
FORM OF FORMATION RESOLUTION

CITY RIO RANCHO
RESOLUTION

COUNCIL BILL NO. _____

ENACTMENT NO. _____

APPROVING THE PETITION AND APPLICATION OF AMREP SOUTHWEST INC., A NEW MEXICO CORPORATION, FOR FORMATION OF LOMAS ENCANTADAS/ ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, NMSA 1978, §§ 5-11-1 to 27 (2001, AS AMENDED) AND THE CITY OF RIO RANCHO NEW MEXICO PUBLIC IMPROVEMENT DISTRICT GUIDELINES AND APPLICATION PROCEDURE; MAKING FINDINGS IN CONNECTION WITH THE PETITION AND APPLICATION AND SUPPORTING DOCUMENTATION REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE GENERAL PLAN, RATE, METHOD OF APPORTIONMENT AND MANNER OF COLLECTION OF A SPECIAL LEVY TO BE IMPOSED UPON REAL PROPERTY WITHIN THE DISTRICT, AND APPROVING A DEVELOPMENT AND REIMBURSEMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE DISTRICT; PROVIDING THAT OBLIGATIONS OF THE DISTRICT SHALL NOT BE OBLIGATIONS OF THE CITY OF RIO RANCHO; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS FORMATION RESOLUTION.

Capitalized terms used in the recitals below and not defined therein shall have the meanings ascribed to such terms in Section 1 hereof.

WHEREAS: the New Mexico Public Improvement District Act, NMSA 1978, §§ 5-11-1 to 27 (2001, as amended) provides in part that an owner of real property may file a petition and application with the governing body of the municipality or county in which the real property is located for the formation of a public improvement district for the purpose of financing public infrastructure improvements; that the governing body shall hold a hearing to determine whether a public improvement district should be formed; and, upon determination that formation of a district is in the interest of the property owners and the citizens of the governing body's municipal or county jurisdiction, shall order that the public improvement district be formed, and that the district shall be formed if the petition and application has consent of the owner(s) of 100% of the property proposed to be included within the district; and

WHEREAS: the Act authorizes owners, public improvement districts, municipalities and counties to enter into development agreements to establish the obligations of the owner or developer, the county or municipality and the public improvement district concerning the zoning, subdivision, improvement,

impact fees, financial responsibilities, and other matters relating to the development, improvement and use of real property within the district; and

WHEREAS: the City of Rio Rancho, New Mexico (the "City") has enacted policy guidelines and application procedures for the establishment of public improvement districts within the City (the "PID Policy"); and

WHEREAS: the Petitioner has presented a Petition and Application for Approval of the Formation of Lomas Encantadas/Enchanted Hills Public Improvement District (the "District" or the "PID") and the following documents in support of the Petition:

(i) a description of the proposed PID, a legal description of its boundaries, the identity and addresses of all persons or entities with any interest in the property, the names and addresses of any resident qualified electors (as defined in Section 5-11-2(S) NMSA 1978) certified by the Clerk of Sandoval County, located within the proposed boundaries;

(ii) a current title report for the real property;

(iii) a general development plan establishing financial parameters for the operation and financing of the District;

(iv) an estimated project schedule for the commencement of construction and the completion of (a) the public development improvements, and (b) the private development;

(v) a financing plan for the public District improvements;

(vi) a financial feasibility study;

(vii) a current appraisal of the fair market value of the property within the District;

(viii) a confirmation that no market demand study is required;

(ix) a description of the Petitioner's professional experience and evidence demonstrating its financial capacity to undertake the development associated with the District improvements;

(x) a proposed form of special levy disclosure to home buyers;

(xi) operating plan for the District describing the operation and maintenance of the infrastructure and all other services in the District;

(xii) a certificate that the District will comply with the City's current zoning requirements;

(xiii) an environmental assessment of the District;

(xiv) a Development and Reimbursement Agreement (the "Development Agreement") to be entered into by and between the City, the District, and the Petitioner; and

