in its sole and absolute discretion, appear as real party in interest in any third party action or proceeding, and in such event, the City may defend such action or proceedings at City's sole and absolute discretion. This City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate to represent its interests.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by either the City or the Developer against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in the City of Riverside, Riverside County, California, and any action or proceeding brought relative to this Agreement shall be heard in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

15. Headings. The headings of each Section of the Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

16. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants that all necessary

legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

Dated: _____

DEVELOPER

By _____

Title _____

By _____

Title _____

APPROVED AS TO FORM:

Deputy City Attorney

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Exhibit D

Schedule of Current Monthly Service Charges for Sanitary Sewer Service Exhibit E

Sewer Connection Fees - Amounts and Schedule of Payment

Revised

COMMERCIAL SEWER RATES EFFECTIVE 01/01/93 RENDERED 2/01/93

	MINIMUM CHARGE		13.05	
	RATE PER 100 C.F.		PUMPING SURCHARGE	
	BASIC			
	REV	RATE	REV	RATE
Dept & Retail Stores	500	1.057	525	1.243
Hotels & Motels	501	1.225	526	1.413
Laundromats	502	1.062	527	1.249
Commercial Laundries	503	1.857	528	2.044
Markets	504	2.415	529	2.621
Mortuaries	505	2.431	530	2.606
Professional Offices	506	0.951	531	1.139
Repair Shops & Service Stations	507	1.541	532	1.726
Restaurants	508	2.534	533	2.71
Other Commercial (90% return)	509	1.057	534	1.243
Hospital & Conv. Homes	510	1.211	535	1.397
Churches & Halls	511	0.987	536	1.143
Schools (A) 80% return (not used)	513	0.987	538	1.134
Schools (B) 30% return	514	0.407	539	0.486
Other Commercial (80% return)	515	0.688	540	0.784
Other Commercial (30% return)	516	0.334	541	0.393

FLAT RATED AND RESIDENTIAL SEWER RATES EFFECTIVE 01/01/93 RENDERED 2/01/93

Commercial Basic	473	13.05
Commercial Pumping	594	14.97
RESIDENTIAL		
Gravity - City - Multi Unit	474	12.29
Gravity - City - Single & Duplex	475	13.05
Gravity - La Sierra - Multi Unit	476	12.29
Gravity - La Sierra - Single & Duplex	477	13.05
Pumping - City - Multi-Unit	591	14.21
Pumping - City - Single & Duplex	590	14.97
Pumping - La Sierra - Multi-Unit	593	14.21
Pumping - La Sierra - Single & Duplex	592	14.97

see samples

Exhibit E

Sewer Connection Fees - Amounts and Schedule of Payment

EXHIBIT "E"

**Sewer Connection Fees
Amounts and Schedule of Payment
Riverside County CSA 152C**

Class of Service (Per Unit)	Connection Fee			Deferred Conn Fee*
	Full	Deferred	Cash Basis	
Single Family House	\$4,030	\$1,130	\$2,900	\$6.77
Condominiums	\$3,840	\$1,080	\$2,760	\$6.48
Apartments	\$3,500	\$980	\$2,520	\$5.88
Mobile Homes	\$3,330	\$930	\$2,400	\$5.58
Motels & Hotels	\$510	\$140	\$370	\$0.84
Industrial	**	NA	**	NA
Commercial	**	NA	**	NA

Notes:

- Assumes 8,900 EDU's
- Full Connection Fee includes plant capacity replacement costs
- Deferred Connection Fee is 28% of the Full Fee
- Deferred Connection Fee is paid monthly by customer over 30 years at 6% and is in addition to the City's published rates schedule
- Monthly rates include pre-treatment and treatment of sewage and maintenance of collection system
- Cash Basis Fee reflects the payment required prior to system connection

* Deferred Connection Fee will be added on to the monthly service charge.

** INDUSTRIAL, COMMERCIAL, INSTITUTIONAL
\$1,050 for first 3,000 square feet of building or portion thereof, plus \$1,050 for each additional 3,000 square feet or portion thereof.

Warehouses

The first 12,000 square feet only shall be charged 25% of the industrial, commercial and institutional rate.