

City of Las Cruces®

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Council Action and Executive Summary

Item # 11Ordinance/Resolution# 15-027For Meeting of _____
(Ordinance First Reading Date)For Meeting of August 18, 2014
(Adoption Date)

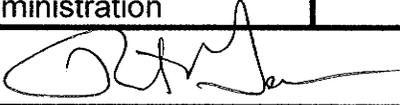
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A SETTLEMENT AGREEMENT BETWEEN THE PUEBLOS AT ALAMEDA RANCH ASSOCIATION, INC., AND THE CITY OF LAS CRUCES.

PURPOSE(S) OF ACTION:

To approve a settlement agreement.

COUNCIL DISTRICT: 6		
<u>Drafter/Staff Contact:</u> L. Reyes	<u>Department/Section:</u> Public Works/ Administration	<u>Phone:</u> 528-3125
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Pueblos at Alameda Ranch (The Pueblos) is a private, gated residential subdivision within the City of Las Cruces (City). The streets within The Pueblos are privately owned by The Pueblos at Alameda Ranch Association, Inc. (Association) and have never been dedicated to or accepted by the City, nor are they subject to City maintenance. Residences within The Pueblos are connected to the City's water utility system and are individually metered and billed for water services. The water main line and service lines, which were installed over six (6) years ago by a private contractor on behalf of the subdivision's developer, are located within the streets, which are recorded as utility easements. The water main line and water service lines have been accepted for ownership and maintenance by the City.

The water service lines within the subdivision began to fail, resulting in subgrade and pavement failure on Nambe Arc from Northrise Drive to the cul-de-sac, San Carlos Court from Nambe Arc to both the north and south cul-de-sacs, Chimayo Drive from Northrise Drive to Nambe Arc, and Picuris Court from Nambe Arc to both the north and south cul-de-sacs (collectively called "the affected streets"). The City's Utilities Department agreed to replace the water service lines, related fittings, and to patch the associated pavement cuts at the City's sole expense. The City has completed many of the water service line repairs along Nambe Arc and Chimayo Drive. This work required that numerous cuts be made to the pavement, which were repaired by City crews with asphalt patches in compliance with City standards.

The Association is concerned that the pavement cuts and subsequent patches affect not only the aesthetic condition of the affected streets, but also have reduced their useful life, thus

increasing their financial burden towards maintenance of the streets. The Association also contends that the City is obligated to restore the streets to their prior condition. While the City contends it has no legal obligation to do so, an agreement has been reached to apply MasterSeal™ to the streets to satisfy the Association's concerns and resolve this disputed claim.

MasterSeal™ fills small cracks, stops raveling, and protects asphalt pavement against chemicals, moisture, and oxidation through the application of a quick setting asphalt emulsion, sand, additive, and water. The MasterSeal™ application will completely satisfy the disputed claim and release the City from any additional obligation for any future roadway surface maintenance or repair work within The Pueblos. The estimated cost for the MasterSeal™ application is \$59,180.89 (includes NMGRT).

Any future maintenance of City utilities within the affected streets, including pavement cuts, will be completed and patched by the City in compliance with City standards in effect at that time without any further obligation by the City to restore the affected streets to the condition that existed prior to the pavement cuts and asphalt patching.

Attached is Exhibit "A", Settlement Agreement between the Pueblos at Sonoma Ranch Homeowners Association and the City of Las Cruces (Agreement) and Attachment "A", Map of the affected streets.

If the Agreement is approved, the City will hire a contractor to repair the remaining water services lines, asphalt patches, and apply the MasterSeal™ road surface treatment to all the affected streets. The total estimated cost for the proposed improvements is \$250,000 (includes NMGRT). Funds for this Agreement will come from the appropriate budgeted Utilities Department Fund.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Settlement Agreement Between the Pueblos at Alameda Ranch Homeowners Association and the City of Las Cruces.
3. Attachment "A", Map of the affected streets in The Pueblos at Alameda Ranch gated community.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allow the City Manager to sign the Agreement to resolve the disputed claim.
2. Vote "No"; this will not allow the City Manager to sign the Agreement, resulting in no City participation in a MasterSeal™ application.
3. Vote to "Amend"; this action could approve the Agreement with adjustments to conditions or changes as requested by City Council.
4. Vote to "Table"; this would allow City Council to postpone consideration of the Resolution to approve the agreement and direct staff accordingly.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION NO. 15-027**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT BETWEEN THE PUEBLOS AT ALAMEDA RANCH ASSOCIATION, INC., AND THE CITY OF LAS CRUCES.**