(xv) a proposed form of Formation Resolution; and

WHEREAS: pursuant to the Development Agreement, the Infrastructure Improvements have been or will be designed and constructed according to all applicable City rules, regulations and standards, are to be suitable for dedication to the City upon completion, and will be acquired by, dedicated to, owned, and operated by the City, except where the homeowners association will take primary responsibility in the maintenance and operation of the parks, trails and general landscaping of the District; and

WHEREAS: pursuant to the Development Agreement, the City will acquire the PID Funded Infrastructure Improvements concurrently with the District's issuance of the District Financing in conformity with the Development Agreement, which will be payable by the imposition of the District Special Levy upon the Land; and

WHEREAS: pursuant to the Petition, the District will be responsible for imposing the District Special Levy as provided in the Act, will adopt procedures for the foreclosure of delinquent District Special Levy liens on the Land, and that the cost of administering the District Special Levy, including any required reimbursements to the Sandoval County Assessor and Sandoval County Treasurer, will be an operating cost of the District which may be eligible for reimbursement through the District Special Levy; and

WHEREAS: pursuant to the Petition and Development Agreement, the purpose of the District is to finance the Infrastructure Improvements to serve approximately three hundred fifty-seven (357) developable acres of land, located wholly within the corporate boundaries of the City, which is an authorized purpose and appropriate use of a PID as set forth in the PID Policy; and

WHEREAS: the City Council has considered the Petition and related submittals by Petitioner and has determined that proceeding further with the formation of the District is consistent with the PID Policy and promotes the interests, convenience or necessity of the owners, residents of the District and citizens of the City of Rio Rancho.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIO RANCHO THAT:

Section 1. Defined Terms. As used in this Formation Resolution, the following terms shall have the meanings specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

A. "Act" means collectively NMSA 1978, §§ 5-11-1 through 27 (2001, as amended), the home rule powers and all enactments of the Governing Body, including this Formation Resolution.

B. "City" means the City of Rio Rancho, New Mexico.

C. "City Council" means the City Council of the City.

D. "Clerk" means the City Clerk.

E. "Development Agreement" means the Development and Reimbursement Agreement, by and between the City, the District, and the Petitioner, in accordance with Section 2-10-6(E) of the PID Policy, in the form attached as Tab 19 to the Petition, which Development Agreement shall be later joined and ratified by the District.

F. "District" or "PID" means the Lomas Encantadas/Enchanted Hills Public Improvement District.

G. "District Financing" means one or more series of reimbursement certificates to be issued by the District pursuant to the Act and in conformity with the Development Agreement.

H. "District Boundary Map" means the map attached as Exhibit A to the General Plan.

I. "District Special Levy" or "District Special Levies" means the special levy or special levies to be imposed on the Land pursuant to NMSA 1978, § 5-11-20 (2001).

J. "Feasibility Study" means the study of the estimated costs and financing methods of the Infrastructure Improvements submitted by the Petitioner in connection with the Petition, in the form attached as Tab 11 to the Petition.

K. "Formation Documents" means the Petition, the General Plan, the Development Agreement, and such other documents as are required by the Act and the PID Policy to be submitted by an applicant in connection with an application for the formation, implementation and governance of the District.

L. "Formation Resolution" means this resolution adopted by the City in connection with its approval of the formation of the District, as supplemented or amended from time to time.

M. "General Plan" means the General Plan submitted by the Petitioner in the form attached as Tab 8 to the Petition, which is on file with the Clerk and includes a map depicting the boundaries of the district and the real property proposed to be included in the district; a general description of anticipated improvements and their locations; and general cost estimates, proposed financing methods and anticipated special levies.

N. "Infrastructure Improvements" means the PID Funded Infrastructure Improvements and such other improvements, which are collectively all of the improvements on the Land, whether funded directly by the Petitioner or with the

proceeds of the District Financing, described and in the approximate locations shown on Exhibit B to the Feasibility Study.

