

**SUBMITTAL TO THE FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
11.3
(ID # 6435)

MEETING DATE:
Tuesday, March 13, 2018

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Approval of Assignment, Assumption and Amendment to Cooperative Agreement between the Riverside County Flood Control and Water Conservation District, City of Moreno Valley, RSI Communities LLC and RSI Communities - California LLC for Sunnymead – Black Shadow Drive Storm Drain, Stage 1 (Tract No. 22180-2); Project No. 4-0-00363 [District 5] [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assignment, Assumption and Amendment to Cooperative Agreement between the Riverside County Flood Control and Water Conservation District (District), City of Moreno Valley (City), RSI Communities LLC (Assignor) and RSI Communities - California LLC (Assignee);
2. Authorize the Chairman to execute the Agreement documents on behalf of the District; and
3. Direct the Clerk of the Board to return five (5) executed copies of the Assignment, Assumption and Amendment to the District.


Prev. Agn. Ref.: MT#3873 11-2 of 04/18/2017

ACTION: Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Perez 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: March 13, 2018
xc: Flood

Keqia Harper-Ihem
Clerk of the Board
By 
Deputy

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT 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: Assignee is funding all construction and construction inspection costs (100%)			Budget Adjustment: No	
			For Fiscal Year: N/A	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Assignment, Assumption and Amendment to Cooperative Agreement (Agreement) transfers the rights and responsibilities as established by the original Cooperative Agreement executed on April 18, 2017 (Board Agenda Item No. 11.2) to the Assignee.

Once the Agreement is executed, the Assignee will assume responsibility for the construction of the drainage facility, as originally required as a condition of development for Tract No. 22180-2. Upon completion of the facility's construction, the District will assume ownership, operation and maintenance of the mainline storm drain facility.

County Counsel has approved the Agreement as to legal form and the City, Assignor and Assignee have executed the Agreement.

Prev. Agn. Ref.: MT#3873 11-2 of 04/18/2017

Impact on Residents and Businesses

Assignee's planned development will benefit from the storm drain facilities that are to be constructed by the Assignee.

SUPPLEMENTAL

Additional Fiscal Information

The Assignee is funding all construction and construction inspection costs. Future operations and maintenance costs associated with said mainline storm drain facility will accrue to the District.

ATTACHMENTS:

1. Vicinity Map
2. Assignment, Assumption and Amendment to Cooperative Agreement

AMR:blm
P8/217817

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



Gregory V. Priapros, Director County Counsel 2/23/2018

ASSIGNMENT, ASSUMPTION AND AMENDMENT TO
COOPERATIVE AGREEMENT

Sunnymead – Black Shadow Drive Storm Drain, Stage 1

Project No. 4-0-00363

Tract No. 22180-2

This Assignment, Assumption and Amendment to Cooperative Agreement ("ASSIGNMENT") is made by and between (i) the Riverside County Flood Control and Water Conservation District, a body politic ("DISTRICT"); (ii) the City of Moreno Valley, a municipal corporation of the State of California ("CITY"); (iii) RSI Communities LLC, a Delaware limited liability company ("ASSIGNOR"); and (iv) RSI Communities - California LLC, a Delaware limited liability company ("ASSIGNEE").

RECITALS

A. DISTRICT, CITY and ASSIGNOR have previously entered into that certain Agreement which was executed on April 18, 2017, and recorded as Document No. 2017-0178361 in the Official Records of the County of Riverside ("AGREEMENT"), setting forth the parties' respective rights and obligations concerning ASSIGNOR's proposed design and construction of certain flood control and drainage facilities required as a condition of approval for Tract No. 22180-2 located in the city of Moreno Valley, State of California ("PROPERTY"); and

B. Subsequent to the execution of said AGREEMENT, ASSIGNOR officially title to the real property to ASSIGNEE and AGREEMENT will now be in the name of ASSIGNEE; and