The City Council is informed that:

WHEREAS, The Pueblos at Alameda Ranch (The Pueblos) is a private, gated, residential subdivision within the City of Las Cruces (City); and

WHEREAS, the streets within The Pueblos are privately owned and maintained by The Pueblos at Alameda Ranch Homeowners Association (Association) and have never been dedicated or accepted by the City; and

WHEREAS, water utility lines within The Pueblos are owned and maintained by the City and such lines are located within the streets; and

WHEREAS, repairs to the water service line required cutting and patching of the streets within The Pueblos, and the patches were in compliance with City standards; and

WHEREAS, the Association contends that the patching of the streets within The Pueblos have negatively affected the aesthetic condition and useful life of the streets. The Association further contends that the City is obligated to return the streets to their former condition; and

WHEREAS, the City contends that it has no legal obligation to repair the streets but seeks to resolve this disputed claim and agrees to apply MasterSeal™ to the affected streets as stipulated in the Settlement Agreement between The Pueblos and the City of Las Cruces (Exhibit "A").

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT a MasterSeal™ treatment will be applied to the affected streets specifically being Nambe Arc from Northrise Drive to the cul-de-sac, San Carlos Court from Nambe Arc to both the north and south cul-de-sacs, Chimayo Drive from Northrise Drive to Nambe Arc, and Picuris Court from Nambe Arc to both the north and south cul-de-sacs, within The Pueblos as stipulated in the Settlement Agreement between The Pueblos and the City of Las Cruces attached hereto as Exhibit "A" and made part of this resolution.

(II)

THAT the City Manager is authorized to sign the Agreement attached hereto as Exhibit "A".

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this ____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Smith: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

**SETTLEMENT AGREEMENT BETWEEN
THE PUEBLOS AT ALAMEDA RANCH ASSOCIATION
AND THE CITY OF LAS CRUCES**

This Settlement Agreement ("Agreement") is entered into on this _____ day of _____, 2014, between the **City of Las Cruces** (the "City") and **The Pueblos at Alameda Ranch Association, Inc.** (the "Association"), a New Mexico domestic non-profit corporation.

BACKGROUND

1. The Pueblos at Alameda Ranch ("The Pueblos") is a private, gated residential subdivision within the City limits. The streets within The Pueblos, specifically Nambe Arc, Chimayo Drive, San Carlos Court and Picuris Court (collectively "the affected streets"), subject to this Agreement, and specifically excluding Nambe Court which is not subject to this Agreement, are privately owned and maintained by the Association and are not dedicated to or accepted by the City. The affected streets are also considered to be utility easements as referenced in the plat for the Pueblos at Alameda Ranch, recorded on September 23, 2005, in Plat Book 21, Pages 349-351 of the records of Dona Ana County, specifically Note #9 on Plat Page 351, which states that "Tract G consists of Nambe Arc, Picuris Court, San Carlos Court, and Chimayo Drive. Tract G will be a 50" wide permanent, private access and utility easements privately owned and maintained within a gated community by the neighborhood association."
2. Residences within The Pueblos are connected to the City's water utility system and are individually metered and billed for City water utility service. The service lines, which are located within the affected streets, are on the City's side of the water utility

meters and were accepted for ownership and maintenance by the City. The service lines were installed within the affected streets over six (6) years ago by a contractor on behalf of the developer of The Pueblos.

3. After meeting with representatives of the Association, the City's Utilities Department has agreed to replace the water service lines and related fittings, which are now part of the City's water utility system, at the City's sole expense.
4. The City has completed many of the water service line repairs along Nambe Arc and Chimayo Drive, and intends to replace the remaining water service lines within San Carlos Court and Picuris Court within six (6) months of the execution date of this Agreement. This repair work requires numerous cuts to the pavement of the affected streets. As some of the older asphalt patches have settled over time and now lie below existing street grade, the City's Utilities Department, at its sole expense, will repair all water line repair pavement cuts within the affected streets with asphalt patches in compliance with City standards.
5. The Association is concerned that the pavement cuts and subsequent patches affect not only the aesthetic condition of the affected streets but have also reduced their useful life, thus increasing the Association's financial responsibility towards maintenance of the streets, and contends that the City is obligated to restore the affected streets to the condition that existed prior to the pavement cuts and asphalt patching.
6. The City will patch the pavement cuts in Picuris Court and San Carlos Court and will repair the asphalt patches in Nambe Arc and Chimayo Drive in compliance with City standards, and contends that it has no obligation to restore the affected streets to

the condition that existed prior to the pavement cuts and asphalt patching beyond the completed patching.