O. "Land" means the real property described in the District Boundary Map; provided that, if any lot within the District Boundary Map is conveyed to a resident qualified elector or person other than the Petitioner or a consenting owner prior to formation of the District, such lot may be excluded from the District and the Land.

P. "MAI Appraisal" means the valuation of the Land as of February 1, 2016 in the appraisal prepared by David Pearson, MAI, and attached as Tab 12 to the Petition.

Q. "Petition" means the Petition and Application filed with the City for the formation of the Lomas Encantadas/Enchanted Hills Public Improvement District and all documentation incorporated by reference in the Petition, submitted to the City pursuant to the Act and the PID Policy.

R. "Petitioner" means AMREP Southwest Inc., a New Mexico corporation.

S. "PID Funded Infrastructure Improvements" means the portion of the Infrastructure Improvements financed with the proceeds of the District Financing, as identified in Table 1 in Section IV of the General Plan.

T. "PID Policy" means the City of Rio Rancho, New Mexico Public Improvement District Guidelines and Application Procedures.

U. "Rate and Method of Special Levy Apportionment" means the rate, method of apportionment and manner of collection of the District Special Levy submitted by the Petitioner in the form attached as Exhibit D to the General Plan.

V. "Reimbursement Certificate" means each of the certificates affirming and memorializing the District's obligation of reimbursement to the Petitioner, pursuant to the Development Agreement.

W. "State" means the State of New Mexico.

Section 2. Construction of Formation Resolution. Except as otherwise expressly provided in this Formation Resolution, or unless the context otherwise requires:

A. The singular includes the plural and the plural includes the singular.

B. All accounting terms not otherwise defined in this Formation Resolution have the meanings assigned to them in accordance with generally accepted accounting principles in the United States.

C. All references to Sections shall refer to Sections of this Formation Resolution, unless otherwise stated.

D. Words importing any gender include the other gender.

E. "Herein," "hereby," "hereunder," "hereof," "hereinbefore" and "hereafter" refer to this Formation Resolution and not solely to the particular portion of this Formation Resolution in which such word is used.

F. All times will be local time in the City unless otherwise designated in this Formation Resolution.

Section 3. Findings. The City hereby declares that it has considered the Petition and all other relevant information and data, and hereby makes the following findings:

A. The Petitioner, together with those parties consenting to the Petition, own 100% of the Land and no resident qualified electors or any other persons are located on the Land.

B. As planned and proposed by the Petitioner, the Infrastructure Improvements have been or will be constructed to City specifications and will be subject to inspection, approval and acceptance by the City prior to dedication to the City, as provided in the Development Agreement.

C. The District Financing will be the sole obligations of the District, and will not be backed by the credit, general funds or resources of the City in any manner. No person entitled to enforce the District Financing will have any right to require the City or the District to impose ad valorem property taxes to pay District Financing.

D. The District will serve the interests, convenience and necessity of Petitioner, future owners of the Land and the citizens of the City.

(i) The cost of constructing the Infrastructure Improvements will be allocated to the owners of Land within the District who will utilize the PID Funded Infrastructure Improvements, in a fair and equitable manner, and will not be passed on to the City or citizens of the City, other than the Petitioner and the other owners of the Land; and

(ii) The City will receive the benefit of the Infrastructure Improvements through dedication of the Infrastructure Improvements.

E. The financing of the Infrastructure Improvements is feasible and, based upon the Feasibility Study, will not impose an undue burden on the future owners of the Land or served by the PID Funded Infrastructure Improvements.

F. The financing of the Infrastructure Improvements will enable the District to construct or acquire those improvements in a cost-effective manner.

G. The District is planned and will be implemented in a manner which provides for the expenses to be paid by the Petitioner, who will be reimbursed by the District.

H. As planned, the Infrastructure Improvements are consistent with the City's development goals, growth management policies, and conservation policies.

I. The formation of the District and the issuance of District Financing, subject to the requirements and limitations specified in this Formation Resolution, are consistent with the requirements of the PID Policy.