C. ASSIGNEE is now the sole owner of PROPERTY and plans to proceed in accordance with AGREEMENT; and

D. A true copy of AGREEMENT, has been provided to ASSIGNEE and said AGREEMENT describes the terms and conditions by which those certain flood control and drainage improvements that are required in connection with the development of Tract No. 22180-2 are to be designed and constructed by ASSIGNOR, and inspected and accepted for operation and maintenance by DISTRICT and CITY; and

MAR 13 2018 11.3

1 E. ASSIGNOR, ASSIGNEE, CITY, and DISTRICT intend that, by execution of this
2 ASSIGNMENT, ASSIGNEE shall assume and agrees to perform all of ASSIGNOR'S rights and
3 obligations as stated in the AGREEMENT; and

4 F. In addition, DISTRICT desires to make certain amendments to the AGREEMENT.
5 NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants
6 hereinafter contained, the parties hereto do hereby mutually agree as follows:

7 1. The above Recitals are true and correct.
8 2. For the benefit of CITY and DISTRICT, ASSIGNEE hereby agrees to be fully
9 bound by the terms of the AGREEMENT that are stated and imposed on the ASSIGNOR in the
10 AGREEMENT.

11 3. AGREEMENT is hereby amended as follows:

12 I. Section I.8 is revised to read:

13 "Notify DISTRICT in writing (Attention: Contract Services Section), at least
14 twenty (20) days prior to the start of construction of PROJECT. Construction
15 shall not begin on any element of PROJECT, for any reason whatsoever,
16 until DISTRICT has issued to ASSIGNEE a written Notice to Proceed
17 authorizing ASSIGNEE to commence construction of PROJECT."

18 II. Section I. 20 is revised to read:

19 "Within two (2) weeks of completing PROJECT construction, provide
20 DISTRICT (Attention: Construction Management Section) and CITY with
21 written notice that PROJECT construction is substantially complete and
22 requesting that DISTRICT conduct a final inspection of DISTRICT
23 FACILITIES and CITY conduct a final inspection of APPURTENANCES."

24 4. ASSIGNEE agrees to complete construction of PROJECT as detailed in
25 AGREEMENT within twelve (12) consecutive months after execution of this ASSIGNMENT and
26 within one hundred twenty (120) consecutive calendar days after commencing work on PROJECT.

27 5. DISTRICT and CITY consent to ASSIGNEE's assumption of the AGREEMENT.
28

In further clarification of the intent of the parties, ASSIGNEE specifically agrees with DISTRICT that access to and/or granting of real property interests required by DISTRICT pursuant to AGREEMENT, if any, shall be satisfied by ASSIGNEE, and in regard to all financial obligations DISTRICT shall invoice ASSIGNEE for all charges incurred pursuant to AGREEMENT.

6. This ASSIGNMENT is to be construed in accordance with the laws of the State of California.

7. Any and all notices sent or required to be sent to ASSIGNEE arising from either this ASSIGNMENT, or the obligations contained in AGREEMENT will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Contract Services Section

CITY OF MORENO VALLEY
14177 Frederick Street
Moreno Valley, CA 92553
Attn: Vince Giron
Public Works Department

RSI COMMUNITIES LLC
620 Newport Center Drive, 12th Floor
Newport Beach, CA 92660
Attn: Rola Ann Nicasio

RSI COMMUNITIES – CALIFORNIA
LLC
620 Newport Center Drive, 12th Floor
Newport Beach, CA 92660
Attn: Rola Ann Nicasio

8. The individuals executing this ASSIGNMENT on behalf of ASSIGNEE hereby certify that they have the authority within their respective companies to enter into and execute this ASSIGNMENT, and have been authorized to do so by any and all boards of directors, legal counsel and/or any other board, committee or other entity within their respective companies which have the authority to authorize or deny entering into this ASSIGNMENT.