7. In spite of their disagreements, the parties desire to resolve this disputed claim as set forth below.

CONDITIONS

1. The Association, after considering several options presented by the City, has determined that the application of MasterSeal™ to the affected streets is the most effective way both to extend their life and to improve their aesthetic appearance. MasterSeal™ fills small cracks, stops raveling, and protects asphalt pavement against chemicals, moisture, and oxidation through the application of a quick setting asphalt emulsion, sand, additive, and water.
2. The City will, at its sole expense and, as contended by the City, without a legal obligation to do so, hire a contractor to apply MasterSeal™ to the affected streets, specifically being Nambe Arc from Northrise Drive to the cul-de-sac, San Carlos Court from Nambe Arc to both the north and south cul-de-sacs, Chimayo Drive from Northrise Drive to Nambe Arc, and Picuris Court from Nambe Arc to both the north and south cul-de-sacs, in complete satisfaction of the disputed claim set forth above. The City will pay for that expense from the appropriate budgeted Utilities Department fund. The estimated present cost for the MasterSeal™ project to the four (4) affected streets is \$55,020.00 plus New Mexico Gross Receipts Tax in the amount of \$4,160.89; for an estimated total project cost of \$59,180.89 as set forth in the estimate attached as Attachment "A". The cost at the time the MasterSeal™ is applied may be more or less than this amount, depending on the cost for MasterSeal™ at the time of application.

3. The City shall notify the Association at least one (1) week prior to the date that the MasterSeal™ will be applied.
4. The work to be performed as part of this Agreement shall be warranted for a one (1) year period in accordance with the City of Las Cruces General Conditions for Construction Contracts Manual, Section GC-38. Guarantee.
5. The Association recognizes and accepts that any future maintenance of City utilities within the affected streets, including pavement cuts, will be completed and patched by the City in compliance with City standards in effect at that time without any further obligation by the City to restore the affected streets to the condition that existed prior to the pavement cuts and asphalt patching.
6. This Agreement contains the entire understanding between the parties and supersedes any prior written or oral agreements between them respecting the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Agreement that are not fully set forth in this Agreement.
7. This Agreement shall be binding upon and insure to the benefit of the successors and assignees of the parties. Neither party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other party. No third party or other person including individual homeowners within The Pueblos shall have any right or benefit hereunder.
8. No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by both parties.
9. The parties have a contractual duty to attempt to resolve, in good faith, any dispute pursuant to this Agreement prior to litigation. In the event litigation is commenced to

enforce or interpret, or for the breach of any provision of this Agreement, the prevailing party shall be entitled to recover from the losing party costs and expenses incurred, including reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

CITY OF LAS CRUCES

THE PUEBLOS AT ALAMEDA
ASSOCIATION, INC.

By: _____
Robert L. Garza, P.E.
City Manager

By: _____, President
(Signature)

APPROVED BY:

Marcia B. Driggers
Senior Assistant City Attorney

Estimate for Master Seal work in the Pueblos at Alameda Ranch

Council District	Street	From	To	Length (ft)	Width (ft)	Surface Area (SY)	Unit Cost (SY)	Estimate Cost per Street Segment
6	Nambe Arc	Picuris Ct.	San Carlos Ct.	437	38	1845	\$2.50	\$4,612.78
6	Nambe Arc	San Carlos Ct.	Chimayo Dr.	1650	38	6967	\$2.50	\$17,416.67
6	Nambe Arc	Chimayo Dr.	South Cul-de-sac	282	30	940	\$2.50	\$2,350.00
6	Nambe Arc	Northrise Dr.	Picuris Ct.	500	38	2111	\$2.50	\$5,277.78
6	Chimayo Dr.	Northrise Dr.	Nambe Arc	658	32	2340	\$2.50	\$5,848.89
6	San Carlos Ct.	Nambe Arc	North Cul-de-sac	302	32	1074	\$2.50	\$2,684.44
6	San Carlos Ct.	Nambe Arc	South Cul-de-sac	695	32	2471	\$2.50	\$6,177.78
6	Picuris Ct.	South Cul-de-sac	Tee	195	34	737	\$2.50	\$1,841.67
6	Picuris Ct.	Tee	North Cul-de-sac	472	38	1993	\$2.50	\$4,982.22
6	Picuris Ct.	Nambe Arc	Tee	530	26	1531	\$2.50	\$3,827.78

Sub Total: \$55,020.00
 NMGRT: \$4,160.89
 Total: **\$59,180.89**

THE PUEBLOS AT ALAMEDA RANCH