Section 4. Approval of the Formation Documents; Formation of District; Approval of District Foreclosure Procedures for Delinquent Special Levies.

A. The Lomas Encantadas/Enchanted Hills Public Improvement District is hereby ordered approved and formed to carry out the purposes set forth in, and according to the provisions of, this Formation Resolution.

B. The Petition is hereby accepted and approved.

C. The General Plan is hereby accepted and approved. The District shall include the Land, which is the real property described in the General Plan's District Boundary Map and more particularly identified in the legal descriptions attached as Tab 4 to the Petition.

D. The Development Agreement is hereby accepted and approved, and shall be an agreement or condition pertaining to the District, as contemplated by Section 2-10-6(E) of the PID Policy, so that any existing agreements with the Petitioner or other developers and landowners regarding the provision of Infrastructure Improvements proposed to be furnished to the City shall be deemed amended to reflect the terms of the Development Agreement.

E. The Rate and Method of Special Levy Apportionment, establishing the apportionment and manner of collection of District Special Levy in sufficient detail to enable each owner of all or a portion of the Land or resident within the District to estimate the maximum amount of the proposed District Special Levy, is hereby accepted and approved.

F. The Notice of District Special Levy substantially in the form attached as Tab 15 to the Petition is hereby approved.

G. The District shall have the powers necessary and convenient to enter into the Development Agreement, finance the PID Funded Infrastructure Improvements with the District Financing and acquire the PID Funded Infrastructure Improvements as provided in the General Plan, Feasibility Study, Rate and Method of Special Levy Apportionment and Development Agreement, as those documents may be amended or modified. The District and the City shall be bound by the terms thereof.

H. The purpose of the District shall be to provide for reimbursement to Petitioner for the Infrastructure Improvements set forth in the Petition.

I. The District Financing shall be within the value to lien ratio described in the Petition, except as otherwise approved in a supplemental resolution by the District's governing body and the City Council.

J. The District Special Levies to be imposed by the District shall not exceed the amounts set forth in the Petition, subject to adjustment consistent with the terms of the Act and the Rate and Method of Special Levy Apportionment.

K. The District shall be self-supporting, as provided in Section 2-10-3(D) of the PID Policy.

L. The District shall comply with existing City policies for development, growth management and conservation, as provided in Sections 2-10-3(A) and 2-10-5(K) of the PID Policy.

M. The PID financing proposed in the Petition and other Formation Documents meet the applicable requirements of Sections 2-10-6(H), 2-10-7(D), 2-10-7(F) and 2-10-7(G) of the PID Policy.

N. The officers, agents and employees of the City are hereby authorized and empowered to do all acts and things and to execute and deliver all documents relating to or requested by the District to carry out and comply with the provisions of the Formation Documents.

O. The District's governing body shall hold a public meeting within 15 days following the date of adoption of this Formation Resolution. At that meeting, the District's governing body shall adopt the open meeting policy and by-laws for the District submitted in the Application, approve and execute the Development Agreement, and shall take such other action toward or in connection with the issuance of the District Financing, as authorized by this Formation Resolution.

P. Pursuant to the authority granted in §§ 5-11-20(G) and 5-11-23(F) of the Act, the District shall establish procedures for foreclosure of delinquent District Special Levies and for redemption of foreclosed property, which procedures shall be substantially similar to the foreclosure and redemption procedures applicable to Municipal Improvement Districts set forth in NMSA 1978, §§ 3-33-28 to -30 (1965, as amended), and as set forth for the District in the Development Agreement approved by this Formation Resolution.

Section 5. Authorization of District Financing. The District may issue District Financing pursuant to a resolution of the District's governing body authorizing issuance of one or more Reimbursement Certificates, or other financing mechanisms available to the District upon approval of Petitioner, for the purpose of financing the Infrastructure Improvements subject to the requirements set forth in this Formation Resolution (the "Financing Resolution").

