



Legislation Text

File #: 18-0191, **Version:** 1

A Resolution terminating that certain Modified and Restated Wastewater Facilities Participation, Utilization, and Service Agreement approved February 10, 2009, as amended, by and between Colorado Springs Utilities and the Banning Lewis Ranch Metropolitan District No. 1

Presenter:

Bethany Burgess, Senior Attorney, City Attorney's Office

Summary:

In light of City Council's consideration of an Amended and Restated Banning Lewis Ranch Annexation Agreement which modifies the manner in which developers will pay for the cost of wastewater treatment system improvements, City Attorney's Office and Utilities' staff requests that City Council also consider termination of the Modified and Restated Wastewater Facilities Participation, Utilization, and Service Agreement ("Modified and Restated Wastewater Service Agreement") between the City of Colorado Springs on behalf of Colorado Springs Utilities and the Banning Lewis Ranch Metropolitan District No. 1, based on the fact that it is inconsistent with the Amended and Restated Annexation Agreement.

Previous Council Action:

City Council previously approved Resolution No. 45-09 supporting the Modified and Restated Wastewater Facilities, Participation, Utilization, and Service Agreement, and subsequently approved the assignment of the obligations of the Modified and Restated Wastewater Service Agreement first to the Banning Lewis Ranch Regional Metropolitan District (Resolution No. 102-10) and then to Banning Lewis Ranch Metropolitan District No. 1 (Resolution No. 103-10).

Background:

Colorado Springs Utilities previously entered into a Wastewater Facilities Participation, Utilization, and Service Agreement with The Banning Lewis Ranch Company, LLC and Banning Lewis Ranch Development I and II, LLC, effective January 24, 2006. On February 10, 2009, City Council approved Resolution No. 45-09, supporting the Modified and Restated Wastewater Service Agreement. This agreement sets forth the financial obligations and responsibilities of certain property developers for wastewater treatment system improvements to implement the requirements of the 1988 Aries Annexation Agreement. This Agreement was later assigned by the developers to the Banning Lewis Ranch Regional Metropolitan District and then from the Regional Metropolitan District to Banning Lewis Ranch Metropolitan District No. 1. This Agreement was the basis for the Banning Lewis Ranch Regional Metropolitan District's First Amended Service Plan.

Under the 1988 Aries Annexation Agreement, property owners were responsible not only for wastewater collection system improvements, but were also responsible for the cost of building a new wastewater treatment plant that the City believed would be needed to serve Banning Lewis Ranch.

Because property owners would be fully funding the cost of a new wastewater treatment plant, City Council established a reduced wastewater development charge for Banning Lewis Ranch in Colorado Springs Utilities' Utilities Rules and Regulations that included only the cost of sludge conveyance and no treatment costs.

Under the proposed Amended and Restated Banning Lewis Ranch Annexation Agreement, instead of having property owners directly fund the cost of a new wastewater treatment plant, Colorado Springs Utilities' Utilities Rules and Regulations will be amended to require that property owners within Banning Lewis Ranch pay a standard development charge and that Utilities will be responsible for the financing and construction of wastewater treatment plant capacity when it is required. With this change in the way treatment plant capacity will be handled under the Amended and Restated Banning Lewis Ranch Annexation Agreement, the Modified and Restated Wastewater Service Agreement is no longer required and should be terminated as stated in the attached Resolution.

Financial Implications:

The fiscal analysis performed by Colorado Springs Utilities indicates that if development of Banning Lewis Ranch occurs in accordance with the Amended and Restated Banning Lewis Ranch Annexation Agreement, there will be significant net present value to Utilities.

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A

Alternatives:

Approve the attached Resolution; or do not approve the attached Resolution.

Proposed Motion:

Move approval of the proposed Resolution terminating that certain Modified and Restated Wastewater Facilities Participation, Utilization, and Service Agreement approved February 10, 2009, as amended, by and between Colorado Springs Utilities and the Banning Lewis Ranch Metropolitan District No. 1.

N/A