9. This ASSIGNMENT may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

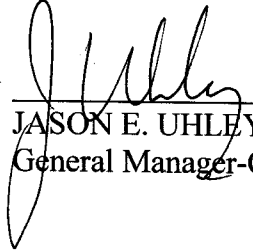
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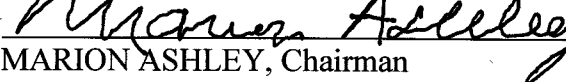
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IN WITNESS WHEREOF, the parties hereto have executed this ASSUMPTION AND
 AMENDMENT on MAR 13 2018
 (to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

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

By 
 JASON E. UHLEY
 General Manager-Chief Engineer

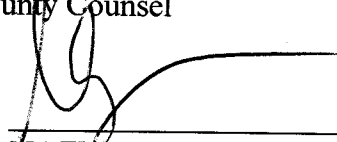
By 
 MARION ASHLEY, Chairman
 Riverside County Flood Control and Water
 Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
 County Counsel

KECIA HARPER-IHEM
 Clerk of the Board

By 
 NAZIK HASAN
 Deputy County Counsel

By 
 Deputy

(SEAL)

Assumption of, and Amendment to, Cooperative Agreement: Tract No. 22180-2
 Sunnymead-Black Shadow Drive Storm Drain, Stage 1
 Project No. 4-0-00363
 AMR:blm
 12/07/17

1 RECOMMENDED FOR APPROVAL:

CITY OF MORENO VALLEY

2
3 By M.L. Wolfe
4 Michael L. Wolfe
5 Public Works Director/City EngineerBy Thomas M. DeSantis
City Manager6
7 APPROVED AS TO FORM:
8 MARTIN D. KOCZANOWICZ
9 City Attorney

ATTEST:

10 By [Signature]
11 PAUL EARLY
12 Assistant City AttorneyBy [Signature]
PAT JACQUEZ-NARES
City Clerk

13 (SEAL)

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25 Assumption of, and Amendment to, Cooperative Agreement: Tract No. 22180-2
26 Sunnymead-Black Shadow Drive Storm Drain, Stage 1
27 Project No. 4-0-00363
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12/07/17

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

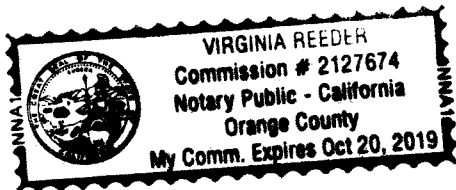
State of California)

County of ORANGE)

On 2/9/18 before me, Virginia Reeder, Notary Public,
personally appeared Darius Fatakia

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Virginia Reeder
Signature of Notary Public

Place Notary Seal Above

ASSIGNOR

RSI COMMUNITIES LLC

a Delaware limited liability company

By: RSI Holding LLC,
a Delaware limited liability company
its Manager

By


DARIUS FATAKIA

Vice President of Land Development

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Assumption of, and Amendment to, Cooperative Agreement: Tract No. 22180-2
Sunnymead-Black Shadow Drive Storm Drain, Stage 1
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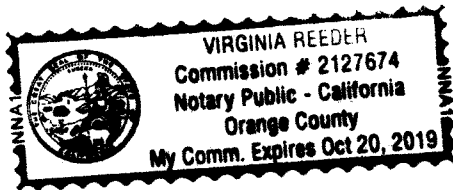
State of California)

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Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Virginia Reeder
Signature of Notary Public


Place Notary Seal Above

ASSIGNEE

RSI COMMUNITIES – CALIFORNIA LLC
a Delaware limited liability company

By: RSI Communities LLC,
a Delaware limited liability company
its Manager

By: RSI Holding LLC,
a Delaware limited liability company
its Manager

By 
DARIUS FATAKIA
Vice President of Land
Development

(ATTACH NOTARY WITH CAPACITY
STATEMENT)

Assumption of, and Amendment to, Cooperative Agreement: Tract No. 22180-2
Sunnymead-Black Shadow Drive Storm Drain, Stage I
Project No. 4-0-00363
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