A. The Financing Resolution shall be approved by the District.

B. The Financing Resolution shall include, at minimum, the following provisions for the protection of the owner of the District Financing when Reimbursement Certificates are issued:

(i) The District shall issue Reimbursement Certificates in substantially the form set forth in Exhibit C to the Development Agreement;

(ii) The Financing Resolution shall include provisions for the issuance and delivery to Petitioner of Reimbursement Certificates concurrently in accordance with the Development Agreement;

(iii) Each Developed Platted Property within the District shall be levied the maximum allowable District Special Levy for each year beginning the first Fiscal Year after a home on said Developed Platted Property receives a certificate of occupancy from the City (the "Maximum Annual Special Levy"). Unless reduced by the Petitioner for a specific Final Plat as stated in Paragraph 4B of the Development Agreement, the Maximum Annual Special Levy in any given year shall be the same amount for each Developed Platted Property within said Final Plat which amount shall be computed as stated in Section C.1 of the Rate and Method of Special Levy Apportionment attached to the General Plan as Exhibit D; provided that, (1) the Maximum Annual Special Levy shall never exceed the maximum amounts identified below in in the Rate and Method of Special Levy Apportionment attached to the General Plan as Exhibit D; and (2) the Reimbursement Certificates Requirement (as defined in the Rate and Method of Apportionment of Special Levy attached as Exhibit D to the DGP) shall not be imposed on Developed Platted Property for more than 30 years after the date of imposition of the first Maximum Annual Special Levy on such Developed Platted Property. After the Reimbursement Certificates Requirement has been assessed for 30 years on any specific parcel of Developed Platted Property, the District Special Levy for such Developed Platted Property shall decrease to only that portion of the District Special Levy equal to such Developed Platted Property's pro rata amount of operating expense of the District (the "Operating Requirement"). Each Developed Platted Property's "pro rata amount of operating expense of the District" is equal to the estimated total amount of operating expense of the District divided by the aggregate number of Developed Platted Property's subject to the Reimbursement Certificates Requirement or the Operating Requirement. The terms "Developed Platted Property", "Fiscal Year" and "Final Plat" used in this paragraph shall have the same meaning as such terms are defined in the Rate and Method of Special Levy Apportionment attached to the General Plan as Exhibit D. The term "operating expense of the District" means all obligations and expenses of the District other than costs of the PID Funded Infrastructure Improvements dedicated to the City. The Operating Requirement shall be assessed until the date the District terminates;

(iv) The Financing Resolution shall include provisions for appointment by the District of a PID Administrator. The PID Administrator may exercise or assign to another the rights and remedies of the District to collect District Special Levies and foreclosure delinquent District Special Levies for the benefit of the District and Petitioner;

(a) The District shall issue Reimbursement Certificates to the Petitioner. The Reimbursement Certificates shall not be offered, traded, transferred or sold unless the District and the City receives an opinion of nationally recognized bond counsel that no state or federal securities laws will be violated by such offer, trade, transfer or sale. The Financing Resolution shall provide that the PID Administrator may exercise the rights and remedies of the

District for the protection of the party entitled to enforce the Reimbursement Certificates including, without limitation, the following:

- (i) the PID administrator's collection of District Special Levies;
and
- (ii) the PID administrator's foreclosure of delinquent District Special Levies.

C. Prior to the issuance of District Financing, the District's Financing Resolution shall be presented to the City Council for approval and will be approved by the City Council if consistent with the provisions of this Section 5 of this Formation Resolution.

Section 6. District Governance.

A. The District's governing body (the "District Board") shall be composed of the following five directors: (i) two representatives of the Petitioner, who shall be Louie Maldonado and Christopher V. Vitale; (ii) two representatives of the City, who shall be Keith Riesberg and Dan Olsen; and (iii) a representative chosen by the mutual agreement of the four preceding directors, who shall be Carey Plant. Each of the directors named shall serve 6-year terms.

B. Prior to the end of the initial six year period of the District, if any of the City nominees shall resign or otherwise cease to act as directors of the District, the City shall have the sole right to nominate their replacements for the remaining term. Prior to the end of the initial six year period of the District, if any of the Petitioner nominees shall resign or otherwise cease to act as directors of the District, the Petitioner shall have the right to nominate their replacements for the remaining term subject to the City's right to approve such nominees in the City's reasonable discretion. Prior to the end of the initial six year period of the District, if the joint nominee of the four preceding directors shall resign or otherwise cease to act as a director of the District, the City and the Developer shall jointly nominate the replacement for the remaining term. In each case, such nominee shall be appointed to the District's board of directors by the remaining members of the District's board of directors.

C. Pursuant to § 5-11-6 of the Act, Louie Maldonado is appointed clerk of the District and Dan Olsen is appointed treasurer of the District.

D. Within six years following the date of formation of the District, the District shall hold an election of members of the District Board in conformance with Act and the PID Policy. In the event that a member of the District Board acting pursuant to an election resigns or is otherwise terminated as a member of the District Board, the City shall appoint a director of the District Board to serve until the next election.

Section 7. Waiver of Additional Hearing and Election. Based on the information provided by the Petitioner in the Petition, the Petition has been consented to on behalf of the owners of 100% of the Land to be included in the proposed District and no resident qualified electors or any other persons are located on the Land, and on that

basis the City waives the requirements for posting, publication, mailing, notice, hearing and owner election, as authorized by NMSA 1978, § 5-11-7(l) (2001).

Section 8. Amendments. This Formation Resolution may be amended or supplemented by ordinance or resolution adopted by the City Council in accordance with the laws of the City and the State, and in compliance with the Development Agreement and Developer approval.

Section 9. Repealer. All ordinances or resolutions, or parts thereof in conflict with the provisions of this Formation Resolution, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 10. Severability. If any section, paragraph, clause or provision of this Formation Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this Formation Resolution.

Section 11. Publication of Notice of Adoption of Formation Resolution. The Clerk is hereby directed to publish a notice of this Formation Resolution, in substantially the following form:

Notice is hereby given of the title and general summary of the subject matter contained in a resolution duly adopted and approved by the City Council of the City of Rio Rancho, New Mexico relating to the approval of Lomas Encantadas/Enchanted Hills Public Improvement District. Complete copies of the resolution are available for public inspection during the regular business hours of the City Clerk, City of Rio Rancho, New Mexico.

The title of the Formation Resolution is as follows:

RESOLUTION

APPROVING THE PETITION AND APPLICATION OF AMREP SOUTHWEST INC., A NEW MEXICO CORPORATION, FOR FORMATION OF LOMAS ENCANTADAS/ ENCHANTED HILLS PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, NMSA 1978, §§ 5-11-1 to 27 (2001, AS AMENDED) AND THE CITY OF RIO RANCHO NEW MEXICO PUBLIC IMPROVEMENT DISTRICT GUIDELINES AND APPLICATION PROCEDURE; MAKING FINDINGS IN CONNECTION WITH THE PETITION AND APPLICATION AND SUPPORTING DOCUMENTATION REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE GENERAL PLAN, RATE, METHOD OF APPORTIONMENT AND MANNER OF COLLECTION OF A SPECIAL LEVY TO BE IMPOSED UPON REAL PROPERTY WITHIN THE DISTRICT, AND APPROVING A DEVELOPMENT AND REIMBURSEMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE DISTRICT; PROVIDING THAT OBLIGATIONS OF THE DISTRICT SHALL NOT BE OBLIGATIONS OF THE CITY OF RIO RANCHO; RATIFYING CERTAIN ACTIONS

HERETOFORE TAKEN; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS FORMATION RESOLUTION.

A summary of the subject matter of the Formation Resolution is contained in its title.

(End of Form of Summary of Resolution for Publication)

ADOPTED THIS _____ DAY OF _____, 2016.

Gregory Hull, Mayor

Date

ATTEST:

Stephen Ruger, City Clerk
(SEAL)